

Opening Statement by Mr. Lorcan O'Connor, Director, Insolvency Service of Ireland, to the Joint Oireachtas Committee on Justice and Equality, 25 October 2017

1. Introduction

This Committee is well aware of the mortgage arrears problem in this country. While the overall number of mortgage accounts in arrears has fallen each quarter since this time in 2013, the reality of the situation is that there are still over 70,000 mortgage accounts in arrears. These accounts represent over €13.5 billion of debt and 10% of all mortgage accounts held in this country. More than 30,000 of those accounts are in arrears of over 720 days which, by their nature, means that they are the most complex to solve.

The Central Bank reported that at the end of June of this year there were 120,000 family home mortgage accounts restructured on an informal basis. Where these restructurings have been done on a sustainable basis, they are to be welcomed.

It is important to remember that there are people and very distressed families behind these statistics. In working closely with debtors and debtor advocacy groups, the ISI is all too aware of the impact mortgage arrears can have on debtors – it affects their physical and mental health. But it goes further. It can also have a significant detrimental effect on the wellbeing of the wider family.

So the challenge for us all is clear - to find permanent sustainable solutions for as many of the remaining mortgage accounts that are in arrears as possible.

It is apparent to me that the Mortgage Arrears Resolution (Family Home) Bill 2017 has this objective at its core. I will be happy to address any specific questions that the Committee might have concerning the Bill in a few moments but I wish briefly to address two areas at this stage, namely:

1. an appraisal of the existing personal insolvency legislation;
2. some high-level observations around the proposed Bill;

2. Our existing personal insolvency legislation

Prior to 2013, personal insolvency legislation in Ireland was outdated. The Personal Insolvency Act 2012 (the “**Act**”) established the ISI as the independent statutory body responsible for all personal insolvency matters. It brought Ireland in line with international best practice and went one important step further with the introduction of the Personal Insolvency Arrangement (“**PIA**”). This innovative solution seeks to restructure or settle secured debt within voluntary arrangements – something that hasn’t been attempted elsewhere. You will note in Appendix 1 to this submission examples of where PIAs have returned people to solvency while keeping them in their home.

These personal stories represent debtors and families that were in real fear of losing their homes. Personal Insolvency Practitioners (“**PIPs**”), the professional advisers we regulate across the country, were able to find a sustainable solution to their problem debt, including their mortgage, that saw them stay in their home. Further testimonials are available on our website. You will note one strong theme across the testimonials above all others – the huge sense of relief experienced by debtors when they secure a permanent solution that returns them to solvency.

Since opening, the ISI has returned almost 6,000 debtors to solvency and approximately 2,000 of those cases were PIAs dealing with mortgage debt. In over 90% of these PIA cases, debtors have been able to stay in their home. That, in my view, is a very significant achievement.

International experience shows that it takes several years for a new insolvency regime to really gain traction. The ISI has however, never worked towards the steady growth that international comparisons would suggest we aspire to. Rather since our establishment, we have done everything within our power to ensure that all those that could benefit from the statutory solutions available, in particular the PIA, do so.

Earlier this year, the ISI undertook a critical appraisal of its work so far. This culminated in the publication of a submission to the Department of Justice and Equality (our “**Submission**”) in June, a copy of which we have provided to all members of this Committee. Our analysis identified three key factors that influence activity levels:

1. Efficiency of Process
2. Debtor engagement

3. Creditor engagement

2.1 Efficiency of Process

The core recommendation contained within our Submission is that the insolvency arrangements provided for under the Act, should be approved by the ISI rather than requiring a Court to make an order for their approval. Importantly this recommendation has the support of all members of a Consultative Forum chaired by the ISI – which is made up of debtor advocates, creditors, PIPs and the Courts Service. The ISI is of the view that such a change would result in a number of benefits including;

- an increase in the accessibility to the personal insolvency system;
- time savings by streamlining the process (reducing the overall process by up to a month);
- cost savings;
- consistency of approach.

In addition, the ISI recommends a number of other enhancements to the existing legislative framework in order to drive efficiencies, reduce barriers to entry and otherwise improve the overall process. I would be happy to speak around any of these proposed changes should members of the Committee wish me to do so.

2.2 Debtor Engagement

Our Submission also sets out steps we have undertaken to date to ensure debtors are aware of the solutions that are available to them. This ranges from national and local campaigns on radio, television and print as well as debtor advice clinics and attendance at other events across the country. We also have a debtor focused website, 'backontrack.ie' and related materials.

Through the new Abhaile Service, there are now free consultations available for debtors with PIPs as well as a number of other supports to ensure the insolvent debtor is supported at every stage of the process of addressing their unsustainable mortgage. Once again, I would be happy to give the Committee more details about what we have done to date in this area or to speak around our communications plans for the coming months should members of the Committee wish me to do so.

2.3 Creditor Engagement

In terms of creditor engagement, the ISI has consistently encouraged each main creditor to:

- avail, in a timely manner, of the provision within Sections 64 and 98 of the Act to make clear to PIPs the manner in which the creditor wishes the debts of a specific debtor to be dealt with as part of an arrangement; and
- provide all PIPs with details of the range of options the creditor will broadly support within an insolvency proposal. For example a 'waterfall' statement setting out their preferences as to when and how term extensions, interest rate reductions and capital write off should take place. This, in my view, would be of assistance in making the overall process run more efficiently.

It is disappointing to say that I am unaware of any significant progress on either of these fronts.

The simple reality is that the PIA is an extremely efficient solution for creditors as well as debtors. There are several checks and balances contained in the legislation which is overseen by the Courts to ensure that no party is unfairly prejudiced. It requires the goodwill and support of both parties for the system to work efficiently and effectively. Despite best efforts, I do not believe that creditors have constructively engaged with the personal insolvency legislation. I can point to statements made by various banks as evidence of this. I can point to dozens upon dozens of cases where banks have rejected proposals that produced a better return than repossession while also having due regard for the underlying security linked to any mortgage. I can point to legal challenges mounted by creditors to various PIAs on technical rather than commercial grounds. Such challenges, while perfectly within the rights of creditors to take, in my view, where successful, amount to a pyrrhic victory. The creditor still has a bad loan that they need to deal with. They have turned down what should have been a sustainable solution that did not unfairly prejudice them for the case to have met the minimum statutory requirements set out in the Act.

Some creditors appear to be mounting objections which are designed to preserve their own credit guidelines, which have wide customer application, rather than dealing with the merits of the specific debtor proposal which in many instances, provides a commercial return for the creditor which is far better than that which could be achieved through repossession or bankruptcy.

The Committee should be aware of the Section 115A review process, introduced in late 2015 which was designed to remove the so-called 'bank veto', whereby there is a requirement to attain certain levels of support from creditors before an arrangement can be put in place. The legislation was designed to operate in a relatively quick manner whereby Courts would be asked to review and assess the reasonableness of a rejected arrangement and where satisfied, having regard to specific criteria set out in the Act that the arrangement was reasonable, the Court would impose the arrangement over their will. These review cases have proven to be long and drawn out. While I can point to a number of cases that have made significant strides forward, for example, with regards to warehousing and separated spouses, we still see large numbers of Court reviews where the arguments before the court are technical legal points which inhibit consideration by the Court of the commercial aspects of a proposal.

I see no evidence that creditors are using Section 64 or 98 of our Act, whereby they have an opportunity in the first instance to engage with PIPs and identify how they wish for their loans to be dealt with and avoid the necessity of a Court Review. Instead, the practice appears to be to wait for the PIP to produce a proposal, for it then to be challenged on as many fronts as possible.

Creditors must recognise what it is that the Act is designed to achieve - a fair outcome for all sides. Such positive engagement could ensure that we keep as many people as possible in their homes while also ensuring that the rights of creditors as secured lenders are respected to the greatest extent possible and that creditors finally deal with their remaining non-performing loan cases. In order to ensure positive engagement, the Act needs to be amended to oblige creditor engagement at an early stage of the process.

3 Observations with regards to the Bill

I now wish to turn to the main focus of today – the Mortgage Arrears Resolution (Family Home) Bill 2017. The ISI welcomes any initiative designed to help deal with mortgage accounts that are in arrears and the ISI notes the envisaged role for the Service within the proposed Bill.

From the outset, I wish to say that I am of the view that the Personal Insolvency Act incorporating our proposed amendments as set out in our Submission, coupled with mandatory creditor engagement, is the most appropriate way of achieving the objectives of this Bill. Such an approach would:

1. minimise risk of legal challenge;
2. minimise potential delays, expense and uncertainty that might be experienced from setting up the new office - the Mortgage Resolution Office; and
3. offer a holistic solution for debtors – returning a debtor to solvency by addressing all of their debts, not just the family home.

3.1 Minimising the risk of legal challenge

I am aware from Dáil debates during the summer that the Minister for Justice and Equality has indicated that the Government has a number of constitutional concerns regarding the Bill. It is not for the ISI to comment on such constitutional concerns. However, I would point out that the Personal Insolvency Act has operated for almost 4 years without challenge.

The ISI sets out in its Submission why it believes its suggested proposal of removing the Courts from the various processes is sound from a constitutional perspective.

3.2 Minimising potential delays in setting up the Mortgage Resolution Office

The Bill proposes that a new Office, the Mortgage Resolution Office, be established within the ISI and that a new instrument, a mortgage resolution order, be introduced. I would point out that there is a tendency among citizens to delay taking action until there is clarity around any new policy initiative. Any initiative that causes insolvent debtors to delay engaging with their financial institution could have consequences in terms of increased arrears and increased risk of repossession. For these reasons I would suggest that changes to the insolvency legislation that build on and enhance the current provisions will cause the least uncertainty for insolvent debtors. It can also be delivered quickly. Should the Bill become law, and the ISI is tasked with setting up the Mortgage Resolution Office, you have my commitment that we will leave no stone unturned in opening the service as quickly as possible having regard to our duties and responsibilities under any establishing legislation. However, it needs to be recognised that it will take time to set up an Office of the type envisaged.

3.3 Holistic solutions

Understandably the Bill is focused on mortgage arrears. The Bill however fails to address the other debts of the debtor. Our existing Act takes a holistic approach, dealing with all the debts of a debtor, both secured and unsecured. Our analysis shows that people with mortgage debts seeking help from the ISI¹, have on average five other creditors. Our experience in reviewing cases, that have previously been dealt with on a bilateral basis between the debtor and their mortgage provider, is that they often fall down due to the other debts owing. It is essential that a holistic solution for debtors is provided and that they return to solvency as part of the process. As a consequence of this, the family home is far more secure in the short term and longer term.

4 Conclusion

My assessment is that creditors have yet to fully engage in a constructive manner with the Personal Insolvency Act. This is notwithstanding the fact that it is carefully balanced to ensure the rights and obligations of all parties are protected and to ensure that no party is unfairly prejudiced.

I have already explained that creditors are not working within the spirit of the legislation. PIPs are not getting the clarity around the manner in which the creditor wishes their debts to be dealt with. This is despite numerous efforts on my part in every single engagement with banks. While acknowledging that there is no legislative obligation on the creditor to provide this clarity, I am disappointed that the banks have not given this clarity. I believe therefore it should become compulsory. I also believe that some measures are needed to curtail the number of Court review cases that are being contested on procedural rather than commercial grounds. I believe that creditors should be restricted to only those arguments that they raised during the protective certificate period. This would be fair to all sides and it would bring a much greater efficiency to the process.

I believe these two creditor focused changes, combined with the overall efficiency measures identified in our Submission, would get us to the point where we should have been some years ago, whereby the Act and the PIA in particular, can be used to deal with all of the difficult mortgage cases and maximise the number of cases that see debtors remain in their home. This, I

¹ Figure A3.5: PIA Debtor Profile 2014 – 2016; Page 65 of Submission

respectfully submit, would achieve the objectives that lie behind the proposed Bill you are considering this morning, with minimum risk.

Thank you for the time this morning to listen to my opening statement. I am now happy to take any questions.

Appendix 1: PIA cases

The following cases summarise recent Personal Insolvency Arrangements (PIAs) that were subject to Court review under Section 115A of the Personal Insolvency Acts. Please note names have been changed to protect identities.



Example 1 - Couple

Marie and James are a couple with three children under 12 years of age. Marie receives an Invalidity Pension and prior to that she was out of work for two years without pay. During this time the family relied on James' income until he lost his job. He was unemployed for 16 months receiving Job Seekers Allowance. Consequently, they were unable to meet their mortgage repayments and arrears accrued.

Marie and James met with a Personal Insolvency Practitioner (PIP) who assessed their situation and advised them that a Personal Insolvency Arrangement was the best solution for them. The solution resulted in a write down of over €165,000 and their other unsecured debts of €56,809 were largely written off under the arrangement. The family home was retained.

Case Summary	
Mortgage balance:	€285,647
Current market value of property:	€105,000
Negative equity:	€180,647
ISI monthly Reasonable Living Expenses (set costs): Two adult household with three children, aged four, six and twelve + car	€2,251
PIA Solution	
Principal:	Write Down of €165,647
Term:	Remaining Mortgage of €120,000 @ 2.5% for 72 months. This temporary interest rate reduction was to facilitate a modest payment towards unsecured creditors.
Rate:	Rate to revert to 4.50% Variable post arrangement.
Other key features:	Other debts of €56,809 receive a dividend of 2%.



Example 2 – Separated couple

Lucy and Michael are a separated couple with one child in primary school. They have shared custody of their daughter. Michael lives in the family home and Lucy lives in rented accommodation. Michael is the primary carer for his mother and works part-time as a farm worker. Lucy is in full time employment. The child spends 40% of her time with Michael.

Lucy and Michael met with a Personal Insolvency Practitioner (PIP) who assessed their situation and advised both of them to enter into individual Personal Insolvency Arrangements. The solution for Michael resulted in a write down of over €190,000 and his other unsecured debts of €223,349 (including business debt) were dealt with under the arrangement. The family home was retained under the arrangement.

Case Summary (Michael)	
Mortgage balance:	€465,567
Current market value of property:	€275,000
Negative equity:	€190,567
ISI monthly Reasonable Living Expenses (set costs): One adult household with one child (40% of time) + car	€1,177
PIA Solution (Michael)	
Principal:	Write off of €190,567
Term:	Mortgage extended by 6 years.
Rate:	Interest only payments @ 3% for the duration of the PIA (6 years). Will be on a variable rate after the term of the arrangement. This temporary interest rate reduction is to facilitate a modest payment towards unsecured creditors.
Other key features:	Other debts of €223,349, including business debt, receive a dividend of 4.3%.

A similar solution for Lucy's debts was also achieved with her PIA.



Example 3 - Older couple

Sandra and Barry are a couple in their sixties. Barry ran a business between the years 2009 and 2016 but found himself unable to meet the debts of the business.

A Personal Guarantee was called in and a judgement registered. Barry has had no real income apart from social welfare payments for a number of years. Sandra works as a Special Needs Assistant in a local Primary School and as a child minder. Net monthly income amounts to circa €3,000 per month. Adult children are also contributing €450 per month to the household. With only 7 years left to age 70, the couple needed to quickly start addressing debts to find a long term solution.

Sandra and Barry met with a Personal Insolvency Practitioner (PIP) who assessed their situation and advised them that a joint Personal Insolvency Arrangement was the best solution for them. The solution resulted in a write down of over €60,000 and their other debts of €353,195 were dealt with under the arrangement. The family home was retained under the arrangement.

Case Summary	
Mortgage balance:	€220,016
Current market value of property:	€150,000
Negative equity:	€70,016
ISI monthly Reasonable Living Expenses (set costs): Two adult household + vehicle	€1,486.62
PIA Solution	
Principal:	Write Down of €60,016
Term:	New Mortgage of €160,000
Rate:	1% for 84 months
Other key features:	Other debts of €353,195 receive a dividend of 0.4%.