

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.

35. Income Payment Agreements and Orders

Obtaining Income Payments Agreements (IPA) and Income Payments Orders (IPO) from bankrupts, including the matters to be taken into account when calculating the sum to be paid

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Introduction to Income Payments Agreements and Orders

35.1 General

One consequence of the debt relief afforded by bankruptcy is that the bankrupt, who is no longer responsible for making payments to creditors, may have a surplus income beyond that needed to meet their daily living expenses. The legislation allows the trustee to seek contributions to the bankruptcy estate from this surplus for a maximum period of 3 years (36 months). This chapter provides guidance on some

of the issues which may arise in calculating surplus income and the process of obtaining and enforcing income payments agreements (IPA) or income payments orders (IPO). There is no set formula every case must be considered on its merits, every bankrupt's circumstances will be unique to them. The chapter should be read and applied in conjunction with the SFS IPA Calculator and User Guide available above and on the Intranet. Income and expenditure should be evidenced and tested where it is reasonable to do so.

35.2 Standard Financial Statement IPA Calculator

Since April 2017 the official receivers calculate surplus income using the [Standard Financial Statement \(SFS\)](#). As a first step in any assessment, surplus income should be established by completing the bespoke calculator based on the SFS. Information to complete the calculator will be provided by the bankrupt as part of their bankruptcy application or preliminary information questionnaire (form PIQB). If the bankrupt has sought debt advice within six months of the bankruptcy order being made they may have completed the SFS with a debt advisor as part of that process. If the SFS is provided to the official receiver the information from the existing SFS may be used to establish surplus income.

35.3 One agreement per bankrupt

Only one IPA (or IPO) should be in existence per bankruptcy case. Where the bankrupt has agreed to make higher payments for a short period of time following a temporary increase in income, for example following the application of an NT (nil tax) code or council tax holiday, this should be included as a separate element within a single IPA. This might be referred to as a “stepped IPA” the agreement allowing for different contributions to be made at different times.

What is an income payments order (IPO) and an income payments agreement (IPA)?

35.4 Introduction to an IPO

Provision is made by section 310 for the trustee to apply to the court for an order requiring the bankrupt, or a third party on behalf of the bankrupt, to make regular

payments of a specified amount or proportion of the bankrupt's post order income into the estate for a specified period. The legislative rules governing IPOs can be found in the Insolvency (England and Wales) Rules 2016¹

1. Rules 10.108 to 10.114

35.5 Application to court and terms of an IPO

An IPO can only be made on an application submitted to court by the trustee prior to the bankrupt's discharge, although an order can be made after discharge on an application lodged at court before discharge. The period of the order must not be more than three years (36 months), beginning with the date on which the order was made. The period of the IPO must be incorporated into the order, and may extend beyond the date of discharge. An IPO cannot be made if the effect of the order is to reduce the income of the bankrupt below an amount "necessary for meeting the reasonable domestic needs of the bankrupt and their family". In other words the court might only order payments from surplus income after deduction of all reasonable household expenses. An IPO can be changed ('varied') on application to the court by the trustee or the bankrupt (before or after discharge) but the period of the order cannot be extended beyond three years from the date the order was made.

35.6 Introduction to IPAs

The IPA procedure was introduced into the Act¹ with effect from 1 April 2004. The basis of assessment is the same for an IPA as that for an IPO (see above) but the trustee is able to enter into a binding agreement with the bankrupt to make payments rather than seek a court order. The rules governing IPAs can be found in the Insolvency (England and Wales) Rules 2016.²

1. Section 310A

2. Rule 10.115 to 10.117

35.7 The terms of an IPA

An IPA is a contract, the terms of which are enforceable as though it were an IPO¹. The agreement is made between the bankrupt and the official receiver or the trustee, on terms that the bankrupt will pay an agreed amount of their post bankruptcy order income to the bankruptcy estate. Once received the monies form part of the bankruptcy estate.² An IPA may provide for the payments to be made by a third party, for example an employer. The period of the agreement must not exceed three years (36 months), beginning with the date on which the agreement comes into force, the agreement can extend beyond the date of the bankrupt's discharge. The terms of an IPA can be changed ('varied') at any time by written agreement of both

parties but the period of the agreement cannot be extended beyond three years from the date the agreement originally came into force.

1. Section 310A(2)

2. Section 310A(4)(a)

35.8 Approval of IPA

An IPA can only be completed prior to the discharge of the bankrupt and only comes into force when both parties have authenticated (signed) the agreement. Once the terms of the IPA have been agreed a copy of the agreement is delivered to the bankrupt who has 14 days to authenticate (sign) and return the agreement (unless discharge will occur earlier than the expiry of the 14 days)¹. The agreement must then be authenticated (signed) by the official receiver or assistant official receiver to bring it into force. The IPA should be authenticated at the earliest opportunity. There must be no delay in signing the agreement where the bankrupt's discharge is about to occur.

1. Rule 10.115(3)

35.9 Failure to provide information and suspension of discharge

An IPO application must be made or an IPA must be in force before discharge. Where a bankrupt fails to provide the necessary information to enable an income payments calculation to be made, or delays agreement of an IPA, an application should be made for suspension of discharge to ensure that the ability to obtain the potential asset is not lost. See chapter 19 for information on suspension of discharge.

35.10 IPAs always to be sought in preference to IPOs

Where the bankrupt has surplus income available to make a payment to their bankruptcy estate, an IPA should always be sought in preference to an IPO. An IPO should only be sought in those cases where an agreement cannot be reached and the bankrupt fails to consent to the proposed IPA or does not co-operate with the official receiver in the collection of an IPA.

Income

35.11 Definition of income

For the purposes of an IPA or IPO “income” is widely defined¹ as any form of income. In addition to periodic payments the bankrupt might receive by way of salary or wages from any employment, business or vocation, pension or state benefits, lump sum payments might also fall within the definition of income². For example, a bonus payment from an employer, arrears of maintenance payments or a lump sum from a pension. Income received at any point after the making of the bankruptcy order, to the point of discharge, might be included in an IPA or IPO and therefore can include income which is already in the hands of the bankrupt³.

1. Section 310(7)

2. *Supperstone v Lloyd's Names Association Working Party* [1999] BPIR 832

3. *Official Receiver v Baker* [2014] BPIR 724

35.12 Salary or wages

Figures for salary or wages from employment should always be the bankrupt's net take home pay after deduction of tax, NI and other payments. If the amount is reduced by any attachment of earnings relating to a provable debt in the bankruptcy, steps should be taken to vacate the attachment of earnings¹. Regular overtime payments should be included in any calculation of surplus income. Any IPA can be varied if the overtime comes to an end.

1. Sections 310(4) and 310A(3)

35.13 Bonus payment by employer

Where a lump sum bonus payment or overtime payment is received post bankruptcy, this should be considered as income and included in any income payments calculation. If a bonus is paid to the bankrupt whilst an IPA is already in force, the IPA may be varied to claim the bonus, including where the bonus is received after discharge. As with all income calculations, the bonus can only be claimed in circumstances where the bankrupt otherwise has sufficient funds to meet their reasonable domestic needs.

35.14 Bonus payment from employer paid under a trust settlement

A bankrupt may be eligible to receive a bonus which is paid under a Trust Settlement. An example of this is the John Lewis Partnership bonus paid annually to all partners (employees) as a percentage of salary, the amount of the percentage being dependent on the business profits made in the previous year. Where the bankrupt is due to receive a bonus after the date of the bankruptcy order, the official receiver may encounter the problem that the Trust Settlement precludes the bonus from being paid to an undischarged bankrupt where it will be claimed by the official receiver. The trustees of the scheme will seek an unequivocal statement that the official receiver in bankruptcy will have no claim on the money, either now or in the future. It is open to the official receiver to decline to make such a statement and the bankrupt will not receive the bonus payment. In the alternative, the official receiver may seek, in principle, a voluntary agreement with the bankrupt, that in return for the undertaking the bankrupt will make a voluntary payment to the official receiver. It is suggested that a minimum 50% of the bonus received would be an acceptable compromise.

35.15 Agreeing an IPA where the bankrupt is self-employed

Where a bankrupt is self-employed, although their income may be a variable amount each month, it should still be possible for the official receiver to identify whether the bankrupt will have a surplus of income. This may be done in a number of ways and may require the trustee to review the bankrupt's circumstances more frequently than in cases where the IPA is based on income received as a result of being in receipt of a regular wage.

35.16 Calculating average income where the bankrupt is self-employed

The official receiver might consider the average of the bankrupt's income received over a given period, through analysis of any records or accounts supplied to the official receiver. An IPA can be based on a monthly or quarterly payment based on the average surplus income calculated. An allowance for tax and national insurance contributions should be included in any calculation.

35.17 Dealing with seasonal, staged, or commission based self-employed income

In other cases where the bankrupt's income varies on a seasonal basis, it may be possible to agree an IPA which covers only the specific period when the bankrupt is

in receipt of surplus income (e.g. for a six month period in the summer or winter depending on the nature of the seasonal income). In circumstances where the bankrupt is in receipt of staged payments (e.g. those received by building contractors) or is paid on a commission basis their basic salary may provide insufficient income for an IPA, but in conjunction with staged payments/ commission income received may provide adequate surplus to agree an IPA. In these circumstances, if appropriate, the official receiver could propose an agreement with the bankrupt to pay contributions when the payments are received. In these cases the official receiver can agree the particular payment terms within the IPA. As always, the period of the IPA must not exceed three years from the date of commencement of the agreement or order.

35.18 Income relating to foster care

Where a bankrupt is in receipt of [foster care allowance](#) this should be treated as income and not a state benefit. Where a child or young person has been placed with an individual by either a local authority or independent fostering provider, that individual is considered to be self-employed. It is necessary to establish whether the income is received jointly with another foster carer. All expenses associated with the care of the children subject to foster care must also be considered in the calculation where the foster care income is included.

35.19 Income arising from nil tax (NT) coding

Where bankruptcy occurs, HMRC submits a claim in the bankruptcy proceedings for the whole of the outstanding tax due in that tax year for both employed and self-employed individuals. The claim submitted in the proceedings by HMRC is dealt with in the same way as any other unsecured creditor. Where a bankrupt is employed on a PAYE basis they will have a tax code issued to them which enables their employer (or pension provider) to calculate the amount of tax to deduct from their salary. Where a bankrupt is in PAYE employment at the date of bankruptcy, and remains with the same employer, HMRC applies a nil or no tax (NT) code to the bankrupt's salary for the remainder of the tax year in which the bankruptcy order is made. The NT code is applied to all income earned by the bankrupt after the bankruptcy order date, either until there is a change in the bankrupt's source of income (i.e. a new job with a different employer), or until the end of the tax year in which the bankruptcy occurs, whichever event is the earliest. This means the bankrupt does not pay any tax on their income whilst the NT code is in force and so receives additional income which can be included in the income payments calculation. Notification of the bankruptcy order will cause the local tax office dealing with the bankrupt taxpayer's affairs to identify cases where the nil tax (NT) code will be applied. The application of

the NT coding is not dependent on any additional notification from the official receiver to the tax office.

35.20 Effect of NT coding on other income sources (e.g. benefit income)

As the application of the NT code raises the debtor's net income, it can affect the payment of some benefits, which may ultimately lead to a reduction in the amount of surplus available to make a payment under an IPA. Where the bankrupt's income is reduced as a consequence of re-assessment of part of their income (e.g. housing benefit) or an award in other proceedings (e.g. a CSA payment), then the IPA should be varied to reflect the change in the available surplus income. HMRC have confirmed that the application of the NT code to a bankrupt's income will not have any impact on a bankrupt's claim for working tax credits. Tax credits will continue to be paid at their existing rate as long as the bankrupt remains eligible.

35.21 Claiming extra income arising from NT coding

Where the NT code is expected to be applied before the end of the tax year, the additional income arising as a result of the application of the NT coding can be included when calculating the bankrupt's surplus income from which contributions can be collected under an IPA. It is also possible that the increased income available as a result of the application of the NT coding may provide sufficient surplus to agree an IPA, even where the bankrupt does not have sufficient surplus from their usual net income. In this instance an IPA could be agreed based solely on the surplus income created by the application of the NT coding to the bankrupt's salary.

35.22 Form TNIDIS, instruction to agents

Where an IPA has been agreed to collect surplus income arising as a result of the application of an NT coding, and the bankrupt has signed the Tax and National Insurance Disclosure Authority (form TNIDIS), a copy of form TNIDIS should be forwarded to HMRC by e-mail to Tnidis.ptopsbankruptcy@hmrc.gov.uk. Form IRNTMB requesting that HMRC forward notice of the NT coding to the official receiver's agents to enable them to commence collection of the NT IPA should be sent separately by post. A copy of form TNIDIS should be retained by the official receiver. In deciding whether an IPA is appropriate in order to collect surplus NT income, consideration should be given to the amount of tax the bankrupt pays each month and the time the local tax office is likely to take to implement the NT coding. In practice, it can take some time to implement the NT code and the bankrupt will then

receive the overpayment of tax as a refund at the end of the tax year. Where such a tax refund arises due to delays in adjusting the bankrupt's tax code, it should be claimed by using the TNIDIS which authorises the payment to the official receiver /trustee of income tax refunds payable for the tax year in which the bankruptcy order was made rather than through the IPA process.

35.23 Tax refunds up to and including the year of bankruptcy

The bankrupt may receive tax refunds for periods both before and after bankruptcy. Tax refunds paid to a bankrupt for any period prior to the bankruptcy order date and including the financial year in which the bankruptcy order is made should be claimed using the authority provided by the bankrupt when they complete the TNIDIS. The tax refund must not be claimed as after-acquired property or included in an IPA.

35.24 Tax refunds for years subsequent to year of bankruptcy

Any refund in respect of tax years following the tax year in which the bankruptcy order was made may be claimed by means of an IPA or an IPO where the bankrupt remains undischarged or subject to an existing IPA (or IPO).

35.25 Council tax holiday

Where the bankrupt receives a council tax holiday for the remainder of the year of bankruptcy this should be treated in the same way as additional income under an NT coding.

35.26 Redundancy, pay in lieu of notice or compensatory notice pay

Where a bankrupt is due to receive redundancy and/or pay in lieu of notice (PILON), the payment represents compensation paid for loss of employment and where the employer elects not to give a statutory period of notice. This payment does not represent wages either during the notice period or for any period after employment has ceased. It should be claimed as an asset of the estate if paid to the bankrupt before the date of the bankruptcy order, and as after acquired property if paid after the date of the bankruptcy order. PILON may be subject to tax¹. Where an employer is insolvent the Redundancy Payments Service (RPS) will pay a compensatory notice payment (CNP) to the employee instead of PILON. This payment is limited by

statute and subject to mitigation; the amount paid is reduced by any earnings or benefit entitlement during the statutory notice period. A CNP should be claimed in the same way as PILON.

1. [Employment Income Manual \(EIM12976\)](#)

35.27 Payments received in respect of loss of earnings

Periodic payments received after the date of the bankruptcy order in respect of loss of earnings should be included in an IPA calculation. Any wages received whilst an individual works out a notice period, holiday pay or arrears of wages should also be included in the calculation.

35.28 State benefits

There is nothing in legislation which excludes state benefits, once paid to the individual, from falling within the definition of “income”¹. As a matter of policy, an IPA (or IPO) should not be sought where the bankrupt’s only source of income is state benefits. In this context “state benefits” refers to all forms of income supplement and support provided by central or local government including payments of a War Disability Pension (Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, where the bankrupt has been injured on active service, these should be regarded as a state benefit. There is no requirement to undertake an assessment of surplus income where the only source of the bankrupt’s income is state benefits. In all other cases an assessment should be made even if part of the household income is derived from state benefits.

1. [Section 310\(7\)](#)

35.29 Establishing surplus income where income is partly derived from state benefits

Where a bankrupt is in receipt of benefit income and non-benefit income, the official receiver should take into account all income sources including any state benefits which the bankrupt or family members, are entitled to receive. The reasonable domestic expenses should be deducted from this total income to establish the surplus income. An assessment can then be made as to whether the bankrupt has surplus income from which to support an IPA. The amount of any payment under an IPA must not exceed the income the bankrupt receives from the source other than state benefits. Examples of calculations and the adjustments to be made where the bankrupt is in receipt of benefit income can be found at [Annex A](#). It should be

remembered that whilst the bankrupt's total income (including state benefits) can be included in the calculation of surplus income, it is the income from sources other than the benefit(s) which is providing the payments under the IPA.

35.30 Claiming arrears of benefits received post bankruptcy

Where the bankrupt receives a payment of benefit arrears post bankruptcy (and is in receipt of other (earned) income), the official receiver can include the benefit arrears payment as a source of income to be included in an income payments calculation. If, by including the benefit income the bankrupt has sufficient surplus income (from non-benefit income), from which to make an IPA contribution, an IPA can be agreed. It is suggested when calculating an IPA to include arrears of benefit income, the amount of the arrears is divided by 12 months (treating it as an "income boost" over the period of a year) and the corresponding monthly amount included in the calculation over a 12 month period.

35.31 New IPA agreed for benefit arrears

Where a new IPA is being agreed (including the benefit arrears income) as the bankrupt did not previously have sufficient surplus income from which to make a contribution, the IPA should be paid at the assessed rate for 12 months, and then at a reduced or nil rate (based on an assessment of the bankrupt's income without the arrears included) for the months remaining under the IPA (i.e. 24 months). The IPA contribution must be equivalent to or less than the income derived from non-benefit sources.

35.32 Existing IPA to be varied to include benefit arrears

Where there is an existing agreement already in force this can be varied to include the benefit arrears and vary the agreement to include a temporary 12 month increase in payments. The payment amount can then revert to the previously agreed monthly payment amount for the balance of the term of the IPA agreement (to the end of the maximum possible term of 36 months). In the event that the bankrupt's income changes again the IPA can be further reviewed. If an IPA cannot be agreed with the bankrupt, then the official receiver as trustee can consider applying to court for an IPO to recover increased surplus income available as a result of the payment of the benefit arrears.

35.33 Pension receipts generally

Pension benefits are generally paid in two parts, a tax free lump sum and a monthly or annual payment following retirement until the individual dies. The recipient can elect to forego a lump sum payment in favour of a larger monthly payment. Where the pension fund is less than £30,000 the individual can elect to take the whole of the fund as a single lump sum payment.

35.34 Pension receipts already in payment at the date of the bankruptcy order

Where a bankrupt has received their pension prior to the bankruptcy order date, it is likely they will already be in receipt of the annual/monthly payment at the date of the bankruptcy order. This income should be included in the income payment calculation to assess the bankrupt's surplus income.

See [Annex B](#) for guidance on the assessment of surplus income where the official receiver seeks to claim a lump sum pension payment received after the commencement of bankruptcy.

35.35 Lump sum pension payments received before discharge

Where the official receiver becomes aware that the bankrupt is due to receive payment from a pension, the official receiver may seek to agree or vary an IPA to recover any lump sum. If this is not possible to agree, the official receiver may apply to court for an IPO. The lump sum payment might be claimed as a single payment or final payment under an IPA, but only in circumstances where the bankrupt otherwise has sufficient funds to meet their reasonable domestic needs. As a consequence where a lump sum is available the calculation of surplus income is a two-stage process. Guidance and example calculations on the assessment of surplus income in circumstances where the official receiver seeks to claim a lump sum payment via an IPA are included at [Annex B](#).

35.36 Periodic payments received in respect of personal injury and medical care

Under section 101(4) of the Courts Act 2003, the bankrupt's right to receive periodic payments in respect of personal injury will not form part of the bankrupt's estate and cannot be subject to the IPA or IPO provisions. The payments should not be included in the calculation of surplus income but equally the costs associated with

personal injury care and medical costs covered by the payments should also be excluded from the calculation.

35.37 Funds arising from capital property

Where the bankrupt has an interest in capital assets as at the date of bankruptcy, for example bank accounts, a tenanted property, shares etc., these are vested assets and should be realised within the bankruptcy proceedings. Any income arising from the ownership of the vested asset (for example, dividend income arising from shares held) will also be claimed as an asset which vests in the bankruptcy estate. In the same way if the bankrupt receives a capital asset post bankruptcy (but prior to discharge) the asset can be claimed as after acquired property and any income or payments arising from ownership of the asset (such as dividend income) will vest in the bankruptcy estate. For more detailed information on collecting rental income when dealing with tenanted properties please refer to the guidance on dealing with tenanted property.

35.38 Income received from spouse/civil partner/partner

It is reasonable to expect that within the household of the bankrupt, the income received by a spouse/civil partner/partner (all referred to as “partner” hereafter) will be used to contribute to the household expenditure in some way, for example by purchasing food, clothing, etc. The bankrupt may genuinely not know their partner’s income and the partner may not be willing to disclose it to the official receiver as they are not personally subject to the proceedings. It is not a proper use of section 366 to have a partner privately examined for the purpose of obtaining details of their income for an assessment of the bankrupt’s surplus income.

35.39 Ascertaining partner’s income where bankrupt does not co-operate

Where resistance to the disclosure of the partner’s income is encountered, in the absence of any information to the contrary, it is appropriate for the official receiver to assume that the partner pays for 50% of all household expenditure. This will enable an income payments calculation to be completed to ascertain whether there is any surplus. If the required information concerning the exact amount of the partner’s income is then received, the official receiver may re-calculate surplus income of the bankrupt taking in to account this new information.

35.40 IPA or IPO payments to be equal to or less than the bankrupt's surplus income

As with state benefits which supplement earned income, whilst it is acceptable to include the income of the bankrupt's partner as part of the total income received into the household of the bankrupt, an IPA can only be made against the surplus arising from the bankrupt's income. Any calculation of surplus income for the purpose of obtaining an IPA should work out the surplus available having assessed total income and total expenditure of the household. The extent of any surplus arising should then be apportioned according to the bankrupt's share of the total income. The income payments calculator will automatically calculate the bankrupt's share of the household surplus.

35.41 Income from adult children and other adult members of household

In the same way as it is reasonable to expect that a partner's income will be included in covering household expenditure, it is also reasonable to expect other adults living in the household who have an income make some contribution towards the outgoings of the household. Any contribution received from them should be included in income assessed against household expenditure within the IPA calculation.

35.42 Maintenance payments received by the bankrupt

The bankrupt may be in receipt of maintenance payments paid by the Child Support Agency (CSA) under the Child Support Act 1991. Any funds received in this way should be included in any calculation for an IPA.

35.43 Arrears of maintenance payments due to the bankrupt

Assessments made under the provisions of the Child Support Act 1991 are made and enforced by the CSA. The parent who requests the assessment does not hold a right to sue the absent parent for payment, and arrears under an assessment are not a "book debt" recoverable by the official receiver's agents. A parent may ask the CSA to make the assessment and to collect and enforce payments. Where the parent is in receipt of state benefits they are required to authorise the CSA to make the assessment and enforce collection. This means any decision on enforcement lies

with the CSA, and not the individual or their trustee in bankruptcy. Following recovery of funds by the CSA, any arrears paid to the bankrupt parent post bankruptcy are classed as income so should be included in any calculation of surplus income and claimed under an IPA (or IPO).

35.44 Student loan income

Where a bankrupt is in receipt of a student loan this is not income and cannot be included in any calculation of surplus income¹.

1. Teaching and Higher Education Act 1998, section 22.

Expenditure - general

35.45 Assessing expenditure against reasonable domestic needs

In assessing surplus income each case should always be considered on its own merits. An assessment should be made as to whether the expenditure claimed is realistic, relevant and appropriate to the bankrupt's circumstances. Since April 2017 the official receiver has assessed surplus available income using the Standard Financial Statement (SFS). The Income Payments Calculator (available on the intranet) based on the SFS provides a detailed breakdown of expenditure and should provide an accurate reflection of the bankrupt's income and outgoings. The examiner should have an open conversation with the bankrupt about whether they can afford a payment and challenge amounts which appear excessive, particularly where those payments are not supported by evidence of the expense. If the bankrupt has previously obtained debt advice and completed the Standard Financial Statement with a debt advisor within six months of the order being made, the figures from the existing SFS calculation can be used and relied upon. Care should be taken where the bankrupt has been assisted in preparing any statement by a commercial organisation, as a set of pro-forma outgoings may have been included which are not expenses actually incurred by the bankrupt on a day-to-day basis, the examiner should ensure that expenditure being claimed is properly taking place.

35.46 Assessing whether expenditure is reasonable or excessive

The SFS contains a set of fixed and flexible expenses. Spending guidelines have been agreed for the flexible categories, where expenditure is normally elective but not for the fixed outgoings which generally meet basic domestic needs of any household. Judgement should be used in deciding whether a fixed expense is reasonable for the circumstances of the bankrupt and their family. More detailed guidance on this is provided later. The calculator will highlight if a spending guideline is exceeded and the bankrupt should be required to evidence and explain the higher spend.

Accommodation costs and council tax

35.47 Assessing mortgage payments

Mortgage re-payments may be extremely high where the bankrupt is in arrears or has taken on a mortgage to the maximum extent of their income. Where the bankrupt is making the entire mortgage payment against a property which is jointly mortgaged, and no (or minimal) contributions are being made by the joint owner(s) the official receiver should take this into account when assessing the bankrupt's capacity to make payments. A bankrupt who is making mortgage repayments is protecting their home, but is also repaying a bankruptcy debt. Where the bankrupt continues to make high mortgage repayments this is likely to be at the expense of unsecured creditors, and the official receiver should consider whether to seek to disallow a fair share of the payments being made in respect of any joint liability.

35.48 Pursuing and IPA or IPO where mortgage payments appear excessive

The official receiver should not make a bankrupt homeless through the pursuit of an IPA but should continue to pursue an agreement where mortgage payments appear excessive. Care should be taken when assessing outgoings to identify any liability for mortgage obligations in addition to the family home, e.g. if the bankrupt's income is being used to supplement mortgage payments for properties owned with or by other family members. The official receiver should consider whether the support gives the bankrupt an equitable interest in the relevant property. Payments for a property the bankrupt does not live in should normally be disallowed when considering the bankrupt's expenditure.

35.49 Requirement to seek alternative rented accommodation

Where mortgage payments are considered excessive, particularly where the accommodation is more than the bankrupt appears to reasonably require to accommodate their family size, the official receiver should consider pursuing an IPO which disallows excessive mortgage payments¹. If the payments are to be disallowed the bankrupt will likely be forced to find alternative accommodation. Landlords may be unwilling to offer a tenancy to an undischarged bankrupt without receiving a significant deposit in advance. It is also not always the case that suitable alternative accommodation is available to rent at a cost less than maintaining existing mortgage repayments. The bankrupt may be able to extend the repayment terms of the mortgage, thus reducing the amount to be paid on a monthly basis. The risk in doing so is that the lender may take this as an opportunity to make the bankrupt liable for any mortgage shortfall post bankruptcy.

1. *Malcolm v Official Receiver* [1999] BPIR 97

35.50 Payments to additional secured creditors

Where there are additional secured creditors the official receiver should take into account all payments to be made. Where there is no equity available to secondary charge holders, the official receiver should consider discounting any payment to these creditors in an income payments calculation as there is no enforcement action that can be taken in respect of these debts as the asset is already fully charged, and as, in effect, the secondary charge holder is an unsecured creditor, any payment to it could be considered to contravene the provisions of section 285(3) of the Insolvency Act 1986.

35.51 Rent arrears

The landlord is not entitled to recover any arrears of rent, except by way of dividend in the bankruptcy but the right of a landlord to recover their property from a defaulting tenant is not affected by bankruptcy¹. Post bankruptcy a possession order might still be granted and suspended but not on condition of the payment of rent arrears. Any suspended possession order in force at the date of the bankruptcy order might be varied to remove any provision for payment of rent arrears. The official receiver should not make a bankrupt homeless and should take no steps to interfere with the payments being made. Generally no allowance should be made for payments relating to bankruptcy debts but where the rent with the addition of arrears payments

might be considered still reasonable for rent an allowance should be made reflecting the impact of repossession on the debtor's ability to make a contribution under an IPA. If the payments appear to be excessive, the bankrupt should be asked to attempt to vary the agreement with the landlord.

1. *Christina Sharples v Places For People Homes Limited* [2011] EWCA Civ 813

35.52 Council tax

Council tax (for the property in which the bankrupt is liable for Council tax at the date of the bankruptcy order) is a contingent liability provable in bankruptcy, irrespective of whether payments were in arrears at the date of the bankruptcy order. Where there is a non-bankrupt joint owner/occupier of the family home they will remain liable for council tax and it will continue to be a household expense. Where either the bankrupt is a sole owner/occupier or both joint owners/occupiers are bankrupt the household expenses will not include council tax for the remainder of that year e.g. to 31 March. However, if the bankrupt moves before 31 March they will become liable to pay Council tax^{2 3} at their new home and it will need to be included as a household expense and any IPA/IPO will need to be reviewed.

1. Local Government Finance Act 1992, sections 6 and 9]

2. *Re Nortel and others* [2013] UKSC 52

3. *Kaye v South Oxfordshire DC* [2013] EWHC 4165

Care and health costs

35.53 Child maintenance or child support

An obligation arising under an order made in family proceedings or under a maintenance assessment made by the Child Support Agency (CSA) under the Child Support Act 1991 is not a debt provable in bankruptcy¹. It is a continuing obligation, payable out of income. The amount payable by a bankrupt under a maintenance order or CSA assessment should be taken into account when calculating surplus income. The definition of "family" is given as persons living with the bankrupt and dependent on the bankrupt². The maintenance assessment is unlikely to have been made in respect of children living with the bankrupt. Notwithstanding the definition, the obligation to support children is a reasonable demand on the bankrupt's income and should not be excluded from the calculation³. Voluntary payments made to support non-resident children should also be included provided they are reasonable. Information concerning the CSA and a calculator for estimating the amount of

maintenance the bankrupt will be likely to pay, depending on the number of children, where the bankrupt is the non-resident parent, can be found at the website of the CSA.

1. Rule 14.2

2. Section 385(1)

3. *Re X (A Bankrupt)* [1996] B.P.I.R. 494; *Albert v Albert (A Bankrupt)* [1996] B.P.I.R. 233

35.54 Claims for adult children within the family unit who are students

Outgoings claimed in relation to a member of the family (aged 18 or over) who is in full time education will need to be considered in the context of the student as a dependent member of the bankrupt's family. Where the student lives away to study either permanently or during term time and has no other form of income, the official receiver may consider it reasonable for the parent to make a contribution towards the basic rental costs of living accommodation whilst the student is away from home. Matters to be considered when assessing whether the expense claimed is reasonable include, for example, where the contribution assists the student in meeting the tenancy terms of a shared house, or the arrangement to pay a contribution towards the student's accommodation has already been established prior to the bankruptcy order against the parent. Generally, the official receiver should not agree to allow non-specific payments or allowances to adult children who are students. The student can look to the student loan provisions, grants and/or part-time employment to assist with financing their education and domestic needs.

35.55 Prescription charges

Where the bankrupt is liable to pay for prescriptions and is claiming for multiple item monthly prescription charges, the official receiver should assess whether the costs claimed are in excess of the average monthly prescription costs available under either a three month or twelve month pre-payment certificate. These prepayment certificates can provide a considerable reduction in the monthly cost of prescriptions where an individual has to pay for more than four prescription items on a regular basis.

35.56 Health care provision, including dentists and opticians

NHS healthcare is provided to meet the reasonable needs of the population in providing healthcare. So, as an essential expense, for example, payment towards NHS dental care should be included but claims for expenditure for private treatment or health insurance would not normally be considered. Where the bankrupt can demonstrate they have no practical alternative but to pay for private healthcare (such as there being no NHS dental service available to them in the area where they live or work) an allowance for payment for an annual check-up and basic treatment at a privately run dental practice may be considered as meeting a reasonable domestic need. In the same way the costs of paying for eye tests, glasses etc. may be included as a reasonable outgoing. The official receiver should investigate above average claims, and, where a cheaper alternative is available (e.g. less expensive glasses frames) which would still meet the bankrupt's reasonable needs, only allow expenditure sufficient to provide the cheaper alternative. Payments claimed for private healthcare or medical insurance should only be allowed where it can be demonstrated that there is no practical alternative NHS facility available, or, for example, that to disallow the payment would have a significant detrimental effect on the health, wellbeing or future of a dependent child.

35.57 Healthcare entitlements in the UK for non-UK citizens

Anyone deemed to be ordinarily resident in the UK, or who is working for an employer based in the UK (including ship workers whose vessel is registered in the UK and off-shore workers working in a UK sector), or who is a self-employed person whose principal place of business is the UK, should be entitled to free NHS hospital treatment in England. This means a bankrupt who comes from a European Economic Area (EEA) country or EU member state who declares themselves bankrupt whilst ordinarily resident and working in the UK, and who meets the designated criteria, should be entitled to free NHS hospital treatment, as will their family. Any claim for private healthcare costs by a bankrupt whose country of origin is outside the UK should be investigated and evidence provided as to why the bankrupt is unable to receive free hospital treatment.

Transport and travel

35.58 Costs of maintaining a vehicle retained by the bankrupt

Where the bankrupt retains a vehicle which is exempt property the costs of maintaining and using the vehicle, including breakdown cover must be included in the calculation of surplus income. Some vehicles are [exempt from road tax](#), including vehicles used by a disabled person.

35.59 Allowance for season tickets and other transport costs

Reasonable expenditure for bus or rail travel (including season tickets or passes) are part of the normal outgoings of the bankrupt to allow them to get to work and participate in social occasions. These payments should be included in the calculation provided they are considered reasonable in the bankrupt's individual circumstances and location.

School costs

35.60 After-school clubs, school trips and extra-curricular activities

An expenditure claim for after-school clubs should be considered where they are used to provide childcare where parents are working. If the use of the club is simply a matter of convenience the bankrupt should be informed that the cost of funding the club cannot be considered as an essential expense. All claims for extra-curricular activities should be assessed in the context of the individual's circumstances and the needs of dependant children. Any excessive claims for multiple extra-curricular activities should be closely examined and evidenced.

35.61 School fees

Provision for private school fees should not normally be allowed in any calculation of surplus income. The individual circumstances of each case must be taken into account but the fact that a bankrupt is unhappy with local state schools, opting instead for private education, is not sufficient in itself to make the school fees acceptable as a reasonable domestic need¹. Where changing a child's schooling arrangements could have a detrimental effect upon the child then the decision may be different, for example where the child was in their GCSE year at school².

1. Scott v Davis [2003] B.P.I.R.1009

Pensions and insurances

35.62 Pension contributions and SAYE scheme

Payments into a pension deducted at source from earnings or made to a private pension scheme should be included provided they are reasonable and do not represent additional voluntary contributions. In most cases an individual can elect to stop or reduce their contributions to a personal pension for a period of time and if the payments seem to be unusually high the bankrupt should be asked to make this election for the period of the IPA. Saving for a future pension is acceptable but excessive contributions should not be made at the expense of creditors. In the same way where the employer operates a Save As You Earn (SAYE) scheme, where a proportion of the bankrupt's income is deducted at source to purchase shares in the employing company, this expenditure should not be included.

35.63 Life assurance

Life assurance policies taken out prior to bankruptcy vest in the official receiver and so payments should not be included unless the policy has been bought back. Where a policy has been sold back to the bankrupt or a new policy has been taken out, then payments towards a reasonable amount of life cover is an acceptable expense.

Work costs and tax

35.64 Allowances for professional affiliations or work related clothing or equipment

Certain professions require affiliation to or membership of a particular society or professional body before a person is allowed to work in that profession. In considering whether to include this expense consideration should be given to whether the bankrupt can continue to work without payment for membership of a professional body. Where clothing or specific equipment is required as a necessity to carry out a trade or profession enquiries should be made as to whether the bankrupt receives an allowance for this or whether the clothing is provided and/or paid for by

the bankrupt's employer, and the necessary adjustments made to reflect this in the calculation of surplus income.

35.65 Tax where self-employed

Where the bankrupt is self-employed at the date of bankruptcy, HMRC will regard that self-employment as ceasing on the date of the bankruptcy order and will submit a claim for outstanding tax to the date of the bankruptcy order. A self-employed individual who enters bankruptcy still has their tax allowances and is liable to pay tax on their self-employed earnings where the bankrupt re-commences self-employment following the bankruptcy, irrespective of the fact that this may include part of the tax year in which they were declared bankrupt.

Variable outgoings

35.66 General considerations

The purpose of the calculation is to establish the bankrupt's actual outgoings and to explore whether the expenditure is reasonable in the bankrupt's circumstances and to explore whether the costs could be reduced in areas where expenditure is elective to maintaining the bankrupt's lifestyle. This area of expenditure should always be carefully considered but expenditure above the spending guidelines should always be challenged and detailed explanation sought by the individual assessing the calculation. The spending guidelines are simply there as a benchmark and should not be treated as an allowance.

Communications and leisure

35.67 Home phone, internet, television packages and mobile phones

Broadband has become an essential utility and is now often packaged with landline telephone and television services packages. Ensure that the cost allocated to telephone, mobiles and broadband is not excessive. It should be sufficient to meet the reasonable domestic needs of the household, but if it appears that they are paying for excessive TV and telephone packages, it is not unreasonable to ask if costs can be reduced. Where the bankrupt uses the mobile phone for business calls,

the official receiver should establish whether the bankrupt's employer provides re-imbursement for this usage (or if self-employed, whether the bankrupt claims expenses for this usage from the business in addition to any other drawings/income they have already declared). The re-imbursement can be included as additional income to off-set against the total expenditure claimed, or the work-related portion of the claim for mobile phone usage could simply be disallowed. The same principle could also be applied where a bankrupt uses their landline home telephone for business as well as personal calls. Ongoing contracts for the supply of goods and services which remain in force at the date of bankruptcy vest in the trustee of the bankruptcy estate and the official receiver should take care not to adopt any ongoing service contracts.

35.68 Leisure, sport, gifts and charitable donations

These expenses are part of normal social interaction and allowances should be made within the overall constraints of the spending guidelines to ensure expenditure is not excessive in the circumstances of the bankrupt's family. Where it has been the practice of a bankrupt to make a regular monthly payments to a charity or a religious organisation/place of worship (sometimes referred to as tithing), this might continue provided it does not compromise the bankrupt's ability to make a contribution to their creditors. In saying that, the bankrupt should be invited to suspend payments for the duration of the IPA, the money being used for the benefit of their creditors. In normal circumstances membership of a sporting club, gym, golf club, stables etc. is not considered an essential day-to-day living requirement. Where sufficient evidence is provided to suggest that the expenditure is necessary, the official receiver should make a decision based on the circumstances relevant to the individual. An example of individual circumstances affecting this type of expenditure might be where the bankrupt has evidence from their GP prescribing exercise as an essential health treatment, which may in turn require the bankrupt to pay for membership of a local gym to fulfil this treatment.

Food, housekeeping and personal costs

35.69 Assessing claims for family outgoings

Provided the spending guideline for the "Food and housekeeping" and "Personal costs" categories aren't exceeded these should generally be accepted by the official receiver, although high expenditure on smoking and alcohol should be challenged.

Where high expenditure on groceries, laundry or clothing is recorded explanation/evidence as to why the higher amount is required should be obtained. In deciding whether an amount which exceeds the spending guidelines should be allowed the official receiver should consider whether there are extenuating circumstances. For example, a family member with a medical condition requiring specialist food or the nature of the bankrupt's employment and clothing requirements incurring extra laundry charges.

Attachment of earnings

35.70 Attachment of earnings order in force

Where there is an attachment of earnings order in force against the bankrupt, this is an order of the court and payments should continue until the order is discharged or varied. The court may, if it thinks fit, discharge or vary such an order on the application of the bankrupt, the trustee or the official receiver in order to secure payments by the bankrupt under the IPA¹. When making an application, if appropriate, the court's attention may be drawn to the provisions section 285(3) (limit on creditors' actions) and section 346 (enforcement procedures) which limit the ability of a creditor with a provable debt to continue action against the bankrupt. In such circumstances the official receiver should also seek the refund of any monies paid to the creditor since the making of the bankruptcy order. Where the trustee is making application court for an IPO the court may at that time be asked to discharge the attachment of earnings order in order to secure payments by the bankrupt under an IPO².

1. Section 310A(3)

2. Section 310(4)

Assessment and implementation of an IPA

35.71 Identifying surplus income - initial information

Details of income and expenditure should be provided by the bankrupt when completing the bankruptcy application, the bankruptcy preliminary information questionnaire (form PIQB) or where the bankrupt has been asked to complete an income payments questionnaire (IPOQ), the bankrupt should answer any questions regarding income and outgoings, providing full details of monthly income received from all sources and usual monthly expenditure. These figures should be entered into the IPA Calculator.

Where the bankrupt has sought debt advice in the six months prior to the bankruptcy order being made and, within that process completed the Standard Financial Statement (SFS) with a debt advisor, these figures may be referred to and should certainly be compared to any submissions to the official receiver.

35.72 State benefits only source of income

There is no requirement to complete the IPA calculator where the bankrupt's sole source of income is state benefits.

35.73 Consistency

It is important to maintain a consistent approach when considering expenditure claimed by the bankrupt, but all individual circumstances will be different. Each case must be considered on its merits. If a bankrupt's expenditure appears to equate exactly with evidenced income, leaving no surplus income, expenditure should be carefully examined and tested. Particular care should be taken where the debtor appears to have had assistance from a commercial organisation in the completion of their bankruptcy application or PIQ. The figures in the calculation may not be based upon information provided by the bankrupt but rather designed to ensure that the bankrupt is not considered to be eligible for an IPA. It is important that income and expenditure is evidenced and independently verified wherever possible.

35.74 Calculation of contribution to be claimed under a new IPA/IPO

All of the bankrupt's expenditure should have been accounted for, including an amount to allow the bankrupt to save for emergencies so the bankrupt should be asked to pay 100% of the monthly total available for creditors through an IPA (or an IPO if an IPA cannot be agreed).

35.75 "Stepped" or "staggered" agreement or order

The agreement or the order can require the bankrupt to begin making payments with immediate effect but also allow the amount of the payments to be decreased or increased at a later date. Usually the circumstance in which this would occur would be where a Nil Tax ('NT') code was to be implemented or where the official receiver considers that part of the mortgage repayments should be disallowed because they are unusually high or because they include an element of arrears. During the period where lower payments are made by the bankrupt, they would be expected to come to an arrangement with the mortgagee to accept lower mortgage repayments or to find alternative accommodation.

35.76 Obtaining an IPA where IP trustee appointment pending

The official receiver should continue with the necessary procedure to ensure the IPA agreement comes into force at the earliest opportunity and should not neglect to secure the payments under the IPA where the appointment of an insolvency practitioner is pending.

35.77 Contested IPA

Where a bankrupt does not consider they are able to make payments in the amount requested, they should be questioned as to why this is the case, the amount having been calculated from information provided by the bankrupt, and all reasonable necessary expenditure having been considered when completing the calculator. There is some room for negotiation and the bankrupt's concerns should be addressed wherever possible.

35.78 Consent to an IPA to be pursued in preference to applying for an IPO

Where the official receiver remains satisfied that on the evidence provided by the bankrupt there is surplus income, the bankrupt's consent to an IPA should be pursued in the first instance rather than making application to court for an IPO. Where a bankrupt refuses to accept that a surplus exists and/or will not agree to a reduction or exclusion of expenditure considered unreasonable by the official receiver, and continues to refuse to agree to an IPA. If the official receiver remains convinced that the bankrupt has sufficient surplus to make a contribution towards the official receiver should consider pursuing these repayments by making an application to court for an IPO.

35.79 Official receiver's requirement to present the bankrupt with the IPA

It is the official receiver's responsibility to provide a draft agreement for consideration and approval by the bankrupt approval¹. Form IPA can be presented at interview for the bankrupt to sign or it may be sent to the bankrupt for signature under cover of form IPALET, requesting that it be signed and returned within 14 days. The official receiver may specify a longer period if it is deemed appropriate, over holiday times or the Christmas period, for example¹. The 14 day period should be shortened where discharge may occur before the 14-day period has expired.

1. Rule 10.115(2)

2. Rule 10.115(3)

35.80 14-day "cooling off" period following consent given at a face-to-face interview

Where the bankrupt signs the agreement at a face-to-face interview, the Official Receiver should give the bankrupt a 14-day "cooling off" period to reflect upon the agreement before it comes into effect. If after 14 days, the bankrupt has not contacted the official receiver to withdraw consent to the agreement, the official receiver should sign and date it and on that signature, the IPA will come into force and become legally enforceable. This is operational policy, not a legal or statutory requirement, to ensure consistency with the maximum 14 day period to return an IPA by post and best practice by following the precedent of 14 days "cooling off" which is legally required in consumer credit agreements. The proximity of the date of discharge must be considered, as an IPA only comes into force when it has been signed by both the bankrupt and the official receiver or trustee prior to the date of discharge. The official receiver should not delay in signing an IPA where discharge may occur before the 14-day period has expired.

35.81 Bankrupt required to notify official receiver of refusal to consent

If the bankrupt decides not to consent to the IPA, they should notify the official receiver in writing of that decision within the same timescale as specified by the official receiver for return of the signed form. Where the bankrupt is prevaricating or refusing to sign the IPA and their discharge is imminent, if the official receiver is concerned there will be insufficient time to obtain a valid IPA, then the retains the option to apply for an IPO.

Income Payments Order (IPO)

35.82 Applying to court for an IPO

Where an IPA cannot be agreed, the official receiver may decide to seek an IPO instead. The application to court must be made before the date of discharge. An IPO can be made after the date of discharge as long as the application and report to court (form IPORAC) was submitted to court before the date of discharge. The official receiver should contact the appropriate court (at least 6 weeks ahead) to fix a date and time for the court to hear the application (chambers hearing). Where the court fee (currently £155) is paid this should be included in the amount to be recovered under the IPO.

35.83 Notice to bankrupt

The official receiver must send notice of the application and of the venue to the bankrupt (the official receiver using form IPONA) at least 28 days prior to the hearing date¹. A copy of the application and the report to court, setting out the grounds of the application should also be sent. A 'certificate of service'² must be completed in its entirety by the person sending the forms to the bankrupt. The 'certificate of service' should be filed at court within 21 days of service having been effected. The IPONA includes two consent forms which should be completed if the bankrupt consents to the making of an order under the terms sought. If the bankrupt consents to the making of the order one of the consent forms needs to be sent to the court and the other returned to the official receiver. The consent forms need to be sent by the bankrupt to the court and the official receiver at least five business days before the date fixed for the hearing if the bankrupt wishes to consent. If the bankrupt does not consent to the making of an order, or fails to return the consent forms before the appropriate deadline the bankrupt is required to attend the court hearing and will be given an opportunity during the hearing to make representations as to why the order should not be made or the terms sought varied.

1. Rule 10.109(2)

2. Form N215

35.84 General review prior to obtaining an IPO

If necessary the official receiver may seek to vary the amount sought at the time of the hearing, if the official receiver becomes aware that the bankrupt's income has

increased or decreased since the original assessment of the contribution amount available for an IPO.

Notification of agreement/order

35.85 Copy of agreement or order to be sent to bankrupt

Once the agreement has been signed and dated by the official receiver, a copy must be sent to the bankrupt¹ under cover of form IPAPAY, which also provides instructions for the payment of contributions under the IPA. If an IPO has been made a sealed copy of the order is placed on the bankruptcy file or court file and a further copy must be sent to the bankrupt² (form IPO under cover of form IPOSV).

1. Rule 10.116(1)

2. Rule 10.111

35.86 Notice to third party responsible for making payments under the IPA

Where the agreement or order provides for payments to be deducted and paid over by a third party, a notice of the agreement must be sent to the third party¹. The notice must contain:

- the full name and address of the bankrupt
- a statement that an IPA has been made, the date of it and that it provides for the payment by the third person of sums owed to the bankrupt to be paid to the official receiver
- the full name and address of the third person
- a statement of the amount of money to be paid to the official receiver/trustee from the bankrupt's income, the period over which the payments are to be made, and the intervals at which the sums are to be paid; and
- the full name and address of the official receiver and the address or details of where the sums are to be paid

1. Rule 10.116(2) and 10.111

35.87 Fee payable to third party making payments under the IPA

When a third party is making payments under an IPA, the third party may deduct the appropriate fee (from the payment) towards the clerical and administrative costs of complying with the IPA but must notify the bankrupt in writing of the amount deducted¹. The appropriate fee is currently £1².

1. Rule 10.116(4) and (5)

2. Rule 10.114A applying Attachment of Earnings Act 1971, section 7(4)(a)

Collection of an IPA/IPO

35.88 Instructing collection agents

Once the IPA (or the IPO) is in force, unless there are other assets in the case which mean that it is likely that the appointment of an IP trustee will be made, the official receiver should immediately instruct the collection agent employed by the service, currently Clarke Willmott. This is usually done by uploading a corporate report (Clarke Willmott IPA/O referral) in a spreadsheet format, along with a scanned copy of the IPA (or IPO where appropriate). Within two working days Clarke Willmott will set up on their [Debt View](#) website a separate record for each IPA or IPO, which should be checked by the case officer assigned to the case. This is an online enquiry facility for Insolvency Service staff which allows originating offices and LTADTs complete case access to be able to monitor progress, view payments received, all letters and case history, and receive and send instructions via [Debt View](#). The case officer assigned to the case has a login account and password to allow access. Information on the service provided by Clarke Willmott and full guidance on using their Debt View website is available on the [Clarke Willmott](#) intranet page. Full instructions on the procedure to follow and information required by the collection agent in order to process the collection of IPA or IPO contributions are available on the intranet.

35.89 Case to be passed to the relevant LTADT following instruction of collection agent

Following the instruction of the collection agent, the case must then be passed to the appropriate LTADT to monitor collection. A case should not be transferred to the LTADT until the first payment has been made.

35.90 Implementing an IPA where an insolvency practitioner appointment is pending

Where there are other assets and an insolvency practitioner trustee is likely to be appointed, the official receiver should still take action to secure the payments under the IPA or IPO, pending the appointment of the insolvency practitioner. This includes instructing the collection agent where necessary to ensure payments commence on the due date as agreed.

35.91 Payments made by bankrupt before collection agent is instructed

Should any payments be made by the bankrupt prior to instructing the collection agent, these must be entered on to the 'payments' screen of the case on Debt View, so that they can be taken in to account regarding the completion of the bankrupt's obligations under the IPA.

35.92 Nil tax (NT) coding to be notified to Clarke Willmott

Any payment resulting from an NT coding being applied to the bankrupt's income will be identified on the corporate report referral spreadsheet so that collection can commence as soon as the NT coding is applied by HMRC.

35.93 Additional income notified to Clarke Willmott

Should Clarke Willmott be informed the bankrupt is in receipt of a bonus payment from their employer, they will notify the relevant official receiver via the workbook 'task list' on Debt View. It will then be the responsibility of the official receiver to take the matter forward regarding any action to vary the agreement to collect the bonus payment if it is appropriate to do so. The collection agent will also inform the bankrupt that the relevant official receiver's office will contact them regarding any action arising from this change in circumstance.

Review, variation and discharge of IPA/IPO

35.94 Review, variation and discharge of an IPA or IPO

An IPA may be varied by written agreement between the parties¹. This can be achieved by an exchange of letters, where the trustee confirms any reduction or increase in payments, and the date the new payments will commence. Variation of the agreement does not require the original IPA to be redrafted, and whilst it is possible to vary an existing agreement post discharge, it is not possible to enter into an IPA after the bankrupt has been discharged. The amounts to be collected can be changed under the agreed variation, but the period of the agreement cannot exceed three years from the date the original agreement comes into force. An IPO can only be varied, reviewed or discharged by order of the court on the application of the trustee or the bankrupt².

1. Section 310A(6)

2. Rule 10.114

35.95 Application to court required where IPA variation is disputed

In the event that one of the parties to an IPA wishes to vary it but the other party does not consent to the variation, application may be made to court for the IPA to be varied.

35.96 Variation of an IPA by application to court

Any application to court to vary the IPA does not have to be made before the discharge from bankruptcy, but it may assist in recovering arrears if any variation is progressed as soon as possible. Variation of the agreement only modifies the IPA, any court order made as a result of an application to vary the agreement would incorporate the terms of the varied agreement, it does not convert it into an IPO. If the trustee wishes to apply to court for an IPO, this can only be done on an application filed at court before the bankrupt has been discharged. The application to court to vary an IPA must be accompanied by a copy of the original agreement (form IPA)¹.

35.97 Notice of variation application and venue to be provided by the applicant

Where the bankrupt or the trustee is applying to the court to have the terms of the IPA or the IPO varied they must send a copy of the application and notice of the venue to the other party at least 28 days before the date fixed for the hearing¹. If the bankrupt does not comply with the IPO and the trustee seeks to vary the order for payments to be made by a third party, the trustee is not required to give notice of the application².

1. Rule 10.117 and 10.114

2. Rule 10.112(2)

35.98 Application for IPO variation application may be dismissed by the court

The court may dismiss the application to vary the IPO, if it considers no sufficient cause is shown for the application. The court can dismiss the application without giving notice to any party other than the applicant¹.

1. Rule 10.114(4)

35.99 Insolvency practitioner trustee in office when IPA/IPO variation required

Where an insolvency practitioner has been appointed trustee, and variation of an IPA or IPO is required the official receiver should decline to deal with any application to the court to vary the agreement or order if requested by the insolvency practitioner trustee. Such applications form part of the trustee functions.

35.100 Notice where variation requires third party payments under the IPA/IPO

Where the court orders that the IPA/IPO be varied so that it takes the form of an agreement that a third party is to make the payments under the IPA/IPO to the trustee, the trustee must then send notice of the agreement or order to the third party. When making any such payment under an IPA, the third party may deduct the

appropriate fee towards the clerical and administrative costs of complying but must notify the bankrupt in writing of the amount deducted.

35.101 Notification to collection agents

Where the Insolvency Service collection agents have been instructed (currently Clarke Willmott), a copy of the variation letter or order should be uploaded via Debt View so that they can act on the new terms or close their file.

Enforcing and IPA or IPO following default

35.102 Objectives when seeking payments under an IPA/IPO

When considering the action to be taken with regard to an IPA/IPO, the trustee's aim is to achieve the maximum payment of the amount due under the IPA/IPO, at the least expense to the estate. Ideally to do this the trustee will need to know the whereabouts of the bankrupt, to be able to establish their financial circumstances, and where money is payable and the bankrupt is deemed capable of paying it, enforce payment. These principles form the basis for the guidance in this chapter, where there has been a default in payment of an existing IPA/IPO.

35.103 Recovery action taken by collection agent following default

Where the bankrupt defaults, the agents will, in the first instance, seek to resolve the default up to and including seeking payment direct from the employer. If the bankrupt contacts the agents and advises their circumstances have changed the agent will issue an IPOQ and refer the matter back to the official receiver for re-assessment. If the agents are unable to collect payments from the employer they will refer the matter back to the official receiver.

35.104 Case returned to the official receiver for re-assessment

The IPA can be varied by agreement between the parties. This can include increasing or decreasing the payments for the remaining term of the IPA depending on the bankrupt's circumstances. If the bankrupt is no longer able to maintain payments the agreement can be suspended. If the bankrupt's circumstances change again payments might recommence (with no penalty) until the agreement reaches its end date. Instruction to the collection agents will conclude if the agreement is suspended and a new instruction will need to be issued if payments are recommenced. Variation of an IPO can be agreed informally but should properly be set out in an application to the court to ensure the terms of the variation can be enforced.

35.105 Case returned to the official receiver for enforcement

In the first instance assessment should be made whether enforcement action is appropriate. The official receiver will need to consider the amount of the arrears, the likely costs of seeking to recover the outstanding funds. As the agents will have made preliminary attempts to collect the funds the official receiver needs to consider that the enforcement process can be time consuming, involving court hearings and cost to the estate. If enforcement is not to be pursued the reasons should be noted on the file.

35.106 Methods of enforcement

If the IPA/IPO is still in force and the bankrupt's current employment details are known then application may be made to vary the IPA to an IPO with an attachment of earnings, or an application made for an attachment of earnings. If the bankrupt's current employment status is not known then a private examination should be held with the option of seeking an attachment of earnings. If the IPA/IPO has concluded then the official receiver may seek a private examination of the bankrupt with the option to obtain judgment for the debt which might then be enforced through a number of routes.