WHAT ARE MY OPTIONS

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Contents

Booklet Abstract

This booklet is intended to provide you with a summary of the various options through which you may be able to deal with your debts. The booklet should be read having regard to the contents of the "Options Discussion Document" that you will also receive.

Each of the four options are explained in further detail and their relevant pages have a colour coded heading to help you review all the information.
(see colour key below).

Colour Key for each section of this booklet

= Individual Voluntary Arrangement (IVA)

= Debt Management Plan (DMP)

= Debt Consolidation

= Bankruptcy

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How does an IVA work?

An IVA is a formal insolvency process and is an alternative to Bankruptcy. In essence, an IVA is a contract that you enter into with your creditors whereby you agree to repay a certain percentage of your debt over a fixed period of time (usually 5 years although they can be shorter where a cash lump sum can be raised). The amount you pay back is dependant upon your circumstances and it will differ from case to case for that reason.

What you need to know

~ In order for an IVA to be an option open to you, you must be insolvent. Generally speaking, you need to have personal/joint debts in excess of £15,000, a regular source of income and a reasonable disposable income available to you each month (assuming you would no longer be making contractual payments to your creditors).

~ By law, you will require the assistance of an Insolvency Practitioner to assist you with the IVA process – this is McCambridge Duffy's area of expertise.

~ An IVA will afford you an opportunity to safeguard assets and such opportunity would not be available under the other options. For example, creditors will normally allow a homeowner to remortgage their home in an IVA and introduce a cash lump sum for their benefit rather than seek to force a sale of that property.

~ If you wish to attempt an IVA McCambridge Duffy can help you to draft an IVA proposal which will then be sent to creditors for their consideration. A date will be set for your creditors to meet to determine whether or not they are willing to accept the terms of your proposal and, if agreement is reached by the necessary majority, both you and your creditors will be bound by the agreed terms of the IVA.

~ It is very common for creditors to seek to modify the terms of your proposal. Modifications will always seek to provide creditors with a better return and typically creditors will not agree to a proposal if you do not agree to the changes. Nevertheless, a change can only be made if you agree to it and this should be remembered if you decide to proceed with an IVA.

What you need to know (continued...)

If your IVA Proposal is approved

~ Creditors are legally bound by its terms – even those who may have voted against your proposal.

~ Creditors must cease all recovery action – you are formally protected by the IVA.

~ Creditors must (by law) suspend all interest and charges on your accounts.

What if your circumstances change during an IVA?

~ If your circumstances change for the better during an IVA creditors will expect to gain some benefit from the improvement in your circumstances. As such, you may be required to increase your payments and your circumstances will be reviewed annually to determine whether any increase is appropriate.

~ If your circumstances change for the worse during an IVA it may be possible to vary the terms of the arrangement. However, variations to an arrangement's terms can only be made with creditors' approval and, as such, it is creditors who will decide whether the IVA can continue.

How does an IVA fail?

~ An IVA can fail if you breach any of its stipulations and such breach cannot be remedied in accordance with the arrangement's terms and conditions.

What happens if my IVA fails?

~ How an IVA fails will be dependant upon the exact terms of the arrangement, how much has been paid into the arrangement and at what point it fails. Some arrangements will require the supervisor of the IVA (your Insolvency Practitioner) to bankrupt the individual if enough contributions have been made to meet the costs associated with this process. Other arrangements will simply fail and a payment will be made to creditors if possible.

~ All monies paid into the arrangement will be used to meet the costs and fees associated with its preparation and supervision, to fund a bankruptcy petition (if necessary) and/or will be distributed to creditors.

~ If an IVA fails, you lose its formal protection and creditors can therefore instigate recovery action against you and can again apply interest and charges to your account.

What you need to know (continued...)

What happens if I successfully complete my IVA?

~ If you successfully complete your IVA, your creditors will receive payment and any remaining balances must be written off by law. You will receive a "Certificate of Due Completion" and you will no longer be bound by the terms of your arrangement.

~ It should also be noted that it may be possible to settle an IVA early if you can make a suitable offer of settlement to creditors and they sanction the early completion.

How are the costs and fees of the IVA paid?

~ McCambridge Duffy do not charge any upfront fees or costs – we will only be entitled to draw fees and costs if your IVA proposal is approved by creditors.

~ The fees and costs will differ from case to case and will be clearly stated in your IVA proposal document.

~ You will never be billed in advance for any work carried out by McCambridge Duffy – the fees and costs of the arrangement are built into your payments to the arrangement.

~ There are two types of fee charged in relation to every IVA – a "Nominee fee" and a "Supervisor fee".

~ The "Nominee fee" is charged in relation to the work carried out by McCambridge Duffy in researching and drafting your IVA proposal and in convening and conducting a meeting of creditors.

~ The "Supervisor" fee is charged in relation to all work carried out in administering the agreed terms of the IVA after it has been approved at the meeting of creditors.

~ If your circumstances change and you require a variation to the terms of your arrangement, it will be necessary to convene a further meeting of creditors to consider your variation proposal. As such, a "Variation fee" may be charged for the additional work that we have to do in this regard. This fee will also be built into your arrangement in the same way as the "Nominee" and "Supervisor fees". Remember, this fee will only arise if you need to change the terms of your arrangement.

Is an IVA a viable option for you?

An IVA will be a viable option for you if:

~ Your disposable income is sufficient to service an IVA – this will depend upon both how much you can afford to offer each month and how much you owe in total.

~ You believe that a Debt Management Plan (option 2 in this booklet) will have an excessive duration and you would prefer to address your debts within a shorter timeframe.

~ If you are unable to obtain a consolidation loan or if you cannot raise enough to repay your debts in full.

~ You have assets (eg a home or business) that you wish to try and safeguard under the terms of an IVA.

~ You wish to avoid any adverse effect that bankruptcy may have on your employment/career.

~ You wish to avoid any adverse effect that bankruptcy would have on your ability to trade your business.

~ You are/or will be a Company Director and do not want to lose your Directorship as a result of Bankruptcy.

~ You wish to avoid the publicity and perceived stigma associated with Bankruptcy.

~ You require or want formal protection from your creditors.

How does a Debt Management Plan work?

A DMP involves making offers of repayment to creditors based upon what you can afford to pay back. You will be obliged to provide a financial statement to creditors outlining your income and expenditure and offers of payment are generally made in accordance with the principle of "Equitable Distribution" – that is that the repayment offers are made having regard to the amount owed to each creditor. For example, if one creditor represents 50% of your total debts, then that creditor should be offered a payment equivalent to 50% of your disposable income.

What you need to know about a DMP

~ It is an informal approach to resolving a debt problem in that it has no legislative basis.

~The informality means that the terms of a DMP are not restricted by legislation and therefore they can be very flexible.

~ However, the lack of a legislative basis also means that a DMP will only work if all creditors agree voluntarily to accept the offers of repayment made to them – no dissenting creditor can be bound by the terms of a DMP.

~ DMP's are very common on account of the fact that you do not need any professional assistance to establish one. However, McCambridge Duffy may be able to assist you in this regard if you so wish – our Sister Company, National Debt Relief Ltd, specialise in the setting up and administration of DMP's and we would ask that you contact us if you wish to be referred to that company. Alternatively, some charitable organisations like the Citizens Advice Bureau may be able to help you.

~ A DMP does not offer you any form of formal protection from your creditors – this is of particular importance if you are a homeowner or have an interest in any other asset. A DMP will not protect you from an Order Charging Land, an Attachment of Earnings Order or a Custody Warrant/Warrant of Execution.

~ Creditors are not obliged to accept any offer of repayment made to them nor are they required by law to suspend interest or charges.

What you need to know about a DMP (continued)

~ If a creditor accepts the offer of repayment, they will normally agree to suspend interest and charges, however, the informality of the agreement means that each creditor can adopt their own stance in this regard.

~ If a creditor accepts the offer of repayment, they will do so "without prejudice" to the terms of your original credit agreement with them. In essence, they reserve their rights under the original credit agreement and will retain their rights of enforcement under it at all times.

~ The DMP process is one of constant and regular review. If a creditor accepts an offer of repayment, it is very common that such acceptance will be limited to a 3-6 month period. As such, you will be required to provide a revised financial statement to creditors every 3-6 months.

~ A DMP has no capped length – it will continue until all debts are repaid in full.

~ The effectiveness of a DMP as a solution to your financial difficulties will be entirely dependant upon the attitude of each of your creditors. It is common for some creditors to accept offers of repayment whilst others may not and, in such circumstances, the DMP will not provide a complete solution to your financial concerns.

~ DMP's are not a matter of public record although it is possible that it may have an adverse impact on your credit rating as some creditors will note it on your credit file.

Is a DMP a viable option for you?

A DMP will be a viable option if:

~ You cannot afford the monthly contributions required to service an IVA.

~ You cannot afford to meet the costs associated with petitioning for your own Bankruptcy.

~ You can afford to make some regular payment from your household disposable income and/or you can make a lump sum contribution.

~ You do not require the formal protection from creditors available through an IVA or Bankruptcy.

~ You only require a short term solution as your circumstances will improve in the near future.

~ Your employment/career prospects may be adversely affected by Bankruptcy.

~ Your trading may be adversely affected by Bankruptcy.

How does Debt Consolidation work?

Debt Consolidation involves obtaining a loan which is then used to repay all other debts. As such, you should then only have one affordable repayment to make and upon repayment of this one loan you will be debt free. Debt Consolidation could be achieved by the following means:

1. An Unsecured Consolidation Loan - these are many and varied and may range from a loan from your bank to roll all your existing debts into one or taking out a new credit card with a period of 0% interest on balance transfers.

2. A Secured Loan - these are loans which can be used to pay off your unsecured loans but the new loan is secured on your property by way of second charge. As a result the interest rate will tend to be lower than the unsecured debts they replace.

3. A Remortgage - these are loans by which you not only borrow the money to repay your unsecured debts but also your existing mortgage lender. Generally the interest rate is lower than a secured loan as the lender will have a first charge.

What you need to know about Debt Consolidation

~ For this option to work, it is imperative that the loan amount is sufficient to repay all other unsecured debts (or at the very least reduce your debts to a manageable level) and that you do not avail of any further credit unless your financial circumstances improve to such extent that you can afford it.

~ Generally speaking, this will only be an option for those individuals who have a regular income, a reasonable disposable income each month and a decent credit rating.

~ In our experience, Debt Consolidation tends to either provide a complete solution to a debt problem or has the effect of making it worse (typically because an individual struggles to maintain the repayments on the Consolidation Loan and therefore begins to supplement their income with credit).

What you need to know about Debt Consolidation (continued...)

~ Self-discipline will be required. If you use a Consolidation loan to repay credit card debts it is very important to stop using (and preferably cut up) your credit cards. In our experience, many formal insolvencies arise out of taking out Consolidation Loans and then running up further credit card debt.

~ If you consolidate by way of a Secured Loan or Remortgage, please be aware that you are essentially securing unsecured debts against your home and therefore failure to manage the loan repayments may lead to your property being repossessed.

~ Remember that any Secured Loan (or Remortgage) may well not be with a high street lender (particularly if you have defaults) and as a result the interest rate may be higher than on your existing mortgage. You will need to factor any increased payments as a result into your monthly budgets.

~ You must consider the terms of any Consolidation Loan carefully – do not let the stress of your situation cloud your judgment. It is common for Consolidation Loans to last for a considerable period of time and, as a result, whilst the loan will resolve your current financial difficulties, the interest you will pay on the Consolidation Loan will have the effect of increasing the overall amount that you owe. In other words, you need to consider how much this Consolidation loan is going to cost you and consider your long term future.

~ Look for any "hidden" costs. Where you are consolidating by way of a Secured Loan or Remortgage, ask about penalties for early redemption (in adverse lending situations these can be significant) and, importantly, how much commission the mortgage broker will receive from the lender. A good idea is to speak to your existing mortgage lender first as they will often come up with the best deal.

~ Treat any "offers" from existing unsecured lenders to convert their debts to Secured Loans with caution.

Is Debt Consolidation a viable option for you?

Debt Consolidation may be a viable option for you if:

~ You are not insolvent under the terms of the current legislation.

~ You have a reasonable disposable income.

~ You have a regular income.

~ You have a decent credit rating.

~ You own a property with sufficient equity in it to repay your debts (this point will only be relevant if you wish to obtain a Secured Consolidation Loan or Remortgage).

How does Bankruptcy work?

Bankruptcy is a formal insolvency process and is considered to be a remedy of last resort. In your current position, you could either declare yourself bankrupt (known as a "Debtor's petition") or it is possible that one or more creditors may bankrupt you (known as a "Creditor's petition).

The "Debtor's petition" process is quite straightforward in that you simply obtain the petition papers from the court in your area that deals with Bankruptcy matters (in Northern Ireland this is the High Court in Belfast) and complete them (if your local CAB provides a "Money Advice" service they will be able to assist you). You then return them to the court, pay the necessary fees and costs (see below), and you will be given a "hearing date". On that date, you simply return to the court and the Judge (or Master in Northern Ireland) will decide whether or not to make a Bankruptcy Order against you.

Regardless of how you are declared bankrupt, the outcome is the same. Control of your assets and financial affairs will pass to the Official Receiver (an Officer of the Court) who will either deal with your case himself or he may appoint an Insolvency Practitioner (known as the Trustee) to deal with it. The Official Receiver/Trustee will investigate your financial situation with a view to determining your ability to repay your debts.

Assuming that you have not been declared bankrupt in the 5 years preceding this bankruptcy and that you cooperate fully with the Official Receiver/Trustee, you will be discharged from your bankruptcy within 12 months. Any account balances owing to your creditors have to be written off by law and you will be debt free.

For more detailed information about Bankruptcy please see the Insolvency Service website at **http://www.insolvency.gov.uk**

What you need to know

~ Bankruptcy is not a process that is designed to punish you – it is there to protect you from your creditors when you simply cannot afford to resolve your financial difficulties by any other means.

~ It can be an ideal solution for individuals who have no assets, are not employed in a professional capacity and who are on a low income.

~ A Debtor's petition has a cost (a court fee & a deposit) that can be prohibitive for some debtors. The court fee element may be waived if you are in receipt of certain state benefits but the deposit amount will still have to be met. The costs tend to vary from time to time and for up to date information please contact your local court.

~ Generally speaking, a creditor is unlikely to instigate Bankruptcy proceedings against a debtor unless that creditor believes that it is very likely that the Bankruptcy will result in the repayment of both the costs incurred by that creditor in instigating Bankruptcy proceedings and the actual debt amount. As such, a creditor's petition is most common where a debtor is a homeowner or has a valuable interest in any other asset.

~ In Bankruptcy, you will be allowed to retain any tools of trade, household items for basic domestic need and income for reasonable domestic need. The Official Receiver/Trustee will be the one who determines what assets are excluded from your estate.

~ Typically you will be discharged from Bankruptcy in 12 months, however you may be subject to certain restrictions for up to 15 years.

~ Whilst you are bound by the Bankruptcy, you will be required to cooperate fully with the Official Receiver/Trustee. If you do not cooperate, the duration of your Bankruptcy may be extended.

~ If the Official Receiver/Trustee believes that your conduct has been dishonest or blameworthy you may be subjected to a Bankruptcy Restriction Order or Bankruptcy Restriction Undertaking which would effectively extend the duration of your Bankruptcy for between 2 & 15 years.

~ The purpose of the Bankruptcy is to ensure that your creditors are repaid as much as possible from your estate. If you have no assets, it is likely that creditors will simply not receive any payment through bankruptcy. Similarly, if you are homeowner (or have a valuable interest in any other asset), your interest in that asset will have to be realised in some way.

What you need to know (Continued...)

~ An asset will not be excluded from your estate simply because your Bankruptcy will have an impact on a third party (eg spouse and children living in the family home).

~ If necessary, the Official Receiver/Trustee has the power to force a sale of your assets, however, the Official Receiver/Trustee may be willing to accept payment from a third party or by an alternate means when seeking to realise your interest in an asset provided that this does not prejudice the best interests of creditors. For example, if you have an interest in a property, the co-owner may be able to buy out your interest by way of a Remortgage and these monies would be paid to the Official Receiver/Trustee. Alternatively, a family member or friend could give the Official Receiver/Trustee monies equivalent to the value of your interest in that asset.

Is Bankruptcy a viable option for you?

Bankruptcy will be a viable option for you if:

~ You do not have a regular and sufficient disposable income to service a DMP, IVA or obtain a Consolidation Loan.

~ You can afford to meet the costs of the petition.

~ You have no assets or are not seeking to safeguard assets.

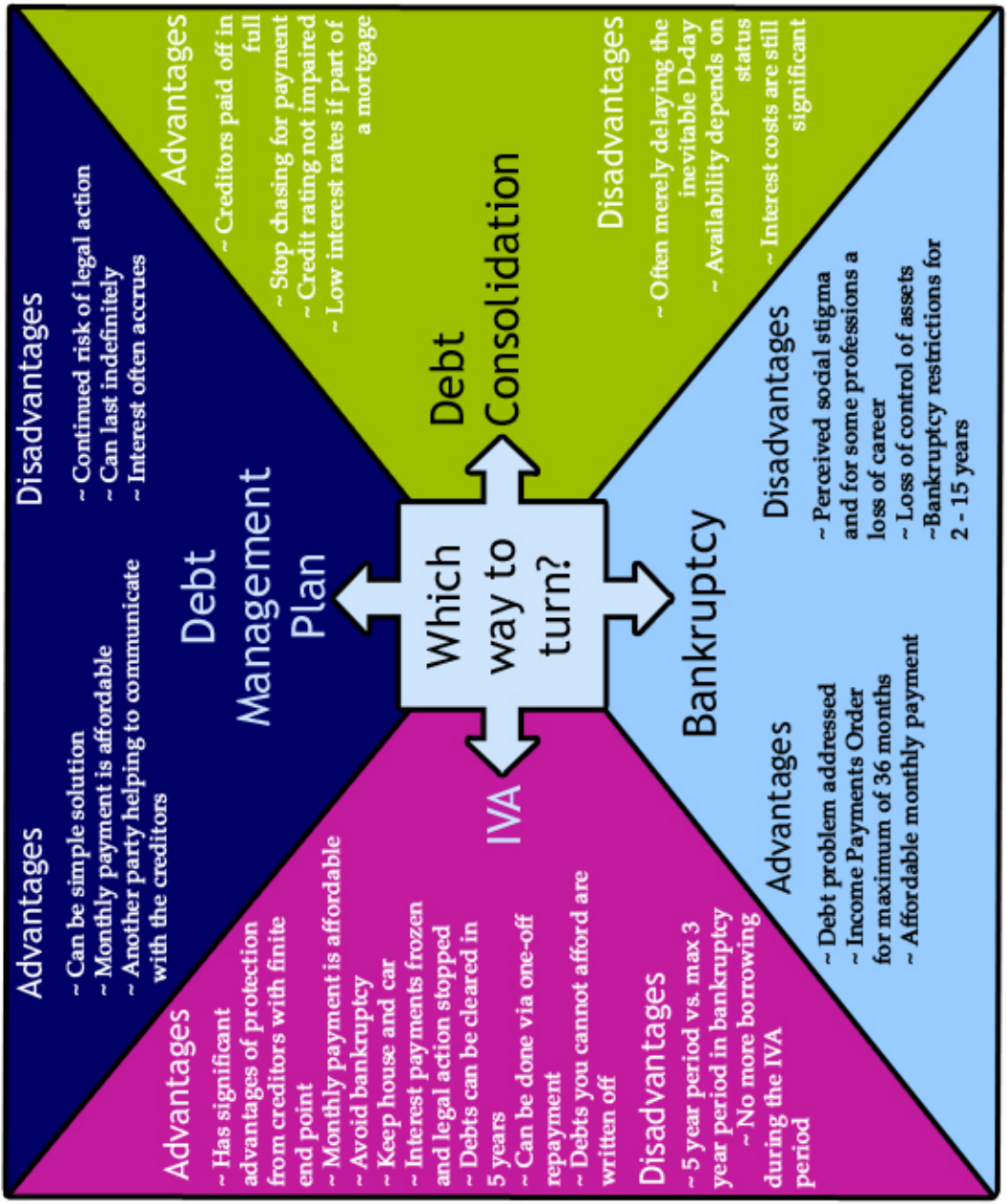
~ You are on a low income (remember that if your income is deemed to be sufficiently high, you may be subjected to a 3 year Income Payments Order).

~ Bankruptcy will not have an adverse impact on your employment/career prospects.

~ Bankruptcy will not have an adverse impact on your ability to trade your business (remember that you cannot be a Company Director if you are a Bankrupt).

~ You wish to be formally protected from your creditors but cannot afford to enter an IVA.

~ You are not concerned about the publicity and perceived stigma associated with Bankruptcy.


Which way to turn?
Debt Management Plan
Advantages
~ Can be simple solution
~ Monthly payment is affordable
~ Another party helping to communicate with the creditors
Disadvantages
~ Continued risk of legal action
~ Can last indefinitely
~ Interest often accrues
Debt Consolidation
Advantages
~ Creditors paid off in full
~ Stop chasing for payment
~ Credit rating not impaired
~ Low interest rates if part of a mortgage
Disadvantages
~ Often merely delaying the inevitable D-day
~ Availability depends on status
~ Interest costs are still significant
Bankruptcy
Advantages
~ Debt problem addressed
~ Income Payments Order for maximum of 36 months
~ Affordable monthly payment
Disadvantages
~ Perceived social stigma and for some professions a loss of career
~ Loss of control of assets
~Bankruptcy restrictions for 2 - 15 years
IVA
Advantages
~ Has significant advantages of protection from creditors with finite end point
~ Monthly payment is affordable
~ Avoid bankruptcy
~ Keep house and car
~ Interest payments frozen and legal action stopped
~ Debts can be cleared in 5 years
~ Can be done via one-off repayment
~ Debts you cannot afford are written off
Disadvantages
~ 5 year period vs. max 3 year period in bankruptcy
~ No more borrowing during the IVA period

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What now?

Hopefully this booklet has answered any questions you may have had about an IVA, a DMP, Debt Consolidation and Bankruptcy.

However, if you are still unsure or have any questions, please do not hesitate to contact us. We will be happy to discuss your options further.

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Disclaimer

This booklet is not intended to provide complete advice about each of the options referred to herein and should not be relied upon in isolation. This booklet is merely part of McCambridge Duffy's general advice process and for case specific advice clients should refer to the "Options Discussion Document" completed in the course of their Intial Meeting or should contact one of our advisors.