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An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas

Tuarascáil maidir leis an Téarma Féimheachta in Éirinn

Iúil 2015

Houses of the Oireachtas

Joint Committee on Justice, Defence and Equality

Report on the Term of Bankruptcy in Ireland

July 2015

31/JDAE/030

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Chairman's Preface

The issue of bankruptcy is a matter that retains renewed and very relevant context in the aftermath of the banking crisis and consequent financial collapse.

The Committee opened a consultation process on one very specific matter, should the term for bankruptcy in Ireland be reduced from 3 years to 1 year.

The call for submissions resulted in over 100 submissions being received from a wide range of stakeholders and interested parties.

Many of the submissions from private individuals contained some personal and detailed accounts of experiencing bankruptcy. While the Committee has taken note of the contents of all submissions it has decided only to publish submissions from organisations.

The law relating to personal insolvency has undergone significant and radical reform recently and the bankruptcy term was reduced from 12 years to 3 years.

In addition, newer debt settlement concepts have been introduced, including the Debt Relief Notice (DRN), Debt Settlement Arrangement (DSA) and Personal Insolvency Arrangement (PIA). It must be remembered that not all creditors are large organisations but can also take the form of small town businesses, suppliers and contractors. Therefore, a balance must be struck between debtors and creditors taking account of the justice of each and every case. Bankruptcy should not be used a “quick fix” solution for someone in financial difficulties to the detriment of their creditors when other solutions might be more equitable.

However, based on this process, the Committee believes that this issue should be kept under constant review and believes that the mechanism of bankruptcy should aid recovery in the fairest possible way, but not punish the debtor.

Finally, I would like to express my gratitude to all those who took the time to make a submission, the contents of which have been noted by the Committee.



A handwritten signature in dark ink, appearing to read 'D Stanton', written over a horizontal line.

David Stanton T.D.
Chairman
July 2015

Introduction

At its meeting of 27th May 2015, the Committee had an engagement with the Insolvency Service of Ireland to receive an update on the recently introduced aspects to debt insolvency arrangements.

Arising from this, the Committee decided to examine the issue of the bankruptcy term but particularly to focus on the very specific issue of whether the term for bankruptcy in Ireland should be reduced from 3 years to 1 year.

The Committee published a call for submissions from interested parties and received a total of 122 submissions.

Many submissions contained some very detailed and personal accounts, demonstrating the wide-reaching effect debt has had on Irish society in recent years.

At its meeting of 8th July 2015, the Committee considered the submissions received and this report sets out the main points made in the submissions on which the Committee has made some observations.

This Report has been sent to the Minister for Justice and Equality and the Committee looks forward to engagement on this matter.

Law on Bankruptcy

Section 85 of the Bankruptcy Act 1988, as amended by the Personal Insolvency Act 2012, provides for automatic discharge after three years. However, if the Official Assignee or a creditor objects to discharge due to the applicant's failure to co-operate or non-disclosure, it may be suspended for up to eight years.

The bankrupt may also be ordered to make payments for up to eight years after the individual was adjudicated bankrupt under section 85D of the Act.

It is also worth noting that there is a prospect of EU harmonisation of bankruptcy arrangements. The European Commission, in its Recommendation of 12th March 2014 on a new approach to business failure and insolvency, suggested entrepreneurs should be discharged after 3 years.

Other jurisdictions take varying approaches to bankruptcy:

- In Northern Ireland, England and Wales, a one year term applies. However, an Official Receiver may impose a Bankruptcy Restriction Order for between 2 and 15 years. The bankrupt is automatically discharged after the one year term if there is no restriction. A shorter discharge is also possible if a notice is filed with the High Court.
- In Australia, a three year term applies. However, if the trustee objects this may be extended to between 5 and 8 years. If there is no objection, the bankrupt is automatically discharged upon completion of the term. There is no provision for a shorter bankruptcy but it may be annulled in certain circumstances.
- In the USA, the bankruptcy term varies and if creditors object, the discharge period may be extended. If there is no objection, the bankrupt is automatically discharged upon completion of the term. If creditors do not submit motions to the Court within a specified timeframe, then the Court may grant a shorter discharge.

The forms of bankruptcy in the United States may be as follows:

- Chapter 7 (Liquidation): approximately four months after the date the debtor files the petition with the clerk of the bankruptcy court.
 - Chapter 11 (Reorganisation): discharge upon completion of debt repayment plan, which may take a number of years;
 - Chapter 12 (Adjustment of debts of a family farmer or fisherman): approximately four years after the date of filing; and
 - Chapter 13 (Adjustment of debts of an individual with regular income): approximately four years after the date of filing.
- In Canada, the bankruptcy term ranges from 9 months to 3 years. However, the Court may suspend a discharge and the debtor may also apply early for a

discharge. If there is no such change, the bankrupt is automatically discharged upon completion of the term.

There is also an additional consideration on what proportion of the debtor's income goes towards his or her debts while in bankruptcy, with a number of jurisdictions taking different approaches.

- In Ireland the Personal Insolvency Service of Ireland has an obligation under section 23 of the Personal Insolvency Act 2012 to produce Guidelines on a Reasonable Standard of Living and Reasonable Living Expenses. The amount varies depending on the circumstances of the individual, their spouse or co-habitant and the age of any dependent children.
- In England and Wales the Insolvency Service produces a Household Expenditure Survey and uses this information to calculate income payment agreements. There is no set standard as housing costs are individually assessed.
- In Canada, there is provision for individuals whose income exceeds a certain amount while in bankruptcy to have to pay 50 per cent of their excess income to their bankruptcy trustee. The threshold may be adjusted if the debtor is co-habiting or has dependent children. However, the amount to be paid is adjusted for the share of the household income the bankrupt earns.
- Australia has a similar arrangement to Canada, i.e. 50 per cent of a bankrupt's excess income (while in bankruptcy) goes towards their debts. However, the excess income threshold depends on the individual circumstances of the bankrupt and no details are available on the thresholds.
- In the USA when filing for bankruptcy the debtor must produce "a detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc." In a Chapter 13 bankruptcy if their income is higher than the median income in their State they must pay all their income above a set amount to their Trustee. This amount is based on standard expenses set by the Internal Revenue Service. These expenses can be State, City and/or county specific.

Observations

The Committee noted overwhelming support in submissions towards reducing the bankruptcy term from 3 years to 1 year.

There were many arguments in favour of a reduction:

- It is necessary to aid the economic recovery of the State and to enable many of those caught up in bankruptcy to become positive contributors to the economy as quickly as possible. The Committee observed this as a common trend from a number of submissions.
- A one year term would make the financial institutions engage more with debtors in reaching meaningful solutions and encourage further engagement with the DSA and PIA processes.
- It would pass on the benefits of economic recovery to all citizens by allowing people with crippling levels of debt associated with credit obtained during the economic boom to move on from that debt. This would allow the debtor to return to economic normality much faster. A particular context for this is the issue of negative equity.
- A reduction would bring Ireland in line with the United Kingdom and other common law jurisdictions.

The Committee was also told in submissions that the family home should be offered an element of protection. One submission expressed the view that banks may be willing to offer forbearance on mortgage debt for one year while the bankrupt goes through the process. Whether this takes the form of detaching this asset from the debtor's other debts, or transferring the asset elsewhere and allowing the mortgagor enter an alternative arrangement via the Official Assignee is a matter that the Committee feels warrants a serious and detailed level of consideration.

A smaller number of submissions were opposed to the proposal for a reduction in the term. However, in the Committee's view these did raise a number of issues:

- From the perspective of Credit Unions the debt represents other members' savings and the debtor undertaking a level of endurance before it can be written-off is argued as equitable.
- The view was expressed that the reduced time period of 1 year makes it too easy for the bankrupt to defer asset/income acquisition until after that date expiry. In addition, newer debt solutions, such as the PIA and DSA would become less attractive.
- Rather than reducing the term in all cases, the argument was made that the Official Assignee should be given the right to apply to the High Court to

discharge the bankrupt earlier. This would occur where the bankrupt has cooperated with the process and there is nothing further to be gained by enforcing the full three years.

A number of alternative suggestions were made to the Committee, including the following:

- Reducing bankruptcy to one year for combined debts of less than €500,000 with a longer term applied to large business debts with more complex forms of accounting. In one submission, it was argued that “this would ensure that those whose only crime was to purchase a home, and have since had to turn to bankruptcy, would be treated more fairly”;
- Similarly, a reduced bankruptcy term may be extended to 3 years if there is no cooperation from the debtor;
- Establishing an appeals mechanism for decisions of the Official Assignee as an alternative to reduced bankruptcy;
- Enabling the system in place to identify legitimate business bankruptcies from other bankruptcies
- The introduction of additional measures such as an early warning system and a second chance programme to operate alongside bankruptcy legislation;
- That availing of the one year bankruptcy term is dependent on having applied for the PIA and DSA processes or not having engaged in fraudulent and reckless trading;
- There was also the suggestion of making mortgage to rent schemes compulsory for banks as a mechanism for addressing the high level of home repossessions.
- An early discharge would enable the debtor to secure new credit / funds to purchase the remaining equity in the family home from the Official Assignee.

As well as the arguments for and against bankruptcy, the Committee made a number of further observations from submissions that it believes also warrant further consideration.

- The Committee observed an overwhelming support for reducing the term of bankruptcy from three years to one year. In addition, the Committee also noted support for reducing the associated income payments order, e.g. from 5 years to 3 years.
- The Committee also observed the issue of economic activity on the part of insolvent persons. One submission raised the issue of bankrupt persons not working for three years as a strategy to avoid having an income.

- The Committee observed a suggestion to adopt non-recourse lending for private mortgage similar to what is applied in the USA, which would ensure prudential lending by the regulated banks carrying on business in this State.
- The Committee also observed, through the vast number of very personal stories it received, that there are serious mental, emotional and psychological impacts of bankruptcy, which the Committee feels should not be ignored.
- The issues of bad faith and moral hazard were also raised. The Committee suggests that the appropriate safeguards are put in place to address situations where the bankrupt is not cooperative or acts in bad faith. Allowing the term to be extended to two or three years may be appropriate in such circumstances.
- As mentioned above, the Committee was also told in submissions of introducing a mortgage-to-rent scheme and that it be made a compulsory element of the process.
- Finally, the Committee also suggests that consideration is given to examining the enhancement of promotion of the Insolvency Service of Ireland and the alternative processes available to debtors.

Conclusions and Recommendation

Based on the submissions, the Committee concluded that a number of possible recommendations should be considered:

1. Retain the term at 3 years. As the term has only been reduced relatively recently it may be too early to further reduce it as any long term effects may not yet be apparent;
2. Reduce the term to 1 year. This is based on the view expressed in the majority of submissions;
3. Retain the 3 year term but allow for an application to be made for a reduced term in certain specified circumstances. A reduced term could be considered where there is no evidence of recklessness;
4. Reduce the term to 1 year but provide for an application for an extension by the Official Assignee of up to 3 years in certain circumstances.

A term of between 1 year and 3 years could apply to a bankrupt in certain circumstances, for example: where non-cooperation with the Official Assignee is evident; there is excessive unsecured debt (as opposed to mortgage or business debt); the “moral hazard” issue whereby bankruptcy is more attractive than other more equitable solutions.

Recommendation:

The Committee’s recommendation to the Minister for Justice and Equality is conclusion number 4 above – a reduction in the term to 1 year but provide for an application for an extension by the Official Assignee of up to 3 years in certain circumstances.

APPENDIX 1

Published Submissions

----- Forwarded by Bankruptcy Review on 05/06/2015 14:39 -----

"Liam Dunny" <liam.dunny@lisduggancu.ie>

05/06/2015 14:19

To <bankruptcyreview@oireachtas.ie>

cc

Subject SUBMISSION ON PROPOSED REDUCTION IN BANKRUPTCY TERM

-Friday 5th June 2015

Dear Sirs

Re: Reduction in Bankruptcy Term

On behalf of Lisduggan District Credit Union, Church Road, Lisduggan, Waterford, I wish to express my concerns to the proposed reduction in the Bankruptcy term from three years to one.

The reduction to Bankruptcy within three years introduced in the Personal Insolvency Bill 2012 resulted in a practical workable solution. From the debtor's point of view, the three-year period was a worthwhile process to undergo in order to reach a resolution to their debt burden. It represents a satisfactory middle ground between the implausible 12 year term which gave no realistic incentive for any debtor to seek redress and the proposed one-year term. The latter would constitute too easy a channel for individuals to enter in order to avoid having to take reasonable responsibility for debt incurred. In the case of a Credit Union, such a debt represents other members' savings and it is only equitable that there should be some level of endurance undergone before such funds have to be written off.

I trust that the above comments will be granted due consideration.

Thank you

Liam Dunny
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ensure that the onward transmission, opening or use of this message and any attachments will not adversely affect its systems or data. Please carry out such virus and other checks as you consider appropriate. No responsibility is accepted by Lisduggan District Credit Union Limited in this regard.

----- Forwarded by Bankruptcy Review on 05/06/2015 15:03 -----

pmcgleenan@mcgco.ie (Patrick McGleenan)

05/06/2015 14:52

To bankruptcyreview@oireachtas.ie
cc
Subject Persoanl Insolvency Review

Dear Sirs,

We understand that the Dail is reviewing the one year time limit on Personal Bankruptcy under the 2012 Act. Given the existing practise in UK & NI is for one year which was introduced many years ago and their respective economies / society / financial systems remain intact, we see no reason not to align our duration for bankruptcy in this State.

On an aside we also believe that non-recourse lending for private mortgage debt should be the norm in this State as applies in the USA. This would at a stroke ensure prudential lending by the regulated banks carrying on business in this State.

Finally, it is observed that the State does not charge a market rate for the implicit guarantee from which all lenders benefit.

Such a mechanism, if introduced, would ensure that lenders who choose to operate without this support could if they wish contract out of such protection and carry on business in the State on the explicit basis of carrying no State support which would mean in the event of insolvency automatic closure & resolution. This discipline would ensure that the management of such lenders would have "skin in the game" when they set their strategy. The lenders that choose to remain within the implicit guarantee regime would become "utility" type operations that provide the essential activity of loans & deposits in a conservative manner without any need for incentivised star management teams causing the inevitable instability that goes with being allowed take the upside while the State carries all the downside.

**Regards,
Patrick McGleenan
For and on behalf of
McGleenan & Co
Chartered Accountants
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9th June 2015

Alan Guidon
Clerk to the Committee
Joint Committee Justice Defence & Equality
Oireachtas
Dublin 2

Re: SUBMISSION ON PROPOSED REDUCTION IN BANKRUPTCY TERM

INTRODUCTION

New Beginning is authorised to provide debt management services by the Central Bank of Ireland.

Through our partner law firm, Carley & Associates, and our partner Personal Insolvency Practitioners McCambridge Duffy, we provide a full range of debt management service from negotiation through to bankruptcy. New Beginning, together with McCambridge Duffy, has been responsible for almost 80% of all accepted proposal in Personal Insolvency in the State and has completed over 40% of all debtor petitions in bankruptcy since 2014. We have been involved in most of the leading cases that have come before the Courts in the area of mortgage and personal debt.

Ireland remains a highly indebted country with our citizens being among the most indebted in the developed world. This is reflected in the high level of mortgage arrears which, by any standard, are unprecedented.

THE PERSONAL INSOLVENCY SCHEME

The Memorandum of Understanding executed between the Irish government and the Troika in 2010 required the State to introduce a Personal Insolvency regime. Up to that point Irish law provided no viable mechanism for debtors to exit unsustainable debt.

In late 2012 the *Personal Insolvency Act* came into force which provided for new insolvency mechanisms most notably a Personal Insolvency Arrangement (PIA) and a Debt Settlement Arrangement (DSA).

In both these arrangements an intermediary (PIP) proposes a scheme of arrangement which has, as its effect, the following:

1. An immediate return of the debtor to solvency;
2. An emphasis on the retention of the family home where possible;
3. A contribution by the debtor to his/her debt/s having regard to the debtor's entitlement to maintain a reasonable standard of living for himself and his dependent;
4. Debt write off of residual unsecured debt after maximum of 5/6 years of compliance by the debtor with terms of arrangement.

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Registered in Dublin, Ireland. Registration No. 516024. Directors: R Maguire & S O'Connell

For the purpose of this submission regard must be had to section 145 of the *Personal Insolvency Act, 2012* which amended the *Bankruptcy Act 1988* thereby prohibiting a debtor from seeking his own adjudication in bankruptcy until after reasonable efforts had been made via the Personal Insolvency regime.

"A debtor may not present a petition for adjudication unless the petition is accompanied by an affidavit sworn by the debtor that he has, prior to presenting the petition, made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement to the extent that the circumstances of the debtor would permit him to enter into such an arrangement."

The Courts have interpreted this section to mean that a debtor must meet with a Personal Insolvency Practitioner and a report must be obtained and put before the Court establishing the fact of the meeting and the fact of the reasonable efforts having been made.

The consequence of this legislative provision is twofold.

A debtor shall not be able to seek his or her own adjudication in bankruptcy unless:

1. He does not have sufficient means available to him (having regard to the Insolvency Service of Ireland's published Reasonable Living Expenditure Guidelines) to make any contribution to his debts;
2. He has made a reasonable proposal (such that the dividend to the creditors will be greater than in bankruptcy) and this has been refused by the creditors.

It is also to be noted that where a creditor seeks the adjudication in bankruptcy of a debtor, a Court has discretion to adjourn the application to allow the debtor to make a proposal for an insolvency arrangement and to punish, by way of costs orders, a creditor who persists in seeking an adjudication in bankruptcy after an insolvency proposal has been made.

It is clear therefore that the legislature has, rightly in our view, promoted Personal Insolvency, as the mechanism by which over indebtedness is resolved.

BENEFIT OF A REDUCTION IN THE BANKRUPTCY TERM

Any such benefit will accrue to those debtors who are entitled to seek their own adjudication in bankruptcy, that is, those who either cannot make payments or those whose proposal has been rejected.

In the case of those who cannot make payments (having regard to the Reasonable Living Expenditure Guidelines) it is submitted that there is no benefit to any party in keeping such people in bankruptcy beyond the minimum period required to allow the Official Assignee confirm their position. This should only take a number of months.

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Any "hope value", that is, a view that the debtor's circumstances might improve and allow for bankruptcy payments order to be made, is largely meaningless.

People in these circumstances are highly unlikely to look to improve their lot where such improvement will mean a commencement of payments to the Official Assignee. Our experience shows that most people in these circumstances are the self-employed whose businesses have been dead for years, but who have often failed to recognise this fact, and have continued attempting to self-resolve.

In these circumstances the longer period of bankruptcy acts a disincentive to a new start and acts as a drag on the economy. This group will be enabled by the shorter period to get on with their lives quickly and this will often mean a return to business and to the benefits that this will accrue to the community.

In the case of those debtors who have made a reasonable offer by way of an insolvency proposal which has then been rejected, the proposed change in the bankruptcy term means it is more likely that deals will be accepted.


The reduction in term will mean that there is greater pressure on creditors to accept proposals in personal insolvency thereby increasing the efficacy of the whole Personal Insolvency regime.

CONCLUSION

There is no down side obvious to a reduction in the bankruptcy term to 1 year. On the other hand there are considerable up sides, most notably, allowing people a fresh start, 12 months after adjudication and putting pressure on creditors, and financial institutions in particular, to accept proposals in Personal Insolvency.

Regard should also be had to the fact that insolvent debtors have most likely been insolvent since shortly after the outset of the financial crisis in 2008.

There is therefore a compelling need to speed up the process of financial recovery.



Ross Maguire
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New Beginning

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**Submission by the Irish Society of
Insolvency Practitioners to the Joint
Committee on Justice, Defence and Equality
on the Period of Bankruptcy**

June 2015



**Houses of the
Oireachtas**
Tithe an Oireachtais



Submission to the Joint Committee on Justice, Defence and Equality

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BACKGROUND TO ISIP

- 1.1. **ISIP** was established in 2004 to create a forum to enhance knowledge and expertise of its members and to allow members to share experiences between those accountants and lawyers in Ireland who specialise in turn around and insolvency and among practitioners working in the insolvency profession in Ireland. Its membership is drawn from the leading firms of insolvency practitioners, accountants and solicitors in the country.
- 1.2. Its members, some of whom are Personal Insolvency Practitioners, act on behalf of debtors in financial difficulty, and also on behalf of creditors who are dealing with debtors in financial difficulty.
- 1.3. ISIP is regularly consulted by various Government Agencies such as the Revenue Commissioners and the Central Bank on areas of mutual interest. ISIP has a representative on the Company Law Review Group.
- 1.4. ISIP has been heavily engaged with the Insolvency Service of Ireland (“ISI”) in developing procedures and protocols under the Personal Insolvency Act 2014.
- 1.5. The current members of ISIP’s Council are:

Chairman – David O’Connor (*BDO*)

Secretary Judith Riordan (*Mason Hayes & Curran*)

Treasurer Derek Earl (*Somers Murphy Earl*) .

Doug Smith (*Eugene F. Collins*)

Brendan Colgan (*Matheson*)

Shane McCarthy (*KPMG*) Des

Gibney (*McStay Luby*)

Sean McNamara (*Smith & Williamson*)

Jim Stafford (*Friel Stafford*)

1.6 The objectives of ISIP are partially achieved by the work of the following committees:

LAW REFORM COMMITTEE

Doug Smith (*Eugene F. Collins Solicitors*)

Catherine O'Callaghan (*Eugene F. Collins Solicitors*)

Angela Brennan (*Matheson Solicitors*)

Bill Holohan (*Holohan Solicitors*)

Bobby Waters (*PwC*)

Colin Farquharson (*Ernst & Young*)

Daniel Hughes (*Hughes Solicitors*)

Frank O'Reilly (*Whitney Moore Solicitors*)

Gavin Smith (*Walkers Global Solicitors*)

James Butler (*GBW Chartered Accountants*)

Mícheál Leydon (*Outlook Accountants*)

Niamh Counihan (*Matheson Solicitors*)

Owen Henson (*Kane Tuohy Solicitors*)

Stephen Scott (*Baker Tilly Ryan Glennon*)

Warren Baxter (*Deloitte*)

Shane McCarthy (*KPMG*)

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Michael Butler (*Butler & Co.*)

Jim Luby (*McStay Luby*)

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Hugh Ward (*Hugh Ward Solicitors*)

Gareth Steen (*Mason Hayes & Curran*)

Kevin Gahan (*Matheson*)

SUBMISSION IN RESPECT OF CHANGING THE BANKRUPTCY PERIOD

- 2.1** We recommend that the period of bankruptcy be reduced from 3 years to 1 year and that the associated income payments order be reduced from 5 years to 3 years. Such a change would bring much needed relief to many thousands of distressed debtors.
- 2.2** It is well accepted that the demand for PIAs and DSAs since the establishment of the ISI has been beneath expected levels. We believe that the relatively low demand for formal arrangements has been due to a combination of factors. We believe that a major factor is that there can be relatively little difference in outcomes between an “income type” PIA/DSA from a creditor perspective when compared to a bankruptcy. This issue is best illustrated by the following example of a PAYE worker taking home net pay of €4,000 per month, married with 2 primary school children. After allowing for Reasonable Living Expenses of €1,835.07 and a reasonable monthly mortgage payment of €1,000, the debtor can afford to make monthly payments of €1,164.93 to his creditors. We set out below the estimated outcome for creditors under a DSA and under a bankruptcy.

	DSA	Bankruptcy
	€	€
Debtor’s monthly contribution	1,164.93	-
Monthly Income Payments Order	-	1,164.93
Total contributions for 60 months	69,895.80	69,895.80
PIP fees & Expenses (inc.VAT)	(6,150.00)	-
Bankruptcy administration fee	-	(2,000.00)
Bankruptcy realisation fee	-	(13,734.37)
Bankruptcy distribution fee	-	(500.00)
Return to creditors	63,745.80	53,661.43

2.3 As is illustrated by the above table, there is, in our view, a material difference in outcomes for creditors, with the DSA producing €10,084 more than a bankruptcy, or, in percentage terms, 18% more than a bankruptcy. However, some of our PIPs have found that some creditors have voted against such arrangements. Creditors have given a multitude of reasons for voting against such schemes, such as claiming from that they would get more money from a 10 year payment plan, “sitting” on a judgment mortgage etc. For some creditors, they are prepared to call the debtor’s “bluff” and risk losing the 18% extra dividend. Whilst the forthcoming legislation on restricting the creditors’ veto in respect of such schemes will be of benefit, there is no certainty that it will work in practice particularly if the existing bankruptcy terms remain the same.

2.4 We believe that if the bankruptcy period was changed from 3 years to 1 year, and the Income Payments Order was reduced from 5 years to 3 years, that there would be a significant increase in formal arrangements. Such a change would bring us in line with the United Kingdom. We set out below the estimated outcome for creditors under a DSA and under a bankruptcy with just a three year Income Payment Order.

	DSA	Bankruptcy
	€	€
Debtor’s monthly contribution	1,164.93	-
Monthly Income Payments Order	-	1,164.93
Total contributions for 60 months for DSA and 36 months for bankruptcy	69,895.80	41,937.48
PIP fees & Expenses (inc.VAT)	(6,150.00)	-
Bankruptcy administration fee	-	(2,000.00)
Bankruptcy realisation fee	-	(9,527.24)
Bankruptcy distribution fee	-	(500.00)
Return to creditors	63,745.80	29,910.24

- 2.5** As is illustrated by the above table, there is, in our view, a much more material difference in outcomes for creditors when the Income Payments Order is reduced to 3 years, with the DSA producing €33,835.56 more than a bankruptcy, or, in percentage terms, 113% more than a bankruptcy. We believe that the dramatic differences in outcomes would encourage more creditors to vote in favour of PIAs and DSAs.

Lessons from the United Kingdom

- 2.6** The personal insolvency statistics for England and Wales for 2014 are as follows:

Bankruptcies	20,318
Debt Relief Order (<i>Similar to DRNs. Threshold debt is £15,000</i>)	26,688
Individual Voluntary Arrangements (<i>Similar to DSAs</i>)	52,190
Total	99,196

- 2.7** The UK experience shows that the majority of debtors wish to avoid the stigma of bankruptcy, and pay more money to their creditors over a longer period of time (5 years) as opposed to less money over a three year period in a bankruptcy. When UK creditors are presented with an IVA that pays them dividends over 5 years as opposed to dividends over a three period in a bankruptcy, they will vote in favour of an IVA. We believe that a similar voting pattern would occur in Ireland if the Income Payment Order was reduced to three years.

Advantages of changing the bankruptcy period to one year

- 2.8** More debtors would avail of PIAs and DSAs and achieve final resolution of their debts. ISIP members have many clients who are unable to presently persuade the banks/funds to accept PIAs or DSAs, but who would lose their income if they went bankrupt. These clients include professionals such as auctioneers, pharmacists, solicitors and people in financial services who are subject to very strict fitness and probity standards. These debtors are currently “trapped”.

- 2.9** The Committee are aware that billions of commercial and consumer debt has been sold to various funds, and that further sales are due to take place. It is difficult to predict how “tough” these funds will be on debtors in the future. Changing the bankruptcy term to one year would generate a more level playing field.
- 2.10** The flow of Irish people to the UK to go bankrupt would cease.
- 2.11** It would increase the prospect of people retaining their family homes. We note that the Official Assignee has suggested that reducing the bankruptcy period would not allow more people to stay in their homes. We note that the Official Assignee has based his views on a sample of 497 bankruptcy cases for the period 1 January 2014 to 8 March 2015. We believe that the majority of those cases were dominated by debtors who were grossly insolvent and who had no prospect of being able to offer anything worthwhile to their creditors. Such cases are not representative of the thousands of cases that our members are currently handling, and over which the Official Assignee has no visibility. We believe that reducing the bankruptcy period would allow more debtors to retain their family homes. For example, our members have clients who could generate tax free rent (under the Rent a Room scheme) of up to €12,000 per annum. Such rent could be used to contribute towards a mortgage. However, if such a debtor become bankrupt, the Official Assignee would collect the rent, thereby encouraging the bank to re-possess the home.
- 2.12** By providing a positive light at the end of the tunnel it could serve to reduce the risk of debtors developing suicidal tendencies and relieve the burden on both family and the health care services of dealing with the psychological impacts of stress on overburdened debtors.
- 2.13** Entrepreneurs would be motivated to develop new and existing businesses.

Possible dis-advantages of changing the bankruptcy period to one year.

2.14 The moral hazard argument. Based on the UK experience, we do not believe that this argument has much validity.

2.15 We note that the Official Assignee is concerned that if a change to one year was made, that Dublin could become the bankruptcy tourism capital of Europe, and that the ISI would not have adequate resources to handle the extra work arising. We believe that if the Irish Courts adopted the same robust approach that Northern Ireland adopts, that Dublin would not be attractive to Europeans seeking bankruptcy. (The Northern Ireland courts take a very robust approach to debtors seeking to go bankrupt in that jurisdiction, seeking positive proof that a debtor has made a genuine change in his Centre of Main Interests, unlike many courts in England and Wales.)



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To: The Oireachtas Joint Committee on Justice, Defence and Equality
Re: reduction in the period of bankruptcy from three years to one year.
From Professor Gerard Casey, School of Philosophy, University College Dublin

1. The issue of bankruptcy has ethical, legal and economic dimensions. I am qualified in all three areas: *Ethical*: BA (UCC), MA (Notre Dame), PhD (Notre Dame), DLitt (NUI); *Legal*: LLB (London), LLM (UCD); *Economic*: Associate of the Mises Institute, Auburn, Alabama, sometime editor of *Economic Affairs*.
2. The basic ethical principle in human agreements is *pacta sunt servanda*—agreements are to be kept. The basic principle of justice is to give to others their due. That being so, ideally, all lawful debts should be fully discharged.
3. Agreements are fundamentally bi-partisan and ideally, apart from circumstances of aggression and coercion, should be free from third party intervention. Parties to an agreement should be free to include in the terms of their agreements, conditions under which debt could be considered to be discharged or discounted.
4. It would be better if we did not have to have a public regime of bankruptcy but, if we must have one, then it is better that we have one that balance the interests of creditors and debtors *and promotes the interests of society at large*. The interests of society at large are furthered by the unfettering of genuine entrepreneurial activity and the return of debtors to a position in which they can exercise entrepreneurial skills.
5. A bankruptcy regime should—
 - provide legal certainty antecedent to transactions
 - discourage reckless lending and reckless borrowing
 - discourage fraudulent or reckless trading
 - recognise that non-culpable factors may make the repayment of a debt practically impossible
 - provide for the discharge of the debt where such non-culpable factors exist
 - facilitate the return of the debtor to a position to engage in commercial transactions as speedily as possible.
6. The shorter the period of bankruptcy, the more circumspect creditors will tend to be. The shorter the period of bankruptcy, the less circumspect debtors will tend to be *unless the shortness of the bankruptcy period is counterbalanced by a requirement that a decree of bankruptcy will not be given where the debtor has engaged in fraudulent or reckless trading, reckless trading to include reckless borrowing*.
7. *Recommendation*: that, in the interests of creditors, debtors and society at large, the period of bankruptcy be reduced from three years to one year, subject to the condition that debtors shall not have engaged in fraudulent or reckless trading.

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Submission from Brendan Burgess on reducing the bankruptcy term

18th June 2015

Background

I am a consumer advocate and founder of the consumer forum askaboutmoney.com. I have a particular interest in mortgages and mortgage arrears. I chaired the Consumer Panel of the Financial Regulator from 2004 to 2007. I was a member of the Expert Group on Mortgage Arrears – The Cooney Group. Askaboutmoney.com has a variety of forums on personal financial issues including:

[Mortgage arrears & negative equity case studies](#)

[Personal Insolvency, bankruptcy, etc](#)

[Mortgage arrears - policy issues](#)

[Issues arising from joint mortgages](#)

My main concern is how bankruptcy affects the small borrower, and their home in particular.

While this is a personal submission, and these are my own views, some of the ideas have come from the contributors to askaboutmoney.com and in particular from the first-hand experience of people who are currently going through the bankruptcy process.

Summary of recommendations

Leave the default term for bankruptcy at 3 years.

The Official Assignee should be given the right to apply to the High Court to discharge the bankrupt earlier where the bankrupt has cooperated and where there is nothing further to be gained by waiting for three years.

When applying for an Income Payments Order, the Official Assignee should give consideration to the behaviour of the bankrupt prior to being adjudicated bankrupt and the extent to which they had cut back their expenditure to the equivalent of the Reasonable Living Guidelines.

The bankruptcy period should be no longer than that necessary to allow the Official Assignee to quickly and efficiently deal with the assets and liabilities of the bankrupt.

Bankruptcy should not be seen as a penalty. It should not be regarded as similar to a criminal conviction where the sentence should be appropriate to the crime.

The sole determinant of the term should be the time taken for the Official Assignee to sort out the assets and liabilities of the bankrupt. This will be determined by the size and complexity of the bankrupt's affairs and by the co-operation of the bankrupt.

That could 3 months where there are no assets and only unsecured creditors or it could be 6 years where the bankrupt does not co-operate.

The default term should be three years, but the legislation should be changed so that the Official Assignee has the right to apply to discharge the bankrupt earlier. Alternatively, the default term

could be one year, with the Official Assignee having the right to apply to extend it. However the former would result in fewer court appearances.

The Official Assignee's job is a lot simpler when there is no property and there are only unsecured creditors. A borrower facing bankruptcy may well reach agreement with their lender prior to bankruptcy to dispose of all secured assets, thus making the bankruptcy simpler and shorter for everyone.

Leaving the duration at the discretion of the Official Assignee would encourage people to behave responsibly. If a borrower were to quit their job to reduce their income or if they were to dissipate their assets prior to bankruptcy, the Official Assignee would take that into consideration.

There is a danger in reducing the bankruptcy period to a fixed one year, that people may game the system as the term is so short.

The duration and amount of the Income Payments Order are more important than the term of the bankruptcy

The main restrictions of bankruptcy have little impact on most people. They don't want to be company directors or auditors. They don't want to be public representatives. Unless they are a member of a particular profession, their employment or trade will not be affected.

The duration of bankruptcy does not seem to be a factor in whether or not a person retains occupation of their family home.

What affects people much more is that they must live within the Insolvency Service's Reasonable Living Expenses for 4 or 5 years.

While living within the Reasonable Living Expenses for 5 years might be considered to be an appropriate price to pay for having one's debts wiped out, it must be remembered that anyone going bankrupt, has probably been living on the breadline for a number of years before bankruptcy.

Typically a home owner who loses their job will struggle for around 5 years trying to keep their family home before they opt for bankruptcy. If they then face an Income Payments Order for 4 years, they will be living a meagre life for a total of 9 years. That is a huge chunk out of anyone's life. In most cases, this is happening while they are raising children.

The maximum period anyone would have to live on the equivalent of the Reasonable Living Expenses should be five years, including the period prior to bankruptcy. Where a borrower has been struggling for some years before bankruptcy, the Official Assignee should not seek an Income Payments Order which would oblige the person to live a further period on the Reasonable Living Expenses.

Of course, a very high earner should not be allowed to enjoy their full income after a short bankruptcy term. So it might be better to have the ordinary Reasonable Living Expenses for a total of 5 years, followed by a period where the RLEs are doubled. This would not affect most people. But if someone were earning €200,000 a year, they would live on twice the RLEs and pass the surplus to their creditors.

Reducing the Bankruptcy/IPO term is unlikely to change the behaviour of mortgage lenders

One of the arguments used in favour of reducing the bankruptcy term is that it “would put manners on the banks” and make them more flexible in dealing with mortgage holders. There doesn’t seem to be any merit in this argument.

In some circumstances, bankruptcy may be beneficial to both the borrower and the mortgage lender in that it wipes out the borrower’s obligations to their unsecured creditors and so leaves more money available to pay the mortgage lender. So making bankruptcy easier, may help keep people in their homes. But it will be at the expense of other creditors and not at the expense of the mortgage lender.

While most people want to retain their family home, many are happy to get rid of it, if it means getting rid of the associated mortgage as well. Making bankruptcy less onerous, will encourage a lot of people with unsustainable mortgages to take the bankruptcy option much earlier. Again, this probably suits the lenders as much as it suits the mortgage holders.

It should be borne in mind that the current widespread existence of deep negative equity is temporary and will not persist forever. With house prices recovering and with more conservative lending, it will probably be rare in a few years’ time to find a borrower in deep negative equity. It’s important to design legislation for the long term and not just for today’s problem.

Scenario 1 - Unsecured debts only. Reducing the term would be of great benefit to the borrower.

Income	€30k
Mortgage shortfall after selling family home	€100k
Credit union debt	€30k

The ideal solution for this borrower and his creditors is that they realise that the debt is not sustainable. The lender should write off the mortgage shortfall. The credit union should realise that the debt will not be repaid and should write it off.

There should be no need for a Debt Settlement Arrangement. However, if the credit union does not agree to write off their debt, the lender should propose a DSA and use their majority as an unsecured creditor to write off all unsecured debt instantly. There should be no need for a 5 year workout.

If the mortgage lender does not agree, then the borrower should go bankrupt. There is nothing to be gained by a three year bankruptcy and a 5 year Income Payments Order.

The Official Assignee would advise the court that there is no purpose to be served by extending the bankruptcy period and that that the bankrupt should be immediately discharged. Of course, a creditor would be able to object if they had grounds for objection.

Scenario 2 - Home owner with unsustainable mortgages. Reducing the term would encourage them to face reality earlier.

Income	€30k
Home worth	€200k
Mortgage	€300k
Mortgage shortfall	€100k
Credit union debt	€30k

This is the same as Scenario 1, except that the home has not been sold yet. The lender and the borrower should agree to a voluntary sale as part of a Personal Insolvency Arrangement. If the lender does not agree, then the borrower should be able to go for bankruptcy and get a fresh start immediately.

Reducing the term would allow borrowers face up to the reality that their mortgage is unsustainable a lot earlier. The threat of a short term bankruptcy would make the mortgage lender and the unsecured creditors much more likely to negotiate a write-down of debt without the need for a PIA or bankruptcy.

Scenario 3 Sustainable mortgage but unsustainable other creditors. Making bankruptcy easier will help people to retain occupation of the family home as getting rid of the unsecured creditors will help make the mortgage sustainable.

Income	€60k
House worth	€200k
Mortgage	€300k
Business debts from a failed business	€200k

In this case, the mortgage would be sustainable if the borrower were not under pressure from the business creditors.

By going bankrupt, the home will vest in the Official Assignee. If the bankrupt is able to meet the mortgage repayments, the mortgage lender will be happy to leave the property in the name of the OA and so the borrower gets to retain occupation of the family home. Of course, the bankrupt loses legal ownership of it, but could regain legal ownership if their financial situation improves in time.

This would happen under a three year bankruptcy term as well. So it might be argued that shortening the term would make no difference.

Shortening the term makes bankruptcy more attractive to the debtor. It means that they can get the stigma of bankruptcy removed much sooner. A three year term with a potential further 5 years of an income payments order is daunting. The possibility of a shorter term would make it a more attractive option.

Submission to Joint Committee on Justice, Defence and Equality on the period for bankruptcy.

17th June 2015

Introduction

The Irish Mortgage Holders Organisation ("IMHO") have been to the fore of advocating, advising and representing those in difficulty with debt in Ireland. We are the only not for profit organisation in Ireland to offer all options of debt solution; including informal arrangements, insolvency arrangements and a free bankruptcy service. Last year we arranged solutions for over 3,500 people in difficulty.

We are of the strong view and considering the lack of solutions offered by banks and creditors that a one year bankruptcy is essential.

The organisation has an in-house Personal Insolvency Practitioner who works closely with our bankruptcy team to assist those debtors for whom a formal or informal solution will not resolve their difficulties. We are the only outlet in the state which provides a full, professionally staffed, service to those requiring bankruptcy at **no cost** to debtors.

In the last year we have assisted over 100 people through bankruptcy. These 100 individuals had over €32.9m of debts written off as part of the process. 80% of these people were in such serious financial difficulty that they have already lost, or will through the bankruptcy process, lose their home.

Our team are the most prominent professional bankruptcy operators in the state. Our experience and expertise in this area is rooted in a deep involvement with all relevant stakeholders including the Official Assignee, the Insolvency Service of Ireland & the Examiners Office of the Court Service.

We believe that Bankruptcy represents the very last resort for a debtor seeking to resolve their difficulty, is a significant life decision for any individual to take and that in this context both a compassionate and fair regime is required along with safeguards to ensure that those looking to avail of bankruptcy are protected from purely profit focussed commercial activity.

Factual information that you have to offer from which the Committee might be able to draw conclusions, or which could be put to other parties for their reactions:

The data table at Appendix 1 outlines a sample of IMHO cases progressed to date. This data details the following:

- a) Location of debtor
- b) Total Debt
- c) No. of Creditors
- d) Marital status

- e) How many child dependents
- f) Employed or unemployed
- g) Age
- h) Whether an income payment order¹ was obtained against the debtor
- i) If the debtor had, or was likely to retain their PDH

This data provides a series of revealing insights about the profile of individual who avail of bankruptcy protection.

- a) The average total debt of a debtor entering bankruptcy is €338,000 and they have, on average 7.5 separate creditors. These creditors range from banks and building societies to personal finance companies, utilities and trade creditors arising from failed businesses.
- b) 46% of debtors entering bankruptcy are married with a further 25% of debtors divorced or separated.
- c) 55% of debtors entering bankruptcy have 1 or more dependent children and the average age of a debtor entering bankruptcy is 43.
- d) 80% of debtors have already lost or will lose their family home.
- e) 49% of debtors entering bankruptcy are unemployed. As noted below this cohort of debtors, whilst in bankruptcy, have no motivation to improve their circumstances and cease to rely on the state for income.
- f) 1.5% of debtors in our database had an income payment order obtained against them. The remainder had no surplus income to contribute.

Recommendations to the Committee:

On the basis of the information provided above and the experience of the Irish Mortgage Holders Organisation it is our view that, where a debtor is bankrupted appropriately, it is highly unlikely that the debtor will have the ability to make any material contributions to the estate. Indeed of the sample client database provided there is only one debtor against whom an income payment order was obtained.

On this basis it is our recommendation that the debtor is returned to functioning economic society at the earliest possibly opportunity and not longer than 12 months after adjudication.

Apart from being of huge relief to vulnerable debtors a 12 month discharge period will have the following societal benefits. These benefits, in our view, far outweigh any nominal additional contribution to the estate a debtor may make in a scenario where the discharge period is maintained at the existing levels.

- Encouragement and motivation for a debtor to re-enter or improve their contribution to economic life. Currently any improvement in circumstances over the reasonable living expenses is taken, by way of an income payment order, by the Official Assignee and passed to creditors. With such a system there is no motivation for a debtor to seek employment or improvised employment creating an unnecessary drag on their involvement in economic life.
- 2013 research from Princeton University in the United States of America on the effects of consumer bankruptcy protection found that those who successfully navigated a bankruptcy process, when compared with those who didn't, enjoyed over \$5000 in increased annual

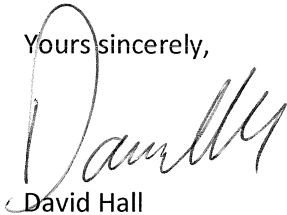
¹ The High Court, in determining what, if any, contribution it may direct you as a bankrupt person to pay, may also have regard to the ISI Guidelines. This will typically take the form of an Income Payment Order and last up to 5 years. Source: <http://www.isi.gov.ie/en/ISI/Pages/WP13000217>

earnings in the first ten post-filing years and a 3.5 percentage-point increase in employment over the first five post-filing years, including a nearly 3 percentage-point increase in self-employment. These are all positive outcomes for both the debtor and society and delaying their realisation unnecessarily is poor policy.

- The same study also found that access to debt relief reduced mortality (presumably by decreasing stress) during this period by almost 2 percentage points.

I would be delighted to discuss more detail at your convenience.

Yours sincerely,



David Hall

CEO

Irish Mortgage Holders Organisation



Stephen Curtis

Project Manager

Irish Mortgage Holders Organisation

Appendix 1 - sample of debtor profiles

County	Total Debt	No. of Creditors	Majority Creditor	Married/Single	Dependants	Employed?	Debtor Age	Surplus over RLE's?
Wicklow	697,443	10	Bank of Ireland	married	2 children	yes, business manager	41	no
Wicklow	715,391	10	Bank of Ireland	married	2 children	yes, salon owner	41	no
Meath	338000	4	Ulster Bank	Singel	1 child	Unemployed	36	No
Meath	328,347	9	Start Mortgages	married	2 children	taxi driver	57	no
Dublin	277,028	3	Start Mortgages	married	None	shop assistant	57	no
Tipperary	139,950	10	Revenue	married	1 child	no	33	No
Kildare	915,362	11	BWG Foods	separated	3 children	part time tour guide	43	no
Kildare	708,259	14	PTSB	separated	3 children	no	37	no
Dublin	380,723.51	6	PTSB	single	none	student	31	No
Wicklow	30,250	7	Ulster Bank	married	4 children	shop supervisor	41	no
Wicklow	153,243.14	3	PTSB	single	1 child	unemployed (site engingeer constr	39	no
Dublin	334,624	5	EBs	married	2 children	team manager	34	No
Clare	125,476.08	5	Clare County Council	single	1 child	yes, truck driver (?)	46	no
Cork	476,157	8	PTSB	married	5 children	yes, fitter	44	no
Mayo/Sligo	167,949.95	5	Ulster Bank	living with partner	2 children	employed	41	No
Kildare	288,798	4	IBRC/Pepper	single	none	unemployed	32	no
Dublin	101,805.21	2	Pepper	married	none	unemployed	36	no
Dublin	140,286.85	4	Pepper	married	none	unemployed	41	No
Dublin	231,992	5	KBC	separated	none	unemployed	58	no
Galway	338000		AIB	single	none	unemployed	45	no
Kildare	208,368	4	KBC	Married	none	student	35	No
Dublin	273,436.53	4	PTSB	single	none	yes, charity worker	39	no
Kildare	168,687.11	3	Kildare County Council	married	2 children	yes, OTC assistant	35	no
Waterford	342,869	7	BOSI	married	none	yes, salesman	55	No
Waterford	318,905	6	BOSI	married	none	yes, receptionist	54	no
Monaghan	234,574	16	Ardee Credit Union	married	3 children	unemployed	46	no
Dublin	299,715	5	PTSB	Divorced	NONen	Yes, plumber	43	No
Kerry	272,681.22	8	Ulster Bank	married	2 children	yes, construction manager	63	no
Kerry	112,695.08	5	Ulster Bank	married	2 children	no (homemaker)	66	no
Cork	82,328.72	9	Youghal Credit Union	single	none	no	40	No
Dublin	396,911	22	PTSB	married	2 children	Unemployed	39	no
Dublin	402,238	21	PTSB	married	2 children	Unemployed	38	no
Meath/Westmeath	419,287.31	6	PTSB	separated	none	unemployed (bricklayer)	54	No
Dublin/Donegal	1,352,660.27	25	AIB (unsecured)	single	none	student	35	no
Sligo	332,092.50	1	Bank of Ireland	single	none	no (project manager)	49	no
Cork	207,820	3	PTSB	married	1 child	unemployed (book keeper)	41	No
Cork	208,605	4	PTSB	married	1 child	unemployed (office manager)	45	no
Mayo	341,690.54	7	PTSB	separated	none	yes, self-employed	55	no
Dublin		5	AIB	Married	None	Yes, farmer	48	No
Dublin	281,476.23	15	PTSB	separated	none (older children)	yes, taxi driver	46	no
Dublin	338000	1	PTSB	separated	2 children	unemployed (administrator)	43	no
Dublin	120,976	4	Dublin City Council	Single	None	Unemployed	39	No

Appendix 1 - sample of debtor profiles

Wexford	391,777	15	Start Mortgages	married	2 dep children	unemployed (environmental inspe	49	no
Wexford	346,491	9	Start Mortgages	married	2 dep children	yes, hairdresser	48	no
Dublin	99,397.34	2	Revenue?	single	1 child	Yes, self employed	31	No
Wexford	338000	8	Bank of Ireland	single	none	unemployed (carpenter/joiner)	42	no
Dublin	617,485.36	12	AIB	separated	3 children	yes, take away assistant	58	no
Dublin	27,151	7	Bank of Ireland	Married	2 Childen	Unemployed	37	No
Kilkenny	2,272,825	16	AIB	married	none	yes, self-employed	43	no
Wicklow	39,429.00	9	AIB	single	3 children	unemployed	29	no
Mayo	382,764	28	PTSB	separated	5 children	unemployed (sole trader/shop owr	44	No
Tipperary	89,488.90	2	Bank of Ireland	separated	1 child	no (factory operator)	34	no
Roscommon	309,074.76	4	KBC	divorced	2 children (part time)	chef	49	no
Dublin	206,631	1	KBC	single	none	unemployed (block layer)	35	No
Monaghan	338000	6	KBC	divorced	none	farmer	27	no
Kerry	1,038,231.08	11.00	Ulster Bank	Seperated	1 child	unemployed	60	no
Wexford	123,449.30	6	Revenue	divorced	None	unemployed	52	No
Dublin/Mayo	179,100	4	Shoreline Residential	married	1 child	yes, full time IT support	36	no
Dublin/Mayo	179,100	3	Shoreline Residential	married	1 child	unemployed (bakery manager)	43	no
Galway	661,140	10	Pepper	Married	none	unemployed	36	No
Kerry	279,836	5	EBS	Single	none	no	49	no
Wicklow/Carlow/Dublin	220,099	3	Ulster Bank	divorced	none	yes, counsellor	51	no
Wexford/Carlow	245,999.76	5	Ulster Bank	single	1 child	yes, warehouse manageer	28	No

SUBMISSION IN REBUTTAL OF THE OFFICIAL ASSIGNEE'S (MR CHRISTOPHER LEHANE) STATEMENT TO THE DAIL COMMITTEE ON WEDNESDAY 27TH MAY 2015 OPPOSING THE PROPOSAL TO REDUCE THE BANKRUPTCY TERM TO ONE YEAR

INTRODUCTION

People who end up in bankruptcy are generally of the self-employed entrepreneurial type. It follows therefore that people in this category will struggle to take up employment in circumstances where their "skill-set" is very specific to the business they once operated for themselves. From talking to people who are in bankruptcy it quickly becomes obvious that they generally struggle to get employment and more times than not, they **DO NOT** make any contribution to commercial life until such time as they exit bankruptcy and manage to "get going again". It is clear that their efforts to "get going again" are totally frustrated by being side-lined and put out of the system for three years.

Three year bankruptcy serves no useful purpose but to inflict maximum penal injury or damage on the bankrupt and to quite simply **DEPRIVE** the economy of a wealth of entrepreneurial skill and endeavour, which would have led to job creation and a more rapid recovery in the economy.

Most bankrupted business people had created and were running SME's when the banking bubble burst happened and put them out of business. These enterprises were each employing anything from five to thirty people and it would seem logical that the sooner we can get these entrepreneurs back to creating employment, the better.

Mr Lehane's arguments against reducing the bankruptcy term to one year are as follows:

1. Moral hazard

That more people will avail of this debt solution due to the one year discharge and may therefore not avail of other debt solutions. On the face of it this is complete nonsense. A PIP letter is required by the Court to confirm a person's suitability for bankruptcy. Is Mr. Lehane suggesting that PIPs will be giving these letters out on careless basis? Bankruptcy is, 99.9%, a remedy of last resort for genuine people who find themselves in an insolvent position that can only be resolved through bankruptcy.

- 2. That three year bankruptcy is an International average.
The Law Reform Commission approved it in 2010.
EC Commission recommended 3 years as an upper limit.**

None of these three statements establish any argument for not reducing the term back to one year. Experience has shown that the three year term is not working and that the one year model as operated by the UK, US and Canada is in fact the correct model.

3. That there is no basis for the argument that reducing the term will improve the bankrupt's prospects of retaining the family home.

This is complete nonsense. The bankrupt's chances improve at least three fold by exiting in one year. It is clear that family and friends might be in a position to help with a mortgage for one year, whereas three years is highly unlikely. Furthermore, if the bankrupt is discharged after one year it is likely that she/he can get going again and will get into a position where mortgage payments can be reinstated.

4. Bankruptcy tourism.

That reducing period will encourage "tourism". This is quite simply not a matter for Mr Lehane. In any case it is highly unlikely, when the UK, US and Canada are already available. Moreover, a person must establish a centre of business in the jurisdiction she/he wishes to go bankrupt in; that is not easily done retrospectively.

5. That reducing the term will cause too much work for the ISI.

This is arrant nonsense. Is creating new employment and reducing the unemployment register not far more important than Mr. Lehane's workload?

In summary, none of the arguments advanced by Mr Lehane hold water as valid, compelling reasons for not reducing the bankruptcy term from its present three year term to one year and when analysed do not stand up to scrutiny.

END

Submission by Irish Homeowners Unite regarding proposed amendment to legislation to reduce the bankruptcy term from three years to one year

The community group, Irish Homeowners Unite, was established in 2011 in the form of a network of support for individuals and families struggling to hold onto their homes.

Many of those homeowners were, and still are, in significant mortgage arrears and at high risk of having their homes repossessed.

Having been involved from the outset with one of the groups in society most directly affected by the financial crisis, and being cognisant of the socio-economic implications of homelessness, not only for those directly affected but consequentially for society as a whole, Irish Homeowners Unite is of the informed opinion that the bankruptcy term in Ireland should be reduced to bring it in line with that of the UK.

We would therefore endorse the proposal to amend Irish bankruptcy legislation insofar as a reduction in term from three years to one year and would further submit that the time of drafting of such amendment presents an ideal opportunity to revisit the [directive principles of social policy](#) outlined in the Irish Constitution from which we appear to have strayed.

Basis for approving amendment to legislation

We have left it to other groups to put forward their arguments with regard to the financial implications of the proposed reduction for the State and for commerce.

Our group implore its reduction from a humanitarian viewpoint but would also aver that there is significant financial merit, both for the State and for the Nation, in having the bankruptcy term reduced.

It is a well-established fact that the socio-economic implications of homelessness are significant, and yet the Irish Government have made no serious or realistic attempt to address this issue. We would refer the Committee to the European Observatory on Homelessness evidence-based assessment, [The Costs of Homelessness in Europe](#), and ask that they pay particular attention to the final paragraph of its summing up (6.3) which emphasises a need to correct the societal failure that hampers the goal to house all citizens in their own homes.

With that in mind, a one year bankruptcy term offers an opportunity for forbearance by Mortgagors in that, on discharge, a bankrupt will be in the position to allocate all available funds, over and above reasonable living expenses less stringent than those imposed during bankruptcy, to meet repayment obligations on their mortgage.

The reduced term would speed up the process that would allow banks and borrowers explore fresh avenues for finding long term sustainable resolutions to mortgage arrears because it would remove any ambiguity surrounding the borrower's financial circumstances going forward.

The shortened term would act as a pressure release valve for the sometimes unendurable strain under which debtors find themselves and in many cases could stave off disintegration of family units or suicide in distressed borrowers who have exhausted the limits of their endurance because of prolonged austerity combined with no hope or future aspiration.

Additionally, it would lessen the effects on our People from the sustained battering a long-term financial struggle inflicts which will inevitably have far reaching consequences for both physical and mental health, resulting in an increased burden on our already overstretched health services.

Moral hazard has been used to argue against any form of debt forgiveness but we are not dealing here with a situation where the citizen caused their own insolvency.

No citizen could reasonably be expected to have predicted the extent to which they were financially exposed when Government, who were tasked with financial regulation and risk management, were equally broadsided by the banks and money markets.

We would go further and say that it is incumbent upon the State to ensure that redress is put in place to compensate its citizens for allowing this to arise.

It is only fair, in those circumstances, not to prolong the suffering and to allow those in debt to emerge from a situation not all of their own making at the earliest opportunity, and one way of achieving that is to reduce the bankruptcy term.

We would view a reduction in the length of bankruptcy in terms of distributive justice to redress the balance in all social conscience for:-

- The Prom Night debacle and ineptitude of Government in dealing with the banking crisis.
- Libor rate manipulation and misrepresentation by banks on interest rates, resulting in overcharging on loans which cannot be quantified.
- Dubious retrospective application of legislation following amendment to the Land and Conveyancing Act.
- The ethics of Government in burdening Irish citizens with an inordinate percentage of European banking debt.

At this stage it is difficult to disentangle the transactions affected by what is clearly emerging as a banking fraud enacted upon borrowers who entered into agreements with lenders in good faith.

It would be an impossible task, therefore, to assess the right of borrowers to recover damages and to quantify same.

However, reduction in the bankruptcy term could go some way towards righting that wrong.

Our hope for the future

We have limited our submission to the tabled proposal but would contend that a decision on the term of bankruptcy cannot be taken in isolation.

It is our considered opinion that in the handling of the financial crisis our Government clearly failed to follow the directive principles in social policy embedded in the Constitution.

Furthermore, they have failed to protect the family unit and family home as outlined in [Article 41](#); under which is acknowledged the precious grounding that resides there for fostering the common good.

It is for that reason we vehemently suggest that the designation of the family home as purely a financial asset needs to be addressed.

We do acknowledge that this poses a quandary.

However, where a moderate dwelling, conducive to the reasonable requirements of the family or individuals in residence, is treated as an asset in bankruptcy, it serves society ill to eject its residents to become a burden on the State.

In those circumstances, common sense and human decency and dignity should prevail, if not for humanity then for economic prudence.

When faced with the expected bankruptcy of citizens on the vast scale we now anticipate, in circumstances where they find themselves in those dire straits because they shoulder an odious debt taken on by the State, we feel it reasonable that the Government afford them the very basic protection of a roof over their heads.

Most especially because the result of not doing so will, in the long term, have implications of social detachment and discord.

A nation cannot thrive when its progress is being impaired by shackled citizens; because their restraint also impedes the advance of those who are free from such encumbrance.

We would implore those entrusted with our interests to loosen the shackles and set our citizens free so that we can all strive together to rebuild our lives and reconstruct our Nation.

IRISH HOMEOWNERS UNITE
18th June 2015

The Association of Personal Insolvency Practitioners – Submission to the Committee on the period for bankruptcy

Association of Personal Insolvency Practitioners

**Submission to the Joint Committee of Justice, Defence and Equality on the Period for
bankruptcy**

The Association of Personal Insolvency Practitioners – Submission to the Committee on the period for bankruptcy

Introduction

The Association of Personal Insolvency Practitioners (APIP) was formed in 2013 and is the largest representative body of Personal Insolvency Practitioners (PIPs) in Ireland, with 81 members.

It is a key stakeholder in the implementation of the Personal Insolvency Act 2012 and regularly engages with the Government and the Insolvency Service of Ireland (ISI) in relation to the performance and implementation of Ireland's personal insolvency laws.

APIP is a voluntary organisation and is governed by its members and an elected Management Committee.

Its current Chairman Eric Hendy is available to provide evidence to the Committee.

The Association of Personal Insolvency Practitioners – Submission to the Committee on the period for bankruptcy

Foreword

APIP supports the reduction of the bankruptcy period from three years to one year, with a corresponding change reducing the maximum Income Payment period in bankruptcy from five years to three years.

It is the view of APIP that bankruptcy is a vital remedy that should exist in any modern credit based society, both as a means of providing creditors with an effective means of debt recovery; and also as a means of providing debtors with an opportunity to obtain debt relief and a fresh start.

We believe the cornerstone of any bankruptcy system should be fairness: both to debtors who become bankrupt, but also to creditors who have their debts included into a bankruptcy; and it should be proportionate, striking the correct balance between the rights of creditors and the needs of debtors to seek relief from their unmanageable debts.

The financial failure of some consumers is an inevitable part of any modern credit based society and can arise for a number of different reasons: economic downturn, unemployment or illness, to name just a few. Often the media highlight the irresponsible or feckless behaviour of some debtors, but in our experience these examples are the exceptions to the rule and are unrepresentative of the majority of debtors who seek assistance from our members.

We believe it is important that modern bankruptcy law should treat debtors with fairness and compassion, but should also have sufficient safeguards in place to deal with those debtors who abuse or try and game the system.

We believe these safeguards exist in the form of offences that exist in the Bankruptcy Act 1988, which debtors can be prosecuted for; and by virtue of the fact the Official Assignee is able to apply to have a debtor's bankruptcy discharge deferred where they have been uncooperative or dishonest in their disclosure of assets and liabilities.

We also believe that in addition to the rights of debtors and creditors, the public interest in bankruptcy also has to be considered, so where debtors are unable to make payments to their creditors, there is no benefit for the creditor in delaying the discharge of the debtor beyond one year, but there is a cost to the public purse in administering the case.

We also believe there is a cost to society in unnecessarily delaying the discharge of debtors as it increases the occurrence of financial exclusion within the State.

The Association of Personal Insolvency Practitioners – Submission to the Committee on the period for bankruptcy

On 17 June 2015, APIP held a meeting of its members at Portlaoise Heritage Hotel and discussed the bankruptcy reform and our submission to the Committee. Following those discussions we make the following recommendations to the Committee:

Recommendations and comments to the Committee on the period for bankruptcy:

- We believe that where debtors have fully co-operate with the Official Assignee and make a full and honest disclosure of all their assets and liabilities, there is no public good served by delaying a debtor's discharge beyond one year;
- We believe the majority of bankrupts will be consumers and will have no alternative but to petition for their bankruptcy as their circumstances will not allow them to apply for an Arrangement under the Personal Insolvency Act 2012 or creditors will have rejected any proposal they have made for such an Arrangement;
- We do not accept that one year bankruptcy is bankruptcy light. A debtor's estate still vests with the Official Assignee and where assets can be realised for the benefit of the creditors, they will still be realised.
- We do believe, however, the stigma of bankruptcy and the restrictions associated with it are onerous and harsh and where the bankruptcy arises from no fault of the debtor or through their misfortune, we believe providing a discharge for the bankruptcy after one year is proportionate;
- We do, however, believe more Arrangements under the Personal Insolvency Act 2012 will be accepted by creditors if the bankruptcy payment period is reduced, as Arrangements will offer creditors better returns. This will mean more negotiated Arrangements and less homes lost through insolvency;
- We believe that by reducing the bankruptcy period from three years to one year, this means the poorest of debtors who are unable to enter an Income Payment Agreement (IPA) with the Official Assignee will be able to move on with their lives sooner, as no IPA can be applied for after the debtor has been discharged. This will prevent further costs to the public purse of administering cases that are of no benefit to creditors;
- We believe the biggest threat in relation to forum shopping or bankruptcy tourism, is posed not by debtors coming to Ireland, but by some of our most innovative and entrepreneurial citizens choosing to leave Ireland to seek remedies elsewhere;
- We believe that by reducing the income payment periods from five years to three years, this brings the Irish bankruptcy regime into line with neighbouring states and is the most effective safeguard against bankruptcy tourism. We also believe it brings the law of bankruptcy into line with the recommendations of the European Commission in its Entrepreneurship Action Plan 2020ⁱ.
- We believe scope for abuse will be negligible as the Official Assignee will still be able to apply for the debtor's discharge to be deferred under S85A of the Bankruptcy Act 1988.

The Association of Personal Insolvency Practitioners – Submission to the Committee on the period for bankruptcy

ⁱ Para: 3.5, Entrepreneurship Action Plan 2020, European Commission, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0795:FIN:EN:PDF>

Submission by Carrington Dean on Extending the Bankruptcy Period

- One year bankruptcies were introduced into the UK by the Enterprise Act 2003 and the Bankruptcy and Diligence Etc. (Scotland) Act 2008 with the purpose of providing entrepreneurs with a quick turnaround in Bankruptcy.
- Where this policy has failed is it was based on a premise that bankruptcy is a solution used by entrepreneurs to deal with business debts, whereas in fact it is primarily a remedy used by consumers to deal with consumer debts.
- Despite this, one year bankruptcy has produced benefits in that it has significantly reduced the stigma of bankruptcy in the UK.
- Although bankruptcies have increased, it is not possible to state this has been related to the reduction in the bankruptcy period, as increases in bankruptcy also occurred at a time when consumer debt was high.
- Despite the bankruptcy period being reduced and uptake increasing, we would submit this has not led to levels of bankruptcies in the UK increasing beyond what are safe levels, even by international standards, of 0.2-0.3% of the population per annum.
- However, we do believe one year bankruptcies have helped rehabilitate debtors sooner, without any detriment for creditors as payment periods have remained at 3 years.
- One year bankruptcies can significantly reduce the financial footprint of administering insolvencies on the public purse, particularly in relation to cases where no debtor contribution is possible, and has been instrumental in the Accountant in Bankruptcy's Office in Scotland (the equivalent of the Office of the Official Assignee) becoming a full cost recovery service.
- Different payment periods between different insolvency solutions, when all else remains equal, can influence the behaviour of debtors when choosing a solution. There was evidence of this in Scotland between 2013 and 2015 when the payment period for Protected Trust Deeds (Scotland's equivalent to Debt Settlement Arrangements) increased from three years to four years whilst the payment period for sequestration (bankruptcy) remained three years. There was a marked uptake of Sequestration, which should be the remedy of last resort.
- In other parts of the UK this is not the case, where bankruptcy is one year with a three year payment period, but Individual Voluntary Arrangements (IVAs) normally last at least five years. There is not the same evidence of debtors opting for bankruptcy over IVAs, although this is likely because the cost of applying for bankruptcy in England is substantially higher than it is in Scotland (£705 in England, £200 in Scotland), whereas there is no upfront cost to apply for an IVA or a Protected Trust Deed.
- We believe if Ireland was to reduce the bankruptcy payment period from five to three years, this would not necessarily increase uptake in bankruptcy over Personal Insolvency Arrangements, providing debtors still have to evidence that a Personal Insolvency Solution is not suitable for them in the first instance.

- We do believe, however, if the bankruptcy period is reduced to one year, it should also be reduced to one year for Debt Relief Notices, as these debtors are the debtors with the least means and it would be nonsensical to deny them a discharge after one year when bankrupts were receiving discharges.
- We would see the reduction in the bankruptcy period as a proportionate act as it would allow debtors to move on with their lives sooner, particularly as many may lose their homes in bankruptcy.
- We do not see bankruptcy as a solution to Ireland's mortgage debt problem, as although few debtors have equity, many are in unaffordable homes and without a restructuring of these secured loans, these homes will often have to be surrendered in bankruptcy.
- Where bankruptcy will be effective is in assisting those who lose their homes to address any residual debt. It is in these cases we believe one year bankruptcies, with three year payment periods will be most appropriate, as it will allow these debtors to move on with their lives.
- We do not accept that reducing the bankruptcy period from three years to one year will result in increased Legal Forum Shopping (bankruptcy tourism). In our experience most consumers lack the means or the will to relocate themselves and their families to deal with unmanageable debts.



**The Consultative Committee
of Accountancy Bodies-Ireland**

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

20/10/3, 21/ / (c)

19th June 2015

David Stanton
Chairman
Joint Oireachtas Committee on Justice, Defence and Equality
Leinster House
Kildare Street
Dublin 2

Dear Mr. Stanton,

Bankruptcy term

The Insolvency Committee (“IC”), on behalf of the Consultative Committee of Accountancy Bodies – Ireland (“CCAB-I”), welcomes the opportunity to contribute to your Joint Committee’s deliberations on the length of the bankruptcy period at the end of which the debtor, generally, receives an automatic discharge. We understand these deliberations form part of the primary purpose of your work, stated in March 2015, “...to examine how insolvency procedures might be strengthened ...”.

The detailed recommendations of the December 2010 Report from the Law Reform Commission, which constituted the “building blocks” of what became the

Personal Insolvency Act, 2012, set a three year period for automatic discharge from bankruptcy. The CCAB-I supported that recommendation.

The Commission decision reflected “... a fundamental principle of modern personal insolvency laws – i.e. a debtor should be released from all or part of his or her obligations within a reasonable period of time.”.

The March 2014 EU Recommendation “A new approach to business failure and insolvency”, developed from the 2011 Communication on this topic, acknowledges that “... the social stigma, legal consequences and on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up business or have a second chance ...”. Paragraphs 30 to 32 of the Recommendation provide that, generally, “Entrepreneurs should be fully discharged of their debts which were subject of a bankruptcy after no later than three years..... without the need to re-apply to a court.”. Paragraph 32 permits a Member State to extend that period in particular circumstances – for example, where the debtor was dishonest or acted in bad faith.

In our opinion, the availability of a range of various debt resolution procedures, following the 2013 changes to the personal insolvency statutory framework, have encouraged debtors and creditors to make settlements – either via one of the statutory procedures or by a formal contract.

The current bankruptcy procedure where discharge is no longer conditional, but automatic, together with the movement (within four years) in the maximum time period for a compliant debtor from twelve to three years, has made bankruptcy a viable option for the debtor. The large reduction in administrative fees has also helped.

It is suggested that “fear of the unknown”, coupled with the stigma which many citizens associate with bankruptcy, are the primary deterrents to entering the process. In members’ experience, the three year “wait” does not deter would be applicants who now see a definitive end to past financial travails in the near future.

Many applicants are not mortgage holders, but individuals who are unable to access the debt relief notice procedure ("DRN") because their total debts exceed the E20,000 limit. The DRN, perceived to be quite successful, operates for a three year period, with, as in bankruptcy, the possibility of the debtor exiting the process earlier in specified circumstances.

Control of the bankrupt's assets – including the debtor's principal residence -- passes to the Official Assignee, regardless of the term of, or reason for, bankruptcy. The mortgagee's primary interest in the subsequent adjudication process (unaffected by the bankruptcy period) is whether the payment plan, if any, agreed with the debtor is acceptable to the Official Assignee. Therefore, reduction in the bankruptcy term will not help the debtor remain in the family home.

In light of the above, we recommend that the three year period be retained.

Yours sincerely

A handwritten signature in black ink, appearing to read 'JBW', written in a cursive, stylized script.

John Bowen-Walsh
Secretary
Insolvency Committee

IC/s/bankruptcyJune2015

Submission on
Bankruptcy Discharge
Terms
to
Joint Oireachtas Committee on
Justice, Defence & Equality

FLAC, 19 June 2015

About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence.

FLAC Policy

Towards achieving our stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

You can download/read FLAC's policy papers at <http://www.flac.ie/publications/policy.html>

For **more information**, contact us at

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1. Introduction.

This submission primarily relates to the discharge term for consumers and those with primarily non-business debt. FLAC recognises that, for many, business and personal debt are inevitably mixed because personal assets were mortgaged or guaranteed for many business debts. We also recognise that any changes will also affect those with mainly business debt.

However, as bankruptcy has become an important mechanism to deal with consumer debt cancellation, we trust that the submission will be helpful to the Committee in its consideration from a consumer perspective of whether the bankruptcy discharge period should be reduced in general from three years to one years.

2. General

The discharge period in bankruptcy in any country is a matter of policy. It has evolved over time, as has the understanding of the purpose of bankruptcy. Historically, bankruptcy was a form of debt collection and a punishment to those who refused to pay their debts. However, with the recognition that credit is a core part of doing business, that thinking had to change and now modern bankruptcy laws have 'transformed bankruptcy from a creditor initiated debt collection exercise to a debtor initiated debt relief mechanism¹'. The purposes of bankruptcy were well identified in recent years, particularly by the Law Reform Commission in its seminal three papers in 2009-2010 which formed the basis for the thinking in the current Personal Insolvency Act 2012 and indeed provided the model for that legislation. Included in those purposes the Commission noted that bankruptcy now exists to assist in the protection of consumers and the capacity for a person to make a fresh start.

As the American academic Professor Jason Kilborn, chairperson of the World Bank drafting group on bankruptcy reform,² noted at a FLAC conference in 2012:

Modern consumer lending practices inevitably produce casualties and that is a structural phenomenon that is here to stay in a global marketplace. Allowing thousands of debtors to remain deactivated by debilitating debt is a serious structural impediment to a maximally healthy, vibrant economy that Ireland could and should have.

Arguing for a model of bankruptcy that helps get people back on their feet, he says that:

¹ The Law Reform Commission's *Report on Personal Debt Management and Debt Enforcement* 2010 at 3.32-3.33 <http://www.lawreform.ie/fileupload/reports/r100debt.pdf>.

² http://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf

Any other model imposes waste and expense on every actor in the system, especially the state and its taxpayers, to subsidise creditor avarice and an irrational desire for punishment of debtors, who are not malefactors, but victims of local financing risk-taking by banks and global economic forces beyond consumers' control and probably beyond their comprehension.³

3. The family home

For many of those that contact FLAC, their unmanageable over-indebtedness arises from mortgage debt on their family homes. Some will be able to avail of insolvency arrangements - a debt settlement arrangements or a personal insolvency arrangement – but for many others these are either refused or are not suitable under the current rules.

Therefore, if they are unable to restructure their debt by agreement with their lenders, and if they are unable to avail of insolvency solutions, they can expect to lose their homes. The discharge period for bankruptcy will be of most concern after they lose the house. After the house is either voluntarily sold by agreement with the lender or repossessed and sold by the lender, many are left with an overhanging debt which is the difference between what they owed the lender and what the lender received on the sale. The size of this debt will usually overshadow all other debts. For such consumers, bankruptcy is often a viable option and the discharge period is seriously significant.

4. Arguments previously made

We do not propose to repeat the submission made to this Committee by the Insolvency Service of Ireland, and in particular by the Official Assignee, Mr. Chris Lehane, when he appeared before the committee on 27 May 2015. He highlighted a number of important arguments in favour and against reducing the bankruptcy term.

He correctly highlighted that a reduction in the bankruptcy term may not affect a person's capacity to retain the family home. FLAC agrees that this is the case but submits that a short discharge period may affect the negotiations which often end up in forcing the sale of the family home and may encourage

³ *FLAC conference 19 April 2012 Legislating for Personal Insolvency in Ireland: International Developments and Domestic Issues - A comparative consumer insolvency perspective: Key lessons from thirty years of pitfalls and best practices Prof. Jason J. Kilborn John Marshall Law School (Chicago)*
http://www.flac.ie/download/pdf/kilborn_irish_reform_bill_keynote_text2.pdf

agreed write down of un-payable debt, thus avoiding sale of the family home and subsequent bankruptcy entirely.

4. Discharge term reduction and moral hazard

Modern bankruptcy, seen as a debtor-initiated debt relief mechanism, should operate from an assumption that those seeking bankruptcy are acting in good faith. However, for those acting in bad faith, our legislation does provide for extension of the bankruptcy term. Section 85A of the Bankruptcy Act 1988, as inserted by Section 157 of the Personal Insolvency Act 2012, allows the Official Assignee or a creditor to apply to the court to extend the term of a bankruptcy from three to eight years in the event that the bankrupt has failed to co-operate or has failed to disclose assets.

5. Bankruptcy tourism

The difference in the bankruptcy term between Ireland and the neighbouring jurisdictions of Northern Ireland and England & Wales has led to significant numbers of people leaving Ireland and establishing centres of interest and residence in those jurisdictions to avail of the shorter bankruptcy periods.

This however is not available to everyone. People in a wide range of employment cannot just leave their jobs and re-settle or establish a centre of interest elsewhere. Many others have family and personal commitments in Ireland that do not allow them to move. Still more do not have the funds to do so. This then effectively discriminates against those with fewer resources and less flexible work arrangements.

There is an argument that reducing the term would encourage bankruptcy tourism. It is submitted that establishing a new centre of interest is never going to be a trivial step. That removes the exercise far from one of 'tourism' but even if that term is accepted, then it could be said that we are exporting a problem to our neighbouring jurisdictions even now.

6. Income Payment Orders

In addition to the existing three-year term, there is provision for income payment orders – currently five years. If the term of bankruptcy is reduced to one year, then it is submitted that the length of these orders should be reduced to three years – as is the position in the UK. These income payment orders can commence at any time during the bankruptcy and while it is normally envisaged that they begin with the bankruptcy period, they can in fact be made on the final day of discharge, which would extend the repayment period significantly.

7. EU Best Practice proposals

In the Final Report of London Economics, prepared for the European Commission, A Study on means to protect consumers in financial difficulty⁴ Section 6.1.2 provides a summary of best practice. It proposes as best practice for the EU in consumer debt cancellation that:

‘As in Denmark and the UK, discharge should occur one year into a three year payment plan, aligning discharge at the lowest common denominator whilst still ensuring creditors have access to excess earnings for three years’

8. Stigma

The same study also calls for the ending of the pejorative term of bankruptcy to be replaced by the more neutral ‘debt-adjustment’. This brings us to the final reason why the Committee might want to recommend reduction of the bankruptcy term.

Whether it should be the case or not, those we meet in FLAC will often still feel a sense of shame – although many will work their way through to recognition that what is happening is simply dealing with their debt. For consumers, unexpectedly faced with massive, unexpected over-indebtedness, the three-year term of being bankrupt is a long one and the label and connotation of bankruptcy can be a heavy burden for them and their families to face.

FLAC is happy to furnish any further information or comment to the Committee or its members as might be requested.

Noeline Blackwell and Paul Joyce

FLAC

19 June 2015

⁴ December 2012.

19.06.2015

Submission by Mitchell O'Brien trading as Insolvency Resolution Service, a person authorised by the Insolvency Service of Ireland to carry on practice as a Personal Insolvency Practitioner, to the Joint Committee on Justice, Defence and Equality on the Period of Bankruptcy

Background to Mitchell O'Brien

Mitchell O'Brien was the first person authorised by the Insolvency Service of Ireland ("ISI") to carry on practice as a Personal Insolvency Practitioner ("PIP") [PIP Authorisation no. PC00001].

Mitchell was the first PIP to secure a Protective Certificate ("PC") with respect to a Personal Insolvency Arrangement ("PIA"), and the first PIP to manage a PIA through to Court approval.

Mitchell has facilitated greater than 85 debtors self-adjudicating as bankrupts, and uniquely has facilitated significantly more PIAs than personal bankruptcies.

Mitchell is a committee member of the Association of Personal Insolvency Practitioners ("APIP") and is one of APIP's two representatives on the ISI's Debt Solutions Protocol Steering Group ("DSPSG") which successfully delivered both the Debt Settlement Arrangement ("DSA") and PIA Protocol documents between the period of February 2014 and March 2015.

Mitchell lectures on two of the ISI approved Personal Insolvency Practitioner courses [National College of Ireland and City Colleges].

Mitchell has acted as consultant to another Eurozone Government on the development of their new Personal Insolvency legislation.

Mitchell O'Brien trades under the business name 'Insolvency Resolution Service' ("IRS").

Submission

Having managed a significant minority of the approved PIAs since the commencement of the Personal Insolvency Act 2012 ("2012 Act") we have deduced that the only requirement for a successful Personal Insolvency Regime here in Ireland is to have all stakeholders act rationally.

I believe the proposal for a reduction in the term of bankruptcy would not be on the table had creditors, and in particular secured creditors in relation to family home mortgages, acted rationally from the outset.

My personal experience is that the vast majority of personal bankruptcies since Nov '13 fall into two groups [and IRS have facilitated >20% of all of these]:

1. Low income/Social welfare cases, i.e. no capacity in Bankruptcy, a DSA or PIA to make a contribution to previous debts/creditors

1890 131 131

Mitchell O'Brien is authorised by the Insolvency Service of Ireland to carry on practice as a personal insolvency practitioner
PIP authorisation no. PC00001

Committee member of the Association of Personal Insolvency Practitioners

www.insolvencyresolution.ie

2. Those that do have a capacity to fund a contribution to their creditors in full and final settlement of their debts short of bankruptcy, but their creditors have acted irrationally [or have indicated they would act irrationally] in a DSA/PIA

For those in group 1, the term of bankruptcy doesn't really make any difference. They have nothing, so they'll pay nothing.

The debtors in group 2 find themselves in a different situation. Take the case of Eric O'Callaghan, a bankrupt, who had a failed PIA resulting in a petition for bankruptcy in an effort to return himself to solvency in a fair, transparent and equitable manner within a prescribed period of time; while protecting his Reasonable Living Expenses ("RLEs"). The PIA would have seen his family home mortgage lender Ulster Bank 113% better off than would have been the case in bankruptcy. When the High Court was presented with Mr O'Callaghan's bankruptcy petition, so concerned was the Court regarding its jurisdiction in this case, Judge Costello held a special hearing where she ordered Ulster Bank to attend and explain their decision making process in voting against the PIA proposal proffered by the PIP on behalf of the debtor. Their rationale was simply 'Ulster says No!'; resulting in Judge Costello adjudicating Mr O'Callaghan a bankrupt, and Ulster Bank will now receive circa €108K in bankruptcy relying on their security as opposed to a performing secured loan of €230K being paid interest and capital at an APR of 4.5% over 16 years, by which time he will have reached old age pension age.

It is argued a one-year bankruptcy term would harm the PIA process, i.e. why would a debtor be attracted to a PIA when bankruptcy might be easier? I would refute this argument on two grounds:

- a) For the PIA mechanism to work as designed we need creditor banks [including mortgage lenders to act rationally]. To date undertakings from creditors, and in particular secured mortgage lenders have proved to be hollow. The PIA's comparison with bankruptcy will be enhanced the harder bankruptcy is on secured creditors, and the easier bankruptcy is on debtors.
- b) Bankruptcy whether one year or three years sees all of a debtor's assets vest in the Official Assignee in Bankruptcy at the moment of adjudication [less a provision for personal assets and effects of a value of up to €6,000]. It is not proposed this will change in any amendment to the legislation.

Considering the above, a reduction in the term of bankruptcy will not affect a return to creditors unless the term of any payment order is reduced. In this regard it would occur the quid pro quo for a debtor entering a PIA or DSA, saving themselves from having to be adjudicated bankrupt, is an extended period of payments to creditors via their PIP, i.e. up to five years in a DSA and up to six years in a PIA.

I would submit the logical extrapolation of my extensive personal experience in this sector would be to advocate for the following:

- i. A reduction in the bankruptcy term from three years to one year for those debtors who have first tried the Personal Insolvency options [DSA or PIA] and have been unable to secure the support of their creditors for a solution short of bankruptcy; and the petitioning debtor grounds their Bankruptcy Petition on the failed PIA or DSA.
- ii. For those who have not attempted a PIA or DSA in an effort to be returned to solvency short of bankruptcy, the current term would remain unchanged at three years.
- iii. The period of an Income Payment Order ("IPO") would be reduced from five years to three years for those bankrupts who cooperate with the Official Assignee in Bankruptcy.

The above should be read in context of recent announcements by Government in relation to imminent changes to the Personal Insolvency Act limiting the current creditor veto [appeal process to the Court who issues the PC in the first

instance]. Once the creditor veto has been effectively limited, the number of debtors who will be able to petition for bankruptcy will reduce dramatically; as a debtor will be unable to find a PIP able to confirm to the Court an alternative short of bankruptcy would not have been successful on appeal. There are checks and balances in place ensuring that only those that should be afforded bankruptcy protection from their creditors will be eligible for same.

I see no virtue in keeping a person in bankruptcy for an extended period if their creditors are not going to materially benefit from this economic prison.

I am contactable to discuss any of the above at your convenience, and to provide specific examples of the cases upon which I have based the rationale behind this submission.

Your sincerely,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. O'Brien', with a horizontal line extending to the right.

Mitchell O'Brien BA FS, Dip.Lbc, Cert. PM, CPIP, PIPC, PC

Personal Insolvency Practitioner

M. (087) 8177781

E. mitchell.obrien@insolvencyresolution.ie

24 June 2015

Att: Committee Clerk, Department of Justice and Equality.

Submission from James Treacy, Managing Director of BPSG Limited trading as StubbsGazette, to the Joint Committee on Justice, Defence and Equality on the Period of Bankruptcy.

Background to StubbsGazette

StubbsGazette is Ireland's leading private credit bureau and debt collection agency with an intimate knowledge of debtor behaviours and personal solvency.

StubbsGazette is also an equal shareholder in Insolvency Resolution Service, a leading Personal Insolvency practice. Our perspective at all sides of the debtor/creditor relationship is perhaps unique in the Irish marketplace.

Submission

The proposal to once again reduce the automatic discharge period for bankruptcy from three years to one year is unnecessary and may lead to dysfunctional behaviours and outcomes from a debtor perspective. Furthermore, it is unfair to creditors.

The decision in 2014 to reduce the period of discharge from 12 years to 3 years was correct. In the context of encouraging entrepreneurs who suffer business failure, excluding their participation in the economy for this period was excessive. The new proposal, however, tilts the balance too far in favour of the debtor and diminishes the legitimate punitive sanction of bankruptcy. It also may have a dysfunctional effect of making bankruptcy appear to be a relatively attractive option and obscuring the very significant restrictions placed on the bankrupted individual.

From a creditor perspective, consider the situation in the UK where a bankrupt is automatically discharged 12 months after the date of the bankruptcy order even where no payments have been made to creditors. After discharge, the bankrupt is released from all bankruptcy debts and any property he or she acquires after discharge is the erstwhile debtor's property. The official receiver (or trustee in bankruptcy) cannot lay claim to these assets as only the property comprised in the debtor's estate at the time of the bankruptcy order remains under the control of the official receiver to be sold for the benefit of the creditors.

While the 12 month discharge in the UK was designed originally to encourage entrepreneurs who had experienced business failure to get back in to business, unhindered by the earlier failure, the reality is that 80% - 90% of bankrupts are consumers who quite simply lived beyond their means and their bankruptcy has nothing to do with business debts or anything remotely connected to enterprise.

Regardless of whether the bankrupt is a consumer who lived beyond their means, or a failed entrepreneur, a 12-month discharge period is insufficient to retain a prospect for the creditor to secure an acceptable outcome. The reduced time period of 12 months makes it too easy for the bankrupt to defer asset/income acquisition until after that date expiry, thereby denying creditors a legitimate share of the debtor's subsequent wealth creation.

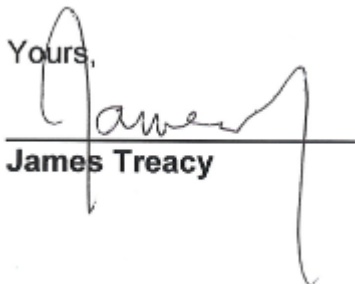
Bankruptcy has far-reaching (and potentially ruinous) consequences for creditors and diluting the sanction of bankruptcy encourages reckless and unscrupulous behavior.

From a debtor perspective, while a reduction of the bankruptcy discharge term to one year might seem attractive, bankruptcy retains some very severe disadvantages and restrictions and is not to be entered into lightly.

- Proponents of a reduced discharge period cite the increased probability of the bankrupted retaining the family home but this flies against the facts: some 75% of bankrupts end up losing the family home.
- The bankrupt is persona non grata with banks; will lose his or her bank account and credit cards; is disbarred from seeking credit in excess of €600
- The bankrupt's credit rating is effectively destroyed
- The bankrupt may lose his or her job due to bankruptcy status and may well be disbarred from seeking certain forms of employment
- The bankrupt may not become a company director for the period of bankruptcy

Reducing the period of bankruptcy discharge also distorts the balance of attractiveness with alternatives such as a Debt Settlement Arrangement (DSA) or Personal Insolvency Arrangement (PIA). DSAs and PIAs are long term commitments, lasting 5 or possibly 6 years, which is already a much longer time frame than bankruptcy. If debtors going bankrupt will be discharged after just 12 months and only have to pay contributions for 3 years, how seriously are they going to consider the alternatives, which by comparison will seem like a real endurance test.

I would be happy to appear before the Committee if requested.

Yours,

James Treacy

Managing Director | StubbsGazette

E: james.treacy@stubbsgazette.ie | T: 01 672 5939

26 June 2015

Oireachtais Joint Committee
Bankruptcy Review
Tithe an Oireachtais

By email to bankruptcyreview@oireachtas.ie

Re: Period of Bankruptcy

Dear Sirs,

Please find below McCambridge Duffy Limited submissions to the Oireachtais Joint Committee tasked with reviewing the Bankruptcy Period.

Executive Summary

- **Bankruptcies with no assets or realisations are a significant drain on taxpayer funds. If there are no assets keeping a bankruptcy open at taxpayers' expense is not beneficial.**
- **Returning people to economic activity sooner can boost entrepreneurial spirit providing jobs and investment for the wider economy.**
- **Revesting of the family home and payment periods are the key concerns for most people in financial difficulty.**
- **One year bankruptcy with possible extension if Bankrupt has not acted in good faith.**

Introduction

McCambridge Duffy consists of five qualified Personal Insolvency Practitioners ("PIPs") supported by 25 additional staff members. Since the enactment of the Personal Insolvency Act 2012 the company has guided in excess of 10,000 people towards various solutions to resolve their financial difficulties.

The company also draws on experience gained within the UK insolvency market where we have advised over 200,000 debtors and acted as office holder in over 30,000 statutory insolvencies both personal and corporate.

In the UK our PIPs act as Trustees in Bankruptcy and therefore have firsthand experience of the effect Bankruptcy has on individuals which can be compared and contrasted with the Personal Insolvency advice we provide in Ireland.

Cost to the Taxpayer of Administering Cases

In determining the appropriate level of the Bankruptcy period one must consider the benefit to creditors versus the cost to the taxpayer. The Office of the Official Assignee (“OOA”) essentially operates a public service to creditors by realising assets or collecting contributions from the bankrupt’s income over the duration of the Bankruptcy to provide a return to creditors if possible. A fee calculated on a percentage of the assets realised is drawn by the OOA to cover their costs which is similar in other jurisdictions.

This method of drawing a fee works if there are assets in the Bankruptcy. Conversely, if there are no assets/contributions, a common occurrence in Bankruptcy, then this means the OOA is unable to draw fees but they do have to advise creditors of the appointment, monitor the case for the three years, report to creditors and ultimately close the case advising creditors that no return was possible. This essentially means taxpayers are funding a free service for creditors.

If we look at the UK, the method of drawing fees would be similar however, the duration shorter but still the UK Insolvency Service had to write off almost £81m of taxpayer money in one year prompting a discussion regarding the administration of “asset-less” insolvent estates and who should pay. (<http://www.credittoday.co.uk/article/11143/online-news/warning-issued-on-bankruptcy-fees>)

In our context here the majority of self petitioned bankruptcies reviewed by us would fall into the category of “asset-less” so as volumes increase so will the cost to the exchequer.

With that in mind the cost to the State versus the benefit to creditors would seem unbalanced in a commercial sense.

Useful Economic Activity

The purpose of insolvency is to provide creditors with a fair return based on the realisation of the bankrupt’s assets and to return the bankrupt to useful economic activity. The nature of business is based on risk. However, if the consequence of taking that risk can result in a relatively draconian punishment of people spending a significant portion of their lives in bankruptcy, then the number of people willing to take that risk will be less.

Business can be a steep learning curve for many and often requires multiple attempts to “get it right.” Throughout history there are many examples of people who tried, got it wrong, dusted themselves down and tried again. Henry Ford, Walt Disney and H.J. Heinz amassed combined personal net worths of close to \$200bn and made huge contributions to the various economies in terms of jobs and investment. They all were bankrupts at a stage during their lives but were bankrupt for only a year.

The question therefore is, would these people have taken the risk again if they had a significant period out of economic activity? In our own experiences we have seen many people relocate to the UK to have a ‘fresh start.’ As an Irish company we find it is painfully disappointing they now have successful businesses operating and employing people in for example Nottingham and not Navan.

What matters to people in financial distress?

In our experience the bankruptcy issues which matter most to people in financial difficulty are firstly, the effect of their family home followed by the payment period with the discharge period last on the list.

There is a general acceptance that if there is equity in the family home then this is likely to form part of the bankruptcy. However, what people find a significant deterrent is the need to provide €5,000 each to the OOA to re-vest a property which is in significant negative equity. When advised of this the prospect of maintaining a mortgage while simultaneously trying to gather up €5,000 (or €10,000 in the case of a married couple) to meet the costs of bankruptcy and ‘buying out’ the OOA interest in their family home, it often results in a decision to quit the family home.

The payment period is the one which most people view as being “the bankruptcy period” as it is the one which tends to have an implication for their ability to return to economic activity. There would also be a reluctance for some people to enter a DSA / PIA given that the payments periods are similar, particularly when there are no assets. This over time will place more strain on the OOA and ultimately result in more taxpayer funded creditor recoveries.

Practical Experience of Bankruptcy

Since the new bankruptcy regime was enacted we have issued almost 200 personal insolvency practitioner reports to debtors who were applying to the High Court for bankruptcy. These were primarily based on the debtors having neither realisable assets nor disposable income. The debtors could readily be broken down into three categories: -

The Property Developer

Often the developer had come out the other end of a receivership process and had not nothing left to offer creditors they had already been subject to economic hardship for at least six years and in order to be able to draw a line in the sand had no other choice than to file for bankruptcy. A three year bankruptcy period only limits them from becoming active again in economic activity with a view to providing themselves and others with employment. A twelve month discharge would mean once again they could become a company director, trade on a self employed basis without the limitations or restrictions of bankruptcy and therefore promote a rescue culture and rehabilitation of the bankrupt.

Co-borrower in a broken relationship

The position of a co-borrower in a broken relationship where the partner has absconded or in non-cooperative effectively means that the mortgage cannot be dealt with under MARP leaving the co-owner with no option but to succumb to the repossession process. This unfortunately crystallises in most cases a significant shortfall on the sale and the only option to address the shortfall again is bankruptcy. The repossession of the property is largely due to no fault of the bankrupt and therefore there is no reason to have them subject to a bankruptcy administration for three years. Bankruptcy should not be a punishment and the three year period does not reflect this.

PAYE workers with investment properties

At the height of the property boom the professional classes were often advised by their bankers to invest in property as a means of providing for their retirement only to find when the recession hit and the collapse of the property market that rental yields declined and receivers were appointed to sell the assets to reduce bank borrowings. Again a three year bankruptcy only restricts the rehabilitation of the bankrupt especially where they may be suspended from a professional body for the duration of the bankruptcy.

Conclusion

The purpose of the review is to ensure adequate balance is struck between providing the maximum return to creditors, being cost effective for the taxpayer and ensuring that entrepreneurial spirit is not discouraged. Currently, the period of time for the majority of cases will result in a significant cost to the exchequer due to the lack of assets coupled with a significant period of economic inactivity for the bankrupt.

McCambridge Duffy would suggest a reduction of the existing term to one year with an automatic discharge once this has passed. This will reduce the burden on the OOA dealing with cases which will only cost the taxpayer and never provide a return to unsecured creditors. We are not advocating a 'soft approach' and so the Official Assignee should be provided with powers to extend the period where the Bankrupt has not conducted his affairs in a reasonable manner.

For example, where the bankrupt has been uncooperative, concealed assets, has mishandled tax affairs or has acted irresponsibly, fraudulently or negligently then this period could be extended by the Court on application of the OOA for a much longer period depending on the nature of the nefarious act.

On discharge from bankruptcy a property in negative equity would revert with the bankrupt who can continue to service the mortgage and remain in their family home. Again this would mean that the OOA's office will not incur the cost dealing with a property which is not an asset of the bankrupt rather it belongs to the mortgage lender and is unlikely to ever be of any benefit to unsecured creditors.

Consideration could be given to reducing the payment period to minimise the cost to the taxpayer and return the bankrupt to economic activity sooner.

Yours faithfully,



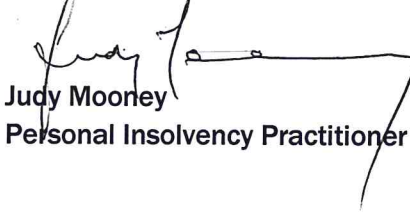
Ronan Duffy
Personal Insolvency Practitioner



Daragh Duffy
Personal Insolvency Practitioner



Daniel Rule
Personal Insolvency Practitioner



Judy Mooney
Personal Insolvency Practitioner



James Green
Personal Insolvency Practitioner

6

Daragh Duffy, Daniel Rule, Ronan Duffy, James Green and Judy Mooney are authorised by the Insolvency Service of Ireland to carry on practice as personal insolvency practitioners.

SMALL FIRMS ASSOCIATION

SUBMISSION ON CHANGES TO THE BANKRUPTCY PERIOD

Presented to:

Joint Committee on Justice, Defence & Equality

June 2015

INTRODUCTION

The Small Firms Association is the trusted partner of small business in Ireland, with 8,500 members and seven affiliated organisations in all sectors and parts of the country. Our mission is to deliver business-focused advice and insights to member companies, influence government policy to the benefit of small businesses and connect our members in a thriving community.

Ireland is a nation of small businesses. We have 200,000 businesses in Ireland, of which 97% have less than 50 employees (small) and 84% have less than 10 employees (micro). These companies provide 56% of private employment – that's jobs for some 863,175 people. An additional 49,195 people are self-employed. Each year in the region of 13,000 new businesses start up.

The SFA welcomes the opportunity to contribute to this important consultation on behalf of the small business community.

GENERAL COMMENT

Creating a culture of entrepreneurship and risk taking is essential to driving economic growth and job creation. Central to this is an acceptance of failure and the existence of an environment conducive to learning from past failure and starting again.

Statistically, entrepreneurs who have experienced failure in the past outperform the market due to the lessons they have learned. In Ireland, however, the social stigma of failure stifles second chance entrepreneurship and the bankruptcy regime remains overly-punitive despite recent changes. The SFA strongly believes that Government policies should encourage entrepreneurs back into business after bankruptcy.

ENTREPRENEURSHIP ECOSYSTEM

The Government's 2014 National Policy Statement on Entrepreneurship in Ireland maps the entrepreneurship ecosystem and identifies areas in which progress is needed. In the foreword, Minister Richard Bruton sets out the aim of not only having great entrepreneurs in Ireland, but a great number of entrepreneurs.

While little attention is given in the report to second chance entrepreneurship, it identifies risk acceptance in Ireland as a particular weakness relative to competitor countries such as the UK, Denmark and the US. The Global Entrepreneurship Development Index (2014) ranks Ireland 19th, with the others mentioned above all inside the top 10. The United States, where past failure is viewed as a "badge of honour", tops the ranking.

The 2013 Global Entrepreneurship Monitor (GEM) report showed that fear of failure among the Irish entrepreneurial adult population rose from 35% in 2006 to 45% in 2013. The report states that fear of failure in Ireland deters an individual from starting a new business in 45%

of cases. The bankruptcy regime is a factor in the perception of failure and calculation of risk when it comes to setting up a business.

If Ireland is to become a world class environment in which to start and grow a business, with the job creation that would follow, it is vital that the risk of setting up a business is minimised and fear of failure consequently reduced. A reduction in the period of bankruptcy from the current three years to one year would be a major step forward in this regard and the SFA would strongly advocate this change.

IDENTIFYING HONEST FAILURES

A reduction in the period of bankruptcy to one year is intended to recognise that honest entrepreneurial endeavour is not always successful. A recent conference organised by the European Commission in Brussels suggested that 96% of entrepreneurs declared bankrupt are honest business people who made a mistake.

It is these people for whom the SFA is seeking to ease the burden of bankruptcy. Therefore, action is needed to separate business bankruptcies from consumer bankruptcies and to further identify legitimate business bankruptcies, which would enable a one-year automatic discharge to be workable for the Insolvency Services.

Talented entrepreneurs who are locked out of the system for three years will have no alternative but to emigrate and it will be very hard to attract them back. If we are to continue on the path of economic recovery, we need more entrepreneurs and we need to maintain the entrepreneurial talent that we have.

ALIGNMENT WITH INTERNATIONAL BEST PRACTICE

The UK experience shows that a one-year bankruptcy model can work well. In the UK this is complemented by a second chance programme run to encourage entrepreneurs to learn from their failures and start again. An additional benefit of aligning the regime in Ireland with that in the UK would be to prevent forum shopping by debtors, a practice that is currently prevalent.

Other European countries provide examples of successful initiatives that sit alongside bankruptcy legislation. The strategy moving forward should be to provide entrepreneurs with warning tools and assistance in identifying situations that could lead to insolvency or the closure of the business. The Danish Early Warning Programme is a model from which Ireland could learn valuable lessons.

CONCLUSION

While Ireland recognises the critical role of entrepreneurs and indigenous small businesses, there is a stigma surrounding business failure. To develop our indigenous business structure

we need to ensure that Ireland offers entrepreneurs a more supportive environment both in success and in failure.

The overall message should be to encourage more formal investment in small business and foster respect for entrepreneurial endeavour even if it is not always successful. An appropriate bankruptcy regime is essential to achieving this cultural shift. Where business people have acted in good faith, they should be given every chance to rebuild their lives and their businesses here in Ireland.

Summary of SFA recommendations:

- 1. Reduce the period of bankruptcy from three years to one year**
- 2. Improve the system for identifying legitimate business bankruptcies from other bankruptcies**
- 3. Introduce an early warning programme and a second chance programme alongside bankruptcy legislation**



TITHE AN OIREACHTAIS

**An Comhchoiste um Airgeadas, Caiteachas Poiblí
agus Athchóiriú**

**Aighneacht chuig an gComhchoiste den Oireachtas
um Dhlí agus Ceart, Cosaint agus Comhionannas
maidir leis an laghdú beartaithe ar an téarma
féimheachta**

Iúil 2015

HOUSES OF THE OIREACHTAS

**JOINT COMMITTEE ON FINANCE PUBLIC
EXPENDITURE AND REFORM**

**Submission to the Oireachtas Joint Committee on
Justice, Defence and Equality on the proposed
reduction in the bankruptcy term**

July 2015

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CHAIRMAN'S PREFACE

On 11 March 2015, Deputy Willie Penrose introduced a Private Members' Bill (PMB) in the Houses of the Oireachtas. The purpose of the legislation is to reduce the discharge period of bankruptcy from the existing three year timeframe to one year. The PMB attracted significant media commentary and sparked a broader debate on the operation of the bankruptcy process. Subsequently, the Minister for Justice and Equality, Ms. Frances Fitzgerald TD, wrote to the Oireachtas Justice Committee asking that it examine the key issues arising from the proposed legislation.

Aware of the potential significance of this legislation, members of the Oireachtas Joint Committee on Finance, Public Expenditure and Reform queried the various representatives of the banking institutions during meetings with them for their views on changes in the bankruptcy regime. The Committee has examined matters relating to insolvency and bankruptcy before and the current debate offered an opportunity to gain an insight into the thoughts of the main financial bodies on the issue.

The Committee met with representatives of Allied Irish Banks, Ulster Bank, Bank of Ireland and Permanent TSB over four consecutive hearings. Professor Patrick Honohan attended on 28 May to conclude the series of meetings. Members asked all parties for their views on the proposal to reduce the bankruptcy term. This submission contains exchanges that took place and is drafted to inform any examination that the Justice Committee intends to conduct in the near future.

I would like to express my appreciation to all the witnesses for their contributions, to the Committee Secretariat for their administrative support, and to the members of the Committee for their work on this subject. I hope that this submission will help to inform the consultation process and make a valuable contribution to the examination of the legislation.



Liam Twomey T.D.

Chairman

July 2015



SECTION 1-INTRODUCTION

The Oireachtas Joint Committee on Finance, Public Expenditure and Reform, (hereafter the Committee), has closely monitored developments relating to mortgage arrears and the resolution processes established to deal with such difficulties. Engaging with the State's main financial institutions has become a regular feature of the Committee's work schedule. Typically, the Committee has met twice a year with representatives of the four main banks – Allied Irish Banks, Bank of Ireland, Permanent TSB and Ulster Bank. These series of meetings are generally followed by a discussion with the Governor of the Central Bank to review the main financial issues arising from earlier debates.

The enactment of the Personal Insolvency Act 2012 and the subsequent establishment of the Insolvency Service of Ireland (ISI) as a statutory body in March 2013, marked a key milestone in putting in place an institutional framework that could deal with the expanding mortgage arrears crisis. As part of its continued engagement with the banks and review of the various arrears restructuring mechanisms, the Committee invited representatives of the ISI to update members on progress and developments in regard to the work of the Insolvency Service. The Official Assignee in Bankruptcy also attended a Committee meeting and outlined for members the bankruptcy process and answered a number of questions in regard to same.

Following sustained engagement with the above parties and considerable interaction with bodies involved in assisting those experiencing arrears difficulties, the Committee published a detailed report in July 2014. The report contained a number of recommendations aimed at improving the mortgage arrears resolution process. Four recommendations specifically related to the Insolvency Service of Ireland. These included:

- The Committee notes the contributions of both the Director of the Insolvency Service of Ireland and the Official Assignee in Bankruptcy in highlighting the significant benefits of bankruptcy in offering the opportunity to discharge the burden of debt and regain

financial independence. The Committee recommends that this positive communication is continued by both parties;

- The Committee recommends that barriers to bankruptcy be addressed, including the current prohibitive price of application;
- The Committee notes the high cost of engaging with a personal insolvency practitioner, which acts as a potential barrier to the application of the insolvency legislation. The Committee recommends provision be made to ensure people are not denied access to insolvency solutions due to lack of money;
- The Committee notes the public refusal of some financial institutions to engage in any write-down of secured debt. The Committee notes this stance is in direct contravention to stated Government policy in regard to enactment of insolvency legislation. The Committee recommends a review of the existing insolvency legislation by the Department of Justice and Equality to mitigate against such practice.

At his recent appearance before the Oireachtas Joint Committee on Justice, Defence and Equality, Mr. Lorcan O'Connor, Director of ISI, alluded to the recommendations in the above report.¹ Furthermore, he confirmed that the ISI had studied the recommendations in detail and acted accordingly.

In relation to the first recommendation and the request to improve communication with the wider public, the ISI established its "*Back on Track Campaign*". The campaign represented a concerted effort to inform a wider public audience of ISI activities. The campaign involved creating a dedicated website for insolvent debtors, simplifying information guides, arranging approximately two dozen town hall meetings across the country and associated advertising. The ISI also distributed its new information guides to a wide range of locations

¹ The Oireachtas Joint Committee on Justice, Defence and Equality met with ISI representatives on Wednesday 27th May 2015.

which was intended to maximise the exposure of the service to as many citizens as possible.

Significant measures have also taken place in relation to reducing the costs associated with applying for insolvency and bankruptcy solutions. This has included the ISI waiving application fees and the Courts Service reducing fees that it applies to applications. Bankruptcy application costs, estimated at €1,500 a couple of years ago, have dropped substantially. The current application costs are €270. This compares favourably with the United Kingdom where the application costs remains substantially higher at €1000.

The ISI also undertook actions to address the recommendation concerning the availability of Personal Insolvency Practitioners (PIPS) to debtors. In October 2014, the ISI introduced an initiative that effectively would underwrite the costs of up to €750 per case to ensure debtors would have access in all cases where a practitioner could assist them.

Finally, the ISI also contributed to a general review of the Insolvency legislation in 2015.

The Committee commends the ISI for taking on board and acting on the recommendations in the Committee's report.

The Committee held its latest series of meetings with the main financial institutions in April and May of this year. The dates and list of attendees are listed below:

- **Wednesday 22 April:** Allied Irish Banks [Mr. David Duffy, Chief Executive Officer, Mr. Mark Bourke, Chief Financial Officer. Mr. Bernard Byrne, Director of Retail and Business Banking and Mr. Brendan O'Connor, Head of the Financial Solutions Group];
- **Wednesday 29 April:** Ulster Bank [Mr. Jim Brown, Chief Executive, Mr. Paul Stanley, Chief Financial Officer and Mr. Stephen Bell, Chief Risk Officer];

- **Wednesday 29 April:** Bank of Ireland [Mr. Richie Boucher, Chief Executive, Mr. Liam McLoughlin, Chief Executive, Retail Ireland, Mr. Stephen Mason, Director-MARS and Mr. Pat Farrell, Head of Group Communications];
- **Wednesday 13 May:** Permanent TSB [Mr. Jeremy Masding, Group Chief Executive Officer, Mr. Glen Lucken, Group Chief Financial Officer, Mr. Shane O' Sullivan, Managing Director, Asset Management Unit and Mr. Ger Mitchell, mortgage, consumer finance and insurance director].

Aware of the recent publication of the "Penrose Bill" and the proposal to reduce the discharge period for bankruptcy from three years to one year, the Committee asked the representatives of the above institutions for their views on the proposal. It is in this context, and the subsequent announcement by the Oireachtas Justice Committee that it would undertake scrutiny of the legislation, that this submission is made. The submission merely details the responses from the representatives of the financial institutions as and when Committee members engaged with them on the proposed legislation.

ENGAGEMENT WITH THE FINANCIAL INSTITUTIONS ON THE PROPOSAL TO REDUCE THE BANKRUPTCY PERIOD FROM THREE YEARS TO ONE YEAR

A number of members asked the AIB representatives for their views on reducing the bankruptcy period. Mr. David Duffy, CEO, acknowledged that AIB officials had discussed the proposal. Prefacing his comments by stating that the institution's de facto position is merely to comply with legislation and refrain from commenting on political and government policy, he nevertheless proceeded to say: *"With specific reference to the policy on bankruptcy, I do not see any fundamental problem from the bank's perspective with the reduction in the term."*

The same question was put to Bank of Ireland representatives when they attended. Specifically, Deputy Creed referred to the broader public debate taking place on reducing the discharge period and inquired whether (i) Bank of Ireland had a view on the matter; and (ii) if so, whether it had expressed that view to the Government. Mr. Boucher confirmed that there had been no communication with the Government on the issue. He further added *"We have assessed the issue on different bases. My personal view is that it would not make a material difference to the mortgage market. There seems to have been some misunderstanding about bankruptcy..."*.

Mr. Boucher also highlighted significant differences between the bankruptcy regimes in operation in Ireland and the UK. He contended that the mortgage retains absolute primacy in the UK process which differs from the process in Ireland. Moreover, Mr. Boucher emphasised the extent to which unsecured creditors in Ireland receive considerable consideration *vis a vis* their UK counterparts.

Deputy Creed further explored the operation of the UK's one year bankruptcy term with Ulster Bank attendees. Ulster Bank is a subsidiary of its parent bank, Royal Bank of Scotland, and because of its cross-border operations, would have a particular insight into the variations in bankruptcy procedures. Mr. Jim Brown, referring to efforts to assist those in arrears, stated that, in his opinion, the length or duration of the

bankruptcy period was irrelevant. Engagement was the only mechanism to resolve arrears cases and he believed, from experience, that the bankruptcy period exerted a negligible influence on speeding up the resolution process.

Deputy Donnelly had further exchanges with Mr. Brown on the issue of reducing the bankruptcy term. Deputy Donnelly raised the prospect of reducing the discharge period temporarily or what he labelled "a term-limited time". In this instance, the Deputy suggested an appropriate period equal to the time required for resolution of the mortgage crisis.

Beyond the specific impact of the proposed reduction in the bankruptcy term on mortgage arrears, Deputy Donnelly widened the debate to the general consequences of a change in the legislation. He asked Mr. Brown if he had any general concerns about reducing the term. Mr. Brown responded: *"Not really. The period is one year in Northern Ireland. I would have to give it a considered opinion and look at the difference between the two markets."*

Mr. Stephen Bell elaborated further when he stated: *"...we would be fine with bankruptcy periods of whatever length but what would make a huge difference is the ability for the court process to be speeded up in those cases where we agree this cannot be allowed to continue. The measure of that can be seen in England and Wales where the court system is faster..."*

The issue of bankruptcy also arose in exchanges between Senator Hayden and PTSB representatives. Senator Hayden stated that in one-third of cases the bank would not agree to a proposal being made and she questioned why any borrower in that situation would not choose bankruptcy as a viable option. In her view, bankruptcy appeared to be a more attractive option than the prospect of an individual having to bear outstanding debt for potentially ten or twenty years – a lifetime in her estimation.

Mr. Shane O'Sullivan responded on behalf of PTSB. He began by stating that PTSB had no problem with bankruptcies. Indeed, he pointed out that PTSB had supported in the region of 300 in the previous year. His

argument concentrated on the definition of being insolvent and whether one actually meets the criterion for taking the bankruptcy route.

He elaborated on this theme when he said *"If bankruptcy is the right answer, then it is the right answer. However, a person cannot elect to be a bankrupt or insolvent without actually being insolvent or being a bankrupt. By that I mean, some of the cases that we veto are because the applicant-the customer-actually is not insolvent. Insolvent is not being able to repay one's debts as they fall due and there is no likelihood that situation changing over the next five years."*

Again, Deputy Donnelly expanded the debate to discuss the overall merits of reducing the bankruptcy term. He asked the witnesses if PTSB would see any major difficulties for their bank were the bankruptcy period reduced further. Mr. O' Sullivan confirmed PTSB do not see this as a major difficulty. From his perspective, more could and should be done in accelerating some of the insolvency judicial treatments. He cited the current time lengths involved in processing Debt Relief Notices (DRNs) and Debt Settlement Arrangements (DSAs) as obstacles to attaining resolutions. If these processes could be speeded up and the unsecured debt portions dealt with earlier, those in arrears could devote their sole attention to repaying the most important payment – the mortgage.

Mr. O'Sullivan believed that the issues of insolvency and bankruptcy were to some degree becoming conflated. He described PTSB's stance as follows *"We have no particular issue with reducing the period from three years to one, but it is not about keeping a roof over one's head. Insolvency and bankruptcy are different"* He expressed a desire that existing insolvency solutions be streamlined to bring about a more timely resolution.

As usual, this series of hearings concluded with the attendance of Professor Patrick Honohan, Governor, Central Bank of Ireland. Members discussed a broad range of financial issues with the Governor. Bankruptcy matters also featured. Deputy Rabbitte referred to the "Penrose Bill" and asked Governor Honohan for his thoughts on the issue.

Professor Honohan stated he was not fully briefed on the matter. However, he did add that he was *"disappointed with the failure of the banks to seize the opportunities created by the Personal Insolvency Act. I told them that if they did not, there would be consequences and I think there are going to be consequences."*

CONCLUSION

The Oireachtas Joint Committee on Finance, Public Expenditure and Reform has consistently engaged with the Insolvency Service over the course of its examination on mortgage arrears. This engagement has also extended to meeting with the Official Assignee in Bankruptcy and members gaining an understanding of the operation of the bankruptcy process.

Deputy Penrose published his Private Members' Bill (PMB) outlining the proposed reduction in the bankruptcy term on 11 March 2015. The publication of this PMB generated significant media attention and sparked a wider public debate on bankruptcy in general. The legislation enacted in December 2013 reduced the bankruptcy term from 12 years to 3. Nonetheless, the recent debate has once again drawn comparisons to the terms of bankruptcy operating in other jurisdictions – notably the one year terms in the United Kingdom, Canada and the United States.

The recent schedule of meetings with the main financial institutions afforded members the opportunity to elicit views on reducing the bankruptcy term. Several common themes emerge from the discussions. Firstly, all of the institutions indicated, in principle, that they had no difficulties with a reduction in the bankruptcy term. However, attention was drawn several times to the fact that bankruptcy and insolvency are very different processes. Many of the representatives argued that bankruptcy changes would have little or no effect in terms of accelerating the mortgage arrears resolution process. Instead, they argued, that greater priority should be given to streamlining existing insolvency processes and reducing the timelines associated with those processes.

When the Oireachtas Justice Committee announced it was seeking submissions on the proposed changes, the Joint Committee on Finance, Public Expenditure and Reform deemed it important to contribute on the basis of its recent meetings. The Committee hopes that the information gleaned from these meetings proves insightful and assists the Justice Committee in undertaking its examination of an important and relevant topic.

APPENDIX 1

JOINT COMMITTEE'S TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2). The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3). Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such-
 - (a) Bills,
 - (b) Proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) Other matters

as shall be referred to the Select Committee by the Dáil, and

- (e) Annual Output Statements, and
 - (f) Such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,

- (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion

made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

APPENDIX 2

JOINT COMMITTEE MEMBERS

Deputies:	Tom Barry (FG)
	Richard Boyd Barrett (PBP)
	Ciaran Cannon (FG)
	Ciara Conway (LAB)
	Michael Creed (FG)
	Pearse Doherty (SF)
	Regina Doherty (FG)
	Stephen S. Donnelly (IND)
	Timmy Dooley (FF)
	Alan Farrell (FG)
	Seán Fleming (FF)
	Ciarán Lynch (LAB)
	Mary Lou McDonald (SF)
	Michael McGrath (FF)
	Paul Murphy (SP)
	Kieran O'Donnell (FG)
	Pat Rabbitte (LAB)
	Arthur Spring (LAB)
	Peadar Toibín (SF)
	Liam Twomey (FG) (Chairman)
	Brian Walsh (FG)
Senators:	Seán D. Barrett (IND)
	Marc MacSharry (FF)
	Paul Coughlan (FG)
	Michael D'Arcy (FG)
	Aideen Hayden (LAB) (Vice-Chair)
	Tom Sheahan (FG)

APPENDIX 3

LINK TO TRANSCRIPT OF HEARINGS

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015042200002?opendocument#A00200>

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015042900002?opendocument#A00400>

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015051300002?opendocument#B00100>

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015052800002?opendocument#B00100>

APPENDIX 4

WITNESS LIST

Meeting 22 April 2015

Name	Organisation
Mr David Duffy, Chief Executive Officer	Allied Irish Banks
Mr Mark Bourke, Chief Financial Officer	Allied Irish Banks
Mr. Bernard Byrne, Director of Retail and Business Banking	Allied Irish Banks
Mr. Brendan O' Connor, Head of Financial Solutions Group	Allied Irish Banks

Meeting 29 April 2015

Session A

Name	Organisation
Mr Jim Brown, Chief Executive	Ulster Bank
Mr Paul Stanley, Chief Financial Officer	Ulster Bank
Mr Stephen Bell, Chief Risk Officer	Ulster Bank

Session B

Name	Organisation
Mr Richie Boucher, Chief Executive	Bank of Ireland
Mr Liam McLoughlin, Chief Executive, Retail Ireland	Bank of Ireland
Mr. Stephen Mason, Director, MARS	Bank of Ireland
Mr. Pat Farrell, Head of Communications	Bank of Ireland

Meeting 13 May

Name	Organisation
Mr Jeremy Masding, Group Chief Executive	Permanent TSB
Mr Glen Lucken, Group Chief Financial Officer	Permanent TSB
Mr. Shane O'Sullivan, Managing Director – Asset Management Unit	Permanent TSB
Mr. Ger Mitchell, Mortgage, Consumer Finance and Insurance Director	Permanent TSB

Meeting 28 May

Name	Organisation
Professor Patrick Honohan, Governor	Central Bank of Ireland