

**Money Advice and Budgeting Service and Citizens
Information Board**

Personal Insolvency Bill, 2012

A submission to the Department of Justice and Equality – September 2012

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Executive Summary

This submission, endeavours to view the Bill from the MABS clients' perspective and, from there, proposes a response which, it is considered, will enhance the efficacy of the new structure, particularly for the most vulnerable of debtors.

This response includes the following recommendations:

- Alignment of the definition of "Principal Private Residence" to the definition of "primary residence" under the Code of Conduct on Mortgage Arrears.
- Clarity on the definition of "security" as it refers to credit union, and other, unsecured debts.
- Introduction of financial inclusion measures to ensure that those subject to an insolvency arrangement are not excluded from financial services.
- Introduction of a "pre-action protocol" for voluntary arrangements.
- Introduction of a right of appeal for the debtor.
- Greater access to insolvency arrangements to take account of unexpected life events.
- Revision of the application process for Debt Relief Notices, to include online applications, to maximise available resources and cater to varying levels of debtor capacity.
- Transparency of fees charged by approved intermediaries and personal insolvency practitioners.
- Increasing / removing the debt threshold for Debt Relief Notices to provide a more comprehensive solution to those with a slightly higher level of debt but who would not be eligible for a Debt Settlement Arrangement.
- Greater clarity in relation to the calculation of disposable income with reference to essential household expenditures.
- Greater clarity in relation to asset valuation and an increase of the assets' threshold, particularly in relation to the debtor's car.
- Reducing the supervision period for Debt Relief Notices from 3 years to 1 year, as per the Heads of Bill.
- A removal of the requirement for court approval, in particular in relation to Debt Relief Notices, in order to encourage more debtors to engage with the process.
- An amendment to the treatment of increased income / monetary gifts to encourage debtors' participation in the workplace where possible.
- Clarity in relation to the application process for joint debts under a Debt Settlement Arrangement.
- Reduction of the range of opportunities for creditor veto, as they could act as a deterrent to the debtor in entering the various arrangements.
- That an initial review of the practical implementation of the legislation takes place after one year.
- Limited submission in relation to the proposed Bankruptcy provisions.

Introduction

The Personal Insolvency Bill (the Bill) was published on the 29th June 2012 following the publication in January of the draft Heads of Bill on which MABS made a submission on the 21st February 2012.

Following the format of this earlier submission, this document considers the Bill, and the various insolvency arrangements, as they apply to the debtor and to the MABS organisation.

General Administrative Issues

Definitions

There are concerns with regard to the definition of terms used in the proposed legislation as they apply to the debtor's case. In particular:

"Principal Private Residence" is not defined in accordance with the definition of "primary residence" in the Central Bank's Code of Conduct on Mortgage Arrears which includes not only the family home of the debtor, but a property not occupied by the debtor but being the debtor's only residential property in the State.

"security" the definition refers to a "charge, lien, pledge..." over any property. In the case of all loans with the credit union, and some other unsecured debts with other financial institutions, it is a condition of the loan documentation that a lien is placed on all present and future shares and deposits held in the credit union by the debtor. This would have the effect of making all credit union loans *de facto* secured debts.

Financial Exclusion

A 2011 ESRI report¹ considered the liquidity of a household (i.e. when asked "Can your household afford an unexpected expense of €985² without borrowing? the response is "That the household is unable to remedy the situation by recourse to (financial and non-financial) assets..." – Davydoff et al. 2008). Of those households surveyed, 67.9% of the households in the bottom quintile responded 'no' to this question. Furthermore, there was found to be a high overlap (97%) between those in persistent arrears and those unable to raise such contingency funds.

The above indicates the need for a level of contingency /emergency fund for over-indebted households which is currently lacking in the Irish market. Accordingly, when considering applications for any of the mechanisms proposed by the Bill, care must be taken to ensure that these over-indebted households are not barred from obtaining emergency credit from reputable sources, forcing them to seek high-cost loans from moneylenders, again contrary to the Strategy for Financial Inclusion (2011).

While we appreciate the requirement to ensure that debtors who have been granted an insolvency arrangement do not engage in reckless borrowing, the borrowing thresholds proposed during the course of the insolvency arrangements (€650 for DRN and DSA; €1,000 for PIA) are prohibitively low should a debtor have a requirement for emergency credit. We would therefore suggest an

¹ Financial Exclusion and Over-indebtedness in Irish Households, Helen Russell, Bertrand Maitre and Nora Donnelly, ESRI, 2011

² This figure was later updated to €1,085.

exception to the disclosure requirements for specified emergency borrowing and also, in this context, highlight the requirement for a social lending mechanism,

Access to Insolvency Arrangements

We would suggest amending the limitation on each insolvency arrangement, currently proposed as once per lifetime, (e.g. where the debtor was very young on first entering the arrangement or in the event of an unexpected life event) to enable a debtor to access the arrangements after a specified period.

There is very little detail in the Bill on the procedure in the Circuit Court for dealing with personal insolvency arrangement applications. In the event that it is not a purely administrative exercise, debtors should be obliged to seek independent legal advice before entering into a court process and, as appropriate, the relevant fees should be payable by the credit industry.

Information Requests & Information Provision

The Insolvency Service is granted the power to request high levels of information from numerous sources in relation to the debtor's affairs. We would be concerned that the collection and processing of this information by all of the parties and in particular private practitioners is in full compliance with the data protection legislation.

Furthermore, we would have similar concerns in relation to the gathering of sensitive personal data on a Prescribed Financial Statement to be distributed to all creditors, the Insolvency Service and the appropriate court, at which point it becomes a matter of public record, and would submit (while acknowledging that such information is not compulsory where it has been provided to the authorised intermediary / personal insolvency practitioner and the Insolvency Service) that the inclusion of this type of data on a generic form would be unsuitable and disproportionate.

Voluntary Arrangements

Once the pros and cons of each option are explained to debtors, it is possible that many will opt to enter into a voluntary arrangement with their creditors (as in the case in the UK where the level of formal insolvency arrangements is decreasing³). In these circumstances, creditors must be encouraged and incentivised to work with their borrowers to come to affordable, sustainable arrangements which, should circumstances warrant, result in the settlement of a portion of the debt after a sustained repayment period and, in this regard, we refer to the Debt Settlement Pilot operated by MABS, with the assistance of FLAC, and the Irish Bankers Federation between 2002-2006 (as outlined in our previous submission).

In this regard, we again refer to the recommendation of the Law Reform Commission⁴ of the introduction of a "pre-action protocol" in proceedings against debtors which would oblige both creditors and debtors to consider engaging in an arrangement or voluntary debt management plan prior to a petition for bankruptcy, and suggest that such a protocol be included in the Bill to ensure that creditors and debtors attempt to come to a realistic, affordable and sustainable repayment plan for the repayment of debt *prior* to engaging with the statutory arrangements.

³ <http://www.insolvencydirect.bis.gov.uk/otherinformation/statistics/201202/index.htm>

⁴ Personal Debt Management and Debt Enforcement Final Report, December 2010, pg.152

Debt Relief Notices (DRN)

Eligibility Criteria

In the submission of 21 February, the suitability of the debt threshold of less than €20,000 and disposable income threshold of €60 per month were queried. These queries are reiterated in this document on the basis that only an estimated 14% of MABS clients would be likely to eligible for a Debt Relief Notice, (this figure will be lower if the concerns raised in relation to the status of credit union debts are realised in the legislation).

Furthermore, in calculating the net disposable income in accordance with section 23(2), no allowance is made for the cost to the debtor of maintaining other household members and dependents and we would, therefore, suggest an inclusion to the effect that regard shall be had to the personal circumstances and household composition of the debtor for this purpose. We would also welcome, particularly if this process was extended to include private as well as public approved intermediaries, standard guidelines on what constitutes “reasonableness” and suggest that same be consistent with the National Action Plan for Social Inclusion, in particular the definition of poverty contained therein.

In recent years, with the increase in redundancies, resulting in lump sum payments, many debtors may have discharged their most expensive debt (e.g. credit card, moneylender) first. As section 23(10) prohibits the giving of preferences to otherwise specified creditors, these debtors may find themselves ineligible for a DRN. Again, this would appear unreasonable in the circumstances and we would suggest that some discretion is allowed in such cases.

Section 23(7) sets out the criteria for determining the likelihood of the debtor remaining insolvent, but makes no reference as to who makes this determination. As the approved intermediary processes the applications on behalf of the debtor for the approval of the Insolvency Service, it is likely that it will be the Insolvency Service who will make this determination, however we would welcome clarity on this point in order to prevent confusion and delays for applicants.

Income and Expenditure

We note that section 23(5) specifically excludes Child Benefit from the calculation of disposable income. Other State payments, such as Domiciliary Care Allowance and Family Income Supplement could also be excluded as to include these payments, would unfairly prejudice the debtor and exacerbate their circumstances.

It is submitted also that robust guidance, taking account of the wealth of research in the area, be provided for the calculation of reasonable household expenditures to ensure that debtors have sufficient retained income to enable them to participate in Irish society, as required by the National Action Plan on Social Inclusion. Such guidance should include specific reference to how household expenditures are treated in cases of single debtor applications, particularly where the spouse of that debtor gains employment / receives an income in salary.

Pre-Meetings and Face to Face advice

Section 24(2) provides for a pre-meeting with the debtor to advise of options and determine the suitability of a DRN in the debtor's circumstances, followed by a meeting with the approved intermediary to complete the Prescribed Financial Statement and make the application. Where circumstances are such that the debtor has sufficient capacity to do so, mechanisms should be implemented to empower the debtor to make the application to the approved intermediary online, with a verification process for the approved intermediary to determine the suitability of a DRN.

Fees

Section 20(2) provides for such fee, as may be prescribed, to accompany the application for a DRN. We would suggest that this fee be determined with reference to the debtor's disposable income (i.e. less than €60 per month) and capable of waiver for those most vulnerable.

NINA and LISA

The Debt Relief Notice appears to be aimed at those debtors with No Income, No Assets (NINA), however with the majority of MABS clients being Low Income, Some Assets (LISA), we would recommend an expansion of these criteria if this mechanism is to be effective as a means of providing over-indebted debtors with a fresh start.

Court Approval

There are concerns that the proposed process of seeking the approval from the Circuit Court for what could be a very low level of debt, would not only deter the debtor from applying for a DRN⁵ in what is intended to be a non-judicial debt settlement process, but would also inevitably lead to delays in the process and an administrative burden on the Courts Service.

Assets

There is no provision contained in the proposed legislation to determine the market value of the debtor's vehicle similar to the valuation provisions in respect of assets considered in an application for a Debt Settlement Application or Personal Insolvency Application. Guidance on this point would be welcomed.

Many debtors, particularly those engaged in sales work or those living in rural areas require a car as a means to continue employment or participate meaningfully in society. In these circumstances, a case may be made to exclude the car, making it part of the essential household items required by the debtor.

We further suggest an increase in the asset threshold as it applies to the debtor's car as the current threshold may exclude otherwise eligible applicants.

A right to 'set-off' is contained in section 129 and it is submitted that this be compulsory in the case of shares, bonds or other assets that are easily capable of being liquidated. The Bill provides that the right 'may' be applied, which would imply that this is a matter for the creditor's discretion. If the

⁵ In this regard, reference is made to the FLAC research 'To No One's Credit', 2009, which explored the reasons why debtors did not attend court hearings for debt.

language is to remain the same, it is submitted that it is a matter for the Insolvency Service to determine whether such right applies in the circumstances.

An increase to the asset threshold of €400 would be welcomed to permit the debtor to save a small amount for contingencies. Research carried out by the ESRI indicates that an amount of €1,085 should be built up over time to prevent a debtor borrowing for essential household items or repairs, and it is therefore submitted that this is a vital requirement, particularly in light of the increase of the supervision period for a DRN from one to three years.

We understand that the Insolvency Service will provide guidance on what shall be included as part of essential household items and would submit that computers required for work or school be included as part of a non-exhaustive list as we are advised by colleagues in the UK that negotiations for the inclusion of computers in this list in individual cases can take a significant amount of time.

Finally, on this point, with effect from 6 April 2011, “approved pensions”⁶ are not included in the definition of assets for the purpose of a Debt Relief Order⁷. A similar provision should be included in the Bill to ensure otherwise eligible debtors are not excluded from applying for a DRN by virtue of their pension.

Credit Unions

A number of issues arise in relation to the treatment of credit union debts under the proposed legislation.

a. Definition of Security

As credit union loans are usually secured over present and future shares and deposits held with the credit union, they will fall within the current definition of a secured debt. As secured creditors may be included in a DRN at their discretion, they may elect not to be a party to it, thereby impacting on the debtor’s ability to resolve his / her problems.

b. Life Savings Insurance

Some credit union members build up their savings in the credit union as a form of life assurance policy where the credit union operates a ‘Life Savings Insurance’, payable on the death of the member in proportion to the member’s savings at the date of death. Where a debtor has no pension or other life assurance policy, and would otherwise qualify for a DRN, deposits of this nature could be excluded from the definition of assets for the purpose of a DRN application⁸.

c. Salary deduction and preferential creditors

Section 23(10) provides that a debtor will have been deemed to prefer a creditor if, at a time when he was insolvent, he makes a payment to a specified creditor that has the effect of putting that creditor into a better position than if he had been part of a DRN. In MABS’ experience, some debtors have experienced difficulty in reducing the amounts deducted by industrial credit unions (i.e. credit unions operated through an employer, with deductions taken

⁶ Defined by s.11 of the Welfare Reform and Pensions Act, 1999

⁷ Rule 3 of The Insolvency (Amendment) Rules, 2011

⁸ In this regard we view such life savings insurance as having a similar status to ‘approved pensions’ under the UK’s DRO process as referred to on page 7.

at source from the debtor's salary), even where that credit union is presented with evidence that the debtor is insolvent and struggling to repay other, essential, expenditures. It would be unreasonable, in these circumstances, that the debtor would not be eligible for a DRN.

Supervision Period and Future Income

We note that the proposed supervision period of 3 years mirrors the period proposed in the bankruptcy legislation, replicating the structure in other jurisdictions, however we would submit that 3 years is excessive given the circumstances of the borrower.

While there is no expectation that the debtor will make repayments throughout the supervision period, in cases where the debtor is in a position to make any payments (due to an increase in income / a gift), we understand, pursuant to section 34, that the Insolvency Service shall distribute these payments. Clarity would be welcomed on whether the Insolvency Service would also be engaged in supervising the debtor, and any change in circumstances, during the supervision period.

Furthermore, the requirement to surrender 50% of any gift or payment received in excess of €500, and 50% of any increase in income in excess of €250 per month may act as a deterrent for some debtors to entering into the workforce for the duration of the supervision period. We would suggest that the additional income threshold be increased to €400 per month, in line with similar provisions applicable to certain payments from the Department of Social Protection and that it may also be more appropriate to provide for the surrender of 50% of the sum *in excess of* €500 (in the case of gifts or payments) or the increase *in excess of* the additional monthly income threshold.

Creditor Veto and Termination

The balance of power in a DRN is weighted in favour of the creditor who may object during the application process and who continues to have a right to veto for the duration of the supervision period.

Section 42(4) specifically provides that the discharge of the debtor's liability for the debt at the end of the supervision period does not release any other person who may be liable for that debt. Accordingly, a creditor may choose to pursue a guarantor without following due process for recovering the debt from the original debtor.

Debtor Right to Challenge

While the Insolvency Service and the creditor have the right to apply to the Circuit Court for a termination of the DRN, the debtor does not appear to have any right to defend himself against this termination in the event that the Insolvency Service is acting on misinformation in doing so or, indeed, to challenge or appeal any other aspect of the process. In order to properly address the balance of power, currently weighted in favour of the credit sector, we would suggest the inclusion of a non-judicial appeals mechanism for debtors wishing to avail of the DRN process.

Registers

While the Bill provides that information is retained on registers held with the Insolvency Service for specified periods of time only, such registers are available for public inspection at which point there is no control over the length of time a person or body may retain it.

Debt Settlement Arrangement (DSA)

Joint Debts

Section 50(3) provides for a joint application in the event of a joint debt, however it is unclear if a debtor with debts in sole and joint names would be required to make multiple applications, and incur multiple costs.

Assets

Section 52(2)(c) takes “*current and prospective assets...*” into account in determining the likelihood of a debtor becoming solvent within the next five years on an application for a DSA. As a spouse may inherit the assets of their partner on death, we would welcome clarity on whether those assets would be included in such determination.

Connected Persons and Right to Vote

The Bill provides that connected creditors cannot vote in favour of a DSA however, as this may unfairly prejudice the debtor on a vote requiring 65% of the vote to pass a DSA, we would suggest an alternative requirement for the connected creditor to disclose their connection to the debtor to the other creditors.

Creditor Right to Veto

The creditor has several opportunities to veto the DSA throughout the application process: an appeal on application by the Personal Insolvency Practitioner (PIP) for a protective certificate, a 65% majority requirement on voting at a creditors’ meeting, a right to object to the DSA to the appropriate court within 21 days of the DSA being approved at a creditors’ meeting, and a right to terminate at any point during the term of the DSA on specified grounds. This not only acts as a potential deterrent for the debtor to engage in the process but, as the DSA application requires a significant undertaking of work by the PIP, may encourage the PIP to advise debtors towards the bankruptcy process.

Furthermore, there appears to be an anomaly in the Bill whereby section 69(2) refers to creditors having 21 days to object to the passing of a DSA, while section 72(1) provides for the court approving the DSA where no objection is lodged by a creditor within 10 days of it being passed.

Preferential Creditors / Secured Creditors

It is noted that the Revenue Commissioners are both an excluded debt and a preferential creditor by virtue of the fact that they are included in the list of excluded debts in section 59(2)(c) and in the definition of preferred creditors in section 61(1) which makes reference to the definition in the Bankruptcy Acts which specifically reference the Revenue Commissioners. Clarity would be welcomed on how same should be treated in a Debt Settlement Arrangement application.

Court Approval

As in the case of DRN, there is a high level of recourse to the appropriate court in a DSA application process which may act to deter the debtor from engaging.

Personal Insolvency Arrangements (PIA)

General

Section 9(1)(e) provides that the Insolvency Service is obliged to provide information to the public on the working of the legislation and, as such, debtors may seek information directly from the Insolvency Service or any agency directed to provide such information on their behalf. However, as the eligibility criteria are quite nuanced, some debtors may require robust advice from other sources, such as MABS, with possible resource implications.

Once the debtor has provided the information to the Personal Insolvency Practitioner (PIP), the PIP develops the proposals and makes the application for the protective certificate (section 88), puts forward the proposals for the PIA (section 93) and calls the creditors' meeting (section 105). The debtor must agree to the terms of the PIA (section 94 (1)) and the PIP will likely discuss these terms with him, however the PIP is not an advocate on behalf of the debtor and, therefore, the debtor has little control of the process once the protective certificate has issued.

While there are timescales in relation to the service of notices and the calling of creditor meetings, a lot of the work is front-loaded, in the preparation of a Prescribed Financial Statement and the draft terms of the PIA. This work is not time-limited in the Bill and, in order to prevent undue delays, specific and adequate timelines would be welcomed to avoid unnecessary delays.

Creditor Right to Veto

As in the case of DSAs, creditors have numerous opportunities to object to, or veto, the application process: an appeal on application by the PIP for a protective certificate, an overall majority of 65% with 50% each of secured and unsecured creditors on voting at a creditor meeting, a right to object to the court within 21 days of the PIA being approved, and a right to terminate at any point during the Personal Insolvency Arrangements (PIA) on specified grounds. In addition, secured creditors have several options, under section 98, to protect their security after discharge of the PIA. This not only acts as a potential deterrent for the debtor to engage in the process but, as the PIA application requires a significant undertaking of work by the PIP, may encourage the PIP to advise debtors towards the bankruptcy process.

As with the DSA, there appears to be an anomaly in the Bill whereby section 107(2) refers to creditors having 21 days to object to the passing of a PIA, while section 110(1) provides for the court approving the PIA where no objection is lodged by a creditor within 10 days of it being passed.

Court Approval

As in the case of DRN and DSA, there is a high level of recourse to the appropriate court in a PIA application process which may act to deter the debtor from engaging.

Secured and Excluded Debts

While not specifically included in the list of *excluded debts*, a judgment (other than a judgment in relation to family maintenance payments which are listed as excluded debts) may come within the definition of 'security' as it is technically a type of lien or charge over the debt, even where this was

not the intention of the Bill. Accordingly, a specific exclusion of judgments (other than judgment mortgages) would be welcomed in the definition of security.

Concerns remain about the inclusion of judgment mortgages in the definition of secured debt as this may encourage unsecured creditors to bring legal proceedings against their debtors to secure the judgment against their property. While the Annual Report of the Courts Service⁹ indicated an appreciable rise in judgment mortgages in 2011 (16% on 2010) and judgments for the recovery of debts (21% rise in the Circuit Court, constituting 50% of all civil claims raised there, and 35% in the High Court), anecdotal evidence from MABS staff supports the assertion that this figure has continued to rise at pace since the introduction of the Heads of Bill in January and suggests that some creditors have brought such action, even where agreed repayments are in place. Accordingly, we would submit that were the inclusion of judgment mortgage creditors to remain, that the registration period be extended from three months to two years prior to the date the application for a Personal Insolvency Arrangement is made.

Review

Finally, it is envisaged that the Minister will review the efficacy of the Personal Insolvency Arrangements after 5 years. As per the previous submission, it is suggested that, reviews be carried out annually, at least initially, to ensure compliance by creditors, debtors and Personal Insolvency Practitioners with the obligations attaching to their respective roles in such arrangements, and also to establish a picture of the profiles and perspectives of the debtor in going through this process.

Bankruptcy

While, as acknowledged previously, bankruptcy is likely to remain outside the remit of MABS, for completeness we re-state our limited submission in this regard:

- a) We would submit that the proposed threshold for retention of household goods and tools of the debtor's trade etc., be increased from €6,000 to €10,000 as, depending on the nature of the self-employment, the debtor may require a vehicle and heavy machinery which would cost in excess of the proposed amount.
- b) We welcome the reduction in the period for automatic discharge from bankruptcy, however we submit that the potential additional period of five years attachment of earnings is excessively punitive, and may preclude the debtor from participating meaningfully in society.
- c) The right of objection by a creditor to a debtor's discharge from bankruptcy must be subject to clearly defined parameters and not open-ended on the basis of a subjective definition of "wrongful conduct".

The Personal Insolvency Practitioner

There is no detail as to the remuneration structure for the Personal Insolvency Practitioner. This role is critical, and how the fees associated with this service are to be calculated is of great importance.

⁹ Chapter 4, Section 3, available online at [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/1EAF33B0C5E24F980257A3E0037FCC9/\\$FILE/Courts%20Service%20Annual%20Report%202011.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/1EAF33B0C5E24F980257A3E0037FCC9/$FILE/Courts%20Service%20Annual%20Report%202011.pdf)

If the fee is to be commission-based, the Personal Insolvency Practitioner may be incentivised to seek greater levels of recovery of the debt on behalf of the lender, perhaps to the detriment of the borrower. The fee for the Personal Insolvency Practitioner must be calculated so that it is not linked to the value of the debt recovered, as this may also preclude those who are most vulnerable, who cannot afford high level payments, from accessing any arrangement administered by a Personal Insolvency Practitioner, thereby creating a market gap.

Furthermore, the process followed by a Personal Insolvency Practitioner, the criteria applied in making proposals, any affiliation or connection with any lending institution, must be transparent and defined by Codes of Conduct developed by the Insolvency Service.

There is no detail as to the qualifications necessary for the role of the Personal Insolvency Practitioner. We would contend that there is a need for strict regulation and licensing in this regard, to ensure that both the borrower and the lender may trust in the integrity of the post.

Proposed Role for MABS

It is possible that MABS will have a number of distinct roles in relation to its intended target group following the introduction of the legislation. These include:

- the current role in negotiating voluntary arrangements both as a solution in its own right, which has proven extremely successful to date, and as a supplementary solution for borrowers who have been denied a Debt Settlement Arrangement or Personal Insolvency Arrangement and who are reluctant to engage in the Bankruptcy process,
- the processing of Debt Relief Notices as an approved intermediary, and;
- the possibility of providing Personal Insolvency Practitioner services for the MABS client base group.

These roles are examined in more detail below.

MABS and Voluntary Arrangements

MABS, as the only free, independent and confidential service in the State providing support to over-indebted borrowers has a long and successful history in negotiating realistic and affordable payment arrangements on behalf of its clients. Key objectives of that approach are; 1) ensuring the sustainability of those arrangements and, 2) the consistent empowerment of its clients to engage in a meaningful way with their creditors.

Building on this experience MABS NDL has been instrumental in the development of protocols across the credit industry, and the negotiation of robust consumer protection mechanisms to provide adequate support and protection of the wider consumer cohort.

Were voluntary arrangements recognised in the proposed legislation as an important part of the debt resolution process in the manner proposed above MABS would have a key role in this regard in relation to its intended target group. Further, the current high level of support provided by MABS in this area would be significantly enhanced by an obligation on the credit industry to engage. It is also foreseeable, given the eligibility criteria and the numerous opportunities for a creditor to veto an application that failed applicants will express an interest in voluntary arrangements resulting in an

increase in those wishing to avail of MABS services, requiring a corresponding increase in resources to the organisation.

Some recent, and poignant, examples of the positive impact of the work carried out by MABS money advice staff can be seen in 'Lifting the Load'¹⁰, research commissioned by Waterford MABS and supported by the Citizens Information Board and MABS NDL, which explores the impact of mortgage debt from a borrower's perspective and provides numerous quotes from MABS clients on the supports provided.

MABS and the Approved Intermediary Role

MABS currently perform the role of trusted intermediary and will perform the role of approved intermediaries as assigned with regard to Debt Relief Notices, notwithstanding the concern raised previously that MABS could find nearly all candidates seeking a Debt Relief Notice coming to them, simply because there is no other cost-free intermediary service available.

No detail is provided for the regulation of approved intermediaries, or of what 'approved' is to constitute, save for the requirement of a licence to be issued from the Insolvency Service. Neither is there any detail offered on how remuneration for the services of an intermediary might be calculated, if any, or paid. Given that MABS is the only free debt advice service, it is logical to assume that any person wishing to apply for a Debt Relief Notice will do so through MABS.

MABS and the Personal Insolvency Practitioner Role

As this legislation takes shape, a new market will open for the provision of intermediary and personal insolvency services. There is a social rationale for the maintenance of MABS in this space as a public service. It can continue as currently constituted, but with the possible addition of a team of Personal Insolvency Practitioners available within its walls. Although the services of these Personal Insolvency Practitioners will not be free to the public, they will be free from profit considerations (and therefore will be more likely to work towards affordable, sustainable repayment arrangements regardless of price structure), targeting resources to make the full suite of options available based on criteria that reflect the MABS client base. This proposal maintains for the client a consistency of process for the resolution of their difficulty in their particular circumstances.

As stated in the previous submission, MABS advice staff already performs many of the functions outlined as those intended for performance by a Personal Insolvency Practitioner, and those not currently within the role of an Adviser could be developed and included. Whether MABS staff would satisfy the regulatory standards for this role remains to be seen, but it should be noted that MABS have begun to embark on an accredited programme of certification.

It is not possible for the same person to act as both an advocate and as a Personal Insolvency Practitioner for a borrower, as while the Personal Insolvency Practitioner will have an advisory function, it cannot engage in advocacy work on behalf of the borrower, and so where MABS may employ Personal Insolvency Practitioners at some stage, structures would need to provide for separation of functions between the two. Personal Insolvency Practitioners within MABS should

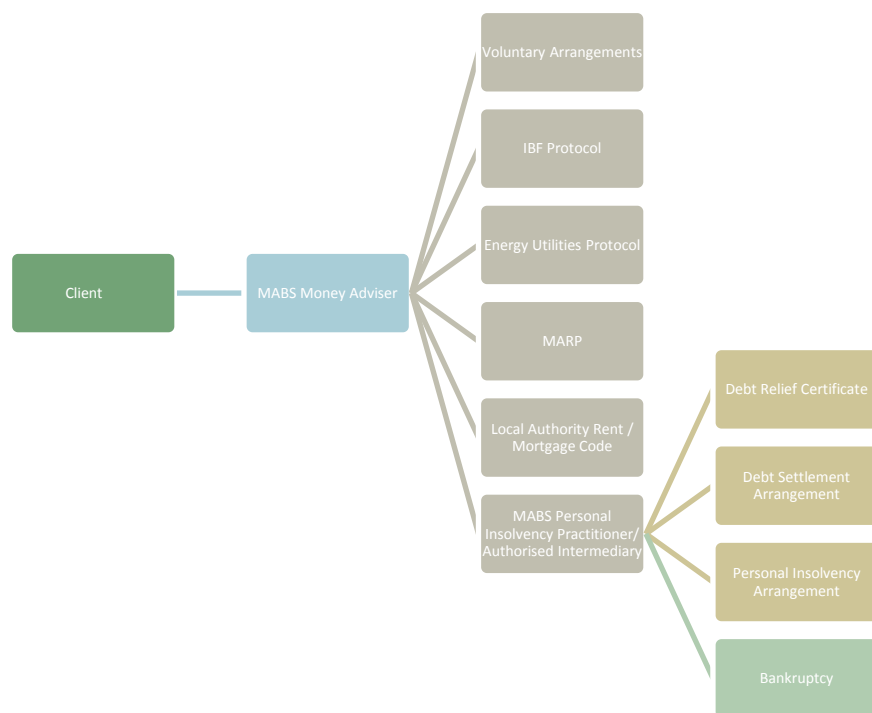
¹⁰ Lifting the Load, Norris and Brooke, commissioned by Waterford MABS, 2011

operate on the same footing as their commercial counterparts, with fees payable for their services creating a revenue stream.

MABS is a strong brand, nationally and internationally recognised and respected in the area of holistic debt advice. The introduction of a Personal Insolvency Practitioner system would only strengthen this brand, relying as it would on the vast experience and expertise within the MABS and the current relationship of MABS with all creditors who acknowledge the integrity of the MABS process.

Accordingly, MABS would envisage a space within the service for a Personal Insolvency Practitioner service, focused on MABS clients and the MABS client base, regulated and remunerated in line with commercial operators but with a MABS ethos and approach to consumer protection, to which MABS advisers may make referrals.

Figure 1- Potential Structure



Appendix 1 – The Origins and Experience of MABS

Origins of MABS

MABS was established in 1992 as an anti-poverty¹¹ measure in response to the problem of illegal money lending. The initial pilot programme was evaluated and the programme expanded and over the intervening years MABS grew to become a national network of 51 services and 2 support services (MABS NDL and National Traveller MABS) operating in every county in Ireland. There are several counties with more than one Service – reflecting the community origins of the Programme. Services are small in size; most having a Co-ordinator, one or more money advisors and an administrator. The Services are operated by voluntary Boards of Management comprising key local stakeholders including, inter alia, the St. Vincent de Paul, local CIC, Credit Union, local authority, Department of Social Protection representatives and relevant others.

The Citizens Information Board was given statutory responsibility for MABS in 2009.

The role of MABS over the last two decades as the primary response to personal over indebtedness in Ireland has been consistently and independently recognised (e.g. the 2011 report of the ESRI ‘Financial Exclusion and Over-indebtedness in Irish Households’).

Role of MABS National Development Limited

Since 2004, MABS has received specialist technical casework and other support from a dedicated support company, MABS National Development Limited (MABS ndl) MABS ndl also assists the MABS service in providing comprehensive training, educational and informational supports as well as assisting in highlighting policy issues that arise in the course of money advice work on behalf of clients. MABSndl has responsibility for the ongoing development of the MABS website www.mabs.ie and for providing the MABS national helpline service.

Change in MABS Casework

Over the recent past (i.e. 2008- date) there has been very significant growth in the number of cases supported by the 51 MABS services that provide ‘face to face’ support.¹² There has also been growing complexity in the casework support provided by MABS. As such, MABS Services are working with an active client base (clients whose cases may take several months and in some instances several years to resolve, especially if a client’s situation deteriorates and cases need to be reviewed /offers revised) **as well as** growing numbers of new clients.

Furthermore, as certain debts and, in particular mortgage debt, contribute to the total indebtedness of a household; MABS client data often reflects the position of couples /householders (in this regard ‘client’ data may underestimate the numbers of people affected).

The Money Advice Process

In the twenty years since its inception, MABS has developed a proven track record in the area of personal debt management, adapting and developing over time in accordance with the needs of our

¹¹ This aspect of its work continues and MABS is referenced in the current National Action Plan on Social Inclusion

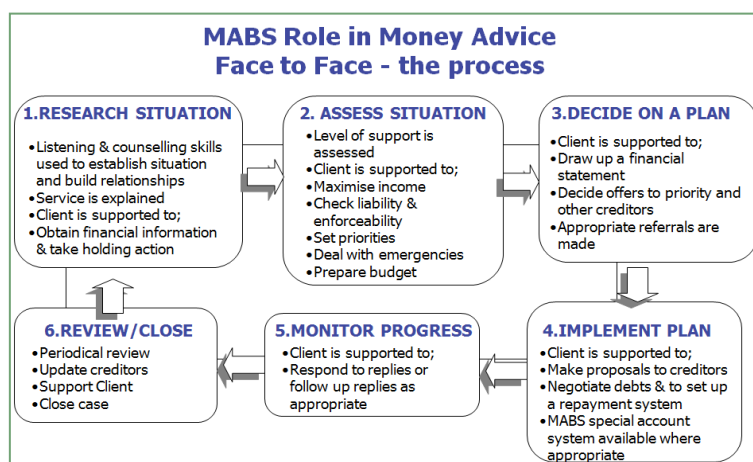
¹² MABS had an active caseload of over 26,000 clients at the end of 2011.

clients. In 2003 MABS was chosen for Peer Review in the EU¹³. Quoting from the findings of the Eustace/Clarke evaluation, the MABS Peer Review report states (page 17):

"The extent to which MABS is regarded as a benefit to communities is extraordinary. Eighty percent or more of the respondents indicated that the community had benefited significantly because people had been helped to deal with debt and/or to manage their money better. Around seventy percent answered that MABS had contributed to improve health and quality of life".

It is this community-based ethos that is central to the holistic Money Advice Process (see Figure 1).

Figure 1 – MABS Money Advice Process



There are 6 main components to the process of rights-based money advice. These can be summarised as follows:

(i) Identifying Problems

By using listening, counselling and interviewing skills to build a rapport with the client, the adviser begins the process of finding out the nature and extent of the difficulties involved. An explanation of the service is provided which describes the main features of the service, (free, confidential, independent etc.) The appropriate level of service to be provided is identified – based on the capacity of the client. Once authorised to proceed, initial holding action is taken either by the client or MABS as appropriate. This affords time to compile the client's financial profile.

(ii) Assessment of the Situation

Letters, phone calls and the client's own records are used, as appropriate, to establish a full picture of the financial situation. Emergencies are dealt with by requesting that creditors allow the money adviser sufficient time to consider the total extent of the problems. Discussions take place as to the liability and enforceability of the various debts and the client's rights relevant to their situation. Possible ways of maximising income are explored. Possibilities of redirecting or reducing expenditure are discussed. A preliminary budget is prepared, as priorities are identified in partnership with the client. Where appropriate, discussions take place on the desirability of a client beginning to set aside agreed amounts e.g. into a credit union account, as per the agreed payment

¹³ Korcza, D., 2004. *The Money Advice and Budgeting Service Ireland – Synthesis Report of the Peer review Meeting in Cork*, 18-19 November 2004. Report for DG Employment, Social Affairs and Equal Opportunities. Brussels: European Commission.

plan to ensure that the client can afford the proposed payments and to demonstrate to creditors his / her commitment to it.

(iii) Deciding on a Payment Plan

At this stage, a standard financial statement is drawn up and is signed and 'owned' by the client. A plan is drawn up giving priority to those debts with more serious consequences, housing, utilities etc. As well as setting aside sufficient disposable income to maintain an adequate standard of living, (provision for food, clothing etc.) this plan also endeavours to include a small savings element for future credit needs. Finally, the plan distributes any surplus financial resources on an equitable (pro-rata) basis between the remaining creditors, generally unsecured loans owing to various financial institutions.

(iv) Implementing the Strategy

Proposals can now be forwarded to the various creditors on the basis of what is realistic, affordable and sustainable given the client's present circumstances, rather than what the creditor may demand. Negotiation and mediation may be required if the creditor refuses to consent. Appropriate payment facilities are agreed (household budget scheme, special account scheme etc). Where third parties are involved, (solicitors, debt collectors, courts etc), proposals are made to these parties also. The client commences proposed payments on a given date.

(v) Monitoring Progress

Creditor replies to proposals are acknowledged. Where MABS intercedes on the client's behalf, the client is kept informed of such communications and creditors are kept informed of progress. Those who do not reply are followed up. Case notes of all contacts are kept. Payments through the Special Account Scheme (where availed of) are monitored. Clients who are having difficulty making payments in line with the agreed plan are contacted to ascertain why this might be so and whether the plan needs to be revised.

(vi) Case Review and Closure

At periodic intervals cases are reviewed, clients are contacted and payment plans are revised where appropriate. Creditors are updated as to progress/changes and a procedure for case closure is instigated where appropriate. The clients are given the opportunity to give feedback on the service they received. They are advised that the case can be reopened if, and when, necessary.

Where clients elect to pay through the special account system, the case can stay at the monitoring/review stage unless/until the relationship between the client and the service breaks down or the client chooses to make payments by another method.

The empowerment of the client is core to the MABS approach to money advice, a 7 level model of client support is applied, that both respects the extent of the capacity (ability) of the client to do things for themselves whilst, at the same time, respecting the capacity of the service to respond to clients' needs. The model further aims to maximise the usefulness of the MABS helpline, self-help workbook (MABS Money Management Guide), website and information leaflets produced by MABS (and other agencies) on different credit and debt topics as well as sample letters and other materials for those who wish to deal with their creditors directly.

MABS has developed a number of materials to support and reinforce the ethics and practice of money advice, they include:

- The MABS Customer Charter
- The MABS Code of Practice
- The MABS Service Agreement Leaflet
- The MABS Money Management Guide
- The MABS client authorisation form
- MABS Standard Financial Statement

The success of MABS is measured by the level of sustainable voluntary arrangements made with creditors and the acceptance of the Money Advice Process by the credit industry with the development of the IBF / MABS Operational Protocol and the Utilities Providers / MABS Operational Protocol which rely heavily on these principles. MABS is also active at national level in areas of debt-related social policy, providing inputs on the development of the Standard Financial Statement under the Code of Conduct on Mortgage Arrears and the drafting of the Central Bank's Guide to completing it.