

**Causes of Early Failure in
Individual Voluntary Arrangements**

Sue Morgan, Visiting Fellow, Kingston University

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Abstract

Consumer over-indebtedness is a topical and growing problem and Individual Voluntary Arrangements (IVA) are becoming the preferred solution for consumer debtors. When successfully completed, an IVA provides permanent debt relief and an opportunity for an individual to have a new start, but when these arrangements fail the individuals find themselves in a worse financial situation often with no alternative other than bankruptcy. The Insolvency Service (IS) only publishes very limited data on the procedure and there has been limited research into the process.

This project has provided the first data from a debtor's perspective. The findings on the initial advice process provide evidence of the importance of face-to-face meetings and the need for the regulators to reinforce rather than weaken best practice guidelines to improve quality and consistency. The breakdown in the relationship between Insolvency Practitioners (IPs) and creditors has caused a power struggle resulting in restrictive terms being forced on debtors, and finally the lack of an agreed approach for failed arrangements. The introduction of an agreed protocol in February 2008 will go some way to alleviating these problems. Further research is needed into the causes of IVA failure and follow-on projects are suggested. Due to the technical nature of this project a glossary of terms is set out on the next page.

Key words

Individual Voluntary Arrangement, Personal Insolvency, Insolvency, Consumer Debt, Credit, Bankruptcy, Over-indebtedness, Personal Bankruptcy Law, Creditor, Personal Debt Management

Contact details

Email: Susan.morgan@kpmg.co.uk

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GLOSSARY

BERR	Department for Business, Enterprise and Regulatory Reform
Creditor	An organisation or individual owed money by a debtor
Consumer debtor	A debtor without any trade debts
Debtor	An individual who owes money to one or more creditors
DP	Data protection
DTI	Department of Trade and Industry
Failure (of an IVA)	Each IVA proposal must specify the criteria for failure and in cases where there are contributions from the debtor one criterion may be when 3 or more payments are missed.
IA86	Insolvency Act 1986 (as amended)
Over-indebtedness	Anyone who is struggling to keep up with payments and is suffering real financial hardship
IO	Interim Order – moratorium granted prior to agreement of IVA
IP	Insolvency Practitioner (IA86 introduced licensing)
IPC	The Insolvency Practices Council
IR86	Insolvency Rules 1986 (as amended)
IS	Insolvency Service (executive agency of BERR)
IVA	Individual Voluntary Arrangement
JIC	Joint Insolvency Committee
Nominee	An IP appointed by the debtor to advise the court and creditors on the efficacy of the arrangement. The role of the nominee is impartial and is distinct from the earlier role as adviser to the debtor. [r5.4 IR86]
Protocol	A set of documents agreed by creditors and IPs in respect of the content and format of debtors' proposals
RPB	Recognised Professional Bodies [section 391 IA86] (see Diagram 1)
SIP	Statement of Insolvency Practice - A series of best practice guidelines issued on various topics by R3 in conjunction with the RPBs, JIC and IPC
SoS	Secretary of State
SPSS	Statistical Package for the Social Sciences
Supervisor	An IP appointed by the creditors to administer the terms of an approved IVA

CHAPTER 1: INTRODUCTION AND BACKGROUND

This paper looks at the causes of early failures in Individual Voluntary Arrangements or 'IVAs'. The IVA is just one of the formal solutions available to individuals in financial difficulty and they are becoming the primary solution for consumer debt problems. An IVA is a court sanctioned agreement between a debtor and their creditors and "fails" when the terms of the agreement are breached. In order to understand the significance of IVA failure, the political and economic impact of over-indebtedness on society will be discussed, followed by an explanation of the IVA process and the regulatory regime including market changes and behaviour.

There has been industry concern over early IVA failures for some time (JIC, 2001 cited 2004, IPC, 2005). Despite this there is still no published data available so the problem cannot be measured or properly monitored (Green, 2002a, p. 23). Green (2006, Ch.6, pp. 8-9) looked at four different ways to measure failures over time. Using the historical data, a conservative estimate shows approximately 25% have failed; around 30% of which occur in each of the first 2 years (see Table 1 and Figure 3). To match failures with completions the data has been time shifted based on the assumption that completed arrangements usually last 5 years, whereas failures usually occur within the first 2 years. Using this rough measure between 1994 and 1998 failures increased from 31% to 36% whereas between 1999 and 2003 they fell from 29% to 24%. Despite this apparent improvement¹ the absolute number of failures has more than doubled in the last 10 years and with it the number of people who have had to face failure twice² with all the emotional and financial costs that involves.

1.1 Consumer debt and over-indebtedness

The consumer credit market has expanded rapidly in recent years and exacerbated the problem of over-indebtedness. There is no agreed definition of over-indebtedness but it has been described as "debt that has become a major burden for the borrower" (DTI, 2006, p. 24; Tribe and Cocks, 2008, p. 17).

¹ Pond's failure rate was 31% (Pond, 2002b, p. 53)

² First by admitting insolvency, then by seeking a failed solution

TABLE 1 IVAs - Historical Data

Year	Completed	Total %	Year	Failed	Total %	New %	Total finalised	Year	New registrations	Growth %
								2007	42,231	-5
			2007	7,320		16.6		2006	44,331	119
			2006	4,034		19.9		2005	20,270	89
			2005	2,376		22.1		2004	10,751	42
2007	4,706	80.5	2004	1,142	19.5	15.1	1,142	2003	7,583	20
2006	5,496	76.1	2003	1,726	23.9	27.4	7,222	2002	6,295	2
2005	6,636	78.5	2002	1,821	21.5	29.5	8,457	2001	6,172	-20
2004	5,839	76.4	2001	1,807	23.6	23.4	7,646	2000	7,729	7
2003	4,415	72.5	2000	1,676	27.5	23.3	6,091	1999	7,195	47
2002	3,263	70.7	1999	1,354	29.3	27.6	4,617	1998	4,902	8
2001	2,722	63.9	1998	1,536	36.1	33.8	4,258	1997	4,549	2
2000	2,539	63.3	1997	1,473	36.7	33.0	4,012	1996	4,466	2
1999	2,632	62.5	1996	1,581	37.5	36.1	4,213	1995	4,384	-14
1998	2,912	65.8	1995	1,514	34.2	29.7	4,426	1994	5,103	-10
1997	2,599	68.4	1994	1,201	31.6	21.1	3,800	1993	5,679	21
1996	2,349	72.8	1993	879	27.2	18.8	3,228	1992	4,686	56
1995	2,221	81.6	1992	501	18.4	16.7	2,722	1991	3,002	56
1994	1,741	87.2	1991	255	12.8	13.2	1,996	1990	1,927	57
1993	1,264	92.9	1990	96	7.1	7.8	1,360	1989	1,224	57
1992	804	95.7	1989	36	4.3	4.6	840	1988	779	93
1991	468	97.5	1988	12	2.5	3.0	480	1987	404	
1990	335	99.7	1987	1	0.3		336			
1989	182									
1988	61									
1987	16									
Total	48,494	73.8%		17,469	26.6%	25.5%	65,704		68,496	

Source: IS (2008) and (2008a)

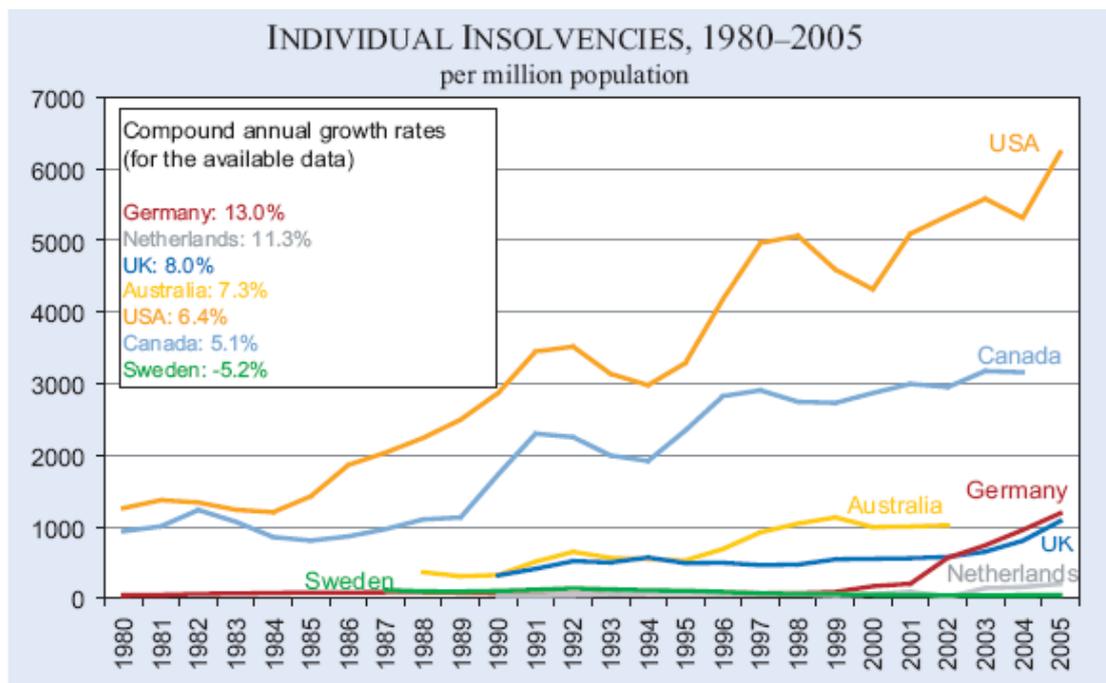
Significant research has been focussed on measuring and defining over-indebtedness (Barnwell *et al*, 2006; Bridges and Disney, 2004; Del Rio and Young, 2005ab; FSA, 2004-6; Green, 2006; Kempson, 2002; Kempson *et al*, 2004; May *et al*, 2004; Oxera, 2004; Tudela, 2003; Tribe and Cocks, 2008) but despite this, all the measures have difficulty in differentiating between sustainable and unsustainable debt (Green, 2002). During 2007

- the growth rate for consumer credit was between 5.2-6.0% (BoE, 2008)
- outstanding balances totalled £224bn (some will have been repaid) at the end of the year (BoE, 2008)

- nearly 74% of credit card balances increased monthly with interest (BBA, 2008)
- over 65m credit cards were in circulation with 31.4m cardholders (BBA, 2008)
- 10% of people missed a payment on their credit card, loan or mortgage (BBA, 2008).

Assuming just 5% of cardholders are over-indebted, then roughly 1.5m people, or three times the total aggregate of formal personal insolvencies over the whole of the last seven years³, may be in need of a debt solution. Despite the increasing numbers, formal insolvencies are still low as a percentage of the working population (IS, 2006, p. 6) when compared to other countries. The informal market has similarly expanded with 70-80,000 debt management plans estimated for 2005 (Green, 2006, Ch.4, p. 18). These figures highlight the need to understand the relationship between personal insolvency and the wider consumer credit and banking market (Ramsay, 1997) both in the UK and globally (Tabb, 2005).

FIGURE 1



Source: Osterkamp (2006, p. 31)

³ Between 2000 and 2007, bankruptcies and IVAs for England and Wales totalled 453,258.

1.2 The IVA process

The Insolvency Act 1986 was the first major reform in insolvency legislation for 100 years and it introduced the modern IVA⁴. Initial take up was very slow with less than 1,000 IVAs in the first two years, increasing to around 10,000 by 2004 and to 44,000 by 2006. The Enterprise Act 2002 was intended to encourage entrepreneurship and improvements to the consumer credit market. An increase in consumer confidence was necessary to drive economic growth, which was achieved by encouraging the take up of consumer credit. The 2003 White Paper listed the three key elements essential for an open and competitive consumer credit market as choice, information and protection. The government's aim was to ensure that the consumer credit market functioned effectively, providing fair protection for the consumer debtor because the cost of over-indebtedness does not just fall on the individual borrower but affects financial institutions, other creditors, government and society as a whole (DTI, 2004, p. 4).

This climate encouraged a few entrepreneurs in the insolvency profession to use the IVA procedure as a lucrative solution for individuals with consumer debt problems (Clarke, 2006). Their business models relied on rapid expansion to fund their set-up costs. It was in their interest to sell as many IVAs as possible, even where inappropriate for the individual debtor (Tribe and Cock, 2008). To keep costs to a minimum the model generally used relied on low paid non-professionally trained staff to deal with small sections of the process, rather than a single manager or small professional team handling an individuals' case administration throughout the process. The mass media advertising used to generate this business was inconsistent with professional standards⁵ (BBA, 2006). The professional bodies took no action against these members and the consequent media frenzy resulted in a break down of the relationship between institutional creditors and IPs (ICAEW, 2007; BBA, 2007). The institutional creditors were being accused of inappropriate lending (Kempson, 2002; Griffiths, 2005). The creditors countered that IPs acting as nominees and motivated by self interest were prejudicing creditors by inappropriately⁶ advising debtors to enter IVAs that had little chance of success. The whole image of the profession suffered as a result, with the only positive benefit

⁴ Voluntary arrangements have a long legal history before the current format was introduced by Insolvency Act 1986(IA86)

⁵ Professional ethics require any advertising for services, achievements or products to be consistent with the dignity of the profession and project an image of a person bound by high ethical and technical standards (ICAEW members' handbook, Tribe, 2008).

⁶ The impartial nature of the role of the nominee is explained later.

being that information was disseminated more widely to the general public, although sometimes this information was misleading (Tribe and Cocks, 2008).

1.3 Statutory and legal framework

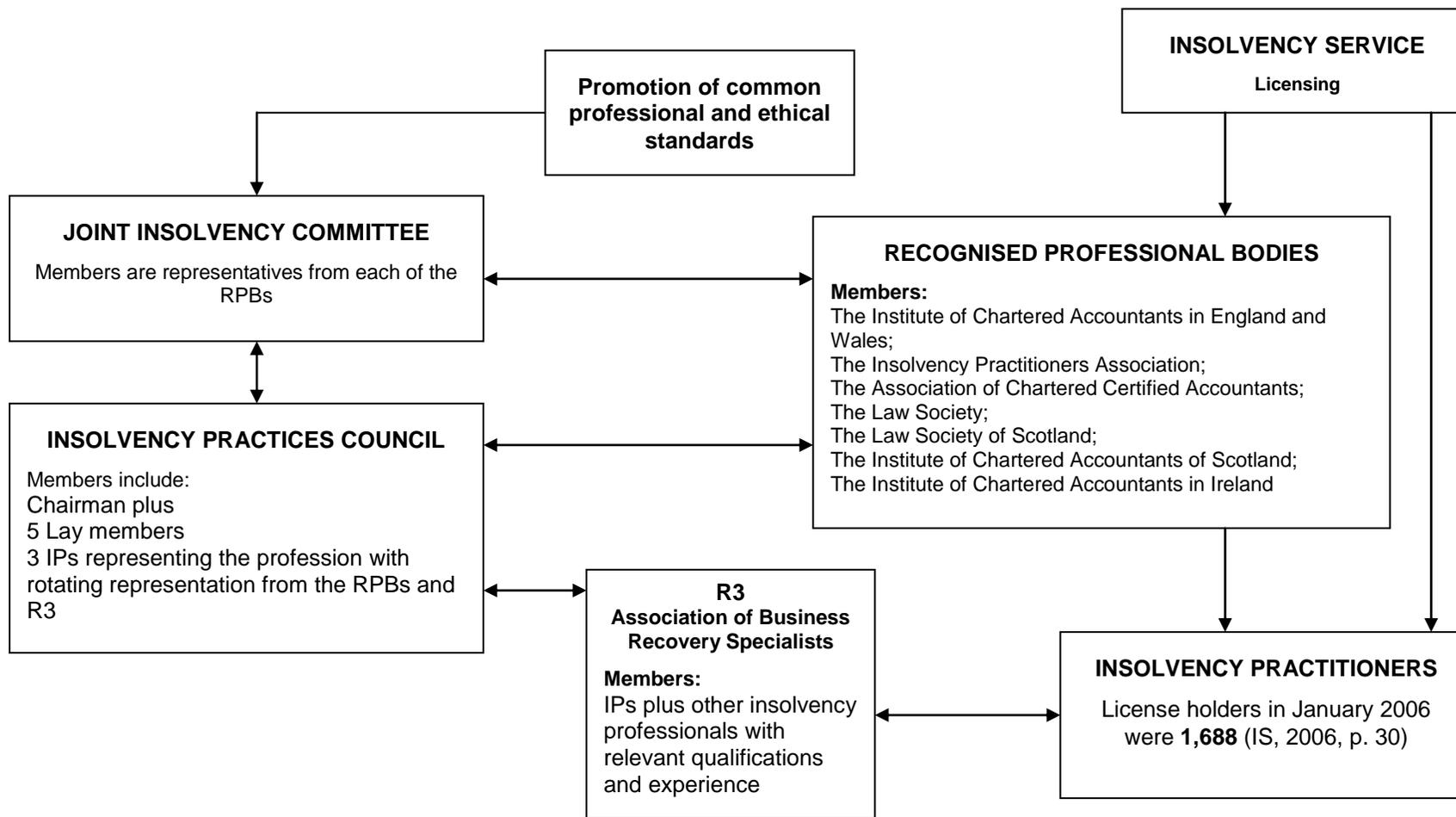
An IVA is a statutory contract or agreement between a debtor and his creditors. An amount of less than 100p in £ is accepted by the creditors in full and final settlement. A 'nominee', who must be a licensed IP⁷, presents a proposal to the creditors and, if approved at the creditors' meeting subsequently acts as 'supervisor' of the arrangement. The supervisor implements the terms of the IVA, reporting annually to the creditors and the court. If the proposal includes regular payments, the payments must be made within the parameters agreed or the agreement is broken and the IVA fails.

A unique feature of an IVA is that the IPs primary duty of care shifts as the each stage of the process is reached. At the initial advice stage the IPs duty is to the debtor (SIP3, 2003, para 3.1) but once the proposal has been produced and the IP becomes the nominee, the IPs role changes and he is required to report impartially on the efficacy of the proposal to court and creditors (SIP3, 2003, para 3.4). On appointment as supervisor, the IPs role is to implement the terms of the proposal dispassionately, while maintaining regular contact with the debtor. In the event of failure the supervisor should comply with whatever conditions were set out in the proposal.

To aid understanding of the complex and fragmented structure of the insolvency profession, a brief description of the regulatory framework follows, which is drawn from Finch (2002), Green (2006) and Walters (2008) and summarised in Figure 2. The Insolvency Service (IS) representing the Secretary of State (SoS) acts as the regulator of regulators with each of the recognised professional bodies (RPBs) taking responsibility for licensing and monitoring its own insolvency practitioners (IPs). Two committees were set up on recommendation of the insolvency regulation working party to improve cooperation: the Joint Insolvency Committee (JIC) and the Insolvency Practices Council (IPC), which provide guidance on professional standards and ethics. R3 (a trade association) publishes technical bulletins and best practice guidance (SIP3) in association with the RPBs, IS, JIC and IPC.

⁷ Licensing was introduced by IA86 (Part XIII, ss388-398).

FIGURE 2 THE INSOLVENCY PROFESSION – REGULATORY FRAMEWORK



The original procedure was streamlined (Practice direction, Bankruptcy 1/91, [1992] 1 All ER678) to shortcut the need for an interim order and by 1994/95 over 43% of cases used this procedure (Pond, 1998a, p. 4). The Enterprise Act 2002 introduced further amendments, including a new fast track procedure specifically for undischarged bankrupts to convert to an IVA. Although available since 1 April 2004, there has been a slow take-up of this option.

1.4 Lack of data

Despite all the media interest there has been very little research into the IVA process (Green, 2002a; Ziegel, 2003), the literature review in the next chapter will concentrate mainly on findings published by Green (2002) and Pond (1995-2002). The lack of data has been caused by the fragmented nature of the insolvency profession (see Figure 2). Individual IPs have no interest in providing any data which has a personal financial cost to them without any perceived benefit. The RPBs, who are fragmented, only see their role as enforcers of the legislation and have conflicting duties to the IPs as their members. They do not form a coherent whole in their regulatory regimes (Finch, 2002; Green, 2006; Walters, 2008). Despite collecting information on failures since 2003 no data has been published. Lastly the IS, who is powerless to compel the provision of any data not specifically provided for in the legislation.

Three areas arise as potential causes of early failures: initial advice process, inflexible terms and relationships between interested parties. This last issue includes the institutional behaviour of creditors who have effectively ganged up to obstruct debtor's access to an IVA even where the return is expected to be better than in bankruptcy. An open forum called in May 2007 to discuss the breakdown of trust between IPs and the creditors resulted in an agreed protocol (IS 2008b) which came into effect on 1 February 2008. If successful this should resolve some issues raised in this project and is discussed in more detail later.

The empirical work on IVA failures by Green (2002) was the first available data. Updated extracts are shown in Table 1. Pond's earlier research (1995-2002) was a longitudinal study and relied heavily on data obtained from the supervisors of IVAs. Both looked at legal developments and changes in the market structure including the changing relationships between IPs and creditors. The next chapter evaluates their findings by reviewing the three areas identified above.

CHAPTER 2: LITERATURE REVIEW

This chapter focuses mainly on the work of two researchers, Pond and Green who have looked specifically at IVAs. It identifies the gaps in available data on IVAs, the effect these issues might have on early failures and then compares the data produced. The three areas which will be concentrated on are the initial advice process, inflexible arrangement terms and the relationships between the interested parties.

2.1 Availability of data

Prior to the report by Green (2002), there was no published data on the number of IVA failures. Adverse publicity meant that IPs were being pilloried (Hughes, 2001) for taking nominees fees where prospective IVAs had no chance of success. Green's initial analysis (2002, Table 4.4) provided limited data. Further analysis showed failures were a fairly constant percentage of finalised cases between 1991 and 2002 (35-40%) and subsequent data shows this percentage still falling (Green, 2006, Ch 6, pp. 6-7) rather than increasing. However the changing market makes this measure unreliable and further research and analysis is needed.

There are currently no criteria available to determine whether the failure rates are a product of market forces, bad advice or other issues which could be tackled to improve the success rate. Pond's earlier research (1995) relied solely on data obtained from the supervisors of IVAs. His data indicated that failure was linked to what he termed 'debtor non-cooperation', a subjective supervisor measure. However he identified some factors he could measure as being unrealistic terms. These included duration, contribution levels and equity in the matrimonial home (1998b, 1998a). The initial advice process outcome fell outside these parameters. This project examines data from debtor participants on this aspect but further work is needed to produce a reliable measure.

2.2 Market structure

The initial take-up of the IVA procedure in 1987 was slow (fewer than 100) but subsequently took off, levelling out between 5,000 and 6,000 annually between 1992 and 2002 (Pond, 1995, p.1; 1998b, p. 2) before rocketing to the current registrations exceeding 44,000 in 2006. The take up in the late 1980s was championed by a few specialist firms who recognised a niche market they could fill (Pond, 1995, p. 2).

These firms discreetly marketed the IVA as a solution to debt problems for professions prohibiting bankruptcy of their members e.g. lawyers, accountants, police, politicians, and armed forces personnel. Many of these early IVAs involved a loan,¹ providing a one off payment to creditors within a short period². These specialist firms were the forerunners of the large providers who market IVAs as a panacea to all debt problems (Ewing, 2007) and specialise in low cost consumer debt arrangements.

TABLE 2 DISTRIBUTION OF IVA CASES AND PARTICIPATING FIRMS 1995-2006

Year	All cases	No. of firms	No. of firms with >50% of cases	% of firms	Biggest firm's No. of cases	No. of firms with ≥100 cases	% of cases handled by top 5 firms
2006	44,331	339	8	2.4%	6,719**	47	48%
2005	20,270	289	5	1.7%	3,290**	28	50%
2004	10,734	288	5	1.7%	1,571**	18	46%
2001	6,172	287	12	4.2%	889	12	36%
2000	7,729	292	8	2.7%	803	21	34%
1995	4,169	284	39*	14.0%	156	5	12%

*53.4% of cases

**Same firm

Source: Green (2002a, p. 19) and IS (2008)

Table 2 updates Green's (2002a) original data on the market spread and demonstrates the polarisation of the market structure with a few large firms controlling the majority of registrations with several hundred smaller firms making up the remainder. The largest firm registered more IVAs in 2006 than the total number registered in 1995. The type of firm offering IVAs has also changed. In 1995 the top 20 firms included all the large accountancy firms (Pond, 1998b), but by 2000 this had changed to none (Green, 2006). Table 2 shows the market is now dominated by firms who specialise solely in providing IVAs with less than 10 firms controlling the majority of new registrations. It also includes other financial institutions predominantly debt management providers.

Pond (1998b) identified the start of this trend towards processing centres. He found that traditional accountancy firms sourced most of their work through creditor contact, generally in their local areas, whereas smaller firms used 'work finders' who sourced

¹ Loan terms depended on the occupation and income of the individual.

² Typically within 6 months of IVA approval.

their work from all over the country. The outcome being that those who had more successful 'work getters' ended up 'stealing' work from outside their geographical location. To counter these independent national 'work finders' (or ambulance chasers) several large accountancy firms began offering their national clients a 'free proxy service'³ (Pond, 2002, p. 4) in return for supporting their nominations for appointment across all work types. Green (2002b) expressed concern that the majority of IVAs were effectively controlled by these firms acting on behalf of creditor groups which stifles flexibility and fuels a culture of mistrust between supervisors and creditors, with debtors the casualty. The independent work finders fought back by setting up organisations offering enhanced proxy and monitoring services for which they charge and the regulatory implications of these changes are returned to later.

The increasing volume of IVAs is linked to the rising volume of consumer debt. The percentage of them dealt with as IVAs increased from 12.2% to 18.6% between 1987 and 1994 (Pond, 1998b, p. 6), whereas it had stayed fairly stable at around 9% for bankruptcy suggesting that IVAs were the preferred choice for consumer debtors during that period. This change continued and Green (2002a, p. 15) suggested that by 2002 at least 90% of the IVA market were consumer debt cases, whereas Tribe's (2008, p. 137) sample indicated a slightly lower figure (88%)⁴. There is a similar trend for bankruptcy with the 2006 data (IS, 2008, Table 2b) showing that non-trading individuals account for 82.7% of the total bankruptcies showing a steady increase up from 47% in 1998. Non trading debtors in this project totalled 86.4%.

A key feature of this new popularity as a consumer debt solution was national advertising, which expanded the market and encouraged the rapid rise of 'IVA factories' (Ewing, 2007, p. 5) with the inherent ethical issues they pose. The current relaxation of ethical standards to accommodate payment for introductions under the guise of work done has caused a huge debate within the insolvency profession and is contrary to generally accepted insolvency principles (IA86, s164)⁵ on payment for introductions. The change has fuelled the existence of marketing companies whose sole purpose is to collect leads for sale, with one IVA comparison website (Credit Today, 2008, p. 14) offering a pre-paid card with £50 to anyone signing up to an IVA.

³ Completion, submission and meeting report

⁴ 12% had trade debts

⁵ IA86 covers this issue for liquidators: "A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is liable to a fine." (s164 IA86)

These leads frequently change hands for substantially more than £50 depending on the data being offered with typically more than £500 being paid. There is controversy over how these activities should be regulated with the majority of complaints being made by professional competitors (ICAEW, 2007). In July 2007 the IS issued guidelines for monitoring volume IVA providers. They recognised the different business models being used but did not include any guidance on payments for leads.

2.3 Returns to creditors

Returns to creditors are paid by way of dividends which are expressed in terms of p in £. Dividends paid to creditors of an IVA are directly affected by its duration, costs and contributions

When IVAs were originally introduced they typically lasted for periods up to 3 years this being comparable with the discharge period for bankrupts in 1986. According to Pond (1998, p. 8), between 1988 and 1995 the average length of arrangements increased. This can be contrasted to those lasting less than a year and in 1988 more than 50% of arrangements lasted less than a year. By 1994/5, this had decreased to just over 10%. Arrangements lasting more than 4 years increased from around 11% to over 35% between 1988 and 1994 (Pond, 1998, p. 8) and to 45-50% by 2006 with around 10% lasting more than 6 years (Green, 2006, ch.6 pp. 5-8). This increase in length was creditor driven (pp. 50-54⁶), with the sole purpose being better returns by increasing the number of contributions from income. Pond (1998b) suggested it indicated that debtors were willing to work harder to avoid bankruptcy and the associated stigma. The downside of longer IVAs is the increase in administration costs. More recently a hard line has been taken by creditors on the level of fees they approve (Seib, 2007) and arrangements being rejected where projected fees exceed limits set. Having increased duration creditors have also sought to increase the level of contributions. Pond (2002b) identified this as a debtor non-cooperation factor.

IVA costs are generally cheaper than bankruptcy (Pond, 1995); with bankruptcy fees calculated on realisation and distribution scales accounting for 40% funds on small cases (Pond, 2002a, p. 7). Pond's first sample showed IVA costs averaging 18.35% of realisations as opposed to 33% in bankruptcy. Green (2002a) only looked at IVAs but found that costs were on average a third of realisations, indicating that costs had almost doubled. Both Pond (1998a) and Green (2002) demonstrated that returns

⁶ The role of the creditor and creditor power on IVA terms.

had also fallen during the same period. This reflects the known market changes with an increasing number of IVAs with fewer assets with more reliance being placed on future income streams.

2.4 Changing roles and relationships

The roles and relationships between the interested parties in an IVA are complex. With the changes introduced by the large providers, supervisors are remote from individual debtors with administrative staff and advisers dealing with the day-to-day handling of cases (Tribe and Cocks, 2008). The original intention of the IVA process was for the debtor, having realised he was in financial difficulty, to approach an IP with a proposal⁷ to be put to his creditors. In reality very few debtors are able to get to this stage before they seek out an IP or other adviser and the proposal is usually prepared by the adviser based on accepted standards that have been developed since 1986⁸. At this stage in the proceedings (SIP3, 2003, s3) the IP's duty is to the debtor to ensure that the IVA is the best solution for their circumstances. Once the content of the proposal has been agreed by the debtor and is ready for the report to court, the IP becomes the debtors' nominee⁹ and his responsibilities change.

As nominee the IP owes a duty to the court to report on the efficacy of the proposed arrangement and to balance fairly the interests of the debtor and the creditors. At this point the nominee should ensure that the debtor and any parties who may be injecting funds into the arrangement have been independently and appropriately advised by a third party (SIP3, 2003, para 3.2). The IP no longer has a duty to the debtor and has to act impartially and be seen to be independent from all parties including the creditors (SIP3 2003, para 3.4). The process to this point is clearly an ethical minefield and best practice¹⁰ requires this change to be clearly explained to each debtor. This project has collected data from the debtors on how this process operated in practice.

⁷ Rule 5.2 (IR86)

⁸ R3 issue standard terms & conditions plus Lawson (1999) & Bailey (2003) contain examples
⁹ IPs consent to act (r5.4 IR86) and report to court (r5.11 IR86 (IO) or r5.14 IR86 (no IO))

¹⁰ "In many cases the member's role will change during the conduct of the case, for example from adviser to nominee to supervisor. These roles will involve different responsibilities: for example, when acting as adviser the member's role will be to consider the best course of action for the debtor in the light of their particular circumstances; when he becomes nominee his duty will be to the creditors and the court; and when acting as supervisor his responsibilities will be governed by the terms of the arrangement. The member should be mindful of possible conflicts of duty arising from these changes of role. He should ensure that his case records distinguish between these functions and that his remuneration in respect of each function is separately identified." (SIP3, 2007, para 1.5)

The IP remains the nominee up to the approval of the arrangement, at which point a resolution is proposed for the appointment of a supervisor¹¹. During the meeting and in the previous period any amendments proposed to the arrangement by creditors must be agreed by the debtor (SIP3 2003, para 7.6). There has been an ongoing publicly reported argument over modifications proposed by creditors who have grouped together to force through amendments that are not always a fair and equitable compromise. The specifics of some of these clauses including their volume and competing nature are discussed in depth in the results and conclusions chapters.

The role of creditors was mentioned earlier in connection with maximising their returns. Pond (2002a) looked at the role of the creditor under the heading 'therapeutic intervention' and his summary of the opportunities that creditors have to influence the outcome of an IVA is shown in Table 3.

TABLE 3 OPPORTUNITIES FOR THERAPEUTIC INTERVENTION

Before the s257 ¹² meeting	(i) Discussion with IP during 'design' phase of proposal (ii) IP knowledge of common proposal amendments put forward by specific creditors
At the s257 meeting	(i) Tabling of amendments to proposal (ii) Conditional voting at the meeting
After the s257 meeting	(i) Legal objection to outcome of meeting within 28 days (<i>IA 1986, s 262</i>) (ii) Variation of proposal following failure

Source: Pond (2002a, p. 4)

2.5 Success or failure

Table 4 summarises the key issues for success (or failure) found by Pond (1998b).

TABLE 4 KEY FACTORS IN SUCCESSFUL IVAs

<i>Feature</i>	<i>1987/88</i>	<i>1994/95</i>
Entry route	No prior procedure (s.253)	No prior procedure (s.253)
Type	Must contain some realisable assets with or without an income stream	Must contain some realisable assets with or without an income stream
Size	Under £50,000 liabilities	Over £20,000 assets with liabilities under £50,000
Dividend anticipated	Data not collected	IVA dividend should be no more than 20p better than the anticipated bankruptcy dividend
Duration	24-36 months	Any duration (but especially < 1 year)

Source: Pond (1998b, p.16)

¹¹ The supervisor is usually the same person as the nominee (r5.25 IR86)

¹² The s257 IA86 meeting is the creditors' meeting at which creditors vote for or against the proposal

Green (2002) had focused on the relationship between formal and informal activities of the financially distressed and he produced a series of indicators which he used to analyse the successfulness of the IVA process. He produced this graphically in a debt curve and demonstrated that success or failure was determined by their position on this graph (Green, 2002a, p. 57). He looked at how well the IVA market operated and concluded that further research was needed on the causes of failure.

2.6 Methodology

The approaches of these two pieces of IVA research varied. Pond's research was longitudinal in nature commencing in 1989 when he looked at 100 proposals commenced in 1987 and 1988¹³, whereas Green's (2002) research is empirical in nature and relies heavily on the official data provided by the Insolvency Service. Green's report (2002) contained two pieces of original empirical research. The first analysed historical data for IVAs completed successfully between August and October 2000. The second, analysed arrangements started or proposed in autumn 2001, and were based on data supplied by a panel of IPs who, in the year 2000, originated almost half the arrangements commenced in the UK, and by those creditors' representatives who dominated the approval process at the time.

In contrast, Pond followed up his initial sample (879) from 1994/5 and revisited some of his original sample (490 – 30% response rate) in a longitudinal study (Pond, 1998b, p. 5). He obtained the majority of his data from questionnaires sent to the supervisors of the arrangements supplemented with explanatory interviews from a small sample. There are a number of key differences in the approach of this project. Both Pond and Green used inductive strategies using their data to formulate theories. The strategy used in this project is deductive. A number of research questions were posed with the actual results being discussed in conjunction with the expected results (Bryman and Bell, 2003). Another difference is the source of the survey data for this project which was obtained not only from debtors but also from supervisors.

¹³ IVAs registered in 1987 and 1988 were <1200. Registrations in 1987 were 404 and in 1988 were 779 compared with 44,331 in 2006.

2.7 Rational choice theory

Mises (cited in Smith, 1998, pp. 155-158), an economist, differentiated between the quantitative predictions of the natural sciences and the qualitative predictions of the social sciences by noting that humans by nature are individually unpredictable but that general patterns of behaviour are discernable. Game theory is one example of this approach with the rational actors always behaving in a 'minimaxing' way to establish patterns of behaviour in an endless number of scenarios from the simple game of chicken crossing a road to prisoners' dilemma in which two suspects being questioned separately face a number of choices on whether to confess or not depending on whether or not they think their partner will do the same. This approach has been used by a several researchers to look at available strategies (Pond, 2002, Braham and Steffen, 2003).

Pond used this approach to look at the choices faced by both debtors and creditors on entering into an IVA. He used game theory to explain the reflexive nature of the process and the key role that 'trust' plays in the relationship between creditors and IPs (acting for the debtor in the negotiations). Moral hazard is key in this relationship as both the IP and the creditors have to assess the honesty of the debtor and his ability to fulfil the terms. Pond calculated the chance of failure by looking at each of the risk factors (2002b, p. 54). These included debtor non-cooperation, difference between the projected dividends (IVA v bankruptcy), the level of assets, creditor support and modifications. In contrast, Braham (2003) used it to compare voting strategies in voluntary arrangements across different jurisdictions.

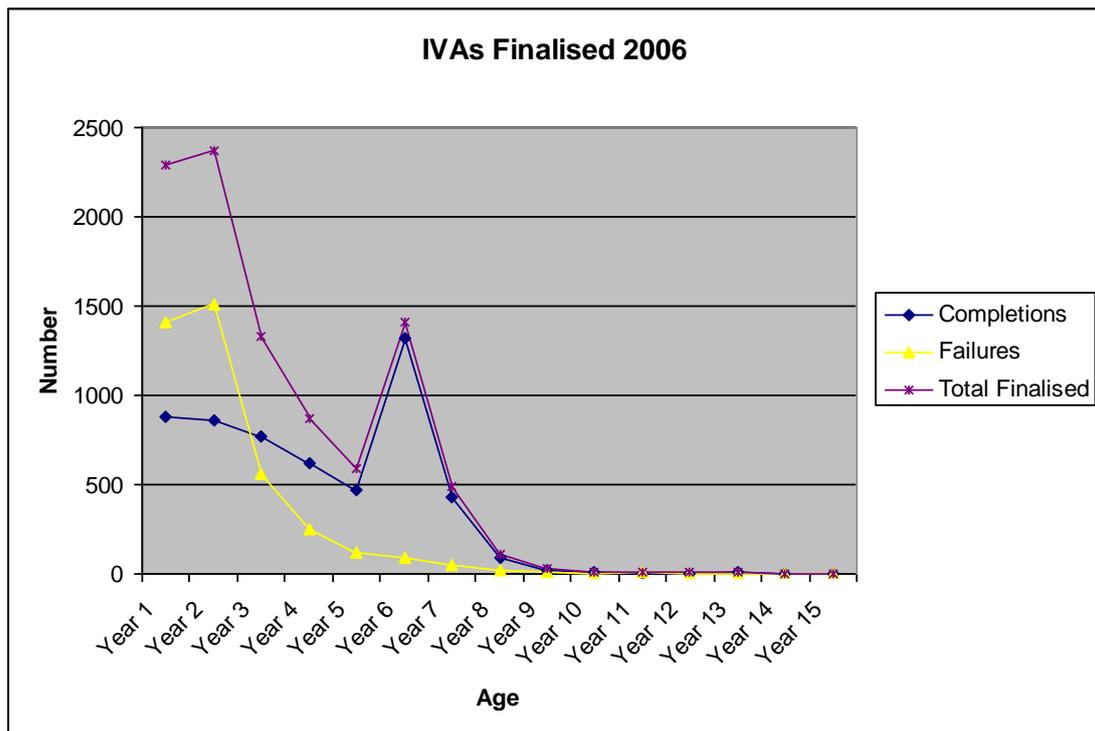
The next chapter describes the methodology in more detail.

CHAPTER 3: METHODOLOGY

This chapter starts with an overview of the methodology and theoretical grounding used, then looks at the detailed planning process including the population, sampling, data access and questionnaire design, including anticipated problems. This is followed by a discussion of the ethical issues including personal and social issues of the participants, informed consent, identification, roles and relationships and data protection act requirements.

The objective of this project was to look at the causes of early failures in IVAs. Intuitively you would expect failures to increase as time progresses but in fact most failures (circa 60%) occur during the first two years (see Figure 3) which is why early failures are so important.

FIGURE 3



Source: IS (2008)

Chapter 1 explained the economic and political background to market changes, and why data on the causes of failure is lacking. Chapter 2 provided a framework for the research questions being posed. These research questions fall into three broad areas: the advice process, the terms of the arrangement, and the effect of the various

relationships on these and ultimately success or failure. These are summarised in Table 5 and discussed further in Chapter 4. Identification of possible improvements should lead to improvements in the IVA process.

3.1 Rationale and theoretical grounding

For this project empirical data was required as a framework and so a positivist approach was taken. The research design was cross sectional (Bryman and Bell, 2003) with the most recent available data being used (i.e. all failed, completed and new IVA registrations for 2006). Survey methodology provided a systematic approach for collecting this data as 'questionnaires provide consistent answers to consistent questions' (Sapsford, 1999, p. 5). Their completion also provided a process for self-selection (Bryman, 2002) for the follow-up interviews, which was the only practical way of gaining access to this diverse and mobile debtor population.

Quantitative approaches to research are often criticised for lack of depth of information, while qualitative research is criticised for being descriptive, trivial and ignoring the constraints of structure (i.e. only exists within a set of social relations which emphasises agency at the expense of structure) (Bryman and Bell, 2003). This project attempts a dual approach using the questionnaire responses to find debtors and supervisors willing to participate in follow-up interviews.

The main arguments against using a multi-strategy is that each have embedded epistemologies and are in effect separate paradigms (Bryman, 2001). However, using the logic of triangulation allows the qualitative data from the interviews to supplement and inform the quantitative data from the survey. Data for this project was collected from different sources and both quantitative and qualitative methods of data collection and analysis were used. Previous research relied heavily on data provided by supervisors, whereas the experience of the debtor is crucial when looking at the advice process and relationship issues. In addition now that there are tens of thousands of IVAs¹⁴ rather than the few thousands when Pond¹⁵ and Green¹⁶ started their research, the burden on supervisors would be much greater, and the response rate would suffer as a consequence. Separately each approach would have provided useful data, but in isolation and without recognising the changing relationships within the IVA process.

¹⁴ Registrations in 2006 were 44,331 and in 2005 were 20,270 (IS2008a)

¹⁵ Registrations in 1998 were 4,733 (IS 2008a)

¹⁶ Registrations in 2002 were 6,295 (IS 2008a)

3.2 Research questions

The causes of early failures are the main focus of this project. IVAs fail because the terms are breached, often caused by a shortfall in contributions. This research concentrated on the reasons behind that failure and isolated those that could be influenced and potentially improved. Two points emerged that were key to the process; the initial decision which relied on professional advice and the terms of the proposal agreed with the creditors. Both could be influenced by relationship issues between the key parties. The main propositions were therefore that bad advice, unfair terms or bad relationships separately or combined caused early failures.

The findings on the initial advice process provide evidence of the importance of face-to-face meetings and the need for the regulators to reinforce rather than weaken best practice guidelines to improve quality and consistency. The breakdown in the relationship between Insolvency Practitioners (IPs) and creditors has caused a power struggle resulting in restrictive terms being forced on debtors, and finally the lack of an agreed approach for failed arrangements. The recently agreed protocol (IS, 2008b) should go some way to alleviating the issue of unfair terms.

Table 5 presents these questions and relates them to the survey questions and coded data (SPSS variable names used are shown in the square brackets).

TABLE 5

RESEARCH QUESTIONS

**What
issues
influence
the early
failure
of IVAs?**

Subsidiary questions

Is failure higher for consumer debtors?

**Failed
debtor
questionnaire**

Q 1 [trader]

**Completed
debtor
questionnaire**

Q 1 [trader]

**Supervisor
questionnaire**

Was the failure as a result of unforeseen external causes?

Q 2 [xcauses]

Did the quality of advice affect the outcome?

Quality being defined as:

Correct in light of outcome

Q 4(a) [acorrect]

Q 4(a) [acorrect]

Source / independence

Q 4(b) [asource]

Q 4(b) [asource]

Q 5 [linkorg]

Methods of communication

Q 4(c) [amethod1
to 3]

Q 4(c) [amethod1
to 3]

Q 3 [scomp /
scomt / scmm]

Were the terms of the arrangement a fair compromise?

Q 2 [xcauses]

Q 2 [xcauses]

Q 1 [termsa]

For failed arrangements was bankruptcy the automatic outcome?

Q 3 [bankrupt]

Q 9 [fodebtct]

Q10 [outcome]

Did the influence of any of the key relationships affect the outcome?

Key relationships:

Advisor / Nominee influence

Q 4(d) [affluence]

Q 4(d) [affluence]

Family influence

Q 4(e) [afamily]

Q 4(e) [afamily]

Creditors terms

Q 5(a) [acreditor]

Q 5(a) [acreditor]

Q 5(a) [acreditor]

Supervisor – communication

Q 5(b) [scom]

Q 5(b) [scom]

Supervisor – pro-activity

Q 5(c) [sproact]

Supervisor – availability

Q 5(d) [savail]

Q 5(d) [savail]

3.3 Target populations and sampling

For the purposes of this project there are a number of target populations as data was sought from both debtors and supervisors. These are dealt with separately below.

3.3.1 Debtor sample

Table 6 shows the populations and sample sizes for the surveys. IVAs finalised during 2006 were divided into failures and completions, from which those less than 12 months old were identified as the target populations for the project.

TABLE 6 IVAs FINALISED DURING 2006

Registered during 2006 as:	Total finalised	<12 months old	Sample Size	No. of firms involved in early finalisation
FAILURES	4034 (42.3%)	1413 (61.6%)	360 (60%)	128 (21.3%)
COMPLETIONS	5496 (57.7%)	880 (38.4%)	240 (40%)	562 (93.7%)
Total	9530 (100%)	2293 (100%)	600 (100%)	600 (100%)

Source: Analysis of IS (2008)

Discussions with the IS revealed the main issue they experience with debtor surveys is the number of responses that come back marked 'gone away'. In some surveys undelivered questionnaires are as high as 60%, so in order to get a reasonable number of returns an initial sample of 600 debtor questionnaires²⁴ was posted covering both failed and completed arrangements. In an attempt to reduce the number of 'gone away' responses the IVA failure list was checked against the current bankruptcy order listing to ensure the most up to date address available was used.

TABLE 7 CROSS SECTION OF FIRMS - FAILURES REGISTERED 2006

Firm code	No. of firms	Year 1 failures	Sample per firm by size	Total sample
A	3	404 (28.6%)	32	96 (26.7%)
B	6	365 (25.8%)	18	108 (30%)
C	9	221 (15.6%)	6	54 (15%)
D 1	14	187 (13.2%)	4	56 (15.6%)
D 2	96	236 (16.6%)	1	46 (12.8%)
Total		1413 (100%)		360 (100%)

Source: Analysis of IS (2008)

²⁴ The IS already had 600 prepaid envelopes available

TABLE 8 CROSS SECTION OF FIRMS - COMPLETIONS REGISTERED 2006

Firm code	No. of firms	Year 1 completions	Sample per firm by size	Total sample
A	9	82 (9.3%)	5	45 (18.8%)
B	13	209 (23.8%)	4	52 (21.7%)
C	35	197 (22.4%)	2	70 (29.2%)
D 1	24	111 (12.6%)	1	24 (10%)
D 2	482	279 (31.8%)	1	49 (20.4%)
Total		878 (100%)		240 (100%)

Source: Analysis of IS (2008)

3.3.2 Supervisor sample

As regards supervisors, there are approximately 600 licensed IPs who currently have IVAs registered, of which only 146 had early failures registered. Only three firms had in excess of 100 first year failures each during 2006, with a further 29 having between 10 and 100. The sample of supervisors was stratified by firm size (coding explained on p. 28-29) and included a cross-section of the various size firms plus those with the largest and smallest failure and completion rates.

The supervisor sample of 100 was selected to ensure that a maximum of one supervisor per firm was selected and that again each firm size was represented. This biased the sample towards the smaller firms but was compensated for by the fact that one supervisor from a larger firm covers a larger percentage of the debtor sample.

TABLE 9 FIRM SIZE OF SUPERVISORS' - FAILURES REGISTERED 2006

Firm code	Year 1 failures	No. of supervisors	No. of firms	Total sample
A	404	11	3	3
B	365	6	6	6
C	221	9	9	9
D	423	120	120	82
Total	1413	146	138	100

Source: Analysis of IS (2008)

3.3.3 Sampling method

A random sample would normally provide the most statistically reliable outcome but the very low response rate of most surveys mean that the responses are unlikely to be representative. As firm size was potentially a useful variable the decision was made to use a stratified sampling technique to improve the chances of obtaining a cross section of responses. In this case the sample was systematically selected by firm size after analysing the total population. The sampling method combined with the low response has meant that results are not statistically valid but some tentative conclusions have been made from the combination of available data.

Each sample was stratified by firm size based on the overall failures and completions for the year. In addition, 275 failed debtors were identified using the same selection method. The stratification was completed by giving each firm a size code. Initially these were split into groups of 10 which were subsequently recoded into four groups A-D. Firm code A being firms with more than 100 failures, Firm code B with failures between 50 and 99, Firm code C with failures between 20 and 49 and Firm code D with failures of 19 or less. A similar stratification was used for selecting early completions.

3.4 Questionnaire design

Three variations were required for the questionnaires. The emphasis of the debtors' questionnaires was on their experience of the whole process, while the supervisor's questionnaire concentrated on what they perceived to be their processes and avoided asking questions that would require specific data from their files. All participants were invited to provide examples or additional comment and were invited to use whatever method of communication they felt most comfortable with (either on the questionnaire, by telephone or email).

The questionnaire used a variety of techniques including simple yes/no answers, multiple choice and rating scales. They were piloted with a sample of colleagues to obtain general feedback on structure, wording and layout. The debtor questionnaires were circulated by post during October and December 2007 and the supervisor questionnaires were circulated by email during the same period.

3.5 Data collection

Responses to self-completion questionnaires can be low. Tribe (2006) achieved a rate of 11.5%, but the response rate to the present project's debtor survey was only just over 6%, with firms classified as completions reaching the target of 10% and lower responses from firms classified as failures (just under 5%). In his survey of supervisors, Pond achieved responses from 69% in 1995 and 30% in 1998, compared to only 22% in the present project, the majority of which only being received after several reminders and chasing telephone calls.

The main practical issue affecting the outcome of this project was the unexpected postal strike. There were complex consequences. The most obvious was the initial delay which caused further delays in the replies being returned. This was compounded by printing errors which came to light from an initial batch of returned mail. Due to the negotiations on access the questionnaires were sent out via the IS post room and consequently control over the final output was lost. The initial circulation was repeated and in some cases three copies of the same documents were sent. This in itself raised a further problem with some participants phoning to complain they were being victimised because they had received first one and sometimes the second or two further copies in the same post because of the post strike. Others returned completed duplicates which were later picked up during the coding process and removed. These printing errors also affected some batches of the questionnaires which made completion more complicated.

For supervisors there were different issues. The questionnaires were provided attached to an email, the format of which was controlled by the IS. Several participants struggled to complete the questionnaire electronically and during follow-up calls were happy to complete them over the phone. Previous research has shown that response rates and accuracy are improved by offering completion via the telephone (Hira and Kostecky, 1995). During the final round of reminders the questionnaire was included in the actual body of the email which made return and completion a one click action. This did elicit some additional responses.

Some alternative data was sourced from the IS, which consisted of responses from a survey of 2,000 mixed IVA users (including failed, completed, and ongoing cases) not yet analysed by the IS. The focus of this research was on simplification of the process, but there was one question on the primary cause of their IVA failure and two on previous debt relief and how they heard about the IVA process. There was also a

question that asked them to rate their ease/difficulty of understanding the various stages of the process.

Full follow-up telephone interviews were conducted during January and February 2008 participants. Every debtor and supervisor who offered to take part was approached, but some were not contactable or had changed their minds. In addition, some provided limited feedback via a shorter telephone conversation, email or on their questionnaires.

The use of telephone interviews was based on convenience and cost. The relevant questionnaire was used as a topic list. Any anomalies noted on the questionnaire were marked for discussion during the interview and all interviewees were invited to elaborate on their answers and provide any other information they felt relevant. The interview notes and additional comments made on the questionnaires were typed up and collated.

3.6 Data access, protection & analysis

The IS is the gatekeeper of the IVA register. A part-time secondment was negotiated to allow full access to the register. A secure mailbox and mailing facilities were also provided. The quantitative survey data was coded according to the themes of the research questions (see Table 5) and SPSS was used to generate frequency distributions. The qualitative data from the interview transcripts and other meeting notes were also coded thematically. Quotations were selected to illustrate the findings under each heading.

3.7 Ethical considerations

The guidelines being used during this project are the British Sociological Association Statement of Ethical Practice (1993). Ethical issues fall under a number of headings and include personal and social issues of the participants, informed consent, identification, roles and relationships, data protection and the use of professional ethical guidelines.

3.7.1 Personal and social issues of participants

Financial health can be compared to physical health in many ways as the data is equally as sensitive to the individual, but is often treated as less so by financial institutions that share and sell the information. Participants were advised of the procedures in place to anonymise and secure the data from this project. The IVA

and Bankruptcy register is open for inspection by the general public plus a lot of detailed personal data is copied to creditors with the proposal including details of income and day to day expenditure. The availability of data from the IVA register and the impact of this are discussed later together with other data protection requirements.

3.7.2 Ethical dilemmas and informed consent

Obtaining informed consent from the participants was treated with care to ensure the participants did not feel coerced into taking part. A guidance letter was issued using a 'frequently asked questions' format. Those involved in the follow-up interviews were self-selecting.

3.8 Project Review

The aim of this section is to reflect upon the practical experiences and their implications on the theoretical and methodological issues discussed earlier. The practical problems encountered with the data collection have been discussed above. This section will look first at data protection issues and then at the reflexive nature and problem of bias in this project.

3.8.1 Data collection and analysis

Data protection was an issue raised by participants as the questionnaires all arrived at the same time as various stories hit the headlines about loss of government data (BBC, 2007, Hastings and Copping, 2007). Calls were received requesting more information on how the personal details had been obtained and others on its security. A surprising number of the participants seemed to be completely unaware of the requirement for IVAs to be registered (IS, 2004). Some IVA providers do not appear to be aware and have therefore not informed their debtors that the register has been publicly available since 2004 (Tribe and Cocks, 2008, pp. 77-82).

The low response rate has meant that the analysis performed on the data has been limited with the non-response bias being an important factor in interpreting the results. Although data from different sources have been used to bolster the findings the dissimilar datasets mean that they are not directly comparable.

3.8.2 Bias

The difficulties encountered with the sampling and data collection processes during this project raised various issues but in particular it highlighted the problem of dealing

with bias. Bias has conflicting definitions and the range depends on the epistemological view being taken. Quantitative researchers use it to discuss significance levels whereas qualitative researchers use it to encompass all forms of error including procedural, systematic, haphazard, culpable, non-culpable and every combination (Hammersley, 1997, para 4.7). Qualitative research is criticised for bias by using concepts such as 'truth' and 'objectivity' and more specifically because the 'researcher is the instrument of research' (Hammersley, 1997, paras 1.8, 2.1).

Problems have occurred at every level in this project. The inaccessibility of the population and the self-selecting element of the respondents meant any interpretation of the data is limited. One example is the age group of the debtor participants who did respond. The younger element (18-27) of the sample selected (SPSS data: 15.8%) was not well represented in the responses (SPSS data: 6.7%) and quite a few parents phoned or wrote explaining their children had moved away. This sub-section of the sample is more mobile and not well represented in the results. Of those who did respond in the younger age group they were exclusively female whereas the sample was almost 50:50 split. Gender and age combinations may be important when looking at motivational issues and need further investigation.

Other debtor participant problems included identifying the researcher as working for the IS despite the letter explaining the need for the secondment to allow access to the data. This may well have put off some from responding. Despite the high non-response rate only 11.8% of the failed debtor questionnaires and 19.6% of completed debtor questionnaires (see Table 10) were returned marked 'gone away'. These were both low in comparison to the expected rates. Calls received confirmed that a lot of the completed arrangements relied on property sales of the addresses used which explains the higher return rate for completions (see Table 11). There was also some adverse reaction from the supervisors who equally failed to either read or understand the explanatory letter. One supervisor identified the researcher as a potential competitor and refused to respond on the basis that they thought the results would not be fairly presented and the data would be manipulated. Like the debtors others thought an incentive should have been offered with one quoting the amount of fees he had lost while talking.

The nature of the population and the process of self selection in this project biased the respondents and the data obtained. Most of those who volunteered for the follow-up interviews admitted to being 'motivated' to take part because they felt there

had been some injustice in their case. One method of compensating for this problem was the triangulation of the data from multiple sources and using different methods (Hammersley, 1995, p. 214). Even though the main focus of this project was failed arrangements the issues being investigated were universal across all IVAs and the inclusion of a similar sample of completed arrangements was intended to provide a benchmark for comparison. Each of the samples was stratified by firm size in an attempt to obtain some data across all firm sizes from each source. This was not a success and the supervisor sample had no responses in one category.

The questionnaire design similarly suffered from problems. During the design phase they were piloted, but despite this errors were still made in the wording and format. The questions were reworded but some still asked leading questions which became more obvious during the coding process. Equally responses from the communication question required interpretation and would have benefited from being split.

The creditor as one of the key players in the IVA process did not have a voice in this project. Consideration was given to including interviews with financial institutions but time constraints prevented this (Tribe and Cocks, 2008, p. 59). Pond (2002c) interviewed two major banks and compared their different approaches to dealing with individuals in financial distress. For the purposes of this project their perspective was based on statements made by their representatives in the press and at the forum.

Finally the researcher always has the final say on what is or is not included in the results (Bourgois, cited in Taylor, 2002, p. 17) and therefore “the role of the researcher in generating the data collected must be recognised” and “rather than seeking to eliminate reactivity, its effects should be monitored and, as far as possible brought under control” (Hammersley, 1995, p. 123). Hence the question of bias can only be addressed by researchers being critical about their own design, methodology and interpretation of data. Researchers by being aware of all the potential sources of bias can more readily report and situate the knowledge gained from the data collected.

CHAPTER 4: RESULTS

Chapter 1 provided the background to this project and how over-indebtedness has resulted in the increasing popularity of IVAs as a solution of choice. The lack of research and available data on failures has also been discussed. Chapters 2 and 3 provided the framework for the project. This chapter provides an overview of the data collection process followed by the detailed findings as they relate to each element of the research question. The implications of these findings on public policy are discussed in more depth in chapter 5.

4.1 Overview

Turning to the areas identified for investigation, these were the advice process, the terms of the arrangement and the influence of the relationships between the interested parties. The subsidiary research questions included looking at whether the quality of advice or specific terms in the arrangement affected the outcome, and how the relationships influenced the terms.

The data collected consists of questionnaires from debtors (both failed and completed), questionnaires from supervisors and follow-up interviews from a cross section of the participants including debtors with failed and completed IVAs and supervisors. Other participants provided additional feedback in shorter telephone conversations and by email. The debtor survey responses are summarised below.

TABLE 10 DEBTOR QUESTIONNAIRES

	Posted	Responses	With trade debts	With consumer debts only	Returned 'Gone away'
FAILURES	635 (100%)	31 (4.9%)	8 (1.3%)	23 (3.6%)	75 (11.8%)
FAILURE status in doubt		1 (0.1%)		1 (0.1%)	
COMPLETIONS	240 (100%)	24 (10%)	5 (2.1%)	19 (7.9%)	47 (19.6%)
Total	875 (100%)	56 (6.4%)	13 (1.5%)	43 (4.9%)	122 (13.9%)

One hundred supervisor questionnaires were sent out of which 19 were returned already completed and a further 3 were completed over the telephone during follow-up calls.

Some additional data was provided by the IS from a recent survey to supplement the survey data from this project and this is summarised in Table 11.

TABLE 11 INSOLVENCY SERVICE DEBTOR QUESTIONNAIRES

	Sample posted	Returned - Failed	Returned – Ongoing	Returned - Completed	Total responses
YEAR 05-06	1000	5	31	3	39 (3.9%)
YEAR 06-07	1000	9	187	36	232 (23.2%)
Total	2000	14	218	39	271 (13.6%)

The three issues identified as being linked to failures were: the quality of advice; the terms of the arrangements; and the influence of the interested parties. The relationships issue impacts on both the advice process and the terms of the arrangements. The detailed findings are presented by looking at the advice process, the terms of the arrangements and the influence the key players have. Relationships issues are also intertwined with these processes.

4.2 The advice process

The quality of the advice process was investigated by looking at ‘correctness’, independence and the impact of the method of communication. The influence of professional advisers and friends and family are also included under this heading. This was done by asking a series of interlocking questions about the advice process. The roles of the IP and his staff were discussed earlier (section 2.4).

The first question to be analysed looked at ‘correctness’. It was expected that those whose arrangements had failed would feel they had been given incorrect advice, unless there were other external causes, and vice versa for completed arrangements. Table 12 confirms this proposition.

TABLE 12 DEBTOR QUESTIONNAIRES – ADVICE

In light of your experience do you think you received the correct advice to enter into an IVA?						
	Trade debts	Responses	Yes		No	
FAILURES	Yes	8 (100%)	0 (0%)	11 (34.4%)	8 (100%)	21 (65.6%)
FAILURES	No	24 (100%)	11 (45.8%)		13 (54.2%)	
COMPLETIONS	Yes	5 (100%)	4 (80%)	19 (79.2%)	1 (20%)	5 (20.8%)
COMPLETIONS	No	19 (100%)	15 (78.9%)		4 (21.1%)	
Total		56 (100%)	30 (53.6%)		26 (46.4%)	

Included in those who felt they had been given the wrong advice were five successfully completed arrangements. Follow-up information was obtained from one of these participants. His IVA offered a remortgage and a single payment to his creditors. The remortgage was arranged with an associated firm without any apparent regard to his ability to continue to repay it in the long term. He had not understood the terms he was agreeing to and in his case the lack of a face-to-face meeting was a key issue which is discussed further later.

The method of communication was looked at next. It was anticipated that more failures would result from telephone advice than from face-to-face meetings because of the higher likelihood of misunderstandings. Indeed, the results show that only 65% of failures had been seen in person compared to 75% for successfully completed IVAs.

TABLE 13 DEBTOR QUESTIONNAIRES – COMMUNICATION

	Responses	In person	By telephone	By letter / email
FAILED	32 (100%)	21 (65.6%)	25 (78.1%)	18 (56.3%)
COMPLETED	24 (100%)	18 (75.0%)	22 (91.7%)	17 (70.8%)
Total	56	39 (69.6%)	47 (83.9%)	35 (62.5%)

The follow-up interviews in this project provided evidence of misunderstandings leading to participants feeling they had been given the wrong advice.

“It was all done through the post ... No I didn’t read all the small print and everything and the next thing you know they said I can’t have life insurance for the mortgage because you are too old.”

(Debtor - successfully completed arrangement)

“Nobody ever came to the house or sat and talked to me. It was all done by post”.

(Debtor - failed arrangement)

Analysing the same data by firm size and cross referencing this the ‘correctness’ was revealing as some might argue that this problem was exclusively with the larger firms but from the responses shown in Table 14, there is no evidence of this. A more robust analysis of this data was not possible due to the low response rate.

TABLE 14 DEBTOR QUESTIONNAIRES – COMMUNICATION

Firm size	Correct advice	Responses	In person	By telephone	By letter / email
A	Yes	13 (23.2%)	4 (10.3%)	6 (12.8%)	4 (11.4%)
A	No		5 (12.8%)	7 (14.9%)	4 (11.4%)
B	Yes	18 (32.1%)	7 (17.9%)	8 (17%)	9 (25.7%)
B	No		6 (15.4%)	5 (10.6%)	4 (11.4%)
C	Yes	9 (16.1%)	3 (7.7%)	7 (14.9%)	4 (11.4%)
C	No		0	2 (4.3%)	2 (5.7%)
D	Yes	16 (28.6%)	7 (17.9%)	6 (12.8%)	6 (17.1%)
D	No		7 (17.9%)	6 (12.8%)	2 (5.7%)
Total		56 (100%)	39 (100%)	47 (100%)	35 (100%)
			39 (69.6%)	47 (83.9%)	35 (62.5%)

The supervisors' survey asked a similar question in respect of the method and frequency of their contacts. Over 95% of the supervisors said they conducted interviews in person with a third of those responses categorising debtor take-up as rare rather than frequent.

TABLE 15 SUPERVISOR QUESTIONNAIRES – COMMUNICATION

How does your firm usually provide advice?							
Firm size	Responses	In person		By telephone		By letter / email	
		Frequently	Rarely	Frequently	Rarely	Frequently	Rarely
A	3 (100%)	1 (33.3%)	2 (66.7%)	3 (100%)	0	2 (66.7%)	0
B	0	0	0	0	0	0	0
C	1 (100%)	1 (100%)	0	1 (100%)	0	1 (100%)	0
D	18 (100%)	13 (72.2%)	4 (22.2%)	12 (66.7%)	4 (33.3%)	9 (50%)	7 (38.9%)
Total	22 (100%)	15 (68.2%)	6 (27.3%)	16 (72.7%)	4 (18.2%)	12 (54.5%)	7 (31.8%)
		21 (95.5%)		20 (90.9%)		19 (86.4%)	

Those supervisors who took part in the follow-up interviews stated that they always offered to see people personally, but people in employment often had difficulty in taking time off work to see an advisor. Others found debtors were embarrassed about their situation and found it more comfortable to discuss their problems over the telephone.

“We have a team of people who can visit if they want a face to face meeting. A lot of people are very embarrassed talking about debt and if it's not convenient because of where they work or whatever so we offer the telephone as well.”

(Supervisor - firm size C)

Surprisingly the majority of debtors had nothing but praise for their advisors regardless of whether or not they thought they had been wrongly advised.

“They were very good and I can’t fault them.”

(Debtor - failed arrangement)

“I always got straight through to her and she was very good actually...”

(Debtor – successfully completed arrangement)

Having determined whether the debtor participants thought they had received the correct advice and the impact of the method of communication, the final component was to discover how persuasive they felt that advice had been on their decision to enter into an IVA²⁵. It was expected that the majority of participants would be strongly influenced by the professional advice they had received. This was borne out by the data, with over 80% considering the advice influential (72% felt the advice had to be followed).

TABLE 16 DEBTOR QUESTIONNAIRES – INFLUENCE OF ADVICE

How influential was the professional advice you received in your decision to opt for an IVA?						
	Trade debts	Responses	Not influential	Persuasive	Felt advice had to be followed	Not answered / Multiple answers
FAILURES	Yes	3 (100%)	0	0	2 (66.7%)	1 (33.3%)
FAILURES	No	12 (100%)	1 (8.3%)	2 (16.7%)	7 (58.3%)	2 (16.7%)
FAILURES	All	15 (100%)	1 (6.7%)	1 (6.7%)	9 (60%)	3 (20%)
COMPLETIONS	Yes	3 (100%)	0	0	3 (100%)	0
COMPLETIONS	No	18 (100%)	1 (5.6%)	1 (5.6%)	14 (77.8%)	2 (11.1%)
COMPLETIONS	All	21 (100%)	1 (4.8%)	1 (4.8%)	17 (81%)	2 (9.5%)
Total		36 (100%)	2 (5.6%)	3 (8.3%)	26 (72.2%)	5 (13.9%)

This highlights the need for all professional advisers to spend the time needed at the outset, and explain to the debtor ‘the pros and cons’ of all the options available. In organisations where the IP is not directly involved in the initial advice process there needs to be good training and strict quality control to ensure that non-professional staff are giving the best advice to each individual, and not effectively selling a product to meet targets. This was reinforced by some of the comments from the follow-up interviews.

²⁵ Those participants who had been advised that another option was better for them were asked not to answer this question.

“My debt burden caught up with me big time at the end of 05 - a time of great personal stress on a number of fronts, including family illness followed by the deaths in early 2006 of both my mother and stepfather. I found the [name removed] website and sent them an email and was subsequently contacted by an advisor, who was very nice and helpful but was in the business of selling me an IVA.”

(Debtor - successfully completed arrangement)

“IVAs are being pushed by companies simply because they make a lot of money by doing so.”

(Debtor – failed arrangement)

“I felt my supervisor bullied me into entering the IVA even though I didn’t think I could afford the repayments. As soon as it was passed I found it difficult to contact him.”

(Debtor – failed arrangement)

4.3 The effect of relationships

The issue of the relationships between the key players are an integral part of the whole process and affect both the quality of the advice and the terms of the arrangement. Although looked at separately the results reinforce the overall findings.

The first relationship explored was between the debtor and the supervisor or his staff and whether the latter’s availability for support and advice aided successful completion. The expected response was general agreement for the successfully completed arrangements but some disagreement for the failed arrangements. This was proved correct and despite a number of adverse comments the majority of the debtor participants had nothing but praise for the people who they had contact with. The majority (66.1%) reported they had good relationships and good access to the supervisor’s staff (see Table 17).

“I was supported throughout until the IVA was complete. Thereafter availability for further advice was offered without time limit.”

(Debtor - successfully completed arrangement)

However it appears that even though the relationship between IPs and the debtors are important it does not automatically affect the final outcome. Problems of access were reported in about a quarter of the successfully completed arrangements and a third of the failed arrangements (Table 18).

“He took weeks to reply to my letters, continually lost documents, set payments far too high, would never recommend this company to anyone... felt treated as a fourth class citizen.”

(Debtor - successfully completed arrangement)

TABLE 17 DEBTOR QUESTIONNAIRES – SUPERVISOR AVAILABILITY

“My supervisor or other member of staff was always available for me to speak to or would return my call / email promptly.”				
	Completed questionnaires	Agree	Disagree	Don’t know or prefer not to answer
FAILURES	33 (100%)	19 (57.6%)	11 (33.3%)	3 (9.1%)
COMPLETIONS	23 (100%)	18 (78.3%)	5 (21.7%)	0
Total	56 (100%)	37 (66.1%)	16 (28.6%)	3 (5.3%)

A further question on proactivity was addressed specifically to the debtor participants of failed arrangements with a view to finding out whether the relationship changed when an arrangement looked like it was failing. It might be expected that during imminent failure the supervisor or his staff would be in more regular contact with the debtor. However, more than half the participants disagreed, including nearly all of those with trade debts. This suggests that when arrangements are failing supervisors appear to be disinterested in addressing the problem and leave the debtors to initiate contact.

“Once it was clear that the IVA was going to fail they were really horrible to us. We should have gone bankrupt straight away.”
(Debtor - failed arrangement)

“I found [name removed] to be un-informative and unhelpful. Their [sic] only concern was to keep the first year’s payments as their commission.”
(Debtor - failed arrangement)

There was anecdotal evidence that family and friends were often involved in the advice process and the next question was testing the assumption that the same people would have a strong influence over any advice received. It was expected that this would be especially so in cases where more than one member of the household was in financial difficulty. This was not borne out by the responses received with only just over a quarter confirming that family and friends influenced their final decision. However, of those who confirmed that family and friends were involved, the percentage of completed arrangements was almost double the figure for failed arrangements. This could indicate that where family have influenced the decision, support is also provided which help debtors to complete successfully.

From the follow-up interviews discussing financial problems was considered sensitive, and even with friends, the subject is often avoided until the problems are forced into the open.

“I found it quite daunting and humiliating having to ask people for financial help. Although after I’d done it and mentioned it to a work colleague, she said: “I’m in the same boat as you” and so many people have come to me and said the same. You don’t realise how many people are keeping things like that quiet and now I feel much better that I know so many other people who are in the same situation.”

(Debtor - failed arrangement)

The last but probably the most important role to be looked at is that of the creditor. The creditor relationship is multi-faceted and both their relationship with the debtor during the pre IVA period and their ongoing relationship with the IP can be vital to the acceptance of the proposed terms. The key issue is the acceptance by a creditor that once an IP takes on the role of nominee his report on the efficacy of the arrangement is prepared with due diligence and not with the intent to ‘rip them off’ for the benefit of the debtor.

To assess how both the debtors and supervisors felt about these relationships they were given a series of statements relating to creditor influence to agree or disagree with. The responses expected were that both debtors and supervisors would feel that creditor groups had gone too far in dictating unreasonable terms as a backlash to the irresponsible advertising of IVAs and accusations of irresponsible lending. This was confirmed by the debtors with 58% (excluding non-responses and ‘don’t knows’) and by 95% of the supervisors.

TABLE 18 SUPERVISOR QUESTIONNAIRES – CREDITOR INFLUENCE

How do you think the interests of creditors are reflected in the IVA process for consumer debt cases?				
Firm size	Responses	Very representative	Slightly biased in their favour	Very biased in their favour
A	2 (100%)	0	1 (50%)	1 (50%)
B	0	0	0	0
C	1 (100%)	0	0	1
D	17 (100%)	1 (5.9%)	1 (5.9%)	12 (70.6%)
Total	20 (100%)	1 (5%)	5 (25%)	14 (70%)

The follow-up interviews with the debtors explored the reasons for the ‘don’t know’ responses (45%). Participants commented they felt overwhelmed by the process and often failed to ask the right questions.

“I felt dreadful at the time, very shameful over the situation that I was in so I didn’t ask all the questions that I should have done. I wish I had asked more questions now.”

(Debtor - failed arrangement)

This emphasises the need to ensure that advice and information is provided in different ways and at different times to ensure the debtor has the opportunity to absorb all the information and make an informed decision. This is discussed in more detail later.

4.4 The terms of the arrangement

The supervisors in their survey were asked for examples of unreasonable terms being imposed by creditors and the debtors were asked a similar question during the follow-up interviews. The three problem areas commented on were the imposition of hurdle rates, the incompatibility of multiple modifications, drafting errors and the outcome for failed arrangements.

Minimum expected dividend rates have been used by creditors for many years and these have become known as hurdle rates. However, in the last few years this practice has proliferated. Pond (1998b) concluded that arrangements where the difference between the expected dividend in an IVA versus bankruptcy was more than 20p were more likely to fail. The increased use of hurdle rates has meant that the increase in the expected return in IVAs is usually substantially more than in bankruptcy and this return is obtained by increasing the contributions to an unsustainable level.

“[Name removed] is insisting on onerous conditions which he (the debtor) can’t meet. In bankruptcy the creditors would get about 10p in £ - they are insisting on 65p in £. The fallback position for him (the debtor) will be to sell the business to a limited company and then go bankrupt. The business employs 6 people. Every case needs to be looked at on its own merits and trying to up the dividend beyond reasonable terms is counterproductive and is costing the creditors money.”

(Supervisor - firm size D)

“He was telling us what we could afford rather than us telling him what we could afford.”

(Debtor - failed arrangement)

“Modifications received consistently uplift the debtor’s voluntary contributions... We strive to set the voluntary contributions at a level that is (a) high enough that it gives creditors a return significantly higher than the alternative of bankruptcy, and (b) low enough that the debtor is confident they [sic] can afford the payments for 60 months.”

(Supervisor - firm size D)

Most arrangements fail because the debtors can no longer afford the contributions. This can be caused by either the contributions being set too high at the outset or because of a change in circumstances. Only three of the participating debtors had arrangements failed for other reasons.²⁶ This is reinforced by the IS data, which included nine failed arrangements, of which five stated they had failed because their payments had been set too high. Of these, two had a drop in their income which was not accommodated for in the proposal.

The incompatibility and volume of modifications being proposed by different creditors often causes rejection or failure. The key complaint from supervisors was that creditors or their agents are not reading the proposals and just insisting on modifications regardless of the circumstances of each case. In much the same way as hurdle rates are being used as a minimum requirement other terms are being proposed as modifications in every case regardless of whether they are already included. The result is that competing groups of creditors have devised contradictory terms which would make nonsense of any proposal and in most cases it is evident that the creditors are not even reading the proposal on offer.

“We have had 79 modifications put forward for a straightforward consumer IVA.”

(Supervisor - firm size D)

The new IVA protocol (IS, 2008b) should address this problem.

A slightly different issue, but as equally damaging, are drafting errors in the arrangement. Any material errors invariably cause failure and although it is the debtor's responsibility to ensure that the documentation is correct the convoluted and legalistic nature of the standard proposals means that the majority rely on their advisers and invariably sign the documentation without checking the detail.

“We told our advisor that my husband was due to be made redundant and this wasn't included in the proposal.”

(Debtor - failed arrangement)

“The IVA was not arranged properly. There were a few serious miscalculations. The whole thing took months and months to arrange.

²⁶ These included the failure to disclose a credit card, a house that was sold for less than the valuation and the third on the insistence of the IR for breaching their requirements.

Admittedly we did not notice that the figures did not add up; we were just pleased it was all done.”

(Debtor - failed arrangement)

This reinforces that what was originally intended as a simple and flexible procedure has become over legalistic (Green, 2002) and too complicated for the majority of debtors to follow and understand without substantial guidance.

4.5 After failure

Once an IVA has failed the debtor is essentially back in the same position or even worse off financially having paid money into an arrangement with little or no benefit to the creditors. Best practice requires every proposal to include clear terms on what action is to be taken in the event of failure. Historically the intention was for bankruptcy to be this final solution but creditor pressure has resulted in this clause being removed from most arrangements leaving debtors in failed arrangements to either find the deposit and present their own bankruptcy petition or deal with creditors piecemeal offering payments as and when they have funds.

“They did say they were going to go to the creditors and see if they were going make me bankrupt but I never heard anything about that so I just take it that they didn’t want to make me bankrupt.”

(Debtor - failed arrangement)

Different creditor groups are looking for different outcomes and the issue of competing terms being proposed was referred to above. Very few creditors of failed consumer debt IVAs file bankruptcy petitions. The reason appears to be a desire to retain the opportunity (however slight) of collecting something in years to come rather than having to write the whole debt off if the debtor is made bankrupt. The consequence is that creditors whose debt collection processes are more robust will then gain a commercial advantage bypassing the rigours of pari passu. It is therefore not surprising that over 80% of the supervisors confirmed that they had removed the mandatory bankruptcy clause from their standard proposals and were unlikely to make a failed debtor bankrupt unless specifically requested to by creditors.

TABLE 19 SUPERVISOR QUESTIONNAIRES – OUTCOME – BANKRUPTCY

Does your standard set of proposals include mandatory bankruptcy on failure?			
Firm size	Responses	Yes	No
A	3 (100%)	1 (33.3%)	2 (66.6%)
B	0	0	0
C	1 (100%)	0	1 (100%)
D	18 (100%)	2 (11.1%)	16 (88.9%)
Total	22 (100%)	3 (13.6%)	19 (86.4%)

All the participants who had been made bankrupt had filed their own petitions with the majority being encouraged to do so by their supervisors.

The key findings include the lack of face-to-face meetings for the initial advice process and the effect this has on the ability of debtors to understand the process and what they are agreeing to. This is compounded by the high degree of influence that professional advice has on the recipient. Another key issue raised is the problem of onerous conditions being enforced by creditors. The recent introduction of an agreed protocol should go some way to redressing this imbalance. Finally the lack of a real outcome for debtors whose arrangements have failed is a cause for concern and the creditor motivation behind this change is discussed in more depth in the conclusions.

CHAPTER 5: CONCLUSIONS

This project was borne out of the debate over the increasing numbers of IVAs and the consequential increase in early failures. The purpose of this project was to gain insight into those causes. The results can now be put into context using the framework of issues raised by Green and Pond summarised in chapter 2 and the current debate on the way forward.

The conclusions are split into two groups: conclusions relating to the advice process including communication, influence and contact issues, and conclusions relating to the terms of the arrangements including relationship issues with creditor groups. The chapter concludes by listing some suggestions for new projects.

5.1 The advice process

The key issue emerging from this aspect of the project was the effect of a lack of an initial face-to-face meeting. The combination of IPs delegating the role of adviser to more junior staff (sometimes in call centres) combined with the lack of face-to-face contact are the problem. This move away from meetings in person has been driven by the changes in the market structure despite best practice guidance²⁷ to the contrary. This guidance was modified²⁸ by the RPBs in April 2007; however, all the participants in this study should have been interviewed in person by the IP or staff except where there were exceptional circumstances. This did not happen with less than 70% having face-to-face interviews.

It is clear from the data that this requirement was routinely ignored by advisers and was not enforced by the RPBs. The response to this compliance failure was to relax the guidance in 2007 rather than enforce what had been considered best practice for many years (SIP3, 2007). The result is that debtors do not have the opportunity to discuss all their options in the best circumstances. Those who are elderly and less able to understand the implications of what they are agreeing to are disadvantaged. Even the amended guidance issued in 2007 requires an interview to be offered,

²⁷ SIP 3 v 3 became mandatory 1 October 2003 and required a face-to-face initial meeting

²⁸ SIP 3 was modified with initial meetings no longer being mandatory with effect from 1 April 2007

especially when the adviser is of the opinion that a meeting in person would be appropriate.²⁹

“I do think people my age should be taken into consideration and they should send somebody out to see you rather than doing it all on the phone or through the post.”

(Debtor - successfully completed arrangement)

This finding replicates findings concerning credit agreements (Kempson, 2002, p. 59) where individuals who were not provided face-to-face contact during the formation of the contract were unaware of their cancellation rights. In Kempson’s case, those with financial difficulties were particularly disadvantaged³⁰.

5.2 Creditor power

There is general agreement that IVA terms are currently overly dictated by creditor groups. The data collected for this project confirms this conclusion. This power struggle between creditors and debtors is not a new phenomenon and the issue was addressed by Cork (1982, p. 13):³¹

‘In the complex world of credit, the legislature and, through the legislature, society has always striven hard to maintain a just balance between the creditor on the one hand and the debtor on the other. Over the centuries this balance has shifted first one way and then the other. In considering where it should be today, it must be remembered that it is the creditor who possesses the capital - which, in the aggregate, is the capital of society as a whole - to which the debtor seeks access for purposes beneficial first to himself, secondly to the creditor in providing him with a market for his capital and, thirdly, to society as a whole.’

An IVA should represent a fair compromise between the debtor and their creditors. There is evidence to suggest that some modifications enforced by creditors actively contribute to the failure of arrangements. Green (2002b) looked at the behaviour of

²⁹ ‘On initial contact with the debtor, the member should offer to meet personally, or arrange for a suitably experienced member of his staff to meet the debtor. If the debtor declines the offer, the member or a suitably experienced member of his staff may conduct the initial interview on the telephone. However, if during the telephone interview, the interviewer forms the opinion that either the debtor does not fully understand the matters described in paragraphs 3.2 to 3.5 or that the debtor has not adequately disclosed his financial circumstances, the member should insist that a meeting in person be conducted.’ (SIP3 2007, para 3.1)

³⁰ 3% of households were affected but of those 50% were in financial difficulty

³¹ The Cork Report was the basis for the Insolvency Act 1986

the creditors and expressed concern that the process was controlled by key creditors through a handful of agents. This polarisation has continued to breaking point. In May 2007, a meeting between all the stakeholders started a discussion process culminating in the implementation of a protocol effective from 1 February 2008. This protocol (IS, 2008b) embodies a number of documents whose terms include the limitation of modifications and the use of an agreed common financial statement (calculation of contributions from income and allowable expenditures). The conflict has in part been addressed by the protocol but only time will tell if it will be effective in restoring trust. A standing committee will be monitoring any reported abuse but already some creditors have stated they reserve the right to continue to propose modifications in the key areas of contribution levels and minimum dividends (hurdle rate).

5.2.1 Contribution levels

Most of the debtor participants interviewed thought that their contributions had been set too high including some of those who had managed to complete successfully. For those that had failed it was either the main cause or contributed to the failure of their arrangement. These comments were evenly spread across all firm size groups. Pond's research (1998b) highlighted the correlation between big differences in expected dividends and success. Those arrangements where the difference between the expected dividends in IVA³² and bankruptcy was less than 20p had more chance of success. Supervisors appear to be setting contributions at unmanageably high levels because the hurdle rates of some creditors would otherwise put IVA's beyond the reach of many low paid individuals. These are artificially imposed rates which do not follow the criteria set down in the legislation. Part of the new Protocol (IS, 2008b) includes agreement to use the common financial statement for income and expenditure which should help both creditors and supervisors³³ in ensuring contributions are pitched at sustainable levels.

³² The Nominee is required to include in his report a comparison of the expected between an IVA and Bankruptcy (SIP3, 2003 p.6.4 (h)). This is the difference being referred to by Pond (2002b, p.54).

³³ "Before recommending an IVA to a debtor, the member should be reasonably satisfied, on the basis of an assessment of the debtor's income from all declared sources and his stated expenditure needs, that the debtor has sufficient income to sustain the payments proposed under the IVA" (SIP3 para 3.7).
CCCS guidelines on income and expenditure are those being used in the protocol.

5.2.2 After failure

The majority of supervisors confirmed that they no longer make the debtors in failed IVAs bankrupt. Creditor pressure groups have been insisting that bankruptcy on failure is not mandatory as they prefer to have the option to continue debt collection by other methods. As a result most debtors of failed arrangements are left to deal with their creditors piecemeal. Most in this study resorted to filing their own bankruptcy petitions once they had saved or borrowed the deposit required. From a public policy perspective more data is required. The question of why creditors want to continue leaving these debts outstanding must be addressed. Returning to the data provided in the introduction there is clearly a large and growing number of over-indebted individuals. Credit card write-off rates have increased from 2% in 2000 to 7.5% during 2007 (BERR, 2007). The decision to remove mandatory bankruptcy for failed IVAs may be a way of artificially keeping the increase in write-offs down to acceptable levels in lenders published figures or alternatively allowing them subsequent opportunities to pursue the debt.

5.2.3 Variations

Some failed debtor participants were unaware that an IVA could be varied within the first year. Several were told by their supervisors (or their staff) that it was too early to propose a variation, the inference being that this was a statutory prohibition rather than a term inserted by the creditors. This approach does not recognise the need for flexibility in today's changing employment market, and resulted in the failure of some arrangements. More than 70% of the failed arrangements failed because the debtors' circumstances changed and their arrangements were not flexible enough to cope. This restriction on variations has been imposed by some creditor groups and providers as a standard term and cost saving measure.

5.3 Future research

Further work is required on the causes of IVA failures and a better measurement needs to be constructed for failure rates as part of an ongoing project to look at the advice process in more depth. This could also include the provision of more data on failures from supervisors and the circulation of questionnaires to all failed debtors as an ongoing project. This could be part of a longitudinal study looking at what happens to debtors post failure providing insight into the outcome for debtors with failed IVAs. The follow-up interviews provided an interesting starting point for this project. The theme could be debt forgiveness and the role that creditors are playing in not wanting debtors to get a new start. This project could also include debtors'

attitudes towards the stigma of bankruptcy (Athreya, 2004) and why some are involved in serial IVAs rather than petitioning for their own bankruptcy. The questions to be looked at could include: What motivates an individual to avoid bankruptcy at any cost? Best practice guidance issued to IPs could be improved to include provision for dealing with debtors post failure.

A second aspect stressed by several participants was financial awareness. This is a researched area (Reifner, 2003) which needs a new approach. Kingston University ran a pilot project with a series of Financial Awareness Workshops which were cut short due to lack of interest. There was positive feedback from the attendees but incentivising people to attend is the problem with some countries making attendance part of the rehabilitation process (Berry, 1999). A number of psychological issues were noted both around debtors admitting they have debt problems and the motivations for taking part or not taking part in surveys. Financial health needs to be treated in the same way as physical health as there are similar taboos. This could form one strand of an education programme; greater understanding of people's motivation could help in promoting and targeting new workshops. Linked to this are age and gender issues and more data and analysis is needed to see if targeted programmes would be more successful.

Green (2006) has produced some data on the male/female split including data on joint arrangements. Green suggested that data on households (as an economic unit) would be more useful for identifying trends and issues than individual IVAs (Green, 2002a, Ch. II, p. 16). It would also be useful to know if having another member of the household in debt has a knock on effect to other members and whether this affects credit, or future job prospects. There has been some research into the effect on job prospects (Ambrose, 2004).

The relationship between consumer spending and the housing market has been investigated (Benito *et al.*, 2006). The relationship with IVAs and the number of equity release schemes could be a starting point for investigating this relationship further including the connections between financial institutions and IVA firms.

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