



# Hard Times for the Self-employed

***Citizens Information and MABS Experience***

A Citizens Information Board Social Policy Report





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**March 2012**

### **Acknowledgements**

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# Preface

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This Citizens Information Board (CIB) social policy report, *Hard Times for the Self-employed: Citizens Information and MABS Experience*, sets out a range of factors relevant to social insurance provision for self-employed people arising out of the experience of CIB delivery partners – Citizens Information Services, the Citizens Information Phone Service and Money Advice and Budgeting Services.

The report contains a number of proposals which would enable the Irish social welfare system to better accommodate the current difficulties being faced by self-employed people and the emerging scenario where many more people will at some point in their working lives be self-employed either as sole traders or as small family businesses with employees. The proposals are based on the premise that all people should have broadly similar levels of protection under the social insurance system and should be able to avail of whatever other relevant income supports and employment activation supports that are available from the State.

The distinction between social insurance provision for self-employed people and employees is recognised in many European countries. Indeed, there is a broad acknowledgement internationally of the difficulty of providing social insurance cover for unemployment for the self-employed because a self-employed person can influence his or her situation of unemployment in a way that an employee can not. Insurance for the self-employed against the economic risk of short or long-term

incapacity for work is perceived as less problematic since such conditions can be objectively verified. Notwithstanding this difficulty, there has been a good deal of discussion over many decades in both Ireland and in other jurisdictions about the need to provide social insurance cover which would afford a self-employed person the same protection against labour related risks as an employee. Indeed some EU countries already provide such cover.

The proposals outlined in the report take into account the fact that any changes to the social insurance provisions for the self-employed cannot be determined solely by reference to the current recession which is having a severe effect on self-employed people, particularly those in the construction sector. The increasing pressure on the social insurance fund is acknowledged as is the likelihood that many self-employed people would be interested in having the option of making a social insurance contribution as cover in the event of their business failing or them becoming ill or incapacitated.

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## Principal Functions of the Citizens Information Board

The principal functions of CIB are to support the provision of and, where appropriate, provide directly to the public, independent information, advice and advocacy services in relation to social services. CIB is also required to assist and support individuals, particularly those with disabilities, in identifying their needs and options and in accessing their entitlements to social services.

Other functions of the Board are:

- (i) To support, promote and develop greater accessibility, co-ordination and public awareness of social services
- (ii) To disseminate integrated information in relation to such services by statutory bodies and voluntary bodies and
- (iii) To provide information on the effectiveness of current social policy and services and to highlight issues which are of concern to users of those services.

The latter function provides the legislative basis for the CIB's social policy feedback role. This is closely linked to the basic theme underpinning CIB strategic development, *viz.*, putting the citizen at the centre of how services are delivered. The Board has identified five interconnected strategic priorities to achieve this<sup>1</sup>. One of these priorities is to be a pivotal and trusted intermediary between citizens and public services.

1 Citizens Information Board (2009), *Pathways to Services: Putting Citizens at the Centre*, Strategic Plan for 2009-2012.

CIB works in collaboration with its delivery partners – Citizens Information Services (CISs)<sup>2</sup>, the Citizens Information Phone Service (CIPS), the Money Advice and Budgeting Service (MABS)<sup>3</sup> and the National Advocacy Service (NAS). The Board also manages the Citizens Information website ([www.citizensinformation.ie](http://www.citizensinformation.ie)).

A core element of Citizens Information Board (CIB) strategy is learning from client experiences in order to provide feedback to public sector bodies on emerging issues with regard to services within their remit. This is particularly important in the current difficult economic environment. The high number of people, including self-employed people, out of work presents significant challenges in terms of both income support and ensuring that people who have become unemployed have access to good quality information and can retain and/or acquire the relevant skills and motivation to overcome obstacles to employment.

2 There are 42 Citizens Information Services (CISs) in the national network.  
3 There are 51 MABS companies delivering money advice nationwide.

## Section One

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# Introduction and Background

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### 1.1 Introduction

This Citizens Information Board (CIB) social policy report is concerned with issues affecting self-employed people, in particular those whose businesses are no longer generating sufficient income for daily living and who are reliant on the social welfare system. It focuses on the position of self-employed people in the current climate of reduced work opportunities and a period of severe crisis in the State's finances. The particular issues that can arise for self-employed people in securing means-tested welfare supports and the absence of insurance-based social welfare provision to cater for situations of unemployment or sickness/disability are highlighted in the report.

During the past three years CISs and CIPs around the country have seen an increase in the number of self-employed people coming to the service with questions about their entitlements. Many would have never accessed social welfare supports previously but with major fall-offs in their business and income over recent years they are finding it difficult to make ends meet. Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) routinely record queries with a social policy dimension on the CIB Oyster Database, i.e., queries which refer to a situation where a citizen experienced difficulties in relation to service provision. In recent years, difficulties in relation to supports for self-employed people featured regularly in these records. The CIB also receives feedback from

Money, Advice and Budgeting Services (MABS) in relation to policy issues arising out of their money advice work. The need for better supports for small business people and sole traders dealing with indebtedness features regularly in this feedback.

As part of its on-going remit to respond to emerging information needs, CIB has developed specific information resources for the self-employed including an information booklet and a dedicated micro-site [selfemployedsupports.ie](http://selfemployedsupports.ie) which provide comprehensive information on the services and entitlements available to self-employed people whose income is reduced. CIB has a combined role in both the provision of information and in highlighting feedback from service users on their experiences of public social services. The report is based primarily on this feedback from the CIB delivery partners and reflects the actual experiences of self-employed people in accessing appropriate supports.

It should of course be noted that there are many self-employed who interact directly with the Department of Social Protection (DSP) in respect of accessing their entitlements and do not go through independent information, advice and advocacy services.

The main focus of the report is on access to income supports by self-employed people who are experiencing trading difficulties or who are unable to continue in self-employment. It does not examine in detail other public service supports available to

the self-employed including taxation supports.<sup>4</sup> The report highlights a number of key policy and administrative issues that arise out of the interactions of self-employed people with the social welfare system – the level of social insurance cover for the self employed, including credited and voluntary contributions, access to social assistance payments including administrative issues such as information, delays and appeals, exclusion from Family Income Supplement (FIS) (a top-up payment for low earners) and access to education and training options. A range of issues arising from those experiences are described and analysed. Case examples are provided to illustrate the issues identified. A number of proposals for addressing these issues are included together with some general observations on the need to ensure that self-employed people are afforded appropriate protection under the social welfare code.

In 2011, Citizens Information Services dealt with almost 700,000 clients and one million queries from members of the public. The Citizens Information Phone Service answered 166,619 calls in 2011. Many of these calls and queries related to the economic downturn, particularly in relation to social welfare entitlements. Issues concerning job loss featured consistently. Many of these point to difficulties and challenges faced by newly welfare dependent and low-income (usually work-poor) households.

MABS also experienced an increased demand for its services. The total active caseload at the end of 2011 was over 26,000 clients. The MABS National Helpline received almost 30,000 calls in 2011.

A growing number of the clients of CIB supported services in the last three years were self-employed people who were either unemployed or had experienced a major reduction in income. Many of these report high levels of indebtedness. This issue is particularly complex where, as is frequently the case, no distinction is made between the business and personal/family finances and related indebtedness.

## 1.2 Context of Report: Current Policy Focus on Self-employed

The main components of the current social welfare policy context as it pertains to self-employed people are set out in Section Two of this report.

In general, the ability of self-employed individuals and families to function effectively is, like the rest of the population, affected by their level of access to income, housing, work and credit. While the situation of self-employed people in Ireland on low or significantly reduced income has not been systematically analysed, the issue of social welfare supports for the self-employed has been getting a good deal of attention in public and policy discussion and debate in recent years.

The general downturn in the economy and the related rise in unemployment, particularly in the construction sector, have highlighted the fact that many workers had been operating on a self-employed basis and, consequently, had not contributed at the PRSI Class A rate and as a result had no entitlement to the insurance based Jobseeker's Benefit (JB). The increasing number of self-employed families whose business has ceased, or whose income has reduced, has resulted in a growing problem of indebtedness, difficulties in accessing credit and an inability, in some instances, to meet loan/mortgage payments.

In accordance with a commitment in the current Programme for Government, the Minister for Social Protection established an Advisory Group on Tax and Social Welfare in 2011. Included in its Terms of Reference were:

- To constitute a forum to which the Minister for Social Protection may refer specific issues around the income supports and tax systems so that they provide good incentives to take

4 A wide variety of supports may be available to formerly self-employed people who are unemployed or who take up employment, including the Community Employment Programme, Family Income Supplement, Farm Assist, Back to Work Enterprise Allowance and most recently the JobBridge scheme. Supports include the back to education programmes and the range of services available to jobseekers through FÁS Employment Services, responsibility for which has been transferred to the Department of Social Protection. For comprehensive information on such supports, see [welfare.ie](http://welfare.ie), [selfemployedsupports.ie](http://selfemployedsupports.ie), [citizensinformation.ie](http://citizensinformation.ie) or the CIB publication, *Supports and information for the self-employed*.

- up work and to contribute to the reduction of poverty and child poverty
- (b) To examine and report on issues involved in providing social insurance cover for self-employed persons in order to establish whether or not such cover is technically feasible and financially sustainable

The Terms of Reference also stipulated that the Advisory Group should consider any proposals for change to existing arrangements in a cost-neutral or cost-reducing context. The Minister recently stated that "any changes to the PRSI system in order to provide access to short-term benefits such as jobseeker's benefit would have significant financial implications and would have to be considered in the context of a much more significant rise in the rate of contribution payable".<sup>5</sup> The Minister also noted that the question of social insurance cover for the self-employed is being considered in the Actuarial Review of the Social Insurance Fund which is due to be completed in mid-2012.

### 1.3 Methodology

The report draws primarily on selected case studies from frontline services against a backdrop of dealing with a wide variety of concerns from the public – almost 700,000 clients and a million queries on all aspects of social services and welfare provision. It is based on the premise that information, advice and advocacy services (CISs, CIPS and MABS) are well placed to be a barometer of issues affecting the public. The report includes:

- » A review of selected literature on the issue of supports for self-employed people
- » An analysis of Social Policy Records<sup>6</sup>
- » A Social Policy Alert<sup>7</sup> to CISs and CIPS and consultation with MABS
- » Consultation with DSP and other key informants
- » Identification of illustrative case examples

### 1.4 Outline of Report

The report contains three main sections. Section Two sets out the overall background and existing policy context. Section Three outlines the issues identified by CIB delivery partners. A number of illustrative case examples are presented. Section Four describes the policy challenges arising, discusses some possible options and sets out a number of proposals for addressing the issues identified. A summary of recommendations is included.

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5 Minister for Social Protection, *Dáil Written Answers*, 1st March 2012

6 These are social policy issues recorded by CIB delivery partners on a central database.

7 A Social Policy Alert is a tool used by the Citizens Information Board to ask Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) to pay particular attention to named categories of queries and/or cases for a period of time in order to identify any policy issues arising.

## Section Two

# Policy Context

### 2.1 Introduction

This section of the report describes the overall policy context relevant to self-employment in Ireland with reference to the changing economic scenario during the past three years where increasing numbers of self-employed people are becoming dependent on the social welfare system. Current social welfare provisions for the self-employed, both social assistance and social insurance, are outlined. The role played by other additional welfare support schemes is discussed briefly. Reference is made to the particular problems of micro-entrepreneurs/sole traders encountering problems of indebtedness due to the current economic downturn.

### 2.2 The Role of Self-employment

In Irish law, legal definitions of the terms 'employed' and 'self-employed' are complex but the Revenue Commissioners and the Courts have laid down a number of guidelines to help determine whether

a person is deemed to be self-employed or an employee. These guidelines are contained in a Code of Practice on Employment Status<sup>8</sup>.

There has been a gradual decrease in the number of self-employed people in Ireland since 2008. In Quarter 4 (October-December) 2011, the number was 285,800 (compared to 349,200 in 2008). The majority of these (199,400) were self-employed people with no employees (i.e., sole traders) whose number had reduced by 18,700 during the previous two years. The number of self-employed with paid employees (86,400) had decreased by the same number in the two-year period. The annual decrease between 2010 and 2011 was 3.7% compared to 8.1% between 2009 and 2010.<sup>9</sup>

The level and rate of self-employment in any economy is influenced by a number of factors, including prevailing economic conditions

8 Revenue Commissioners, *Code of Practice for Determining Employment or Self-Employment Status of Individuals*, prepared by the Employment Status Group set up under the Programme for Prosperity and Fairness. The group was set up because of a concern that there may be increasing numbers of individuals categorised as 'self employed' when the 'indicators' may be that 'employee' status would be more appropriate'. The Code states that: "You are self-employed if you go it alone and set up in business on your own account ... You are also regarded as self-employed if you are in partnership, sharing in the control and in the success or failure of the business".

9 [http://www.cso.ie/en/media/csoie/releasespublications/documents/labourmarket/2011/qnhs\\_q42011.pdf](http://www.cso.ie/en/media/csoie/releasespublications/documents/labourmarket/2011/qnhs_q42011.pdf)

(e.g., levels of unemployment and sectoral change), changes in the practices of employers, individual preferences and government policy on supporting enterprise. The policy framework for self-employment has been identified as having three dimensions (Duggan 1999)<sup>10</sup>:

- (i) The *interventionist* dimension, implemented through public policies (predominantly in the areas of industrial and labour market policy) that actively seek to promote the option of self-employment through the implementation of support programmes
- (ii) The broader *macro/regulatory* framework – including macro-economic policies and administrative requirements - within which self-employment and micro-enterprises operate
- (iii) *Social policies* – including health, social insurance and pensions that underpin the longer term well-being of the self-employed and their families

The current economic climate is one where, as already stated, the potential role of self-employment comes into sharp focus. The proactive promotion of self-employment as a pathway to job creation should incorporate each of the three dimensions listed within an integrated policy framework. Increasingly, the self-employed (like other workers) are reliant on a combination of part-time and/or casual work and social welfare for their basic income. There were 86,815 casual and part-time workers on the Live Register in December 2011 which represents 20% of the total Live Register. This compares with 18.8% in December 2010 when there were 80,258 casual and part-time workers. It is reasonable to assume that some of these are self-employed with atypical patterns of work and income support requirements which need to be met.

## 2.3 Means-tested Social Welfare Supports for the Self-employed

Means-tested payments provide an important and essential income safety net for the self-employed. There are a number of means-tested social welfare supports available to self-employed people or people who were formerly self-employed. Self-employed people who are unemployed or who have an illness/disability may establish eligibility to assistance-based payments (paid at the same rate as insurance-based payments), including Jobseeker's Allowance, Farm Assist<sup>11</sup>, Disability Allowance and Supplementary Welfare Allowance.<sup>12</sup> Where self-employed people satisfy the appropriate means test and any other specific qualifying conditions, they have eligibility in the same way as employees. A difficulty arises in assessing income from self-employment that does not arise in the case of employees. In particular, income from employment is more transparent in that it involves the interaction of a third party (the employer) who is subject to independent legal obligations. Also in practice, the level of income from activity as a self-employed person will, in most cases, vary on a weekly or seasonal basis.

### Jobseeker's Allowance

Jobseeker's Allowance is an important income support for self-employed people who become unemployed because their business has to close down or whose business no longer provides them with sufficient income. During the three-year period 2009 to 2011 (up to the 30<sup>th</sup> November 2011), there were 18, 677 Jobseeker's Allowance claims from self-employed people, 85% of which were awarded. (1,120 were disallowed with the remaining 1,680 cases withdrawn). The reason for disallowance in the majority of cases was that the applicant's means exceeded the scheme's maximum criteria. Other

11 Farm Assist is a means-tested payment which is not available to employed people.

12 In assessment of means for social assistance payments , account is taken of the level of earnings in the previous twelve months in determining expected income for the following year, taking account of the current downward trend in the economy. The manner in which means are assessed are set out in the Third Schedule of the Social Welfare Consolidation Act 2005.

10 Duggan, C. (1999), *Self-Employment in the United Kingdom and Ireland - Current Trends, Policies and Programmes*, OECD

reasons for disallowance were an applicant failing to disclose means to the Department and the applicant not habitually resident in Ireland.<sup>13</sup>

Legislation provides that a person's income in the coming 12 months is the basis on which his or her means are assessed. Where a claimant for Jobseeker's Allowance has been self-employed, has ceased this self-employment and has no reasonable prospect of deriving any income from this source in the coming 12 months, s/he is deemed not to have any means from self-employment. If a person has declared that s/he is continuing in self-employment at the point of claim, s/he is assessed using the previous year's self-employment earnings as a guide but also taking into account the fact that the same level of income may not be generated in the succeeding year as well as local economic conditions. If a person is also engaged in insurable employment in any week, earnings for that employment are assessed and the level of payment is adjusted accordingly.

### Farm Assist

Farm Assist is a means-tested income support scheme for farmers. It is similar to Jobseeker's Allowance but has a more generous means test and, in addition, people do not need to be available for work to qualify for Farm Assist.

In order to qualify for Farm Assist, a person must be a farmer, farming land in the State, aged between 18 and 66 and satisfy a means test. The means test takes account of virtually every form of income, including income from employment and other self-employment, but assesses it in different ways and disregards various amounts. Costs actually and necessarily incurred in connection with the running of the farm are taken into account in the assessment of means as are costs incurred in other self-employment.

13 See Minister for Social Protection, *Dáil Written Answers* 14<sup>th</sup> December 2011

## 2.4 Self-employed and the Social Insurance System

### Pay Related Social Insurance

Pay Related Social Insurance for the self-employed was introduced in 1988. All self-employed people aged between 16 years and 66 with earnings more than a specified amount (currently €5,000 per annum) must pay PRSI. The class of PRSI contribution paid by self-employed people is Class S.<sup>14</sup> Contributions are calculated at 4% of reckonable income or €253, whichever is greater. When a self-employed person registers with Revenue s/he will automatically become registered for PRSI purposes with the Department of Social Protection. A self-employed person pays tax, PRSI and the Universal Social Charge under the self-assessment system and must file returns by the 31<sup>st</sup> October each year.

Self-employed PRSI Class S contributions entitles a person to a limited range of social insurance payments, including Widow's, Widower's or Surviving Civil Partner's Contributory Pension, Guardian's Payment (Contributory), State Pension (Contributory), Maternity Benefit, Adoptive Benefit and the Bereavement Grant.

Employees have access to the full range of social insurance benefits, including Jobseeker's Benefit and Illness Benefit. Employees pay PRSI Class A at the rate of 4% and, in addition, employers make a PRSI contribution of 10.75% in respect of their employees, resulting in the payment of a combined 14.75% rate per employee under full-rate PRSI Class A. (The rate of employer's PRSI is 4.25% for employees earning less than €356 per week).

It is important to note that self-employed people get very good value for their contributions in relation to the benefits for which they are covered because of the different rates of contribution (4% under Class S and a total of 14.75% under Class A). The Minister

14 There are special arrangements in place for share-fishermen/women who are treated differently within the social insurance system to other categories of self-employed persons.

for Social Protection recently (January 2012)<sup>15</sup> referred to the finding of the 2005 Actuarial Review of the Social Insurance Fund that a self-employed contributor can expect to receive over 10 times what s/he contributes to the social insurance fund compared to an employee who only gets 3 times of the combined contribution (employee and employer). This is the case despite the fact that the range of benefits available to employees is greater.

### Class P Social Insurance

Share-fishermen/women are treated differently within the social insurance system. Fishermen/women who are paid a set wage are regarded as Class A employees and the total maximum contribution paid in respect of a fisherman/woman is 14.75% (employee and employer contribution). However, where a fisherman/woman is paid solely by reference to a share of the catch, that income is subject to the Class S rate paid by the self-employed. Share-fishermen/women who are classified as self-employed and who are paying PRSI under Class S have the option to pay additional contributions (Class P). This contribution is over and above the PRSI paid under Class S. The minimum annual contribution for Class P for 2012 is 4% of all income in excess of €2,500, subject to a minimum contribution of €200. Class P contributions provide cover for social insurance payments not covered by Class S – limited Jobseeker's Benefit, limited Illness Benefit and Treatment Benefit.

### Credited Contributions

PRSI credited contributions are an integral part of the social insurance system for employees and are for the most part linked with having an underlying entitlement to a social welfare payment while being temporarily detached from the labour force or having an entitlement to statutory leave. Credited contributions are also important in determining the yearly average of contributions necessary for pension purposes. To qualify for a credit, a person must have worked and paid at least one PRSI contribution at PRSI Class A, B, C, D, E, or H and have paid or credited contributions in either of the last two completed tax years. If there is a gap of

more than two completed tax years, a person must work and pay contributions for a further 26 weeks before s/he qualifies for credited contributions.

A person who was previously insured under Class S does not receive credited contributions if s/he becomes unemployed or sick. As a result formerly self-employed people, despite receiving a social assistance payment and being on the Live Register, do not get credited contributions. This contrasts with the position of former employees who are receiving a social welfare payment.

The lack of credited contributions is potentially a significant problem in that, if a person remains without social insurance cover for a period of two or more years, the only mechanism to re-enter the system is, as already stated, to obtain 26 paid contributions. It should be noted that credited contributions have greater application in maintaining eligibility for short-term benefits. However, the consequences of remaining outside the social insurance system are that a person will have insurance gaps that may cause problems in terms of eligibility for the Contributory State Pension at age 66.

### Voluntary Contributions

If a person is no longer liable to pay Class S PRSI (for example, ceasing self-employment or income from self-employment falling below the €5,000 limit) and is under age 66, s/he may apply to become a voluntary contributor. Voluntary contributions provide cover for the social insurance payments included under Class S PRSI.

To be eligible to make voluntary contributions a person must:

- » Have at least 260 weeks PRSI paid under compulsory insurance in either employment or self-employment
- » Apply to make the voluntary contribution within 12 months after the end of the last completed tax year (contribution year) during which

15 Minister for Social Protection, *Dáil Written Answers*, 26<sup>th</sup> January 2012.

- compulsory insurance was last paid or a credited contribution awarded
- » Agree to pay voluntary contributions from the start of the contribution week that follows the week in which s/he leaves compulsory insurance

Formerly self-employed people pay an annual 'special' contribution of €253 if the last PRSI contribution was at Class S; if PRSI was paid at Class A, E or H a high rate of 6.6% of the previous year's earnings are used to determine the amount of voluntary contributions to be paid.<sup>16</sup>

It is possible that a significant number of formerly self-employed people who are now receiving Jobseeker's Allowance are not paying insurance as Voluntary Contributors. Possible reasons for this are that people do not know or understand about the voluntary contribution scheme and its importance or they may feel that paying the annual contribution of €253 is not a priority in terms of their immediate needs. Evidence from information services suggest that self-employed people who had previously relied on their accountants to advise on PRSI contributions and tax returns are not now using an accountant because they cannot afford the cost and, may, therefore, not be informed of the importance of making voluntary contributions towards protecting their social insurance record. It should be noted that the Revenue Commissioners include specific reference to the Voluntary Contribution Scheme in yearly notices of assessment which issue to self-employed contributors.

As a result of people not making voluntary contributions, there is a strong likelihood that a significant group of formerly self-employed people may be excluded from insurance-based pension entitlements in the future. As a starting point in identifying and addressing this likely emerging problem, it would be desirable to generate data on the numbers of those currently signing on who are not receiving credited contributions or making voluntary contributions.

16 The Legislation dealing with voluntary contributions is Chapter 4 of Part II of the Social Welfare Consolidation Act 2005, and Articles 28 to 37 of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 (SI 312 of 1996).

While the cost of voluntary contributions may act as a possible disincentive to participation, the benefits from being a voluntary contributor are significant, especially once pension qualification moves towards a total contribution paid approach. Fundamental changes are planned to the qualification procedures for State Pension from 2020, with a move away from yearly averaging towards a total contributions approach. A total of 30 years contributions will be required for full pension qualification (of which a maximum of 10 years may be credits). In terms of safeguarding future entitlements, it is clear that the benefits of making voluntary contributions far outweigh the cost involved.

## 2.5 Social Insurance Cover for the Self-employed

Under the current social insurance system in Ireland, self-employed people are not deemed to require protection against and/or compensation for the labour-related risks of unemployment and incapacity for work. Thus, there is an important distinction being made between employees and self-employed people. The fact that self-employment is likely to be a key component of job creation in the foreseeable future raises important questions about the need to extend insurance cover for contingencies of unemployment, underemployment and illness/disability. Social insurance protection for self-employed people should, like that for the rest of the population, be viewed as a mechanism to temper the harshness of the economic market, to protect the labour force from periodic economic downturns and to promote integration and social solidarity<sup>17</sup>.

Internationally, a variety of approaches have been adopted to provide social insurance cover for self-employed people. However, the provision of social insurance for periods of unemployment and sickness/disability has been problematic in

17 This approach is in contrast to other models of welfare provision, the one which sees the role of the State as limited to the provision of a minimum subsistence standard of living for those in need and another which sees a central role for the State in all areas but particularly in the area of income redistribution -the emphasis in the latter being on collective State welfare provision to cater for all contingencies.

all jurisdictions due to, for example, the difficulty of catering for irregular patterns of income and earnings related to self-employment<sup>18</sup>. In general, self-employed persons are compulsorily insured against the long-term contingency of old-age and frequently provision is made for insurance cover for long-term illness disability. Many EU countries provide cover for illness/disability and for occupational injury/disease, including Denmark, Finland, Sweden, Germany, France, Poland, Italy, Malta and Cyprus<sup>19</sup>. In some of these countries the provision is based on voluntary schemes while in others it is compulsory.

While protection against unemployment is not generally provided, there are countries which do include such provision on either a voluntary or compulsory basis. For example, in Luxembourg, Poland, the Czech Republic, Hungary and Slovakia, provision for unemployment benefits for the self-employed is included under their general insurance system. In Denmark and Sweden, there is provision for a voluntary contribution scheme by the self-employed. In Finland, the self-employed are covered by the basic unemployment insurance system with the option since 1995 of joining an earnings related voluntary insurance scheme.

Since Ireland is one of the few EU countries that do not have any insurance-based provisions for unemployment, illness/disability or occupational injury in respect of the self-employed, any extension of coverage would bring the Irish social insurance system more in line with provisions in other EU states. This applies particularly in relation to work-related and occupational injury where a number of EU countries provide cover as part of the general insurance system or as part of a voluntary scheme.

The 1986 Report of the Commission on Social Welfare<sup>20</sup> in Ireland took the view that an insurance-based system for the self-employed should cover long-term payments – invalidity, old age and widowhood. Short-term periods of incapacity could, the Commission concluded, be provided for on a means-tested basis. While the Commission recommended that the self-employed should be brought within the PRSI system and be eligible for old age, widowhood and invalidity pensions, provision for the latter was not introduced. A 1978 Green Paper<sup>21</sup> had concluded that cover for short-term benefits for contingencies such as sickness, unemployment and maternity would not be appropriate. However, the Green Paper also identified certain types of self-employment where earnings depend on personal participation and where such people (e.g., trades people and sole operators) would have difficulty in making up over time for temporary loss of income as other self-employed people might be able to do.

This latter point is crucial in the current climate where opportunities for working and trading and making up for loss of income are extremely limited, at least in the short-term.

## 2.6 Extending Social Insurance Cover for Incapacity

In addition to the distinction between self-employed people with employees and sole traders, there is another important distinction between self-employed traders – those who can sell or let their business during periods of reduced work or illness and those who cannot. The latter group are entirely dependent on their own day-to-day labour for the generation of their income and clearly need provision for the contingencies of unemployment, illness /injury or disability in a way that a person who can still draw an income from his/her business does not. While some self-employed may be able to continue to receive an income while ill or have a disability, there are others who cannot.

18 See, for example, <http://www.ilo.org/public/english/protection/secsoc/downloads/353sp1.pdf> <<http://www.ilo.org/public/english/protection/secsoc/downloads/353sp1.pdf>>

19 Mutual Information System on Social Protection (MISSOC) (2011), *Social protection of the self-employed*, European Commission Directorate-General for Employment, Social Affairs and Inclusion Unit D/3.

20 Report of the Commission on Social Welfare (1986), The Stationery Office.

21 Department of Social Welfare (1978), *Social Insurance for the Self-employed – A Discussion Paper*, referenced in the Report of the Commission on Social Welfare.

The National Pensions Board (NPB)<sup>22</sup>, in its 1988 report on extending social insurance cover for the self-employed, noted that the risk of loss of income for the self-employed in the event of illness/disability is not the same as for employees in that many self-employed people may be able to continue to draw an income from their business during a period of short-term or long-term disability. For example, there could be situations where the management of the self-employed contributor's business could pass to another member of the household and, therefore, the household could then benefit from the income from the business while the insured person receives an insurance-based payment, were the latter available under the PRSI system. The NPB pointed out that employees have to give up their employment to qualify for an insurance-based illness/disability-related payment and suggested that it would not be feasible to apply this condition to self-employed people, e.g. those who own their own farms or businesses.

The National Pensions Board (1993)<sup>23</sup>, in considering the extension of invalidity pensions to the self-employed, pointed out that self-employed contributors are at the same risk of both temporary and permanent incapacity for work as employed contributors. An Actuarial Review of the Social Insurance Fund completed in 2007<sup>24</sup> concluded that there were significant financial implications to extending coverage for Invalidity Benefit (Pension) to the self-employed with projected expenditure on Invalidity Benefit (Pension) increasing by approximately 11% in 2061.

The National Pensions Board (1993) also concluded that it would be inappropriate to apply to the self-employed the present eligibility conditions for Invalidity Pension which apply to employees:

"Many self-employed people can continue to

draw an income while suffering the sort of disabilities which would qualify an employee for an Invalidity Pension. Employees, moreover, have to give up their employment to qualify for the pension, but it would not be feasible to apply this condition to self-employed people who own their own farms or business, (whatever about those whose income is wholly dependent upon their own personal labour)" (p.147).

The National Pensions Board did not recommend the immediate extension of Invalidity Pension to the self-employed but recommended instead that means-tested cover, in the form of a disability assistance (provided for in legislation in 1996 but never actually introduced) and Invalidity Pension, be made available. It further recommended that the question of introducing social insurance cover for the self-employed should be reviewed not later than 5 years after the introduction of the proposed schemes. The proposed schemes were not, however, introduced.

## 2.7 Other Income Supports

### Role of Additional income Supports

Access to additional income supports is an important consideration in respect of low-income self-employed families in the context of ensuring that all families have adequate and equitable income. Rent Supplement and Mortgage Interest Supplement play a significant role in supporting low income families in meeting their housing needs. The Family Income Supplement (FIS) scheme provides income support to low-income employees with children and the payment effectively preserves the incentive to take up or remain in employment in circumstances where the employee might only be marginally better off than if s/he were claiming other social welfare payments. The provision of additional supports and incentives to low-income self-employed families, while administratively more challenging than such provision for employees, is nevertheless important from the point of view of ensuring that the self-employed can maximise whatever work opportunities are available while receiving equitable protection from the social welfare system.

22 National Pensions Board (1988), *Report on the Extension of Social Insurance to the Self-employed*, The Stationery Office; National Pensions Board (1993), *Developing the National Pension System: Final Report of the National Pensions Board*, The Stationery Office.

23 National Pensions Board (1993), *Developing the National Pension System: Final Report of the National Pensions Board*, The Stationery Office.

24 [www.nationalpensionsframework.ie/downloads/ActuarialReviewoftheSocialInsuranceFund.pdf](http://www.nationalpensionsframework.ie/downloads/ActuarialReviewoftheSocialInsuranceFund.pdf)

## Rent Supplement<sup>25</sup> and Mortgage Interest Supplement<sup>26</sup>

Rent Supplement and Mortgage Interest Supplement (MIS) are not payable in circumstances where either the claimant or his/her spouse is engaged in 'remunerative full time work' defined as over 30 hours per week. This is the situation irrespective of the person's lack of means or employment status. In practice, it may be difficult for those retaining a residual or casual connection to self-employment to establish the extent of their work and, consequently, their eligibility for Rent Supplement and Mortgage Interest Supplement.

The 2006 Expenditure Review of the Supplementary Welfare Allowance<sup>27</sup>, recognising the short-term nature of the Rent Supplement scheme and acknowledging that support to those in full time employment and residing in the private rental sector are best provided through the rental assistance arrangements, was satisfied that the 30 hour rule should continue to apply at least until the full implementation of the new rental assistance arrangements have been achieved.

The existing Rent Supplement assessment process provides for a gradual withdrawal of payment as hours of employment or earnings increase. Self-employed people availing of part-time employment and/or training opportunities can continue to receive Rent Supplement subject to their satisfying the standard means assessment rules. Where a person has additional income in excess of the standard weekly rate of supplementary welfare allowance, the first €75 of such additional income together with 25% of any additional income above €75 is disregarded for means assessment purposes.

This ensures that those returning to work or participating in training schemes are better off as a result of taking up such an opportunity.<sup>28</sup>

The purpose of the Mortgage Interest Supplement (MIS) scheme is to provide short term support to eligible people who are unable to meet their mortgage interest repayments. The payment is in respect of a house which is a person's sole place of residence and the supplement assists with the interest portion of the mortgage repayments only. It should be noted that the Report of the Inter-Departmental Mortgage Arrears Working Group<sup>29</sup> reiterated a key finding of the Mortgage Arrears and Personal Debt Group and the Department's Review of the Mortgage Interest Supplement Scheme that receipt of Mortgage Interest Supplement (MIS) should be time limited. The report concluded that Mortgage Interest Supplement (MIS), while a very important support provided by the State to certain mortgage holders in difficulty, is not an appropriate long term support and it should be replaced with a more sustainable solution. The report suggested that the introduction of Mortgage to Rent Schemes could provide a better and more sustainable solution for many people in receipt of MIS on a long-term basis and that the scheme should be replaced by additional social housing options.

## Family Income Supplement (FIS)<sup>30</sup>

The question of access by self-employed people on low income to Family Income Supplement (FIS) has long been a matter of policy debate. Indeed, as far back as 1998, the Commission on the Family recommended that Family Income Supplement for the self-employed should be considered.

25 There has been a significant increase between 2010 and 2011 in the number of Rent Supplement recipients over what was previously a stable client base. In August 2011 there were over 96,000 people in receipt of a Rent Supplement. The estimated expenditure on Rent Supplement for 2011 was €465 million.

26 The estimated expenditure on Mortgage Interest Supplement for 2011 was €77 million.

27 [http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp\\_rev/Pages/swa\\_phase2.aspx](http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp_rev/Pages/swa_phase2.aspx)

28 Provision was made in 2007 whereby a person on Rent Supplement, who is accepted as eligible for accommodation under the Rental Accommodation Scheme, may return to full-time work, subject to a means test, without losing the entire Rent Supplement payment.

29 Inter-Departmental Mortgage Arrears Working Group Report (2011), <http://www.finance.gov.ie/documents/publications/reports/2011/mortgagearr2.pdf>

30 In 2011, there were 28,180 recipients of FIS, an increase of 19.2% on the 2009 figure. The estimated cost of FIS in 2011 was €199.3 million.

To qualify for FIS, a family must have a combined total of at least 19 hours employment per week (or 38 hours per fortnight) and have earnings below a specified income limit, which is adjusted by family size. FIS is payable at a rate of 60% of the difference between the weekly income (net of tax and PRSI) and the relevant income limit for that family size. The "full-time" employment condition has been a fundamental part of the FIS payment since its introduction although the number of hours worked in order to satisfy this condition has been reduced considerably over the years. These conditions exclude two groups: those working for less than 19 hours per week and self-employed workers on low income as a result of underemployment.

When FIS was introduced, it was decided not to include the self-employed in its scope for the following reasons<sup>31</sup>. Firstly, it would be difficult to establish the eligibility of the self-employed as their means and hours of employment would be difficult to establish and control. Secondly, self-employed workers who were not fully occupied and who had low incomes could be eligible for unemployment assistance (now Jobseeker's Allowance payment).

The difficulties in extending FIS to self-employed people have been identified by a previous Minister for Social Protection<sup>32</sup>, including the administrative difficulty of establishing satisfactorily eligibility as hours of employment would be difficult to establish and certify on an ongoing basis. The then Minister also pointed to the considerable practical difficulties in defining and controlling an alternative to the number of hours worked condition. "An extension of the FIS scheme would in effect fundamentally change the nature of the scheme and raise the risk of self-employed workers reducing the number of hours that they worked and/or under declaring their income to qualify for payment". A further difficulty with extending FIS to the self-employed identified by the then Minister, and one which is clearly relevant in the current economic climate, is the considerable cost of extending the scheme to the self-employed.

The DSP Value for Money Review of Child Income Supports<sup>33</sup> included a proposal for an integrated child and family income support payment to replace FIS. This supplement would be income-based rather than an employment status payment and would presumably include provision for low income self-employed families.

## 2.8 Self-employed and Problems of Indebtedness

Small enterprises and sole traders play a significant role in the economic life of both the local community and the Irish economy. However, many of these businesses are now in financial difficulty and are finding it very difficult to access low cost or free business debt advice and social supports for themselves and their families.

It is also the case that very often there is no distinction between the business and personal/family finances of micro-entrepreneurs. Many such families presenting to MABS, CISs and CIPS often have little or no income from their business. Furthermore, in many instances, such families have put up their home as collateral for business loans and do not have separate accounts for home finances. This means that when things go wrong in the business, as they often do, the family home can be in danger. Even if the home has not been put up as collateral, it may be subject to repossession because the person as a sole trader is not limited by guarantee.

Loss of income and lack of capacity to cope with their debts results in many such families approaching MABS and CISs. Such families are regarded by MABS as amongst the most vulnerable. Because in many instances business and personal debts are intertwined, there is a need to look at the issue holistically and to have an integrated response. The fact that supports (including income support) are not provided in an integrated and holistic manner may result in salvageable enterprises failing and families becoming more indebted and reliant on the State as a result.

31 Source: *A Policy and Value for Money Review of Child Income Support and Associated Spending Programmes*, November 2010, Department of Social Protection

32 <http://www.kildarestreet.com/wrants/?id=2010-12-02.698.0>

33 [http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp\\_rev/Documents/CISReviewFinal.pdf](http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp_rev/Documents/CISReviewFinal.pdf)

It is important to note that some micro-businesses can get through difficult times with the appropriate support. The experience of the Business Debtline in the UK is relevant in this regard where the experience is that support has meant a number of struggling businesses who contacted them have gone on to become profitable enterprises.<sup>34</sup> In Ireland, while there is a strong emphasis on business start-ups and entrepreneurship, the reality is that there is relatively little support for struggling businesses.

While issues relating to limited companies are beyond the remit of MABS, it does have an important role in assisting those on low income, including many self-employed or previously self-employed people where there is personal liability for debt incurred.

## 2.9 Overall Changing Income and Living Conditions Scenario

It is reasonable to assume that the changing position of self-employed people will be reflected in overall data on income and living conditions in the country. The most recent Survey on Income and Living Conditions (SILC) Report<sup>35</sup> shows that the 'at risk of poverty' rate at state level rose from 14.1% in 2009 to 15.8% in 2010. This increase reflects the change in the income distribution between 2009 and 2010 and the widening of the gap between those in the highest and those in the lowest income quintiles. It also reverses the downward trend in the poverty rate evident since 2004. The 'at risk of poverty' rate for those of working age (18-64) increased from 13.0% in 2009 to 15.3% in 2010 and is 26.1% for unemployed people compared to 15.8% for the state as a whole.

When the impact of social transfers on the at risk of poverty rate is taken into account, in 2010 if all social transfers were excluded from income the 'at risk of poverty' rate would be 51%, indicating a steady increase from 39.8% in 2004. This increase over time clearly demonstrates the increasing dependence of individuals on social transfers to remain above the 'at risk of poverty' threshold.

34 <http://www.bdl.org.uk/>

35 Central Statistics Office (2011), *Survey on Income and Living Conditions (SILC)*: Preliminary Results 2010

In 2010 the deprivation rate (those experiencing two or more types of enforced deprivation) was almost 23% compared with just over 17% in 2009. Significantly, this increase was largely attributable to an increase in the deprivation rate of those *not* at risk of poverty, from 13.7% in 2009 to 19.3% in 2010 while there was no significant change in the deprivation rate for those at risk of poverty.

## 2.10 Section Two: Summary of Main Points

The means-tested social welfare supports available to self-employed persons or persons who were formerly self-employed have been outlined as have the social insurance entitlements of self-employed people paying Class S PRSI contributions, including, Widow's, Widower's or Surviving Civil Partner's Contributory Pension, Guardian's Payment (Contributory), State Pension (Contributory), Maternity Benefit, Adoptive Benefit and the Bereavement Grant. It was noted that illness, disability and unemployment are not covered under Class S contributions and that, therefore, there is no entitlement to Jobseeker's Benefit, Illness Benefit or Invalidity Pension. The relatively good value for money for the benefits under Class S PRSI contributions was highlighted.

It was noted that under the current social insurance system, self-employed people are considered in a similar manner to an employer in that they are not deemed to require protection against and/or compensation for the labour-related risks of unemployment and incapacity for work. The fact that self-employment is likely to be a key component of job creation in the foreseeable future was identified as raising important questions about the need to extend insurance cover for contingencies of unemployment, underemployment and illness/disability.

The significant challenges being currently faced by many small business people and sole traders were noted. Many of these traders are now in financial difficulty and are finding it very difficult to access low cost or free business debt advice and social supports for themselves and their families. Very often there is no distinction between the business and personal/family finances of micro-entrepreneurs.

## Section Three

# The Case Evidence and Policy Issues Arising

### 3.1 Introduction

This section draws on queries and trends and evidence from CIB delivery partners nationally<sup>36</sup> in order to more closely apprehend the policy issues involved. A number of case examples are included which are indicative of the issues that are identified in respect of self-employed or formerly self-employed people engaging with the social welfare system. Some of the issues identified in the case studies are not exclusive to self-employed people and may apply equally to others on low income who are accessing welfare supports for the first time. It should be noted that the issues identified by information, advice and advocacy services refer to situations where the benefits system was experienced as unsatisfactory from the perspective of the citizen-user.

### 3.2 Overview of Issues

Some formerly self-employed people who have never previously had to engage with the social welfare system experience difficulty in navigating the pathways to income supports. The risks and implications associated with self-employment and the lack of social insurance-based support during periods of unemployment and/or disability/illness may not have been fully understood by many self-employed people prior to being faced with a situation where they had no, or a significantly reduced income, from self-employment.

Delays in self-employed people accessing assistance payments are regularly reported by CIB delivery partners. Initial delays can arise because of difficulties a person has in establishing either the fact of a total cessation of self-employment or a significant reduction in income from ongoing self-employment. Where people cannot easily provide accounts from the previous year and/or have difficulty in establishing current levels of income, there is inevitably a delay in having claims processed. Further delays arise in cases where an application for a social welfare payment is turned down in the first instance and the person seeks a review of the decision at local level or appeals to the Social Welfare Appeals Office.

The interface between the social welfare system and self-employed or formerly self-employed people can be difficult for various reasons.

<sup>36</sup> CISs and CIPS nationally dealt with over 800,000 clients and 1 million queries in 2011. Almost half of all queries to CISs and CIPS are social welfare related. CISs and CIPS routinely record queries with a policy feedback dimension on the CIB Oyster Database, i.e., queries which refer to situations where a citizen was unable to get a service including: support services available being inadequate or inappropriate; inadequate information from statutory agencies; perceived inequities, inconsistencies or anomalies in the social welfare system; delays in the application process for benefits/services.

Self-employed applicants may not always be aware of the requirement to present their current income in a transparent and verifiable manner. There is sometimes a cross-over between business debt and family debt which makes it difficult to ascertain actual current income as distinct from notional income. Some self-employed people may be slow to accept the fact that they have to engage in a means-testing process to establish eligibility for a social welfare payment. It is also reported that many formerly self-employed people state that they cannot afford to pay accountants for work previously done and, as a result, cannot get up to date accounts to verify current income.

Qualifying for Jobseeker's Allowance (JA) is crucial in that it is not only a key income support provision but also, and very importantly, a qualifying payment for access to a range of training, education and work experience options. Thus, qualifying for even a minimum payment is significant in that it opens up a range of options for self-employed people.

There is some lack of understanding on the part of self-employed people about the requirement to make voluntary social welfare contributions in order to maintain their social insurance record for Class S social welfare payments (including State Pension Contributory, Widow's, Widower's or Surviving Civil Partner's Contributory Pension and Bereavement Grant). The fact that people previously insured under Class S will not be awarded credited social insurance contributions during periods of unemployment or illness/disability is regarded by many self-employed people as unfair relative to former employees receiving social welfare payments.

The fact that self-employed people, regardless of level of income, are not eligible for FIS is a matter of concern for the self-employed on reduced income. Another issue which is regularly identified is that neither Rent Supplement or Mortgage Interest Supplement (MIS) is payable in circumstances where either the claimant or his/her spouse is engaged in 'remunerative full time work', defined as over 30 hours per week (irrespective of the level of income from such work).

Many self-employed people whose businesses have failed are experiencing significant indebtedness. In some cases, personal debt is attached to

business debt but because MABS do not deal with business debt, it is frequently the case that people with business debt difficulties cannot get the help and support that they require. Difficulties in accessing credit and problems with payments to utility companies are regularly encountered by self-employed families whose business has failed. Also, some are no longer in a position to avail of work opportunities because the necessary equipment for the job (e.g., lorry) has been repossessed. Some self-employed are being refused credit due to a poor credit history. It is also the case that many small businesses and sole traders in financial difficulty find it very difficult to access low cost or free business debt advice and social supports for themselves and their families.

### 3.3 Case Examples

The specific issues identified by the CIB delivery partners arising out of their engagement with citizens seeking information, advice and assistance are set out below by reference to a number of illustrative case examples.

#### Limited cover under Class S PRSI contributions

Many self-employed people, who are also often employers, who sought help from CIB delivery partners over the past three years expressed the view that the lack of social insurance based provision for contingencies such as unemployment and illness/disability undermines the contribution of self-employed people and fails to give due cognisance to the risks associated with self-employment and micro-entrepreneurship.

In many instances when people are faced for the first time with a situation of reduced income, the realisation that they do not have insurance cover for benefits comes as somewhat of a shock. This results in feelings of grievance in that they never had been afforded the opportunity to pay insurance contributions as cover for such contingencies. The situation is compounded for some who had assumed that they had such cover.

### Case Example 1

A client who had been self-employed for over 20 years contacted CIPS. The business is now closing due to economic circumstances. The client enquired what social welfare payment would be available to him. He was informed that Jobseeker's Benefit payment would not be an option as he had no employee PRSI paid in the relevant tax year. However, he could apply for Jobseeker's Allowance payment. He pointed out that he felt that this was grossly unfair to self-employed people. He felt aggrieved that he never had the option of paying a higher rate of social insurance contribution to cover for the contingency of short-term unemployment.

*"This is a common issue especially in the current economic climate"*  
*(Information Provider).*

of significantly reduced income is exacerbated for some self-employed people by what they perceive to be a lack of adequate response or engagement in the first instance by the welfare system.

### Case Example 2

A man with two children contacted a CIS regarding problems paying his mortgage and meeting the costs of daily living. He had been self-employed up to 2.5 yrs ago when he developed serious health problems. His wife, who had been working, was now on Jobseeker's Benefit. The man was unaware that he was eligible for Disability Allowance and told the information provider that he had been told that, as he was self-employed, he was not entitled to a social welfare payment. [His wife had been working at the time and it is not clear whether or not he told the DSP about his health problems]. The information provider commented "For the last 2.5 yrs he has lived from his wife's part time earnings - this man could have been claiming Disability Allowance - I assisted the client filling in the DA Application Form".

### Information Deficits

There is a lack of awareness on the part of some self-employed people of the nature of their social insurance cover and related rights and entitlements. It was reported that self-employed people who seek information and advice from CIB delivery partner services are often initially unaware of their eligibility for means-tested payments – Disability Allowance, Jobseeker's Allowance or how means are assessed. Queries from self-employed people also suggest that there is a deficit in awareness about the risks associated with self- employment, in particular, the lack of social insurance- based support during periods of unemployment or illness/disability. A lack of awareness is also reported in relation to entitlement to Widow's/Widower's/Surviving Civil Partner's Pension; the need to make voluntary contributions when income falls below the threshold for Class S contributions and where to seek assistance with business debts and how to deal with these as MABS deal primarily with personal debt.

There is also some evidence of people enquiring about entitlements not being informed of possible eligibility for means-tested payments at the first point of contact with the social welfare system. The difficulty in coping with the changed circumstance

### Case Example 3

A self-employed man aged over 60 came to the CIS because he now had only work for 2 days a week and was struggling financially. During discussion with the information provider, it emerged that the man's wife had died two years previously. He had not applied for a Widowers' Pension as he did not know that he could receive the pension and work at the same time. He had received a Bereavement Grant but was not made aware of the fact that he could have applied for a Widower's Pension. "This payment over the past 2 years would have eased his burden quite a bit if he had been aware of its availability" (Information Provider).

#### Case Example 4

A woman whose husband was self-employed but whose business was failing and, as a result, the family was experiencing significant financial difficulties, sought advice and assistance from a CIS. She told the CIS that because her Illness Benefit was coming to an end she had called to the Local Social Welfare Office to ask about social welfare entitlements in their current family circumstances and was told that because her husband was self-employed he was not entitled to a social welfare payment. She further told the CIS that she was not asked about the family's current level of income and circumstances. She said that she was not told that she could apply for Jobseeker's Allowance and that she was not given a JA application form. She also stated that she had enquired in the social welfare office about the availability of other payments to assist the family but again was told that the family did not have any entitlement in this regard. The CIS pointed out that she was not referred to the Community Welfare Officer as would have been appropriate. The CIS noted that the woman "was distraught and appeared to be under extreme financial pressure". The CIS believes that the family income during the current year would be below the means threshold for Jobseeker's Allowance and was assisting her with an application for Jobseeker's Allowance and for SWA.

The feedback from CIB delivery partners suggests that in some instances there has been a lack of clarity about whether or not a person is required to cease self-employment in order to be eligible for Jobseeker's Allowance (JA). In practice, self-employed people may be facilitated to take up part-time work as it becomes available and awarded JA payments for days not worked. However, there is evidence of people stating that they were

informed that they needed to completely cease self-employment in order to qualify for Jobseeker's Allowance. The same issue arose in respect of people applying for Supplementary Welfare Allowance (SWA) while waiting for claims for JA to be processed where people reported being told that they must cease self-employment before being eligible for social assistance payments.

#### Case Example 5

A man who was self-employed but who had experienced a loss of work went to his local Social Welfare office to apply for Jobseeker's Allowance. He was told that he was eligible to apply and made an application. He was advised that it could take 12-15 weeks for his payment to be processed and that he could go to his Community Welfare Officer to get Supplementary Welfare Allowance in the meantime. He told the CIS that the CWO told him that he could not get SWA unless he ceased being self-employed. He was not willing to do this as he wanted to take any opportunity of work that would arise.

The information provider commented: *"It seems strange that the Department of Social Protection would not require a person to cease self-employment but the CWO does so, considering that an application for SWA is usually in the context of applicants waiting for their social welfare payment to be processed".*

### Case Example 6

A self-employed migrant worker has applied for Jobseeker's Allowance (JA). While he was waiting for that application to be processed, he applied for Supplementary Welfare Allowance (SWA). He told the CIS that he was informed that he would not be eligible for SWA unless and until he closed down his business, even though he is only looking for SWA as a stop-gap while his JA application is being processed. The CWO involved confirmed to the CIS that the applicant was required to cease self-employment, "as is the case with all self-employed people who apply for SWA".

As he had come to Ireland originally as a migrant worker, this man had considerable trouble in establishing his self-employed status and, understandably, is very reluctant to close his business at this point. However, his financial circumstances are dire at the moment so he may have no choice in this. The information provider commented: "As he said himself, the situation seems to be encouraging him not to seek to earn an income but rather to shut up shop and rely on welfare payments".

Consultations between the CIS and the CWO are ongoing in this case.

The CIS information provider noted that "it appears that whether or not a self-employed person needs to cease self-employment in order to receive Supplementary Welfare Allowance depends on where they live. Some Superintendent CWOs take the view that they should cease self-employment while others are of the opinion that they don't need to".

It should be noted that providing a person is not engaged in 'remunerative full time work' of over 30 hours per week s/he is entitled to have his/her claim assessed on its merits irrespective of whether s/he is employed or self-employed. In many instances a CWO will seek to accept the *bona fides* of the claimant pending a decision of the Deciding Officer in respect of a Jobseeker's Allowance claim.

### 3.4 Validating Income for Means-testing Purposes

Processing a claim from a self-employed person for a means-tested payment involves the Deciding Officer, in accordance with the legislation, to establish the income a person is likely to receive in the current year. Rule 1 (2) and Rule 3 of Part 2, 3<sup>rd</sup> Schedule, Social Welfare Consolidation Act 2005 (as amended) provides that in the calculation of the means of a person:

- 1(2) *all income in cash and any non-cash benefits that may be prescribed which the person or his or her spouse may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise, ...*
3. *For the purposes of Rule 1(2) and (10), the income of a person shall, in the absence of other means of ascertaining it, be taken to be the income actually received during the year immediately before the date of calculation.*

In practice, the process of establishing means is frequently a difficult one for both claimants and Deciding Officers. Some of the feedback from the CIB delivery partners, as already stated, referred to situations where a pragmatic approach is taken to facilitate self-employed people taking up part-time work as it becomes available and awarding Jobseeker's Allowance payments for days not worked.

It would appear that reference to the previous year's income in respect of establishing means is being made unnecessarily and more frequently than it need be in that the legislation makes clear provision for assessment on the basis of current (succeeding year) income as well as the previous year's income.

### Case Example 7

A CIPS client was engaged in self- employment and was paying Class S PRSI. Previous to this he had been in insurable employment but did not have sufficient PRSI contributions to qualify for Jobseeker's Benefit. He applied for Jobseeker's Allowance and the means test was based on his previous year's income. He qualified for a weekly payment of €30.

The client disagreed with this means test as he was being assessed based on means he had during the previous year and not on means he had during the current year when he applied for assistance. He felt this was very unfair and sought clarification of same from his local social welfare office. He told the CIPS information provider that he was advised that there was 'no other option' for him. The client argued that the means test should be an "assessment of money you have currently and not what you had" in the previous year. He appealed the judgement on this basis and was granted the full payment on the grounds that he had no means and should have qualified for the full payment. He requested that the payment be backdated but this was refused.

Some of the cases identified by CIB delivery partners refer to seemingly straightforward situations where a self-employed person had ceased trading and self-employment. It would be reasonable to assume that a person in such instances is unemployed and, therefore, without income from that source. However, instances have been reported where the use of the previous year's income as the primary source for determining the level of means has resulted in people being disqualified from assistance in the first instance.

### Case Example 8

A self-employed person who was no longer trading applied for Jobseeker's Allowance. He told CIPS that he was told that he needed to produce audited up to date accounts before his application could be processed. He stated that the Deciding Officer had told him that 'self- made' accounts were not acceptable. The cost of getting an accountant would be €400 which the client stated he could not afford. The CIPS information provider advised the client to submit his self-prepared accounts and to appeal the decision if necessary.

### Case Example 9

A man formerly self-employed in the haulage business applied for and was refused Jobseeker's Allowance on the grounds of insufficient information to ascertain his level of means – the local Deciding Officer had requested the previous year's accounts. The claimant asserted that he could not afford to pay his accountant in order to prepare the previous year's accounts.

It emerged in the discussions with the information provider that the claimant was no longer trading and that he had considerable debt associated with his business. An affidavit was prepared detailing the circumstances of his business failure, the outstanding business debts and bank accounts showing an absence of business income being generated. A further commitment was made to recover his records from the accountant and to make a return to the Revenue Commissioners notifying them of the business closure. The new evidence was submitted to the Deciding Officer who revised his decision and determined that Jobseeker's Allowance should be awarded in full.

An issue that emerges on an ongoing basis relates to people who are in self-employment on a part-time basis having difficulty in verifying their actual income from different sources. There are indications of local disparities in how self-employed people's income is assessed and validated. Also, cases have

been identified where there is a divergence between a person's actual income and the level of income assigned to him/her from part-time or occasional self-employment for means-testing purposes. Some self-employed people have reported having income assigned to their self-employment which is notional rather than real in that, for example, it is money owed by debtors which may not be realised.

#### Case Example 10

A self-employed person's business has collapsed and he had applied for Jobseeker's Allowance (JA). Arising out of his business, he is owed over €70,000 from debtors but feels that he has little hope of ever recovering this. He told the CIS that he had pointed this out to the DSP but that it was still included as an asset in the means test and consequently he was awarded only a significantly reduced JA payment. The information provider noted that the man believes this to be unfair in that it is not a true and accurate assessment of his actual means.

#### Case Example 11

A self-employed woman complained to CIPS that her income in the previous year (€23,000 per annum) was assessed against her husband's application for Jobseeker's Allowance (JA) (they are a family with 3 children). The information provider agreed with her that if the €23,000 was earned in employment, the weekly family means would be assessed at €229 a week which would give them a JA payment of €173 in contrast to the current assessment where all of the predicted income is taken into account (€442 per week) and no JA will be paid.

The information provider commented "*This situation is very unfair for self employed people because of both the different ways means of self-employed persons and employees are calculated and the fact that the estimated income is based on previous year's figures which in the current economic climate will not be realised for many self-employed people in the current year*".

#### Assessment of Spouse's Means for Jobseeker's Allowance

A perceived anomaly in the way means are assessed for Jobseeker's Allowance concerns applicants whose spouse is self-employed. Where a spouse is an employee, there are a number of disregards that apply – earnings of €20 per day for each day up to a maximum of €60 per week are discounted and only 60% of the balance is assessed as means. However, in the case of self-employed persons, all the income from self-employment is taken into account in the means test. The two following case examples illustrates the issue.

#### Case Example 12

A woman who had been in receipt of Jobseeker's Benefit applied for Jobseeker's Allowance. Her husband has been forced to declare himself as self-employed as his employer does not deduct tax or PRSI. His means were assessed as €421 per week and because this is above the basic SWA payment for a person, a qualified adult and 2 children (€372) they cannot receive any means tested payment including SWA. Neither do they qualify for Family Income Supplement or Mortgage Interest Supplement. If the man was deemed an employee (as he feels he should be), he would have a disregard of his earnings of €60 per week and only 60% of the balance would be assessed as means, which would qualify them for a payment of €156 per week. The CIS referred the case to the DSP Scope section and is awaiting a reply to determine if they consider that the man is in fact truly in a self-employed situation or if he is in fact an employee. "The family income would change significantly if the latter is deemed to be the situation" (Information Provider).

## Family Income Supplement (FIS)

Feedback from the CIB delivery partners refers to the fact that self-employed people frequently argue that they should be entitled to FIS on the same basis as employees on low income. (The administrative difficulties associated with extending FIS to the self-employed have been noted above in Section Two).

### Case Example 13

A woman called to the CIS and asked about FIS entitlement for her family (4 children). She is not working and her husband is self-employed and his income recently dropped to about €350 - €400 a week. "If he was an employee, this family could get FIS of €280 - €250 a week, but self-employed are not entitled to this payment at all" (Information Provider).

## Status of Employment

The issue of people registered as self-employed but effectively functioning as employees was noted by CIB delivery partners. Some people who were classified as self-employed (e.g., some people working in the construction sector) were *de facto* employees. Having the status of employee rather than that of self-employed evidently has significant implications for people's entitlement to insurance-based payments. The fact that not all people may be aware of their right to have their employment status clarified by the Scope Section<sup>37</sup> of the Department of Social Protection has been highlighted.

### Case Example 14\*

A man contacted CIPS regarding his entitlement to a social welfare payment. He had been refused Jobseeker's Allowance on the basis that his partner worked. On further investigation by CIPS, it appeared that when he arrived in Ireland he found it difficult to find work due to the language barrier. He, along with a number of colleagues, was advised by an employer to register as self-employed. He was not aware that this had any repercussions for him in the future. He continued working for this company for 4 years. According to Revenue and the DSP the man was registered as a self-employed person but on further investigation of the case by CIPS it appeared that he could potentially be considered an employee as he never provided equipment to carry out the work and had no control over the work or the hours of work. CIPS referred the case to the Scope section of the DSP who determined that the client was indeed an employee. He is now in the process of applying for his entitlements as an employee through both the DSP and the Rights Commissioner.

\*Case Example 12 also applies

## Jobseeker's Allowance as a Qualifying Payment

Jobseeker's Allowance (JA) is not only a key income support provision but also, and very importantly, a qualifying payment for access to a range of training, education and work experience options. Thus, qualifying for even a minimum payment is significant in that it opens up a range of options for self-employed people. The assessment of means from casual self-employment is, therefore, a crucial consideration (see Case Example 15 below).

Also, delays in the processing of claims or appeals results in people who may be eligible being excluded from progression and retraining options for significant periods of time. As one CIS information provider put it, "*I have self-employed people who have been waiting 10 months to date for an appeal to be dealt with*". Another issue identified is that a

<sup>37</sup> Where a person feels that their insurance status is not correctly classified, s/he can apply to Scope Section of the Department of Social Protection to have his/her employment investigated and the correct class of contribution established.

person must be long-term unemployed (in receipt of jobseeker's payments for 15 months) before s/he qualifies for the means-tested Fuel Allowance. This means that non-eligibility for Jobseeker's Allowance or delays in processing claims can have an important knock-on effect on people's access to other supports.

#### *Case Example 15*

A CIS client applied for Jobseeker's Allowance (JA) as he had significantly reduced income from self-employment as a carpenter due to the economic downturn. His application for JA was turned down as his weekly means were assessed as being greater than the weekly rate of payment for JA (€313). As a result of not qualifying for JA, he did not qualify for Back to Education Allowance or a Community Employment Scheme. The CIS requested the Deciding Officer to look again at the man's means. His income from self-employment was re-calculated and he was reassessed as having an entitlement to a minimum payment of €20 which made him eligible to access training and employment programmes.

about the extent to which applicants for social assistance payments were required to completely cease self-employment and, also, as to whether the provision of previous year's accounts was an essential requirement for a claim to be processed. A perceived anomaly in the way means are assessed for Jobseeker's Allowance (JA) for unemployed people whose spouse is self-employed was identified.

The experience of MABS and CISs is that former sole traders are finding it difficult to access social welfare supports to meet basic living expenses for themselves and their families. This may be as a result of a difficulty in providing up to date business accounts and/or validating current income levels.

The fact that self-employed people, regardless of level of income, are not eligible for FIS was highlighted. Another issue noted is that neither Rent Supplement or Mortgage Interest Supplement (MIS) is payable in circumstances where either the claimant or his/her spouse is engaged in 'remunerative full time work', defined as over 30 hours per week (irrespective of the level of income from such work). This provision applies to both employees and self-employed people.

The issue of people registered as self-employed but effectively functioning as employees, particularly in the construction sector, was noted and the fact that having the status of employee rather than that of self-employed evidently has significant implications for people's entitlement to insurance-based payments.

The fact that Jobseeker's Allowance (JA) is not only a key income support provision but also, and very importantly, a qualifying payment for access to a range of training, education and work experience options was highlighted. Thus qualifying for even a minimum payment is significant in that it opens up a range of options for self-employed people.

### **3.5 Summary of Issues Identified**

Feedback from information services identified in this section refers to self-employed people having difficulty coming to terms with the fact that they are not covered for insurance-based payments – Jobseeker's Benefit, Illness Benefit and, in the longer-term, Invalidity Pension. Significant delays were reported in the processing of claims for social welfare payments by self-employed people who have no work or whose income from such work has reduced. These delays were compounded in situations where an appeal had to be made. There is also evidence of an information deficit or lack of understanding by formerly self-employed in respect of the importance of making voluntary contributions to maintain their insurance record.

Difficulties experienced by self-employed people engaged in part-time work in establishing their level of income for means-testing purposes were identified. There was also some lack of clarity

## Section Four

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# Addressing the Issues

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### 4.1 Introduction

This section of the report sets out the broad parameters of the context within which the issues identified should be addressed. The need for the social welfare system to respond to the changing policy context within which self-employment is being actively promoted as a mechanism for helping to move out of the current recession is highlighted. Some options for extending social insurance cover for the self-employed that might be explored are listed and some of the related challenges are identified. While it is noted that the growing phenomenon of occasional and part-time working by self-employed people presents additional challenges, it is acknowledged that any changes to the provisions for self-employed cannot be determined solely by reference to the current recession which is having a severe effect on self-employed people, particularly those in the construction sector. The key role of information, advice and advocacy services is stated. Finally, a number of recommendations aimed at developing a more integrated response to the issues outlined are listed.

### 4.2 Main Issues and Concerns Identified

#### Absence of Insurance Cover for Short-term Unemployment and Illness

Illness, disability and unemployment are not covered under current provisions and there is no entitlement to Jobseeker's Benefit or Illness Benefit. It should, of course, be noted that these contingencies are covered under means-tested social assistance payments.

#### Lack of Insurance Cover for Long-term Incapacity

The lack of insurance cover for Invalidity Pension is an issue that has been widely acknowledged in policy discussions. In addition to the cost of provision, there is also a difficulty in providing insurance cover for the long-term Invalidity Pension for the self-employed without also providing cover for the short-term Illness Benefit. In particular, the question of how to apply any such provision in cases where people have a business that they can lease or sell to someone else presents challenges.

**Diagram 1: Summary of Issues and Concerns**



## No Provision for Credited Contributions

In contrast to employees, a self-employed person who was previously insured under Class S will not be awarded credited contributions if s/he becomes unemployed or sick. A key issue is that, for formerly self-employed people, the fact of receiving a social assistance payment and being on the Live Register does not provide for the award of credited contributions.

## Voluntary Contributions Required to Maintain Social Insurance Record

It would appear that many eligible people are not making such voluntary contributions in order to maintain their social insurance record and, as a result, there is a strong likelihood that a significant group of formerly self-employed people will be excluded from insurance-based pension entitlements in the future.

## Cost to Exchequer of Extending Social Insurance Cover

Extending social insurance based benefits to self-employed contributors would require substantial changes in the social insurance arrangements for the self-employed and a potential significant additional cost to the exchequer. The cost of additional social insurance benefits for the self-employed would have to be funded by increasing significantly the PRSI contribution rate for the self-employed.

## Potential Significant Cost for Self-employed Persons of Social Insurance Extension

The additional costs for full social insurance cover for self-employed persons would be substantial even if they were not required to pay the full cost. (Currently there is a combined rate of 14.75% for PRSI Class A employees compared to the 4% Class S rate).

## Access to Training and Labour Activation Programmes

Jobseeker's Allowance (JA) is not only a key income support provision but also, and very importantly, a qualifying payment for access to a range of training, education and work experience options. Thus qualifying for even a minimum payment is significant

for self-employed people in that it opens up a range of options. The assessment of means from casual self-employment is, therefore, a crucial consideration

## Eligibility for Additional Income Supports

Those retaining a residual or casual connection to self-employment sometimes experience difficulty in establishing the extent of their work and, consequently, their eligibility for these payments.

## Occasional and Part-time Self-employment: Difficulties in Assessing Current Income

In general it is more difficult to assess income from self-employment than from employment in that the latter involves a third party, the employer.

## Indebtedness among Sole Traders and Family Businesses

Small businesses and sole traders play a significant role in the economic life of both the local community and the Irish economy. However, many of these traders are now in financial difficulty and are finding it very difficult to access low cost or free business debt advice and social supports for themselves and their families. It is also the case that very often there is no distinction between the business and personal/family finances of those engaged in small businesses.

## Information Deficits

A number of information deficits exist in respect of self-employed persons' understanding of the nature of their social welfare contributions and their rights under the social welfare code. Clients of CIB delivery partner services frequently report that they were not aware that they had no entitlement to insurance-based unemployment and disability-related payments or that they could not get credited contributions. An information gap is also reported in respect of the need for formerly self-employed people to make 'voluntary contributions' to maintain their social insurance record.

## Changing Self-employment Scenario

There is an extent to which the issues identified arise because of the changing nature of self-employment and the fact that the social insurance system as initially conceived did not anticipate the current trends. This policy vacuum has come into sharper focus during the current economic downturn.

### 4.3 Responding to a Changing Policy Context

Since self-employment is likely to play a key role in moving out of the current recession, the social welfare system should as far as possible enable people to pursue employment and income generating opportunities in the knowledge that they will have appropriate social insurance protection in the event of sickness/disability or unemployment.

It is almost certain that frequent transitions into and out of self-employment will become a growing feature in the employment histories of the labour force.

A fundamental question arises as to whether or not a self-employed person should enjoy the same protection against social risks and labour related risks as employees do. In the current economic and labour market climate there are strong arguments for both the self-employed and employees enjoying similar protection. The promotion of entrepreneurship as a key component in moving out of the current recession will require looking at and addressing the economic risk for the self-employed. How to achieve this presents a significant challenge because of the perception that a self-employed person can influence his/her situation of unemployment more than an employee can and the related difficulty in ensuring equity and accountability for the taxpayer. The provision of full social insurance cover would have significant cost implications for the exchequer. It would also have substantial cost implications for self-employed people in that a major part of the 'employer's contribution' would presumably have to be borne by self-employed people themselves.

The risks associated with being self-employed need to be examined further so as to provide some additional options for insurance-based contributions

to cater for contingencies of unemployment, illness or disability. A further argument in favour of extending coverage is that it would bring the Irish social security system closer to the standards which exist in other countries. In many EU States coverage is more comprehensive, particularly in relation to work acquired injury.

### 4.4 Exploring Alternative Social Insurance Options

There is a need to explore further the feasibility of different insurance-based options taking into account: (a) the need for continued equity in the social insurance system; (b) the current economic and policy context where self-employment is being promoted as having significant potential for job creation; and (c) exploring the advantages and disadvantages of both optional and mandatory approaches. While full extension of insurance-based cover to self-employed people may not be realistic, it may be possible to look at more limited provisions for self-employed persons to cover unemployment and illness/disability. These could be a combination of higher contributions by self-employed people and shorter duration and lower levels of payment. However, the desirability of these approaches would have to carefully considered, given the current focus on simplification of schemes. It may also be the case that the extension of social insurance cover for illness/disability would have implications for income continuance plans.

In exploring alternative insurance-based options, there will be a need to look at how different options would apply in the case of the two types of self-employed persons already referred to – those who can sell or let their business during periods of unemployment or illness and those who cannot. Addressing this question may require a number of alternative approaches, for example,

- » Extension of cover to only some groups of self-employed persons, e.g., sole traders
- » Extension of cover on a voluntary basis to self-employed persons similar to that for share-fishermen/women

The following are identified as options for insurance cover that might be explored:

- » Provision for self-employed in the case of long-term illness/disability with an additional PRSI contribution by the self-employed
- » Provision for self-employed in the case of short-term illness/disability (Illness Benefit) with an additional PRSI contribution by the self-employed
- » Including provision for both unemployment and illness/disability (short and long-term) with an additional PRSI contribution by the self-employed
- » Making separate or additional provisions for incentives (e.g., tax relief) for people to buy private insurance to cover contingencies of unemployment and sickness/disability
- » Providing some form of short-term insurance-based payment (with an additional PRSI contribution) to self-employed people who take up training/education programmes

## 4.5 Extending Invalidity Pension Cover for the Self-employed

The introduction of cover for Invalidity Pension requires active consideration. As already stated, the National Pensions Board (1993)<sup>38</sup> noted that self-employed contributors are at the same risk of both temporary and permanent incapacity for work as employed contributors.

One of the conditions for receipt of Invalidity Pension is that the person must have been incapable of work for at least 12 months. This condition can be met where the person has been in receipt of Illness Benefit for 12 months. Illness Benefit is, therefore, a gateway payment to Invalidity Pension in many cases. Eligibility for Invalidity Pension is dependent on a person being clearly "(permanently) incapable of work". "Permanently incapable of work" is defined as having an incapacity which has existed for 12 months prior to the date of claim, and where the Deciding Officer or Appeals Officer is satisfied that the person is likely to be unable to work for 1 year from the date of claim. In practice, virtually all new entrants to Invalidity Pension have transferred to it from Illness Benefit. There is clearly a difficulty

in providing insurance cover for the long-term Invalidity Pension for the self-employed without also providing cover for the short-term Illness Benefit.

Developing transparent and workable protocols to apply the condition of 'permanent incapability for work' in cases where a business can continue to operate without the regular and active involvement of the owner clearly presents administrative challenges. There is also the issue of how to apply any such provision in cases where people have a business that they can lease or sell to someone else.

## 4.6 Short-term Benefits

Access to Illness Benefit is subject to medical certification of a person being unable to work due to illness. However, it is recognised that in some cases people getting Illness Benefit can do some work. In early 2012 a new scheme Partial Capacity Benefit replaced the previous exemption arrangements where people on Illness Benefit or Invalidity Pension could get permission to work part-time (known as an exemption) for rehabilitative or therapeutic purposes and keep their full social welfare payment. Applicants for the Partial Capacity Benefit scheme have the restriction on their capacity for work assessed as moderate, severe, or profound. They then get a percentage of their previous payment (either Illness Benefit or Invalidity Pension) and there is no restriction on the amount they can earn or the number of hours they can work. People can work in a self-employed capacity while getting Partial Capacity Benefit.

The lack of access to Jobseeker's Benefit is a key issue for self-employed people who cannot trade or who have reduced income. If provision were to be made for access to Jobseeker's Benefit by self-employed people, the challenge would be how to develop a system of validating that a self-employed person is either fully unemployed or unemployed for at least 3 days out of 6 which is a fundamental requirement of Jobseeker's Benefit. It is widely accepted that it would be difficult to monitor this in the case of self-employed people who own their own business. Also, there is the question of how to deal with situations where self-employed people could let or sell their business and still qualify for the Jobseeker's Benefit payment.

<sup>38</sup> National Pensions Board (1993), Developing the National Pension System: Final Report of the National Pensions Board, The Stationery Office.

## 4.7 Financial Implications of Changes to the PRSI System

Any changes to the PRSI system in order to provide access to short-term benefits for the self-employed, such as Jobseeker's Benefit would have significant financial implications and would have to be considered in the context of a much more significant rise in the rate of contribution payable. In this regard, it should be noted that the Actuarial Review of the Social Insurance Fund, 2005, noted that the self-employed received better value for money for their contributions when compared with employees (based on the level of employer and employee contributions). Extending social insurance based benefits to self-employed contributors would require substantial changes in the social insurance arrangements for the self-employed.<sup>39</sup> Spending on social insurance benefits would have to be funded by increasing significantly the PRSI contribution rate for the self-employed.

## 4.8 Occasional and Part-time Self-Employment and Means-testing

There is a need to clearly acknowledge the difficulties being encountered by self-employed people in the current economic climate and to identify ways of keeping as many people as possible in self-employment. For many, this will have to be on a casual or part-time basis in the short to medium-term. Many have been experiencing financial difficulty with their self-employment for a considerable period of time resulting in some non-profitable trading and increased indebtedness. In some instances people have been unrealistically trying to trade out of their difficulties in order to generate some household income while others are unable to acknowledge that their business is not viable as a means of generating an adequate household income.

In the event that a person wishes to continue to engage in some level of self-employment, there is often a lack of contemporaneous evidence to support his/her assertion that s/he is without sufficient work or adequate income from self-employment. The claimant may have difficulty in establishing the *bona fides* of his/her position, i.e., that while his/her self-employment is generating some income, such income is within the means test criteria for social assistance. An added difficulty is that there may be a naïve expectation on the part of some claimants that they should be believed without any supporting evidence to corroborate their stated position.

Anecdotal evidence suggests that some local social welfare offices have adopted a flexible approach whereby they are allowing people who pick up casual self-employment to simply sign off for the days they work and to receive a daily rate social welfare payment for each day that they do not work. In addition, the Department of Social Protection has recently introduced a fast-tracking system for people who sign off a jobseeker's payment to take up work for a short period (up to 4 weeks) or to go on a short training course (up to 8 weeks). In these cases, instead of closing the claim, the local office temporarily suspends payment for the duration of the work or training. Such flexibility is clearly required in the current challenging self-employment environment.

## 4.9 Role of Independent, Information, Advice and Advocacy Services

Independent information, advice and advocacy services can play an important role in the interface between self-employed people experiencing reductions in income from their businesses and the income support system. Self-employed people on low income need to be helped to understand the means test requirements and how their current level of income may be assessed. This requires assisting applicants to provide a clear and accurate picture of their current average income so that the Deciding Officer has all of the relevant information to enable him/her to make a fair and transparent decision. The application for assistance can be strengthened by comparison with people's situation in the previous year, e.g., a listing of one-off jobs that are no longer

39 The National Pensions Board (1993) estimated (assuming a similar pattern of claims based on experience of the schemes for employees) that the cost of extending Invalidity Pension to self-employed people could be as high as €85 million (or £67 million) in 1992 terms and concluded that it would be very expensive to extend social insurance cover to self-employed.

available and, therefore, cannot be reasonably included in any assessment of means. For example, a self-employed construction worker might have relied on a particular contractor over the last 5 years. That contractor might have now gone out of business and, therefore, income derived from that source in the past cannot have any meaning or relevance in the current year or for the foreseeable future.

#### **4.10 Addressing Information Deficits**

Having clear and accurate information on rights and entitlements is an essential requirement for people engaging with the social welfare system. While many self-employed people no doubt are aware of their social welfare entitlements and of their responsibilities in that regard, there are some who appear to be not fully aware of the provisions of their PRSI Class S contributions and/or of the need to maintain their social insurance record by way of voluntary contributions. Some of the grievance about lack of entitlement to short-term insurance benefits articulated by self-employed people may be associated with this lack of awareness.

There is a need for a targeted approach to informing self-employed people about the importance of making voluntary contributions towards protecting their social insurance record. While the Revenue Commissioners include specific reference to the Voluntary Contribution Scheme in yearly notices of assessment which issue to self-employed contributors, a more proactive approach may be required. This is particularly important in the context of the fundamental changes that are planned to the qualification procedures for State Pension from 2020, with a move away from yearly averaging towards a total contributions approach. A total of 30 years contributions will be required for full pension qualification (of which a maximum of 10 years may be credits).

Information about eligibility for social assistance payments for people engaged in occasional and part-time self-employment also needs to be proactively promoted as well as information about the need for such self-employed people when applying for social welfare assistance-based payments to provide full information about their means from all sources to enable their claims for to be processed expeditiously.

There is a need for a strong inter-agency approach to the dissemination of information in relation to all aspects of social welfare provisions for self-employed people. The CIB website *selfemployedsupports.ie* could be used to develop a targeted and collaborative initiative involving the CIB delivery partners, the DSP, the Revenue Commissioners and self-employed representative organisations.

#### **4.11 Addressing the Specific Policy Issues Identified**

Figure One summarises the issues and identifies ways in which they might be addressed. Recommendations in respect of each of these are listed together with the relevant administrative/ organisational context and the outcomes that could be achieved from implementing the recommendations.

*Figure One: Outline of Policy Issues and Recommendations*

<b>Policy Area</b>	<b>Recommendation</b>	<b>Context</b>	<b>Responsibility</b>	<b>Outcome</b>
1. <i>Links between Social Insurance Contributions and Benefits</i>	An overall reassessment of the links between social insurance contributions and benefits in the case of self-employed people needs to be carried out.	Advisory Group on Tax and Social Welfare	Department of Social Protection (DSP) and Government	A more comprehensive social insurance system
2. <i>Exploring options for Insurance Cover for the Self-employed</i>	Options for providing additional social insurance cover for the self-employed should be identified and explored.	<i>The need to provide more comprehensive social insurance cover for the self-employed</i>	DSP Government	Better social protection and related incentives for people to embark on entrepreneurship
3. <i>Interim provisions for unemployment and illness/disability</i>	Some provision should be made on an interim basis for people in regular and ongoing part-time self-employment pending a review of the current system of Class S contributions.	<i>Interim Social Welfare Provisions for Self-employed Persons</i>	DSP	A more equitable response to the difficulties experienced by self-employed people on low income
4. <i>Credited Contributions</i>	On the basis of their Class S record, self-employed who qualify for JA should be eligible for credited contributions.	<i>Credited Social Insurance Contributions</i>	DSP	Increased insurance-based social protection
5. <i>Voluntary Contributions</i>	There is an urgent need to proactively disseminate information about the importance of voluntary contributions for former self-employed people in order to minimise the number excluded from key aspects of the social insurance system.	<i>Protecting Social Insurance Coverage through Voluntary Contributions</i>	DSP CIB CISS MABS	Ensuring that self-employed people have an adequate social insurance record

Policy Area	Recommendation	Context	Responsibility	Outcome
6. Means-Testing	An additional mechanism for establishing actual means for JA in respect of self-employed people is required which, while based on legislative provisions, is pragmatic and transparent for both claimants and Deciding Officers.	Administrative	DSP	More efficient and transparent means-testing
7.	A pro forma list of the type of means-related evidence that can be marshalled to help process a claim for JA expeditiously should be drawn up and used by all Deciding Officers.	Administrative	DSP	Expediting the processing of JA applications
8. Improving access to Training, Education and Job Activation Programmes	Consideration should be given to finding mechanisms to ensure that self-employed people who do not qualify for JA or who are awaiting a decision on an application or an appeal can have efficient access to training, education and job activation programmes.	Job activation and training	DSP Dept. of Education and Skills Dept. of Jobs, Enterprise and Innovation FÁS/SOLAS.	Better access for self-employed people to training and job activation programmes
9. Joint Training for Service Providers	Joint training should be provided to frontline staff – DSP, CWOs, CISS, CIPS and MABS – to ensure that there is a collective understanding of the legislation and the obstacles being faced by decision makers, information providers and service users in respect of accessing income supports for self-employed people.	<i>A partnership approach to information, advice and advocacy in respect of supports for the self-employed.</i>	DSP CIB MABS	A more streamlined and efficient service

Policy Area	Recommendation	Context	Responsibility	Outcome
10. <i>Providing Better Safety Nets for self-employed people</i>	The structures for support for the micro-business sector built on a local enterprise and self-employed approach should ensure that safety nets (social welfare protection) remain for those setting up as sole traders.	<i>Supporting Entrepreneurship</i>	DSP Dept. of Education and Skills Dept. of Jobs, Enterprise, and Innovation FÁS/SOLAS	A more secure context for risk-taking by entrepreneurial sole traders
11. <i>Dealing with a Possible Disincentive to self-employment.</i>	While extending FIS to the self-employed would be administratively very difficult and costly, the negative impact of people opting out of self-employment altogether and becoming fully reliant on social welfare income needs to be considered.	<i>Supporting self-employed workers on low incomes</i>	DSP	A more supportive social protection context for sole-traders
12.	The provision which excludes people working more than 30 hours per week from rent supplement and Mortgage Interest Supplement should be amended.	<i>Implementing the recommendation in the Report of the Mortgage Arrears and Personal Debt Group and the DSP Review of MJS.</i>	DSP Dept. of Jobs, Enterprise and Innovation Dep. of Finance	A policy response to indebtedness among low income families
13. <i>Developing a Comprehensive Database</i>	There is a clear need to generate data on the numbers of those currently signing on who are not receiving credited contributions as well as on the number of self-employed persons who are not making voluntary contributions.	<i>Need for More Comprehensive Data on Self-employed social insurance coverage</i>	DSP CSO Revenue Commissioners	A comprehensive database on which to assess likely gaps in social insurance contributions

## Section Four: Addressing the Issues

Policy Area	Recommendation	Context	Responsibility	Outcome
14. <i>Helping Small Businesses/Sole Traders in debt</i>	<p>Consideration should be given to making an SWA payment for a period of 6-8 weeks to formerly self-employed people who are unable to establish entitlement to another social welfare payment.</p> <p>A mentoring service for sole traders/micro enterprises in difficulty should be established – preferably through structures such as the County Enterprise Boards or the proposed new network of Local Enterprise Offices.</p>	<p><i>Provision for emergency payments</i></p> <p><i>Provision of advice and support to troubled businesses</i></p>	<p>DSP BASIS County Enterprise Boards/Local Enterprise Offices MABS</p>	More small businesses being helped and supported to work through their trading difficulties.
15.				
16.				
17.				

Policy Area	Recommendation	Context	Responsibility	Outcome
18. <i>Improving pathways to services and supports for self-employed people whose businesses have failed</i>	<p>There is a need for a uniform and clear understanding on the part of all information, advice and advocacy services of the relevant statutory provisions relating to social welfare supports for the self-employed and their interpretation and practical application.</p> <p>19.</p> <p>There should be a clear focus on a collaborative approach between claimants, information, advice and advocacy services and DSP Deciding Officers to ensure that local review mechanisms are fully exhausted prior to having recourse to the Social Welfare Appeals Office (SWAO).</p> <p>20.</p> <p>Advocacy support should be available to assist self-employed people access JA as a supplement to income from part-time or casual self-employment, initially and very importantly at the local level and, where necessary, in the case of an appeal to the SWAO.</p> <p>21. <i>Enhancing information about social welfare provisions for self-employed people</i></p>	<p><i>Enhancing the role of Information, Advice and Advocacy Services and collaboration with DSP officials</i></p>	CISS, CIPS, MABS, CIB	<p>Maximising efficiency in the processing of social insurance claims</p> <p>Ensuring that blocks are dealt with at the most appropriate level</p>
			CIB, CIB Delivery Partners, DSP, Revenue, IBEC, ISME	<p>Ensuring that self-employed people are aware of their social welfare entitlements and tax and social insurance requirements</p>
			<i>The need for self-employed people to be fully aware of tax and social welfare provisions</i>	

# Summary of Recommendations

## Links between Social Insurance Contributions and Benefits

An overall assessment of the links between social insurance contributions and benefits in the case of self-employed people needs to be carried out. The role of the Advisory Group on Tax and Social Welfare set up to examine inter alia the entitlements of the self-employed and the elimination of disincentives to employment is an important starting point in this regard.

## Options for Insurance Cover for the Self-employed

There are five possible options for insurance cover that should be explored:

- (i) Provision for self-employed in the case of long-term illness/disability with an additional PRSI contribution by the self-employed
- (ii) Provision for self-employed in the case of short-term illness/disability (Illness Benefit) with an additional PRSI contribution by the self-employed
- (iii) Including provision for both unemployment and illness/disability (short and long-term) with an additional PRSI contribution by the self-employed
- (iv) Making a separate provision for incentives (e.g., tax relief) for people to buy private insurance to cover contingencies of unemployment and sickness/disability
- (v) Providing some form of short-term insurance-based payment to self-employed people who take up training/education programmes

A central question in respect of (i) and (ii) and (iii) would be whether such a provision would be mandatory or optional.

## Interim Provisions

- » Interim provisions should be made for people in regular and ongoing part-time self-employment pending a review of the current system of Class S contributions. These could include provision for payment to people along the lines of Farm Assist. (In the case of Farm Assist, means are assessed at 85% of total assessable self-employed income).

## Credited Contributions

- » On the basis of their Class S record, self-employed who qualify for Jobseeker's Allowance (JA) should be eligible for credited contributions while claiming JA.

## Voluntary Contributions

There is an urgent need to proactively disseminate information about the importance of voluntary contributions for former self-employed people in order to minimise the number excluded from key aspects of the social insurance system.

## Means-Testing

- » An additional mechanism for establishing actual means for JA in respect of self-employed people is required which, while based on the legislative principles, is pragmatic for both claimants and Deciding Officers.
- » A detailed pro forma list of the type of means-related evidence that can be marshalled to enable a claim for JA or SWA to be processed expeditiously should be available which should be used consistently by all Deciding Officers.

## Improving Access to Training, Education and Job Activation Programmes

- » Consideration should be given to finding mechanisms to ensure that self-employed people on low income who do not qualify for Jobseeker's Allowance or who are awaiting a decision on an application or an appeal can have access to training, education and job activation programmes.

## Joint Training for Service Providers

- » Joint training should be provided to frontline staff – Department of Social Protection, CWOs, CISs, CIPS and MABS – to ensure that there is a collective understanding of the legislation and the obstacles being faced by decision makers, information providers and self-employed service users in accessing income maintenance supports. The aim would be to ensure accuracy of information and a collaborative approach in meeting the requirements of the legislation.

## Providing Better Safety Nets for Self-employed People

- » The structures for supporting the micro-business sector built on a local enterprise and self-employed approach should ensure that safety nets (social welfare protection) remain for those setting up as sole traders.
- » While extending FIS to the self-employed would be administratively very difficult and costly, the negative impact of people opting out of self-employment altogether and becoming fully reliant on social welfare income needs to be considered.

## Dealing with a Possible Disincentive to Self-employment

- » The recommendation in the Report of the Mortgage Arrears and Personal Debt Group<sup>40</sup> and the Department's own internal review of the Mortgage Interest Supplement Scheme<sup>41</sup> for an amendment to the provision which excludes people working more than 30 hours per week from Rent Supplement and Mortgage Interest Supplement (MIS) should be implemented.

## Developing a Comprehensive Database

- » There is a clear need to generate data on the numbers of those currently signing on who are not receiving credited contributions as well as on the number of self-employed persons who are not making voluntary contributions.

## Helping Small Businesses/Sole Traders in Debt

- » Consideration should be given to making a Supplementary Welfare Allowance (SWA) payment for a period of 6-8 weeks to formerly self-employed people who are unable to establish entitlement to another social welfare payment. The principle enshrined in the Social Welfare Consolidation Act 2005 (Section 202) which allows for the payment of supplementary welfare allowance in an urgent case could be invoked in such situations.
- » A mentoring service for sole traders/micro enterprises in difficulty should be established – preferably through an existing structure such as the County Enterprise Boards or the proposed new network of Local Enterprise Offices.

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40 <http://www.finance.gov.ie/viewdoc.asp?DocID=6585&CatID=45&StartDate=01+January+2010>

41 Review of the Mortgage Interest Supplement Scheme (2010), [http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp\\_rev/Documents/misreviewJuly2010.pdf](http://www.welfare.ie/EN/Policy/CorporatePublications/Finance/exp_rev/Documents/misreviewJuly2010.pdf)

- » A module should be added to BASIS<sup>42</sup> covering core material relating to troubled micro-enterprises.
- » Consideration should be given to establishing a separate support for sole traders in debt along the lines of the Business Debtline in the UK which would involve MABS and the City and County Enterprise Boards/new network of Local Enterprise Offices.

### **Improving Pathways to Services and Supports for Self-employed People Whose Businesses Have Failed**

- » There is a need for a uniform and clear understanding on the part of all information, advice and advocacy services of the relevant statutory provisions relating to social welfare supports for the self-employed and their interpretation and practical application.
- » There should be a clear focus on a collaborative approach between claimants, information, advice and advocacy services and DSP Deciding Officers to ensure that local review mechanisms are fully exhausted prior to having recourse to the Social Welfare Appeals Office.

- » Advocacy support should be available to assist self-employed people access Jobseeker's Allowance as a supplement to income from part-time or casual self-employment, initially and very importantly at the local level and, where necessary, in the case of an appeal to the Social Welfare Appeals Office.

### **Improving Information Dissemination**

All agencies engaging with self-employed people should adopt a proactive approach to information dissemination on all aspects of social welfare provisions for self-employed people. The CIB website *selfemployedsupports.ie* could be used to develop a targeted and collaborative initiative involving the CIB delivery partners, the DSP, the Revenue Commissioners and self-employed representative organisations.

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42 BASIS (Business Access to State Information and Services) was established in 2000 as part of the Irish Government Action Plan 'Implementing the Information Society in Ireland'. The Department of Enterprise, Trade & Innovation is responsible for the development of the BASIS initiative. The aim of the BASIS website is to deliver Government information and services to business 24 hours a day, seven days a week, from a single access point and with a consistent look and feel

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The Citizens Information Board provides independent information, advice and advocacy on public and social services through [citizensinformation.ie](http://citizensinformation.ie), the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides the National Advocacy Service for people with disabilities.

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