

Appearance by Mr. Lorcan O 'Connor, Director of the Insolvency Service of Ireland to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform

Thank you for inviting me to appear before the Committee today to meet and brief members of developments within the Insolvency Service of Ireland (ISI) with specific reference to debt management and resolution. I look forward to the opportunity to answer as many questions as I can from members of the Committee, but before doing so, I wish to give you a brief overview of work undertaken in the establishment of the ISI including an update on our current targets and when we believe we will be in a position to accept initial applications for relief under the new debt solutions introduced by the Personal Insolvency Act. Having done so I then wish to highlight a number of points as to why I believe the new reliefs introduced through the Act are both necessary and have the potential to be a very important response in addressing the overall problem of personal debt that we as a country face today.

Establishment of the ISI:

Since my appointment as Director Designate of the ISI at the end of October last year a number of key milestones have been passed including the enactment of the Personal Insolvency Act at the end of December last year; the formal establishment of the ISI in March of this year by the Minister for Justice and Equality, Mr. Alan Shatter, T. D.; the launch of the ISI Information Campaign in April and the publication of regulations governing the authorisation of Personal Insolvency Practitioners and Approved Intermediaries - the people who will be offering the face to face advice and assistance to insolvent debtors - which were issued in June of this year.

In addition to these key milestones the ISI has also, from a complete standing start last November, met a number of organisational targets including:

- The development of a business plan, identifying the structures and resourcing requirements for the organisation
- The recruitment of staff - currently at 78 with an overall requirement of, and sanction of 91
- The identification and fit out of new offices
- The identification of necessary amendments to the primary legislation necessary for the efficient and effective operation of the Service and the new debt reliefs - many of which are reflected in the Courts Bill currently before the Oireachtas
- The development and implementation of appropriate corporate governance procedures and internal controls
- Ongoing stakeholder engagement
- The development of guides explaining the main features of the new debt reliefs together with detailed sample scenarios and step by step guides to aid people in understanding how these new debt reliefs will work
- The launch of a website and Information Line for the public
- The roll out of courses by approved educational bodies for those interested in becoming Personal Insolvency Practitioners and Approved Intermediaries
- Initial research into and ultimate publication of guidelines on a reasonable standard of living and reasonable living expenses as required under section 23 of the Act
- The scoping of the ISI's IT requirements to support an electronic system to accept and process applications under the new debt reliefs and to do as much of our work as possible via electronic means

- The development of extensive documentation to be prescribed by the ISI such as Prescribed Financial Statements of insolvent debtors and relevant application forms for each of the arrangements.

Both I and my entire team are acutely aware of the importance of being in a position to accept applications for these new debt reliefs as soon as possible. I have no doubt that there are very many cases across the country where people find themselves unable to pay their debts, often through no fault of their own, who are waiting for the ISI to "Open its doors" so that they can finally deal with their debt problem which until now may have appeared insurmountable to them.

When I speak to my counterparts in the Insolvency Service of England and Wales or the Insolvency Service of Northern Ireland or other equivalent organisations for that matter, they speak in years rather than months when referring to their experiences around initial establishment or in the roll out of new business areas. When I speak to those involved in the regulation of people practising in the financial services sector I get a similar response. However, notwithstanding these facts I am pleased to confirm that the ISI, following its establishment in March, aim to be in a position to accept applications in mid August.

In order for that to happen three things must occur.

- Firstly, the ISI needs to begin authorising Practitioners and Approved Intermediaries. We hope to begin issuing authorisations by the end of July. Insolvent debtors will then be able to meet authorised practitioners straight away. However I do not want to create false expectations. It is likely to take a number of weeks before a critical mass of practitioners is reached such that there are practitioners available all over the country.
- Secondly, the ISI also needs to have its IT system fully operational. This system has been developed by the IT Division of the Department of Justice and Equality and I have been assured that the entire system will be handed over to the ISI by the end of this week for complete end to end testing involving MABS, potential PIPs and the Courts Service. Any delay in this hand over will have a knock on impact on the date the ISI can begin accepting applications.
- And finally we need the remaining provisions of the Personal Insolvency Act to be commenced together with the passing and commencement of various amendments contained within the Courts Bill. I understand that these should be commenced shortly.

All of this should mean that the first Debt Relief Notices will begin to issue in early September as will the first Protective Certificates that will cover those applying for a Debt Settlement Arrangement or a Personal Insolvency Arrangement.

As the Committee will be aware the Debt Settlement Arrangement and Personal Insolvency Arrangement process is a two stage process and the Protective Certificate at stage one offers a 70 day window for Practitioners to develop a proposal to the satisfaction of the debtor and creditors. This should mean that the first Debt Settlement Arrangement or Personal Insolvency Arrangement will issue during November of this year - approximately 70 days after the first Protective Certificate is issued. It is worth pointing out that from the point in time that the Protective Certificate is issued, debtors are protected from any action that creditors, subject to the Protective Certificate, may be inclined to take.

The new debt reliefs:

I now wish to turn to the actual debt reliefs themselves and why, in my opinion I believe they should play an important role in helping insolvent debtors deal with their difficulties.

DRN

The first arrangement is called a Debt Relief Notice and it will allow for the write off of qualifying debt up to €20,000, subject to a 3 year supervision period. This is primarily designed for those with very little income and very little assets. Approved Intermediaries will advise debtors applying for a Debt Relief Notice and will primarily be available through MABS offices around the country. The features of the Debt Relief Notice are very similar to those which apply to Debt Relief Orders which have been successfully introduced in the UK in recent years.

DSA

The second arrangement introduced by the new Act is the Debt Settlement Arrangement which provides for the agreed settlement of unsecured debt with no limits involved over a period normally expected to be 5 years. Once again there are similar solutions available to insolvent debtors in other jurisdictions which work efficiently in addressing both debtor and creditor issues in any given case. The success of the IVA (Individual Voluntary Arrangement) schemes in the UK, which are broadly similar to the Debt Settlement Arrangement here, gives me confidence that DSAs will also be a success here.

PIA

The third and final arrangement, the Personal Insolvency Arrangement will facilitate the restructuring or settlement of secured debt of up to €3m, a cap that can be increased with the consent of all secured creditors, and the settlement of unsecured debts without limit, over a period normally expected to be 6 years. To my knowledge this arrangement does go further than those that are available in other jurisdictions in that it addresses secured debt in certain circumstances short of formal bankruptcy. Given the difficulties that this country faces in relation to property debt, such a feature to my mind is essential.

There has been much speculation as to whether this arrangement will be a success or whether banks shall choose to vote against many proposals that are developed through this process. I would like to stress that both the Debt Settlement Arrangement and Personal Insolvency Arrangement are voluntary arrangements that are designed to take into account both the interest of a debtor and his or her creditors. It is likely that in the vast majority of cases a practitioner will be able to make a proposal that is in both the interest of the debtor and the creditor.

The reality of the situation is that these new arrangements offer an efficient and an effective means to tackle problem debt in a controlled manner short of bankruptcy. While security is recognised in bankruptcy, the reality of the situation is that bankruptcy in the vast majority of cases is bad news for the creditor. It is costly and, in almost all cases, is likely to crystallise negative equity.

Bankruptcy

Finally, I wish to touch on the area of bankruptcy. As the Committee will be aware the Personal Insolvency Act contains provisions to amend certain elements of the Bankruptcy Act of 1988 - the

main change being the introduction of an automatic discharge from bankruptcy after 3 years rather than the 12 years that currently applies. I expect these provisions to be commenced at the end of this month.

The Committee will also be aware that the Courts Bill contains provisions for the transfer of the Office of the Official Assignee - who in effect manages all bankruptcies - to be transferred into the ISI. The Official Assignee, Chris Lehane, has been working closely with the ISI over recent months to ensure that his office, once transferred, will have sufficient resources to deal with the significant increase in bankruptcies over the coming months and years that are likely to occur.

Over a third of all ISI staff will be working for the Official Assignee which will result in an almost fourfold increase in its current staffing levels. The ISI will be issuing a tender by the end of this week for the development of a specific IT system to meet the needs of the Official Assignee given the anticipated increase in cases.

Conclusion

And so to conclude, we are now only a number of weeks away from the Insolvency Service being in a position to accept applications for the new Debt Reliefs. Insolvent debtors will be in a position to begin meeting with authorised Personal Insolvency Practitioners and Approved Intermediaries at the end of this month.

I firmly believe that these new debt reliefs are not just good for debtors but are also in the interest of creditors by offering an efficient and fair means to tackle what is a very large problem for everyone. Ultimately it is in all of our interests to return an insolvent debtor to solvency, to ensure their well being and by giving them the second chance that they deserve.