

## **SCHEDULE OF OPTIONS AVAILABLE TO INDIVIDUALS IN FINANCIAL DIFFICULTY**

The most common options available to individuals who are unable to pay their debts are:-

- 1 Do nothing.
- 2 Obtain an unsecured debt consolidation loan.
- 3 Release equity by way of re-mortgage or secured loan.
- 4 Informal arrangement (no assistance).
- 5 Debt management programme.
- 6 Individual voluntary arrangement.
- 7 Debt relief orders.
- 8 Bankruptcy.

### 1 **DO NOTHING**

Many people try to avoid dealing with their problems because they don't know what to do for the best. However doing nothing is never an option that we would recommend. Doing nothing increases the likelihood of your creditors taking recovery action against you usually by instructing debt collectors and culminating in court action, bailiffs, attachment of earnings orders, charging and property sale orders and even bankruptcy. This can be very stressful. If you fail to make payments on secured loans repossession proceedings could be commenced.

### 2 **UNSECURED DEBT CONSOLIDATION LOANS**

Again this is not an option that we would ever recommend. In theory a debt consolidation loan allows you to combine numerous credit commitments into one monthly payment. You will need to carefully consider what you can afford to repay realistically each month before the debt consolidation loan is applied for. Unless you can borrow sufficient funds to clear all your existing debts you may find yourself in a worse position.

#### Advantages

- If you are able to consolidate all of your unsecured debts then you can have one monthly payment each month.
- Low impact on your credit rating if you can maintain the required contractual repayment.

#### Disadvantages

- The consolidation loan will cost considerably more in the long term as it will be repayable over a longer period of time and will increase the level of the debt by the new creditors' interest and charges.
- Most people keep their previous credit cards for "emergencies" and over a period of time the balances on the credit cards builds up again.

### 3 RELEASE OF EQUITY & SECURED LOANS/RE-MORTGAGE

This is a debt solution offered by loan companies and banks to home owners in financial difficulty, on the basis that by consolidating unsecured debt in the form of a re-mortgage, the re-mortgage monies can be used to repay all existing unsecured debts and reduce the required monthly repayments by taking advantage of lower interest rates which can be obtained with secured borrowing. Again the level of the required re-mortgage would need to be ascertained so that sufficient money could be raised to clear all of the outstanding unsecured debt.

#### Advantages

- If it pays off all of your unsecured debts then you can have one monthly payment.

#### Disadvantages

- It will cost more in the long term as the secured loan will be repayable over a longer period of time with substantial arrangement fees and interest charged for the duration of the loan.
- If you default on the repayments of the secured loan you may lose your home if the lender commences repossession proceedings.
- With falling house prices falling if you secure further borrowing on your house you may find yourself trapped in a negative equity situation. It is unlikely that you will be able to sell/move out of your property if this were to occur without allowing the mortgage company to sell as mortgagee in possession. In effect this means your house would be repossessed and you would be liable for any unsecured balance.

### 4 INFORMAL ARRANGEMENT (DEALING DIRECTLY WITH YOUR CREDITORS)

If you have a small number of creditors and a low debt level and there is no immediate threat of legal action you could try to come to individual arrangements with each of your creditors by offering them reduced repayments. The difficulty with trying to resolve your issues in this way is that it would be difficult to reach individual agreement with all of your creditors. Those refusing to accept the proposal could commence legal action against you at any time making the arrangement unworkable. In addition it would only be suitable for people whose financial circumstances are about to change for the better thus increasing what would be made available to creditors in the near future.

### 5 DEBT MANAGEMENT PROGRAMME

A debt management programme is an informal procedure under which a specialist debt management company seeks to negotiate on your behalf an agreement with your creditors as to reduced repayments. The debt management company will usually charge an arrangement fee for setting the programme up and a management fee for managing the programme and

distributing payments to your creditors each month. The debt management company with your help will prepare an up to date financial statement regarding your financial situation and agree a monthly level repayment that you can afford to pay your creditors each month. Making allowances for the debt management company's fees your creditors will be offered a pro rata payment out of your surplus income each month. You would make monthly payments to the debt management company usually by standing order or direct debit and they will distribute that payment once their costs have been deducted. This solution is appropriate for people with debts of less than £15,000 and where creditors can expect to receive payment in full within a five or at most six year period. Debt management would not be an appropriate solution in our opinion if it would take you longer than this to become debt-free.

#### Advantages

- Relatively cheap to set up and manage.
- You continue to control your assets.
- Your creditors may freeze ongoing interest and charges.
- Once the programme is implemented ie the creditors are receiving regular repayments from you they will usually stop further action against you.
- Where creditors approve a debt management programme this avoids the need for formal insolvency proceedings.

#### Disadvantages

- Your creditors are not legally forced to freeze interest and charges on your account. Even if they do it is usually only for a limited period of time and may be subject to a periodic review. Creditors will require ongoing information and can change their minds about freezing interest overnight.
- You have no court protection from your creditors who can at any time break ranks and decide to issue court action or other legal process for the recovery of the debt. Creditors who are unhappy with what they are being paid on a debt management programme could also issue a bankruptcy petition against you at court.
- Not all of your creditors may agree to the programme. Those creditors are likely to continue in recovery proceedings against you escalating the size of the debt all the time. Some creditors may even try to get security for their debts over any assets you may own by use of the county court bailiffs (they will usually secure charges over personal items eg furniture or your car) or by way of charging order proceedings usually over your house. In both cases assets can be sold to repay debts.
- Creditors would expect payment in full in respect of the outstanding debt. No part of the debt would be written off.
- Some creditors have minimum repayment requirements eg if an individual creditor feels that what is being offered to them is low they may require individual increases. This again would make the programme unworkable.

- A debt management programme would have an adverse effect on your credit rating as your creditors would log with the consumer credit reference agencies the offers of reduced payments under the debt management programme.

## 6 INDIVIDUAL VOLUNTARY ARRANGEMENT

An individual voluntary arrangement is a formal agreement between you and your creditors under which you agree to make monthly payments or make available to creditors your assets or both in full and final settlement of your debts. As people who avail themselves of this procedure are insolvent creditors will usually agree to part of the debt being written off. However creditors will expect to receive more than they would in the event of bankruptcy. If such an arrangement is accepted/approved by your creditors the creditors are not entitled to apply interest or any changes thereafter and thus the level of the debt will be frozen. Essentially if agreed this would form the basis of a new contract between you and your creditors.

An individual voluntary arrangement is managed by a licensed Insolvency Practitioner. Whilst the terms of the proposal may vary typically you will be required to make an affordable monthly payment to your insolvency practitioner out of your surplus income over a period of usually between three and five years. In exceptional circumstances this could be increased to 6 years. In addition if you own your property and there is equity in it you may be required to introduce a lump sum either by way of re-mortgage or sale of the property at the end of the arrangement. As long as you make the required repayments and do what is necessary you will be debt-free within the time specified in the arrangement. The unpaid balance of what you owe will be written off by your creditors.

### Advantages

- You will not lose control of your assets as you would in a bankruptcy.
- If you are a director of a limited company or self-employed it is easier for you to remain in business. In other words you would not automatically be disqualified from acting as a director and similarly your business partnership would not automatically be terminated. Statutory restrictions on obtaining credit would not apply. There are fewer stigmas in IVAs than in bankruptcy.
- IVAs are not advertised in local newspapers.
- There is quite a lot of flexibility in the preparation of proposal documents and in particular what assets are offered to creditors. Some assets can be excluded.
- As long as over 75% of the creditors voting at your creditors' meeting vote in favour of the proposal then all of your creditors will be bound by its outcome. This avoids the necessity of securing every creditor's specific agreement (as would be required in a debt management programme).
- If approved the IVA gives you security and comfort in knowing that once you have fulfilled your obligations under the arrangement it will

effectively bring the IVA to an end and the creditors will not be able to pursue you for any unpaid balances.

### Disadvantages

- The IVA may impose more onerous obligations over a longer period than bankruptcy.
- Creditors may suggest modifications which may alter the original scope of the proposal for example require higher repayments over a longer period, assets included in the individual voluntary arrangement are held by the Supervisor on trust for the benefit of your creditors.
- If your IVA is approved and you fail to comply with what is required of you in accordance with the terms of the proposal for example if you fail to make the monthly repayments into your proposal without prior arrangement your Supervisor may be forced by creditors to issue a bankruptcy petition against you.
- There are restrictions in obtaining credit whilst you are in an IVA.
- You are released from your voluntary arrangement only when you have complied with all the conditions of your IVA and your creditors have been notified.
- If you were required to re-mortgage your house at the end of the arrangement you would be left with a higher mortgage but this should be affordable as no further monthly contributions into the arrangement will be required at that stage.
- If your IVA were to be refused by your creditors your creditors may if they thought they would recover more money from you by doing so may apply to court for your bankruptcy.

## 7 BANKRUPTCY

Bankruptcy is a formal insolvency procedure used where someone's financial affairs are such that they owe a lot more money than the value of their assets or what they can afford to repay. Bankruptcy can come about either by a creditor who is owed more than £750 making a creditors' application to the court or the debtor making their own application. Either way once a bankruptcy order is made your affairs would be dealt with by the Official Receiver or an appointed Trustee in Bankruptcy. Any assets that you own at the time of your bankruptcy will vest in your Official Receiver or your Trustee in Bankruptcy and consequently if you own your own home the Trustee would seek to realise any value that you have in it if necessary by applying to the courts for your house to be repossessed and sold. This is more likely to happen if there is equity in your house. The Trustee in Bankruptcy would also seek to sell any investments or shares and will also take control of any savings accounts that you may have. If you receive any assets during your bankruptcy such as a lottery win or an inheritance this will have to be paid to your Trustee in Bankruptcy and such sums would be distributed to your creditors. In addition having taken into account your income and expenditure the Trustee in Bankruptcy may try to reach agreement with you as to the level of a monthly payment for an income payments agreement. In the event of him not being able to agree a suitable level of income payment, he will seek to make an application to the court. Such payments usually last for 36 months

from the date of any order and unless the court determines otherwise. The Trustee in bankruptcy under new bankruptcy legislation is now required to investigate your conduct and the circumstances giving rise to your present financial predicament. Relevant conduct can include such matters as borrowing money from creditors when you knew you had no way of repaying it, giving assets away or selling them for less than their value, paying some creditors (usually family members) before others, gambling or fraud. Such conduct could give rise to grounds for your Trustee in Bankruptcy to make an application to the court for a Bankruptcy Restriction Order. The effect of this would be for the duration of your bankruptcy to be extended for a period of up to 15 years. This depends very much on the conduct in question.

#### Advantages

- It gives you an opportunity of a fresh start. It prevents your creditors making any further claims against you or demands for direct repayment of the debts whilst you are bankrupt and cannot pursue you for repayment once you have been discharged from bankruptcy.
- Relative peace of mind. All legal action against you is stopped in relation to the bankruptcy debts.
- The level of an income payments order may be lower than those required in a voluntary arrangement and unless the Trustee in Bankruptcy applies to the court for a bankruptcy restriction order would only last for 36 months.

#### Disadvantages

- If you are to apply for your own bankruptcy you would be required to pay a substantial court fee. At the present time this is £600 comprising of a court fee of £150 with a deposit of £450.
- If you apply to obtain credit of more than £500 during your bankruptcy and prior to discharge you must bring this to the lender's attention.
- Any assets that you own at the time of your bankruptcy will automatically transfer to your Trustee in Bankruptcy.
- You have a duty to provide full information as to your assets and liabilities, income and expenditure and fully co-operate with your Trustee in Bankruptcy. Failure to co-operate may result in the Trustee in Bankruptcy applying to the court to suspend time running in respect of the duration of your bankruptcy and extending its duration.
- The Trustee may make an application to the court for you to be subject to an income payments order and may require monthly repayments for a period of 36 months (unless the court orders a longer period).
- You would be automatically disqualified as acting as a director of a limited company or taking part in the management of a company except with the court's prior permission. You may also be prejudiced in your employment if you work in the financial services industry, police or other related areas or perform a management role.
- Certain debts are not provable in bankruptcy eg student loans, arrears of maintenance, fines and child support agency payments. These will need to be paid even if you are bankrupt.

- As the Official Receiver has to investigate the circumstances giving rise to your present financial predicament if this has been the result of reckless, blameworthy or dishonest conduct, the Official Receiver/Trustee in Bankruptcy appointed by him may apply to the court for a bankruptcy restriction order eg building up credit card debt that you realistically could not pay back.
- Certain conduct in bankruptcy may result in prosecution and can be punishable by imprisonment of a maximum of two years for example defrauding creditors, concealing assets or destroying books and records.
- Bankruptcy orders are advertised in the London Gazette and depending on the official receiver may be advertised in local newspapers therefore it may be difficult for you to operate bank account during bankruptcy.

## 8. Debt Relief Orders

If you have less than £15,000 of unsecured debt and have a surplus disposable income of £50 or less, you do not own a property and the value of your assets is not more than £400 you may be eligible to apply for a Debt Relief Order. If you feel that this may be the right solution for you we will be able to advise you as to how you can access advice in relation to this.

### Advantages

- All unsecured debt is written-off;
- A Debt Relief Order is completed after just 12 months;
- It serves to prevent creditor harassment. Any form of creditor harassment is illegal once a Debt Relief Order has been entered;
- You are not required to make a monthly payment as debtors aren't expected to contribute towards their debts because there is no surplus income available from which payments can be made.
- Simplicity. An intermediary, rather than an Official Receiver, will deal with the case. This means that if you do have financial difficulties you will have someone to consult and take care of the more complex aspects of a Debt Relief Order.

### Disadvantages

- **Bad Credit.** A Debt Relief Order will result in bad credit being registered at all the major credit reference agencies. This will show on your personal credit reports for a period of 6 years. However, if you have been struggling with personal debt problems and financial difficulties it is quite likely that your credit file has been impaired.
- **Existing debt solutions.** A debt relief order is not suitable if you are an undischarged bankrupt, have a Bankruptcy Restriction Order (BRO) or are already in an Individual Voluntary Arrangement;

- Only covers debts up to £15K. If you are seeking to write-off debt above £15,000 will need to look into an alternative debt solution, such as going bankrupt;
- Unsuitable for home owners. Your assets must not exceed £400. If you are a home owner with personal debts over £15,000 you may wish to consider an alternative debt solution, such as an Individual Voluntary Arrangement or a debt management programme;
- Windfall payments. Should you win or inherit money, it is expected that this will form part of the Debt Relief Order;
- Insolvency register. A Debt Relief Order will appear on the publicly available government insolvency register. However, very few people will ever access this as it isn't common knowledge;
- You can apply for a Debt Relief Order once in any six year period.