Investigating personal insolvency : a progression of studies into individual voluntary arrangements

INVESTIGATING PERSONAL INSOLVENCY

A PROGRESSION OF STUDIES INTO INDIVIDUAL VOLUNTARY ARRANGEMENTS

by

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by

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ABSTRACT

This doctoral submission represents over ten years of focused research that has resulted in a unique collection of academic and professional articles. The epithet "unique" is adopted to reflect that over those years this area of study has been relatively untouched by other academic researchers.

This submission presents a total of eight academic and seven professional journal publications that chronicle the major output of numerous research projects undertaken between 1992 and 2002. The publications adhere to a central aim - to investigate the practical use and complex interactions between stakeholders of the individual insolvency rescue vehicle the Individual Voluntary Arrangement (IVA).

The research projects employed a variety of relevant methodologies to populate an emerging conceptual model of the prime factors affecting the incidence, usage and outcomes of IVA cases.

The first five articles report and develop the data collected during the various projects. The articles build on each other, analysing results and comparing these with previous studies to underline reliability in the data. The final three articles draw threads from the research data and develop the conceptual model further.

As a research progression this submission contains all of the necessary ingredients of a doctoral thesis. It focuses on a discrete body of knowledge, builds on a conceptual model, gathers valuable data and tests it, draws strong conclusions and, finally, establishes and contributes new theory in this area of study.

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KEYWORDS:

INSOLVENCY
BANKRUPTCY
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VOLUNTARY ARRANGEMENT
DEBTOR

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A big acknowledgement also goes to Emin Akcaoglu, Research Assistant on the Social Sciences and Humanities Faculty funded project in 1997/98.

My biggest thanks, however, go to my constant helpers and supporters: my wife Christine, who, amongst other sacrifices, meticulously coded and transcribed hundreds of insolvency cases in my 1998 project; Joyce Tuson, my secretary, who marshalled disparate files and data into the finished thesis as well as preparing many of the original articles for publication in journals and in the Banking Centre Research Paper series and Professor Barry Howcroft (just Mr when this journey began) who has encouraged, advised and funded numerous initiatives and who has paid me the enormous compliment of acting as Director of Research for this thesis.

DEDICATION

To Judy, my lifelong learning companion.

To my Dad, Norman Frederick Pond (1924 – 1992), who placed enormous importance on my education but never dreamt that it would lead us here.

To all those whose financial crises made this research possible.

CERTIFICATE OF ORIGINALITY

This is to certify that I am responsible for the work submitted in this thesis, that the original work is my own except as specified in acknowledgements and footnotes, and that neither the thesis nor the original work contained therein has been submitted to this or any other institution for a higher degree.

…………………………………..(Signed)
Keith Pond

……………………May 2003…..(Date)

GLOSSARY OF TERMS

Common abbreviations used in the text

AO	Administration Order
AR	Administrative Receivership
CDDA	Company Directors' Disqualification Act 1986
CVA	Company Voluntary Arrangement
CORK	The Cork report 1982
D of A	Deed of Arrangement (Deeds of Arrangement Act 1914)
IVA	Individual Voluntary Arrangement
IA 1986	Insolvency Act 1986 (also IA 2000)
IP	Insolvency Practitioner
1R 1986	Insolvency Rules 1986
IO	Interim Order
IS	Insolvency Service
OR	Official Receiver
R3	Association of Business Recovery Professionals (Rescue, Recovery, Renewal) (formerly SPI)
RPB	Recognised Professional Body
ROT	Retention of Title
SPI	Society of Practitioners of Insolvency

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CHAPTER 1

OVERVIEW, RATIONALE, CONTEXT AND CONFIGURATION

Introduction

Fifteen years have passed since I first began to undertake research in the area of Individual Voluntary Arrangements (IVAs). Those years have witnessed a series of planned and opportunistic projects designed around a common aim to investigate the IVA phenomenon.

My overall macrostructure has been aimed at investigating the IVAs progress as an alternative to bankruptcy for insolvent debtors. I have also charted its changing incidence and nature. The microstructure within the individual articles presented has been involved with the motives and reactions of IVA "stakeholders". My research, overall, has shown the successes and pitfalls that the IVA can bring.

The various projects undertaken have adopted different methodologies both as the most suitable way to research a particular area and as a means of triangulation of findings. More than once the findings from research have been tested during the research process itself for validity and reliability.

My research publication philosophy has been to inform a mainly practitioner audience of the use of the IVA. Latterly I have augmented this by seeking to share research data and IVA modelling with a wider academic audience.

This doctoral submission represents a unique progression of research. Few academic researchers have ventured into this area of law and practice and few publishing outlets were available in the academic press initially. In this regard I am indebted to

Professor Harry Rajak, former editor of Insolvency Law & Practice, who encouraged further effort by publishing a number of early articles.

Nor has my interest in this area ended or diminished. Further opportunities to chart changes in the law and their impact on decision making are in train and further research in this area is certain.

Rationale

As a practising banker (Midland Bank plc 1978 - 1991) I had often encountered instances of personal bankruptcy and business failure. The nature of the banking business is to take risks and on occasion insolvency aids bankers in quantifying that risk, as money is lost. My training helped me see bankruptcy or liquidation as a failure, often due to circumstances outside the banker's control, as customers were lost and borrowing was only partially recovered.

The bank introduced me to an alternative strategy, however, when I took up an appointment in Midland's "Lending Services Department" (1982-1984). This appointment was to prove to be seminal in my career. Within my LSD team I worked to support and rescue large corporate clients and to minimise bank exposure and potential loss by restructuring and turnaround management. The work of my team was described in a rare contemporary article written by my manager, David Wheatley (Wheatley, 1983), and proof read and delivered to the publishers by me. My time at LSD showed me that rescue and rehabilitation of corporate debtors was beneficial to the debtor, the bank, other creditors and to the economy as a whole. My personal and professional experience was reflected in a wider way in the Cork report (Cork, 1982) that ushered in the most influential change in UK insolvency law that century.

Two seemingly unconnected events in 1986 combined to conceive the work presented in this submission and in my MPhil thesis (Pond, 1989a). These events were the passage of the 1986 Insolvency Act (coming into force on 31 December 1986) and my secondment as Midland Group Visiting Fellow at Loughborough University Banking Centre in July 1986.

The former event provided the legislative change that bankers, creditors, debt counsellors, insolvency practitioners and lawyers, amongst others, would need to come to terms with - the IVA. The latter event gave me the time, resources and opportunity to chart the development of the IVA from its inception.

I have learned, as a researcher, not only to take an objective view of data but also a very subjective view of what interests me in order to motivate my efforts. The resultant work, now submitted, represents an abiding interest.

Arrangement of sections

This submission is arranged into THREE main areas:

Chapter 1 **Overview, rationale, context and configuration**

In this section I bring together the key aims of the research reported in the eight articles (Chapters 2-9). I present the research projects and publications as a coherent whole. I describe and discuss the various research methodologies used and position each article in the research chronology.

Finally I draw key conclusions and look forward to new research challenges ahead that the present work has identified.

Chapters 2 - 9 **The articles**

Each article is reproduced in turn. Each carries its own set of references and footnotes. Where possible the journal style relating to structure, headings and references has been retained.

Appendices

Appendix A

Here I reproduce supporting research materials. The material has never been published in this format since academic journals typically avoid a thesis style approach.

The materials expand, amplify and illustrate points made in the last four papers in particular and give good evidence of the rigour of the research process.

Appendix B

In accordance with my wish to make my research accessible to academics and practitioners alike I reproduce here a number of professional journal articles often written alongside the academic output.

These are reproduced as photocopies of the original pages of the individual journals.

Appendix C

Glossary of Insolvency terms

The three-factor approach to insolvency research design

This approach emerged as a conceptual model following my MPhil research (Pond, 1989a) and my follow-up studies in 1992 and 1997 presented in Chapters 2 and 4 respectively.

Whilst not wishing to engage in too much reductionism the model illustrates and simplifies the multi-faceted nature of this area of knowledge. My initial literature review, conducted to support early research projects, was concentrated in the area of legislation rather than the users of the legislation. My more practical approach saw the key stakeholders, the insolvency practitioner (as a proxy for the debtor) and the creditor as interpreters of the legislation. Important decisions would flow from their knowledge and experience of this area of law and practice. Such decisions, however, would not generate large numbers of IVAs unless the general commercial atmosphere was ready for this to happen.

My overall approach to model building can be illustrated by reference to the Venn diagram shown in Figure 1. The approach provides three separate bases from which to review the observed dispositions of various stakeholders to individual insolvency.

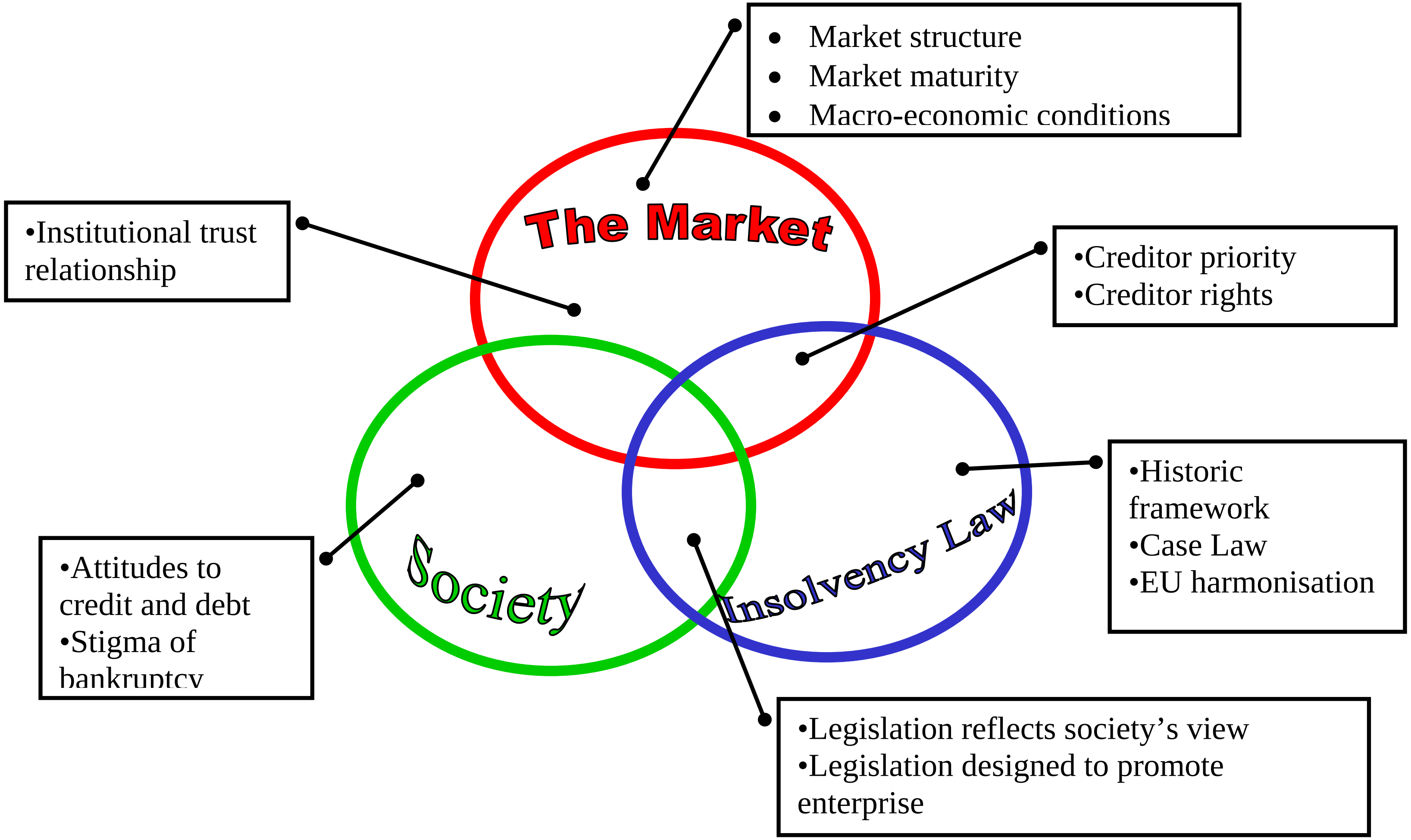
These bases are:

- Competition in the market for credit
- Societal norms
- The framework of insolvency law

Each base (set in Venn diagram terms) intersects with the other two showing their more complex inter-linkages and suggesting areas where research could investigate inter-dependencies.

As my research projects developed over the years 1992 - 2002 I focused attention on one part of the model or another. This focus is reflected in the introductions to the various articles in this chapter.

Figure 1: The Three Factor Approach to insolvency research



Research methodologies

My research methodologies fall into three broad categories:

- Survey (1988, 1989, 1992 and 1997)
- Case Study (1993, 1994, 1995, 1999)
- Interview (1997)

These methodologies were deployed both to investigate an aspect of the study area in the most relevant manner and to assist in triangulation of study findings. This would inform the reliability and validity of the data. The various projects that form the basis of articles in this submission are summarised in Table 1.

In my MPhil study I initially used court documentation to scope out the data required and then survey questionnaire. The former was an expensive and time-consuming methodology but did have the advantage of offering raw data, unadulterated by comment from a particular stakeholder. This allowed me to design a survey questionnaire that asked relevant questions and where responses could be verified against objective records.

The survey method was used again in 1992 and 1997 to good effect, especially as the answers on the fate of IVAs were not readily available from court records. At this stage my template and conceptual model was more of a “Flowchart” (Miles & Huberman, 1984) and then a series of "Learning Loops" (Kolb, 1984) but would soon develop into Woolcott's "Zoom Lens" (Woolcott, 1990) as individual aspects of the IVA model were investigated using the case method.

Table 1: Insolvency research projects undertaken

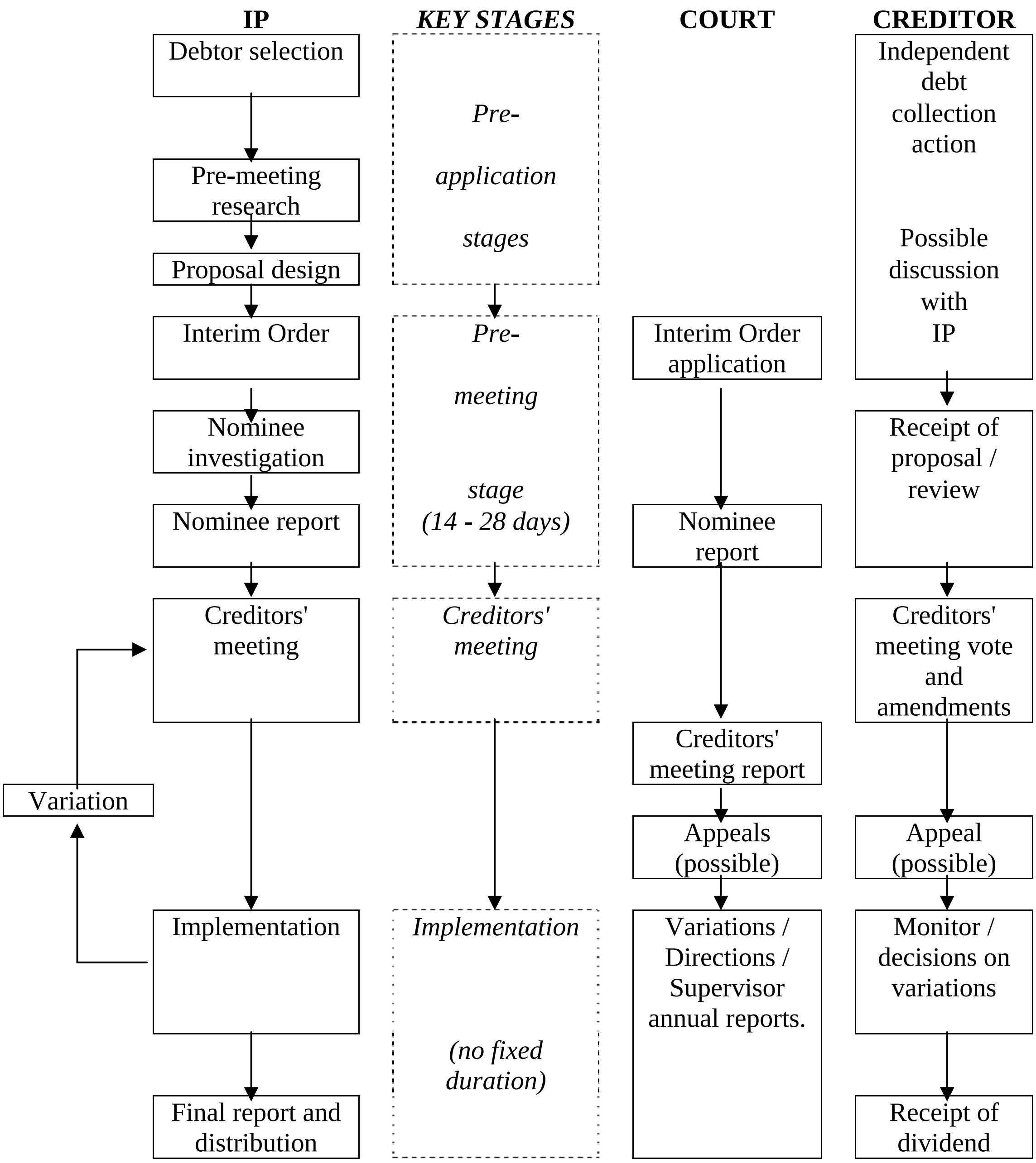
Date	Subject	Methodology
1988	Pilot study of early IVAs	Review of court records
1988 / 1989	Empirical study of IVAs and legal review (MPhil)	Review of court records and survey questionnaire
1993	Debt Counselling	Case based
1992	Long term study of IVA outcomes	Survey questionnaire
1993	Mortgage Arrears	Case based
1994	Expert System analysis of IVAs	Case based
1995	Pitfalls and problems of IVAs	Case based
1997	Empirical review of IVA cases (SSH Faculty funded)	Survey and interview
1998 / 1999	Empirical review of database of IVA and Bankruptcy cases relating to a major creditor	Data interrogation and interview
1999	Management of IVAs by creditors	Case based

Case based research was then used to look at discrete parts of the emerging picture. Cases can limit review to a particular set of interactions (Silverman, 2000) but often provide detailed analysis via the gift of anecdotes and examples. The generalisability of cases is uncertain (Bryman, 1988, Arber 1993) but does have the advantage of purposive sampling, clearly illustrating the features that the research is interested in.

The procedural nature of the IVA lent itself very well to the "Flowchart" method of research design. My 1988/89, 1992 and 1997 projects collected data from various parts of the flowchart – up to the point of the creditors' meeting in the earliest study and in 1992 and 1997 adding the post acceptance phase.

A basic flowchart of the IVA procedure, showing the points of interest for different stakeholders is shown in Figure 2:

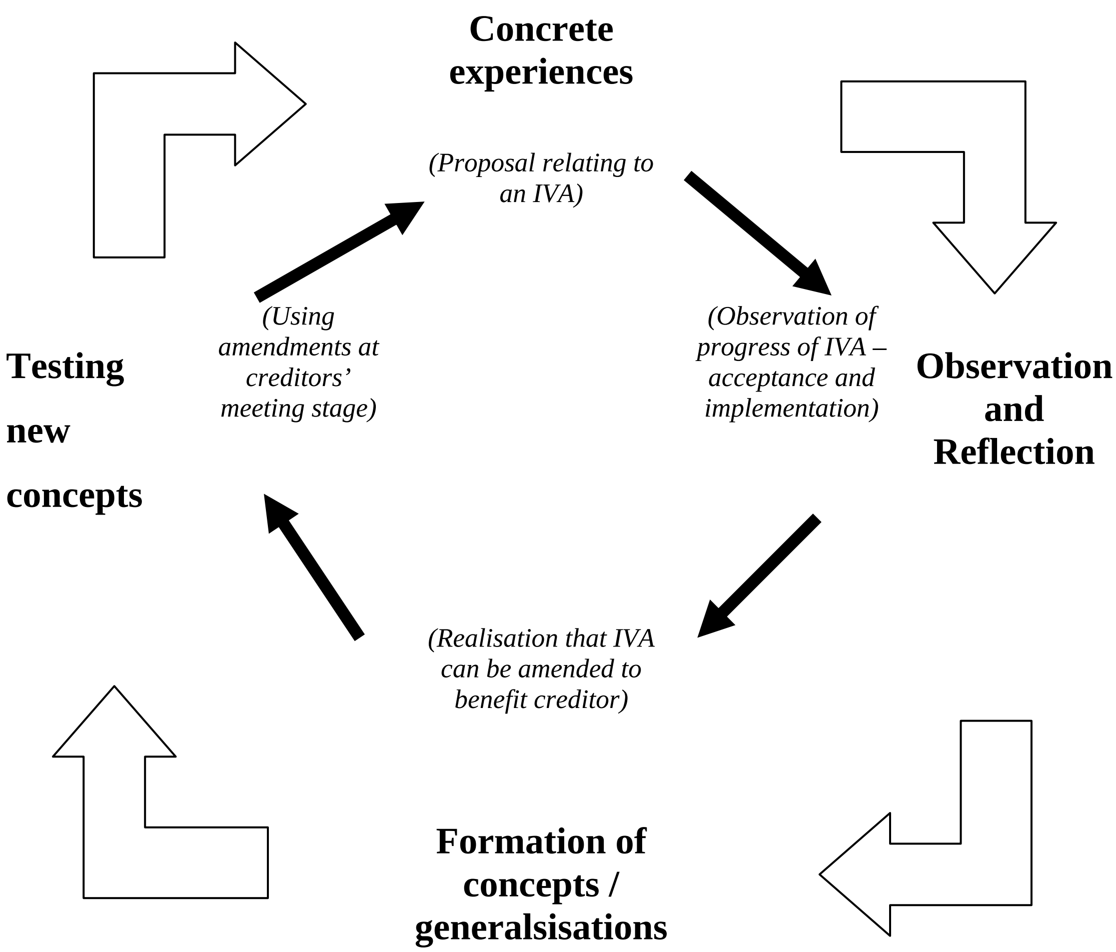
Figure 2: Flowchart approach to research focus



This figure clearly illustrates the points at which features of the IVA could be inspected. The initial 1988 pilot study used actual court records whilst subsequent studies used the IP records – this proved to be particularly important since no clear records were kept by the authorities of final payments or reasons for IVA failures.

Following the 1997 research it was clear that IPs, the courts and creditors (especially the larger ones) were learning from their experience of early IVAs and were using their greater familiarity with the legislation to intervene in the IVA process more often. This approximated, in my mind, to Kolb's "Learning Loop", an example of learning is illustrated in figure 3 and forms the basis of some of the more theoretical papers.

Figure 3: Learning from IVA experience (*with creditor's viewpoint*)



The example shown in figure 3 is only one of many instances of learning seen in the progress of the IVA research. The courts too have learned from the experience and have streamlined procedures (see chapter 2) and IPs have become adept at anticipating creditor demands. The debtor, by the very nature of the event, cannot learn from the experience and so any "institutional learning" undertaken on behalf of debtors is passed on to future generations by the IP or by debt advisers.

The focused case methodologies used informal interview and feedback methods and exemplified the "Zoom Lens" approach as discrete parts of the IVA picture were investigated. In the expert system work, for example, much case data was gathered by demonstrating the system to sample constituents (Citizens Advice Bureaux, major mortgage creditors and a Money Advice centre) and receiving feedback on their own methodologies as well as constructive views on the system displayed.

Table 2 overleaf indicates where the "Zoom Lens" was pointed at different times:

In 1998/ 1999 the case investigation via informal interviews followed, in the case of one bank, a very detailed analysis of its own database of IVA and bankruptcy cases. In this instance only very generalised findings could be published.

In 1997 a purer form of interview was used to aid explanation of the findings from survey material. Appendix A contains some examples of significant findings from the survey research together with sample interview transcripts. The anecdotal material gained was also used in the more qualitative review of IVA interactions underpinning the "theory" based articles.

Table 2: The "Zoom Lens" approach

KEY STAGES		**1988/89**	**1992**	**1993/94**	**1995**	**1997**	**1998/99**
	Focus	**IP**	**IP**	**Creditor**	**IP**	**Creditor**	**Creditor**
Pre-application stages		✓		✓	✓	✓	
Pre-meeting stage (14 - 28 days)		✓				✓	✓
Creditors' meeting		✓				✓	✓
Implementation (no fixed duration)			✓		✓	✓	✓

Note: Descriptions of projects undertaken in the years indicated are shown in Table 1.

Overall, the collection of methodologies aggregates into a long-term ethnographic study. Relevant methodologies were used to address individual research questions contributing to the whole. The different methodologies address the key issues of validity of data and reliability of interpretation.

The refereed articles

Pond, K., ''The Individual Voluntary Arrangement Experience'', *Journal of Business Law*, 1st March 1995, pp 118-130, ISSN 0021 9460.

The Journal of Business Law (JBL) is targeted at academic and professional lawyers and in this first article there was a need to introduce and contextualise IVAs since research had shown low awareness was prevalent (Pond, 1989a). The general background helped to position the article as a review of law and practice 10 years after Cork (Cork, 1982) and five years after introduction of the Insolvency Act 1986.

The articles describe the IVA procedure, enabling statutory references and case law to be introduced to augment particular points. Summary findings from the 1989 and 1992 research studies (Pond, 1989a; Pond 1993) are introduced to show the practical impact of the legislation and to compare IVAs with the more familiar bankruptcy procedure.

By combining both research projects the full chronicles of early IVA cases could be tracked for the first time. This methodology would be used again in 1997.

The article built on my MPhil thesis (Pond, 1989b) that reported only the 1989 research but did include some tentative observations about the areas of conflict and interpretation in IVA design that had been shared by interviewees in the research. The 1989 thesis had not been used as a basis for academic articles due to the hiatus in my academic career when I went back to work for Midland Bank (1989-1991). This article therefore represented the first external publication of my use of IVA categorisation (by income and assets) and the concept of risk for creditors in accepting IVAs.

The article concludes with a review of legal cases and a Practice Direction that had amplified the Insolvency Act and Rules provisions, especially in the area of creditor appeals. It also notes the inclusion of specific contractual clauses in IVA proposals -

an early portent of the standardisation of IVA documentation proposed by the insolvency profession itself 10 years later (R3, 2001)

The conclusion of the article supports the view that IVAs have been successful in achieving their aims but that further use of this insolvency vehicle is needed before a better picture can be drawn.

Doherty, N.F. and Pond, K., "Intelligent Support for Individual Voluntary Arrangements", *Insolvency Law and Practice*, 10(6), 1994, pp 169-172, ISSN 0267 0771. (50%/50% contribution)

In order to explore the 1989 and 1992 research further the opportunity was taken, in 1994, to collaborate with a Business School colleague to review IVA law and practice from a systems engineering point of view.

The research was highly practical and built on earlier collaboration to design and build an expert computer system to describe and support more general debt-counselling work (Doherty, 1993). The article introduces IVAs and summarises research to date for a largely practitioner oriented audience. By 1994 IVAs were well established and had been the subject of a number of descriptive articles in the professional press and so a detailed description of the legislation was not needed for this audience.

The strong conclusion from the research was that that client selection and IVA design were knowledge-intensive procedures, well suited to exploration via a rule-based expert computer system.

The article goes on to describe expert computer systems in general and to show their importance to the achievement of organisational goals. A brief description of the expert computer system (PISCES) follows as the component parts of the IVA selection and design processes are broken down and reviewed. Whilst this rule-based approach appears mechanistic it does introduce the concept that IVAs are a knowledge-based procedure and that much of the subjective knowledge has still to be captured.

Pond, K. and Evans, D., "Debtor Non-Co-operation in Individual Voluntary Arrangements", ***Insolvency Law & Practice,*** **11(4), 1st September 1995, pp 82-85. (90%/10% contribution)**

This is one of two articles showing joint authorship with David Evans, insolvency manager at Pannel Kerr Forster, Leicester (see Appendix B). Whilst David co-operated with the research and offered some advice on the draft articles it remains, essentially, my own work.

The article draws on a unique research opportunity in 1995 extended by Leicester based insolvency practitioners Pannel Kerr Forster. The opportunity was given for me to spend a week with a busy insolvency manager who had responsibility for day-to day management of IVA cases. This interview and case based methodology supported the present article and gave insight not apparent from normal survey methods. A further professional article was also published following this project and is reproduced at Appendix B (Pond, 1995b)

The 1992 research on the fate of some early IVA cases had shown that many had failed due to debtor non-co-operation. This research attempted to provide a clearer explanation of what this phrase actually meant in a practical way.

Findings from the research were also used to inform the design of the 1997 research project, particularly the interview stage.

The article is fairly brief and summarises the rationale for the research, reporting various reasons for non-co-operation. The article also offers possible remedies for some non-co-operation problems; further populating the "knowledge base" built up by insolvency practitioners to support the IVA selection and design process.

The article aimed to provide detailed discussion for practitioners on the causes of IVA failure.

Pond, K., ''A Decade of Change for Individual Voluntary Arrangements'', ***Insolvency Law & Practice*****, 14(6), December 1998, pp 332-336.**

The "Decade of Change" article was again aimed at a practitioner audience. Its style was largely descriptive as it reports findings from my major research study in 1997. The "decade" refers to the fact that IVAs had been available under the Insolvency Act 1986 for 10 years.

The research broadly replicated the studies in 1989 and 1992 (Pond, 1989 and 1993) by identifying a number of cases commenced in 1994/95 and reviewing their outcomes or progress in 1997.

The research learned from and built on the earlier studies, drawing its initial sample from the Insolvency Service public register. The research also drew on the regular surveys undertaken by the insolvency professional body R3 (then SPI) (SPI, 1992-97) that tended to reflect major trends but failed to look at areas of practical detail. Survey results (30% response rate) were carefully coded and analysed (see Appendix A) and tentative conclusions were shared with a small number of insolvency professionals to aid interpretation of the data. Transcripts of selected interviews are included in Appendix A.

The conclusions of the research were that the nature of IVA proposals had changed over the 10 years. Greater awareness and acceptance by creditors and debtors, together with the changed economic conditions, especially relating to domestic property prices, contributed to this change.

IVA terms had lengthened to the now standard five years whilst IVA dividends had fallen and average 17p in the £ (32p for larger cases). Benefits over bankruptcy were remarkably consistent over the 10 years at roughly double the dividend available in bankruptcy. This suggests that economic conditions, rather than debtor or creditor strategies were responsible for this change. Table 3 extends the analysis of the IVA vs., bankruptcy returns in the article.

Table 3: Comparing dividends in IVA and bankruptcy

Case	IVA		Bankruptcy		IVA v. Bankruptcy		IVA as % of Bankty.		10 year difference	
	87/88	**94/95**	**87/88**	**94/95**	**87/88**	**94/95**	**87/88**	**94/95**	**IVA**	**BKPT**
under 10k	32.11	5.02	8.24	4.65	23.87	0.37	389.68	107.96	-27.09	-3.59
10 to 20k	43.17	42.2	18.6	17.75	24.57	24.45	232.10	237.75	-0.97	-0.85
20 to 50k	49.71	31.76	36.79	10.4	12.92	21.36	135.12	305.38	-17.95	-26.39
over 50k	71.07	39.46	56.69	18.65	14.38	20.81	125.37	211.58	-31.61	-38.04
w.av.	47.62	30.69	22.06	14.35	25.56	16.34	215.87	213.87	-16.93	-7.71

The 1998 research also showed that Cork's determination to provide an insolvency vehicle relevant to the needs of professionals and managers was coming to pass (Cork, 1982).

Success rates over the 10 years do fall from 77% to 67% due largely to the poorer economic conditions. Failure of IVAs through debtor non-co-operation was further investigated in the interview phase of this research. This helped to introduce the concepts of IVA risk and moral hazard. This theme would be echoed in future papers.

Pond, K., "Administration of Recoveries in Individual Insolvency: Case Studies of Two UK Banks", ***The European Journal of Finance*****, 8(2), 2002, pp 206-221, ISSN 1351-847X.**

Although it was published in 2002 this article was researched in 1998 / 99, progressing via the academic conference route (Pond, 1999) before being selected for the European Journal of Finance.

As for many researchers serendipity played a large part in this project. A chance enquiry from a major retail bank about IVA research resulted in a long-term relationship whereby advice on IVA design points and monitoring was exchanged for unique access to a full database of that bank's IVA and bankruptcy cases. The strategy that bank had adopted, to "out-source" the management of formal insolvency cases (individuals), was largely cost driven but resulted in a detailed database of cases for research purposes. The relationship also offered an insight into the impact of creditor power in the insolvency process.

This unique insight was compared and contrasted with the strategy adopted by another major retail bank that had chosen to centralise management of its IVA cases within its own organisation. The second bank allowed some access to its staff and its records at its Midlands based unit. Both banks were able to "sign-off" the article before publication.

By the time that this article was written the data gathering phase of this research progression was nearing completion and the model-building phase had begun. The article bases itself firmly in the retail banking and debt recovery literature and introduces my three-factor approach to insolvency research design (see Figure 1).

The two banks reviewed in this article offered generous access to managers, opinions and records. They helped to present a convincing canvas against which research conclusions from previous projects could be tested and compared.

The cases also showed the asymmetric bargaining power of well-organised creditors and practical amendment of IVAs in the light of experience.

The article combines case study insights with new and existing data on the IVA experience. It concludes that these creditors are risk averse and alert to the moral hazard that IVA acceptance delivers.

Pond, K., "The Value of the Banker Customer Relationship: Experience of Individual Voluntary Arrangements", ***Journal of Financial Services Marketing*****, 5(1), September 2000, pp 32-39.**

Published in 2000 this article was drawn from the same basic research as the previous article published in 2002 (such are the vagaries of academic publication). The article reviews my IVA research and further develops parts of the Three-Factor Approach from the focused standpoint of the retail banker and the relationship with the consumer debtor. As such it represents the first "theoretical" article in this progression.

The article looks mainly at the inter-face between competition in the retail banking market place and the social and ethical considerations emanating from an awareness of consumer interactions.

The timeliness of the article ensured that it reflected the growing need for banks to develop relationships with their customers and see them as having "life-time value".

Pond, K., "Creditor Strategy in Individual Insolvency", ***Managerial Finance,*** **28(6), June 2002, pp 46-60.**

The penultimate article in this progression had a lengthy gestation. It draws heavily on an academic conference submission in Stockholm in 1999 (Pond, 1999) prepared during my six-month study leave period. The full publication was part of a special edition of Managerial Finance on UK Insolvency that General Editor Rick Dobbins[1] asked me to edit. My editorial, introducing this and other related articles submitted by a wide range of academic authors, is reproduced at Appendix B.

[1] Dr Rick Dobbins was a lecturer in Accounting at Bradford University Management Centre during my 1975-1978 first-degree course. His subject area introduced me, for the first time, to insolvency law and practice. How fitting for him to re-enter my professional career at this stage.

This major article is the second fully theoretical article in this progression. It reviewed and developed the Three-Factor Approach and focused on the interface between retail bank competition and the framework of insolvency law. The article further develops the concept of IVA risk and places the IVA procedure with a basic game theory setting.

Some time and space is spent in the article outlining and explaining the game based model and then seeks to explore the various responses to the classic Prisoners' Dilemma that the IVA decision represents.

Key areas of my IVA research that the proposed model draws on include:

- The concept of debtor non-co-operation
- The concept of moral hazard in IVAs
- The measurement of IVA risk
- Data relating to IVA failure / success
- Data relating to IVA modifications

The article concludes that IVA stakeholders and their professional advisers have learned crucial lessons about IVAs over the years since 1987. These lessons, however, will change as factors such as IVA risk and social attitudes change.

Pond, K., ''New Rules and New Roles for the Individual Voluntary Arrangement'', *Insolvency Law & Practice*, 18(1), January 2002, pp 9-13.

The final article in this progression uses the opportunity provided by legislative changes to review the part of the Three-Factor Approach concerned with the legal framework and its interface with the marketplace and with society.

The legislative changes highlighted were those provided under The Insolvency Act 2000 namely:

- The duty of the Nominee to give an opinion as to whether the IVA has a "reasonable prospect" of being implemented. (This extends the duty under the Insolvency Act 1986 and Insolvency Rules 1986 that sought the Nominee's opinion on the likelihood of acceptance of the proposal by creditors).
- The introduction of criminal liability for debtors making false representations at the proposal stage.
- The enfranchisement of unlicensed persons to supervise Voluntary Arrangements.

The article offers evidence to support opinion on the likely impact of these reforms.

The Insolvency Act 2000 also amends the law with relation to the nature of the creditors' meeting decision, making it binding on all creditors, whether or not they had notice of it. This amendment is reviewed with reference to case law.

A further change under the Insolvency Act 2000 was to make the creditors' meeting decision under a Voluntary Arrangement binding on all creditors, whether or not they had notice of it. This amendment is discussed in the light of recent post IVA cases.

The further legal changes heralded by the Enterprise Act 2002 (at the time that the article was written this was at discussion paper stage) do not affect IVAs directly. In an indirect way, however, they could see the demise of the IVA. The proposals, that are likely to come into force in summer 2004, are to make the alternative of bankruptcy less burdensome and the discharge period shorter. The current three year discharge period is to be reduced to one year and many of the penalties and restrictions faced by the bankrupt diluted or withdrawn. Changes to bankruptcy fee structures, hitherto a substantial advantage of the IVA over bankruptcy for creditors, also feature in the Act, together with the abolition of Crown Preference.

Whilst the reforms can be reviewed against the accumulated knowledge of IVAs held by professionals and academics their true test will follow implementation. This will also offer fresh opportunities for research.

Analysing the contribution of the research

Although publication in academic research is often seen as an end in itself I always wanted my research contribution to have a further aim. That I achieved publication in some very eminent journals is testament to the quality of the work undertaken. That I helped to disseminate knowledge about the IVA experience to academics, practitioners and professionals is the achievement of my primary goal.

In this opening chapter I have described a progression of research projects and publications with a common theme. I have shown that the separate projects are bound together by a coherent conceptual model. I have also offered conclusions that aid interpretation of existing and proposed legislation in this area.

Key contributions to date include:

- Empiricism in an area where anecdote and experience were the only guides.
- Proof that IVAs were viable and that most were successfully completed.
- Evidence of the different attitudes and approaches of creditors and professional advisers.
- Evidence of the changing nature of IVA proposal design.
- Discussion of the concept of IVA risk.
- Discussion of the wider societal drivers of IVA success.

Yet this is still a work in progress. As the law changes (Enterprise Act 2002) new opportunities open up. What will be the impact on the IVA of a foreshortened bankruptcy period? Will IVAs be an automatic exit route from bankruptcy? How will the design of IVAs react to changing economic conditions? Will creditors standardise their responses to IVA proposals? Will practitioners standardise proposals to reduce costs and fees?

There is also scope for detailed legal research into the procedural issues surrounding IVAs in the court process, the "reasonableness" test - how much "better" than bankruptcy must the proposal be? What will be the creditors' reaction to negligent statements on implementation by nominees?

In addition to this the current work is incomplete in a number of areas. Principal amongst these is the factor relating to society. What are the views of debtors to IVAs? Is bankruptcy stigma a thing of the past and if so what impact does this have on attitudes to credit and debt?

Overall this research has been a major contribution to knowledge and understanding in this discrete area of study. Few other academic authors or researchers have investigated the IVA as thoroughly over a sustained period of time.

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CHAPTER 2

Pond, K., ''The Individual Voluntary Arrangement Experience'', *Journal of Business Law*, 1st March 1995, pp 118-130, ISSN 0021 9460.

THE INDIVIDUAL VOLUNTARY ARRANGEMENT EXPERIENCE

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ABSTRACT

The Individual Voluntary Arrangement (IVA) has been available to insolvent debtors since 1987 as an alternative to bankruptcy. Statistically popular over the last six years IVAs have provided the courts with a number of opportunities to interpret the IVA legislation, embodied in the Insolvency Act 1986.

Research into the practical success of the IVA scheme, together with guidance from the courts, combines to give debtors, creditors, insolvency practitioners and lawyers a better understanding of how IVAs operate and how bankruptcy can be avoided by Cork's "innocent debtors".

This article discusses a number of significant research findings and legal developments regarding IVAs and concludes that the IVA scheme has proved to be a sensible and workable part of insolvency legislation.

THE INDIVIDUAL VOLUNTARY ARRANGEMENT EXPERIENCE

INTRODUCTION AND OVERVIEW

"The single most fundamental innovation under the (1986 Insolvency) Act as regards individuals is the concept of the individual voluntary arrangement."[1] (brackets added)"

Unlike the equally innovative Corporate Voluntary Arrangement, however, which has recorded fewer than 400 cases between 1987 and 1992, the Individual Voluntary Arrangement (IVA) is far from being a dead letter[2].

Despite the slow uptake of IVAs during 1987 this "fundamental innovation" has enjoyed a marked increase in usage as the general economic climate has worsened. Poor publicity for IVAs, despite their advantages to a cost cutting government, creditor inertia, lack of awareness amongst insolvency practitioners, solicitors and professional advisers combined with the high initial cost of an IVA and the lack of "suitable" debtors to make 1987 a disappointing year for IVA supporters with only 404 cases recorded[3].

IVA numbers and the IVA share of the individual insolvency "market" grew steadily until 1990 when 1,927 cases (almost 14% of formal insolvencies) were dealt with in this way. In 1991 this share dropped to 11.71% (3,002 cases), perhaps due to the huge increase in bankruptcy numbers in that year[4], but rose again in 1992 to 12.74% (4,686 cases). In 1990 it was suggested that the "novelty" of IVAs had "worn thin"[5] but recent statistics indicate a revival.

This article reviews the IVA procedure and the practical experience of IVAs over the past six years, as revealed by empirical research. The interpretation of new (1986) legislation by the courts has also added to the fund of knowledge now available to debtors and their professional advisers when formal insolvency proceedings are considered.

Whilst the procedure of the IVA may be innovative the principle is not. IVAs are private "contracts" entered into by debtors and their creditors for the satisfaction of debts. In this court supervised and protected procedure the debtor proposes how the debts are to be satisfied, under the guidance of a licensed insolvency practitioner, and the creditors are given the opportunity of accepting or rejecting the proposal. The private nature of the procedure makes it particularly suitable for professionals and public figures where bankruptcy would rob them of their professional status or preclude their continuation in public office.

Compositions in satisfaction of debts and Deeds of Arrangement are very similar concepts to the IVA and have been available under various Bankruptcy Acts since the eighteenth century[6]. In reviewing UK insolvency law and practice in the late 1970's, however, Cork[7] noted that the disuse of these earlier alternatives to bankruptcy was largely due to the existence of legal impediments and the strictures of the Bankruptcy Act 1914 and the Deeds of Arrangement Act 1914, especially where the agreement of creditors was concerned.

In finding a procedure for dealing with insolvent debtors, other than through bankruptcy, Cork felt that an important social need would be filled in addition to relieving the burden of work on the courts and Official Receivers[8]. The general advice given by many insolvency practitioners can now be summarised as:

"An individual voluntary arrangement should always be considered before bankruptcy"[9].

IVAs have now completely replaced Deeds of Arrangement in practice although Deeds are still available and now have fewer disadvantages and impediments[10].

In 1987 the statistics on the use of the IVA procedure were affected significantly by the activities of a small number of insolvency practitioners. Although few insolvency practitioners could have been fully geared up to implement IVAs in the first half of 1987 some independent firms, notably in the North West of England, "championed" the IVA cause. The North West saw 32.3% of IVAs in 1987 but only 15.4% of bankruptcies. London and the South East, on the other hand, saw 12.4% of IVAs in 1987 and 25.8% of bankruptcies[11].

Recent statistics indicate, however, that this position has changed. Now London and the South East account for 45% of IVAs and 37.8% of bankruptcies. Each of the Eastern, South Western and West Midlands areas see, proportionately, more bankruptcies than IVAs whilst the North West is still "championing" IVAs, albeit in a less noticeable way[12].

THE INDIVIDUAL VOLUNTARY ARRANGEMENT PROCEDURE

The Insolvency Act 1986 (IA 1986) gives great prominence to the legislation covering IVAs. The basic procedure is addressed in Part VIII of the Act (Sections 252 to 263), before the bankruptcy procedure, and the more detailed workings of the scheme are embodied in Part 5 of the Insolvency Rules.

The legislation also gives encouragement, or at least the opportunity, for IVAs to be considered at three distinct times in the bankruptcy procedure:

A Direct application by debtor before a petition. (S.253 IA 1986)

B On court discretion following a debtor's bankruptcy petition (Ss.273/4)

C Following a bankruptcy order (S.253(3)(a))

Acceptance of the IVA proposal by creditors will give the court the opportunity to annul the bankruptcy order (S.261(1)(a)).

Although the three "routes" appear to cover all types of debtor proceeding through the courts the practical impact of the legislation has been less than remarkable. The uptake of IVAs following the second and third routes described above have been low.

The willingness of the debtor is often apparent but the funds to finance an IVA and the lack of advice available within courts are considerable barriers.

Whichever "route" is taken the IVA will proceed as follows:

1. Application and Proposal (S.253)

Normally in conjunction with an insolvency practitioner, but sometimes alone, the insolvent debtor will prepare a detailed proposal for a composition in satisfaction of his debts. The Insolvency Rules 1986 (R.5.3) detail the information required in the proposal and rely on a full disclosure of assets and liabilities by the debtor. The proposal will provide for an insolvency practitioner to act as "nominee" to report on the scheme and become the scheme's "supervisor" in due course.

2. Interim Orders (Ss.252, 254-255)

The nominee is given 14 days in which to report to the court, at which the debtor's proposal has been presented, on the viability of the scheme. During the 14 days court protection in the form of an "Interim Order" is given. This prevents any legal processes, including bankruptcy petitions, being commenced or continued against the debtor or his property.

3. The nominee's report (S.256)

Details of the debtors proposal, a Statement of Affairs and the nominee's objective comments on the scheme are submitted to the court two days before the Interim Order expires. If the nominee considers that a meeting of creditors should be called to consider the proposal the Interim Order will be extended by up to 28 days to cover this period. The courts have insisted on the objectivity of the nominee at this stage as in Re A Debtor (No.222 of 1990)[13].

4. The meeting of creditors (SS.257-258)

The meeting must take place within 28 days of the nominee's report to court and creditors must be given 14 days notice to attend and the option of voting by proxy. Details of the proposal are circulated to creditors at this stage.

A majority, by value, of over 75% of creditors attending the meeting or voting by proxy is required to accept the proposal, provided that no more than 50% of creditors, excluding associates (business partners or relatives), vote against the proposal. The debtors plans may be modified by creditors but only with the debtor's approval. The rights of secured creditors, who do not have their votes counted at the meeting, and preferential creditors, are protected by statute although these creditors may indicate their willingness to have such rights diluted.

Few creditors' meetings are well attended and often IVA proposals are accepted by the votes of only a handful of creditors. In one extreme case from 1987 an IVA was accepted on the single vote of a trade creditor representing only 1.3% of unsecured debts outstanding. In this case banks, owed in excess of £60,000, were not represented at the creditors' meeting[14]. Subsequent research showed that this case was successfully concluded.

Court relief is available to any debtor, nominee, creditor, trustee in bankruptcy or the Official Receiver who considers their rights prejudiced by the decision at the meeting. Such objection must be made within 28 days of the meeting (S.262).

5. Implementation of the scheme (SS.259-263)

If the scheme is accepted by creditors the nominee becomes the "supervisor" of the proposal and will put the debtor's plans into action. Rejection of the proposal will re-establish the legal rights of the creditors as the Interim Order expires.

Acceptance of the proposal by the required majority will bind all creditors having notice of the meeting whether they attended or not and whether they voted in favour or not. Apart from the court proceedings the only public acknowledgement that an IVA has been accepted and is in force is its registration with the Insolvency Service (R.5.23).

Implementation of the proposal now takes place and the supervisor has delivered to him the assets included in the proposal and any income pledged by the debtor. Again the total cooperation of the debtor is essential although the supervisor may use the threat of bankruptcy to focus the mind of any erring client (S.264(1)(c)).

The supervisor must further report to creditors, the court and the Insolvency Service every 12 months on the progress of the IVA and within 28 days of its completion (R.5.26 and 5.29).

THE PRACTICAL SUCCESS OF IVAs

In 1989 Loughborough University Banking Centre (LUBC) undertook a study of 100 IVA proposals from 1987 and 1988[15]. Using questionnaires addressed to IVA supervisors and visits to the register of IVAs maintained by the Insolvency Service a further study in 1992 was designed as a follow - up survey of 78 of those IVAs which had been accepted by creditors[16]. The questionnaire survey achieved a creditable 69.2% response rate.

The study looked at problems encountered with accepted IVAs, the ultimate fate of individual cases and creditor expectations regarding the more measurable features of IVAs, especially the eventual dividend. Not only do IVAs forecast better dividends than could be achieved by the bankruptcy of the particular debtor but, generally speaking, they also deliver them.

Study findings

The IVA cases studied were all from 1987 and 1988 and among the earliest IVAs proposed under the 1986 Insolvency Act. The detailed analysis of the study was based on a small sample of cases but, nevertheless, revealed strong indications that a number of factors affecting the IVA can be associated with success rather than failure.

In the study supervisors were asked to indicate whether the IVA they had administered actually achieved its detailed aims, whether the IVA proposal had to be amended and the nature of problems encountered whilst attempting to implement the proposal.

An estimated 76.7% of study cases achieved their aims, according to supervisors, and were successful. Of the 32.9% of cases which hit trouble through falling asset prices, rising unemployment and a generally poor economic situation, over two thirds eventually failed. The remainder were amended and successfully concluded under a revised proposal.

Failed cases were more likely to include an element of income from the debtor and, consequently, be longer in proposed duration than successful cases. Debtor fatigue, lack of interest in the IVA by the debtor and creditors (especially banks) and non-cooperation feature high in the failed cases.

As many insolvency practitioners find:

"Too many debtors find that their enthusiasm for keeping up payments under voluntary arrangements wanes not long after the heat of the creditors' meeting is off"[17].

There is also an indication that IVAs of employees are more prone to failure than those of self - employed traders. In the context of the economic conditions during the lives of these IVAs this is not really surprising.

Supporting the indication that debtor fatigue sets in if the IVA is too long is the finding that some debtors curtailed their own IVAs by accelerating voluntary contributions or remortgaging to satisfy creditors.

Comparison with bankruptcy

The automatic discharge period for bankruptcy of three years (S.279(1) IA 1986) remains an important benchmark for IVAs. Of the cases reviewed only 18% were designed to last for more than three years. In the event all but one of the failed cases had ended in under three years and only one successful case was still running after the three years had elapsed.

In theory, the sanction for non-cooperation with the supervisor of an IVA and, indeed, failure to comply with the terms of the IVA is bankruptcy. This is far from automatic, however, as the courts' power is discretionary in these cases and relies on the extent of the failure to comply and the reasonableness of the requests with which the debtor has failed to cooperate[18]. Clearly longer term cooperation is more material to the success of an IVA where contributions from continuance to trade or from employment are envisaged in the proposal. These are, of course, the very cases which have proved vulnerable to the external constraints over the period of this study.

Of the cases that failed 60% promised income over a period to creditors. In all of these cases supervisors reported that payments had been erratic or non existent, finally drying up altogether.

Whilst bankruptcy does not always follow the failure of an IVA (even when debtors fail to cooperate with the supervisor) the likelihood is strong that the failed IVA debtor will be forced to move home. Thus, the privations of bankruptcy, if not the legal penalties, are visited upon debtors whose IVAs fail. Supervisors reported grounds for petitioning for bankruptcy in 12 cases in the study but only four petitions were granted. In a further case bankruptcy petitions were rejected on three separate occasions as the court preferred to see alternative IVA proposals presented.

Actual outcomes of the study sample IVAs showed that, whilst expected durations stated in IVA proposals were misleading and asset realisations optimistic, in a number of cases, the proportion of realisations required to cover costs was much as expected. Moreover, actual cost levels were demonstrably lower than the costs of bankruptcy would have been.

For a case with £50,000 of assets and/or income available for distribution the bankruptcy costs, according to the 1986 Insolvency Fees Order, would have been 33% of realisations (£16,500). Actual supervisor costs for a similarly sized IVA in the study sample would have been 18.35% of realisations (£9,175). To both these figures essential legal costs and disbursements of between 2% and 8% of realisations must be added. The key cost element in bankruptcy which does not apply to IVAs is the "audit fee" charged by the Insolvency Service. This fee can amount to 15% of realisations and is a major source of funding for the Insolvency Service.

IVA costs were also lower for cases involving income generation than expected from the IVA proposals. The cost comparison shown in Table 1 is made using the information available from the original IVA proposal which should include the basis on which the supervisor will calculate his own fees. Total fees include legal disbursements

TABLE 1 ABOUT HERE

Consequently, dividends were higher for unsecured creditors than in bankruptcy and, generally, at or in excess of the level that could have been anticipated based on the debtor's original Statement of Affairs.

It is interesting to note that the riskier "income only" IVAs return significantly better dividends to creditors than achievable in bankruptcy. This was mainly due to the fact that those debtors who proposed "income only" IVAs had few, if any, assets to offer creditors in bankruptcy. If the alternative to an IVA is bankruptcy then "income only" IVAs of a reasonable duration appear to offer creditors a better chance of a return, albeit at a higher risk of the IVA failing.

Table 2 shows the comparison between the actual dividends achieved in the IVAs studied and the bankruptcy dividends in those same cases, generated using a contra - factual hypothesis.

TABLE 2 ABOUT HERE

In 1987 and 1988 creditors were more likely to accept IVA proposals which contained a good level of saleable assets. The study supports their logic in finding that successful cases are more likely to contain assets and be shorter in proposed duration than failed cases.

Successful cases are also more associated with the positive support given by secured lenders. This often underpins the exclusion of the home, under the terms of the IVA proposal, and its ultimate retention. This gives the debtor a stable basis from which to launch or relaunch a business or career. Support from secured lenders was also shown to encourage unsecured creditors to accept the IVA proposal in the first place. The findings of this study again support the logic of the creditors' prescience.

LEGAL CLARIFICATION

With over 12,000 IVAs registered between 1987 and 1992 it is not surprising that some have been contentious and have required court scrutiny. Although the Insolvency Act and Rules were carefully drafted it was inevitable, as with any new legislation, that clarification of certain parts of the legislation would be required.

The Insolvency Act also gave creditors and supervisors the opportunity to bring uncertain or disputed matters to the attention of the court. This has resulted in a number of cases, involving IVAs, where High Court and Court of Appeal judgements on the interpretation of particular parts of the legislation have been handed down.

Most of these cases have dealt with procedural matters relating to the period up to the appointment of a supervisor rather than on the implementation of the proposal itself.

Procedural enhancements

The detailed IVA procedures contained in the Insolvency Rules received a major amendment in 1991 with the issue of a Practice Direction by the Chief Bankruptcy Registrar allowing the "concertina order"[19]. A "concertina order" can be used in suitably straightforward, fully documented and non-contentious IVAs to grant an Interim Order and a Final Order on consideration of the chairman's report of the creditors' meeting without the necessity of a hearing. The purpose of the order is to save time and costs as, previously, an obligation for the court to hear all IVA applications existed.

As the LUBC study has shown, the costs argument in favour of IVAs is strong and can be substantiated in most cases. The "concertina order" gives further credence to the claim incorporated in many IVA proposals that an IVA would cost less and realise assets faster than the bankruptcy of the debtor.

Another use of curtailed procedures was seen in Re Cove (a debtor) 1989[20]. In this case the court felt that a creditors' meeting would serve no useful purpose and discontinued the Interim Order. In this case the nominee could not show that the creditors would agree to an IVA. The court's swift action may well have secured some benefit for creditors, as IVAs which subsequently fail may have already exhausted available assets, making bankruptcy almost pointless.

In freezing all legal action against the debtor whilst an IVA proposal is investigated by the nominee by the use of an Interim Order the IVA procedure protects the debtor against creditors. Most creditors are stronger and better equipped to mount court proceedings for repayment of debt than the debtor is to defend them. In a further case, however, the court decided that the appointment of a receiver under The Drug Trafficking Offences Act 1986 was not prohibited by the Interim Order Re M (restraint order)(1991)[21].

In this way the courts have shown their understanding of Cork's wish to see "innocent" debtors treated fairly and expeditiously whilst guarding against an abuse of the IVA scheme by those wishing to evade their creditors. Reliance is also placed on the insolvency practitioner licensing system in this regard. The Insolvency Act 1986 introduced a system of licensing insolvency practitioners and according to the Insolvency Service[22] licenses issued by the seven licensing authorities, including The Law Society, The Institute of Chartered Accountants and The Insolvency Practitioners Association, are held by 1,988 authorised practitioners from 961 different firms. It is estimated that around 600 of these licensed practitioners are fully bonded to undertake insolvency appointments. Failure to adhere to the relevant codes of conduct relating to insolvency appointments can lead to revocation of a license and loss of the practitioner's livelihood.

Interpretation of the Act and Rules

By giving creditors the power to challenge the result of a meeting of creditors in an IVA (S.262) the legislation placed a further check on recalcitrant and dishonest debtors and negligent insolvency practitioners.

Creditors have not been slow to exercise their right to challenge decisions on the grounds:

"(a) that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity at or in relation to such a meeting." (IA 1986)

Section 262 gives the court the power to revoke or suspend the decision at the disputed meeting or give directions for the meeting to be re-convened, provided that the challenge is made within 28 days of the chairman's report of the meeting to the court.

In *Re a debtor (No 259 of 1990)*[23] the court decided that the phrase "*unfairly prejudices*" related to the treatment of creditors under the terms of the IVA proposal, such as the dilution of secured or preferential creditor rights, rather than the allegedly "unfair" interpretation of the validity of debts used to vote in the creditors' meeting by the meeting chairman.

This finding is similar to *Re a debtor (No 222 of 1990*)[24] in which three large banks and two other creditors, owed over £53 millions in total, challenged the chairman's decision to disallow their votes. The court ordered that all creditors attending the meeting were eligible to vote (unless debts were for unliquidated or unascertained amounts (Rule 5.17(3))) but if the chairman is in doubt over the validity of a claim reference should be made to the court (Rule 5.17(6)). The danger of the chairman disallowing votes, for whatever reason, is that the creditors so disenfranchised would not be bound by the decision of the meeting and, ultimately, by the IVA.

This touches on a key area of the IVA legislation - the contractual binding of all creditors having notice of the creditors' meeting provided a 75% majority of creditors attending the meeting agree to the IVA. Under Deed of Arrangement legislation dissenting creditors could still petition for bankruptcy.

The result of the creditors' meeting was also scrutinised in *Re a debtor (No 2389 of 1989*)[25] where the debtor challenged a bankruptcy petition on the grounds that the rejection of an IVA proposal was an unreasonable refusal to compromise the debt on which the petition was based (s.271(3)). The court refused to accept the argument put forward by the debtor. This judgement would appear to spike the guns of those IVA supporters who urged debtors to use IVAs to defeat bankruptcy petitions in precisely this way[26].

Room for improvement?

Having worked with the IVA legislation for over five years insolvency practitioners and solicitors are now fairly familiar with its interpretation and its usefulness.

Many of the early procedural and practical problems with IVAs have been overcome in the past five years. Criticisms in 1988 regarding the lack of standardised court forms relating to IVAs[27] have been remedied and the "concertina order" has effectively curtailed the procedure in appropriately straightforward cases, thus answering the criticism that the IVA needed to be swifter if debtors were to be protected.

Although few of the cases studied in the LUBC research included a detailed financial comparison of the outcome of the IVA and of the bankruptcy of the debtor, despite 70.59% of cases being put forward on the basis of a "*better realisation of assets than in bankruptcy*"[28] this has now become common practice. The Insolvency Rules do not call for such a comparison to form part of the proposal but:

"This is necessary for two reasons: first, so that the creditors can have the fullest possible information to enable them to form a reasoned judgement as to whether or not to support the proposal; and, secondly, the creditors must be satisfied that their position is no worse than it would be in bankruptcy"[29].

Other matters, such as the supervisor's power to amend faltering IVAs, are generally dealt with by adding relevant clauses to the proposal. Already Rule 5.3(2)(o) allows for proposals to state the functions which are to be undertaken by the supervisor of the IVA, without limiting the proper scope of these functions. Without wide powers being granted by the proposal the supervisor would need to seek court directions or summon a new creditors' meeting each time amendments to the proposal were required.

In this way IVA procedures have worked well in a practical sense yet two major areas of contention remain: The appropriateness (or otherwise) of the referral limits under s.273 of the Insolvency Act 1986 and the lack of investigatory powers of the nominee and supervisor.

Referral limits

Court referral of a bankruptcy petition to an insolvency practitioner under S.273 is limited to debtors petitions where the Statement of Affairs reveals unsecured bankruptcy debts less than £20,000 and assets equal to or more than £2,000. In addition the debtor must not have been subject to a bankruptcy order or a composition within the previous five years and the court must consider it appropriate to appoint an insolvency practitioner for this purpose. All four conditions must be met if a referral is to be made.

The court is assisted in deciding whether cases falling within these limited guide-lines are "appropriate" (S.273(1)(d)) by the debtors answers to questions 5 and 6 of Part F of the Statement of Affairs (Debtors Petition) (Form 6.28) which elicit details of previous failed compositions and the debtors ideas for an IVA including, vitally, whether the debtor considers that the creditors would agree to an IVA.

Of the cases included in this study only a small number would have qualified for referral based on the above criteria had they commenced as debtor's bankruptcy petitions[30]. IVAs have, however, been shown to be successful where liabilities exceed £20,000, thus supporting the argument that the £20,000 limit should be removed[31] and, perhaps, that the referral mechanism should be available under creditor's bankruptcy petitions too rather than leaving the possibility of an IVA in the hands of the Official Receiver or the debtor. The Coopers & Lybrand Annual Review does, however qualify its support for the removal of this referral limit, by suggesting that the lower limit of £2,000 worth of available assets be increased to at least £7,000, since meaningful IVAs cannot be generated on lower levels of assets. This view appears to ignore those IVAs which the LUBC research has shown to be successful yet are based on the provision of income alone as the debtor has no assets to realise.

The powerless supervisor

In a number of recent court cases, including one cited above, where creditors have challenged the decision of the creditors' meeting, judgements have suggested that where a thorough investigation of the debtor's affairs is required bankruptcy is the correct procedure to use and not the forum of the creditors' meeting.

This does not reflect "*real life*" outlined in Coopers & Lybrand's Annual Review for 1992[32] which proposes that:

"The Official Receiver should exercise his discretion as to whether or not an investigation should be undertaken in any particular case, which is what in fact takes place now".

The failure to order a referral to an insolvency practitioner on creditors' petitions and debtors' petitions where liabilities exceed £20,000 may, therefore, be linked to the belief that such cases should first be investigated by the Official Receiver.

Anecdotal evidence abounds regarding the attitude of the Inland Revenue to IVAs when they were first introduced. Clearly the Revenue will consider the debtor's payment history and will vote against IVAs where tax investigations are underway or are warranted[33].

Thus the IVA procedure is not viewed, officially, as an appropriate vehicle for investigation. Rather, the duty of disclosure is placed on the debtor with the nominee being given only a short time to review the proposal objectively.

CONCLUSION

During the six years that the IVA legislation has been available the legislation has proved to be robust, workable and fairly popular. Little evidence is offered to substantiate the fear that IVAs can be used by unscrupulous debtors attempting to avoid their creditors and it is clear that the courts have not allowed the detailed Rules to be ignored.

An estimated 9,000 debtors have avoided bankruptcy during 1987 to 1992 by using the IVA scheme. Many have continued to trade or to be employed and have contributed to the economy rather than becoming a drain upon it.

Research has shown that the basic aims of the IVA legislation have been achieved for debtors, through avoiding the penalties of bankruptcy; creditors, through receiving better dividends; insolvency practitioners, through increased activity and experience and the government, through the increased privatisation of insolvency appointments.

TABLE 1

Table 1

Comparison of expected and actual supervisor costs from study sample cases

Type of case	Expected costs as % of estimated realisations	Actual costs as % of actual realisations	Total IVA costs as % of actual realisations
Assets only	19.02%	21.56%	33.06%
Assets and Income	20.52%	24.73%	31.53%
Income only	26.37%	19.75%	23.87%
(Average)	(20.86%)	(22.63%)	(30.18%)

TABLE 2

Table 2

Comparison of expected bankruptcy and actual IVA dividends from study sample cases

Type of case	Expected bankruptcy dividends (p in £)	Actual IVA dividends (p in £)	Actual IVA divs as % of bankruptcy estimate
Assets only	51.0p	64.25p	125.98%
Assets and Income	4.5p	22.88p	508.44%
Income only	6.0p	44.67p	744.5%

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CHAPTER 3

Doherty, N.F. and Pond, K., ''Intelligent Support for Individual Voluntary Arrangements'', *Insolvency Law and Practice*, 10(6), 1994, pp 169-172, ISSN 0267 0771. (50%/50% contribution)

INTELLIGENT SUPPORT FOR INDIVIDUAL VOLUNTARY ARRANGEMENTS

by

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c 3,000 words

IVAs pass the test

As the post - recession reviews of insolvency activity get underway and insolvency professionals ruminate on the lessons of the past five years they may notice that one part of the 1986 Insolvency Act has avoided calls for major reform - the Individual Voluntary Arrangement (IVA) procedure. According to the Society for Practitioners of Insolvency:

'The recession of the last few years has been its (sic) first important test and it has clearly passed, both in terms of usability and productivity.' [SPI, 1994]

This article briefly examines the growth in IVA numbers which supports the contention that the IVA procedure has been a 'success' since its introduction in 1986 [James, 1993]. The article aims to describe the range of expertise and knowledge developed by insolvency practitioners who have handled IVAs and further suggests how the important, and often expensive, lessons of recession can be capitalised upon, for the future benefit of insolvency practitioners, creditors and debtors alike, through the medium of expert systems.

IVA numbers and the IVA share of the individual insolvency 'market' rose significantly until 1990 when almost 14% of formal insolvencies were dealt with in this way. In 1991 this share dropped to 11.71%, perhaps as the initial 'novelty' wore off [Mayner, 1990], but rose again in 1992 to 12.74% and reached over 15% in 1993 as shown in Table 1.

TABLE 1 ABOUT HERE

In finding a court supervised and protected procedure for dealing with insolvent debtors, other than through bankruptcy, Cork [Cork Committee, 1982] felt that an important social need would be filled in addition to relieving the burden of work on the courts and Official Receivers.

Significantly, IVAs have remained statistically popular and available to an increasing number of individuals during the recession. IVAs have the potential to capture an even greater share of the personal insolvency 'market' too as courts continue to refer debtors presenting their own bankruptcy petitions, under S.273 of the 1986 Insolvency Act. In the county courts, in particular, the proportion of petitions originated by debtors has risen from 32.7% in 1990 to 46.7% in 1993 (it reached 47.8% in 1992) [Lord Chancellor's Department, 1991 - 1993].

Some research has been undertaken into the reasons for success or failure of individual cases [Pond, 1993] and individual successes have undoubtedly played a part in making IVAs more acceptable to creditors, another key factor in the continuation of this growth.

Accumulated IVA wisdom

Research being undertaken at Loughborough University Banking Centre (LUBC) hopes to distil the 'expertise' of the insolvency practitioner in selecting successful IVA candidates, in designing acceptable and workable IVA proposals and in successfully managing accepted proposals. A variety of data gathering methods are being used to obtain the information needed to program an expert system for IVAs which forms part of a more holistic debt counselling system [Doherty & Pond, 1993].

Although little can be drawn from a review of relevant literature, which concentrates on legal procedures, earlier research at LUBC [Pond, 1989 and 1993] has proved useful. Interviews have also been conducted with a number of local (East Midlands) insolvency managers in conjunction with a 'case based' approach to data gathering.

Preliminary findings on the reasons for the steady growth in the popularity of IVAs provide strong indications that IVAs are set for even greater success. These include:

- Better awareness of IVAs amongst debt advisers, the courts, professional advisers and insolvency practitioners.

- Good experience amongst creditors, who often receive better dividends than they would in bankruptcy, and insolvency practitioners, who recognise the fee earning potential of IVAs.

- The flexibility of the IVA procedure and the growing importance of the generation of income for distribution to creditors.

- Greater concentration of 'expertise' amongst creditors and amongst insolvency practitioners.

Despite the large numbers of IVAs that have been accepted since 1986 it is fairly clear that only a minority of insolvency firms have become involved with them. Cork Gully remain strong 'champions' of IVAs [Pond, 1993] [Coopers & Lybrand, 1994] amongst the larger firms. Evidence from the Insolvency Service's public register of IVAs suggests that the larger national firms account for around 25% of all IVA appointments whilst a further 25% are accounted for by a small number of independent firms.

Key criteria for success

The research described in this article looks particularly closely at the key criteria used by one East Midlands based insolvency practitioner in the three IVA 'stages' of Selection, Design and Management described earlier. Anecdotal evidence and comment in other insolvency journals would suggest that their experience is not untypical.

The key criteria can be split into two parts: Objective and Subjective, with the latter often having a bearing on the acceptability of the former.

Objective criteria include:

- **Amount of unencumbered assets**. 'Asset only' IVAs are shorter, less reliant on debtor cooperation and less prone to failure.

- **Amount of 'free' income**. Meaningful proposals need at least £300 to £500 per month.

- **Amount of 'third party' funding**. A lump sum or the promise of income from relatives can often make a marginal IVA acceptable. Third parties can also cover the costs of the IVA. Cork Gully's experience is that costs can be around £5,000 from start to finish [Coopers & Lybrand, 1994].

- **Number and value of creditors**. An IVA should aim to deliver a better dividend than in bankruptcy with a minimum of around 10p in the pound over a reasonable period. Many IVAs run for three years, mirroring the period to discharge for the bankrupt.

Although IVA proposals often appear standardised the nature of the legislation is that they are flexible and should be tailored to the requirements of individual cases. Just how the objective data is used will be determined by the subjective 'feel' that the insolvency manager interviewing the debtor develops.

Subjective criteria include:

- **The source of the introduction**. Good referrals are often made by local debt advisors. Insolvency practitioners are aware which advisers can be relied upon to spot likely IVA candidates.

- **The stability of the income stream**. The bankruptcy of a professional person can have serious implications for income availability. An example of this is that The Law Society will withdraw a license to practice from a bankrupt solicitor but not from a solicitor with an accepted IVA (although conditions may be imposed) [Wilmot, 1994].

- **Reliability and trustworthiness of the debtor**. Most of the information provided to the practitioner at initial interview is, necessarily, provided by the debtor. Often no independent valuations or investigations are carried out before the application for an Interim Order starts the IVA procedure rolling.

- **The attitudes of the major creditors**. A frustrated building society can jeopardise the acceptance of an IVA just as certainly as an unsympathetic attitude from the Inland Revenue.

These lists are not, of course, exhaustive. Invariably the insolvency practitioner's subjective judgement is developed over time. This can be a short period if, for example, initial valuations prove to be hopelessly misleading or the debtor fails to supply information in a timely manner or it can be a longer period if the debtor's enthusiasm for the IVA ebbs slowly away following the creditors' meeting.

It is this 'feel' for a case, however, that is often the best indicator of time consuming and expensive remedial action ahead or even the failure of the IVA. Problematical IVAs will also, very often, fail to cover professional fees and can leave the supervisor with the difficult decision to re-engineer the IVA or to petition for the bankruptcy of the debtor, possibly at the creditors' own expense. Either way there could be serious implications for the practitioner's reputation amongst the creditors who fail to receive what they had expected.

Traditional computer systems in use in insolvency practitioners offices often fail to capture this subjective data. Such systems work well in triggering periodic reviews of each case on a diary basis so that payment receipts can be checked, or monitoring time charges to enable fees to be calculated and invoices despatched. Much of the routine but complex information about the design of the IVA proposal or the vital communication with the debtor is still held on manual files. Even the best designed IVAs can fail due to the poor management of this key information.

Much of the available evidence suggests that the IVA is a 'knowledge intensive' procedure. An IVA can involve senior and experienced staff at each stage of the process.

Successful IVA selection, design and management is a fusion of the expertise involved in gathering basic data about a debtor, the subjective assessment of the debtor's past and current behaviour and an appreciation of the changing environmental factors such as house prices and creditor attitudes. This intensive use of expertise within the fairly well defined structure of insolvency legislation is a strong justification for exploring the expert system option for IVAs.

Expert system technology

Knowledge, both individual and collective, resides in organisations in many forms. Some of these are tangible and readily accessible, such as manuals, procedures and computer software, others, such as the experience and expertise of its employees, are far less tangible. Many management specialists now recognise that the long term success of an organisation is greatly dependent upon its ability to harness and effectively utilise such knowledge. Michael Porter [Porter, 1993], the widely published American management writer, for example, views knowledge as being one of the key national and corporate resources which needs to be carefully managed and applied. Another highly influential American management writer Tom Peters [Peters, 1992], states bluntly:

'Knowledge is all-important. Bringing knowledge to bear, quickly, is critical.'

Whilst both of the above writers are clear on the importance of corporate knowledge, it is not obvious how it can best be captured, automated and disseminated throughout an organisation to contribute to corporate effectiveness. Given this critical nature of this knowledge, it is essential that organisations identify strategies for its management. One highly promising strategy is to develop computer-based systems which can store and process expert knowledge and hence facilitate the decision-making process. Such systems, commonly called expert systems, can be defined as: *'intelligent computer programs that use knowledge and inference procedures to solve problems that are difficult enough to require significant human expertise for their solution'*

By capturing and utilising corporate knowledge, expert systems have the potential to provide a wide range of commercial benefits, such as cost, permanence, transference, consistency, output and response time advantages over their human counterparts. This list of benefits is given credibility because it is based upon a large number of well documented success stories [Dutta, 1993]. Despite this impressive list of benefits, however, it should be noted that expert systems do suffer from a number of limitations, such as; having a very narrow focus; providing inadequate explanation; and generally being unable to adapt to new experiences. Consequently, because of these potential limitations, benefits can only be assured if the application area is selected with great care.

A wide range of highly successful applications of expert systems have already been developed and implemented in sectors such as manufacturing, computing, medicine and financial services. This last sector has been particularly enthusiastic with regard to harnessing the power of expert system technology, with a long list of successful applications, including credit authorisation, advice on buying shares, financial planning and insurance claims processing. One recent addition to this list has been the development of an expert system, known as PISCES (Personal Insolvency Strategy Counselling Expert System), to provide advice and guidance on the management of personal debt. It has been shown that much of the knowledge and expertise of experienced debt counsellors can be captured and made available, within a computer-based system [Doherty and Pond, 1993]. The latest enhancement to this system has been the development of a module which is specifically focussed upon the task of identifying clients who would profit from an I.V.A., and managing its implementation.

The IVA module

The IVA module has been developed to function, at least initially, as an integral component of the PISCES debt counselling system. In order to be successful in providing expert advice to individuals, who are facing insolvency problems, PISCES was originally subdivided into four distinct modules. Each of these modules, which supports a major phase of the insolvency counselling process, is briefly described as follows:

- **Data Capture**: The data capture module is primarily responsible for interrogating the client and constructing a detailed picture of their current financial status, and personal circumstances, using a computer-based, pro forma, questionnaire.

- **Data Validation**: Having successfully captured the client-related data some basic validation functions are initiated to ensure that there are no obvious oversights or inconsistencies.

- **Budgetary Adviser**: Budgetary advice to the client is presented to the client both in a summary form to present a clear picture of their current and projected financial status, and also in the form of a comparative analysis with normative budgets, to identify potential savings.

- **Strategy Adviser**: PISCES contains a strategy rule-base which helps to determine which is the most appropriate remedial strategy for a specific client to adopt.

PISCES, in common with most expert systems, utilises rule-based technology. The principle components of such systems are a knowledge-base, containing IF <condition> THEN <action> rules, and an inference engine which manipulates the rules in order to derive one or more solution to a specific problem. The condition component of a set of rules can be matched with facts, either stored in the knowledge-base or supplied by the user. Whenever a match between the two is made, the rule is said to have been fired or executed and the action component of that rule can be inferred. The process of matching and firing continues until a set of solutions has been generated.

PISCES operates in a sequential manner moving through each of the four phases in order, although back tracking, through the phases, is often necessary in order to determine the most appropriate strategy. The new IVA module is now situated between the data validation and budgetary adviser modules. Relevant aspects of the data are passed to the IVA module, in order that a preliminary analysis can be undertaken to determine whether further exploration of an IVA is warranted. This preliminary analysis is based primarily upon the more objective criteria such as the client's level of income and overall level of indebtedness, and the more subjective criteria such as their own assessment of the seriousness of their situation.

If the full IVA analysis is warranted then the module's rule-based procedure is activated to determine firstly whether an IVA is appropriate, and if so what form it should take. The example summary rule shown in Figure 1. illustrates one route that the procedure can take.

FIGURE 1 ABOUT HERE

Each individual clause of this summary rule is in turn composed of a number of specific rules. For example, when determining whether the clause 'At least 10p dividend to unsecured creditors is estimated', can be confirmed or not, a large number of rules are used to take account of; the overall level of secured debt; the possible actions of secured creditors; the estimated level of costs; and the budgeted level of reasonable outgoings. In addition to the knowledge explicitly described in Figure 1, the knowledge-base also contains rules which help to make an assessment of subjective factors, such as the attitudes of the creditors, and the likely behaviour of the client. It should be noted that in addition to the example shown in Figure 1 there will be other summary rules to help determine the most appropriate strategy or alternative strategies in the given circumstances.

The IVA module has now been developed in a relatively simple prototype form. The system contains a wide variety of both procedural and experiential knowledge which has been derived not only from books and other publications, but also through detailed interviews with insolvency professionals. Because the system is in its infancy a range of future, potential development strategies still exist. The IVA module could, for example be used primarily for training purposes, or it could be used directly by insolvency practitioners for confirming the appropriateness of such an arrangement and supervising its implementation, or it could be further developed within the PISCES framework to help general debt counsellors spot IVA opportunities.

Conclusion

Knowledge is a valuable institutional asset but it never appears on a balance sheet. Knowledge can be lost far more easily than it can be gained as retirement, redundancy, ill health or pastures new beckon to key staff. Expert systems provide a permanent and flexible repository for knowledge and have the advantage of being based on proven technology. Working applications of expert systems in the Financial sector are now entering the mainstream and are already providing a wide range of commercial benefits.

IVAs are an important and growing part of personal insolvency work and now represent a thoroughly tested part of the 1986 legislation. The selection, design and management stages of the IVA are 'knowledge intensive' and use 'expertise' alongside routine data gathering. This article has shown that elements of the insolvency practitioner's 'expertise' can be captured by an expert system and that the benefits of consistency, continuity and efficiency can be brought to the field of IVAs. Whilst it is not envisaged that an expert system could ever completely replace the experienced practitioner it could be used very effectively in a training or technical support rôle.

The PISCES IVA module is at the early prototype stage and the authors of this article would welcome any comment or support that could make it a working reality.

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TABLE 1: INDIVIDUAL INSOLVENCY STATISTICS 1987 - 1993

Year	Bankrup-tcies	IVAs	Deeds of Arrangement	Total	IVAs as % of Total
1987	6,994	404	29	7,427	5.44%
1988	7,717	779	11	8,507	9.16%
1989	8,138	1,224	3	9,365	13.07%
1990	12,058	1,927	2	13,987	13.78%
1991	22,632	3,002	6	25,640	11.71%
1992	32,106	4,686	2	36,794	12.74%
1993	31,025	5,679	8	36,712	15.47%

Source: The Insolvency Service (1994)

Figure 1: Example Summary Rule for determining IVA Strategy

IF	No free assets
AND	Monthly disposable income > £300*
AND	Level of indebtedness > £2000*
AND	Disposable monthly income < Monthly debt repayments
AND	Introductory source is appropriate
AND	Professional status / earnings capability at risk through bankruptcy
AND	At least 10p* dividend to unsecured creditors is estimated
THEN	Recommend IVA of three* year duration

* PISCES also has the functionality to allow key 'triggers' such as 'level of free income' to be determined locally and amended to reflect the requirements of the user.

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CHAPTER 4

Pond, K. and Evans, D., ''Debtor Non-Co-operation in Individual Voluntary Arrangements'', *Insolvency Law & Practice*, 11(4), 1st September 1995, pp 82-85. (90%/10% contribution)

DEBTOR NON-CO-OPERATION IN INDIVIDUAL VOLUNTARY ARRANGEMENTS

by

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June 1995

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c 2,000 words (exc.table)

INTRODUCTION

According to the Society for Practitioners of Insolvency the Individual Voluntary Arrangement (IVA) procedure passed the "test" of the recession with flying colours [SPI, 1994].

This article briefly examines the growth in numbers and acceptability of IVAs since they were made available in the 1986 Insolvency Act and further suggests how some of the practical lessons of dealing with IVAs during the recession can be used to help select "successful" IVAs at the outset and to "manage" them effectively.

IVA GROWTH

IVA numbers and the IVA share of the individual insolvency "market" rose significantly until 1990 when almost 14% of formal insolvencies were dealt with in this way. In 1991 this share dropped to 11.71%, perhaps as the initial "novelty" wore off [Mayner, 1990] or the sudden halt in house price appreciation made many IVA proposals more marginal. Numbers rose again in 1992 to 12.74% and are now established at around 17% of insolvencies as shown in Table 1.

<u>TABLE 1 ABOUT HERE</u>

IVAs were the "single most fundamental innovation under the Act (sic)" according to Stephen Lawson in his guide to IVAs [Lawson, 1992]. IVAs provide a realistic alternative to bankruptcy allowing debtors to settle with their creditors. Among the advantages of the IVA are that: the debtor avoids the stigma and penalties of bankruptcy, the Insolvency Service avoids further drain on its meagre resources, the efficient insolvency practitioner can enjoy a profitable relationship and the creditor can often receive enhanced dividends.

IVAs have remained statistically popular and available to an increasing number of individuals despite their "novelty" and the massively increased workload of the insolvency profession during the recession. IVAs have the potential to capture an even greater share of the personal insolvency "market" too due, in part, to increased awareness of this alternative to bankruptcy, good experience of successful IVAs in the past and the opportunity given to debtors petitioning for their own bankruptcy of being referred to an insolvency practitioner under S.273 of the Insolvency Act 1986 to investigate the possibility of an IVA. It is unclear, at present how many IVAs are proposed following a court referral but numbers are thought to be small.

There is one major potential threat to this growth however, the damage to the confidence of creditors and to the reputations and profitability of insolvency professionals from IVAs that do not deliver what was expected and IVAs that fail due to debtor non - co-operation. Of the estimated 33% of accepted IVAs that hit trouble in a long term study of some early IVAs, over two thirds eventually failed [Pond, 1993]. The main reason for failure offered by insolvency practitioners was debtor non - co-operation. Other reasons for failure exist too including circumstances beyond the debtor's control such as sudden loss of earnings or the continuing depression of house prices.

THE NATURE OF NON - CO-OPERATION

The research described in this article looks particularly closely at the types of non - co-operation experienced by insolvency practitioners. Interviews were conducted with a number of insolvency managers from a leading East Midlands firm in conjunction with a "case based" approach to data gathering. The findings have been coupled with a number of practical measures that can be taken either to give "early warning" of non - co-operation or to avoid its effects and make more IVAs end successfully.

Most practitioners with experience of IVAs will have their own criteria by which they judge the "best" offer that a debtor can make in the given circumstances. This could mean the timely disposal of assets or the generation of income over a period or a combination of both to provide an acceptable proposal to creditors. Very often, however, choice is limited due to the nature of the problems that have precipitated insolvency.

Over and above these objective measures of an IVAs likelihood of success comes the practitioner's subjective judgement, borne of experience and coloured by, at best, a few meetings with the stress filled debtor. Much of the subjective judgement will centre around the willingness of the debtor to see the IVA succeed and the grasp the debtor has of the fact that an IVA is only a damage limitation exercise, not a panacea for all ills and definitely not an "easy way out".

Non - co-operation comes in a number of forms. Individually they may make little impact but together they could lead to IVA failure:

- **Misleading valuations**. These can range from the simply optimistic to the concealment of assets.

- **Provision of basic information**. The speed and completeness of a debtor's response to requests for information may say much about the willingness to persevere with an IVA.

- **Attendance at meetings**. Failure to attend scheduled meetings prior to the Interim Order or to attend the Creditors' meeting will leave a negative impression with the practitioner and the creditors respectively. Debtors who fail to attend their own Creditors' meeting will invariably see it rejected.

- **Proposals prepared by agents**. This is a worrying development. Debtors may be introduced by an unlicensed advisor with a proposal already prepared. One occasional exception is that of proposals prepared by solicitors under Legal Aid cover. Practitioners who fail to investigate these cases fully could be dealing with individuals who have no serious intention to go through with the proposal. At the very least the proposal will probably not reflect the debtor's "best offer" to creditors in the circumstances.

- **Lack of will to satisfy creditor demands**. Two schools of thought exist here. Are IVAs the least a debtor can get away with? or are they the best deal for creditors in the given circumstances? Whilst debtors will often incline towards the former, creditors, with their often superior knowledge of the debtor's payment history and personal assets, will seek the better deal. Most creditors will accept a reasonable offer but will reject a dishonest one.

- **Failure to adhere to arrangement**. Perhaps the clearest indicator to the Supervisor that something is wrong is when regular payments under an IVA do not arrive on time or assets included in the IVA are not released by the debtor. It is a weakness of the position of the Supervisor that the IVA assets do not vest in the appointee as they do in bankruptcy. In a very real sense this happens too late for remedial action to be taken and often the legal protection of a charge on the debtor's home is complicated by joint ownership.

- **Withdrawal of Third Party income**. Where family members, friends or even employers, have offered to include cash or assets in the debtor's IVA, a feature which nearly always helps the IVA to forecast a better dividend than in bankruptcy, withdrawal of these can be fatal. In some cases Third Party cash remains outside the IVA and is used to cover fees. Again, non payment of fees is likely to be noticed very quickly by the practitioner.

- **Emergence of post meeting creditors**. Such creditors are not bound by the vote at the Creditors' meeting since they did not have notice of it in the first place. Post meeting creditors can still proceed against a debtor and, if they are large enough, cause the IVA to fail.

- **Circumstances beyond the debtor's control**. Many IVAs fail through redundancy, accident and matrimonial breakdown. There is little that the Supervisor can do to avoid this type of problem.

MINIMISING PROBLEMS

There are two types of Insolvency Practitioner: Those who have had an IVA fail through non - co-operation and those that will have an IVA fail through non - co-operation.

Much can be done, however, to design systems and procedures to minimise the effects of threatened IVA failure and, perhaps, to pre - select those debtors who are unlikely to see an IVA through.

The suggestions below are not offered as a panacea but as a starting point for discussion, and perhaps, further research. Some of the ideas will cost money to implement, either through training or use of outside agencies, but these costs need to be weighed against the potential longer term losses that IVA failure could bring:

- **Character of introducer**. Practitioners with good working relationships with local debt counsellors, banks, accountants and solicitors can often gauge the quality of the proposal from the source of the introduction. Care does still need to be exercised, however, as a debtor's behaviour can be very unpredictable when faced with financial problems.

- **Comprehensive interview checklist**. One of these needs to be completed in every case and gaps or omissions completed at an early stage. If checklists are completed systematically follow up requests for information can be made easier by drawing out "action points" from the interview notes.

- **Professional valuation**. Practitioners should always ensure that they are covered by a professional valuation of major assets.

- **Credit Register search**. Many agencies offer on - line or updated CD Rom search packages covering individuals and companies. Using only a name and a post code or partial address details of previous insolvencies or court judgements can be obtained. Credit Register and Voters Roll searches are used daily by the credit industry as part of the credit assessment process. For an Insolvency Practitioner this information can be used to fill the gaps in the information provided by the debtor and to help judge the completeness of the information offered by the debtor.

- **Subjective judgement of character**. This is more difficult and requires much experience and insight on the part of the interviewer. Helpful training can be given to less experienced staff. In exceptional cases the Nominees report stage of the IVA can also be used to signal to the court and the creditors any evidence of non-co-operation or any doubt in the Practitioners mind over the debtor's motives.

- **Checking up with creditors**. Creditors often know a great deal about the debtor through having dealt with him or her over a long period. Inland Revenue policy on IVAs appears to be influenced by previous payment history. Major creditors, too, will have done some homework and may be a willing source of information. The search for creditors is important as post meeting creditors can jeopardise success. It is made difficult, however, by the absence of any requirement to advertise the IVA in the current legislation.

- **Selection of realistic proposals**. Again based on experience and research. What will creditors accept? What level of income generation is possible? Experienced practitioners will want to anticipate the likely amendments put forward by Crown creditors in particular and so avoid confusion or rejection at the Creditors' meeting stage. This, however, is easier said than done since the Crown regularly reviews its policy towards IVAs and does not discuss the rationale for its decisions in detail.

- **Contractual agreements with Third Parties**. To avoid the early withdrawal of Third Party moneys or the non delivery of assets the Insolvency Practitioner should consider entering into a formal binding arrangement with Third Parties.

- **Adherence to SPI guidelines**. SPI guidelines on IVAs address the need for the practitioner to remain independent and professional at all times. This protects both the debtor and the practitioner. In particular, IVA proposals must be the debtor's "best offer".

CONCLUSION

It will always be difficult for an insolvency practitioner to maintain a balance between a workable and realistic IVA proposal which can be controlled by the Supervisor and the flexibility and freedom from constraint which debtors see as a major advantage of IVAs. In addition there will always be IVAs that fail through no fault on the part of the debtor and the practitioner.

By recognising common problems with IVAs, however, and designing systems and procedures to gain early warning of foreseeable problems ahead, insolvency practitioners can ensure that a greater proportion of the IVAs they manage end up successfully. This outcome benefits the reputation of the practitioner, the return to creditors and the acceptance of the IVA scheme as a whole.

TABLE 1: INDIVIDUAL INSOLVENCY STATISTICS 1987 - 1994

Year	Bankrup-tcies	IVAs	Deeds of Arrangement	Total	IVAs as % of Total
1987	6,994	404	29	7,427	5.44%
1988	7,717	779	11	8,507	9.16%
1989	8,138	1,224	3	9,365	13.07%
1990	12,058	1,927	2	13,987	13.78%
1991	22,632	3,002	6	25,640	11.71%
1992	32,106	4,686	2	36,794	12.74%
1993	31,025	5,679	8	36,712	15.47%
1994	25,634	5,103	2	30,739	16.60%
1995 (q1)	5,609	1,174	1	6,784	17.30%

Source: The Insolvency Service (1995)

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CHAPTER 5

Pond, K., ''A Decade of Change for Individual Voluntary Arrangements'', *Insolvency Law & Practice*, 14(6), December 1998, pp 332-336.

A DECADE OF CHANGE FOR THE IVA

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A DECADE OF CHANGE FOR THE IVA

1. Introduction and background

The last decade has seen not only the successful implementation of Individual Voluntary Arrangement (IVA) legislation but also the rising influence of creditors in IVA situations. The period 1987 to 1997 has also seen significant ways in which IVAs have changed. IVAs were introduced in the Insolvency Act 1986 following a major review of insolvency law by Sir Kenneth Cork [Cork Committee, 1982] and were intended to help small business and professional debtors to avoid the penalties and restrictions of bankruptcy. A major aim of the new law was to offer creditors a better deal than bankruptcy (See Box for a summary definition).

DEFINITION BOX ABOUT HERE

This paper aims to summarise the key findings from a 1998 survey of IVA cases commenced in 1994 and 1995 and to compare them, where possible, with findings from an earlier study published in 1989 and 1993 [Pond, 1989 and 1993]. The paper summarises the research methodology used and reports key findings from the survey's descriptive statistics. The paper concludes with an analysis of some of the more significant findings of the survey and provides some broad interpretations of the data uncovered.

IVAs have grown considerably in popularity since 1987. Bankruptcies have yet to reduce in number to their pre-recession (1988/89) level and may not ever do so due to the reduced "stigma" of bankruptcy and the growth in availability of credit. In the meantime IVAs have held a consistent 17 percent share of the personal insolvency "market" a level the Society of Practitioners of Insolvency (SPI) suggest is a "natural" one, given current economic circumstances [SPI, 1997]. IVAs saw a comparative reduction in popularity during the recession, possibly due to the failure to keep pace with the huge increase in bankruptcies. In 1997 there were 4,545 IVA cases recorded against 19,892 bankruptcies. Early indications for 1998 show that the 17 percent level has been maintained.

This “natural” level of IVAs shows that the early ignorance of them by creditors [Pond, 1989] has evaporated. More Insolvency Practitioners (IPs) and creditors now have first hand knowledge of them. Some IPs continue to “specialise” in IVAs although this is not always the most appropriate insolvency vehicle to use.

2. The focus and methodology of the study

The current study focused largely on the areas of influence that a creditor might have on the IVA process. The study questionnaire not only asked respondents for factual information about accepted IVA proposals but also about the contact with creditors. Such contact could be prior to the IVA, during the formation of the proposal and at the creditors’ meeting. This approach has given both comparative data across the ten or so years that IVAs have been available and, most importantly, insights into the practical running of IVAs.

Cases from 1994 and 1995 were chosen for the study sample, as these would have had long enough, by early 1998, to have either run their course or to be close to a conclusion. This mirrored the methodology used in 1989 [Pond, 1989] and 1993 [Pond, 1993] when a sample of IVAs from 1987 and 1988 was studied. The two studies together provide a unique longitudinal study of IVAs and an opportunity to observe those key factors that are associated with successful IVAs.

The 1998 survey contained three main elements:

1. A basic review of 879 sample accepted IVA cases from 1994 and 1995.
2. A postal survey of 490 accepted IVA cases (response rate 30 percent).
3. A set of interviews with selected practitioners.

A systematic sampling method was used to select 879 accepted IVA cases from 1994 and 1995 from the public register of IVAs maintained by The Insolvency Service. This was reduced to 490 through restricting the number of survey questionnaires being sent to each IP to a maximum of three.

Two major issues were highlighted by IPs who chose not to respond to the survey. These were: Client confidentiality and a feeling that the Society for Practitioners of Insolvency (SPI) already surveyed IVAs sufficiently. The first reason is fully accepted but, as will be shown, the very useful SPI surveys [SPI, 1991-1996] reflect major trends but fail to report on some very practical areas of IVA procedure that can often spell success or failure.

A total of eight IPs and Insolvency Managers were interviewed following the survey in an attempt to explore some of the more significant findings of the analysis. A representative of The Insolvency Service was also interviewed and a representative of a major bank. This process was successful in confirming a number of assumptions and interpretations of the survey data and comments from interviews are included in the analysis of the sample (below).

3. Analysis of the survey sample

The following section looks at some key descriptive statistics from the survey. These combine to give a comprehensive picture of the IVAs in the study and compare the data, where possible, with data from 1987 and 1988.

Large and Small Practitioners

IVAs appear to be the domain of the small independent Practitioner. These Practitioners shared 60 percent of the sample cases (57 percent in 1987/88) with 70 percent of introductions coming from professional advisors. Larger firms have a strong presence in the market but gain more from introductions via Yellow Pages, family advice and Court and Official Receiver referrals. This could be due to the rota system operated by Courts and Official Receivers and to the impression, held by interviewees, that smaller firms would offer lower fees. This is also supported by the finding that larger firms gain more cases following a bankruptcy order whilst smaller firms rely more on cases where there has been no prior procedure.

One other observation comes from an analysis of supervisor location and Court locations for 828 IVAs in 1994 and 1995. It appears that small Practitioners in London and the South East and those in the North West are particularly successful in gaining business from other parts of the country. In the North West, for example, the courts dealt with 16 percent of the cases reviewed whilst North West based IPs handled 27 percent of cases.

Net “losers” are Practitioners in the Eastern and South West regions. Interviewees offered a number of explanations for this including the use of “Work Finders” or “Ambulance Chasers” and the experience of London based IPs with High Court cases. Interviewees also noted that creditors’ views were coloured by the inappropriate use of IVAs by a small number of IPs. Data from the public register of IVAs (which is notoriously incomplete as regards closed cases) shows that for two IPs with clients outside their regional boundaries, failure rates are substantially higher than the national average. Many failures are recorded two to three years into the IVA.

Larger firms were more successful in initiating contact with creditors prior to the creditors’ meeting. There is no evidence to suggest, however, that larger firms are any more effective in supervising successful IVAs than smaller firms. In fact the study shows an exactly equal likelihood of successful IVA outcomes regardless of IP size.

Routes to the IVA

As in 1987/88 most IVAs start with a Section 253 (Insolvency Act) application for an interim order. Today 81 percent of cases commence with no prior procedure – a figure unchanged from 1987/88. Additionally only 4.14 percent of cases (4 percent in 1987/88) were referrals by the court following a debtor's petition for bankruptcy (Section 274).

As mentioned above, mainly larger firms deal with the small numbers of IVAs emerging after a bankruptcy order. These cases do, however, carry a slightly higher chance of failure - 38 percent against the 31 percent failure rate of the whole sample.

In 1987/88 the concertina order [Practice Direction, 1992] was not available but in 1994/95 43.45 percent of cases used it. The criteria for use include the judgement, by the nominee, that the case is "straightforward" and that the interim order is not needed whilst the proposal is being designed. The use of the concertina should, in addition, reduce the costs of the IVA. Whilst use of the concertina order did not significantly presage a successful conclusion to the IVA its use correlates highly with contact prior to the creditors' meeting between creditors and the nominee. This could suggest that creditors are reacting in a positive way to IVAs and that their oft heard plea of early advice of problems is being heard.

Measuring the IVA

Table 1 shows that IVAs, when measured in assets and income offered to creditors, are getting smaller. Table 2 shows that expected dividends are shrinking too, especially for the smallest and the largest cases. Average dividends anticipated at the outset of the IVA were 30.69p in the £ for IVAs in the study (47.62p in 1987/88). This contrasts with 14.35p if bankruptcy had ensued for these individuals (22.06p in 1987/88).

TABLES 1 AND 2 ABOUT HERE

The smallest cases in 1994/95 are associated with the smallest dividends and with the smallest of benefits over bankruptcy, measured by the difference in anticipated dividends. In addition the cases with assets below £20,000 show a considerably greater chance of failure during the course of the IVA. There appears, therefore, to be little reason for backing particularly small and low dividend IVAs from a creditor's point of view. This view is supported by a number of interviewees who suggested that the person most likely to benefit from smaller IVAs was the fee-earning supervisor, even if the IVA failed.

Reviewing the study cases by level of liabilities is also shown interesting. The smaller cases (<£50,000) are associated with a slightly higher chance of success (71 percent as opposed to the study average of 67 percent). A simplistic view would be, therefore, that IVAs with assets available of more than £20,000 and liabilities of less than £50,000 show more signs of ultimate success than IVAs outside these limits.

One method of making IVAs larger, where they are based on an income stream, is to make them longer. The incidence of creditor modifications to extend IVAs is reviewed later but what is clear from Table 3 is that IVAs are becoming longer. In 1987/88 51.22 percent of IVAs studied were due to be completed in less than one year. These were largely cases where only liquidation of assets was proposed. In 1992 Stephen Lawson wrote, *"It will only be in exceptional circumstances that a voluntary arrangement will last for longer than two years"* [Lawson, 1992]. These timescales proved to be over ambitious [Pond, 1993] which may account, in part, for the longer durations now being seen.

TABLE 3 ABOUT HERE

In 1994/95 only 10.34 percent of cases were due to be completed in under one year whilst 44.13 percent (17.08 percent in 1987/88) were designed to exceed the three year mark. Three years had always been seen as a benchmark as this was the likely duration of a full bankruptcy.

In the study sample only the shortest IVAs (under one year) had a significantly higher success rate (87 percent) than the average (67 percent). Although not certain, this could be because they relied on the liquidation of assets rather than the expectation of income in the future.

Demographic features

The study sample shows that IVAs cover all types of businesses and domestic insolvency situations. As Practitioners learned about the IVA legislation during the recession they saw, for themselves, where IVAs were best suited. In 1987/88 IVAs were used more for domestic cases, Agricultural cases and in Hotels and Catering than in other trades. By 1994/95 IVAs were positively avoided for Construction cases (3.4 percent of IVAs but 12.9 percent of bankruptcies) but showed considerable progress in the share of insolvencies in Business and Professional Services (15.9 percent IVA, 7 percent bankruptcies) and Domestic (Employee and Consumer) cases (18.6 percent and 9 percent respectively). This is very much in accordance with Cork's designs.

Apart from the notable exception of the Construction industry, however, IVAs based on a business are just as likely to succeed as are Domestic cases.

The focus on particular trades, where IVAs have been seen to work, is not the only change in the insolvency landscape. In 1987/88 only 15 percent of cases were London and South East based with the North West “championing” the use of IVAs and accounting for 31 percent of cases. By 1994/95 this had reversed with London and South East accounting for 37 percent of cases and North West for only 14 percent.

No region, however, reported a significantly different success or failure rate for completed IVAs. It should be noted that few, if any “Ambulance Chasers” responded to the survey.

Debtor Non-co-operation

In the 1993 study of the outcomes of some of the earliest IVAs [Pond, 1993] a success rate of 76.7 percent of cases was reported. This was buoyed largely by improving property prices post 1987 which supervisors were able to divert into IVAs [Flynn, 1993]. This artificial boost was not available for the 1994/95 cases and a lower success rate of 67 percent was recorded.

Among the principal reasons for IVA failure in 1993 was debtor non-co-operation and this is seen as a significant feature in the current sample too.

What is Non - co-operation?

Survey respondents were asked to rate debtor co-operation on a five point scale (5 for "really co-operative" and 1 for "really uncooperative"). Not surprisingly the success rate for co-operative debtors was significantly higher (92.1 percent) than for non-co-operative ones (19.4 percent). Where respondents scored co-operation at 3 (a neutral response) the success rate was close to the study average of 67 percent at 69.6 percent.

Interviewees were asked to explore what was meant by non-co-operation and it became clear that two different interpretations were held. The first was the debtor's motivation and supportiveness of the IVA. Many debtors see the IVA as a godsend at a time of huge pressure from creditors and family. Optimism and co-operativeness prior to the creditors' meeting can soon turn to non-compliance afterwards, as cash payments have to be made to the supervisor. Many "non-co-operative" debtors fail to realise the importance of what they enter into and rely on the supervisor to implement the proposal. It was felt that nominees should judge whether debtors are suitable candidates to carry out what is promised in the proposal rather than rely on the "punishment strategy" of the genuine threat of bankruptcy. Many cases studied show that the bankruptcy threat is very credible, given the retention of funds by the supervisor for this purpose [see also Pond & Evans, 1995].

The second interpretation offered was the failure of the debtor to fulfil the conditions of the proposal. This could be something as basic as a failure to provide accounts within a set time limit (a favourite Inland Revenue modification) or as serious as a business downturn resulting in insufficient funds to make monthly payments or to pay ongoing tax and VAT obligations. Clearly some debtors in this situation will still be co-operative and motivated to make the IVA succeed but will fail due to external pressures.

Although the measure of non-co-operation is very subjective and varies from practitioner to practitioner the study does reveal some more objective factors that are associated with a greater likelihood of failure.

Identifying unrealistic proposals

Creditors have relatively little time to consider their response to an IVA proposal and must base their judgement on:

- The proposal itself
- Their knowledge of the debtor
- Their contact (if any) with the nominee

One certain source of information is the proposal itself and the creditor must judge whether it is realistic, whether the proposed dividend is acceptable and whether the proposal protects the creditor's position adequately. In addition a positive report from the Nominee, prior to the creditors' meeting, should indicate that the statement of affairs is realistic, the proposal has a real prospect of success and that the proposal is fair [SPI, 1997b].

The creditor's position can be further strengthened by drafting and submitting modifications to the proposal for consideration at the creditors' meeting (see later) but an initial review of the proposal will reveal the anticipated dividend in the IVA and the anticipated dividend in the same debtor's bankruptcy. The study has found that there is a significantly increased chance of failure of the IVA where the difference between the IVA and bankruptcy dividends exceeds 20p.

Thus, a proposal offering a dividend of 10p to 20p more than in bankruptcy has an 83.1 percent chance of success, whilst a proposal offering more than 20p more than bankruptcy has a 62.2 percent chance of success.

Linked with the incidence of debtor non-co-operation it can be seen that over ambitious IVAs are far riskier. Creditors must have a realistic idea of what is possible in the circumstances and what is over - optimistic. Here two areas need to be reviewed: the income stream of the debtor in the future and the likely asset realisation values.

Creditor power and influence

One very prominent feature of the 1994/95 cases was the turnaround by creditors from their fairly indifferent attitude of 1987/88. In 1987/88 the average attendance (both actual and by proxy) at creditors' meetings in accepted IVAs was 56.3 percent with only 23 percent of meetings actually modifying the proposal [Pond, 1989]. By 1994/95 average attendance had risen to 81 percent with 53 percent of cases reporting over 50 percent attendance. In addition, 71 percent of study cases were modified at creditors' meetings. This latter finding may have much to do with the policy of some creditors to insist on modifications to all IVAs. Often nominees receive proxies where support is dependent on acceptance by the debtor and other creditors of a suite of "standard" modifications. IPs have tried to anticipate these and proposals often reflect the wishes of major creditors, such as the Inland Revenue, since modification by them is inevitable.

Over the period 1986 to 1997 it has been observed that creditors' meetings have changed from being the open, multilateral negotiations envisaged by Cork to being a series of closed, bi-lateral negotiations between the debtor and individual creditors. Typically, meetings are attended by "hawkish" creditors and professional proxy holding representatives who have strict instructions on the modifications to be sought in exchange for support. In this way the flexibility of the procedure is eroded as the debtor feels more and more pressurised into accepting creditor modifications.

Unrealistic proposals

This research has discovered that there are links between over-optimism in proposals and ultimate failure. Reported above, the chance of failure for IVAs offering dividends more than 20p better than bankruptcy, is greater. In addition the indication that modifications to proposals have taken place at creditors' meetings is linked with a slightly higher chance of failure of the IVA.

This chance of failure is reduced where modifications are “administrative” in nature such as restrictions on obtaining further credit or definitions of default under the proposal, such as failure to submit accounts within a certain period. The chance is higher, however, where modifications are “contingent”, such as requiring a revaluation and remortgage of the debtor's property, should it rise in value, before the end of the IVA period. Chance of failure is average where modifications are “non-contingent”, such as the extension of the IVA by a year or the increase in monthly contribution by the debtor.

Together, these features suggest that IVAs are far more creditor friendly than in the past and that they reflect less and less the wishes of the debtor. Creditors need to take note of this and temper their actions accordingly. Short term “success” in getting the debtor to agree to modifications to the proposal may be paid for as the chance of debtor non-co-operation increases.

Creditor support

Creditor influence, however, does not have to be malign. It is a tool that needs to be used sensitively. Whilst modifications are a creditor's right the victory can be Phyrric. Far more helpful, according to the research findings, is the maintenance of contact and support during the period of the IVA, both before and after the creditors' meeting. The 1987/88 cases showed that support of a main mortgage lender was often linked with ultimate success of the IVA [Pond, 1993]. The 1994/95 cases show that ultimate success is linked with creditor support and contact throughout the IVA.

4. Conclusions

The earliest IVAs in 1987 and 1988 were a clear act of faith on the part of debtors, practitioners and creditors alike. Lessons have been learned over the past decade and IVA proposals and the procedures that now help to put them in motion have been honed and modified extensively. Creditors are now more aware of the influence they can exercise, for better or for worse, and IVAs now come under much greater scrutiny. IVA proposals are as much the product of negotiation, modification and anticipation of creditor wishes as they are the realistic offer of the debtor made in order to avoid bankruptcy.

Whilst a small number of independent IPs still appear to use the IVA as a panacea, seeking business from all over the country, most nominees seek to design IVA proposals that offer a fair deal to creditors (rather than just the debtor). Creditors must also learn from experience and review their own policies towards modifications as these can turn a reasonable IVA into a failure, from which no return is paid.

Although this research has shown that small IVAs (below £20,000 in assets /income) are more likely to fail and that lower levels of total liabilities (under £50,000) are linked with successful IVAs judgement of proposals in this mechanistic way is not recommended. The fact that IVA periods are getting longer indicates that debtors will work hard to avoid bankruptcy especially as a greater proportion of IVAs is seen in Business & Professional Services, compared with other trades.

Debtor non-co-operation, however, remains the key reason for IVA failure. This can be linked to unrealistic and over - optimistic proposals that have a greater chance of failure. Strict policing of IPs by The Insolvency Service, the Recognised Professional Bodies and the SPI is needed if IVAs are to remain a viable tool in any future economic downturn. Creditor confidence in and support for IVAs relies on their experience of successful outcomes – and their collective memories are long!

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TABLES TO BE INSERTED

Table 1 Size of IVAs

SIZE OF IVAs (Income + Assets)	**1987/88 percent**	**1994/95 percent**
< £10K	23.17	28.29
£10K <= £20K	29.27	22.07
£20K <= £50K	29.27	31.03
£50K +	18.29	13.8
Not known	0	4.83
TOTAL	100.00	100.00

Table 2 ***Anticipated dividends in IVAs and Bankruptcy****

SIZE OF IVAs (Income + Assets)	**1987/88 percent**	**1994/95 percent**	**1987/88 percent**	**1994/95 percent**
	IVA div	IVA div	Bankruptcy div	Bankruptcy div
< £10K	32.11	5.02	8.24	4.65
£10K <= £20K	43.17	42.2	18.6	17.75
£20K <= £50K	49.71	31.76	36.79	10.4
£50K +	71.07	39.46	56.69	18.65
Not known	-	14.29	-	1.14
TOTAL / AV	47.62	30.69	22.06	14.35

***** Estimated Bankruptcy dividend if bankruptcy, rather than IVA, had ensued for the debtor.***

Table 3 Duration of IVAs

Duration of IVAs (months)	1987/88 percent	1994/95 percent
up to 12 months	51.22	10.34
12 to 24 months	8.54	13.1
24 to 36 months	23.17	24.14
36 to 48 months	6.1	15.17
over 48 months	10.98	28.96
Not known	-	8.28
TOTAL	100	100

IVA DEFINITION BOX

WHAT IS AN IVA?

IVAs are private "contracts" for the satisfaction of debts, entered into by debtors and their creditors, pre or post bankruptcy. In this court supervised and protected procedure *(interim order)* the insolvent debtor proposes how the debts are to be satisfied *(proposal),* under the guidance of a licensed insolvency practitioner *(nominee).* This part of the procedure can be curtailed and an initial hearing dispensed with in “straightforward” cases *(concertina order).* The creditors are given the opportunity of accepting or rejecting the proposal *(creditors' meeting).* At the meeting the creditors have the opportunity to offer modifications to the proposal that the debtor can accept or reject. Once agreed and accepted by at least 75 percent by value of creditors attending the creditors' meeting the IVA is binding and the proposal is given effect by the insolvency practitioner *(supervisor).* Accepted IVAs have the effect of either overturning a bankruptcy order, dismissing a bankruptcy Petition or halting other legal action by a creditor to recover a debt.

IVA legislation is covered in Part VIII (Sections 252 to 263) of The Insolvency Act 1986 and Part 5 of The Insolvency Rules 1986 (as amended).

CHAPTER 6

Pond, K., ''Administration of Recoveries in Individual Insolvency: Case Studies of Two UK Banks'', *The European Journal of Finance*, 8(2), 2002, pp 206-221,

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ADMINISTRATION OF RECOVERIES IN INDIVIDUAL INSOLVENCY

- Case studies of two UK banks

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ADMINISTRATION OF RECOVERIES IN INDIVIDUAL INSOLVENCY

- Case studies of two UK banks

ABSTRACT

Against a background of greater competition, market saturation and falling margins over the past decade UK banks have sought greater efficiencies in credit and risk assessment procedures, especially with personal lending products. In the same way they have attempted to reduce costs associated with the monitoring and collection of bad debts. Failure to monitor debt recoveries adequately, however, can lead to further pressure on profits.

This paper uses a case study approach to outline key strategies adopted by two major banks in respect of formal insolvency, the "tip" of a considerable debt recovery "iceberg". The paper illustrates the reactions and changing administrative practices of banks, as unsecured creditors, and draws on empirical research that has charted the effect of the Insolvency Act 1986 as regards individual debtors.

The collection of bad debts presents banks with risks, heightened by adverse selection and moral hazard problems greater than those applicable to credit risk assessment. However, whilst the "downside risk" equates with the debt write-off plus transaction costs the "upside potential" has elements of both tangible and intangible benefit.

The paper goes on to review specific centralisation and outsourcing policies against the critical risks in insolvency. It also suggests that the bargaining power of major creditors, including banks, is increased through these activities, to the possible detriment of smaller creditors and of debtors.

Acknowledgement

This project would not have been possible without the access to records, co-operation of managers and assistance given by practitioners allowed by the two banks reviewed.

KEYWORDS: INSOLVENCY, CREDIT, BANKING, VOLUNTARY ARRANGEMENTS, BANKRUPTCY.

ADMINISTRATION OF RECOVERIES IN INDIVIDUAL INSOLVENCY

- Case studies of two UK banks

1. Introduction

This paper investigates a dilemma for large UK lenders and creditors when faced with the formal insolvency of a personal or small business borrower.

The dilemma emanates from the growing incidence and acceptance of the "rescue culture" for individual debtors and impacts on lenders faced with the choice of bankruptcy (liquidation of available assets) and rescue. Whilst "rescue" often allows lenders to achieve higher levels of recoveries than in bankruptcy it also introduces greater risks that must be both understood and managed.

Credit risk is a concept well understood by lenders and strategies have been adopted that reduce this to acceptable levels at the lowest possible cost. Post Insolvency risk is less well understood and cannot yet be reduced due to the high cost of monitoring that necessarily precedes formalisation of any strategy.

In the two case studies of major UK clearing banks, presented in this paper, different approaches to post insolvency monitoring of bankruptcy and Individual Voluntary Arrangement (IVA) cases are reviewed. Empirical research, industry surveys and unique access to cases recorded by one of the case study banks help to illustrate the complexity of the problem lenders face and the potential rewards for success. The research is at an early stage and concentrates on the administration of new cases. Data to measure the success of chosen strategies are either not available (bank A) or incomplete (bank B). It is hoped that such data will feature in future projects.

2. The banking environment

2.1 The personal banking market

UK retail banks operate in an extremely competitive environment and invest heavily in gaining competitive advantage. Traditional banks suffer pressure on profit margins and growing threats from non-traditional competitors such as supermarkets and even football clubs (Howcroft & Hamilton, 1999). Competitive pressures and available technology have, in part, resulted in an orientation away from the relational banking of the “old fashioned” high street bank manager, towards the standardisation and transactional banking of the direct seller. Technical competence in lending is largely subordinated to systematic “credit scoring” and centralisation based on empirical information from a variety of sources (Leyshon & Thrift, 1999).

Whilst streamlined systems for lending can reduce costs and increase profitability in the short-term it does serve to reinforce the moral hazard problems associated with dealing with borrowers at “arms length”.

The emphasis on product based, transactional banking in the 1980’s and early 90’s had a marked effect on bank organisational structures and sources of income. Banks enjoyed the benefits of profitability and sales growth but suffered from a lack of customer loyalty (Howcroft & Hamilton, 1999).

Consequently, by the mid 1990’s banks had begun to realise the importance of reintroducing “relationship management” and introducing customer retention policies. Although attitudes and practices are often slow to change in large organisations banks are beginning to balance the “lifetime value” of customers with the move towards individual account profitability (Stone et al., 1996). Banks also know that customer acquisition is more expensive than customer retention although few have applied this logic of this in dealing with bad debts, insolvency and defaulting customers (Doherty & Pond, 1995).

In the short-term, lenders have profited enormously from the unprecedented demand for unsecured consumer credit. Annual growth rates in credit card debt, for example, calculated as part of the money supply - M4, consistently exceeded RPI inflation by 2 to 3 percentage points between 1996 and 1998 (BBA, 1999). Over the same period bankruptcy and IVA numbers grew (See Table 1) and are now maintained at a higher level (30,246 for the year 2000) than at any time since the recession of the early 1990’s (DTI, 2001). Table 1 also shows that the growth rate of IVAs exceeds that for bankruptcies for most of the period since 1986.

TAKE IN TABLE 1 ABOUT HERE

2.2 The case study banks

Both Banks A and B, subjects of the case studies, are well - known and respected retail banks with branches nationwide. Both have centralised debt recovery units located outside the London area and have handled IVAs since 1993 and 1997 respectively.

Where banks hold unsecured debt the tendency in corporate insolvency has been towards liquidation (bankruptcy) rather than rescue or rehabilitation. Smaller businesses appear not to warrant bank involvement in workouts (Gladstone & Lane Lee, 1995; Gopinath, 1995) and the same policy appears to be adopted for unincorporated businesses and personal debtors. This approach is typically justified by banks on the basis that there is no point "putting good money after bad" (sic).

The financial argument for cost reduction in debt collection is clear: the amount of debt written off (debt less recoveries) can influence specific provisions for bad and doubtful debt, net profits and tax charges. Transaction costs incurred in account intervention will merely add to losses in the short-term.

In both case study banks the cost savings from centralisation and specialisation were prime drivers for strategic action. The banks had seen bankruptcy and IVA numbers rise in the early 1990's (see Table 1) and sought to reduce both the administrative and cost burdens on individual branches since the account holding branch would be the first point of contact for administration of the insolvency.

Bank A had previously established a debt recovery unit and in 1993 added formal insolvencies from retail branches to its portfolio of activity. Over time four managers were recruited to manage the workload. Other subsidiaries of Bank A, such as its plastic card services, prefer to use their own collection mechanisms.

Bank B had also centralised small debt collection work for all of its subsidiaries some years previously. Spurred on by the efficiency gains required by its new owner Bank

B added IVAs and bankruptcies in 1997. At present corporate recoveries are administered by a unit based in London.

Reducing the burden on individual branches was also a part of a wider strategy to re-designate branches as retail and customer service outlets, rather than administrative units. The reduction in numbers of, largely unprofitable, branches has also been part of this focus. Cost reduction and efficiency gains were the key driver for Bank B.

A secondary objective, especially of Bank A, was to build up expertise, consistency and rewards in dealing with insolvencies. Although cost reduction has been the key driver the wider benefits have exceeded expectations.

In 1998 and 1999 Bank A's unit handled 1,508 and 1,400 IVA cases respectively. On-going monitoring is being undertaken for around half of all cases. Bank B's workload was lower at 621 in 1998 and 400 in 1999. On-going monitoring is undertaken for around 87% of these.

For both banks the longer-term economic argument is less clear but sees write-offs as "sunk costs" and compares the risk weighted "lifetime value" of the debtor against the cost of a more detailed investment in customer rehabilitation. In a congested and competitive market, however, a longer-term view may be more commercially viable, especially where both legislation and social values want to encourage "serial entrepreneurs" (Atkinson, 1999).

3. Insolvency Law and Practice

3.1 The Insolvency Act 1986

Since passage of the 1986 Insolvency Act insolvent UK personal debtors have had access to a statutory IVA procedure which is designed to avoid the finality and penalties of bankruptcy. The IVA between debtors and creditors was designed to allow viable sole traders to continue in business or to achieve a better and more orderly realisation of assets for the creditors. The legislative provisions followed the recommendations of a review committee (Cork, 1982) and extensive consultation (DTI, 1984) that noted the need to "rescue" debtors and to distinguish between the dishonest and the unlucky. Although the review committee also recommended a curtailed procedure for consumer debtors this was not carried through to the statute books and so the IVA "rescue" vehicle remains available to small unincorporated businesses and individual debtors alike.

The IVA is a private contract for the satisfaction of personal debts. As such it can be influenced by the quality of the relationships between lenders and debtors. In this court-supervised procedure the debtor proposes how the debts are to be satisfied, under the guidance of a licensed insolvency practitioner and under the protection of a "moratorium" on creditor action. The creditors are given the opportunity of amending and accepting or rejecting the proposal (Lawson, 1992).

3.2 The nature of the IVA

The years since 1986 have seen a steady rise in the incidence and acceptance of IVAs (The Insolvency Service 1991 - 98). There is also growing evidence of their successful application (Pond, 1998a). In 1998 around 20% of formal personal insolvencies are dealt with via the IVA procedure. In 1999 this rose to 25% (see Table 1). From the database made available by bank B, however, (see Table 2) it is estimated that 89% of bankruptcies return a nil dividend to creditors. On this basis it is estimated that, where a recovery prospect exists ("live cases" in Table 2) the IVA procedure is used approximately 82% of the time.

The choice faced by an increasing number of insolvent debtors is between IVA, and the avoidance of penalties, restrictions and opprobrium connected with bankruptcy or bankruptcy itself. The choice faced by the creditor is limited by the predisposition of the debtor towards bankruptcy in the first instance and by the existence of "moral hazard" which makes the IVA riskier for the creditor. However, a successful IVA can improve creditor recoveries and increase customer retention, since income from continued employment or trade is often included as a benefit.

Moral hazard exists in the IVA situation because the creditor is forced by the Insolvency Act 1986 to make a choice between IVA acceptance and bankruptcy. If the creditors choose IVA, debtors can take actions, unobservable by creditors, which transfer greater risk to creditors. This is compounded by the lack of a formal investigation of the debtor's affairs in an IVA and the debtor's retention and possession of assets. Creditors who doubt the integrity of the debtor or the insolvency practitioner can choose bankruptcy and the possibility of a public examination of the bankrupt in open court, although this is rare.

Bank A has learned to take special care of IVA proposals put forward by Insolvency Practitioners who have presided over failed IVAs in the past. The bank maintains extensive records to allow it to identify both good and poorly performing practitioners. This is useful when IVAs can be rejected at an early stage, avoiding the need for monitoring costs, where the risk factor associated with the Insolvency practitioner is too high.

Creditor experience of bankruptcy is rarely good as official costs and the preferential treatment of some Crown debts deplete available assets and average returns from bankrupt estates are low (SPI, 1992 - 98). This contrasts with the overall experience of IVAs (Pond, 1998b). For banks and larger lenders, with wider portfolios of debtors, successful IVAs are balanced against those that fail during their agreed term and return nothing. In this way larger creditors are more likely to favour IVA acceptance since their overall experience is positive. Smaller creditors, with their less extensive experience, may have more dichotomised views.

4. Society's view

4.1 The rationale for insolvency law

In 1984 Cork (Cork, 1982) recognised that changes in commercial life and society since passage of the Bankruptcy Act 1883 necessitated a review and refashioning of insolvency law. The 1986 reforms that Cork influenced recognised that there needed to be a balance between two separate views of bankruptcy: as a sanction against deviancy and consumer laxness (deterrence) and as a form of consumer protection (Ramsay, 1997).

In a society based on credit, bankruptcy will still exclude individuals from the credit system and act as a punishment. It will also provide a "safety valve", recognising that credit providers share responsibility for over-commitment. The key task in achieving this balance is to distinguish between the dishonest insolvent and the merely unlucky.

The main actors in achieving this balance, apart from individual debtors and creditors themselves, are Insolvency Practitioners and their public sector counterparts the Official Receivers. Cork's recommendation of a licensing system for practitioners and the professionalisation of the industry coincided with the government's wish to reduce public sector involvement in the administration of bankruptcy. Whilst licensing has done much to rid the profession of some malpractice not all practitioners abide by the code of conduct (SPI, 1997) of the profession in respect of IVAs. Some even advertise for clients (Financial Mail on Sunday, 1999).

After 1986 The Insolvency Service, an Executive Agency of the DTI, wanted to concentrate on fraud and malpractice investigations as well as the investigation of failed companies and individuals. The strategy was to offer bankruptcy cases to the private practitioners but the sheer numbers of bankruptcies that failed even to pay their own costs meant that by 1999 Official Receivers were involved in the administration of an estimated 50 - 60% of all insolvencies (The proportion of bankruptcies without dividend to all formal insolvency appointments in Table 2).

TAKE IN TABLE 2 ABOUT HERE

The attendant pressure on Insolvency Service resources has a damaging effect on the perception of the efficient administration of estates. This may be a factor that adds to the attraction of bankruptcy for the debtor.

4.2 The stigma of bankruptcy

Although no specific UK research has been undertaken into attitudes to bankruptcy there exist a number of other factors that help to shed light onto the conflicting attitudes to bankruptcy of creditors and debtors. Factors exist that support the deterrence view of bankruptcy law, typically held by creditors, and the rehabilitation view, presumably favoured by debtors.

There is said to be a "stigma" associated with bankruptcy that supports the deterrence viewpoint. Bankruptcy, IVAs and County Court judgments, so called "black" information, are routinely recorded and included in commercially available Credit Reference databases. A Credit Reference search can highlight a previous bankruptcy or IVA for up to six years beyond the discharge of a Bankruptcy Order or completion of an IVA (Robson, 1999). Institutional creditors often base their credit-scoring and screening on such databases. The existence of this negative information assumes an importance in decision making despite the fact that such information fails to distinguish between the dishonest and the "unlucky" debtor or the recalcitrant bankrupt and the debtor who works hard to ensure that the IVA succeeds.

Creditors' maintenance of a bankruptcy "stigma" is under pressure from government (Atkinson, 1999) and society in general. A society based on credit generally has a greater acceptance of debt and a more permissive attitude to default (Lea et al., 1993). The sheer numbers of individuals seeking the protection of bankruptcy also serves to diminish its threat of censure (Bien, 1999; Wise, 1997). Combine this with the perceived inefficiency in official bankruptcy administration and the automatic discharge from bankruptcy after three years appears to be a favourable "exit strategy" when compared with the five years for the average IVA.

A more accessible feature of the equation, for UK creditors is the institutional credit-trust relationship between lender and borrower. Initial lending relationships between banks and new customers are likely to be deterrence based but will develop into knowledge based relationships where personal contact and repeated interaction are prevalent (Erfat, 1998). Personal lending by UK banks is rarely relationship based, however and most "arms-length" consumer credit transactions will remain deterrence based.

When the value of the deterrence diminishes, however, as society's view changes and as bankruptcy law favours rehabilitation the trust relationship breaks down. In addition the deterrence-based relationship is unlikely to engender any emotional or moral input by the borrower making the bankruptcy "fresh start" principle more accessible.

5. Experience of IVAs

The active creditor's decision to accept or reject an IVA is based on an assessment of the risk of IVA failure and the creditor's own predisposition to the debtor. Most IVAs will offer better dividends than the bankruptcy of the same debtor; indeed, many courts will not sanction IVAs that fail this simple test. The information available to the creditor at the point of IVA acceptance is, therefore, an important factor in the risk assessment.

5.1 Creditor influence in IVAs

On receipt of the IVA proposal the creditor has a limited time to judge whether it is realistic and whether the proposed dividend is acceptable. To help creditors a positive report from the insolvency practitioner appointed (nominee), prior to the creditors' meeting, should indicate that the statement of affairs is accurate, the proposal has a real prospect of success and that the proposal is fair (SPI, 1997).

Creditors can further strengthen their position by drafting and submitting modifications to the proposal for consideration at the creditors' meeting.

One very prominent feature of the 1998 study (Pond, 1998a) was the turnaround by creditors from their fairly indifferent attitude of 1989 (Pond, 1989). In 1989 average attendance (both actual and by proxy) at creditors' meetings in accepted IVAs was 56.3% with only 23% of meetings actually modifying the proposal. By 1998 average attendance had risen to 81% with 53% of cases reporting over 50% attendance. In addition, 71% of study cases were modified at creditors' meetings. This latter finding may have much to do with the policy of some creditors to insist on modifications to all IVAs. As the creditors' only opportunity of influencing the IVA, however, this is not surprising. This finding indicates that creditors are not "risk neutral" due to their broadly spread portfolio of investments but "risk averse", seeking to reduce the flexibility of the debtor in the IVA.

Bank A has a pro-active approach and will always vote at creditors' meetings. Voting is normally by postal proxy, never by bank attendance, and sometimes by instructing a meeting service to attend. Most large insolvency firms offer meeting services to creditors, whereby an experienced insolvency specialist attends creditors' meetings on behalf of the creditor. The attendee exercises a proxy vote where appropriate. Most meeting services are free to creditors and can include summary reports of all cases attended.

Bank A is fully aware of the additional costs involved in operating a specialised unit, however it considers the most salient factor to be net returns. To this end bank A has adopted a "Champion Challenger" benchmarking strategy wherein 10% of IVAs are "outsourced" to a major insolvency firm, enabling the bank to compare potential and actual returns after costs.

Bank B uses meeting services exclusively and relies on meeting specialists to scrutinise IVA proposals, recommend action and attend and vote at creditors' meetings. Like Bank A voting is by proxy but the vital difference is that Bank B's approach is to authorise voting and modifications against a standardised requirement of a 25p minimum dividend. Bank A judges cases on their individual merits.

By handing over the scrutiny and voting power to the meeting services bank B avoids considerable expense. Based on Bank A's resource commitment this could represent savings of over £200,000 annually. The bank does, however, lose some degree of control over cases and is reliant on the practitioners' expertise and the efficiency and timeliness of their reporting. Advantages of out-sourcing also include the benefit of the enhanced voting power of the meeting service as votes are combined with other creditors.

5.2 IVA risk factors

Analysis of IVA cases commenced in 1994/95 (Pond, 1998a) indicated an overall failure rate of accepted IVAs of 31%. An unknown proportion of this risk is exogenous. IVAs can falter if a downturn in trade or unplanned unemployment intervenes to stem the flow of income on which many enhanced dividends rely. There can also be an opposite effect - the domestic house price boom of the late 1980's in the UK intervened to return higher than expected dividends in some early IVAs (Pond, 1993; Flynn, 1993).

The research has also revealed significant endogenous factors associated with higher levels of failure risk including debtor non-co-operation following acceptance of the IVA by creditors, the principal reason for IVA failure reported as shown in Table 3.

TAKE IN TABLE 3 ABOUT HERE

This information is of little use to the creditor trying to decide whether a proposal has a realistic chance of success since non-co-operation occurs after the creditors' meeting. The current case studies show that creditors can use their own data on the debtor and build up a profile of the supervising practitioner well enough to make a judgement about the integrity of the proposal.

Another major factor that could bear heavily on co-operation by the debtor and is affected by other IVA measures, is the size of the forecast dividend. Average dividends, to unsecured creditors, anticipated at the outset of the IVA were 30.69p in the £ for IVAs in 1998 (Pond, 1998a) (47.62p in Pond, 1989). This contrasts with 14.35p if bankruptcy had ensued for these individuals in 1998 (22.06p in 1989). These data correspond to average dividends reported in a series of industry-wide surveys carried out by the Society of Practitioners of Insolvency (SPI, 1992–98).

TAKE IN TABLE 4 ABOUT HERE

The smallest cases are associated with the smallest dividends and with the smallest of benefits over bankruptcy, measured by the difference in anticipated dividends. In addition the cases with assets below £20,000 show a greater chance of failure during the course of the IVA (39%). Where more than £20,000 is offered in the IVA the failure rate falls to 26%. There appears, therefore, to be little reason, in terms of revenue, for backing particularly small IVAs (i.e. those with asset values below £20,000).

One of the most significant findings of the 1998 study (Pond 1998a) was the increased chance of failure of the IVA where the difference between the IVA and bankruptcy dividends exceeds 20p (See Table 3). A proposal offering a dividend of 10p to 20p more than in bankruptcy has a 16.9% chance of failure, whilst a proposal offering over 20p more than bankruptcy has a 37.8% failure chance. Such cases are interpreted as being "over ambitious" since they promise to deliver far more than the equivalent bankruptcy. Linked with the incidence of debtor non-co-operation over ambitious IVAs appear to be far riskier based on 1998 study evidence (Pond, 1998a). Creditors must have a realistic idea of what is possible and what is over - optimistic. Whilst likely asset realisation values are more certain the problems appear to lie with the income stream of the debtor in the future.

One method of improving IVA size, where an income stream is available, is to extend the duration. What is clear from Table 5 is that IVAs are becoming longer. In 1993 51.22% of IVAs studied were completed in less than one year. In his 1992 text on IVAs Stephen Lawson wrote, *"It will only be in exceptional circumstances that a voluntary arrangement will last for longer than two years"* (Lawson, 1992, p.23). The longer duration of IVAs is associated with two design features – The increased reliance on income from the debtor and the increased use of property re-valuation as sources of funds.

<u>TAKE IN TABLE 5 ABOUT HERE</u>

In 1998, however, only 10.34 % of cases were due to be completed in under one year whilst 44.13% were designed to exceed the three year mark. Three years had always been seen as a benchmark as this is the likely duration of a full bankruptcy.

Only the shortest IVAs (one year or less) had a significantly lower failure rate (13%) than the overall average 31% failure rate shown in Table 5. Although not certain, this could be because they relied on the liquidation of assets rather than the expectation of income in the future. Duration alone is not a significant indicator of failure risk, however. This observation does provide support for the notion that debtor co-operativeness and IVA duration are linked. Longer IVAs are more likely to strain the relationship between the debtor, the practitioner.

5.3 Creditors’ meeting modifications

The imposition of modifications *per se* is not, necessarily linked with an increased chance of failure. Table 3 shows that where modifications are made at creditors’ meetings only 33% of IVAs fail subsequently against an average of 31% failing.

The major modifications reported in the 1998 study (Pond, 1998a) related to: Changed duration; increased income contribution; real property; windfall gains and administration of the IVA. The “administrative” modifications are unlikely to impact on the debtor as much as those modifications that extend the duration of the IVA or increase the income contribution. Table 6 shows failure rates of IVAs linked to specific modifications of proposals (Pond,1998a).

INSERT TABLE 6 ABOUT HERE

Perhaps the most visible sign of creditor power in the IVA is the opportunity to table modifications to the proposal for agreement by the debtor. Heavily modified IVAs do have the chance, however, of being far more favourable to the creditor than the debtor originally intended.

Both Banks A and B use modifications extensively to “improve” proposals. . Bank A will request modifications in the 14 - 28 day period between notification of the creditors' meeting and the meeting itself. The bank supplies nominees with pro-forma list of acceptable modifications after review of the case.

Many of the modifications put forward by both case study banks are “administrative” in nature, such as limiting the Supervisor's fee or ensuring that the Supervisor retains sufficient funds too petition for bankruptcy should the IVA fail. Defining IVA failure is also a common modification. Such modifications have been borne of experience. Other modifications seek to improve the prospect of recovery by increasing the assets available, increasing the income contributed or extending the term of the IVA. A third type of modification is a contingent modification, including, "windfall gains" clauses and an undertaking to value the debtors house equity after a certain period with a view to re-mortgage or sale to realise this for the benefit of creditors.

Modifications to extend the IVA are linked to slightly greater co-operation of the debtor (Pond 1998a), although the chance of failure of the IVA is still average. Longer IVA periods indicate that some debtors will work hard to avoid bankruptcy. A greater proportion of IVAs is now seen in business and professional services, compared with other trades, due to that fact that licenses to practice of professionals such as lawyers and accountants are withdrawn under bankruptcy but not under IVA regulations. In 1994/95 an estimated 15.9% of all IVAs related to Business and Professional Services (Pond, 1998a), whilst only 6.94% of bankruptcies related to this sector in the same period (The Insolvency Service, 1995 and 1996).

Greater pressure appears to be placed on the debtor, however, when modifications seeking increased monthly contributions from income are included as the level of co-operation is likely to fall. This is also the case with property related modifications. Typical clauses call for revaluation of the family home towards the end of the IVA, and a re-mortgage or sale of the property if sufficient equity is apparent. These clauses are agreed by the pressurised debtor at the creditors' meeting, but on reflection, appear to erode the debtor's benefits under the IVA. This erosion puts the debtor closer to the position under bankruptcy and offers no compensating advantage, especially when the bankruptcy discharge period is generally shorter and the stigma much diminished.

The knowledge that so many creditors seek to apply modifications also leads insolvency practitioners to incorporate common clauses in proposals at the outset. This suggests that IVAs are far more "creditor friendly" than in the past and that they reflect less and less the wishes of the debtor. Short term "victory" in getting the debtor to agree to certain modifications may be pyrrhic.

6. Options for creditors

There are a number of options faced by creditors in receipt of notice of a creditors' meeting in respect of an IVA. The debtor's full proposal and the Nominee's (practitioner) report accompany the meeting notice. Creditors are given between 14 and 28 days to decide how to vote at the meeting.

The options range from the do-nothing "Bin it" strategy to full investigation and scrutiny. In both cases common benefits are the opportunity to recover any VAT element of the debt and eventual receipt of a dividend whether or not a vote is cast. Beyond this the "Bin it" strategy can only boast that it has no financial outlay but to say that it costs nothing is an overstatement. The potential for loss under the "Bin it" strategy is enhanced since good IVAs could be rejected for lack of support. In addition the creditor may increase the moral hazard problem by failing to share information about assets or the debtor's history. Although other creditors will decide the outcome of the IVA meeting and, perhaps the likelihood of its success, this may be a strategy that even sophisticated creditors adopt where they only hold a small percentage of the total debt and the recovery is likely to be small.

The "Full scrutiny" strategy, such as that practised by Bank A, promises to be very costly in terms of staff time, not only at the time of receipt of the notice but afterwards in monitoring progress of the IVA over a period of years. It does, however, allow a creditor to build up an expertise in this area and make more informed judgements on voting decisions and, importantly, modifications to proposals at the creditors' meeting. Organisations that always scrutinise and vote on IVA proposals enhance their bargaining power and practitioners may even anticipate their response by designing IVAs with particular creditors in mind.

"Full scrutiny" creditors need, however, to temper their expertise and power with the observation that some specific modifications, agreed by pressurised debtors at creditors' meetings, may increase the chance of debtor non co-operation and IVA failure.

7. IVA outcomes

Both case study banks are understandably sensitive about the administrative costs of their respective centralised units. Bank A was also sensitive about recovery levels although the continued benchmarking of their own outcomes against insolvency professionals suggests that centralisation is considered to be worthwhile.

Results that Bank A was willing to divulge indicated that 70% of accepted IVAs remained on target during their life cycle (ie: within 20% of forecast dividends). The recoveries also showed significant improvements on the original proposed levels put forward by debtors.

Bank B data is reported in table 2. The full database indicates that most cases achieve the 25p minimum dividend required and that forecast dividends are roughly in line with national averages reviewed by the SPI surveys (SPI, 1998).

At one level bank B's strategy is highly successful since it has reduced the bank based resources and costs associated formerly with the administration of insolvencies. Forecast recoveries appear to be around the national average but bank B has lost effective control of its own IVAs and is not in a position to act quickly to change its stance should problems arise with particular IVAs or with IVAs in general.

The bank relies on the prudence and expertise of the meeting services it employs and must ensure that it undertakes regular and thorough analysis of reported cases and recoveries in order to inform policy in the future and ensure that the projected recoveries have the best chance of materialising.

8. Conclusions

Changes in insolvency law have often come about following the abuse of existing legislation by debtors; creditors and those placed in control of debtors' estates. The 1986 Insolvency Act reflected the need to stem actual and potential abuses and to reflect society's changing view of bankruptcy. Rescue and rehabilitation for debtors was a primary driver for the review committee.

Since 1986 a variety of pressures, including the focus exercised by some creditors and professional insolvency practitioners, has worked to make IVAs the primary vehicle for dealing with the insolvency of individuals where a recovery prospect exists. The case study banks have acted to streamline and centralise the administration of formal insolvency both for reasons of cost control and to improve recovery prospects.

The asymmetric bargaining power of larger creditors, a result of their corporate experience, centralisation and specialisation and their increasing use of professional “meeting services”, offered by Insolvency Practitioners, also helps banks to influence the acceptance of IVAs more readily. Generally, larger creditors are able to use their experience and select only IVAs that have a realistic chance of returning better dividends than bankruptcy. In these cases, their recoveries are likely to be greater.

The paper also provides evidence to indicate that the large creditors studied are risk averse and work to modify IVA proposals to improve recovery prospects. In this way the case study creditors are pro-active and illustrative of creditors generally who are taking an increased interest in IVAs.

Finally the paper indicates that some specific modifications can be seen as counter-productive as they are associated with a higher chance of IVA failure and overall lower dividends. Creditors are advised to temper their short term aims to maximise returns with the longer term need for the IVA to run its course.

Table 1: Individual Insolvency statistics 1987 - 2000

	1987	**1988**	**1989**	**1990**	**1991**	**1992**	**1993**	**1994**	**1`995**	**1996**	**1997**	**1998**	**1999**	**2000**
Bankruptcy	6994	7717	8138	12058	22632	32106	31016	25634	21933	21803	19892	19647	21611	22042
IVA	404	779	1224	1927	3002	4686	5679	5103	4384	4466	4545	4901	7195	8204
Deed of Arrangement	29	11	3	2	6	2	8	2	2	2	4	1	0	0
TOTALS	**7427**	**8507**	**9365**	**13987**	**25640**	**36794**	**36703**	**30739**	**26319**	**26271**	**24441**	**24549**	**28806**	**30246**
%IVAs	5.44%	9.16%	13.07%	13.78%	11.71%	12.74%	15.47%	16.60%	16.66%	17.00%	18.60%	19.96%	24.98%	27.12%
Bankruptcy growth		10.34%	5.46%	48.17%	87.69%	41.86%	-3.40%	-17.4%	-14.4%	-0.59%	-8.76%	-1.23%	10.00%	1.99%
IVA growth		92.82%	57.12%	57.43%	55.79%	56.10%	21.19%	-10.1%	-14.1%	1.87%	1.77%	7.83%	46.81%	14.02%
TOT. growth		14.54%	10.09%	49.35%	83.31%	43.50%	-0.25%	-16.3%	-14.4%	-0.18%	-6.97%	0.44%	17.34%	5.00%

Source: DTI Statistics Directorate.

Table 2: Comparative IVA and bankruptcy dividends

	Case Study Bank B cases 1998/99	% of total cases	% of "live" cases	Case Study Bank B average anticipated dividends	Comparative dividend from 7th SPI Survey (SPI, 1998)
Accepted IVAs	1034	33.44	82	37.62p	43p
Bankruptcy with dividend	*227*	*7.34*	18	9.67p**	26p
Bankruptcy without dividend	*1831**	*0.0*	-	0	n/k
Total Bankruptcy	2058	66.56	-	-	n/k
TOTAL / AVERAGE	3092	100	100	-	

** Official Receivers appointed in 95% of cases.*

*** This includes cases where dividend was forecast but not quantified. A nil dividend was entered. If such cases are excluded a 36.42p dividend results.*

Table 3 IVA failure risk factors

Factor	Fail %	Chi - square Pearson's r	DF	Sig.
Debtor not co-operative	56.8	50.99719	2	.00000
IVA dividend = bankruptcy dividend	66.7	19.44784	2	.00006
IVA div. > 20p more than bankruptcy	37.8	19.44784	2	.00006
Assets / Income <£20,000	39.4	2.70417	1	.10009
Modifications at creditors' meeting	33.0	0.50755	1	.47620

Source: Pond, 1998a

Table 4 Anticipated dividends in IVAs and Bankruptcy*

SIZE OF IVAs (Income + Assets)	IVA dividend (av.)	Est. bankruptcy dividend (av.)	IVA / Bankruptcy Difference
< £10K	5.02	4.65	+0.37
£10K <= £20K	42.2	17.75	+24.45
£20K <= £50K	31.76	10.4	+21.36
£50K +	39.46	18.65	+20.81
Not known	14.29	1.14	+13.15
TOTAL / AV	30.69	14.35	+16.34

Source: Pond 1998a

Table 5 Duration of IVAs

Duration of IVAs (months)	**1993 study (%)**	**1998 study (%)**	**1998 failure rate (%)**
up to 12 months	51.22	10.34	13
12 to 24 months	8.54	13.1	37
24 to 36 months	23.17	24.14	37
36 to 48 months	6.1	15.17	14
over 48 months	10.98	28.96	38
Not known	-	8.28	38
TOTAL/OVERALL	100	100	31

Source: Pond 1998a

Table 6 IVA modification failure risk factors

Modification	Fail %	n.=*
Windfall clause	23.81%	21
Property re-valuation	48.57%	35
Increased income contribution	35.38%	65
Increased duration	38.71%	31
Other modifications	36.84%	57

* n= number of cases where clause noted. Total sample cases = 145.

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CHAPTER 7

Pond, K., ''The Value of the Banker Customer Relationship: Experience of Individual Voluntary Arrangements'', *Journal of Financial Services Marketing*, 5(1), September 2000, pp 32-39.

THE VALUE OF THE BANKER-CUSTOMER RELATIONSHIP: EXPERIENCE OF INDIVIDUAL VOLUNTARY ARRANGEMENTS

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THE VALUE OF THE BANKER-CUSTOMER RELATIONSHIP: EXPERIENCE OF INDIVIDUAL VOLUNTARY ARRANGEMENTS

ABSTRACT

Over the last ten to fifteen years, and in response to the huge growth in demand for unsecured consumer credit, UK banks have reviewed, automated, de-skilled and streamlined traditional credit assessment techniques. In pursuit of margin and market share, today's due diligence relies increasingly on centralised data and statistical "certainty".

During this same period the nature of the banks' "safety net", the sanction of bankruptcy and court action, has changed too. The effect of this is not only to increase the potential for recovery, in respect of bad debts, but also to increase the moral hazard problem. However, increased risk is masked by creditor power in recovery situations.

This paper draws on theoretical and empirical research from legal, ethical and economic viewpoints and suggests that a reappraisal of this aspect of the banker-customer relationship is essential to restore trust, prudence and long-term profitability.

THE VALUE OF THE BANKER-CUSTOMER RELATIONSHIP: EXPERIENCE OF INDIVIDUAL VOLUNTARY ARRANGEMENTS

Introduction

The relationship between a banker and a customer has its foundations in well-established UK case law[1], reinforced, since 1992, by a code of conduct. Until 1997, however, the code was silent on the matter of dealing with non-performing loans. In 1997 banks made a firm commitment to

> "*consider cases of financial difficulty sympathetically and positively*".

Banks also pledged themselves to

> " ***help you (sic) to overcome your difficulties".***[2]

The banks' commitment covers the period before formal insolvency action and also echoes a much-ignored plea from lenders for customers to give early warning of debt problems. Amongst the motivations for making this plea is that problems can be averted and a customer retained. Coincidentally, early warning of problems allows lenders to act to their own best advantage by taking individual action for debt recovery before the competing claims of other lenders level the "playing field" with the collective nature of the bankruptcy procedure.

The code is silent, however, on the banks' treatment of customers following notice of formal insolvency. At these times there is growing evidence that banks act purely in their own short-term interests[3].

This paper focuses on the law and practice surrounding personal and unincorporated business debt, although parallels in the corporate world are evident. The paper looks closely at the banker – customer relationship at a crucial time of crisis (customer insolvency) and surveys the various influences placed on bankers including the increasing demand for consumer credit and society's changing attitude to bankruptcy.

The paper also looks at the statutory choices faced by insolvent debtors and their creditors and goes on to review the general economic factors that have coloured creditor behaviour during the last decade. It touches on the operational handling of insolvency situations, the creditors' policies towards problem debt and the ethical considerations that guide them.

The paper concludes by arguing that in a highly competitive environment, where debt is a direct corollary to credit granting, banks can do much to regain the trust and security that lead to profitable lifetime relationships with customers.

The banker - customer relationship

UK retail banks operate in an extremely competitive environment and invest heavily in gaining competitive advantage. Traditional banks suffer pressure on profit margins and growing threats from non-traditional competitors such as supermarkets and even football clubs[4]. Competitive pressures and available technology have, in part, resulted in an orientation away from the relational banking of the "old fashioned" high street bank manager, towards the standardisation and transactional banking of the direct seller. Technical competence in lending is largely subordinated to systematic "credit scoring" and centralisation based on empirical information from a variety of sources[5].

Whilst streamlined systems for lending can reduce costs and increase profitability in the short-term it does serve to reinforce the moral hazard problems associated with dealing with borrowers at "arms length".

The legal relationship between bankers and their customers was investigated by the National Consumer Council in 1983[6] and reviewed by the Jack Committee, which reported in 1989[7]. Jack found that the legal relationship was robust and did not require urgent amendment[8]. Both the NCC and Jack, however, were silent on the specific problem of non-performing loans and bad debts.

With a widely publicised code of conduct in place, bankers and their customers should be more certain about their legal relationship. Their commercial relationship, however, is far less clear especially as both retail banks and consumers have undergone significant changes in recent years. Emphasis in the banker-customer relationship, bank training and professional education, has typically focussed on “beginnings” (the initial lending decision) and “endings” (the effective use of security). Whilst these are undoubtedly important it is the “middle” (the quality of relationship) that must now be developed.

The emphasis on product based, transactional banking in the 1980’s and early 90’s had a marked effect on bank organisational structures and sources of income. Banks enjoyed the benefits of profitability and sales growth but suffered from a lack of customer loyalty[9]. Increased levels of competition and the advent of technology driven delivery channels have effectively compounded the problem by commoditising bank products and replacing inertia with a greater degree of customer empowerment.

Consequently, by the mid 1990’s banks had begun to realise the importance of reintroducing “relationship management” and introducing customer retention policies. Although attitudes and practices are often slow to change in large organisations banks are beginning to balance the “lifetime value” of customers with the move towards individual account profitability[10]. Banks also know that customer acquisition is more expensive than customer retention although few have applied this logic of this in dealing with bad debts, insolvency and defaulting customers[11].

US research has indicated that the long term success of firms, in terms of sustainable competitive advantage, is associated with investment in relationships with customers and suppliers[12] (in banking, customers and suppliers are synonymous in certain circumstances since funds deposited in accounts are used by banks to fund lending). Fine tuning of communications with customers also gives benefits. Specialised training and the focused deployment of staff can, therefore, help to engender the trust, satisfaction and commitment that banks desire in their relationships with customers[13].

Insolvency Law and Practice

Since passage of the 1986 Insolvency Act insolvent UK personal debtors have had access to a statutory Individual Voluntary Arrangement (IVA) procedure which is designed to avoid the finality and penalties of bankruptcy. The IVA between debtors and creditors was designed to allow viable sole traders to continue in business or to achieve a better and more orderly realisation of assets for the creditors. The legislative provisions followed the recommendations of a review committee[14] and extensive consultation[15] that noted the need to "rescue" debtors and to distinguish between the dishonest and the unlucky. Although the review committee also recommended a curtailed procedure for consumer debtors this was not carried through to the statute books and so the IVA "rescue" vehicle remains available to small unincorporated businesses and individual debtors alike.

The IVA is a private contract for the satisfaction of personal debts. As such it can be influenced by the quality of the relationships between lenders and debtors. In this court-supervised procedure the debtor proposes how the debts are to be satisfied, under the guidance of a licensed insolvency practitioner (IP) and under the protection of a "moratorium" on creditor action. The creditors are given the opportunity of amending and accepting or rejecting the proposal[16].

Whilst bankruptcy ends the banker – customer contract the IVA does not. Consequently, creditor predisposition, influence and action have had an important place in the IVA procedure and the years since 1986 have seen a steady rise in the incidence and acceptance of IVAs[17]. There is also growing evidence of their successful application[18]. At the time of writing around 25% of formal personal insolvencies are dealt with via IVAs.

The choice faced by an increasing number of insolvent debtors is between IVA, and the avoidance of penalties, restrictions and opprobrium connected with bankruptcy or bankruptcy itself (liquidation of available assets). The choice faced by the creditor is limited by the predisposition of the debtor towards bankruptcy in the first instance and by the existence of "moral hazard" which makes the IVA riskier for the creditor. However, a successful IVA can improve creditor recoveries and increase customer retention, since income from continued employment or trade is often included as a benefit.

Moral hazard exists in the IVA situation because the creditor is forced by the Insolvency Act 1986 to make a choice between IVA acceptance and bankruptcy. If the creditors choose IVA, debtors can take actions, unobservable by creditors, which transfer greater risk to creditors. This is compounded by the lack of a formal investigation of the debtor's affairs in an IVA and the debtor's retention and possession of assets. Creditors must be aware that over-ambitious repayment proposals made by debtors may look attractive initially but may fail to materialise as debtors fail to co-operate with the IP once the IVA has been accepted. Creditors who doubt the integrity of the debtor or the IP can choose bankruptcy and the possibility of a public examination of the bankrupt in open court.

Creditor experience of bankruptcy is rarely good as official costs and the preferential treatment of some Crown debts deplete available assets and average returns from bankrupt estates are low[19]. This contrasts with the overall experience of IVAs[20]. For banks and larger lenders, with wider portfolios of debtors, successful IVAs are balanced against those that fail during their agreed term and return nothing. In this way larger creditors are more likely to favour IVA acceptance since their overall experience is positive. Smaller creditors, with their less extensive experience, may have more dichotomised views.

The asymmetric bargaining power of larger creditors, a result of their corporate experience, centralisation and specialisation, security position and size of debt and their increasing use of professional "meeting services", offered by Insolvency Practitioners, also helps banks, in particular, to influence the acceptance of IVAs more readily.

Generally, larger creditors are able to use their experience and select only IVAs that have a realistic chance of returning better dividends than bankruptcy. In these cases, their recoveries will be greater and, arguably, their retention of customers more marked.

Economic considerations

The fact that banks, as lenders, should be able to pursue profitable lending opportunities is not in question. What is questioned, however, is the time-scale over which such profits are measured.

In the short-term it appears that banks have profited enormously from the unprecedented demand for unsecured consumer credit. Annual growth rates in credit card debt, for example, calculated as part of the money supply - M4, consistently exceeded RPI inflation by 2 to 3 percentage points between 1996 and 1998[21]. Over the same period bankruptcy and IVA numbers have grown (See Figure 1) and are now maintained at a higher level (total estimated at 28,000 for 1999) than at any time since the recession of the early 1990's. In 1998-99 total insolvency growth outstripped the growth in consumer credit with IVAs maintaining their "share" of cases. Petitions for bankruptcy also maintained high numbers, with around 65 – 68% of all petitions being granted and debtors being made bankrupt between 1991 and 1998[22]

TAKE IN FIGURE 1 ABOUT HERE

Where banks hold unsecured debt the tendency in corporate insolvency has been towards liquidation (bankruptcy) rather than rescue or rehabilitation. Smaller businesses appear not to warrant bank involvement in workouts[23] and the same policy appears to be adopted for unincorporated businesses and personal debtors. This approach is typically justified by banks on the basis that there is no point "putting good money after bad" (sic) [24].

The financial argument for this is clear: the amount of debt written off (debt less recoveries) can influence specific provisions for bad and doubtful debt, net profits and tax charges. Transaction costs incurred in account intervention will merely add to losses in the short-term.

The longer-term economic argument is less clear but sees write-offs as "sunk costs". Normal costs of extending credit must take potential losses into consideration and be discounted in the risk related interest rate charged. The decision to invest in relationships with debtors should not, therefore, take the bad debt loss into account. Instead, the decision should compare the risk weighted "lifetime value" of the debtor against the cost of a more detailed investment in customer rehabilitation.

In a congested and competitive market such a policy may be more commercially viable in the longer term, especially where both legislation and social values want to encourage "serial entrepreneurs"[25] and where large numbers of bankrupts are repaying nothing to their lenders. Taking a slightly different perspective, customer information relating to crisis and rehabilitation could eventually lead to danger signals being recognised much earlier in the day, allowing banks to take preventative action and, perhaps, even avoid the need for bankruptcy and IVAs.

The ethical dimension

In 1984 Cork[26] recognised that changes in commercial life and society since passage of the Bankruptcy Act 1883 necessitated a review and refashioning of insolvency law. The 1986 reforms that Cork influenced recognised that there needed to be a balance between two separate views of bankruptcy: as a sanction against deviancy and consumer laxness (deterrence) and as a form of consumer protection[27].

In a society based on credit, bankruptcy will still exclude individuals from the credit system and act as a punishment. It will also provide a "safety valve", recognising that credit providers share responsibility for over-commitment. The key task in achieving this balance is to distinguish between the dishonest insolvent and the merely unlucky.

The main actors in achieving this balance, apart from individual debtors and creditors themselves, are Insolvency Practitioners and their public sector counterparts the Official Receivers. Cork's[28] recommendation of a licensing system for IPs and the professionalisation of the industry coincided with the government's wish to reduce public sector involvement in the administration of bankruptcy. After 1986 The Insolvency Service, an Executive Agency of the DTI, wanted to concentrate on fraud and malpractice investigations. The strategy was to offer bankruptcy cases to the private IPs but the sheer numbers of bankruptcies that failed even to pay their own costs meant that by 1999 Official Receivers were involved in the administration of up to 50% of all insolvencies[29].

The attendant pressure on Insolvency Service resources has a damaging effect on the perception of the efficient administration of estates. Although all bankrupts are subject to an investigation this may be paper based only, with much reliance placed on the debtor to provide information. This may be a factor that adds to the attraction of bankruptcy for the dishonest debtor.

Although no specific UK research has been undertaken into attitudes to bankruptcy there exist a number of other factors that help to shed light onto the conflicting attitudes to bankruptcy of creditors and debtors. Factors exist that support the deterrence view of bankruptcy law, typically held by creditors, and the rehabilitation view, presumably favoured by debtors.

There is said to be a "stigma" associated with bankruptcy that supports the deterrence viewpoint. Bankruptcy, IVAs and County Court judgments, so called "black" information, are routinely recorded and included in commercially available Credit Reference databases. A Credit Reference search can highlight a previous bankruptcy or IVA for up to six years beyond the discharge of a Bankruptcy Order or completion of an IVA[30]. Institutional creditors often base their credit-scoring and screening on such databases. The existence of this negative information assumes an importance in decision making despite the fact that such information fails to distinguish between the dishonest and the "unlucky" debtor or the recalcitrant bankrupt and the debtor who works hard to ensure that the IVA succeeds.

Banks' also find themselves in a privileged position in bankruptcy through their taking of direct and indirect security and guarantees – a privilege maintained by the priority given to types of creditor in the Insolvency Act 1986. An unpopular view put forward in 1992 was the outlawing of collateral that would:

> *" ….force banks into relationship banking, rather than simply paying lip service to it in hard times."*[31]

This view ignores the increased cost of credit that unsecured lending would bring but does address the fundamental relationship between banker and customer.

Creditors' maintenance of a bankruptcy "stigma" is under pressure from government[32] and society in general. A society based on credit generally has a greater acceptance of debt and a more permissive attitude to default[33]. The sheer numbers of individuals seeking the protection of bankruptcy also serves to diminish its threat of censure[34]. Together, the perceived inefficiency in official bankruptcy administration and the automatic discharge from bankruptcy after three years appear a favourable alternative when compared with the five years for the average IVA[35].

A more accessible feature of the equation, for UK creditors is the institutional credit-trust relationship between lender and borrower. Initial lending relationships between banks and new customers are likely to be deterrence based but will develop into knowledge based relationships where personal contact and repeated interaction are prevalent[36]. Personal lending by UK banks is rarely relationship based, however and most "arms-length" consumer credit transactions will remain deterrence based.

When the value of the deterrence diminishes, however, as society's view changes and as bankruptcy law favours rehabilitation, the deterrent effect breaks down. In addition the deterrence-based relationship is unlikely to engender any emotional or moral input by the borrower.

Conclusions

This paper presents a dilemma for bankers. It is a common dilemma as short-term profits are often prioritised ahead of long-term gains. It also presents a range of options for the bank when customer default presages formal insolvency.

Traditionally "short termism", driven by the need to satisfy shareholders, has taken overwhelming precedence over the need to develop long term relationships with customers. Increases in the level of competition have, however, focused attention on the importance of customer retention and the active management of the banker-customer relationship.

Consequently, banks that were traditionally transaction oriented, with an emphasis on standardisation and centralisation, in an endeavour to reduce costs, are emerging as relationship oriented organisations. The value and importance of relationship strategies in reducing moral hazard in the provision of credit to personal customers has been discussed. The paper also recognises the impact of moral hazard on the administration of insolvency law, which, since 1986 has embraced the concepts of rescue and survival.

Insolvency law has, in this respect, been ahead of the “thinking” within banks and, significantly, has reflected the changing ethical attitudes of society to debt. In beginning to emerge as relationship-oriented organisations, therefore, the banks are adopting the values of society and the legal system but still have a long way to go in taking full advantage of IVAs. In a competitive environment banks need to embrace the importance of business rescue and survival in order to benefit from customer retention and continuing relationships with their debtor customers.

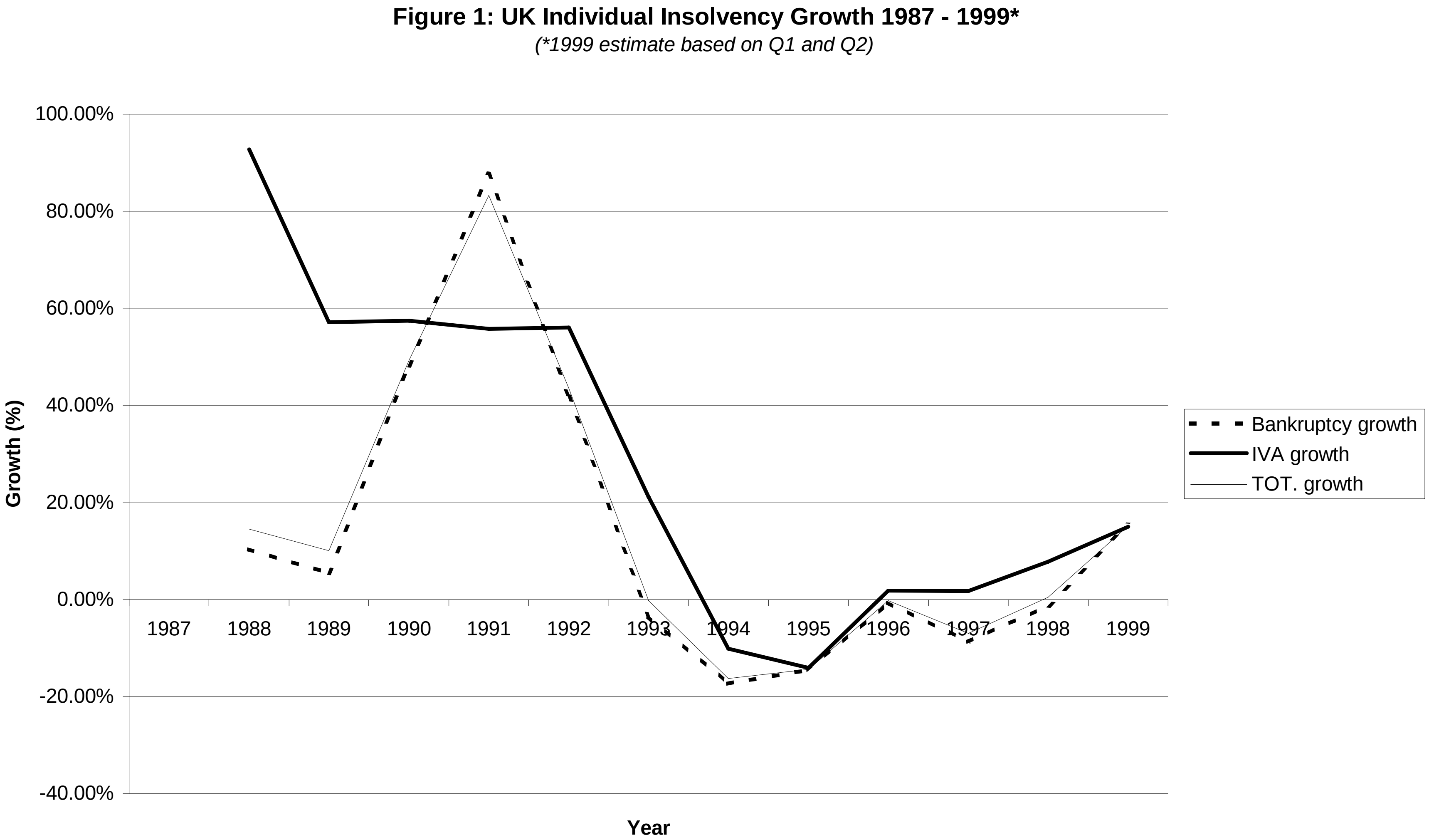
Figure 1: UK Individual Insolvency Growth 1987 - 1999*
(*1999 estimate based on Q1 and Q2)
100.00%
80.00%
60.00%
40.00%
20.00%
0.00%
-20.00%
-40.00%
Growth (%)
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
Year
Bankruptcy growth
IVA growth
TOT. growth

Source DTI

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CHAPTER 8

Pond, K., "Creditor Strategy in Individual Insolvency", ***Managerial Finance*****, 28(6), June 2002, pp 46-60.**

CREDITOR STRATEGY IN INDIVIDUAL INSOLVENCY

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5,000 words (excluding abstract)

KEYWORDS:

CREDITOR, DEBTOR, STRATEGY, GAME THEORY, INSOLVENCY, UK LAW.

ABSTRACT

Under UK Insolvency law creditors face a strategic choice when dealing with some insolvent individual debtors. Since 1986 Individual Voluntary Arrangements (IVAs) have been available to return better recoveries than bankruptcy but returns are subject to a greater degree of uncertainty.

In this paper Game Theory is used to model the strategic choice and the proposition that creditors face. The game played out is an indefinitely repeating non-co-operative game with player learning and risk minimisation supported by empirical evidence from studies of IVAs.

The paper shows that creditors have the potential to select revenue maximising strategies based on simple review of the IVA proposal their knowledge of the debtor and the perceived probity of the insolvency profession. Consistent use of successful strategies could both increase the acceptance and incidence of IVAs and improve the likelihood of recovery.
(140 words)

CREDITOR STRATEGY IN INDIVIDUAL INSOLVENCY

INSOLVENCY CHOICES

Since the Insolvency Act 1986 came into force in late 1986 both creditors and debtors have been faced with a choice when formal insolvency proceedings for an individual are commenced. Initially the individual debtor can choose bankruptcy via a debtor's petition or apply for an Individual Voluntary Arrangement (IVA). The IVA, introduced in the 1986 Insolvency Act is a formal means of avoiding bankruptcy by getting creditors to accept a compromise in the satisfaction of their debts. A similar choice was theoretically available via the Deeds of Arrangement Act 1914 before 1986 but in reality this regime had fallen into disuse (Cork Committee, 1982).

The choice faced by creditors and debtors is not a completely free one however. It is constrained by assumptions made about the creditors; specifically whether or not they will accept an IVA (See Box 1), and what conditions they will exact before acceptance. It is also constrained by assumptions made about the capacity of debtors to fulfil their obligations under the IVA.

TAKE IN BOX 1 HERE

IVA incidence has grown considerably since 1986. Bankruptcies have yet to reduce in number to their pre-recession (1988/89) level and may not ever do so due to the reduced "stigma" of bankruptcy and the growth in availability of credit (Bien, 1999; Wise, 1997). Current government proposals also suggest greater scope for relaxation of restrictions on bankrupts (Atkinson, 1999, Insolvency Service, 2000). In the meantime, IVAs have steadily increased their share of the personal insolvency "market". Despite a Society of Practitioners of Insolvency (SPI) suggestion that the 1996 level of 17% was a "natural" one (SPI, 1992-

1998) IVA numbers have grown steadily and in 1999 represented 25% of formal insolvencies (DTI Statistics Service, 2000).

The apparent low level of IVA uptake, however, is deceptive. When viewed alongside the observation that 80% of bankruptcies reveal no assets and return a nil dividend to creditors (Pond, 2000) the proportion of remunerative insolvencies dealt with by IVA rises to 82% of the total. This is helped by the courts insisting that IVAs must offer better creditor returns than bankruptcy. IVAs can often do this on the basis of reduced costs and the opportunity for the debtor to continue to trade or to earn income for the benefit of creditors (Pond, 1989).

This article draws on questionnaire and interview based research undertaken at Loughborough University Banking Centre (Pond, 1998) that focused largely on the IVA process and how creditor attitudes to IVAs have changed over the last decade. The period since 1987 has seen significant ways in which IVAs have changed due both to external, largely economic, influences and to a growing realisation amongst creditors that they can have a significant influence on the IVA process.

The findings are set against the background of economic "Game Theory" which models situations of interdependence where discrete choices are made by a small number of parties based on their assumptions of how their opponents will react (Bierman & Fernandez, 1998; Kay, 1993). The Prisoner's Dilemma game is familiar to students of oligopoly or duopoly behaviour. In this paper I argue that the possible solutions to the dilemma are applicable in the individual insolvency situation.

THE PRISONERS DILEMMA

The Prisoner's Dilemma models the choices faced by two thieves arrested carrying the tools of their trade and kept in separate cells in the Police Station. Each thief is made the same offer by the police: If one thief confesses and the other does not the partner will get 10 years in jail whilst the other goes free. If both confess they are likely to get 7 years in jail each but each knows that if they both stay silent the police only have enough evidence to jail them for 1 year each.

TAKE IN FIGURE 1

For each thief the “Confess” strategy is ***strictly dominant*** since each thief knows that, whatever decision the other thief takes, confession will deliver a better pay-off than silence.

The central problem is one of simultaneous decision making, unaffected by the actual decision made by the other party (Poundstone, 1992). In a single iteration of the game both thieves will confess as the risk of trusting the fellow thief to remain silent is too great. Thus, the best outcome for both - silence - will not be chosen. Individual rationality will dominate group rationality (Thomas, 1984)

Co-operation or collusion prior to their arrest, or a better knowledge of the other thief’s likely decision would potentially change the outcome to a “Silence” strategy being adopted by each thief. This is especially true if the thieves were put in the same position repeatedly and learned to trust each other to remain silent.

Where the game is repeated a fixed number of times then the last game’s dominant strategy is “Confess”. In this way co-operation unravels and, in anticipation of the last game, all earlier games will use the {Confess, Confess} strategy too (Selten's theorem (Selten, 1973).

By repeating the game indefinitely, however, a “tit for tat” strategy is optimum. Confession by one thief is punished by “Confess” at the next iteration by the other. Likewise “Silence” is rewarded by “Silence” the next time around. The overall effect is co-operation in the long run.

An alternative solution to the dilemma is to change the pay-offs for each thief. If, instead of freedom, the thieves believed that the penalty for confession would be a visit from the friends of the thief who goes to jail, equivalent, say, to a five year “sentence” in hospital (The

Criminal’s Revenge game) the outcome would also be altered (Kay, 1993). In the Criminal’s Revenge game the best strategy for each thief is to follow what the other thief does, or at least to choose the same strategy that the thief anticipates the other thief will choose. In more formal terms this is a *Nash equilibrium*.

THE INSOLVENCY GAME

The choice faced by insolvent debtors and creditors is a potential Prisoners’ Dilemma game. The best outcome for both parties in terms of benefit is to propose and accept an IVA but the creditor’s choice severely curtailed by the predisposition of the debtor towards bankruptcy in the first instance. It is also affected by the existence of “moral hazard” and “adverse selection” which combine to make the IVA choice riskier for the creditor.

Moral hazard exists in the IVA situation as the creditor is forced by the Insolvency Act 1986 to make a choice (IVA acceptance) following which debtors can take actions, unobservable by creditors, which transfer greater risk to creditors. Moral hazard is apparent in all lending situations where the honesty of debtors is not known. Credit "scoring" and other "arms length" credit assessment techniques lead to the retention of this type of risk. In short, debtors can fail to comply with their own IVA proposals. This is compounded by the lack of a formal investigation of the debtor’s affairs in an IVA. Creditors who doubt the integrity of the debtor should opt for bankruptcy and the certainty of an investigation and possibility of a public examination of the bankrupt in open court.

Physical hazard exists in IVA and bankruptcy alike. This refers to events outside the debtor's control and cannot be avoided completely.

Adverse selection occurs in the IVA since all debtors entering an IVA are, by definition, insolvent and generally less desirable for creditors to bargain with both in terms of their history of failure. By definition insolvent debtors are without liquid resources, neither are they isolated from their poor credit history with the very creditors to whom the settlement offer is made.

The insolvency game can be summarised in the following matrix:

TAKE IN FIGURE 2

In the matrix the pay-off “B” is the benefit available to the creditor in bankruptcy. The debtor’s benefits are “0” in bankruptcy which includes the penalties and restrictions of full bankruptcy or “<0”, where the debtor has, in addition, paid the petition fee or the IVA set up costs. The debtor pay-off “(>B-B)” is the value of the positive “benefit” to the debtor of the IVA in terms of the price above “B” that the debtor is willing to pay to secure an IVA. It is assumed that the debtor will wish to avoid bankruptcy provided the cost, in terms of IVA commitments, does not exceed the perceived benefits of the IVA. One element in the choice is the moral stance of the debtor as opposed to the purely economic one but this analysis does not model different views on debt repayment. The influence of different attitudes to bankruptcy is very real, however, and should be acknowledged (Erfat, 1998).

Creditor benefits are summarised as projected dividends on unsecured debts. The pay-off “>B” indicates that the IVA dividend is superior to that in the bankruptcy of the same debtor. It is assumed that creditors will wish to maximise their revenue returns from the insolvency situation. Lastly, the pay-off “<B” includes the transaction costs associated with abortive attempts to set up an IVA from either the debtor or creditor moving first (see Figure 3). Average dividends in recent IVA cases indicate a 31% return in IVA and 14% in bankruptcy (Pond, 1998).

Where a debtor opts for bankruptcy, and moves first, an IVA is unlikely. Average costs of £2,500 to set up an IVA compare unfavourably with the £350 bankruptcy petition fee. The Insolvency Act 1986 (Section 273-4) does provide that when an insolvent debtor presents a bankruptcy petition and the accompanying Statement of Affairs (Section 272) indicates debts of under £20,000 and assets of over £2,000, the court will order an IVA feasibility study by a court-appointed IP. Without the debtor's co-operation, however, the proposal cannot be generated and court approval cannot be gained. Only an estimated 4% of all IVAs are commenced via this route (Pond, 1998).

Where a creditor opts for bankruptcy by presenting a bankruptcy petition the debtor is most likely to be declared bankrupt. IVAs are possible after a petition but the time to set one up is limited. IVAs are also technically possible after bankruptcy but only 15% begin in this way (Pond, 1998). When bankruptcy ensues following rejection or failure of an IVA the bankruptcy dividend is likely to be lower than that in a first instance bankruptcy since some of the debtor's funds have been used in paying the IVA fees. The passage of time has also caused some asset values to decline.

<u>TAKE IN FIGURE 3</u>

The real dilemma for the creditor is that an accepted IVA that fails subsequently is likely to result in a reduced or even zero dividend.

As in the Prisoners' dilemma game the strategy where both creditor and debtor benefit the most *{IVA, IVA}* will only be chosen where each party knows and trusts the intentions of the other and where risk can be reduced or eliminated. In the absence of this collusion or risk assessment the *strictly dominant* strategy will result in the certainty of bankruptcy and the lower dividend payout. The creditor's optimum strategy, therefore, is to accept only IVA proposals that combine the projection of higher dividends than in bankruptcy and the likelihood of successful realisation.

In this context creditors will rely on their experience and knowledge of Insolvency Practitioners (IPs) as they pre-select IVAs that are likely to succeed. The IP's own code of conduct, embodied in the Statement of Insolvency Practice 3 (SPI, 1997) engages IPs to consider the credibility of the debtor in making a Proposal. Comments from the IP can indicate to creditors those cases most likely to return a dividend.

The debtor's optimum strategy for IVA acceptance is to propose a compromise that realistically offers creditors a better return than bankruptcy and also offers the debtor benefits over and above the mere avoidance of bankruptcy. Although no specific research has been published, to date, on the changing attitude to bankruptcy in the UK since the 1986 legislation there is evidence of more permissive attitudes to debt (Lea, 1993). This could mean that the "stigma" of bankruptcy is not as great as before and the threat of bankruptcy not as motivating for the debtor as in the past (Bien, 1999; Wise, 1997).

If creditors assume that the debtor's attitude to bankruptcy is one of indifference the pay-offs will alter as the debtor perceives some positive benefit under bankruptcy to balance out the penalties. In this way the prediction of the Criminal's Revenge game prevails suggesting that the best strategy for the creditor is to copy the option chosen by the debtor. Whilst this strategy does offer the creditor the best dividend in the circumstances there is less overall incentive to choose the IVA route.

Oddly this gives rise to the paradox that policy makers may need to retain or reinstate the punitive effects of bankruptcy if business rescue via the IVA is to be encouraged.

BUILDING TRUST

Unlike the static Prisoners' Dilemma game creditors and debtors have opportunities to assess each other's position and to frame the IVA offer so that it anticipates and answers the reservations that each party has. Insolvency Practitioners (IPs), as proxy for the debtors they advise, can benefit from past experience where individual debtors cannot, since they are precluded from proposing a subsequent IVA within five years of the acceptance of their last. In this way the insolvency game is not static but an indefinitely repeated game between IP and major creditors since most insolvencies feature debts payable to the Inland Revenue, Customs & Excise and major credit providers.

Although the creditor and IP learning process and the practical management of IVAs shows that there is contact between these parties the insolvency game is a non-co-operative one. Creditors make independent decisions about IVAs based on their own predisposition and risk assessment procedures. Indeed, the evidence from the current research indicates that creditors often act in a unilateral but predictable way. There is also evidence that creditors are risk-averse rather than risk-neutral in that they seek to reduce risk by suggesting modifications to proposals.

Central to the choice of IVA acceptance by the creditor is the perception of the trustworthiness and probity of the IP. The prudent IP will have pre-selected debtors who are able to put forward and sustain realistic IVA proposals (Pond & Evans, 1995). Creditors are also aware of the activities of less diligent IPs in this respect, much as they are in corporate situations (Flood, 1995). Some IPs were described to us by survey respondents as "cowboys" and "ambulance chasers". These IPs use IVA in every instance of individual insolvency due to the front loading of their fee rather than the IVA being the best solution. Only creditors willing to file complaints to the IP regulatory bodies can realistically police the activities of the "cowboys". Perhaps the introduction of an insolvency "watchdog" may help in this regard (Finch, 1998; Kemeny, 1999).

IVA FAILURE RISK

Creditors have relatively little time to consider their response to an individual IVA proposal but have the capacity to base their judgement on the proposal itself; previous knowledge of the debtor; knowledge of the IP and contact with the IP.

One certain source of information is the proposal itself and the creditor must judge whether it is realistic, whether the proposed dividend is acceptable and whether the proposal protects the creditor's position adequately. In addition a positive report from the IP, prior to the creditors' meeting, should indicate that the statement of affairs is realistic, the proposal has a real prospect of success and that the proposal is fair (SPI, 1997). There is no evidence to suggest, however, that larger IP firms are any more effective in supervising successful IVAs than smaller ones.

Although it is a necessary feature of all IVAs that the projected dividends are better than in the bankruptcy of that debtor the probability that the higher dividend will be paid is much less. There is an estimated overall 31% failure rate of accepted IVAs (Pond, 1998), correlated significantly with debtor non-co-operation. In addition, IVA dividends are more likely to be paid over a longer period, which means that the creditor will need to discount the dividend flow over the duration of the IVA rather than the 12 months of a typical bankruptcy. The longer time period and the greater involvement when the IVA is set up also give rise to greater transaction costs.

Analysis of data from the 1998 study of IVAs reveals a number of features associated, to a greater or lesser degree, with an above average likelihood of failure. These features are summarised in Table 1.

TAKE IN TABLE 1

Linked with the incidence of debtor non-co-operation it appears that over-ambitious IVAs which offer substantially larger dividends than bankruptcy and those which give debtors no benefit over bankruptcy are far riskier.

IVA RISK ASSESSMENT

The 1998 research used a postal questionnaire addressed to a sample of IPs from IVAs commenced in 1994/95. The questionnaire was advised through the use of focus group feedback at the January 1997 regional meeting of SPI, the IPs "umbrella" professional body. This forum highlighted the dearth of research on creditor attitudes to and influence on IVAs.

A systematic sampling method was used to select 879 accepted cases from the public register of IVAs maintained by the Insolvency Service. By restricting the number of questionnaires to be sent to individual IPs to three this sample was reduced to 490 cases. The questionnaire was designed to elicit both objective and subjective information about accepted IVA proposals. Cases from 1994 and 1995 were chosen for the study sample, as these would have had long enough, by early 1998, to have either run their course or to be close to a conclusion. This mirrored the methodology used in 1989 (Pond, 1989) and 1993 (Pond, 1993). An overall response rate of 30% was achieved (145 cases) and key findings were discussed in interview with 10 representative IPs together with The Insolvency Service and a major creditor organisation.

Based on Table 1 the IVA features that indicate riskier than average proposals include:

- Debtor non-co-operation
- Forecast dividends
- Size and length of the IVA
- Modifications agreed at creditors' meetings

Debtor Non-co-operation

The principal reason for IVA failure reported is debtor non-co-operation (see also Pond & Evans, 1995). In the 1998 survey respondents were asked to rate debtor co-operation on a five-point scale (5 for "really co-operative" and 1 for "really uncooperative"). Not surprisingly the failure rate for co-operative debtors was significantly lower (7.9%) than for non-co-operative ones (80.6%).

This information is of little use to the manager trying to decide whether a proposal has a realistic chance of success since non-co-operation occurs after the creditors' meeting. In a few cases the creditor will know the debtor or the IP well enough to make a judgement about the integrity of the proposal but in most cases, this will be an unquantifiable element of the risk factor.

Non-co-operation encompasses two different types of behaviour, according to interviewees. The first is the debtor's motivation and supportiveness of the IVA. Many debtors see the IVA as a godsend at a time of huge pressure from creditors and family. Optimism and co-operativeness prior to the creditors' meeting can soon turn to non-compliance afterwards, as cash payments have to be made to the supervisor. Many "non-co-operative" debtors fail to realise the importance of what they enter into and rely on the IP to implement the proposal. It was felt that IPs should judge whether debtors are suitable candidates to carry out what is promised in the proposal rather than rely on the "punishment strategy" of the genuine threat of bankruptcy. Many cases studied show that the bankruptcy threat is very credible, given the retention of funds by the IP for this purpose.

The second type of behaviour is the failure of the debtor to fulfil the conditions of the proposal. This could be something as basic as a failure to provide accounts within a set time limit or as serious as a business downturn resulting in insufficient funds to make monthly payments or to pay ongoing tax and VAT obligations. Clearly some debtors in this situation will still be co-operative and motivated to make the IVA succeed but will fail due to external pressures.

During the house price boom of the late 1980’s IVA returns improved as property equity boosted debtors’ assets (Flynn, 1993). The 1998 study shows that the economic cycle can also have negative effects.

Measuring the IVA

Two factors that could bear heavily on co-operation by the debtor are the size of the dividend forecast and the duration of the IVA. Average dividends, to unsecured creditors, anticipated at the outset of the IVA were 30.69p in the £ for IVAs in the 1998 study (47.62p in 1989). This contrasts with 14.35p if bankruptcy had ensued for these individuals (22.06p in 1989).

The smallest cases are associated with the smallest dividends and with the smallest of benefits over bankruptcy, measured by the difference in anticipated dividends. In addition the cases with assets below £20,000 show a greater chance of failure during the course of the IVA (39%). Where more than £20,000 is offered in the IVA the failure rate falls to 26%. There appears, therefore, to be little reason, in terms of revenue, for backing particularly small IVAs.

One of the most significant findings of the 1998 study was the increased chance of failure of the IVA where the difference between the IVA and bankruptcy dividends is either nil or exceeds 20p. A proposal offering a dividend of 10p to 20p more than in bankruptcy has a 16.9% chance of failure, whilst a proposal offering over 20p more than bankruptcy has a 37.8% failure chance. A proposal offering the same dividend as in a bankruptcy has a 66.7% chance of failure.

Linked with the incidence of debtor non-co-operation it can be seen that proposals that either mirror the effects of bankruptcy for the debtor or are over-ambitious are riskier.
Whilst likely asset realisation values are more certain the problems appear to lie with the income stream of the debtor in the future. One method of improving IVA size, where an income stream is available, is to extend the duration of the IVA. What is clear from the 1998

study is that IVAs are becoming longer. In 1993 51.22% of IVAs studied were completed in less than one year. In his 1992 text on IVAs Stephen Lawson wrote, "*It will only be in exceptional circumstances that a voluntary arrangement will last for longer than two years*" (Lawson, 1992)

In 1998, however, only 10.34 % of cases were due to be completed in under one year whilst 44.13% were designed to exceed the three year mark. Three years had always been seen as a benchmark as this is the likely duration of a full bankruptcy. Only the shortest IVAs (under one year) had a lower failure rate (13%) than the average. Although not certain, this could be because they relied on the liquidation of assets rather than the expectation of income in the future.

Creditors' meeting modifications

On receipt of the IVA proposal the creditor has a limited time to judge whether it is realistic and whether the proposed dividend is acceptable. To help creditors a positive report from the IP, prior to the creditors' meeting, should indicate that the statement of affairs is accurate, the proposal has a real prospect of success and that the proposal is fair (SPI, 1997). Creditors can further strengthen their position by drafting and submitting modifications to the proposal for consideration at the creditors' meeting.

One very prominent feature of the 1998 study was the turnaround by creditors from their fairly indifferent attitude of 1989. In 1989 the average attendance (both actual and by proxy) at creditors' meetings in accepted IVAs was 56.3% with only 23% of meetings actually modifying the proposal. By 1998 average attendance had risen to 81% with 53% of cases reporting over 50% attendance. In addition, 71% of study cases were modified at creditors' meetings. This latter finding may have much to do with the policy of some creditors to insist on modifications to all IVAs. Many modifications are offered in exchange for support.

The imposition of modifications *per se* is not linked with the chance of failure. When particular modifications are reviewed, however, a different picture is presented. The major modifications reported in the 1998 study were:

- Changed duration
- Increased income contribution
- Property related
- Windfall
- Administrative modifications, including a limit on new credit and provision of accounts.

Both increased debtor co-operation and a lower than average chance of ultimate failure (24%) are associated with "Windfall" modifications. The logical explanation is that the clause has no immediate impact on the debtor and can be seen as a cost-less concession.

Modifications to extend the IVA are linked to slightly greater co-operation of the debtor, although the chance of failure of the IVA is still average (31%). Longer IVA periods indicate that debtors will work hard to avoid bankruptcy especially as a greater proportion of IVAs is seen in Business & Professional Services, compared with other trades. A number of professions, including Solicitors, Architects and Accountants, withdraw the license to practice on bankruptcy but not on the acceptance of an IVA.

Greater pressure appears to be placed on the debtor, however, when modifications seeking increased monthly contributions from income are tabled as the level of co-operation falls. The same is seen when "administrative" modifications are added such as the retention of funds by a supervisor to ensure that the bankruptcy threat for non-compliance is a credible one.

The clearest links to non-co-operation and a higher failure rate (49%) are seen when property related modifications are sought. Typical clauses call for revaluation of the family home towards the end of the IVA, and a re-mortgage or sale of the property if sufficient equity is apparent. These clauses are agreed by the pressurised debtor at the creditors' meeting but, on reflection, appear to erode the debtor's benefits under the IVA. This erosion puts the debtor closer to the position under bankruptcy and offers no compensating advantage, especially when the bankruptcy discharge period is generally shorter.

The knowledge that so many creditors seek to apply modifications also leads IPs to incorporate commonly suggested modifications in proposals at the outset. This suggests that IVAs are far more "creditor friendly" than in the past and that they reflect less and less the wishes of the debtor. The eventual price of "success" in getting the debtor to agree to certain modifications may be the greater likelihood of debtor non-co-operation and IVA failure in the longer run.

The repeated game prediction

The 1998 study also confirms that the insolvency game is played out not between creditor and debtor but increasingly by their proxies and agents. Through their privileged position created by licensing, introduced in the Insolvency Act 1986, and their offer of "free" meeting attendance services to creditors, IPs call, run and attend creditors' meetings to the potential exclusion of independent creditors.

These features allow for the necessary building of trust between creditors and IPs and the opportunity for creditors to monitor performance. Whilst there is no evidence of any conflicts of interest this does suggest that the insolvency game is moving closer and closer to the "repeated game" prediction of an *{IVA, IVA}* strategy. Additionally IPs can signal the good intentions of debtors to creditors with whom they have developed good relationships.

Although creditor influence can be malign it does not have to be so. It is a tool that needs to be used sensitively. Whilst modifications are a creditor's right the victory can be pyrrhic. Far more helpful, according to the research findings, is the maintenance of contact and support during the period of the IVA, both before and after the creditors' meeting. The 1987/88 cases showed that support of a main mortgage lender was often linked with ultimate success of the IVA (Pond, 1993). The 1994/95 cases show that ultimate success is linked with creditor support and contact throughout the IVA.

CONCLUSIONS

Successful debt recovery strategies depend not only on a good knowledge of the alternative legal procedures available but also on a good assessment of the risks involved in following one particular procedure. This is brought into sharp focus by the choice facing creditors presented with a debtor's proposal for an IVA. Over the past decade creditors, their professional advisors and IPs have learned crucial lessons about IVAs that succeed and those that fail.

In the indefinitely repeated non-co-operative game the strategic choice to be made by creditors allows a revenue maximising strategy to be selected more consistently by assessing the risk of IVA failure and using this to discount the projected dividend. Where the risk and present value discounted dividend is higher than that achievable in the bankruptcy of the debtor the creditor should vote for the IVA.

Creditors need to be aware that as society's attitude to bankruptcy changes the risk factor also changes. If bankruptcy is no longer stigmatised by society debtors may not work as hard to avoid it.

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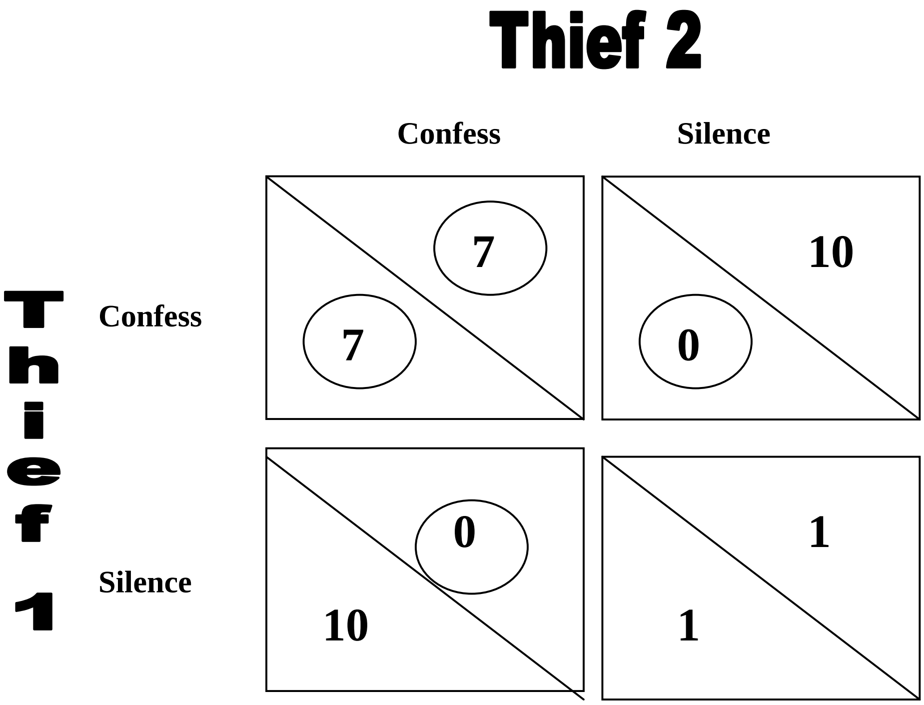
FIGURES / TABLES TO BE INSERTED

Figure 1: The Prisoner's Dilemma



In each quadrant the bottom left payoff is for player 1 and the upper right for player 2. Circles indicate that a payoff is the best outcome for that player given the strategy of the other.

Figure 2: The Static Insolvency Game

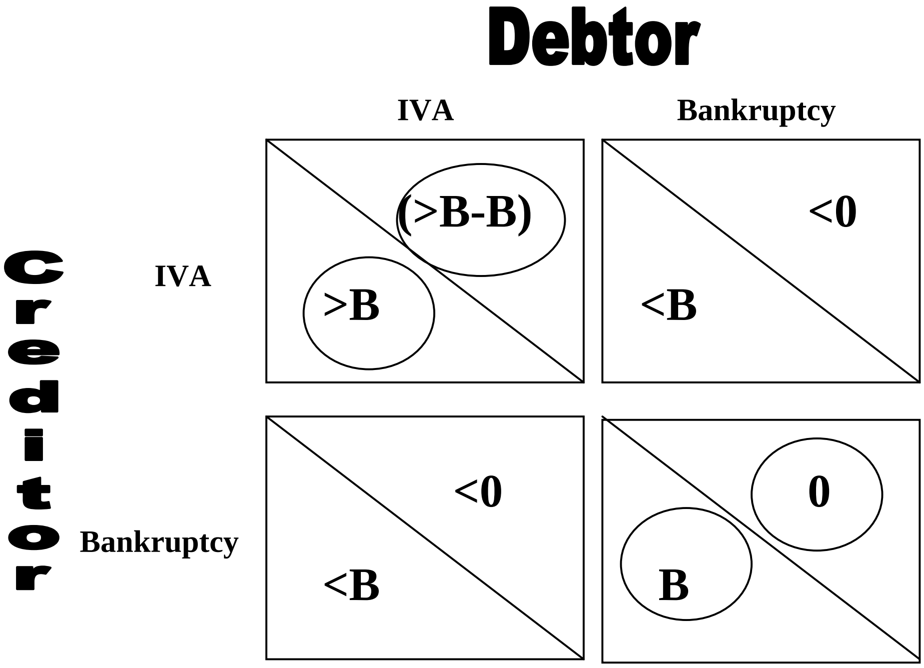
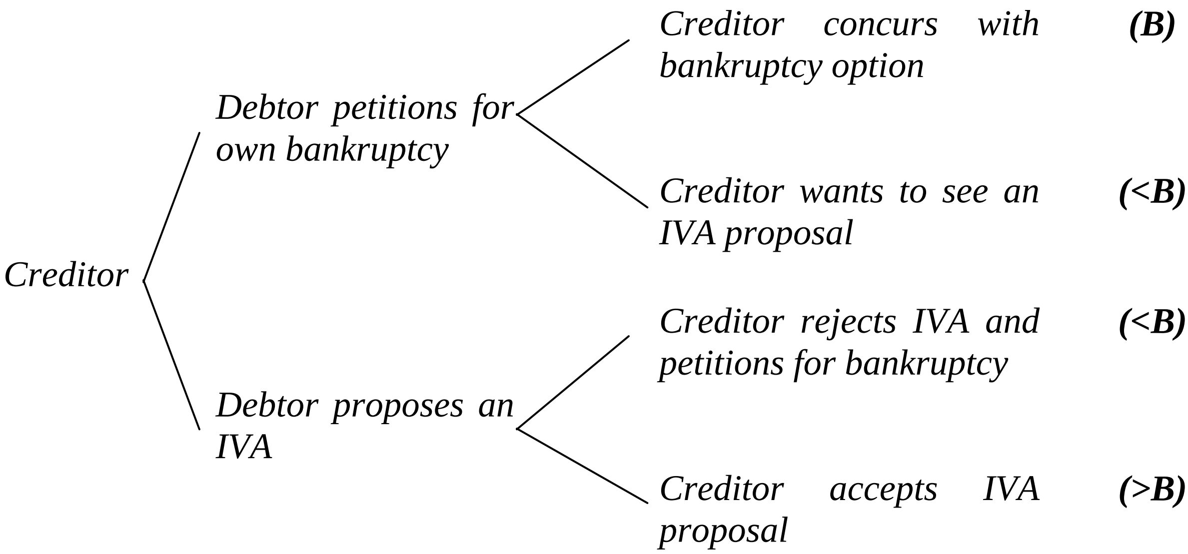
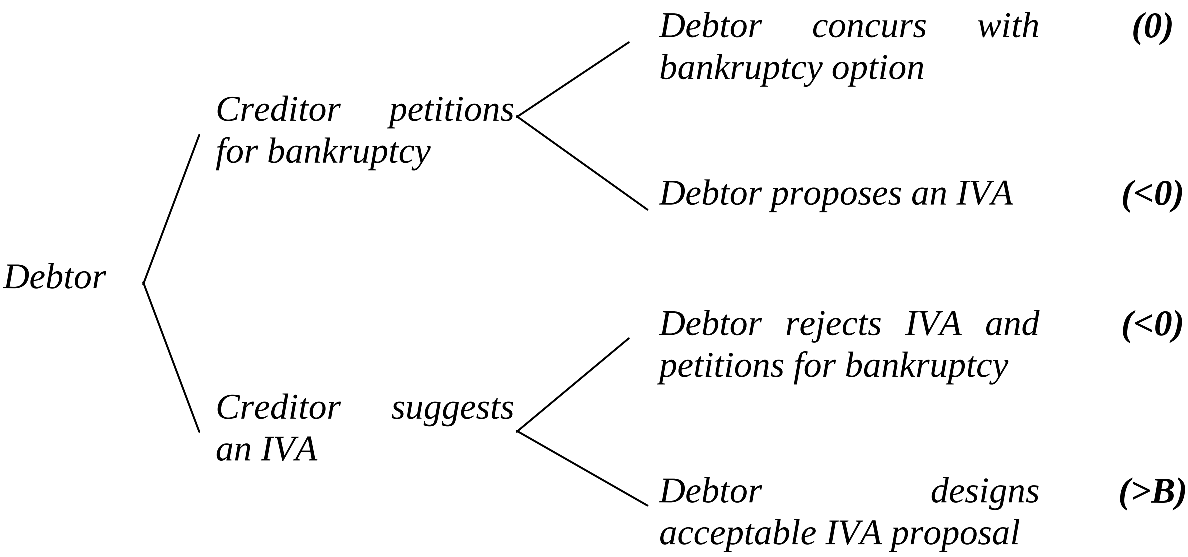


Figure 3 Extensive form of the static insolvency game

(a) Creditor strategies (Debtor moves first)



(b) Debtor strategies (Creditor moves first)



BOX 1

WHAT IS AN IVA?

IVAs are private "contracts" for the satisfaction of debts, entered into by insolvent debtors and their creditors, pre- or post- bankruptcy. In this court-supervised and protected procedure *(interim order)* the debtor proposes how the debts are to be satisfied *(proposal)*, under the guidance of a licensed insolvency practitioner *(nominee)*. The creditors are given the opportunity of accepting or rejecting the proposal *(creditors' meeting)*. At the meeting the creditors have the opportunity to offer modifications to the proposal that the debtor can accept or reject. Once agreed and accepted by at least 75 percent by value of creditors attending the creditors' meeting the IVA is binding and the proposal is given effect by the insolvency practitioner *(supervisor)*. Accepted IVAs have the effect of either overturning a bankruptcy order, dismissing a bankruptcy petition or halting other legal action by a creditor to recover a debt.

IVA legislation is covered in Part VIII (Sections 252 to 263) of The Insolvency Act 1986 and Part 5 of The Insolvency Rules 1986 (as amended).

TABLE I

IVA failure risk factors

Chi - square

Factor	Fail %	Pearson	DF	Sig.	Comment
Debtor not co-operative	56.8	50.99719	2	.00000	Significant at 1% level
IVA dividend = bankruptcy dividend	66.7	19.44784	2	.00006	Significant at 1% level
IVA div. > 20p more than bankruptcy	37.8	19.44784	2	.00006	Significant at 1% level
Assets / Income <£20,000	39.4	2.70417	1	.10009	Close to significance at 10% level
Creditors not generally supportive	42.9	5.53624	2	.06278	Appears significant at 10% level but 2 cells with observations less than 5
Creditors' support "neutral"	39.7	5.53624	2	.06278	As above
Modifications at creditors' meeting	33.0	0.50755	1	.47620	Not significant at 10% level

CHAPTER 9

Pond, K., ''New Rules and New Roles for the Individual Voluntary Arrangement'', *Insolvency Law & Practice*, 18(1), January 2002, pp 9-13.

NEW RULES AND NEW ROLES FOR THE INDIVIDUAL VOLUNTARY ARRANGEMENT

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Abstract

This paper reflects on the activities and experience of Creditors and Insolvency Practitioners with respect to Individual Voluntary Arrangements since 1986. It draws on empirical studies, secondary data, new rules contained within the Insolvency Act 2000 and recent legal decisions to provide a background against which the Insolvency Service "Second Chance" proposals can be reviewed.

The position of creditors is given particular focus in the paper reflecting their emerging influence on the IVA process.

The paper suggests how the new rôles for IVAs need to take into consideration the experience of insolvency practitioners and creditors - factors that may undermine the cost efficiencies promised.

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Key words
INSOLVENCY, DEBTOR, BANKRUPTCY, VOLUNTARY ARRANGEMENT, CREDITOR, UK.

NEW RULES AND NEW ROLES FOR THE INDIVIDUAL VOLUNTARY ARRANGEMENT

Introduction

The IVA is a private agreement for the satisfaction of personal debts, introduced by the Insolvency Act 1986. It is considered to be by far, the most successful element of the 1986 reforms both in terms of numbers of cases and returns to creditors.

Legal decisions since 1986 have sought to clarify many aspects of the Insolvency Rules 1986[1] but no major amendments to the IVA legislation had been contemplated until 2000.

This paper reviews the experience of insolvency practitioners and creditors through the available research and outlines the potential effects of the Insolvency Act 2000 changes. The paper goes on to discuss the latest Insolvency Service "Second Chance" proposals (Insolvency Service, 2001) which affect IVAs by suggesting an expansion in usage and deregulation of their supervision.

The IVA record

As a private agreement the IVA can be influenced by the quality of the relationships between lenders and debtors. In this court-supervised procedure the debtor proposes how the debts are to be satisfied, under the guidance of an authorised insolvency practitioner and under the protection of a "moratorium" on creditor action. The creditors are given the opportunity of amending and accepting or rejecting the proposal (Lawson, 2000). All creditors are bound by the agreement, according to the "statutory hypothesis"[2] provided at least 75% by value vote in favour at the creditors' meeting.

The years since 1986 have seen a steady rise in the incidence and acceptance of IVAs (DTI, 2001). There is also growing evidence of their successful application (Pond, 2000).

In 1987 only 5% of insolvencies were dealt with as IVAs. At the height of the early 1990's recession this had risen to 12%. At the time of writing, however, around 25% of formal personal insolvencies are dealt with via IVAs (5,000 to 6,000 cases per annum). Most bankruptcies however fail to deliver any dividend to ordinary creditors. Where only insolvencies with assets and a forecast dividend are considered IVA incidence rises to 82% (Pond, 2000), making IVAs very significant to creditors.

The choice faced by an increasing number of insolvent debtors is between IVA, and the avoidance of penalties, restrictions and opprobrium connected with bankruptcy or bankruptcy itself. The choice faced by the creditor is limited by the predisposition of the debtor towards bankruptcy in the first instance and by the perceived risk of the IVA failing after it has been accepted by creditors. However, a successful IVA can improve creditor recoveries, since income from continued employment or trade is often included as a benefit. Whilst income is also available in bankruptcy via an Income Payments Order[3] this mechanism is not always used.

The Association of Business Recovery Professionals (formerly the Society for Practitioners of Insolvency) has studied dividends to unsecured creditors, forecast at the commencement of the IVA or bankruptcy, over many years (SPI, 1992 - 1999). IVAs have shown consistently higher returns to creditors than bankruptcy. On average returns are estimated at 17% higher for IVAs although the time-scale for recovery in an IVA is longer (five years against three years in bankruptcy).

The novelty of the IVA in 1986 was such that it readily achieved Cork's proposal to allow businesses to continue to trade and professionals to continue to earn money for the benefit of their creditors (Cork, 1982). In the intervening years, however, numerous contracts have been re-written that equate IVAs with bankruptcy. Of particular interest is the practice of credit reference agencies to record all IVAs on their databases. To the typical credit provider this will be a signal to deny credit. Banks may even decline to open a bank account for an individual even where the IVA has been successfully completed. The IVAs ability to rehabilitate consumer debtors, in particular, is questionable.

A genealogical model

The field of insolvency is peppered with medical analogies: "Company Doctors", "Rehabilitation", "Intensive care" and, of course, "Undertakers". With the fervent wish not to over-extend the analogy I contend that a review of the interaction between IP, Debtor and Creditor in the design of the IVA Proposal can benefit from this correspondence.

From the viewpoint of the creditor, IVAs can present with different genealogies, the most basic of which are illustrated in Figure 1.

INSERT FIGURE 1 ABOUT HERE

IPs are in the vanguard in pre-selecting those debtors most likely to benefit from an IVA, they can not only report to the courts on the viability of the Proposal[4] and its likely acceptance by creditors but they can also signal to creditors the intentions of the debtor.

For the ultimate success of the proposal and for the continued use of the IVA scheme in appropriate circumstances, creditors need to be assured that the case before them has every hope of recovery. This is most likely where a good IP combines with an honest debtor.

Potential for recovery

Good IPs, working in accordance with their own professional code (SPI, 1997) will only propose IVAs where the likelihood of ultimate successful conclusion of the arrangement is greatest. Honest debtors will intend, at least at the outset, to do their best to repay to creditors, as much of the outstanding debt as they can. During the currency of the IVA the honest debtor will also co-operate fully with the IP and adhere to the detail of the arrangement agreed with creditors. The prognosis here is "recovery".

Problems arise for creditors and IPs (but in different measures) when a less trustworthy debtor and / or a less diligent IP become involved in the proceedings. These IVA types I classify as "sickly" and "infected".

Sickly and Infected proposals

Debtor non-co-operation has long been seen by IPs as a major reason for the failure of accepted IVAs (Pond & Evans, 1995). "Sickly" IVAs can often suffer from strategic non-co-operation. Strategic non-co-operation arises by design as the debtor achieves acceptance of an IVA proposal only to fail to fulfil its objectives in the hope that creditors will not pursue the case into bankruptcy. This strategy was certainly possible before creditors began to insist upon proposal clauses that obliged the supervisor (IP) to retain sufficient funds to petition for bankruptcy should the need arise. It may still be possible where the IP or creditors lack the funds or the will to take this option.

Perhaps the most worrying aspect of IVA scrutiny is the creditors' perception of the IP. Less diligent IPs are still practising in the insolvency market despite the strictures of licensing brought in by the 1986 Act[5]. Into this category must be brought IPs who fail to scrutinise fully IVA proposals put forward by "debt counsellors" or "work finders" and IPs who prescribe over-optimistic and standardised IVAs in all and any circumstances, regardless of the appropriateness of the case. Large creditors have, over the years, built up databases of cases and can identify those IPs who put forward cases that subsequently fail (Pond, 2000).

Innocent non-co-operation can arise through a combination of circumstances impacting on debtors that have the effect of reducing their ability to fulfil the IVA proposal. These circumstances include marital problems, employment problems and changes in family circumstances. I exclude from this category external and environmental occurrences since these can impact on honest and dishonest debtors alike.

Terminal cases

Unfortunately there is little hope of recovery or viability where a non-co-operative debtor works in conjunction with a less diligent IP. These cases I label "Terminal" and are probably best dealt with objectively at the outset. Where trust is lacking and creditors' doubt that the IVA will deliver the promised benefits the option to decline the proposal and petition for immediate bankruptcy may be the best idea. IVAs that fail can exhaust assets in the payment of IP fees and in on-going trading (in business cases) making subsequent bankruptcy a worthless exercise for creditors.

Therapy for IVAs

Since 1986 creditors and IPs have worked on strategies that attempt to cure "defects" in the design of IVA proposals. Medication is often prescribed in order to overcome deficiencies arising from doubts about either the IP or the debtor or the proposal itself. Medication for terminal cases is, of course, useless but is administered anyway since creditors tend to have a uniform response to proposals and do not always know whether a case is "terminal" or merely "unwell" until after acceptance of the proposal has taken place.

Medication can have considerable benefits when applied to "sickly" or "infected" cases (especially as creditors are only rewarded if the patient recovers). However, the therapy often administered can, at the same time, have serious side-effects on otherwise healthy cases that show every sign of recovery. Some medication as a precautionary or preventative step is needed but a full course of therapy can be counter-productive.

The opportunities that creditors have for intervention occur before, during and after the creditors' meeting[6] as shown in Figure 2:

INSERT FIGURE 2 ABOUT HERE

Before the creditors' meeting

The IP, as nominee of the proposal, is obliged to assure the court that the proposal has every likelihood of acceptance by creditors. This can be done by contacting major creditors during the review phase of the IVA procedure or by relying on knowledge of how certain creditors have reacted in past cases. Major creditors, such as the Inland Revenue, the banks and credit card companies have centralised departments specialising in the collection of debts and in the review of IVA proposals. Other creditors use "meeting services" provided by IPs and these can offer advice on sensible amendments to proposals or on voting.

Experienced IPs will, therefore, be able to predict the tenor of suggested amendments and, either incorporate them in the proposal at the outset, or gauge the voting intentions of the specific creditors as amendments are tabled. Creditors and their representatives have the opportunity of tailoring modifications to proposals to meet the perceived deficiencies of the debtor, IP or both.

The Insolvency Act 2000 adds the obligation for the nominee to give an opinion as to whether the IVA has a reasonable prospect of being implemented. This places a significant new legal burden on the nominee but one which those following the professional code of conduct (SPI, 1997) will be very used to.

Under the protection of the IVA moratorium nominees have been able to make early contact with creditors to gauge acceptability of proposals without the creditors being able to take precipitate action. Once accepted, however, IVAs cannot be controlled fully by supervisors, especially in the "sickly and infected" cases mentioned earlier.

If the nominee's opinion is to be worth anything in the future, however, this may need to be coupled with higher costs for investigating proposals at the nominee stage and higher monitoring costs for accepted cases. Currently nominees must investigate proposals within the 14-day moratorium period, although extension is possible. It is feasible that more extensions will be required to allow "due diligence" to take place, especially where ownership of assets must be established.

Anecdotal evidence suggests that, as in bankruptcy investigations, many IVAs proceed on the unsubstantiated details given by the debtor at interview with the nominee. The Insolvency Act 2000 does strengthen the nominee's hand by making debtors criminally liable for false representations at this stage but wilful debtors may still take the risk.

Another implication may be the closer scrutiny of IVA records by the Insolvency Service. Annual supervisor reports and completion reports must be supplied to the Insolvency Service for all IVAs. The public register of IVAs carries only basic information, however. Recent research by the Insolvency Service (Flynn, 2001) shows how readily this aspect can be policed. To date this has only been carried out for research purposes.

So far only a small number of large creditors have sophisticated procedures for feeding back experience of IVAs to those responsible for agreeing new cases. The potential is there, however, to identify and discipline nominees making negligent claims about implementation.

One final part of the Insolvency Act 2000 concerns the deregulation of those overseeing IVAs (and CVAs). Unlicensed persons may now apply to the Secretary of State to become nominees and supervisors. Anybody taking this route will find that a track record of success will be needed before creditors will accept their recommendations readily.

At the creditors' meeting

Similar opportunities are available at the creditors' meeting itself but whilst most creditors now vote at meetings few actually attend. Negotiation and application of modifications is limited, in most cases, to numerous bi-lateral agreements between the IP and the individual creditors.

Study of modifications put forward in a sample of IVAs (Pond, 1998) reveals that amendments fall into three main categories:

- Administrative
- Contingent and,
- Non-Contingent

Administrative amendments often relate to the fees payable to the insolvency practitioner, either placing a cap on them or ensuring that they are referred to creditors for approval. IVA supervisors can also be required to retain sufficient funds to ensure that the threat of bankruptcy for debtor non-co-operation is credible. This type of amendment can also address the possibility of the IVA failing by defining what is meant by "failure" (see below).

Contingent amendments relate to post acceptance events that may improve the creditors' recovery position. Following early success in including house equity in IVAs (Flynn, 1993) creditors routinely amend proposals in order that house equity is reviewed before the end of the IVA term with a view to re-mortgage or sale. Contingencies such as "windfall gains" are also included in IVAs in order to bring them more in line with the rules relating to "after-acquired property" in a bankruptcy.

Lastly, non-contingent amendments relate directly to the assets to be included in the IVA, the level of income to be made available and the term of the arrangement. Over 70% of IVAs now have terms of five years.

Administrative amendments do not appear to have a marked affect on IVA success or failure in the long run. Whilst amendments are readily agreed by pressurised debtors at the time of the creditors' meeting, however, those contingent amendments relating to property are generally associated with IVAs that have a greater risk of ultimate failure. One explanation for this is that the more amendments and restrictions that are required by the creditors the more like a bankruptcy the IVA becomes for the debtor and the "hill" becomes too steep to climb (Brewin, 2000)

Creditors know that debtors will agree to amendments at the outset of an IVA or face rejection of their proposals. Creditors are advised, therefore, to monitor failure rates closely and modify their demands in the future. The risk for the creditor is that the recovery of funds may be jeopardised if the IVA fails during its course and that a bankruptcy at the outset would have returned a higher dividend.

After the creditors' meeting

The years since 1986 have shown that, post meeting; IVAs are subject to turbulence and setbacks on the road to debtor recovery. Where debtors intentionally withdraw their co-operation little can be done to keep recovery on track. Where environmental or external factors intervene, however, the supervisor may attempt to avoid complete failure of the IVA by taking remedial action.

Remedial action is most often taken by making amendments to the original proposals or variations to the original detail of the IVA. IVAs can be extended to allow for a longer income stream or assets that were not originally included in the IVA can be included. Under the Insolvency Act 1986 the supervisor is able to seek court directions[7]

In recent years the courts have distinguished clearly between variations of proposals allowed for in the original proposal and variations outside the remit of the original proposal.

In cases where a proposal is silent on the procedure to be followed should variation of the IVA be deemed necessary any consensual variation of its terms will bind only those creditors agreeing to it. It will be contractual, much like a composition, rather than carry the statutory force of the original agreement[8]. The absence of terms in the proposal covering the possibility of later re-negotiation does not preclude variation provided the rights of any creditor not agreeing to the variation are not affected adversely. The Insolvency Act 1986 provides that creditors who feel unfairly prejudiced by the outcome of a creditors' meeting may lodge an appeal within 28 days of the meeting[9].

In *Raja v. Rubin* a creditor who had waived his right to a dividend in the original proposal but then objected to the variation of the proposal later was deemed not to have an interest in the variation and could not, therefore, overturn it.

This is supportive to creditors since there will be numerous IVAs in existence that do not contain clauses covering possible re-negotiation or variation. It also gives leverage to smaller creditors who may be able to exact preferential treatment in re-negotiations as they could avoid being bound by the variation and pursue their claim outside the IVA.

Because of this potential risk most recent IVA proposals will contain clauses that provide for variations. Large creditors with more standardised approaches to IVAs will insist on such amendments before IVAs will be accepted.

The court further clarified the position of variations of IVAs when it was faced with a case, in 1999, in which the original proposal had specifically included rules covering variations. It had foreseen the possibility of calling of a creditors' meeting at 14 day's notice and the possibility of adjournment for a further 14 days[10].

The court[11] held that the "variation meeting" could be governed by the same rules that governed the original meeting in 1994 and that decisions, agreed by more than 75% by value of creditors, would be binding on all creditors with notice of the meeting. Interestingly, the court observed that the "variation meeting" could have actually agreed variations without the concurrence of the debtor in a way that was not possible in the original meeting. Accordingly, debtors may be advised to ensure that variation clauses specifically include the provisions of the Insolvency Act[12] that only allow modifications that have the consent of the debtor.

This case illustrates clearly that the IVA is a private agreement, albeit with statutory force, and that careful drafting is vital at all stages.

The scope for variation since 1986 has been wide since the decision at a Section 257 creditors' meeting was only binding on those creditors who had notice of it. Creditors emerging after the meeting often had little option but to join in the IVA, following a variation. The Insolvency Act 2000 makes Section 257 meeting decisions binding on all creditors, whether they had notice of it or not. As IVAs are not advertised this will, clearly, have an impact on those not party to the original proposal.

Such post-meeting creditors do retain the right, however, to appeal against the decision of the creditors' meeting within 28 days of becoming aware of the IVA. At first sight this plugs a loophole and reduces the potential for disruption of IVAs. It also increases the potential for appeals to be made. The outcomes of proposals accepted without the prior knowledge of a major creditor could be prejudiced where accommodation of that creditor means that dividends will be lower than anticipated or a variation causes the failure of the IVA.

"Second Chance" implications

When the government proposals contained in the Enterprise White paper (Insolvency Service, 2001) come into force then IVAs will face a new challenge.

A direct corollary to the reduction in the bankruptcy disqualification period to 12 months will be the increased usage of IVAs supervised by Official Receivers. The proposals foresee Official Receivers operating a centralised, cost efficient post-bankruptcy IVA machine. However, research to date suggests that the IVA cases to be dealt with by this method will be amongst the most troublesome and the promise of cost reduction through centralisation and economies of scale may not emerge.

Post bankruptcy IVAs are unlikely to offer realisable assets to creditors. My estimate, from a review of bankruptcy cases from 1997/98, indicates that 90% of bankruptcies offer no assets and no return to unsecured creditors (Pond, 2000). Asset rich cases are likely to be commenced as IVAs.

Accordingly, post-bankruptcy IVAs will be smaller and offer only an income stream over a period of years. Whilst such schemes are eminently workable they rely on the honesty and commitment of the debtor and the absence of vitiating factors during the term of the arrangement.

Costs are proportionately higher in small cases due to the irreducible fixed costs of setting up an arrangement and bringing it to a state of acceptance. These cases are, therefore, amongst the most marginal since they are very sensitive to external factors and "contribution drift". Official Receivers expect to be able to contain and curtail costs at the nominee stage. Current nominee fees average £1,500. Lower fees will enhance benefits to creditors.

Lower costs will also derive from the fact that the traditional Official Receiver scale fees[13] for bankruptcy will not apply. Official fees calculated on both realisations and distributions can account for around 40% of proceeds in a small bankruptcy (realisations between £10,000 and £20,000). Once again this should benefit creditors. The Enterprise Bill (Insolvency Service, 2001) will propose alternative methods of funding the Insolvency Service and so the above fees may no longer be applicable.

Cost reductions will also be seen through economies of scale and the avoidance of court supervision, as in the case of Income Payment Orders in bankruptcy at present.

Recent experience has shown that well organised creditors can, and do, act to amend IVA proposals via the S.257 meeting or after it. The difficult task, for Official Receivers, will be to ensure that such amendments do not add risk and monitoring cost to an already marginal case.

The 2001 proposals may also result in uniformity of IVA proposals, altered slightly to reflect the circumstances of individual debtors. In practice, this is what many insolvency practitioners already provide - the problem being that they can be used in inappropriate circumstances, adding further risk of failure.

Conclusion

The Enterprise White Paper puts forward a reasonable and workable scheme for post-bankruptcy IVAs. The scheme is based, however, on some questionable assumptions about the acceptance by creditors of "official" IVAs. The main argument to sway creditors appears to be that of lower costs and higher potential returns without adequately pointing out the additional risks. The White Paper fails to address how such debtors will become rehabilitated by this mechanism.

Experience since 1986 has shown that creditor acceptance is vital to the success of an IVA. The law protects the rights of creditors to negotiate individual terms of IVAs and to appeal when treated "unfairly" by an IVA. Creditors have shown themselves to be willing and able to use this power. Increasingly, however, IVAs are seen as quasi-bankruptcies and the "stigma" of bankruptcy is not, thereby, diminished. For true rehabilitation to take place it is this long-term issue that must be addressed rather than the shorter-term issue of returns to creditors.

No doubt the proposals on post-bankruptcy IVAs will go ahead and an Enterprise Act will come into being. Only time will tell whether it delivers on its promises.

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Figures to be inserted

Figure 1: The different genealogies of IVA Proposals

		Insolvency Practitioner: Diligent	Insolvency Practitioner: Less diligent
Debtor	Honest	**RECOVERY**	**INFECTED**
	Dishonest	**SICKLY**	**TERMINAL**

Figure 2: Opportunities for therapeutic intervention

Before the S. 257 meeting	• Discussion with IP during "design" phase of proposal. • IP knowledge of common proposal amendments put forward by specific creditors.
At the S.257 meeting	• Tabling of amendments to proposal. • Conditional voting at the meeting.
After the S.257 meeting	• Legal objection to outcome of meeting within 28 days (S. 262). • Variation of proposal following failure.

Notes

[1] The Insolvency Rules 1986, SI1986 No 1925, HMSO, London
2 Chadwick LJ in Johnson & Anor. V. Davies & Anor. All ER 1998 2 CA 649.
[3] Insolvency Act 1986, Ch 45, S.310.
[4] Supra, at S .253.
[5] Supra, at Part X111.
[6] Supra, at S.257.
[7] Supra at S.263(4)
[8] Raja v. Rubin (1999) All ER 3 CA 452
[9] Insolvency Act 1986, at S262
[10] Insolvency Rules 1986, 5.13 and 5.19
[11] Sea Voyager Maritime Inc. v. Bielecki (t/as Hughes, Hooker & Co.) (1999) All ER 1 ChD 628.
[12] Insolvency Act 1986 at S 258 (2)
[13] Insolvency Fees Order 1986 (as amended 1988 and 1994)

APPENDIX A

ANALYSIS OF 1997 RESEARCH FINDINGS AND ILLUSTRATIVE INTERVIEW TRANSCRIPTS.

Contents

The Study Sample

By assuming that 5 % error and 10 % confidence interval can be acceptable for a statistical analysis of IVA cases, we calculated that we would need 271 cases.

($n = ((z \times \sigma) / E)^2 = ((1.645 \times 0.5) / 0.05)^2 = 270.6$ or nearly 271 **)**

Moreover as we assumed that if the response rate reaches 50%, it would be useful to double the number of questionnaires which would be sent. As a result we calculated the number of 542 as the number of questionnaires which would be sent out (271 + (0.5 x 271) = 542).

To choose 542 cases of IVAs randomly, firstly, two days (two weeks difference between every two days) in every month of 1994 and 1995 were chosen; and then, the Insolvency Service in Birmingham was contacted to provide us with the details of IVA cases which were registered on these chosen days. The number of cases provided by the Insolvency Service was 879 cases (500 cases for 1994 and 379 cases for 1995). Moreover, we assumed that we should not send more than 3 questionnaires (on 3 cases) to every IP who were supervising IVAs in our sample. This was considered in respect to response rate. As a result, the number of cases was reduced to 504. Then, two different databases (a database for the details of 504 IVA cases and another one for addresses of all IPs) were merged. After this the number of cases was reduced to 490 and the number of IPs (who were supervising these cases) was 250.

145 questionnaires were returned by 87 IPs. 22 IPs responded by saying that they would be unable to help due to various reasons. The major reason was that they thought that filling in such questionnires could mean breaching of customer confidentiality. If they responded they would fill in 48 questionnaires. (After we had tabulated the results by utilising those 145 returned questionnaires, we received further 12 questionnaires (by 7 IPs). However we didn’t included these into our tabulations.)

As a result

response rate = 145 / 490 = 29.6 %
(157 / 490 = 32 %; If we had included the other 12 questionnaires to the sample.)
((145 + 48) / 490 = 39.4 %; If those IPs who informed us that they cannot unable also had filled in questionnaires.)
IPs responded / All IPs whom questionnaires posted to = 87 / 250 = 34.8 %

Total number of IPs who indicated interest in the research = 87 + 7 + 22 = 116
(116 / 250 = 46.4 %)

36 IPs requested a ‘report summary’ for the research results.

The Questionnaire

Loughborough University	***Banking Centre***

ACADEMIC RESEARCH QUESTIONNAIRE
on

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Insolvency Practitioner's			
Name	«Title» «IP_Int» «IP_Surname»	**Firm**	«Firm_Name»

Debtor's Name	«D_Title» «D_Int» «D_Surname»	**IVA No**	«IVA_No»

What was the principal reason for insolvency? Please state in the given space.	
Commercial / Business	**Domestic / Consumer**
Type of Business	**Employment**

Had any creditor (i.e. bank) worked with the Debtor to avert insolvency? If yes - how?	**Yes**		**No**	
please continue overleaf				

What was the point of entry to this IVA procedure? Please tick the appropriate box.	
	No prior procedure (Insolvency Act / Section 253 (3)(b)).
	Via the Debtor's petition (Insolvency Act / Section 274).
	After a bankruptcy order (Insolvency Act / Section 253 (3)(a)).

What was the source of the introduction of the Debtor to the IP? (ie bank, accountant)

Had the Debtor or the Nominee had contact with any of the Creditors before the Interim Order (i.e. in Proposal design stage) ? If yes - what was the effect of this contact?	**Yes**		**No**	
please continue overleaf				

Was a 'Concertina Order' Practice Direction (Bankruptcy 1/91) used in this order?	**Yes**		**No**	

What percentage of the Creditors attended the Creditors' Meeting or voted by proxy?	**%**

What percentage of the Creditors who attended the Meeting voted for the IVA?	**%**

Did any of the Creditors propose any modifications to the IVA Proposal? If yes, please note the details.	**Yes**		**No**	
please continue overleaf				

Did any Creditors accept concessions? (ie giving up a security or a preferential status) If yes, please note the details.	**Yes**		**No**	
please continue overleaf				

In respect of the supervision of the accepted IVA please circle the number most closely representing your view on the following statements:	**strongly agree**	**agree**	**neutral**	**disagree**	**strongly disagree**
The Creditors were / have been really supportive.	**5**	**4**	**3**	**2**	**1**
The Debtor was / has been really co-operative.	**5**	**4**	**3**	**2**	**1**

What is the current position of the IVA? Please tick appropriate answer.	
	IVA progressing according to original or changed Proposal.
	IVA completed in accordance with original or changed Proposal.
	Supervisor vacated office with Proposal unfulfilled.
	External factors have threatened viability of the Proposal.
	If the answer is the last choice, what major problems have been encountered?
	please continue overleaf

Please complete the following details about the Proposal.	
Duration of IVA	**(months)**
Assets realised	**(£)**
Income available (if any)	**(£)**
Total liabilities	**(£)**
Anticipated dividend to unsecured creditors in IVA	**(p in £)**
Anticipated dividend to unsecured creditors in BANKRUPTCY	**(p in £)**

Summary Statistics

Size of IP Firms

<table>
<tr><th>IP FIRM SIZE</th><th>Count</th><th>%</th><th>IP FIRM SIZE</th><th>Count</th><th>%</th></tr>
<tr><td>Big Six Firms</td><td>16</td><td>11.11</td><td rowspan="2">Big Firms</td><td rowspan="2">58</td><td rowspan="2">40.28</td></tr>
<tr><td>National Firms</td><td>42</td><td>29.17</td></tr>
<tr><td>One-Office Firms</td><td>81</td><td>56.25</td><td rowspan="2">Small Firms</td><td rowspan="2">87</td><td rowspan="2">59.72</td></tr>
<tr><td>Two-Office Firms</td><td>6</td><td>3.47</td></tr>
<tr><td>TOTAL</td><td>144</td><td>100.00</td><td>TOTAL</td><td>144</td><td>100.00</td></tr>
</table>

Average Dividend in IVAs

33.39p in £

Average Dividend in Bankruptcies

14.28p in £

Average Difference between Dividend of IVAs and Dividend of Bankruptcies

19.11p in £

Size of IVAs

SIZE OF IVAs (Income + Assets)	Count	%
< £10K	41	28.29
£10K <= £20K	32	22.07
£20K <= £50K	45	31.03
£50K <= £100K	13	8.97
£100K +	7	4.83
Not known	7	4.83
TOTAL	145	100.00

Route to IVAs

ROUTE TO IVAs	Count	%
No prior procedure	117	80.69
Via debtor's petition	6	4.14
After a bankruptcy order	21	14.48
Not known	1	0.69
TOTAL	145	100.00

Concertina Order Practice

CONCERTINA ORDER PRACTICE	Count	%
Yes	63	43.71
No	81	56.29
TOTAL	144	100.00

Creditors' Meeting Attendance

ATTENDANCE TO MEETING	Count	%
0 - 25 %	14	10
26 - 50 %	39	27
51 - 75 %	28	19
76 - 100 %	50	34
Not known	14	10
TOTAL	145	100

Concessions

CONCESSIONS TO DEBTORS	Count	%
Yes	7	4.83
No	136	93.79
Not known	2	1.38
TOTAL	145	100

Modifications

MODIFICATIONS TO IVA PROPOSALS	Count	%
Yes	103	71.03
No	36	24.83
Not known	6	4.14
TOTAL	145	100

Reasons for Insolvency

REASONS FOR INSOLVENCY / BUSINESS RELATED	count	%
Financing / liquidity problems	11	9.32
Personal guarantees given	16	13.56
Loss of sales / margin	41	34.75
Tax problems	11	9.32
Declining prices in the property market	5	4.24
Knock-on (eg. bad debt)	13	11.02
Management weaknesses	3	2.54
Other (eg. bad luck, act of god)	5	4.24
not known	13	11.02
TOTAL	118	100

REASONS FOR INSOLVENCY / PERSONAL	count	%
Overspending on credit cards / consumer credits / other types of borrowing	8	27.59
Divorce	5	17.24
Loss of employment	4	13.79
Personal guarantees given	3	10.34
Declining prices in the property market	5	17.24
Tax problems	2	6.90
not known	4	13.79
TOTAL	29	100

Note: There are 4 cases which have business related reasons as well as personal reasons for insolvency.

Trades

TYPE OF BUSINESS	count	%
Agriculture	2	1.69
Manufacturing	6	5.08
Construction	5	4.24
Transport & Communication	9	7.63
Wholesale	3	2.54
Retail	19	16.10
Financial / Business & Profesional Services	23	19.49
Hotels & Catering	12	10.17
Other	33	27.97
not known	6	5.08
TOTAL	118	100

Regional Distribution of IVA Cases (1987, 1988, 1994, 1995 Cases)

	1987		***1988***		***1994***		***1995***		***1994&95****	
REGION	***count***	***%***	***count***	***%***	***count***	***%***	***count***	***%***	***count***	***%***
London & South East	50	*12.41*	61	*17.13*	1930	*38.67*	1535	*35.66*	281	*32.11*
Eastern	13	*3.23*	21	*5.90*	315	*6.31*	284	*6.60*	67	*7.66*
South West	84	*20.84*	58	*16.29*	781	*15.65*	603	*14.01*	130	*14.86*
East Midlands	24	*5.96*	21	*5.90*	212	*4.25*	203	*4.72*	53	*6.06*
West Midlands	30	*7.44*	20	*5.62*	207	*4.15*	351	*8.15*	69	*7.89*
North East	49	*12.16*	55	*15.45*	594	*11.90*	560	*13.01*	120	*13.71*
North West	130	*32.26*	106	*29.78*	712	*14.27*	605	*14.05*	133	*15.20*
Wales	23	*5.71*	14	*3.93*	240	*4.81*	164	*3.81*	22	*2.51*
TOTAL	**403**	***100.00***	**356**	***100.00***	**4991**	***100.00***	**4305**	***100.00***	**875**	***100.00***

** Initial Sample*

Tabulation of Results

Success or Failure by Debtor's View (Debtor's Cooperativeness)

```
                    DEBTVIEW
            Count  |
            Row Pct |
            Col Pct |                                  Row
                    |     1.00|    2.00|    3.00| Total
SF          --------+--------+--------+--------+
             1.00   |    58   |     6  |    32  |    96
                    |  60.4   |   6.3  |  33.3  |  68.6
                    |  92.1   |  19.4  |  69.6  |
                    +--------+--------+--------+
             2.00   |     5   |    25  |    14  |    44
                    |  11.4   |  56.8  |  31.8  |  31.4
                    |   7.9   |  80.6  |  30.4  |
                    +--------+--------+--------+
            Column      63       31       46      140
             Total    45.0     22.1     32.9    100.0
```

SF // 1: Success 2:Failure
DEBTVIEW // 1:Agree (Cooperative) 2: Disagree (Not cooperative) 3: Neutral

Chi-Square	Value	DF	Significance
Pearson	50.99719	2	**.00000 (Significant at 1 per cent level.)**

Number of Missing Observations: 5

Success or Failure by Debtor’s View (Debtor’s Cooperativeness)

End Result of IVA	Debtor’s Cooperativeness to IVA				Total
	cooperative	neutral	not cooperative	not known	
Success	58	32	6	1	97
Failure	5	14	25	1	45
not known	-	-	-	3	3
Total	63	46	31	5	145

End Result of IVA	Debtor’s Cooperativeness to IVA				Total
	cooperative	neutral	not cooperative	not known	
Success	92%	70%	19%	20%	67%
Failure	8%	30%	81%	20%	31%
not known	-	-	-	50%	2%
Total	100%	100%	100%	100%	100%

End Result of IVA	Debtor’s Cooperativeness to IVA				Total
	cooperative	neutral	not cooperative	not known	
Success	60%	33%	6%	1%	100%
Failure	11%	31%	56%	2%	100%
not known	-	-	-	100%	100%
Total	43%	32%	21%	3%	100%

Success or Failure by Difference between Dividend of IVA and Dividend of Bankruptcy

```
                    DIVDIFFE
            Count  |
            Row Pct |
            Col Pct |                                          Row
                    |   -1.00|     .00|    1.00|    2.00| Total
SF          --------+--------+--------+--------+--------+
              1.00  |     3  |     8  |    49  |    28  |    88
                    |   3.4  |   9.1  |  55.7  |  31.8  |  66.7
                    |  75.0  |  33.3  |  83.1  |  62.2  |
                    +--------+--------+--------+--------+
              2.00  |     1  |    16  |    10  |    17  |    44
                    |   2.3  |  36.4  |  22.7  |  38.6  |  33.3
                    |  25.0  |  66.7  |  16.9  |  37.8  |
                    +--------+--------+--------+--------+
             Column       4       24       59       45      132
              Total     3.0     18.2     44.7     34.1    100.0
```

SF // 1:Success 2:Failure
DIVDIFFE // -1:Less than 0p(Dividend of Bankruptcy > Dividend of IVA) 0:No Difference (Dividend of Bankruptcy = Dividend of IVA) 1:Up to 20 (Dividend of IVA > Dividend of Bankruptcy Up to 20p) 2:More than 20p (Dividend of IVA > Dividend of Bankruptcy is more than 20p)

Chi-Square	**Value**	**DF**	**Significance**
Pearson	19.65212	3	**.00020 (<u>Seems</u> significant at 1 per cent level <u>but</u> see note)**

Number of Missing Observations: 13

<u>Note: 2 cell includes less than 5 observations / Therefore not significant.</u>

Success or Failure by Difference between Dividend of IVA and Dividend of Bankruptcy

```
                    DIVDIFFE
            Count  |
            Row Pct |                                 Row
            Col Pct |      .00|     1.00|     2.00| Total
SF          --------+--------+--------+--------+
             1.00  |     8   |    49   |    28   |    85
                   |   9.4%  | 57.6%   | 32.9%   | 66.4%
                   |  33.3%  | 83.1%   | 62.2%   |
                   +--------+--------+--------+
             2.00  |    16   |    10   |    17   |    43
                   |  37.2%  | 23.3%   | 39.5%   | 33.6%
                   |  66.7%  | 16.9%   | 37.8%   |
                   +--------+--------+--------+
            Column       24        59        45      128
             Total   18.8%     46.1%     35.2%   100.0%
```

SF // 1:Success 2:Failure
DIVDIFFE // 0:No Difference (Dividend of Bankruptcy = Dividend of IVA) 1:Up to 20 (Dividend of IVA > Dividend of Bankruptcy Up to 20p) 2:More than 20p (Dividend of IVA > Dividend of Bankruptcy is more than 20p)

Chi-Square	**Value**	**DF**	**Significance**
Pearson	19.44784	2	**.00006 (Significant at 1 per cent level)**

Number of Missing Observations: 17

Success or Failure by Difference between Dividend of IVA and Dividend of Bankruptcy

End Result of IVA	Dividend Difference				Total
	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	not known	
Success	8	49	28	1	86
Failure	16	10	17	9	52
not known	-	1	-	1	2
Total	24	60	45	11	140

End Result of IVA	Dividend Difference				Total
	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	not known	
Success	33%	82%	62%	9%	61%
Failure	67%	17%	38%	82%	37%
not known	-	1%	-	9%	2%
Total	100%	100%	100%	100%	100%

End Result of IVA	Dividend Difference				Total
	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	not known	
Success	9%	57%	33%	1%	100%
Failure	31%	19%	33%	17%	100%
not known	-	50%	-	50%	100%
Total	17%	43%	32%	8%	100%

Success or Failure by Difference between Dividend of IVA and Dividend of Bankruptcy

	Dividend Difference											
End Result of IVA	DivB> DivI	DivB= DivI	0<- 10p	11- 20p	21- 30p	31- 40p	41- 50p	61- 70p	71- 80p	91- 100p	not known	Total
Success	3	8	30	19	8	7	3	-	3	7	9	97
Failure	1	16	9	1	8	2	3	1		3	1	45
not known	1	-	1	-	-	-	-	-	-	-	1	3
Total	5	24	40	20	16	9	6	1	3	10	11	145

	Dividend Difference											
End Result of IVA	DivB> DivI	DivB= DivI	0<- 10p	11- 20p	21- 30p	31- 40p	41- 50p	61- 70p	71- 80p	91- 100p	not known	Total
Success	60%	33%	75%	95%	50%	78%	50%	-	100%	70%	82%	67%
Failure	20%	67%	23%	5%	50%	22%	50%	100%	-	30%	9%	31%
not known	20%	-	3%	-	-	-	-	-	-	-	9%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

	Dividend Difference											
End Result of IVA	DivB> DivI	DivB= DivI	0<- 10p	11- 20p	21- 30p	31- 40p	41- 50p	61- 70p	71- 80p	91- 100p	not known	Total
Success	3%	8%	31%	20%	8%	7%	3%	-	3%	7%	9%	100%
Failure	2%	36%	20%	2%	18%	4%	7%	2%		7%	2%	100%
not known	33%	-	33%	-	-	-	-	-	-	-	33%	100%
Total	3%	17%	28%	14%	11%	6%	4%	1%	2%	7%	8%	100%

Contact by Concertina Order Practice

```
                      CONCERTI
            Count   |
            Row Pct |
            Col Pct |                      Row
                    |    1.00|    2.00|  Total
CONTACT     --------+--------+--------+
              1.00  |    29  |    22  |     51
                    |  56.9  |  43.1  |   35.4
                    |  46.0  |  27.2  |
                    +--------+--------+
              2.00  |    34  |    59  |     93
                    |  36.6  |  63.4  |   64.6
                    |  54.0  |  72.8  |
                    +--------+--------+
            Column       63       81      144
             Total     43.8     56.3    100.0
```

CONTACT // 1:Yes 2:No
CONCERTI // 1:Yes 2:No

Chi-Square	**Value**	**DF**	**Significance**
Pearson	5.51742	1	**.01883 (Significant at 5 per cent level.)**

Number of Missing Observations: 1

Contact by Concertina Order Practice

Contact	Concertina Order Practice			Total
	Yes	No	not known	
Yes	29	22	-	51
No	34	59	-	93
Not known	-	-	1	1
Total	63	81	1	145

Contact	Concertina Order Practice			Total
	Yes	No	not known	
Yes	46%	27%	-	35%
No	54%	73%	-	64%
Not known	-		100%	1%
Total	100%	100%	100%	100%

Contact	Concertina Order Practice			Total
	Yes	No	not known	
Yes	57%	43%	-	100%
No	37%	63%	-	100%
Not known	-	-	100%	100%
Total	43%	56%	1%	100%

IP Firm's Size by Source (Source for Introduction to IVA)

```
                      SOURCE
            Count   |
            Row Pct |
            Col Pct |                   Row
                    |    1.00|    2.00| Total
IPSIZE      --------+--------+--------+
             1.00   |    12  |    42  |    54
                    | 22.2%  | 77.8%  | 39.7%
                    | 57.1%  | 36.5%  |
                    +--------+--------+
             2.00   |     9  |    73  |    82
                    | 11.0%  | 89.0%  | 60.3%
                    | 42.9%  | 63.5%  |
                    +--------+--------+
            Column      21      115      136
             Total   15.4%    84.6%   100.0%
```

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office Firms & Two-Office Firms)
SOURCE // 1:Debtor is introduced to IVA by a family member or a friend.
2:Debtor is introduced to IVA by a professional.

Chi-Square	**Value**	**DF**	**Significance**
Pearson	3.15408	1	**.07574 (Significant at 10 per cent level.)**

Number of Missing Observations: 10

IP Firm's Size by Source (Source for Introduction to IVA)

Source	Insolvency Practioners' Firms Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Accountant	40	2	8	5	55
Solicitor	14	1	15	3	33
Yellow Pages	4	-	3	-	7
Bank		1	4	2	7
Financial Advisor	6	-	-	-	6
Official Receiver / Court	4	-	-	-	4
Appointment as a trustee by the Sec. of State	-	1	1	1	3
Local Advertisement		-	3	-	3
Other	11	-	6	3	20
Not known	2	-	3	2	7
Total	81	5	43	16	145

Source	Insolvency Practioners' Firms Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Accountant	73%	4%	15%	9%	100%
Solicitor	42%	4%	45%	9%	100%
Yellow Pages	57%	-	43%	-	100%
Bank		14%	57%	29%	100%
Financial Advisor	100%	-	-	-	100%
Official Receiver / Court	100%	-	-	-	100%
Appointment as a trustee by the Sec. of State	-	33.33%	33.33%	33.33%	100%
Local Advertisement		-	100%	-	100%
Other	55%	-	30%	15%	100%
Not known	29%	-	42%	29%	100%
Total	56%	3%	30%	11%	100%

Source	Insolvency Practioners' Firms Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Accountant	49%	40%	19%	31%	38%
Solicitor	17%	20%	35%	19%	23%
Yellow Pages	5%	-	7%	-	5%
Bank	-	20%	9%	13%	5%
Financial Advisor	7%	-	-	-	4%
Official Receiver / Court	5%	-	-	-	3%
Appointment as a trustee by the Sec. of State	-	20%	2%	6%	2%
Local Advertisement	-	-	7%	-	2%
Other	14%	-	14%	19%	14%
Not known	2%	-	7%	13%	5%
Total	100%	100%	100%	100%	100%

IP Firm's Size by Source (Source for Introduction to IVA)

Source	Insolvency Practioners' Firms Size		Total
	Big Firms	Small Firms	
Accountant	42	13	55
Solicitor	15	18	33
Yellow Pages	4	3	7
Bank	1	6	7
Financial Advisor	6	-	6
Official Receiver / Court	4	-	4
Appointment as a trustee by the Sec. of State	1	2	3
Local Advertisement	-	3	3
Other	11	9	20
Not known	2	5	7
Total	86	59	145

Source	Insolvency Practioners' Firms Size		Total
	Big Firms	Small Firms	
Accountant	76%	24%	100%
Solicitor	45%	55%	100%
Yellow Pages	57%	43%	100%
Bank	14%	86%	100%
Financial Advisor	100%	-	100%
Official Receiver / Court	100%	-	100%
Appointment as a trustee by the Sec. of State	33%	67%	100%
Local Advertisement	-	100%	100%
Other	55%	45%	100%
Not known	29%	81%	100%
Total	59%	41%	100%

Source	Insolvency Practioners' Firms Size		Total
	Big Firms	Small Firms	
Accountant	49%	22%	38%
Solicitor	17%	31%	23%
Yellow Pages	5%	5%	5%
Bank	1%	10%	5%
Financial Advisor	7%	-	4%
Official Receiver / Court	5%	-	3%
Appointment as a trustee by the Sec. of State	1%	3%	2%
Local Advertisement	-	5%	2%
Other	13%	15%	14%
Not known	2%	8%	5%
Total	100%	100%	100%

Entry Route by IP Firm Size

ENTRY (Count / Row Pct / Col Pct)	IPSIZE 1.00	IPSIZE 2.00	Row Total
1.00	44	73	117
	37.6	62.4	81.3
	77.2	84.0	
2.00	3	3	6
	33.3	66.7	4.2
	5.2	3.4	
3.00	10	11	21
	47.6	52.4	14.6
	17.6	12.6	
Column Total	57	87	144
	39.6	60.4	100.0

ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b)
2:Via debtor's petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)

Chi-Square	**Value**	**DF**	**Significance**
Pearson	2.95038	2	**.22874 (Not significant)**

Number of Missing Observations: 1

Entry Route by IP Firm Size

```
                     IPSIZE
            Count   |
            Row Pct |                    Row
            Col Pct |     1.00|    2.00| Total
ENTRY       --------+--------+--------+
              1.00  |    47  |    76  |   123
                    | 38.2%  | 61.8%  | 85.4%
                    | 82.5%  | 87.4%  |
                    +--------+--------+
              3.00  |    10  |    11  |    21
                    | 47.6%  | 52.4%  | 14.6%
                    | 17.5%  | 12.6%  |
                    +--------+--------+
            Column       57       87      144
             Total     39.6%    60.1%   100.0%
```

ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b) & Via debtor's petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)

Chi-Square	**Value**	**DF**	**Significance**
Pearson	2.90705	1	**.08819 (Significant at 10 per cent level)**

Number of Missing Observations: 1

Entry Route by IP Firm Size

Entry Route to IVA	IP Firm's Size Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	Total
No prior procedure	12	32	71	2	117
Via debtor's petition	-	3	3	-	6
After a bankruptcy order	3	7	7	4	21
Not known	1	-	-	-	1
Total	16	42	81	6	145

Entry Route to IVA	IP Firm's Size Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	Total
No prior procedure	75%	76%	88%	33%	81%
Via debtor's petition	-	7%	4%	-	4%
After a bankruptcy order	19%	17%	9%	67%	14%
Not known	6%	-	-	-	1%
Total	100%	100%	100%	100%	100%

Entry Route to IVA	IP Firm's Size Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	Total
No prior procedure	10%	27%	61%	2%	100%
Via debtor's petition	-	50%	50%	-	100%
After a bankruptcy order	14%	33%	33%	19%	100%
Not known	100%	-	-	-	100%
Total	11%	29%	56%	4%	100%

Entry Route by IP Firm Size

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure	44	73	117
Via debtor's petition	3	3	6
After a bankruptcy order	10	11	21
Not known	1	-	1
Total	58	87	145

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure	76%	84%	81%
Via debtor's petition	5%	3%	4%
After a bankruptcy order	17%	13%	14%
Not known	2%	-	1%
Total	100%	100%	100%

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure	38%	62%	100%
Via debtor's petition	50%	50%	100%
After a bankruptcy order	52%	48%	100%
Not known	100%	-	100%
Total	40%	60%	100%

Entry Route by IP Firm Size

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure, or via debtor's petition	47	76	123
After a bankruptcy order	10	11	21
Not known	1	-	1
Total	58	87	145

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure, or via debtor's petition	81%	87%	85%
After a bankruptcy order	17%	13%	14%
Not known	2%	-	1%
Total	100%	100%	100%

Entry Route to IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
No prior procedure, or via debtor's petition	38%	62%	100%
After a bankruptcy order	52%	48%	100%
Not known	100%	-	100%
Total	40%	60%	100%

Success or Failure by IVA Size (Income plus Assets)

```
                    IVASIZE
            Count  |
          Row Pct  |
          Col Pct  |                    Row
                   |     1.00|    2.00| Total
SF          --------+--------+--------+
             1.00  |     43  |     48  |    91
                   |   47.3  |   52.7  |  66.9
                   |   60.6  |   73.8  |
                   +--------+--------+
             2.00  |     28  |     17  |    45
                   |   62.2  |   37.8  |  33.1
                   |   39.4  |   26.2  |
                   +--------+--------+
           Column      71       65      136
            Total    52.2     47.8    100.0
```

SF // 1: Success 2:Failure
IVASIZE // 1: Up to 20K (incl.20K)   2: More than 20K

Chi-Square	**Value**	**DF**	**Significance**
Pearson	2.70417	1	**.10009 (Not Significant / <u>However, very close to the level of significance at 10% level</u>.)**

Number of Missing Observations: 9

Success or Failure by IVA Size (Income plus Assets)

End Result of IVA	Size of IVA			Total
	up to 20K	more than 20K	not known	
Success	43	48	6	97
Failure	28	17	-	45
not known	-	-	3	3
Total	71	65	9	145

End Result of IVA	Size of IVA			Total
	up to 20K	more than 20K	not known	
Success	61%	74%	67%	67%
Failure	49%	26%	-	31%
not known	-	-	33%	2%
Total	100%	100%	100%	100%

End Result of IVA	Size of IVA			Total
	up to 20K	more than 20K	not known	
Success	44%	49%	7%	100%
Failure	62%	38%	-	100%
not known	-	-	100%	100%
Total	49%	45%	6%	100%

Success or Failure by IVA Size (Income plus Assets)

End Result of IVA	Size of IVA						Total
	<10K	10<=20K	20<=50K	50<=100K	100K+	not known	
Success	22	21	33	9	6	6	97
Failure	19	9	12	4	1	-	45
not known	-	2	-	-	-	1	3
Total	41	32	45	13	7	7	145

End Result of IVA	Size of IVA						Total
	<10K	10<=20K	20<=50K	50<=100K	100K+	not known	
Success	54%	66%	73%	69%	86%	86%	67%
Failure	46%	28%	27%	31%	14%	-	31%
not known	-	6%	-	-	-	14%	2%
Total	100%	100%	100%	100%	100%	100%	100%

End Result of IVA	Size of IVA						Total
	<10K	10<=20K	20<=50K	50<=100K	100K+	not known	
Success	23%	22%	34%	9%	6%	6%	100%
Failure	42%	20%	27%	9%	2%	-	100%
not known	-	67%	-	-	-	33%	100%
Total	28%	22%	31%	9%	5%	5%	100%

Avertion by Concertina Order Practice

```
                    CONCERTI
            Count   |
            Row Pct |
            Col Pct |                    Row
                    |     1.00|     2.00| Total
AVERTION    --------+--------+--------+
             1.00   |    10   |     1   |    11
                    |  90.9   |   9.1   |   7.6
                    |  15.9   |   1.2   |
                    +--------+--------+
             2.00   |    53   |    80   |   133
                    |  39.8   |  60.2   |  92.4
                    |  84.1   |  98.8   |
                    +--------+--------+
            Column       63        81      144
             Total     43.8      56.3    100.0
```

AVERTION // 1:Yes 2:No
CONCERTI // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	10.76301	1	**.00104 (<u>Seems</u> significant at 1 per cent level <u>but</u> see note)**

Number of Missing Observations: 1

<u>Note: 1 cell includes observations less than 5 / Therefore not significant.</u>

Avertion by Concertina Order Practice

Avertion	Concertina Order Practice			Total
	Yes	No	not known	
Yes	10	1	-	11
No	53	80		133
Not known	-	-	1	1
Total	63	81	1	145

Avertion	Concertina Order Practice			Total
	Yes	No	not known	
Yes	16%	1%	-	8%
No	84%	99%	-	92%
Not known	-	-	100%	1%
Total	100%	100%	100%	100%

Avertion	Concertina Order Practice			Total
	Yes	No	not known	
Yes	91%	9%		100%
No	40%	60%	100%	100%
Not known	-	-	-	100%
Total	43%	56%	1%	100%

Success or Failure by Creditors' View (Creditors' Supportiveness to IVA)

```
                    CREDVIEW
           Count  |
           Row Pct |
           Col Pct |                              Row
                   |    1.00|    2.00|    3.00| Total
SF         --------+--------+--------+--------+
            1.00   |   51   |    4   |   41   |   96
                   |  53.1  |   4.2  |  42.7  |  68.6
                   |  78.5  |  57.1  |  60.3  |
                   +--------+--------+--------+
            2.00   |   14   |    3   |   27   |   44
                   |  31.8  |   6.8  |  61.4  |  31.4
                   |  21.5  |  42.9  |  39.7  |
                   +--------+--------+--------+
           Column      65        7       68      140
            Total     46.4      5.0     48.6    100.0
```

SF // 1: Success 2:Failure
CREDVIEW // 1:Agree (Supportive) 2: Disagree (Not supportive) 3: Neutral

Chi-Square	**Value**	**DF**	**Significance**
Pearson	5.53624	2	**.06278 (Seems significant at 10 per cent level but see note)**

Number of Missing Observations: 5

Note: 2 cells include observations less than 5 / Therefore not significant.

Success or Failure by Creditors’ View (Creditors’ Supportiveness to IVA)

End Result of IVA	Creditors’ Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Success	51	41	4	1	97
Failure	14	27	3	1	45
not known	-	-	-	3	3
Total	65	68	7	5	145

End Result of IVA	Creditors’ Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Success	78%	60%	57%	20%	67%
Failure	22%	40%	43%	20%	31%
not known	-	-	-	60%	2%
Total	100%	100%	100%	100%	100%

End Result of IVA	Creditors’ Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Success	53%	42%	4%	1%	100%
Failure	31%	60%	7%	2%	100%
not known	-	-	-	100%	100%
Total	45%	47%	5%	3%	100%

Success or Failure by Concessions

```
                    CONCESSI
            Count   |
            Row Pct |
            Col Pct |                      Row
                    |     1.00|     2.00| Total
SF          --------+--------+--------+
             1.00   |      7  |     90  |     97
                    |    7.2  |   92.8  |   68.8
                    |  100.0  |   67.2  |
                    +--------+--------+
             2.00   |         |     44  |     44
                    |         |  100.0  |   31.2
                    |         |   32.8  |
                    +--------+--------+
            Column         7      134      141
             Total       5.0     95.0    100.0
```

SF // 1:Success 2:Failure
CONCESSI // 1: Yes 2: No

Chi-Square	Value	DF	Significance
Pearson	3.34113	1	**.06757 (<u>Seems</u> significant at 10 per cent level <u>but</u> see note)**

Number of Missing Observations: 4

<u>Note: 1 cell includes no observations / Therefore not significant.</u>

Success or Failure by Concessions

End Result of IVA	Concessions			Total
	Yes	No	not known	
Success	7	90	-	97
Failure	-	44	1	45
not known	-	-	3	3
Total	7	134	4	145

End Result of IVA	Concessions			Total
	Yes	No	not known	
Success	100%	67%	-	67%
Failure	-	33%	25%	31%
not known	-	-	75%	2%
Total	100%	100%	100%	100%

End Result of IVA	Concessions			Total
	Yes	No	not known	
Success	8%	92%	-	100%
Failure	-	98%	2%	100%
not known	-	-	100%	100%
Total	5%	92%	3%	100%

Contact by Concessions

```
                    CONCESSI
           Count  |
         Row Pct  |
         Col Pct  |                        Row
                  |     1.00|     2.00|   Total
CONTACT    --------+--------+--------+
            1.00  |       4 |      46 |      50
                  |     8.0 |    92.0 |    35.0
                  |    57.1 |    33.8 |
                  +--------+--------+
            2.00  |       3 |      90 |      93
                  |     3.2 |    96.8 |    65.0
                  |    42.9 |    66.2 |
                  +--------+--------+
           Column         7       136       143
            Total       4.9      95.1     100.0
```

CONTACT // 1: Yes 2: No
CONCESSI // 1: Yes 2: No

Chi-Square	Value	DF	Significance
Pearson	1.59203	1	**.20704 (Not Significant)**

Number of Missing Observations: 2

Contact by Concessions

Contact	Concessions			Total
	Yes	No	not known	
Yes	4	46	1	51
No	3	90	-	93
not known	-	-	1	1
Total	7	136	2	145

Contact	Concessions			Total
	Yes	No	not known	
Yes	57%	34%	50%	35%
No	43%	66%	-	64%
not known	-	-	50%	1%
Total	100%	100%	100%	100%

Contact	Concessions			Total
	Yes	No	not known	
Yes	8%	90%	2%	100%
No	3%	97%	-	100%
not known	-	-	100%	100%
Total	5%	94%	1%	100%

Success or Failure by Contact

```
                    CONTACT
            Count  |
            Row Pct |
            Col Pct |                     Row
                    |     1.00|     2.00| Total
SF          --------+--------+--------+
             1.00   |    37   |    60   |    97
                    |  38.1   |  61.9   |  68.8
                    |  75.5   |  65.2   |
                    +--------+--------+
             2.00   |    12   |    32   |    44
                    |  27.3   |  72.7   |  31.2
                    |  24.5   |  34.8   |
                    +--------+--------+
            Column       49        92      141
             Total     34.8      65.2    100.0
```

SF // 1:Success 2:Failure
CONTACT // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	1.57778	1	**.20908 (Not Significant)**

Number of Missing Observations: 4

Success or Failure by Contact

End Result of IVA	Contact			Total
	Yes	No	not known	
Success	37	60	-	97
Failure	12	32	1	45
not known	2	1	-	3
Total	51	93	1	145

End Result of IVA	Contact			Total
	Yes	No	not known	
Success	73%	65%	-	67%
Failure	24%	34%	100%	31%
not known	97%	1%	-	2%
Total	100%	100%	100%	100%

End Result of IVA	Contact			Total
	Yes	No	not known	
Success	38%	62%	-	100%
Failure	27%	71%	2%	100%
not known	67%	33%	-	100%
Total	35%	64%	1%	100%

IP Firm's Size by Contact

```
                    CONTACT
           Count  |
           Row Pct |
           Col Pct |                    Row
                   |    1.00|    2.00|  Total
IPSIZE     --------+--------+--------+
            1.00  |    34  |    23  |    57
                  |  59.6  |  40.4  |  39.6
                  |  66.7  |  24.7  |
                  +--------+--------+
            2.00  |    17  |    70  |    87
                  |  19.6  |  80.4  |  60.4
                  |  33.3  |  75.3  |
                  +--------+--------+
           Column      51       93      144
            Total    35.4     64.6    100.0
```

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)
CONTACT // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	1.50953	1	**.21921 (Not Significant)**

Number of Missing Observations: 1

IP Firm’s Size by Contact

Contact	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	11	23	16	1	51
No	4	19	65	5	93
not known	1	-	-	-	1
Total	16	42	81	6	145

Contact	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	69%	55%	20%	17%	35%
No	25%	45%	80%	83%	64%
not known	6%	-	-	-	1%
Total	100%	100%	100%	100%	100%

Contact	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	22%	45%	31%	2%	100%
No	4%	20%	70%	5%	100%
not known	100%	-	-	-	100%
Total	11%	29%	56%	4%	100%

IP Firm's Size by Contact

Contact	IP Firm's Size		Total
	Big Firms	Small Firms	
Yes	34	17	51
No	23	70	93
not known	1	-	1
Total	58	87	145

Contact	IP Firm's Size		Total
	Big Firms	Small Firms	
Yes	59%	20%	35%
No	40%	80%	64%
not known	1%	-	1%
Total	100%	100%	100%

Contact	IP Firm's Size		Total
	Big Firms	Small Firms	
Yes	67%	33%	100%
No	25%	75%	100%
not known	100%	-	100%
Total	40%	60%	100%

Contact by Creditors' View (Creditors' Supportiveness to IVA)

```
                  CREDVIEW
           Count  |
         Row Pct  |
         Col Pct  |                               Row
                  |     1.00|    2.00|    3.00|  Total
CONTACT   --------+--------+--------+--------+
            1.00  |    29  |     4  |    17  |    50
                  |  58.0  |   8.0  |  34.0  |  35.2
                  |  43.9  |  57.1  |  24.6  |
                  +--------+--------+--------+
            2.00  |    37  |     3  |    52  |    92
                  |  40.2  |   3.3  |  56.5  |  64.8
                  |  56.1  |  42.9  |  75.4  |
                  +--------+--------+--------+
          Column      66        7       69      142
           Total    46.5      4.9     48.6    100.0
```

CONTACT // 1: Yes 2:No
CREDVIEW // 1:Agree (Supportive) 2: Disagree (Not supportive) 3: Neutral

Chi-Square	Value	DF	Significance
Pearson	7.06139	2	**.02928 (<u>Seems</u> significant at 5 per cent level <u>but</u> see note)**

Number of Missing Observations: 3

<u>Note: 2 cells include observations less than 5 / Therefore not significant.</u>

Contact by Creditors' View (Creditors' Supportiveness to IVA)

Contact	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Yes	29	17	4	1	51
No	37	52	3	1	93
not known	-	-	-	1	1
Total	66	69	7	3	145

Contact	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Yes	44%	25%	57%	33.3%	35%
No	56%	75%	43%	33.3%	64%
not known	-	-	-	33.3%	1%
Total	100%	100%	100%	100%	100%

Contact	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
Yes	57%	33%	8%	2%	100%
No	40%	56%	3%	1%	100%
not known	-	-	-	100%	100%
Total	46%	48%	5%	1%	100%

Dividend of IVA by Creditors' View (Creditors' Supportiveness to IVA)

```
                    CREDVIEW
            Count  |
            Row Pct |
            Col Pct |                                Row
                    |     1.00|    2.00|    3.00| Total
DIVIVA      --------+--------+--------+--------+
             1.00  |    44  |     6  |    53  |   103
                   |  42.7  |   5.8  |  51.5  |  76.3
                   |  69.8  |  85.7  |  81.5  |
                   +--------+--------+--------+
             2.00  |    19  |     1  |    12  |    32
                   |  59.4  |   3.1  |  37.5  |  23.7
                   |  30.2  |  14.3  |  18.5  |
                   +--------+--------+--------+
            Column      63        7       65      135
             Total    46.7      5.2     48.1    100.0
```

DIVIVA // 1: Less than 50p (including 50p)   2:More than 50 p
CREDVIEW // 1:Agree (Supportive) 2: Disagree (Not supportive) 3: Neutral

Chi-Square	Value	DF	Significance
Pearson	2.78249	2	**.24876 (Not Significant)**

Number of Missing Observations: 10

Dividend of IVA by Creditors' View (Creditors' Supportiveness to IVA)

Dividend of IVA	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
50p in £ or less	44	53	6	1	104
51p in £ or more	19	12	1	1	33
not known	3	4	-	1	8
Total	66	69	7	3	145

Dividend of IVA	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
50p in £ or less	67%	77%	86%	33.33%	72%
51p in £ or more	29%	17%	14%	33.33%	23%
not known	4%	6%	-	33.33%	5%
Total	100%	100%	100%	100%	100%

Dividend of IVA	Creditors' Supportiveness to IVA				Total
	supportive	neutral	not supportive	not known	
50p in £ or less	42%	51%	6%	1%	100%
51p in £ or more	58%	36%	3%	3%	100%
not known	38%	50%	-	12%	100%
Total	46%	48%	5%	3%	100%

Dividend of IVA by Creditors' View (Creditors' Supportiveness to IVA)

Creditors' Supportiveness to IVA	Dividend of IVA											
	No Div.	0<-10p	11-20p	21-30p	31-40p	41-50p	51-60p	61-70p	71-80p	91-100p	not known	Total
not supportive	1	2		1	1	1				1		7
neutral	7	18	10	10	4	4	2	2	1	7	4	69
supportive	8	10	12	6	5	3	2	1	4	12	3	66
not known	1									1	1	3
Total	17	30	22	17	10	8	4	3	5	21	8	145

Creditors' Supportiveness to IVA	Dividend of IVA											
	No Div.	0<-10p	11-20p	21-30p	31-40p	41-50p	51-60p	61-70p	71-80p	91-100p	not known	Total
not supportive	6%	7%		6%	10%	13%				5%		5%
neutral	41%	60%	45%	59%	40%	50%	50%	67%	20%	33%	50%	48%
supportive	47%	34%	54%	35%	50%	38%	50%	33%	80%	57%	38%	45%
not known	6%									5%	13%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Creditors' Supportiveness to IVA	Dividend of IVA											
	No Div.	0<-10p	11-20p	21-30p	31-40p	41-50p	51-60p	61-70p	71-80p	91-100p	not known	Total
not supportive	14%	29%		14%	14%	14%				14%		100%
neutral	10%	26%	14%	14%	6%	6%	3%	3%	1%	10%	6%	100%
supportive	12%	15%	18%	9%	8%	5%	3%	1%	6%	18%	5%	100%
not known	33%									33%	33%	100%
Total	12%	21%	15%	12%	7%	6%	3%	2%	3%	14%	6%	100%

Success or Failure by Source (Source for Introduction to IVA)

```
                      SOURCE
             Count  |
           Row Pct  |
           Col Pct  |                    Row
                    |     1.00|     2.00| Total
SF                  --------+--------+--------+
              1.00  |     12  |     81  |     93
                    | 12.9%   | 87.1%   | 69.9%
                    | 60.0%   | 71.7%   |
                    +--------+--------+
              2.00  |      8  |     32  |     40
                    | 20.0%   | 80.0%   | 30.1%
                    | 40.0%   | 28.3%   |
                    +--------+--------+
            Column       20       113      133
             Total    15.0%     85.0%   100.0%
```

SF // 1:Success 2:Failure
SOURCE // 1:Debtor is introduced to IVA by a family member or a friend.
2:Debtor is introduced to IVA by a professional.

Chi-Square	**Value**	**DF**	**Significance**
Pearson	1.10257	1	**.29370 (Not Significant)**

Number of Missing Observations: 13

Success or Failure by Source (Source for Introduction to IVA)

Source	Success	Failure	Not known	Total
Accountant	34	20	1	55
Solicitor	25	7	1	33
Yellow Pages	6	1	-	7
Bank	3	4	-	7
Financial Advisor	1	4	1	6
Official Receiver / Court	3	1	-	4
Appointment as a trustee by the Sec. of State	3	-	-	3
Local Advertisement	3	-	-	3
Other	13	7	-	20
Not known	6	1	-	7
Total	97	45	3	145

Source	Success	Failure	Not known	Total
Accountant	62%	36%	2%	100%
Solicitor	76%	21%	3%	100%
Yellow Pages	86%	14%	-	100%
Bank	43%	57%	-	100%
Financial Advisor	16.5%	67%	16.5%	100%
Official Receiver / Court	75%	25%	-	100%
Appointment as a trustee by the Sec. of State	100%	-	-	100%
Local Advertisement	100%	-	-	100%
Other	65%	35%	-	100%
Not known	86%	14%	-	100%
Total	67%	31%	2%	100%

Source	Success	Failure	Not known	Total
Accountant	35%	44%	33.33%	38%
Solicitor	26%	16%	33.33%	23%
Yellow Pages	6%	2%	-	5%
Bank	3%	9%	-	5%
Financial Advisor	1%	9%	33.33%	4%
Official Receiver / Court	3%	2%	-	3%
Appointment as a trustee by the Sec. of State	3%	-	-	2%
Local Advertisement	3%	-	-	2%
Other	13%	16%	-	14%
Not known	6%	2%	-	5%
Total	100%	100%	100%	100%

Success or Failure by Concertina Order Practice

```
                    CONCERTI
            Count  |
            Row Pct |
            Col Pct |                      Row
                    |     1.00|     2.00| Total
SF          --------+--------+--------+
             1.00   |    44   |    53   |    97
                    |  45.4   |  54.6   |  68.8
                    |  73.3   |  65.4   |
                    +--------+--------+
             2.00   |    16   |    28   |    44
                    |  36.4   |  63.6   |  31.2
                    |  26.7   |  34.6   |
                    +--------+--------+
            Column      60        81       141
             Total    42.6      57.4     100.0
```

SF // 1:Success 2:Failure
CONCERTI // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	1.00235	1	**.31674 (Not Significant)**

Number of Missing Observations: 4

Success or Failure by Concertina Order Practice

End Result of IVA	Concertina Order Practice			Total
	Yes	No	not known	
Success	44	53	-	97
Failure	16	28	1	45
not known	3	-	-	3
Total	63	81	1	145

End Result of IVA	Concertina Order Practice			Total
	Yes	No	not known	
Success	70%	65%	-	67%
Failure	25%	35%	100%	31%
not known	5%	-	-	2%
Total	100%	100%	100%	100%

End Result of IVA	Concertina Order Practice			Total
	Yes	No	not known	
Success	45%	55%	-	100%
Failure	36%	62%	2%	100%
not known	100%	-	-	100%
Total	43%	56%	1%	100%

Creditors' View (Creditors' Supportiveness to IVA) by Difference between Dividend of IVA and Dividend of Bankruptcy

CREDVIEW	Count / Row Pct / Col Pct	DIVDIFFE -1.00	.00	1.00	2.00	Row Total
1.00	Count	4	11	28	20	63
	Row Pct	6.3	17.5	44.4	31.7	47.7
	Col Pct	80.0	50.0	46.7	44.4	
2.00	Count		1	1	5	7
	Row Pct		14.3	14.3	71.4	5.3
	Col Pct		4.5	1.7	11.1	
3.00	Count	1	10	31	20	62
	Row Pct	1.6	16.1	50.0	32.3	47.0
	Col Pct	20.0	45.5	51.7	44.4	
Column Total		5	22	60	45	132
		3.8	16.7	45.5	34.1	100.0

CREDVIEW // 1:Agree (Supportive) 2: Disagree (Not supportive) 3: Neutral
DIVDIFFE // -1:Less than 0p(Dividend of Bankruptcy > Dividend of IVA) 0:No Difference (Dividend of Bankruptcy = Dividend of IVA) 1:Up to 20 (Dividend of IVA > Dividend of Bankruptcy Up to 20p) 2:More than 20p (Dividend of IVA > Dividend of Bankruptcy is more than 20p)

Chi-Square	Value	DF	Significance
Pearson	7.00626	6	**.32027 (Not significant)**

Number of Missing Observations: 13

Creditors’ View (Creditors’ Supportiveness to IVA) by Difference between Dividend of IVA and Dividend of Bankruptcy

Creditors’ Supportiveness to IVA	Dividend Difference				
	DivIVA< DivB	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	Total
not supportive	-	1	1	5	7
neutral	1	10	31	20	62
supportive	4	11	28	20	63
Total	5	22	60	45	132

Creditors’ Supportiveness to IVA	Dividend Difference				
	DivIVA< DivB	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	Total
not supportive	-	14%	14%	72%	100%
neutral	2%	16%	50%	32%	100%
supportive	6%	18%	44%	31%	100%
Total	4%	17%	46%	34%	100%

Creditors’ Supportiveness to IVA	Dividend Difference				
	DivIVA< DivB	No Difference	DivIVA>DivB Up to 20p	DivIVA>DivB More than 20p	Total
not supportive	-	5%	2%	12%	5%
neutral	20%	45%	47%	44%	48%
supportive	80%	50%	51%	44%	47%
Total	100%	100%	100%	100%	100%

Success or Failure by Avertion

```
                     AVERTION
            Count  |
            Row Pct |
            Col Pct |                      Row
                    |     1.00|     2.00|  Total
SF          --------+---------+---------+
             1.00   |      9  |     88  |     97
                    |    9.3  |   90.7  |   68.8
                    |   81.8  |   67.7  |
                    +---------+---------+
             2.00   |      2  |     42  |     44
                    |    4.5  |   95.5  |   31.2
                    |   18.2  |   32.3  |
                    +---------+---------+
            Column        11       130       141
             Total       7.8      92.2     100.0
```

SF // 1:Success 2:Failure
AVERTION // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	.94267	1	**.33159 (Not Significant)**

Number of Missing Observations: 4

Note: 1 cell includes less than 5 observations (2 observations).

Success or Failure by Avertion

End Result of IVA	Avertion			Total
	Yes	No	not known	
Success	9	88	-	97
Failure	2	42	1	45
not known	-	3	-	3
Total	11	133	1	145

End Result of IVA	Avertion			Total
	Yes	No	not known	
Success	82%	66%	-	67%
Failure	18%	32%	100%	31%
not known	-	2%	-	2%
Total	100%	100%	100%	100%

End Result of IVA	Avertion			Total
	Yes	No	not known	
Success	9%	91%	-	100%
Failure	4%	94%	2%	100%
not known	-	100%	-	100%
Total	8%	92%	0%	100%

Question: Had any creditor (i.e. bank) worked with the debtor to avert insolvency? If yes, how?

- Debtor worked closely with Bank to maximise recoveries through the company and although a substantial amount was still owed after the realisation of assets, the bank was sympathetic and didn't blame the debtor and wish to bankrupt him.

- The only creditor of the IVA is the Inland Revenue, unofficial agreements but not adhered to. Informal IVA approach made to Inland Revenue not accepted formal IVA approved.

- Bank declined to appoint receiver over property.

- Extended credit.

- The debtor entered into a schedule of repayment with all creditors but failed to maintain them when he was temporarily unemployed.

- The main franchiser supported the debtor.

- Agreed repayment schedules with all creditors except one. This creditor petitioned for his bankruptcy.

IP Firm's Size by Concessions

```
                    CONCESSI
            Count  |
          Row Pct  |
          Col Pct  |                             Row
                   |     1.00|     2.00|  Total
IPSIZE     --------+--------+--------+
             1.00  |       4  |     54  |      58
                   |     6.9  |   93.1  |    40.6
                   |    57.1  |   39.7  |
                   +--------+--------+
             2.00  |       3  |     82  |      85
                   |     3.5  |   96.5  |    59.4
                   |    42.9  |   60.3  |
                   +--------+--------+
           Column          7      136       143
            Total        4.9     95.1     100.0
```

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)
CONCESSI // 1:Yes 2:No

Chi-Square	**Value**	**DF**	**Significance**
Pearson	.83959	1	**.35951 (Not Significant)**

Number of Missing Observations: 2

IP Firm’s Size by Concessions

Concessions	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	-	4	3	-	7
No	15	39	77	5	136
not known	1	1	-	-	2
Total	16	44	80	5	145

Concessions	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	-	9%	4%	-	5%
No	94%	89%	96%	100%	94%
not known	6%	2%	-	-	1%
Total	100%	100%	100%	100%	100%

Concessions	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	-	57%	43%	-	100%
No	11%	29%	57%	3%	100%
not known	50%	50%	-	-	100%
Total	11%	30%	55%	4%	100%

IP Firm’s Size by Concessions

Concessions	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	4	3	7
No	54	82	136
not known	2	-	2
Total	60	85	145

Concessions	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	7%	4%	5%
No	90%	96%	94%
not known	3%	-	1%
Total	100%	100%	100%

Concessions	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	57%	43%	100%
No	40%	60%	100%
not known	100%	-	100%
Total	41%	59%	100%

IP Firm's Size by Concertina Order Practice

```
                   CONCERTI
           Count  |
           Row Pct |
           Col Pct |                    Row
                   |    1.00|    2.00|  Total
IPSIZE     --------+--------+--------+
             1.00  |    32  |    25  |    57
                   |  56.0  |  44.0  |  39.6
                   |  51.0  |  31.0  |
                   +--------+--------+
             2.00  |    31  |    56  |    87
                   |  36.0  |  64.0  |  60.4
                   |  49.0  |  69.0  |
                   +--------+--------+
           Column       63       81      144
            Total     43.8     56.3    100.0
```

IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)
CONCERTI // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	.80834	1	**.36861 (Not Significant)**

Number of Missing Observations: 1

IP Firm’s Size by Concertina Order Practice

Concertina Order Practice	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	11	21	28	3	63
No	4	21	53	3	81
not known	1	-	-	-	1
Total	16	42	81	6	145

Concertina Order Practice	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	69%	50%	35%	50%	43%
No	25%	50%	65%	50%	56%
not known	6%	-	-	-	1%
Total	100%	100%	100%	100%	100%

Concertina Order Practice	IP Firm’s Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Yes	17%	33%	44%	5%	100%
No	5%	26%	65%	4%	100%
not known	100%	-	-	-	100%
Total	11%	29%	56%	4%	100%

IP Firm’s Size by Concertina Order Practice

Concertina Order Practice	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	32	25	57
No	31	56	87
not known	1	-	-
Total	64	81	145

Concertina Order Practice	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	50%	31%	39%
No	48%	69%	61%
not known	2%	-	-
Total	100%	100%	100%

Concertina Order Practice	IP Firm’s Size		Total
	Big Firms	Small Firms	
Yes	56%	44%	100%
No	36%	64%	100%
not known	100%	-	100%
Total	44%	56%	100%

Contact by Modifications to IVA Proposal

```
                     MODIFICA
            Count   |
            Row Pct |
            Col Pct |                     Row
                    |     1.00|     2.00| Total
CONTACT     --------+--------+--------+
             1.00   |    37   |    10   |    47
                    |  78.7   |  21.3   |  33.8
                    |  35.9   |  27.8   |
                    +--------+--------+
             2.00   |    66   |    26   |    92
                    |  71.7   |  28.3   |  66.2
                    |  64.1   |  72.2   |
                    +--------+--------+
            Column      103       36       139
             Total     74.1     25.9     100.0
```

CONTACT // 1: Yes 2: No
MODIFICA // 1: Yes 2: No

Chi-Square	Value	DF	Significance
Pearson	.79068	1	**.37389 (Not Significant)**

Number of Missing Observations: 6

Contact by Modifications to IVA Proposal

Contact	Modifications to IVA Proposal			Total
	Yes	No	not known	
Yes	37	66	-	103
No	10	26	-	36
not known	4	1	1	6
Total	51	93	1	145

Contact	Modifications to IVA Proposal			Total
	Yes	No	not known	
Yes	73%	71%	-	71%
No	20%	28%	-	25%
not known	7%	1%	100%	4%
Total	100%	100%	100%	100%

Contact	Modifications to IVA Proposal			Total
	Yes	No	not known	
Yes	36%	54%	-	100%
No	28%	74%	-	100%
not known	70%%	15%	15%	100%
Total	35%	64%	1%	100%

Success or Failure by Entry Route

SF	Count / Row Pct / Col Pct	ENTRY 1.00	2.00	3.00	Row Total
	1.00	78	6	13	97
		80.4	6.2	13.4	68.8
		68.4	100.0	61.9	
	2.00	36		8	44
		81.8		18.2	31.2
		31.6		38.1	
	Column Total	114	6	21	141
		80.9	4.3	14.9	100.0

SF // 1:Success 2:Failure
ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b)
2:Via debtor's petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

Chi-Square	**Value**	**DF**	**Significance**
Pearson	3.19337	2	**.20257 (Not significant)**

Number of Missing Observations: 4

Note: 1 cell includes NO observations (0 observations).

Success or Failure by Entry Route

End Result of IVA	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Success	78	6	13	-	97
Failure	36	-	8	1	45
not known	3	-	-	-	3
Total	117	6	21	1	145

End Result of IVA	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Success	67%	100%	62%	-	67%
Failure	31%	-	38%	100%	31%
not known	2%	-	-	-	2%
Total	100%	100%	100%	100%	100%

End Result of IVA	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Success	80%	7%	13%	-	100%
Failure	80%	-	18%	2%	100%
not known	100%	-	-	-	100%
Total	81%	4%	14%	1%	100%

Success or Failure by Entry Route

```
                    ENTRY
            Count  |
          Row Pct  |                          Row
          Col Pct  |     1.00|     3.00| Total
SF         --------+--------+--------+
             1.00  |     84  |     13  |     97
                   | 86.6%   | 13.4%   | 68.8%
                   | 70.0%   | 61.9%   |
                   +--------+--------+
             2.00  |     36  |      8  |     44
                   | 81.8%   | 18.2%   | 31.2%
                   | 30.0%   | 38.1%   |
                   +--------+--------+
           Column      120       21      141
            Total    85.1%    14.9%   100.0%
```

SF // 1:Success 2:Failure
ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b) & Via debtor's
petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

Chi-Square	Value	DF	Significance
Pearson	.54558	1	**.46013 (Not significant)**

Number of Missing Observations: 4

Success or Failure by Entry Route

End Result of IVA	Entry Route to IVA (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Success	84	13	-	97
Failure	36	8	1	45
not known	3	-	-	3
Total	123	21	1	145

End Result of IVA	Entry Route to IVA (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Success	87%	13%	-	100%
Failure	80%	18%	2%	100%
not known	100%	-	-	100%
Total	85%	14%	1%	100%

End Result of IVA	Entry Route to IVA (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Success	68%	62%	-	67%
Failure	29%	38%	100%	31%
not known	3%	-	-	2%
Total	100%	100%	100%	100%

Success or Failure by Creditors' Attendance to Creditors' Meeting

```
                    ATTENDAN
          Count   |
          Row Pct |
          Col Pct |                                          Row
                  |     1.00|     2.00|     3.00|     4.00|  Total
SF                --------+--------+--------+--------+
           1.00   |      9  |     23  |     18  |     35  |     85
                  |   10.6  |   27.1  |   21.2  |   41.2  |   66.4
                  |   64.3  |   62.2  |   66.7  |   70.0  |
                  +--------+--------+--------+--------+
           2.00   |      5  |     14  |      9  |     15  |     43
                  |   11.6  |   32.6  |   20.9  |   34.9  |   33.6
                  |   35.7  |   37.8  |   33.3  |   30.0  |
                  +--------+--------+--------+--------+
          Column       14        37        27        50      128
           Total     10.9      28.9      21.1      39.1    100.0
```

SF // 1:Success 2:Failure
ATTENDANCE // 1: 0-25% 2: 26-50% 3: 51-75% 4: 76-100%

Chi-Square	Value	DF	Significance
Pearson	.61725	3	**.89247 (Not Significant)**

Number of Missing Observations: 17

Success or Failure by Creditors' Attendance to Creditors' Meeting

```
                    ATTENDAN
            Count  |
            Exp Val |
            Row Pct |                   Row
            Col Pct |     1.00|     2.00| Total
SF          --------+--------+--------+
              1.00  |     32  |     53  |    85
                    |   33.9  |   51.1  | 66.4%
                    |  37.6%  |  62.4%  |
                    |  62.7%  |  68.8%  |
                    +--------+--------+
              2.00  |     19  |     24  |    43
                    |   17.1  |   25.9  | 33.6%
                    |  44.2%  |  55.8%  |
                    |  37.3%  |  31.2%  |
                    +--------+--------+
            Column       51        77      128
             Total    39.8%     60.2%   100.0%
```

SF // 1:Success 2:Failure
ATTENDANCE // 1: 0-50% 2: 51-100%

Chi-Square	Value	DF	Significance
Pearson	.50940	1	**.47540 (Not Significant)**

Number of Missing Observations: 17

Success or Falure by Creditors' Attendance to Creditors' Meeting

End Result	Attendance to Meeting					
of IVA	0-25%	26-50%	51-75%	76-100%	not known	Total
Success	9	23	18	35	12	97
Failure	5	14	9	15	2	45
not known	-	2	1	-	-	3
Total	14	39	28	50	14	145

End Result	Attendance to Meeting					
of IVA	0-25%	26-50%	51-75%	76-100%	not known	Total
Success	64%	59%	64%	70%	86%	67%
Failure	36%	36%	32%	30%	14%	31%
not known	-	5%	4%	-	-	2%
Total	100%	100%	100%	100%	100%	100%

End Result	Attendance to Meeting					
of IVA	0-25%	26-50%	51-75%	76-100%	not known	Total
Success	9%	24%	19%	36%	12%	100%
Failure	11%	31%	20%	33%	4%	100%
not known		67%	33%			100%
Total	10%	27%	19%	34%	10%	100%

Success or Falure by Creditors’ Attendance to Creditors’ Meeting

End Result of IVA	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Success	32	53	12	97
Failure	19	24	2	45
not known	2	1	-	3
Total	53	78	14	145

End Result of IVA	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Success	60%	68%	86%	67%
Failure	36%	31%	14%	31%
not known	4%	1%	-	2%
Total	100%	100%	100%	100%

End Result of IVA	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Success	33%	55%	12%	100%
Failure	43%	53%	4%	100%
not known	67%	33%		100%
Total	36%	54%	10%	100%

Success or Failure by Modifications to IVA Proposal

```
                    MODIFICA
           Count  |
           Row Pct |
           Col Pct |                      Row
                  |     1.00|     2.00|  Total
SF         --------+--------+--------+
            1.00  |    69   |    25   |     94
                  |   73.4  |   26.6  |   68.6
                  |   67.0  |   73.5  |
                  +--------+--------+
            2.00  |    34   |     9   |     43
                  |   79.1  |   20.9  |   31.4
                  |   33.0  |   26.5  |
                  +--------+--------+
           Column      103        34       137
            Total     75.2      24.8     100.0
```

SF // 1:Success 2:Failure
MODIFICA // 1: Yes 2: No

Chi-Square	Value	DF	Significance
Pearson	.50755	1	**.47620 (Not Significant)**

Number of Missing Observations: 8

Success or Failure by Modifications to IVA Proposal

	Modifications to IVA Proposal			
End Result of IVA	Yes	No	not known	Total
Success	69	25	3	97
Failure	34	9	2	45
not known	-	-	3	3
Total	103	34	8	145

	Modifications to IVA Proposal			
End Result of IVA	Yes	No	not known	Total
Success	67%	74%	38%	67%
Failure	33%	26%	24%	31%
not known	-	-	38%	2%
Total	100%	100%	100%	100%

	Modifications to IVA Proposal			
End Result of IVA	Yes	No	not known	Total
Success	71%	26%	3%	100%
Failure	76%	20%	4%	100%
not known	-	-	100%	100%
Total	71%	23%	6%	100%

Success or Failure by Sex (Sex of Debtor)

```
                    SEX
          Count   |
          Row Pct |
          Col Pct |                     Row
                  |     1.00|     2.00| Total
SF        --------+---------+---------+
            1.00  |     79  |     15  |     94
                  | 84.0%   | 16.0%   | 67.6%
                  | 68.7%   | 62.5%   |
                  +---------+---------+
            2.00  |     36  |      9  |     45
                  | 80.0%   | 20.0%   | 32.4%
                  | 31.3%   | 37.5%   |
                  +---------+---------+
          Column     115        24       139
           Total   82.7%     17.3%    100.0%
```

SF // 1:Success 2:Failure
SEX // 1:Male 2:Female

Chi-Square	Value	DF	Significance
Pearson	.34814	1	**.55517 (Not Significant)**

Number of Missing Observations: 6

Success or Failure by Sex (Sex of Debtor)

End Result of IVA	Sex of Debtor		Total
	Male	Female	
Success	79	15	94
Failure	36	9	45
Total	115	24	139

End Result of IVA	Sex of Debtor		Total
	Male	Female	
Success	84%	16%	100%
Failure	80%	20%	100%
Total	83%	17%	100%

End Result of IVA	Sex of Debtor		Total
	Male	Female	
Success	69%	63%	68%
Failure	31%	37%	32%
Total	100%	100%	100%

Debtor's View (Debtor's Cooperativeness) by Duration of IVA

```
                    DURATION
            Count  |
          Row Pct |
          Col Pct |                   Row
                  |    1.00|    2.00| Total
DEBTVIEW  --------+--------+--------+
             1.00 |    36  |    27  |    63
                  |  57.1  |  42.9  |  47.7
                  |  52.2  |  42.9  |
                  +--------+--------+
             2.00 |    14  |    16  |    30
                  |  46.7  |  53.3  |  22.7
                  |  20.3  |  25.4  |
                  +--------+--------+
             3.00 |    19  |    20  |    39
                  |  48.7  |  51.3  |  29.5
                  |  27.5  |  31.7  |
                  +--------+--------+
           Column      69       63      132
            Total    52.3     47.7    100.0
```

DEBTVIEW // 1:Agree (Cooperative) 2: Disagree (Not cooperative) 3: Neutral
DURATION // 1: Up to 3 years (including 3 years) 2: More than 3 years

Chi-Square	Value	DF	Significance
Pearson	1.17439	2	**.55588 (Not Significant)**

Number of Missing Observations: 13

Debtor's View (Debtor's Cooperativeness) by Duration of IVA

Debtor's Cooperativeness to IVA	Duration of IVA: up to 3 years	more than 3 years	not known	Total
not cooperative	14	16	1	31
neutral	19	20	8	47
cooperative	36	27	1	64
not known	-	1	2	3
Total	69	64	12	145

Debtor's Cooperativeness to IVA	Duration of IVA: up to 3 years	more than 3 years	not known	Total
not cooperative	45%	52%	3%	100%
neutral	40%	43%	17%	100%
cooperative	56%	42%	2%	100%
not known	-	33%	67%	100%
Total	48%	44%	8%	100%

Debtor's Cooperativeness to IVA	Duration of IVA: up to 3 years	more than 3 years	not known	Total
not cooperative	20%	25%	8%	21%
neutral	28%	31%	67%	32%
cooperative	52%	42%	8%	44%
not known	-	2%	17%	3%
Total	100%	100%	100%	100%

Debtor’s View (Debtor’s Cooperativeness) by Duration of IVA

Debtor’s Cooperativeness to IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	60- months	not known	
not cooperative	1	5	8	2	11	3	1	31
neutral	4	7	8	7	11	2	8	47
cooperative	10	7	19	13	11	3	1	64
not known	-	-	-	-	1	-	2	3
Total	15	19	35	22	34	8	12	145

Debtor’s Cooperativeness to IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	60- months	not known	
not cooperative	3%	16%	26%	6%	35%	10%	3%	100%
neutral	9%	15%	17%	15%	23%	4%	17%	100%
cooperative	17%	11%	30%	20%	17%	5%	2%	100%
not known	-	-	-	-	33%	-	67%	100%
Total	10%	13%	24%	15%	23%	6%	8%	100%

Debtor’s Cooperativeness to IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	60- months	not known	
not cooperative	7%	26%	23%	9%	32%	38%	8%	21%
neutral	27%	37%	23%	32%	32%	24%	67%	32%
cooperative	66%	37%	54%	59%	32%	38%	8%	44%
not known	-	-	-	-	4%	-	17%	3%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Concertina Order Practice by Creditors' Attendance to Creditors' Meeting

```
                       ATTENDAN
            Count   |
            Row Pct |
            Col Pct |                                      Row
                    |     1.00|     2.00|     3.00|     4.00| Total
CONCERTI    --------+--------+--------+--------+--------+
             1.00   |     3   |    19   |    11   |    25   |    58
                    |   5.2   |  32.8   |  19.0   |  43.1   |  44.3
                    |  21.4   |  48.7   |  39.3   |  50.0   |
                    +--------+--------+--------+--------+
             2.00   |    11   |    20   |    17   |    25   |    73
                    |  15.1   |  27.4   |  23.3   |  34.2   |  55.7
                    |  78.6   |  51.3   |  60.7   |  50.0   |
                    +--------+--------+--------+--------+
            Column       14        39        28        50      131
             Total     10.7      29.8      21.4      38.2    100.0
```

CONCERTI // 1:Yes 2:No
ATTENDANCE // 1: 0-25% 2: 26-50% 3: 51-75% 4: 76-100%

Chi-Square	Value	DF	Significance
Pearson	4.22056	3	**.23861 (Not Significant)**

Number of Missing Observations: 14

Concertina Order Practice by Creditors' Attendance to Creditors' Meeting

```
                    ATTENDAN
           Count  |
           Exp Val |
           Row Pct |                   Row
           Col Pct |     1.00|    2.00| Total
CONCERTI   --------+--------+--------+
            1.00  |    22  |    36  |    58
                  |  23.5  |  34.5  | 44.3%
                  | 37.9%  | 62.1%  |
                  | 41.5%  | 46.2%  |
                  +--------+--------+
            2.00  |    31  |    42  |    73
                  |  29.5  |  43.5  | 55.7%
                  | 42.5%  | 57.5%  |
                  | 58.5%  | 53.8%  |
                  +--------+--------+
           Column      53       78     131
            Total   40.5%    59.5%  100.0%
```

CONCERTI // 1:Yes 2:No
ATTENDANCE // 1: 0-50% 2: 51%-100%

Chi-Square	**Value**	**DF**	**Significance**
Pearson	.27590	1	**.59940 (Not Significant)**

Number of Missing Observations: 14

Concertina Order Practice by Creditors' Attendance to Creditors' Meeting

Concertina Order Prac.	Attendance to Meeting					Total
	0-25%	26-50%	51-75%	76-100%	not known	
Yes	3	19	11	25	5	63
No	11	20	17	25	8	81
not known	-	-	-	-	1	1
Total	14	39	28	50	14	145

Concertina Order Prac.	Attendance to Meeting					Total
	0-25%	26-50%	51-75%	76-100%	not known	
Yes	21%	49%	39%	50%	36%	43%
No	79%	51%	61%	50%	57%	56%
not known	-	-	-	-	7%	1%
Total	100%	100%	100%	100%	100%	100%

Concertina Order Prac.	Attendance to Meeting					Total
	0-25%	26-50%	51-75%	76-100%	not known	
Yes	5%	30%	17%	40%	8%	100%
No	14%	25%	21%	31%	10%	100%
not known	-	-	-	-	100%	100%
Total	10%	27%	19%	34%	10%	100%

Concertina Order Practice by Creditors' Attendance to Creditors' Meeting

Concertina Order Practice	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Yes	22	36	5	63
No	31	42	8	81
not known	-	-	1	1
Total	53	78	14	145

Concertina Order Practice	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Yes	42%	46%	36%	43%
No	58%	54%	57%	56%
not known	-	-	7%	1%
Total	100%	100%	100%	100%

Concertina Order Practice	Attendance to Meeting			Total
	0-50%	51-100%	not known	
Yes	35%	57%	8%	100%
No	38%	52%	10%	100%
not known	-	-	100%	100%
Total	37%	53%	10%	100%

Avertion by Entry Route

```
                    ENTRY
            Count   |
            Row Pct |
            Col Pct |                                 Row
                    |     1.00|     2.00|     3.00|  Total
AVERTION    --------+---------+---------+---------+
             1.00   |     7   |     2   |     2   |     11
                    |   63.6  |   18.2  |   18.2  |    7.6
                    |    6.0  |   33.3  |    9.5  |
                    +---------+---------+---------+
             2.00   |   110   |     4   |    19   |    133
                    |   82.7  |    3.0  |   14.3  |   92.4
                    |   94.0  |   66.7  |   90.5  |
                    +---------+---------+---------+
            Column      117         6        21        144
             Total      81.3       4.2      14.6     100.0
```

AVERTION // 1:Yes 2:No
ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b)
2 Via debtor's petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

Chi-Square	Value	DF	Significance
Pearson	6.17500	2	**.04562 (<u>Seems</u> significant at 5 per cent level <u>but</u> see note)**

Number of Missing Observations: 1

<u>Note: 3 cells include observations less than 5 / Therefore not significant.</u>

Avertion by Entry Route

```
                    ENTRY
            Count   |
            Row Pct |                        Row
            Col Pct |     1.00|     3.00|  Total
AVERTION    --------+--------+--------+
             1.00   |      9  |      2  |     11
                    | 81.8%  | 18.2%  |   7.6%
                    |  7.3%  |  9.5%  |
                    +--------+--------+
             2.00   |    114  |     19  |    133
                    | 85.7%  | 14.3%  |  92.4%
                    | 92.7%  | 90.5%  |
                    +--------+--------+
            Column     123       21        144
             Total   85.4%    14.6%     100.0%
```

AVERTION // 1:Yes 2:No
ENTRY ROUTE // 1:No prior procedure (Insolvency Act/Sec.253-3-b) & Via debtor's
petition (Insolvency Act/Sec.274)
3:After a bankruptcy order (Insolvency Act/Sec.253-3-a)

Chi-Square	Value	DF	Significance
Pearson	.12381	1	**.72494 (Not significant)**

Number of Missing Observations: 1

Avertion by Entry Route

Avertion	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Yes	7	2	2	-	11
No	110	4	19	-	133
not known	-	-	-	1	1
Total	117	6	21	1	145

Avertion	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Yes	6%	33%	10%	-	7%
No	94%	67%	90%		92%
not known	-	-	-	100%	1%
Total	100%	100%	100%	100%	100%

Avertion	Entry Route to IVA (1) no prior procedure	(2) via debtor's petition	(3) after a bank-ruptcy order	not known	Total
Yes	64%	18%	18%	-	100%
No	83%	3%	14%	-	100%
not known	-	-	-	100%	100%
Total	81%	4%	14%	1%	100%

Avertion by Entry Route

Avertion	Entry Route to IVA: (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Yes	9	2	-	11
No	114	19	-	133
not known	-	-	1	1
Total	123	21	1	145

Avertion	Entry Route to IVA: (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Yes	7%	10%	-	7%
No	93%	90%		92%
not known	-	-	100%	1%
Total	100%	100%	100%	100%

Avertion	Entry Route to IVA: (1 or 2) no prior procedure, or via debtor's petition	(3) after a bankruptcy order	not known	Total
Yes	82%	8%	-	100%
No	86%	14%	-	100%
not known	-	-	100%	100%
Total	85%	14%	1%	100%

Debtor's View (Debtor's Cooperativeness) by Concessions

```
                    CONCESSI
            Count  |
          Row Pct  |
          Col Pct  |                     Row
                   |    1.00|    2.00| Total
DEBTVIEW   --------+--------+--------+
             1.00  |     3  |    61  |    64
                   |   4.7  |  95.3  |  45.1
                   |  42.9  |  45.2  |
                   +--------+--------+
             2.00  |     1  |    30  |    31
                   |   3.2  |  96.8  |  21.8
                   |  14.3  |  22.2  |
                   +--------+--------+
             3.00  |     3  |    44  |    47
                   |   6.4  |  93.6  |  33.1
                   |  42.9  |  32.6  |
                   +--------+--------+
            Column       7      135      142
             Total     4.9     95.1    100.0
```

DEBTVIEW // 1:Agree (Cooperative) 2: Disagree (Not cooperative) 3: Neutral
CONCESSI // 1:Yes 2:No

Chi-Square	Value	DF	Significance
Pearson	.41186	2	**.81389 (Not Significant)**

Number of Missing Observations: 3

Debtor’s View (Debtor’s Cooperativeness) by Concessions

Debtor’s Cooperativeness to IVA	Concessions			Total
	Yes	No	not known	
not cooperative	1	30	-	31
neutral	3	44	-	47
cooperative	3	61	-	64
not known	-	1	2	3
Total	7	136	2	145

Debtor’s Cooperativeness to IVA	Concessions			Total
	Yes	No	not known	
not cooperative	3%	97%	-	100%
neutral	6%	94%	-	100%
cooperative	5%	95%	-	100%
not known	-	33%	67%	100%
Total	5%	94%	1%	100%

Debtor’s Cooperativeness to IVA	Concessions			Total
	Yes	No	not known	
not cooperative	14%	22%	-	21%
neutral	43%	32%	-	32%
cooperative	43%	45%	-	44%
not known	-	1%	100%	2%
Total	100%	100%	100%	100%

Debtor's View (Debtor's Cooperativeness) by Sex (Sex of Debtor)

```
                     SEX
            Count   |
           Row Pct  |
           Col Pct  |                          Row
                    |     1.00|     2.00|  Total
DEBTVIEW   --------+---------+---------+
             1.00   |     53  |      9  |     62
                    | 85.5%   | 14.5%   |  44.6%
                    | 46.1%   | 37.5%   |
                    +---------+---------+
             2.00   |     27  |      4  |     31
                    | 87.1%   | 12.9%   |  22.3%
                    | 23.5%   | 16.7%   |
                    +---------+---------+
             3.00   |     35  |     11  |     46
                    | 76.1%   | 23.9%   |  33.1%
                    | 30.4%   | 45.8%   |
                    +---------+---------+
            Column      115        24       139
             Total    82.7%     17.3%    100.0%
```

DEBTVIEW // 1:Agree (Cooperative) 2: Disagree (Not Cooperative) 3: Neutral
SEX // 1:Male 2:Female

Chi-Square	Value	DF	Significance
Pearson	2.16403	2	**.33891 (Not Significant)**

Number of Missing Observations: 6

Debtor’s View (Debtor’s Cooperativeness) by Sex (Sex of Debtor)

Debtor’s Cooperativeness to IVA	Sex of Debtor		Total
	Male	Female	
not cooperative	27	4	31
neutral	35	11	46
cooperative	53	9	62
Total	115	24	139

Debtor’s Cooperativeness to IVA	Sex of Debtor		Total
	Male	Female	
not cooperative	87%	13%	100%
neutral	76%	24%	100%
cooperative	86%	14%	100%
Total	83%	17%	100%

Debtor’s Cooperativeness to IVA	Sex of Debtor		Total
	Male	Female	
not cooperative	23%	17%	22%
neutral	31%	46%	33%
cooperative	46%	37%	45%
Total	100%	100%	100%

Success of Failure by Duration of IVA

```
                     DURATION
           Count  |
           Row Pct |
           Col Pct |                    Row
                  |    1.00|    2.00| Total
SF         --------+--------+--------+
             1.00  |    47  |    43  |    90
                  |  52.2  |  47.8  |  68.7
                  |  68.1  |  69.4  |
                  +--------+--------+
             2.00  |    22  |    19  |    41
                  |  53.7  |  46.3  |  31.3
                  |  31.9  |  30.6  |
                  +--------+--------+
            Column      69       62      131
             Total    52.7     47.3    100.0
```

SF // 1: Success 2:Failure
DURATION // 1: Up to 3 years (incl.3 years)   2: More than 3 years

Chi-Square	Value	DF	Significance
Pearson	.02331	1	**.87865 (Not Significant)**

Number of Missing Observations: 14

Success of Failure by Duration of IVA

End Result of IVA	Duration of IVA			Total
	up to 3 years	more than 3 years	not known	
Success	47	43	7	97
Failure	22	19	4	45
not known	-	-	3	3
Total	69	62	14	145

End Result of IVA	Duration of IVA			Total
	up to 3 years	more than 3 years	not known	
Success	68%	69%	50%	67%
Failure	32%	31%	29%	31%
not known	-	-	21%	2%
Total	100%	100%	100%	100%

End Result of IVA	Duration of IVA			Total
	up to 3 years	more than 3 years	not known	
Success	48%	44%	8%	97
Failure	49%	42%	9%	100%
not known	-	-	100%	100%
Total	48%	43%	9%	100%

Success of Failure by Duration of IVA

End Result of IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	60- months	not known	
Success	13	12	22	17	21	5	7	97
Failure	2	7	13	3	13	3	4	45
not known	-	-	-	2	-	-	1	3
Total	15	19	35	22	34	8	12	145

End Result of IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	60- months	not known	
Success	87%	63%	63%	77%	62%	63%	58%	67%
Failure	13%	37%	37%	14%	38%	38%	33%	31%
not known	-	-	-	9%	-	-	8%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%

End Result of IVA	Duration of IVA							Total
	0-12 months	13-24 months	25-36 months	37-48 months	49-60 months	61- months	not known	
Success	13%	12%	23%	18%	22%	5%	7%	100%
Failure	4%	16%	29%	7%	29%	7%	9%	100%
not known	-	-	-	67%	-	-	33%	100%
Total	10%	13%	24%	15%	23%	6%	8%	100%

Success or Failure by IP Firm's Size

```
                     IPSIZE
            Count  |
            Row Pct |
            Col Pct |                         Row
                    |     1.00|     2.00|  Total
SF          --------+--------+--------+
              1.00  |      39  |      58  |     97
                    |   40.2  |   59.8  |   68.3
                    |   68.4  |   68.2  |
                    +--------+--------+
              2.00  |      18  |      27  |     45
                    |   40.0  |   60.0  |   31.7
                    |   31.6  |   31.8  |
                    +--------+--------+
            Column       57        85       142
             Total     40.1      59.9     100.0
```

SF // 1:Success 2:Failure
IPSIZE // 1:Big Firms (Big Six Firms & National Firms)
2:Small Firms (One-Office firms & Two-Office Firms)

Chi-Square	Value	DF	Significance
Pearson	.00054	1	**.98139 (Not significant)**

Number of Missing Observations: 3

Success or Failure by IP Firm's Size

End Result of IVA	IP Firm's Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Success	8	31	55	3	97
Failure	8	10	24	3	45
not known	-	1	2	-	3
Total	16	42	81	6	145

End Result of IVA	IP Firm's Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Success	50%	74%	68%	50%	67%
Failure	50%	24%	30%	50%	31%
not known	-	2%	2%	-	2%
Total	100%	100%	100%	100%	100%

End Result of IVA	IP Firm's Size				Total
	Big Six Firms	National Firms	One-Office Firms	Two-Office Firms	
Success	8%	32%	57%	3%	100%
Failure	18%	22%	53%	7%	100%
not known	-	33%	67%	-	100%
Total	11%	29%	56%	4%	100%

Success or Failure by IP Firm's Size

End Result of IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
Success	39	58	97
Failure	18	27	45
not known	1	2	3
Total	58	87	145

End Result of IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
Success	67%	67%	67%
Failure	31%	31%	31%
not known	2%	2%	2%
Total	100%	100%	100%

End Result of IVA	IP Firm's Size		Total
	Big Firms	Small Firms	
Success	40%	60%	100%
Failure	40%	60%	100%
not known	33%	67%	100%
Total	40%	60%	100%

Sample Interviews

Interview with: Mr P… G….., Coopers & Lybrand,
Charnwood Court, New Walk, Leicester, LE11 6TE
and
Mr Emin Akcaoglu, Banking Centre, Loughborough University

27 May 1998

EA We've realised that IVAs are more successful or success if more likely, if the debtor is co-operative. Although there are some cases where the debtor is not co-operative the result is a success. However, as I said before the tendency is the opposite, if they're co-operative the likelihood of success is higher. Can you comment on this? Or, if I ask you why they can be non-co-operative - what kind of reasons can you give me for this?

PG The experience that we had of failed IVAs, I would say is not necessarily due to non-co-operation - it's usually due to business issues, in other words, the business just has not performed as they expected it to, or their income has dropped. I can only really think of one particular IVA where the debtor is, what I would class as, non-co-operative, and with that one we really - if you like - had our concerns that that person may be non-co-operative at the start, we made sure that the arrangement itself provided all the protections that we could build into it, to ensure that that did not expose the creditors. In other words, making sure that there was a charge over the property that was involved and effectively making sure that most of the assets that she was promising to put into the arrangement were put in pretty much in advance. So, the non-co-operation didn't have a huge bearing on the success of the IVA itself. But I have to say, in my experience, that non-co-operation hasn't been the main problem. If there has been non-co-operation it has followed, or has been as a result of failure to reach the result that they were expecting.

EA Some of the IPs told me that - in indirect cases - they agreed that the result that they have got - and they said that one of the reasons can be the priorities of debtors before the start of an IVA - do you think that is logical - for example, they say that initially before accepting an IVA route they are ready to accept anything about, let's say, the payment procedure - they say that I can pay £500 per month, more than that I'm ready to do anything for that, but when the IVA starts, after that point in time, they think that their priorities are different.

PG Yes, there's no doubt that the relationship between the nominee and the debtor is different from the relationship between the supervisor and the debtor, simply because the relationship before the IVA is more one-off, the debtor requiring help. Whereas afterwards, the debtor is, if you like, being requested to perform their obligations. We haven't had a major dispute with a debtor after the IVA - the only one I can think of was relating to something which was supposedly said before the IVA but in fact wasn't a problem and we have the documentation to prove that it wasn't ?brought?. No, I can't think of, although the relationship is different, I can't think of any specific ones where there became such a breakdown in the relationship, or they wouldn't co-operate with what we were asking them to do that it caused a real problem. I think that it's a question of making sure that balancing the costs of the Review process through the IVA with making sure that you've retained a decent relationship with the debtor so that they will adhere to your reasonable requests to increase the contribution. I think that if you only do it by a paper process you're only going to get one answer which is I can't afford to pay any more.

EA If we talk about the creditors meeting, do you think that those meetings are really important in terms of the result of an IVA? Which kind of relationship are there that we can expect - are there many who violate agreements between the debtor and every single individual creditor? Or is there ???? regular agreement between the debtor and the creditors altogether?

PG Its 90%, 99% is multi-lateral agreements. There are very few occasions where there is an agreement different with one particular creditor, if it is its purely for trading reasons, that that particular creditor is essential. The law stipulates that you've got to make sure any such arrangement like that is transparent to all the creditors, so that everybody knows about it. So everybody gets the chance, if you like, to approve or disapprove of one particular creditor being treated differently from the others. We're usually able to persuade the debtor that it's not necessary to treat any creditors differently. In the odd case they'll want to, but it's very rarely that one creditor is different from the others, as opposed to a particular class of creditors.

EA What about the attituide of the Inland Revenue or Customs - these kinds of governmental organisations - I get the impression that they just dictate a settled modification at the meeting to the debtor. Can we say that ...

PG Sorry, I've perhaps misunderstood what you're driving at there. Are you talking about situations where one creditor puts forward a shopping list of modifications about a particular ...

EA Yes. Take it or leave it approach.

PG Yes, even with the Inland Revenue, they have this shopping list that they say, they seem to have become a little bit more helpful, because in recent letters they've said on the face of the letter, whilst they want all these modifications if they cause a problem and my vote would effectively reject the arrangement then I've no problem with you adjourning the meeting and talking to me about it. So they have raised the shutters a little bit to that extent. It is quite frustrating though when Customs and the Revenue put forward this long list of modifications because some of them don't clearly apply to the situation that you're in and there's the odd one that totally changes the whole structure of the arrangement.

EA Do you that that those modifications are really important and vital to the result of the IVA?

PG No, because quite a few of them are designed purely to ensure that the Customs or the Revenue is properly treated in the future which may be a good indicator of whether the debtors business is performing properly in the future, but it's very much weighted in favour of that particular creditor. You could almost argue that putting those modifications in might be unfairly prejudicial to other creditors. Why should an IVA fail just because a VAT return is late. I personally don't see that as any particularly valid excuse to fail an IVA, because if you look at it outside of bankruptcy, just because a return is late, outside a PA's role, just because a return is late the Revenue or Customs wouldn't have any authority to bankrupt a debtor solely on that basis. ???? chasing their debt.

EA If we classify modifications, let's say, under three major points like contingency modifications, modifications like windfall or gains or a second group non-contingency or non-contingency modifications, modifications about property, modifications about future income stream, and if you say that the third group can be administrative modifications. Which group or modifications can be really important for the result rather than the others?

PG	When you say "important"

EA	If it would be a factor on the result of the IVA.

PG	Well the contingency modifications aren't really a problem because we tend to have built them into most of our proposals anyway, so there's already a windfall clause there. So, I would tend to say that that would not be a problem for an IVA - they're already there.

Again, skipping on to the administrative ones, that's rarely a problem because most of what you use there, modifications come up with, again are either already in the proposals that we drafted or in the standard conditions that we have, or they're just clarifying something. We had one that said we'd estimated a certain fee level, and one of the modifications was "the supervisor shall have no more than that over the term of the IVA". And we just said, do you mind if we say we'll have no more than that, unless creditors approve it, if the majority of creditors approve it, and they said no. We don't have a problem with those type of modifications. Generally administrative ones, no, they're pretty easy to deal with.

The non-contingent ones is probably the bigger problem because what you have is, the way we try to do the IVAs is to try to get the debtor to put his best offer forward right at the start, and try not to have the creditors meeting as some sort of a bargaining process or negotiating place. So, if you like, we've tried as best we can to go through that process of making sure the debtor is giving as much as they can decently afford, without them not wanting to get up for work in the morning! Sometimes, when we get to the meeting and some of the tougher creditors shall we say, are after a bit more here and a bit more there, it's quite a prospective process, because we've already have been through that to a large extent. There are occasions when it's right, because perhaps the debtor has not been as forthcoming with us as they will be in the heat of the creditors meeting. But, generally they're the one's that cause the problems, the non-contingent ones, where the creditor is trying to get a bit more.

EA If we go back to the creditors meeting again. From the viewpoint of the creditors, to use their votes by person there, or by using proxy - can these differences effect the result of the meeting. In terms of modifications essentially.

PG Yes it can. I'll say that where you've got a professional there. A professional IP representing a creditor - I'm thinking more in terms of me representing creditors at other meetings, what I would try to do is make the voluntary arrangement more certain, and less open to variation due to circumstances, like the Supervisor's fees going through the roof, or there being no real default clause that said, if they're three months behind on their contributions then either there's another creditor's meeting to discuss it or it's a failure. If there's no actual trigger there it's a far too loose an IVA, so from that point of view, it's very helpful to have an IP actually representing a creditor at a meeting. They can make it much more robust. From the point of view of sitting at the top table with the debtor on proposals that we've prepared, again I don't know if probably IP's being there, but they will try to make it slightly more robust where they think it needs it. The times when its unhelpful is when there is perhaps a particularly aggressive proxy holder who is seeing a dark side to the debtor that isn't really there. Some of them may be misjudged - an honest debtor is somebody who is trying to avoid their creditors or being particularly silly rather than just somebody who honestly got it wrong. Sometimes that's a problem where you've got an insolvency practitioner as a proxy holder, a professional proxy holder shall we say. Where you've got somebody who's just come along to represent themselves, they fall into two categories - there are one's who just sit there and say nothing, and just nod and vote in the right places and don't really seem to understand the process properly despite our efforts to make the documentation as ?? as possible. They're a bit in awe of the process sometimes. But then, there's a second category of people representing themselves who are actually very helpful in terms of being able to put the debtors problems in perspective for everybody else if they know them a bit better, they would be able to say, either you've made promises over a period of months that you've not kept to, or sorry to hear about your problems Mr Debtor and I hope this works for you, and I don't hold it against you. They're quite useful to have around, because they can give you the real perspective on what's happened before basically.

EA Our results shows that if the difference between dividend of IVA and bankruptcy is around 10p the likelihood of success is higher than the case of the difference around 20p. So if, the dividend is the difference is smaller, around 10p, the success will be more likely. If the dividend difference is around 20p again the likelihood in general is success, but lesser than the first indication. What can be the reason for that?

PG I wasn't aware of that. No, it surprises me, but if I try to think of the reasons for that might be, it might be that creditors think that the 20p extra dividend is actually unlikely to happen in reality. I wonder also whether your statistics tell you whether the difference in the results between different practitioners. Is this across the board?

EA Yes

PG From my perspective I know that different practitioners present the information in different ways. Some of them, for instance, won't present a realistic estimate of how much an IVA is going to cost. Some of them don't even put an estimate of the costs in. You are really coming up with alot of guesswork to work out what the dividends are. So, if that's covering the statistics you've got, then I find it difficult to comment. I can only think that the creditors were thinking - the extra 20p just isn't going to happen or its income stream is that the guy's not going to be able to afford it, if he can afford it why has he got into this mess? That's the only thing I can suggest.

EA Do you think that it can be related to those modifications especially non-contingent modifications? Do you think that in the case of ??? difference, many or too many non-contingent modifications so at the initial stage, at the beginning of an IVA the guesswork shows that the dividend in IVA will be much higher so you're putting many modifications not contingent ?? at that time will this process discourage debtors, so instead of success the case becomes a failure?

PG Are you suggesting failure after the meeting rather than the rejection of the ... You're talking about failure after the meeting, rather than rejecting the proposals themselves.

EA No, what I'm saying is that, they're accepting the IVA proposal, so IVA starts because when you look at the proposals the benefits to the creditors will be really high, the projection shows that there will be quite high dividends, however, to be able to do that the proposal needs to be modified alot by putting non-contingent modifications. Although it's accepted at the initial stage, because those modifications are not reflecting the reality although the guess is that at the beginning ...

PG I think that some of those are just too unrealistic. There needs to be a better process of modifying an arrangement through the course of it. Because there isn't really any structure in place, it is evolving in some sets of proposals but the law is still pretty unclear as to say what majority you would need at a variation. There are different views. There ought to be a procedure that becomes automatic in certain circumstances perhaps. For instance, maybe just where the supervisor considers that there is a variation that would be worthwhile continuing, because you may be two or three years into a voluntary arrangement and there is something going wrong which is technically default, and if somebody has stuck in a modification that says three months default and it shall be bankruptcy, supervisors don't have the discretion to call the meeting of creditors which might actually be in our interests. That's definitely something which to be honest it doesn't help when those modifications are put forward, without the proposer of the modifications attending the meeting. Because if they attended or they've maybe faxed even modificate a few days in advance of the meeting, instead of the evening before as tend to do, then you can go back to them and say, look instead of just three months arrears in bankruptcy can we say three months arrears in bankruptcy unless the supervisor considers the issue ?culminating? to vary. And they very often agree. But because they don't turn up to the meeting or they faxed it very late, they don't always get the chance to suggest that amendment to their modifications.

EA Can we say that there are two basic types of IVAs: asset-based IVAs and income stream IVAs and this result 20p can be a problem can be seen in terms of especially asset-based IVAs because at the initial stage the professionals or let's say, valuation professionals are not valuing the asset really. Because of that ...

PG I don't know. I couldn't answer that one. That's not been the case with any of ours that I can think of. The only asset-based one that failed was where to some extent actually obtaining the asset was out of the control of the debtor and he didn't manage to achieve it - so it failed. It wasn't an evaluation issue. There was another one, that I've been involved in, where the dividend is going to be much lower because the valuations was over-stated at the start, but I wouldn’t put that down to - that particular case was very difficult to value because it was a particularly specialised piece of property, it wasn’t a straightforward “96 Suburbia Avenue” - so there were mitigated circumstances for the valuer.

EA Some IPs think that income-stream IVAs are reflecting the future dividends better than the others because you can estimate this kind of income, he, the debtor, or she, will debt in the future. Do you agree with this?

PG No I don’t. I would have expected an asset-based one to be far more secure. Because if you’ve got an asset you ought , within a reasonable range, know how much you are going to achieve in realisations, and because it’s a straightforward realisation process you ought to know roughly how much it’s going to cost to do it. The only problems arise is when you’re second or third in line after chargeholders have wrapped-up more interest by the time it’s been sold. Maybe that’s the reason that that becomes a problem. In my experience the income stream IVAs we’ve had - the best one’s have been the one’s that have had the flexibility to cope with say seasonal fluctuations or problems arising through the course of the IVA, as invariably will be if you’ve managed to persuade them to present a decent income contribution at the start. The problems arise when the business performance “falls off a cliff” and they are made unemployed by that. Some of those you can’t do anything about.

EA Only a few questions left now.

The result shows that if a debtor goes to an IVA after a bankruptcy order the likelihood of choosing a bigger IP firm is higher. What is the reason for that? If it’s correct.

PG I would think one of the reasons would be that the Official Receiver would be referring the debtor to a particular - a number of practitioners who may be on a rota. That’s probably the obvious one. The second one is perhaps because the debtor perceives that a larger firm will have a bigger influence with creditors, the Official Receiver, and the Judge. They’re the things that spring to mind immediately, I don’t know if they’re the right reasons. It may also be that, perhaps I’m being unkind to the smaller practitioners, but it may be that the smaller practitioners don’t particularly want the extra paperwork and hassle that goes with a larger bankruptcy order. I know the Courts will look at a bankrupts IVA slightly more stringently than a proposal for a non-bankrupt. Their guidelines for instance would also require the bankrupt to attend whereas that doesn't always need to happen - when he's not a bankrupt.

EA If IPs are ...

END OF TAPE

Interview with: Mr S…. S….. Griffin Credit Services, Birmingham,
and
Mr Emin Akcaoglu and Mr Keith Pond, Banking Centre, Loughborough University

28 July 1998

SS I think you said earlier what we have done is we have utilised the questionnaire survey to understand certain points about the IVA trends for 1994 and 1995 and there are some points which are more significant than the others in terms of the critical success factors of IVAs. The first one that I'm going to ask about is the debtors co-operation issue. What we have realised that, if debtors are co-operative through the IVA process, the result is generally, or more than likely, a success. So what we wonder is that when we say debtor' co-operation, what do you understand, and what reasons are behind that for being co-operative or not co-operative.

SS OK. To me a debtor who is being co-operative is one who is maintaining payments, as agreed, and in instances where he can't maintain those payments, or wishes for a review, contacts the IVA practitioner immediately and says so.

EA If he is not co-operative what is the reason?

SS Perhaps he was too optimistic when entering into the Proposals, perhaps he was coerced into entering into the Proposal by modifications being sought by the creditors. Or, lastly more cynically perhaps he was just using the process to get out of his obligations, he doesn't perhaps perceive that there can be any enforcement that can be taken against him, other than being made bankrupt. He may have resigned himself to the fact that he has decided if that's what's going to happen, then it's going to happen.

EA I'll ask you another question which can also be related to this point to a certain extent. What we have realised that, we have looked at the differences between IVA dividends and bankruptcy dividends, and the picture seems to us that if the dividend difference is around 10p, 20p but not more than that - the cases are more successful than those cases which have that difference around 20p in the pound, more than 20p. What is the explanation for this. We thought a certain point about modifications again in terms of the initial stages of an IVA because when you are talking about the bankruptcy dividend, it's always an estimation. Or if you're thinking about an IVA dividend it's also an estimation. So do you have an explanation for that.

SS	No, could it be anything to do with including his property in the bankruptcy whereas it might be excluded in an IVA? Could that have something to do with it. I don't know.

KP	One of the main advantages of the IVA is you can exclude assets. everyone's agreeable with that?

SS	So whereas in a bankruptcy, you'd be less likely to exclude something like a matrimonial home, in an IVA you might be able to negotiate that.

KP	OK I think that might be something outside S…'s experience. It's something that the Insolvency Practitioners have certainly had more of a say on that.

EA	Perhaps the major point which could be in your interest is about this. We have found that if the creditor had a contact with creditors before the ?inter-model?

SS	With other creditors?

EA	Yes, with other creditors, that is the likelihood for pursuing the concertina ... Do you have any idea or explanation for this?

SS	What do you mean by concertina practice?

KP	That's the High Court Order that allows - if it's a straightforward IVA that the Insolvency Practitioner can go the Court and say, look, we're applying for an Interim Order, we've got creditor approval, co-operation, I don't have to go through the rigmarole of the Nominees Report, before we get to the Creditors Meeting, I just want you give ??? the Interim Order and I have a Creditors Meeting because this is a straightforward case, no complications, no-one's disagreeing.

SS	So what you're saying is dialogue between the creditors prior to that being proposed. I personally don't like the idea of IVA practitioner's being able to informally approach creditors and try an attempt to gain an idea of what their reactions are going to be. I prefer them to formalise it. An in fact, one of the things I was going to show you was I've got, I'll talk to you about later, but there seems to me to be two ways to look at it.

i) is from the Court's point of view it seems sensible that somebody's approached the major creditors to get an idea of where they are going to be coming from, so that when the Interim Order is actually sought, they can say well I've already spoken to Midland Bank who wrote 50% - and they're quite happy with that. But it also seems to me to be a way open to abuse where you can actually find out how low some creditors might - so somebody might come up to them and say how would you feel if the dividend was around 4p in the pound. But in fact the dividend might be alot higher, so without having to go through the formal process they're actually approaching creditors. So I would probably want them to formalise it before they spoke to them.

EA An IP told me that if the debtor goes to creditors before the ?inter-model? it could be a problem for himself because the creditors can think in another way, by petitioning for bankruptcy over the debtor.

SS It may pre-empt that action, I would certainly say if somebody was making an informal approach then I don't think we would do it, but certainly some unscrupulous creditors might actually take that as being forewarned and actually go in. Because there's no formalisation of the process there, so they might decide, well we'll make an application for a Charging Order or do the petition as you said there. So there's a danger both sides really. I'm not particularly happy with it because it seems to me somebody's sounding out my views without going through a formal process and it could backfire on the debtor as you say there.

EA Another issue, is about IP firm size and source as an introduction to the IVAs. What we've seen in our results is that if IPs are introduced to debtors by a professional such as a solicitor the likelihood of a choice of a big - smaller IP firm is higher than another option such as that if an IP is introduced by a family member or Yellow Pages or anything like that, the likelihood is more to choose a bigger IP firm.

SS Is that a fact, that surprises me, I would have thought that solicitors would probably point them towards the way of the larger firms, but what you're saying is that if a professional advisor is advising a debtor he's more likely to point the debtor towards a smaller practitioner.

EA There's only one exception in that case in our sample study. It's about the accountants. If an accountant are introducing they prefer big firms, but solicitor's or bank's are generally introducing smaller firms.

SS I'm surprised banks are introducing more of them.

KP I'm wondering if behind that there's some idea on say a creditors point of view, whether big firms are going to be more expensive than small firms. Do you have a view on that?

SS My own view would be that I think that the larger the firm the more I can rest assured that they will not be the sort of Maverick type. Having spoken to some of the partners within KPMG and the accountants that we've used they were quite forthright in saying that there would be a certain number of people that they would turn away if there was any doubt in their mind as to whether that person was trying to con them or wouldn't be able to sustain an IVA, they would turn him away. And there seems to be a logic in that that they would. Whereas I wonder whether a small firm that relies on that for his day-do-day bread-and-butter would turn even somebody that was using the rules a little bit, whether they would turn them away, so that's my prejudice against them, so I'd probably be like the accountant recommending the larger firm probably. It certainly has more impact when you see the old Shaws and stuff like that coming through and you get a partner of KPMG that's the IVA practitioner, it gives me a certain degree of confidence. So it's a bias there.

KP Well, I think there you have your rationale for why they're doing this job.

EA Some IPs were talking about personal connections on this issue.

SS That's right. I think if you go along to a solicitor, then he probably knows a smaller firm that he plays golf with rather than the big firm where he's less likely to know personally people within that firm.

EA Some IPs said that because accountants are initially trained in bigger firms, so they have contacts with

SS Loyalty.

EA Yes, although even though they are running their own small company's. Another thing is entry-route to an IVA. Obviously there are three routes to an IVA and one of them is after a bankruptcy order. What it seems is that if a debtor follows the entry route namely, enters an IVA after a Bankruptcy Order the likelihood of a choice of a big firm IP firm, is really higher than choosing a smaller firm. What do you think is the reason for this?

SS I'm just trying to remember now, what I said in that paper. This is where the guy has actually been made bankrupt but somebody somewhere along the line thinks well there's no need for him to go ... it might be. I don't know who it is, is it the Official Receiver?

KP Well they'd be the Trustees the first choice and any fee paying cases they tend to shift off to whoever's on the Court Roll.

SS And the question is if why after, if you take that third route into IVAs is the choice for a large firm of accountants even greater? That was the question wasn't it? I don't know.

EA These are the basic things we would like to ask and there are some things about the Creditors Meeting and modifications issue perhaps. I told you something about the dividend difference issue, so what we thought is that, because if

TAPE TURNED OVER AT THIS POINT.

EA If you're putting too much pressure on the debtor, by putting lots of modifications in the IVA, obviously your estimation for the difference between the IVA and a possible bankruptcy can be higher at the initial stage but at the same time you are discouraging the debtor to co-operate perhaps, because he can say yes, I've got the time now, I can choose bankruptcy if I'm not able to continue in this process, etc, etc. So at this stage perhaps we should consider the Creditors Meeting because as we know even though those meetings some creditors are voting by proxy and some are voting by attendance, and obviously the result of these two types of voting can influence the process of the meeting. What we think is that there must be some creditors who are just sending their shopping list, as their modification lists like Inland Revenue list for modifications or

Customs and Excise or they can go their and negotiate. Initially we can expect that that meeting should be a negotiation process so that would be an agreement multi-lateral agreement between the creditors and the debtor. What's your view about that? If they are voting, the creditors, by proxy, could the process of a meeting be different from if they are voting by person, and do you think that that meetings are creating a multi-lateral agreement between the debtor and the creditors or bringing lots of many bi-lateral agreements between the debtor and every single individual creditor?

KP What is your view of the process in the Creditors - what actually happens in the Creditors Meeting?

SS I'm quite happy with that process and I think the Supervisor that's representing the debtor should be strong enough to stand his corner and represent the debtor properly, so if the view is that if he's been coerced into too many modifications he should be able to respond to each of those requests for a modification and explain why it's not feasible to go with that modification. I certainly don't agree with the shopping list approach which is adopted heavy-handedly by the Inland Revenue, mainly because they know that they're going to be at the front so that if the guy does get made bankrupt, because they're taking a very, I believe, a very selfish view, so they're saying well the chance is that we will recover a fair proportion of our debts anyway even if he goes down the bankruptcy route so we're going to insist on this, that and the other. I wonder whether there shouldn't be some sort of controls over that actually, to stop people doing that because the whole idea of a Meting of Creditors is yes, you have power by the actual value of the debt but I think there needs to be some sort of "pulling-in" of - because it's almost like, it seems to me, that the to use an analogy, the creditors are being unleashed on this debtor and his Insolvency Practitioner is sitting in the corner and it's the larger dogs that are baying away to him while the other one's are having to take their turn at the back. And I think that's a bit unfair so, whilst the logic of it is sound in a way, that the largest creditor should have that I think it doesn't create an environment where everybody's views are represented. So I do think there needs to be some control, which I don't think there is at the moment, because that is the control, isn't it, that the people with the largest debts, by value, ...

KP Typically, the Inland Revenue won't attend.

SS So - the shopping list - I don't agree with that, if that's what you're asking. I don't see how else. To be honest, I'll probably go as far as to say, that if you want to have the vote and you want to have modifications you should be attending. I must be radical, I think that's what I would say. To prevent all that, let's have people actually attending and sounding ... Because if you submit a shopping list, the point I made earlier about the Insolvency Practitioner being able to respond to you, I think that on the face of it is unreasonable, can we look at that again in a bit more detail as to exactly what you're proposing. That option is taken away from you, from the Insolvency Practitioner, who will say that 75% of the debt is owed to Inland Revenue, four of the creditors have attended but the whole thing is being swayed, or held to ransom almost, by this one creditor who is not even there! I would say they can only ask for modifications if they attend. There you are, how's that!

KP Put that in the next Review of the Insolvency ???

EA If I ask you perhaps a last question, I think you have also seen that in the Report that there are three major kinds of modifications, administrative, non-contingent, and contingent. Obviously, non-contingent ones are more critical than the others, because you're talking about the debtor's income or co-operative, whatever. Do you think that those modifications, we talked about the same issue before, but I want to just understand your view about that in a certain extent. Do you think that those modifications can really be effective on the co-operation of the debtor. If you are putting to much, I think the Inland Revenue does it in many cases which can discourage.

SS Are you talking about the non-contingent ones?

EA Yes, like the debtor's income stream or ????? house. If you're asking him to increase the amount of contribution to the IVA obviously you are just pushing him.

SS Yes, I suppose that comes down to how much faith the creditors have got in the Insolvency Practitioner that is representing him. I would only push at that point where I felt that looking at his income and outgoings, that really he could legitimately afford more, so I am really questioning the Insolvency Practitioner's homework there, rather than putting the debtor on the spot. So if I'm asking that he should contribute not £200 but £300 to him, I really trying to quiz the Insolvency Practitioner to see if he's actually looked properly at his income rather than the debtor himself. Because I would expect the debtor to volunteer less than what he could afford.

END OF INTERVIEW

APPENDIX B

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APPENDIX C

GLOSSARY OF INSOLVENCY EXPRESSIONS (E & W)

(Note: The definitions are not intended to be exhaustive summaries of the Law.)

ADMINISTRATION ORDER

(1) An administration order is a court order placing a company that is, or is likely to become, insolvent under the control of administrator following a petition by the company, its directors or a creditor. The purpose of the order is to preserve the company's business allow a reorganisation or ensure the most advantageous realisation of its assets whilst protecting it from action by its creditors.

(2) The administration of the insolvent estate of a deceased debtor.

(3) County court process permitting an individual with modest debts to pay off instalments. No insolvency practitioner is involved.

ADMINISTRATIVE RECEIVER

An insolvency practitioner appointed by the holder of a floating charge covering the whole, or substantially the whole, of a company's property. He can carry on the company's business and sell the business and other assets comprised in the charge to repay the secured and preferential creditors. Sometimes abbreviated to receiver.

ADMINISTRATIVE RECEIVERSHIP

The term applied when a person is appointed as an administrative receiver. Commonly abbreviated to receivership.

ADMINISTRATOR

An insolvency practitioner appointed by the court under an administration order to achieve the purposes set out in the order. The administrator will need to produce a plan for approval by the creditors to achieve this.

AGRICULTURAL RECEIVERSHIP

A special remedy to take control of the assets of a farmer under the Agricultural Credits Act 1928.

ASSOCIATES

Associates of individuals include family members, relatives, partners and their relatives,employees, employers, trustees in certain trust relationships, and companies which the individual controls. Associates of companies include other companies under common control (see also connected persons).

BANKRUPT

Bankruptcy is the process of dealing with the estate of a bankrupt.

BOND

Insurance cover needed by a person who acts as an insolvency practitioner.

BREAK-UP SALE

Dismantling of a business. Trading ceases and the assets are sold off piecemeal. Insolvency practitioners prefer to sell as a going concern if possible.

CHARGE

The appropriation of real or personal property for the discharge of a debt without giving the creditor any property in, or possession of, the subject of security.

CHARGING ORDER

Court order placing restrictions on the disposal of certain assets, such as property or securities, given after judgement and gives priority of payment over other creditors.

COMPANY DIRECTORS DISQUALIFICATIONS ACT (1986)

Consolidation Act on the disqualification of directors.

COMPANY VOLUNTARY ARRANGEMENT (CVA)

A voluntary agreement for a company is a procedure whereby a plan of reorganisation or composition in satisfaction of debts, is put forward to creditors and shareholders. There is limited involvement by the court and the scheme is under the control of a supervisor.

COMPOSITION

An agreement between debtor and his creditors whereby the compounding creditors agree with the debtor between themselves to accept from the debtor payment of less than the amounts due to them in full satisfaction of their claim.

COMPULSORY LIQUIDATION

A compulsory liquidation of the company is a liquidation ordered by the court. This is usually as a result of a petition presented to the court by a creditor and is the only method by which a creditor can bring about a liquidation of its debtor company.

CONNECTED PERSONS

Directors or shadow directors and their associates, and associates of the company.

CORK REPORT

Report of the Insolvency Law Review Committee, chaired by Sir Kenneth Cork, upon which the Insolvency Act 1986 is substantially based (command paper 8555,1982).

COURT-APPOINTED RECEIVER

A person, not necessarily a licensed insolvency practitioner, appointed to take charge of assets usually where they are subject to some legal dispute. Not strictly and insolvency process, the procedure may be used other than for a limited company, e.g. to settle a partnership dispute.

CREDITORS' COMMITTEE

A creditors' committee is formed to represent the interests of all creditors in supervising the activities of an administrator or trustee in bankruptcy, or receiving reports from an administrative receiver.

CREDITORS' VOLUNTARY LIQUIDATION (CVL)

Relates to an insolvent company. It is commenced by resolution of the shareholders, but is under the effective control of creditors, who can choose the liquidator.

DEBENTURE

A document stating the terms of a loan, usually to a company. Debentures may be secured on part or all of a company's assets, or they may be unsecured. Often also referred to as a floating charge, and the lender is often referred to as the debenture holder.

DEED OF ARRANGEMENT

Archaic (1914) method for an individual (not a company) to come to terms with creditors short of formal bankruptcy, now almost completely replaced by Voluntary arrangements.

DISQUALIFICATION OF DIRECTORS

A director found to have conducted the affairs of an insolvent company in an "unfit" manner may be disqualified, on application to the court by the DTI, from holding any management position in a company for between 2 and 15 years.

EXTORTIONATE CREDIT TRANSACTION

An extortionate credit transaction is a transaction by which credit is provided on terms that are exorbitant or grossly unfair compared with the risk accepted by the creditor. Such a transaction may be challenged by an administrator, a liquidator or a trustee in bankruptcy.

FIXED CHARGE

A fixed charge is a form of security granted over specific assets, preventing the debtor dealing with those assets without the consent of the secured creditor. It gives the secured creditor a first claim on the proceeds of sale, and the creditor can usually appoint a receiver to realise the assets in the event of default.

FLOATING CHARGE

A floating charge is a form of security granted to a creditor over general assets of a company which may change from time to time in the normal course of business (e.g.stock). The company can continue to use the assets in its business until an event of default occurs and the charge crystallises. If this happens, the secured creditor can realise the assets to recover his debt, usually by appointing an administrative receiver, and obtain the net proceeds of sale subject to the prior claims of the preferential creditors.

FRAUDULENT TRADING

Where a company has carried on business with intent to defraud creditors, or for any fraudulent purpose. It is a criminal offence and those involved can be made personally liable for the company's liabilities.

GOING CONCERN

Basis on which insolvency practitioners prefer to sell a business. Effectively it means the business continues, jobs are saved, and a higher price is obtained.

GUARANTEE

A legal commitment to repay a debt if the original borrower fails to do so. Directors may give guarantees to banks in return for the bank giving finance to their companies.

INDIVIDUAL VOLUNTARY ARRANGEMENT

A voluntary arrangement for an individual is a procedure whereby a scheme of arrangement of his affairs or composition in satisfaction of his debts is put forward to creditors. Such a scheme requires the approval of the court and is under the control of a supervisor.

INSOLVENCY

Defined alternatively as having insufficient assets to meet all debts as and when they are due. If a creditor can establish either test, he will be able to present a winding-up petition.

INSOLVENCY ACT 1986

Primary legislation governing insolvency law and practice. Nevertheless, many other statues and statutory instruments are also relevant.

INSOLVENT LIQUIDATION

A company goes into insolvent liquidation if it goes into liquidation at a time when assets are insufficient for the payment of its debts and other liabilities and the expenses of liquidation.

INSOLVENCY PRACTITIONER (IP)

Person licensed by one of the chartered accountancy bodies, the Law Societies, The Insolvency Practitioners Association or the Department of Trade. The only person who may act as office holder in an insolvency proceeding.

INSOLVENCY RULES

The Insolvency Rules 1986, as amended, provide the detailed working procedures for the provisions of the Insolvency Act 1986.

INTERIM ORDER

An individual who intends to propose a voluntary arrangement to his creditors may apply to the court for an interim order which, if granted, precludes bankruptcy and other legal proceedings whilst the order is in force.

INVESTORS' COMPENSATION SCHEME

A statutory scheme operated by the SIB (Securities and Investments Board) to give individual investors up to £48,000 protection if an authorised investment business collapses.

JUDGMENT

1. Recognition of a debt by a court.

2. Decision given by a court at the conclusion of a trial.

LAW PROPERTY ACT 1925

Governs transactions in law and property. Contains statutory powers of receivers appointed under a fixed charge.

LPA RECEIVER

Law of Property Act 1925 receiver: a person (not necessarily an insolvency practitioner) appointed to take charge of a mortgaged property by a lender whose loan is in default, usually with a view to sale or to collect rental income for the lender. Common in the case of failure of a property developer, whose borrowings will largely be secured on specific properties.

LIEN

Right to retain possession of assets or documents until settlement of a debt.

LIQUIDATION

Liquidation is the process whereby a company has its assets realised and distributed to satisfy, insofar as it is able, its liabilities and to repay its shareholders. The term winding-up is also used. Liquidation is a terminal process and is followed by the dissolution of the company.

LIQUIDATION COMMITTEE

Committee of creditors who receive information from the liquidator and sanction some of his actions.

LIQUIDATOR

Insolvency practitioner appointed to wind-up a company.

MAREVA INJUNCTION

Court order preventing the disposal of assets.

MEMBERS' VOLUNTARY LIQUIDATION (MVL)

A solvent liquidation where the shareholders appoint the liquidator to realise assets and settle all the company's debts in full within 12 months.

MISFEASANCE

Breach of duty in relation to the funds or property of a company by its directors or managers.

MORTGAGE

A transfer of an interest in land or other property by way of security, redeemable upon performing the condition of paying a given sum of money.

NOMINEE

Insolvency practitioner appointed to consider proposals of a debtor in an individual or corporate voluntary arrangement.

OFFICE HOLDER

A liquidator, provisional liquidator, administrator , administrative receiver, supervisor of a voluntary arrangement, or trustee in bankruptcy.

OFFICIAL RECEIVER (OR)

Officer of the court, civil servant, member of the Department of Trade Insolvency Service, deals with bankruptcies and compulsory liquidations.

ONEROUS PROPERTY

The term onerous property in the context of a liquidation or bankruptcy, applies to unprofitable contracts and to property that is unsaleable or not easily saleable or that might give rise to a continuing liability. Such property can be disclaimed by a liquidator or a trustee in bankruptcy.

PETITION

A written application to the court for relief or remedy.

POLICYHOLDERS PROTECTION ACT 1975

An act which established Policyholders Protection Board to provide compensation to the public in the event of the liquidation of an insurance company. The Board will make payment in full of liabilities under certain policies of compulsory insurance and 90 per cent of liability to provide policyholders under other general and investment type policies. Compensation is restricted to individual policyholders or partnerships; corporate policyholders are not protected.

PREFERENCE

A payment or other transaction in the six month to two year period preceding a liquidation, administration or bankruptcy, which places a creditor or a person connected with the insolvent, respectively, in a better position than they would have been otherwise. A liquidator, administrator or trustee in bankruptcy may recover any sums which are found to be preferences.

PREFERENTIAL CREDITOR

Defined in Schedule 6 of The Insolvency Act 1986. Has priority when funds are distributed by a liquidator, administrative receiver or trustee in bankruptcy.

PROOF OF DEBT

Document submitted by a creditor to the insolvency practitioner giving evidence of the amount of the debt.

PROVISIONAL LIQUIDATOR

An insolvency practitioner appointed to safeguard a company's assets after presentation of a winding-up petition but before a winding-up order is made.

PROXY

Document whereby a creditor authorises another person to represent him at a meeting of creditors. The proxy may be a general proxy, giving the proxyholder a discretion as to how he votes, or a special proxy requiring him to vote as directed by the creditor. A body corporate can only be represented by a proxy.

PROXYHOLDER

Person who attends a meeting on behalf of someone else.

RECEIVER

Is often used to describe an administrative receiver, who may be appointed by a secured creditor holding a floating charge over a company's assets. More accurately, a receiver is the person appointed by a secured creditor holding a fixed charge over specific assets of a company in order to take control of those assets for the benefit of the secured creditor.

RECEIVERSHIP

he general term applied when a person is a appointed as a receiver or administrative receiver.

RECOGNISED PROFESSIONAL BODY (RPB)

An organisation approved by the Secretary of State as being able to authorise its members to act as insolvency practitioners.

RESERVATION OF TITLE (OR RETENTION OF TITLE)

A provision under a contract for the supply of goods which purports to reserve ownership of the goods with the supplier until the goods have been paid for. A complex and continually evolving area of law.

SECURED CREDITOR

A creditor with specific rights over some or all his debtor's assets in the event of insolvency. In essence he gets paid first.

SECURITY

A charge or mortgage over assets taken to secure payment of a debt. If the debt is not paid, the lender has a right to sell the charged assets. Security documents can be very complex. The commonest example is a mortgage over a property.

SHADOW DIRECTOR

A person who is not formally appointed as a director, but in accordance with whose directors or instructions the directors of a company are accustomed to act. However, a person is not a shadow director merely because the directors act on advice given by him in a professional capacity.

SPECIAL MANAGER

A special manager is a person appointed by the Court in a compulsory liquidation or bankruptcy to assist the liquidator, official receiver or trustee in managing the insolvent's business. He does not need to be an insolvency practitioner.

STATUTORY DEMAND

A formal notice requiring payment of a debt exceeding £750 within 21 days, in default of which bankruptcy or liquidation proceedings may be commenced without further notice.

SUPERVISOR

The insolvency practitioner appointed by creditors to supervise the way in which an approved voluntary arrangement is put into effect.

TRANSACTION AT AN UNDERVALUE

A transaction at an undervalue can describe either a gift or a transaction in which the consideration received is significantly less than that given. In certain circumstances such a transaction can be challenged by an administrator, a liquidator or a trustee in bankruptcy.

TRUSTEE

Quite apart from its common usage (e.g. under the Trustee Act 1925) this is a term used for a variety of insolvency appointments, including the insolvency practitioner appointed in an English bankruptcy; a Scottish sequestration; a deed of arrangement; a Scottish trust deed and an administration order (of the affairs of a deceased debtor).

UNSECURED CREDITOR

Strictly, any creditor who does not hold security. More commonly used to refer to any ordinary creditor who has no preferential rights, although, in fact preferential creditors will almost always also be unsecured. In any event, the last in the queue, ahead only of the shareholders.

VAT BAD DEBT RELIEF

The relief obtained in respect of the VAT element of an unpaid debt. Previously available only when the debtor became insolvent, relief is now available on any debt unpaid for more than 6 months.

VOLUNTARY LIQUIDATION

See creditors' voluntary liquidation and members' voluntary liquidation.

WINDING-UP

See liquidation.

WINDING-UP ORDER

Order made by the court for a company to be placed in compulsory liquidation.

WINDING-UP PETITION

A winding-up petition is a petition presented to the court seeking an order that a company be put into compulsory liquidation.

WRONGFUL TRADING

Applied to companies in liquidation where a director allowed the company to continue trading in circumstances where he should have concluded that there was no reasonable prospect that the company would avoid going into solvent liquidation. The directors involved may be made personally liable to make a contribution to the company's assets.

Glossary developed from www page maintained by: info@insolvency.co.uk (http://www.info@insolvency.co.uk)