

Money Advisor Update

Spring Edition 2010

Welcome to this edition of Money Advisor Update, the first in a regular series of newsletters designed to keep money advisors up to date with industry news and information.

May I first wish you all a Happy New Year, and I have no doubt it will be yet another busy one for money advisors. It has now been over two years since we first heard of the credit crunch, and it has proven to be a more complicated economic phenomenon than any of the experts first predicted.

It has been reported that 768,000 (47.5%) applications for consumer credit were rejected by the major UK lenders in July and this is typically the first trigger for the individual to realise that they are in debt and feel the need for help. The impact of this is the demand for honest, impartial, free debt advice has shown no sign of abating with some advice agencies booking money advisors diaries some 6-8 weeks in advance before they can meet a client to discuss their financial problems.

The advisors job has become increasingly difficult, with the range of complex problems being asked by the client continuing to increase and the advisor having to care further through the process of helping the client get to the of their debt journey.

Last year we had over 2,000 advisors who attended the Grant Thornton training days and it was interesting to hear the experiences of many of you throughout the country. This has led me to undertake some major research on the psychology of debt, to understand the person in debt more in order that advisors can better tailor their advice to clients. Consequently this years' training events will concentrate on the Psychology of the client in debt. Details of our seminars can be found later on in this newsletter.

Our newsletter is designed to update you on any new developments within the Insolvency sector and I'm delighted to use the services of our technical expert Stephen Hill, who will be covering off the subject of melancholy consequences of debt and human rights.

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We have also included a section about the 'Stepped IVA', which is a significant development from the standard IVA, being pioneered by Grant Thornton within the Insolvency sector. I hope you find the update useful and your feedback will always be welcomed.

In the meantime if you have any further queries, please do not hesitate to contact me at any time, and I look forward to seeing you over the coming months.



Gareth Neill
Partner

C Putnam & Sons v. Taylor

Herein the court considered the tension between the melancholy consequences of debt and human rights.

C Putnam & Sons Ltd had obtained a charging order against Mr Taylor's interest in the jointly owned home.

In seeking possession and sale, Mrs Taylor resisted on the basis that it was an infringement of her human rights to be deprived of her home by reason of debts that her husband had incurred without her knowledge and/or against her advice.

The judge noted that where there are conflicting rights, in this case the creditor's right to be paid from the husband's main asset, a balance had to be struck. Despite the husband being under treatment for cancer, and an assertion that the cat would be traumatised by a move, the judge held that the creditor's enforcement had to prevail.

He also rejected for lack of evidence and empirical implausibility in the modern world, the wife's claim of gender discrimination in that it tended to be wives who were the victims of their husbands' improvidence in incurring debts.

He allowed five months for Mr and Mrs Taylor to try to achieve a private sale rather than order an immediate eviction and sale by auction.



The Insolvency Act defines a cut off of the rights of a creditor seeking to enforce a judgment when bankruptcy intervenes. The creditor's right to progress private enforcement has to give way to the collective interest of the creditors if the enforcement is not complete in time. The details are in s346 of the Insolvency Act.

The following two recent cases illustrate the operation of this.

Case 1

In **Nationwide v Wright**, Nationwide obtained an interim charging order before a bankruptcy petition was presented against Mr Wright. It was made final after the presentation of the petition of which neither the court concerned, nor Nationwide were aware, but before the making of the bankruptcy order.

The Court of Appeal ruled that as Nationwide had obtained the final order before the commencement of the bankruptcy and without knowledge of the petition they were entitled to retain the benefit of the charging order under the terms of s346.

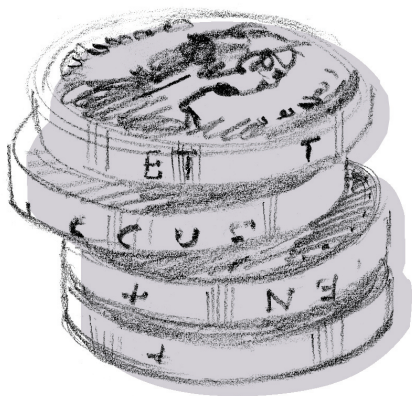
Case 2

In **Tagore Investments SA v Official Receiver**, the court made a final charging order, unaware that on the previous day the debtor had been made bankrupt on his own petition. S346 provides the court with a discretion to allow an execution creditor to retain the benefit of his execution even though it was completed after the commencement of the bankruptcy.

This was a rare example of a case where that should be allowed. The debtor had delayed the creditor's application for the charge with procedural steps and it appeared that the bankruptcy was designed as a last ditch device to prevent the charge being perfected. There were few unsecured creditors (and none pressing). It was probable that the debtor and/or his wife preferred to assert claims to the house as against a trustee in bankruptcy without funding, rather than face Tagore directly as a vigorous creditor in the driving seat.

The Credit Crunch has given birth to Stepped IVA's

We discussed the 'Stepped IVA' at last year's training events and due to the response we got, wanted to update you on its usage in getting clients who are in debt - out of debt.



We believe the Credit Crunch has accelerated the usage of this tool, as a consequence of the unpredictable economic circumstances we are experiencing.

To understand the Stepped IVA process, its important that you comprehend Grant Thornton interpretation of the IVA Legislation.

Grant Thornton view the IVA as a **flexible , financial, framework** which is designed to resolve around the clients needs to solve their indebtedness.

Why FLEXIBLE?

An IVA does not need to be a minimum of £200 per month payment. It can be variable in accordance with the client's financial position.

Why FINANCIAL?

It's a commitment to repay, to the best of the clients endeavours, his or her creditors in full and final settlement.

Why FRAMEWORK?

Yes, the IVA is based on legislation, but that law is only a framework designed to help resolve the clients debts.

The key to the successful deployment of the Stepped IVA is in the examination of the Income & Expenditure, in other words look beyond the obvious Income generators for solutions.

If you have a client showing a surplus income below £200 pcm, then we recommend you use the following checklist to investigate if a Stepped IVA is useful for your client:



1. Does the client have a car on HP?
2. Is the client paying for their children childcare and/or nursery costs?
3. Is there an increase in income or decrease in expenditure in the future?
4. Does the client have an endowment policy?
5. Has the client a litigation claim outstanding?

If the answer to any of these questions is **YES**, feel free to contact me to enquire if the Stepped IVA, designed by Grant Thornton, is the best solution to your clients needs.

IVA – The Myths

During the course of the 2009 training events, we were asked lots of technical questions in relation to IVA's and hopefully we dispelled many of the myths surrounding them.

As part of the process we've compiled the **Top 5 Myths About IVA's** that were continually aired during the question and answer sessions:

1. Do Clients pay the fees involved in setting up an IVA?

NO. Insolvency Practitioners (IPs) are paid by the Creditors, from the pot of money that the client has raised in full and final settlement of his or her debt. Therefore an IP should not charge the client either a front or back end fee, in relation to the IVA.

(Note some IP's charge and its always advisable to get the client to ask this question. As a matter of good practice Grant Thornton don't charge any such fees.)

2. Does a Client need to have a minimum of £200 per month in excess income to be considered for an IVA?

NO. Grant Thornton's approach to Stepped IVA's (see page 3) takes a long term perspective on what the client is offering to his or her creditors.

3. Does an IVA last for 5 years?

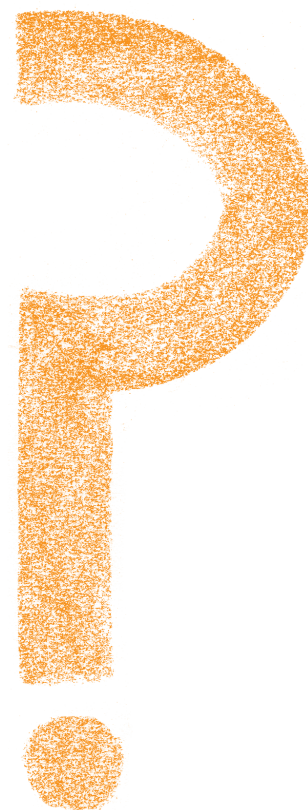
NO. Fundamentally an IVA is a 'deal' between a debtor and creditor, formalised in a legal contract. Therefore if the client raises money towards that deal from the sale of an asset, e.g. house, in full and final settlement, then the IVA can be completed in less time.

4. If the client fails the IVA due to a life changing event, does that mean automatic bankruptcy?

NO. At Grant Thornton we write a clause into the IVA proposal, which allows the client, depending on how his or her circumstances change during the course of the IVA, to modify the IVA payment terms. This clause underlines the flexibility that an IVA allows for clients, should a life changing event take place.

5. Do Debt Management Programmes offer the client more security than an IVA?

NO. DMP's don't legally freeze interest and charges, therefore the client is always exposed to them, should a creditor wish to add them to the debt. They are informal, non-legal agreements and essentially give no protection to the clients assets should creditors pursue the debt.



If you have any further question in relation to IVA's and require technical advice on behalf of your clients, then please contact one of our CSM's within your region. Details are in the Contact section on page 5.

We would like to invite you to our 2010 training seminars for money advisors.

Following the success of last years seminars and to help money advisors understand some of the new issues that debt impacts on consumers, Grant Thornton are pleased to announce a series of free seminars focusing on the **Psychology of Debt**.

These seminars will cover:

- The impact of debt on clients lives and behaviours
- What are their coping strategies during debt?
- The psychological and financial benefits people get from seeking money advisors help
- How the home is dealt with in bankruptcy by the local Official Receiver.

Sessions will start at 10.00am and finish at 3.30pm.

Lunch will be provided.

To reserve your place or for further information on speakers and locations, please contact:

Margaret McBurney

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2010 course dates and locations

Birmingham	24 Feb	Tunbridge Wells	13 May
London	25 Feb	Bristol	19 May
Leeds	2 March	Cardiff	20 May
Liverpool	9 March	Sunderland	26 May
Sheffield	10 March	Middlesbrough	27 May
Winchester	17 March	Lincoln	9 June
Gatwick	18 March	Northampton	10 June
Manchester	13 April	Manchester	16 June
Newcastle	14 April	Carlisle	17 June
Nottingham	20 April	Southampton	28 June
Oxford	21 April	Portsmouth	29 June
Hemel Hempstead	28 April	Brighton	30 June
Norwich	29 April	Birmingham	7 July
London	12 May	Chester	15 July



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Contact us

If you would like to find out more about how Grant Thornton can assist you, please contact:



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