



Section 141 Consultation

ISI Submission

to the

**Department of Justice and
Equality**

June 2017



ISI

Tackling problem debt, together

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Insolvency Service of Ireland Submission to the Department of Justice and Equality in response to the consultation arising from Section 141 of the Personal Insolvency Act

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1 Executive Summary

The Personal Insolvency Act 2012, as amended, (the “Act”) modernised personal insolvency legislation in Ireland by establishing the Insolvency Service of Ireland (ISI) and introducing three new debt solutions as alternatives to bankruptcy.

A lot has been achieved by the ISI in its first three full years of operation.

Prior to the opening of the ISI, insolvent debtors had little by way of options. Alternative solutions to bankruptcy did not exist. The bankruptcy term was 12 years. Very few informal deals were agreed between debtors and creditors. The personal insolvency landscape is now unrecognisable. The ISI has already helped deliver permanent solutions to over 5,000 debtors. The value of debt involved in applications to the ISI as well as in bankruptcies has exceeded €8 billion. The ISI has also acted as a catalyst for over 120,000 informal agreements between debtors and creditors. This has been achieved, in part, thanks to the ‘level playing field’ that now exists in negotiations. Debtors have realistic alternative options available to them through the ISI if negotiations break down. The ISI guidelines to a reasonable standard of living and reasonable living expenses have also removed a key blockage that previously existed in negotiations.

The ISI welcomes the opportunity to submit its views to the Department of Justice and Equality, along with other interested parties, on the operation of Part 3 of the Act.

Our submission demonstrates that the new solutions introduced by the Act work. The debtors who have availed of the solutions have returned to solvency and are able to make a fresh start. In the vast majority of cases, they get to stay in their home. For the creditors involved, they have had their bad loans dealt with in a fair and equitable manner. We equally demonstrate that many of the concepts behind the alternatives to bankruptcy introduced in the Act are well established and work well in other countries. The challenge now is to ensure that all of those people who would benefit from the solutions provided by the Act do so. The ISI estimates that long term activity levels should be significantly higher than at present.

Currently the ISI is processing circa 1,300 solutions a year covering Debt Relief Notices (DRNs), Debt Settlement Arrangements (DSAs) and Personal Insolvency Arrangements (PIAs). International comparisons indicate this should be circa 6,000 per year. Experience in other jurisdictions indicates that it does take time to build awareness of new debt solutions and that it also takes time for activity levels to build.

The ISI has identified three key factors that influence activity levels:

1. Efficiency of Process
2. Debtor Engagement
3. Creditor Engagement

The ISI addresses all of these factors in its submission.

The ISI's core recommendation is that DRNs, Protective Certificates ('PCs'), extensions to PCs ('PC Extensions'), DSAs, PIAs, and variations to DSAs and PIAs ('Variations') should be approved by the ISI rather than requiring a court to make an order for their approval. Importantly, this core recommendation has the support of all members of the Consultative Forum – which is made up of debtor advocates, creditors, Personal Insolvency Practitioners (PIPs) and the Courts Service. The ISI is of the view that such a change would result in a number of benefits. These benefits include:

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

In addition, the ISI recommends a number of other enhancements to the existing legislative framework in order to drive efficiencies, reduce barriers to entry and otherwise improve the overall process.

For DRNs, the ISI recommends a number of enhancements including a reduction in the term of supervision, a change to how additional debtor contributions are calculated to protect a debtor's reasonable standard of living and changes that would widen eligibility criteria.

For DSAs and PIAs, the ISI recommends a number of enhancements including greater flexibility attaching to the PC and the removal of a number of barriers to entry (removal of MARP eligibility criterion; removal of €3 Million Secured Debts threshold; removal of a date restriction for debtors seeking a Court review of a creditor rejection of a PIA proposal).

Other recommendations include the removal of the 'excludable creditor' category and several other suggested legislative amendments which are designed to make the overall process more efficient for all parties.

The ISI recommendations are supported by a detailed analysis of the cases that have described the typical profiles of debtors who have availed of the ISI debt solutions. Thus, the recommendations cater for the typical DRN debtor who is single, unemployed in their late 40s whose total debts are less than €20,000 and whose monthly income is under €1,200 as well as the typical PIA debtor who is married, employed with children with total debts in the region of €500,000 and monthly income of €2,400 who, in 90% of cases, gets to stay in their family home.

In conclusion, the principles underlying the three new debt solutions have been proved to work. Thousands of debtors have already benefited from the solutions. It is clear, with reference to the extent of mortgage arrears that still exists in Ireland and to activity levels in other countries, that more people should be availing of the solutions than are doing so at present. Greater debtor engagement, greater creditor engagement and certain legislative changes to deliver greater access and system efficiencies, will ensure that more insolvent debtors avail of the solutions that are available and that they need.

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2 Introduction

2.1 Terms of Reference for the Review

The full terms of reference for the review are set out in Appendix 1. The review asks how Part 3 of the Act, supplemented by a number of subsequent legislative amendments and the recently introduced Abhaile service, is delivering for the stakeholders, including the ISI, PIPs, creditors and debtors. Part 3 deals with the three non-bankruptcy insolvency solutions, namely, DRNs, DSAs and PIAs. The terms of reference also encompass the commitment in the Programme for Government to review the thresholds and processes for personal insolvency arrangements, including small and medium entrepreneurs, and raise where appropriate.

2.2 Approach to the submission

Staff of the ISI have significant experience in applying the legislation in practice, in establishing the procedures necessary to administer the insolvency solutions, in dealing with the various stakeholders on case-specific and policy matters and in representing the ISI at departmental, inter-departmental and international fora. This experience has been harnessed through meetings and workshops to inform this submission. In addition, the ISI as a member of the Consultative Forum, established by the Minister for Justice and Equality in 2015, has used this review as an opportunity to obtain feedback on some of the issues covered in the submission. Appendix 2 sets out details of the ISI, its functions, its mission and its strategic direction.

2.3 Overview of the submission

Since the enactment of Part 3 of the Act, the ISI has developed and operationalised the three new statutory debt solutions; often referred to as ‘the alternatives to bankruptcy’. The ISI solutions range from a complete debt write off solution for modest unsecured debts of unemployed or low income individuals with negligible assets to an arrangement that writes off or restructures secured debt including family home mortgages.

The debt solutions are court based, that is, court approval is required at various stages of the process and a number of court submissions and appearances may be required as part of the approval process. This submission will explain these stages and offer

suggestions as to how the procedures and processes in our view should be improved for each of the debt solutions.

The debt landscape continues to be a challenge for many debtors. Although mortgage arrears are reducing, the number of mortgage accounts in arrears over 720 days remains stubbornly high. Repossessions have, to date, remained low. Against this backdrop, the take-up of ISI solutions has been lower than anticipated. There has only been a modest increase in the number of debtors availing of ISI solutions notwithstanding the waiving of ISI fees for a number of years and the ISI's investment in significant debtor awareness campaigns, which have demonstrably increased general awareness and resulted in a significant increase in website traffic.

Whilst further public awareness programmes will be pursued with vigour, the ISI believes this consultation process is an ideal opportunity to review the effectiveness and efficiency of the solutions introduced by the Act with the objective of increasing the numbers of insolvent debtors availing of the help that is available.

2.4 Contents of the submission

Section 3 and Appendix 3 deal with the debt landscape, the likely cohort of debtors suitable for ISI solutions and a comparison of Irish activity levels with other countries.

Section 4 and Appendix 4 deal with the stages in the various statutory processes requiring court involvement and, having regard to constitutional property rights and the administration of justice, recommends that DRNs, PCs, PC Extensions, DSAs, PIAs and Variations should be approved by the ISI rather than requiring a court to make an order for their approval.

Section 5 and Appendix 5 deal with additional enhancements to the existing DRN process.

Section 6 and Appendix 6 deal with additional enhancements to the existing DSA and PIA processes.

Section 7 and Appendix 7 explore the area of debtor and creditor engagement. Creditor engagement has resulted in agreed protocols and scenarios that provide rules of engagement for PIPs acting for insolvent debtors. Debtor engagement, which is

linked to the psychology of debt, is still low by international standards as described in Section 3. Details are provided of the ISI's investment in significant debtor awareness campaigns.

Section 8 and Appendix 8 deal with some supplementary issues including an analysis of small and medium sized entrepreneurs and the Abhaile service. It also considers developments at the EU level including the EU Regulation and Draft Directive.

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3 The Debt Landscape and International Comparisons

3.1 Introduction

The long title to the Act provides a context for the timing of its introduction. It explains that it is an act to amend the law relating to insolvency in the interest of the common good including the stability of the financial system in the State. Having established the context, the Act goes on to set out its core objectives, namely:

- the need to ameliorate the difficulties experienced by debtors in discharging their indebtedness due to insolvency and thereby lessen the adverse consequences for economic activity in the State;
- the need to enable creditors to recover debts due to them by insolvent debtors to the extent that the means of those debtors reasonably permits, in an orderly and rational manner; and
- the need to enable insolvent debtors resolve their indebtedness (including by determining that debts stand discharged in certain circumstances) in an orderly and rational manner without recourse to bankruptcy, and to thereby facilitate the active participation of such persons in economic activity in the State.

3.2 The Debt Landscape 2012 to the Present

Personal debt can be divided into three broad categories – Private Dwelling Home (PDH) secured debt, other secured debt, such as buy-to-let properties (BTL), and unsecured debt. There is a dearth of statistical information available covering personal unsecured debt.

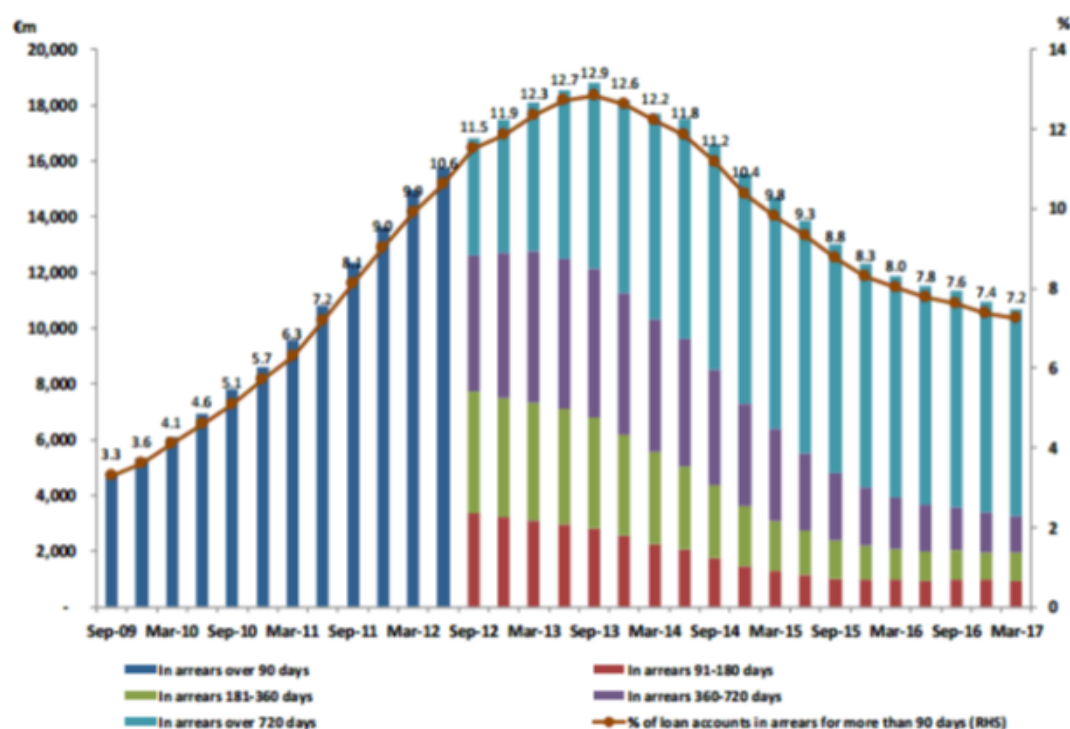
3.2.1 Central Bank Data

The Central Bank of Ireland quarterly publication Residential Mortgage Arrears and Repossession Statistics provides details of PDH and BTL mortgage accounts in arrears.

3.2.1.1 PDH Arrears

As of March 2017, 10% of the all PDH mortgages (76,422 mortgage accounts with a value of €14 billion) were in arrears. Nearly half (43%) of all PDH accounts in arrears were in arrears over 720 days (Almost 33,000 accounts with a value €7.4 billion).

Figure 3.1 Central Bank Residential Mortgage Arrears Statistics



Note: The breakdown of arrears greater than 90 days is not available pre-September 2012.

Figure 3.1 shows that 7% of accounts (53,100 accounts) with a value €10.7 billion were in arrears for more than 90 days. While the number of mortgage accounts in arrears in each category has been declining since late 2013 the percentage of accounts in arrears in 2017 is more than twice the comparable percentage in 2009.

A total stock of 120,894 PDH mortgage accounts out of a total PDH mortgage accounts of 734,106 were categorised as restructured at end-March 2017. This represents 16% of PDH mortgages. A key objective in restructuring is to enable the borrower to meet the original or amended terms of the mortgage over the remaining term. The latest data shows that 86% of borrowers with restructured mortgages are meeting the terms of their restructure.

3.2.1.2 BTL Arrears

At March 2017, 19% of all BTL mortgages (24,533 mortgage accounts with a value €6.4 billion) were in arrears of which more than 8 in 10 accounts (20,009 BTL mortgages with a value €5.9 billion) were in arrears for more than 90 days and 6 in 10 accounts were in arrears over 720 days (over 14,000 accounts with a value of €4.2 billion). Of

note is that in the period end-2012 to Quarter 1 2017, the number of BTL mortgage accounts in arrears over 720 days has almost doubled (from 7,754 to over 14,000) and the value of mortgage debt has increased by over 66% (from €2.5 billion to €4.2 billion).

A total stock of 24,458 BTL mortgage accounts out of a total BTL mortgage accounts of 128,149 were categorised as restructured at end-March 2017. This represents 19% of BTL mortgages. The latest data shows that 88% of borrowers with restructured mortgages are meeting the terms of their restructure.

3.2.2 European Central Bank

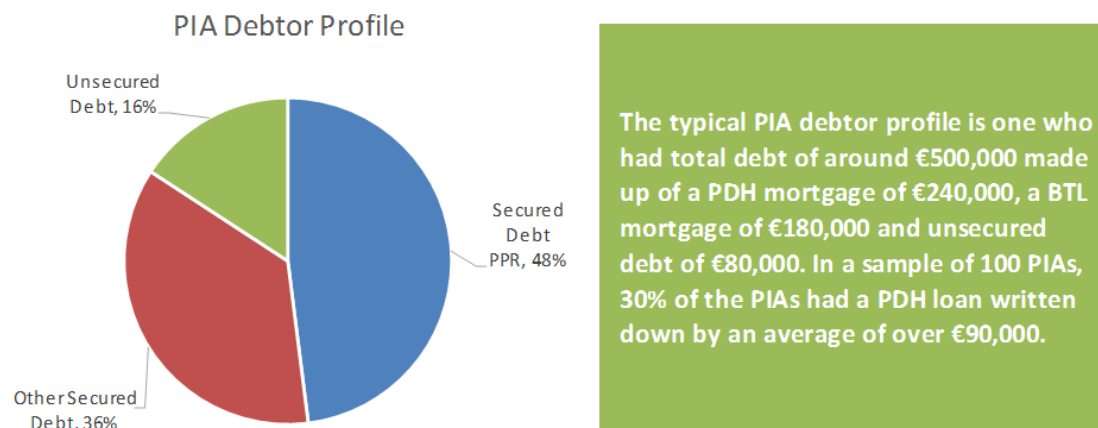
The European Central Bank (ECB) issued guidance to banks on non-performing loans (NPL) in 2017. The guidance explains that an NPL strategy should be put in place that establishes strategic objectives for high NPL banks for the reduction of NPLs over realistic but sufficiently ambitious time-bound horizons (NPL reduction targets). A bank's strategy should lay out the bank's approach and objectives regarding the effective management (i.e. maximisation of recoveries) and ultimate reduction of NPL stocks in a clear, credible and feasible manner for each relevant portfolio.

The guidance will mean that banks are likely to be more active in dealing with NPLs and may look to sell on certain portfolios of non-performing debts. Loan ownership, that is whether a bank or a fund owns the loan, has no bearing on a debtor's entitlement to a PC or a court approved PIA. In many cases a fund which has acquired a portfolio of loans at discount from a bank is more willing to consider and offer debt write down or mortgage to rent solutions to debtors. In summary, it is anticipated that the ECB guidance should put pressure on financial institutions to more actively grant debt relief to debtors, increasing the numbers of PIAs in the future.

3.2.3 ISI Data

The debt and debtor profile of a typical PIA debtor (generally an insolvent person with a PDH mortgage and other secured and unsecured debt) is set out in Figure 3.2.

Figure 3.2: PIA Debtor Profile



Given that there are 33,000 PDH mortgage accounts and 14,000 BTL mortgage accounts that are in arrears over 720 days, there must be a cohort of debtors (in the thousands) who fit the average profile and for whom a PIA would appear to offer an appropriate debt solution. The ISI awareness campaign described in Section 7 has reached out to this cohort but to date many in this cohort have not considered a PIA solution for reasons of non-engagement by debtors covered also in that section.

3.3 International Comparison – Take up of Insolvency Solutions

All modern economies have second chance insolvency solutions that include bankruptcy and debt write down of some or all unsecured debt. Figure 3.3 below shows that all of the countries featured provide a bankruptcy solution and a solution similar to the DSA that is based on ability to pay over a set period of time (5 years is typical) and that provides for negotiated debt write down of unsecured debts. The majority, but not all, of the countries have a DRN equivalent solution that provides for debt write off in circumstances where a debtor can make no payments or negligible payments to creditors.

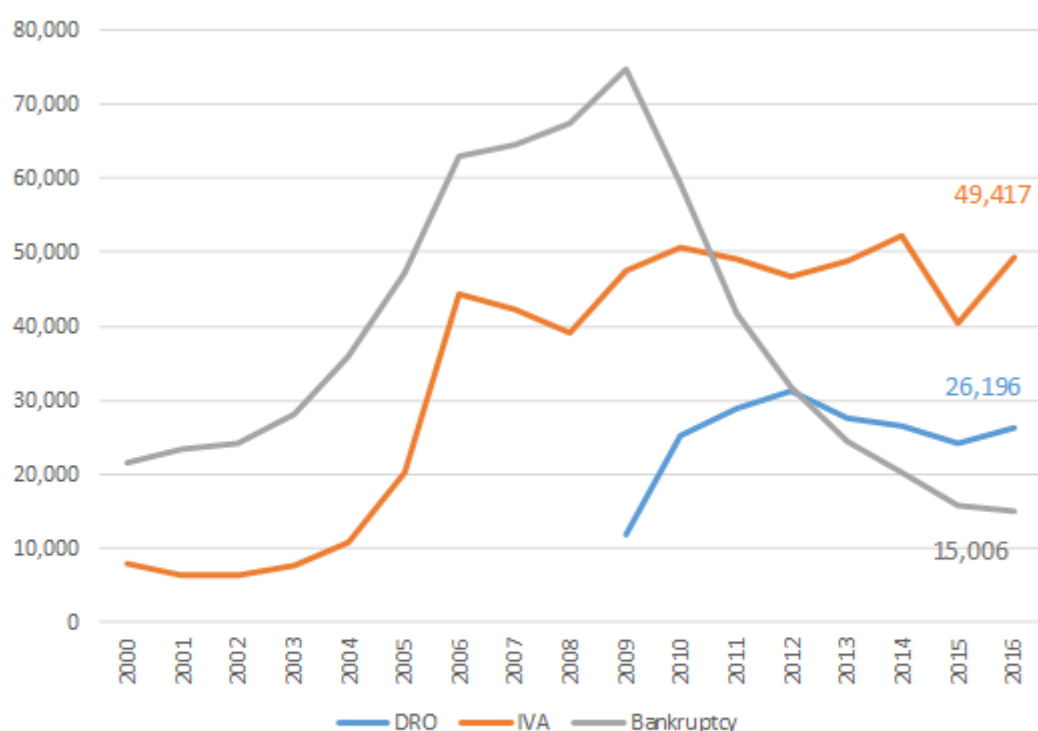
Figure 3.3: Debt Solutions in a sample of countries

Country	Bankruptcy	DRN Equivalent	DSA Equivalent	PIA Equivalent
England and Wales	Yes	Yes (known as a DRO)	Yes (known as IVA)	No
Scotland	Yes	Yes (known as a DAS)	Yes (known as Trust Deed)	No
Northern Ireland	Yes	Yes (known as a DRO)	Yes (known as IVA)	No
New Zealand	Yes	Yes (known as No Asset Procedure)	Yes (known as Summary Instalment Order)	No
Australia	Yes	No	Yes (known as Debt Agreement)	No
Canada	Yes	No	Yes (known as Consumer Proposal)	No

In England and Wales a Debt Relief Order (DRO) applies to unsecured debts up to a maximum of £20,000 whereas an Individual Voluntary Arrangement (IVA) applies to unsecured debt whose value exceeds £20,000. A debtor can apply for a DRO using the services of a Citizens Advice Bureau at no cost to the debtor: the debtor must however pay an application fee of £90. A debtor requires the services of an insolvency practitioner to obtain an IVA. Ireland is unique among the countries in the table since, through the PIA, secured debt can be settled or restructured.

Figure 3.4 presents the number of debt solutions in England and Wales in the years 2000 to date. The data shows that in 2016 there were 15,006 Bankruptcies, 26,196 DROs and 49,417 IVAs. The number of bankruptcies peaked in the mid-2000s and has declined steadily since the introduction of the DRO. The number of IVAs oscillated between 40,000 and 50,000 since the IVA protocol was introduced in the mid 2000s. The DRO number had been in the mid-20,000s in the last few years. The figure shows that in a modern economy with well-established insolvency solutions a significant number of persons avail of the solutions each year.

Figure 3.4: Number of Bankruptcies, DROs and IVAs: England and Wales



Source: The Insolvency Service (UK)
<https://www.gov.uk/government/collections/insolvency-service-official-statistics>

A population-adjusted comparison shows that the number of Irish debtors availing of unsecured debt solutions is significantly lower. For example, the 2016 number of DRNs is about 17% of that in England and Wales (357 compared to 2,113) and the number of DSAs is under 6% of that in England and Wales (233 compared to 4,012). The comparisons provide an indication of where activity levels in Ireland might be in the coming years as the insolvency regime matures.

3.4 Conclusion

The debt landscape is still characterised by significant and entrenched PDH and BTL mortgage arrears. Many accounts have been restructured but these accounts require frequent review and may not be sustainable in the long term. The ECB NPL guidance means that banks will have to be more active in addressing NPLs. The ISI data shows that many debtors who had a PDH mortgage, a BTL mortgage and some unsecured debt had successful PIAs negotiated with creditors by a PIP acting on the debtor's behalf. Personal insolvency in Ireland is in its infancy compared to other modern economies. As Irish debtor and creditor attitudes to insolvency mature in line with

other countries, the numbers availing of the insolvency solutions may be expected to increase overall by a factor of 10 or more over the coming years.

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4 ISI to approve DRNs, PCs, PC Extensions, DSAs, PIAs and Variations

4.1 Introduction

The ISI recommends that DRNs, PCs, PC Extensions, DSAs, PIAs and Variations should be approved by the ISI rather than requiring a court to make an order for their approval. Appendix 4 sets out a description of the current and proposed procedures in relation to these measures. Each member of the Consultative Forum supports in principle such an extension of the functions of the ISI. The ISI is of the view that such a change would result in a number of benefits. These benefits include:

- cost savings (for all parties in terms of fewer court hearings and related legal and travel expenses);
- time savings by streamlining the process. At present the Courts have variable sitting patterns, ranging from more than once per week to once a month, and cases may be subject to adjournments including for clarification of information or to facilitate the attendance of the ISI or a PIP where directed by the Court. Appendix 3 Figures A3.6, A3.7 and A3.8 set out an analysis of how long it takes a debtor to secure a DRN, DSA and PIA from commencement through to approval by Court.
 - it takes 11 days for a PC to be approved by Court after the ISI issues its certificate of compliance and 10 days in the case of a DRN. The proposal that the ISI issue PCs and DRNs will virtually eliminate these days from the process;
 - it takes an average of 119.5 days after a PC issues for an arrangement to be confirmed by court. The average length of a PC, allowing for extensions, is in the region of 80 days. The proposal that the ISI approve DSAs and PIAs will significantly reduce the 119.5 days and could realistically shorten this period by up to a month;
- consistency of approach in terms of administrative decision-making on the application of the statutory eligibility criteria and requirements; and
- an increase in the accessibility of the personal insolvency system, making it more accessible to debtors by ensuring that the system is a largely out-of-court

process (subject to an appeal to Court) as court involvement may inhibit insolvent debtors from considering availing of a solution.

The Act provides for the balancing of competing rights and interests of various parties. The ISI submits that this balance will be maintained under this proposal. The Court will continue to play a crucial role in the process by hearing appeals. It is proposed that the ISI's existing function under the Act, of checking applications and its powers of investigation in relation to these matters, will be expanded upon (where necessary) in order for it to make the various approvals.

The ISI acknowledges that an important factor to consider in relation to these new procedures is ensuring its compatibility with constitutional property rights and principles relating to the administration of justice. The ISI is of the view that the benefits of this proposal can be achieved while still ensuring the continued protection of existing safeguards and rights.

4.2 Constitutional Property Rights and the Administration of Justice

4.2.1 Property Rights

There is a constitutional guarantee to private property. Property rights are not absolute, however. Article 40.3.2 of the Constitution guarantees the protection of the property rights of an individual from unjust attack and Article 43 protects the institution of private property from abolition by the State. Article 43.2 provides that the State should consider social justice in the regulation of property rights, and the State may, as the occasion requires, delimit by law property rights to reconcile their exercise with the common good.

The constitutional justification for limiting property rights has two aspects: firstly whether the objective is justified in terms of social justice and the exigencies of the common good and secondly whether the means for securing the objective are compatible with the Constitution. The ISI submits that the objectives of the Act in respect of DRNs, PCs, DSAs and PIAs are clearly justifiable in respect of social justice and the common good. As there will be no change to the substantive criteria for the issuance of these arrangements, the ISI submits that the objectives of the Act can be similarly achieved by the ISI approving these measures.

Proportionality is a key consideration in evaluating whether a measure restricting property rights is constitutional. As set out in *Heaney v Ireland*¹, the means chosen must:

- a) be rationally connected to the objective and not arbitrary, unfair or based on irrational considerations;
- b) impair the right as little as possible; and
- c) be such that their effects on rights are proportional to the objective.

The ISI submits that this test is met regardless of whether the measures are issued by the Court or the ISI.

The decision in *Fisher v Irish Land Commission*² judgment firmly defends the right of the legislature to place the administration of acts of public policy in the hands of a body other than the Courts. Consequently, it is submitted that placing the administration of arrangements that limit property rights, such as DRNs, PCs, DSAs and PIAs, in the hands of a non-judicial body, such as the ISI, is constitutionally permissible from a property rights perspective.

4.2.2 Administration of Justice by Body other than the Courts

Article 34.1 of the Constitution provides *“that justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public”*.

Non-judicial personnel may exercise limited powers and functions of a judicial matter in civil matters and this is provided for in Article 37 of the Constitution which provides *“Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.”*

¹ [1994]3 IR 593

² [1948]IR 3

While judicial powers are reserved to the Courts, administrative decisions on judicial matters need not, necessarily, be made by the Courts. The ISI submits that in determining whether the exercise of a power by a body other than a Court is permissible or not, the question is whether the power being exercised is judicial in nature.

In *Lynham v Butler (No. 2)*³, the Court described the civil judicial power as being exercised to provide “*a definitive adjudication according to law, rights or obligations in dispute*”. The Court further noted that “*so long as [bodies that are not courts] do not pretend to the judicial determination of justiciable controversies and act only in subordination or as ancillary to and subject to the direction, control and correction of the Courts and Judges of the State, do not exercise, or indeed purport to exercise, the Judicial Power of the State*”⁴.

*McDonald v Bord na gCon*⁵ identified five factors that signify a judicial power. In *Keady v Garda Commissioner*⁶ O’Flaherty J considered that the five criteria could be reduced to two essential ingredients: “*... there has to be a contest between the parties together with the infliction of some form of liability or penalty on one of the parties.*”⁷.

Even if a power is a judicial power, a non-judicial person may exercise limited powers and functions of a judicial nature in civil matters as provided for in Article 37 of the Constitution. Many statutory bodies and statutory officers carry out limited functions which might be described as having a judicial nature which affect property rights.

In *O’Donoghue v. Ireland*⁸, Kearns J made the following comments summarising the position of Article 37: “*While the case law on Article 37 has generally focused on whether particular powers conferred on such bodies breached the separation of powers by virtue of permitting an excessive exercise of judicial power by an administrative body, the very existence of Article 37 is an acknowledgement that many decision*

³ [1933] IR 74. Hogan and Whyte opine that the decision of the Supreme Court in this case was the basis for the inclusion of Article 37 in the 1937 Constitution (Hogan and Whyte (eds.), *Kelly: The Irish Constitution* (3rd ed., 2003) at para. 6.1.13).

⁴ [1993] IR 74 at p. 101

⁵ [1965] IR 217 at p. 230

⁶ [1992] 2 IR 197

⁷ [1992] 2 IR 197 at p. 212

⁸ [2000] 2 IR 168

making functions have both an administrative and a judicial character and may be conferred on a range of bodies, including courts, without violating the Constitution.”⁹.

The ISI submits that if it were to be given the function of issuing DRNs, DSAs, PIAs, PCs, and Variations it would only be exercising an administrative power as opposed to a judicial power. In the alternative, the ISI submits that even if this were to involve an exercise of judicial power by the ISI, the ISI’s role would be sufficiently limited so that it would fall within the scope of what is permitted under Article 37 of the Constitution.

4.3 Noteworthy features of the DRN, PC, DSA and PIA

The ISI submits that particular features of each of the measures should be considered in the context of the constitutional principles outlined above. Under the proposal the creditor would have the right to appeal to the Court to challenge the issue of the DRN, PC, PC Extension, DSA, PIA or Variation by the ISI. The ISI submits that the issue of the relevant measure depends on the debtor satisfying specified criteria and does not, in the main, involve a determination of rights or a form of contest between the parties.

DRNs

Features of DRNs which are particularly noteworthy include:

- debts subject to a DRN cannot exceed €35,000, with a supervision period applying;
- safeguards are in place to ensure that access to this form of debt relief will only be available to individuals who have little or no ability to repay the debt: the debtor must have net disposable income of €60 or less per month and assets of €400 or less;
- procedures are in place to provide for a return for creditors where the debtor’s financial circumstances improve during the supervision period;
- similar to PCs, DRNs are granted ex parte and the ability of creditors to protect their rights by subsequent appeal to the Courts is being proposed; and
- since the beginning of 2015, only 3 creditors (0.4% of cases) have objected to the inclusion of their debt in a DRN and, of those, only one creditor has been

⁹ [2000] 2 IR 168 at p. 175

successful in its objection, with one case on-going. This is out of a total of 759 DRNs issued in that timeframe. See Appendix 4, Figure A4.11.

PCs

Features of PCs which are particularly noteworthy include:

- the PC procedure provides for a suspension of property rights and is only an interim measure. PCs are generally in force for 70 days;
- debts are not settled during the PC period and the purpose of the PC is to facilitate negotiations between creditors and debtors, managed by a PIP, in the context of a time-limited moratorium on enforcement of debt;
- if a creditor objects to the issuance of a PC, there is a requirement for that creditor to hold any money or other assets recovered on trust for the benefit of the other creditors to whom the protective certificate applies;
- PCs are granted ex parte so other parties are not required to be put on notice of their issue. Instead, the legislation permits creditors to vindicate their rights through the objection procedure. It is proposed that a creditor will have a right to appeal the issuance of a PC by the ISI; and
- Since the beginning of 2015, only 11 creditors (0.3% of cases) have objected to the issuance of a PC and, of those, only four creditors have been successful in their objections, with four cases on-going. This is out of a total of 3,623 PCs issued in that timeframe. See Appendix 4, Figure A4.11.

DSAs

Features of DSAs which are particularly noteworthy include:

- DSAs are for a maximum of 5 years, with the possibility of a 12-month extension;
- only certain debtors are eligible for a DSA and a DSA can be amended where the debtor's financial circumstances change during the DSA period;
- an approved DSA is either approved by a majority of creditors at a creditor's meeting or deemed to be approved in accordance with the Act;
- where no objection to the Court is raised by a creditor or where satisfied that the objection should not be allowed and that the arrangement satisfies specified criteria, the appropriate Court must approve an arrangement. Under

the proposal, where no objection to the ISI is raised by a creditor or where the ISI is satisfied that the objection should not be allowed and that the arrangement satisfies specified criteria, the ISI will approve an arrangement. The creditor shall be given the right to appeal the ISI's decision to Court; and

- since the beginning of 2015, only 12 creditors (2.6% of cases) have objected to the coming into effect of a DSA and of those, only 5 creditors have been successful in their objections, with 3 cases on-going. This is against a total of 464 DSAs approved to come into effect in that timeframe. See Appendix 4, Figure A4.11.

PIAs

Features of PIAs which are particularly noteworthy include:

- PIAs are for a maximum of 6 years, with the possibility of a 12-month extension;
- only certain debtors are eligible for a PIA and a PIA can be amended where the debtor's financial circumstances change during the PIA period;
- an approved PIA is either approved by a majority of creditors at a creditor's meeting or deemed to be approved in accordance with the Act;
- the proposed procedure will not impact on the right of a debtor to seek Court review of a creditor-rejected PIA under section 115A of the Act;
- the Court must approve the coming into effect of the approved arrangement when satisfied of specified matters set out in the Act, including eligibility criteria and mandatory requirements;
- where no objection to the Court is raised by a creditor or where satisfied that the objection should not be allowed and that the arrangement satisfies specified criteria, the appropriate Court must approve the arrangement. Under the proposal, where no objection to the ISI is raised by a creditor or where the ISI is satisfied that the objection should not be allowed and that the arrangement satisfies specified criteria, the ISI will approve an arrangement. The creditor shall be given the right to appeal the ISI's decision to Court; and
- since the beginning of January 2015, only 29 creditors (2% of cases) have objected to the coming into effect of a PIA and of those, only 9 creditors have been successful in their objections, with 4 cases ongoing. This is against at total

of 1,491 PIAs approved to come into effect in that timeframe. See Appendix 4, Figure A4.11.

4.4 Conclusion

In light of the above commentary on constitutional property rights and the administration of justice and the clearly defined benefits to improving the statutory process, the ISI recommends to the Department that the ISI functions be extended to approve DRNs, PCs, PC Extensions, DSAs, PIAs and Variations rather than the Courts making an order for their approval. This step would enable the Courts to concentrate on appeals dealing with the more significant legal issues arising from the statutory process.

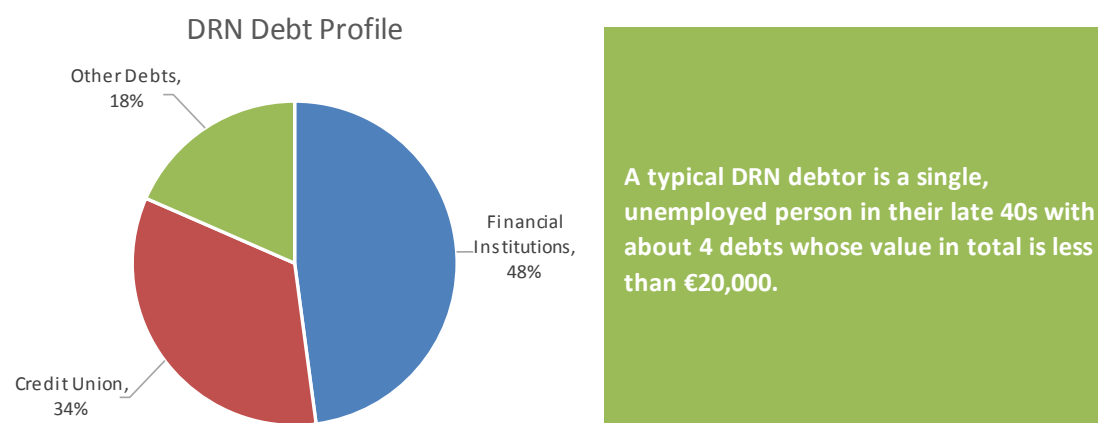
5 Additional DRN Enhancements

5.1 Introduction

In addition to the ISI's core recommendation contained within Section 4 that DRNs, PCs, PC Extensions, DSAs, PIAs and Variations should be approved by the ISI rather than requiring a court to make an order for their approval, the ISI has also identified a number of DRN-specific enhancements.

A DRN is applicable to debtors with low income, few assets and debts of €35,000 or less. The DRN provides protection from creditor contact. The DRN lasts three years during which the debtor may be required to make a contribution to creditors if means improve and at the end of which the debts included in the DRN are formally written off.

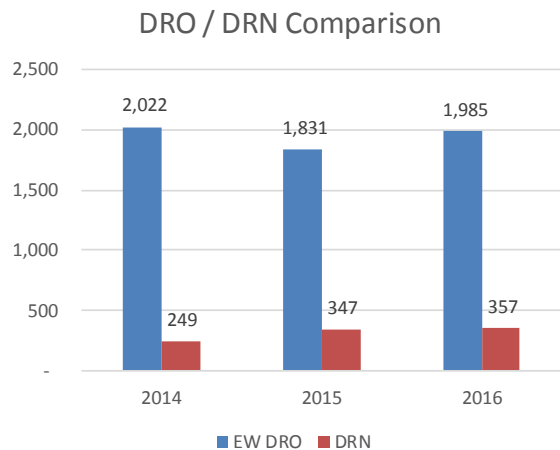
Figure 5.1: DRN Debt Profile



The 2016 DRN average debt figure of €17,600 is a significant increase on the 2014 and 2015 corresponding figures (circa €12,000). The increase is a result of the increase to the debt threshold in 2015 from €20,000 to €35,000.

It is clear from the analysis that the category of debtors who avail of the DRN solution have little prospect of paying off their debts based on their income or assets. The legislation does provide for a contribution from the debtor to creditors if the debtor's income position or asset position improves during the 3-year DRN supervision period. This happens very rarely. Details of the small number of cases, 21 (3% of cases), where a change in circumstances occurred is set out in Appendix 5 Figure A5.1.

Figure 5.2: DRO / DRN Comparison



A comparison to activity levels in England and Wales, indicates that there should be approximately 2,000 DRN cases per year. In 2016 there were 357 cases, indicating the potential for a five fold increase.

The eligibility criteria for a DRO in England and Wales are largely similar to Ireland with the exception of the overall debt limit. In England and Wales, the DRO is limited to £20,000 (approximately €23,000). Arguably, the number of people availing of the DRN in Ireland should therefore be higher, given that the debt limit is higher at €35,000.

5.2 Recommended DRN Improvements

The following sections describe legislative improvements that are aimed at increasing the numbers availing of the solution and making the process more efficient.

Eight specific proposals are recommended, addressing issues on:

1. Term of supervision
2. Asset Threshold
3. Additional income
4. Eligibility criteria relating to undervalue and preference.
5. Power to amend DRNs
6. Distributions to DRN creditors
7. Removal of “excludable creditor” category
8. ISI ability to seek Court direction

A detailed analysis of each of these recommendations is set out at Appendix 5.

5.2.1 Term of supervision

The supervision period for a DRN is currently three years. The data provided shows that DRN debtors have negligible income from which to make contributions to creditors and have little chance (less than 3%) that their circumstances will change

during the three years such that they would be in a position to make a contribution. The ISI recommends that the supervision period be reduced to one year to correspond with the bankruptcy term here. This term would also correspond to the duration of DROs in England, Wales and Northern Ireland.

This proposal has the support of the Consultative Forum.

5.2.2 Asset Threshold

DRN debtors have very little assets - €62 on average. However, a debtor who meets all eligibility criteria with the exception of the asset threshold, currently €400, could be excluded from availing of a DRN solution even though the debtor has no income from which to make a creditor contribution. The ISI recommends that the asset limit be increased to €1,000. The increase in the asset limit would bring this limit closer to the limit of £1,000 (€1,150) that currently applies in England, Wales and Northern Ireland.

5.2.3 Additional income

A DRN debtor's income cannot exceed the sum of the relevant reasonable living expenses plus €60 per month for that debtor to enter into a DRN. During the supervision period the Act provides for a contribution from the debtor to creditors if the debtor's income increases by more than €400 per month. An anomaly arises in circumstances where the debtor's newly computed income remains less than the relevant reasonable living expenses plus €60 per month. The anomaly means that the debtor has an obligation to make creditor contributions in circumstances where a debtor in similar circumstances would not have an obligation if that debtor were first entering a DRN.

The ISI recommends that this anomaly be removed. This proposal has the support of the Consultative Forum.

5.2.4 Eligibility criteria relating to undervalue and preference

The ISI recommends a change to the eligibility criteria for a DRN so that a debtor is no longer ineligible due to entering into a transaction at an undervalue or giving a preference to a person. This amendment is important since it is likely that an individual who has been struggling with problem debt for a period of time will at some stage have preferred one creditor over another in order to pay for utilities, for example, heat their

home or keep the electricity on. In order to protect creditors' interests, the above amendments will require the inclusion of a further amendment which will add, as a ground for objection by a creditor, entering into a transaction at an undervalue or giving a preference to a person during the supervision period.

This proposal has the support of the Consultative Forum.

5.2.5 Power to amend DRNs

The ISI recommends that it be granted, without the need for any court application:

- a) the power to amend a DRN – this would cover minor administrative amendments to the personal and financial details appearing on the DRN, such as creditor title
- b) the ability to add in additional debts, not included or overlooked by the debtor at the time the DRN application was made, or to alter the debt amount in a DRN provided the total of all debts do not exceed the statutory threshold of €35,000.

Any DRN change contemplated by the ISI during the supervision period over which there might be uncertainty would still require, under the provisions of section 41 of the Act, an application to Court for general directions in relation to it.

5.2.6 Distributions to DRN creditors

Dividend payments can arise when a debtor surrenders any sum received (e.g. a gift or payment, or an increase in income) during the supervision period. The ISI oversees the distribution of dividends to creditors. Some dividend payments to creditors are very small, often for less than €1 due to the high frequency (monthly) that the ISI is required to issue payments. The resources involved for both the ISI and creditors to process small payments are disproportionate.

The ISI recommends that the legislation be amended to allow for half-yearly payments to DRN creditors.

5.2.7 Removal of “excludable creditor” category

This proposal also applies to DSAs and PIAs and is dealt with at section 6.3.10.

5.2.8 ISI ability to seek Court direction

This proposal also applies to DSAs and PIAs and is dealt with at section 6.3.7.

5.3 Conclusion

Debtors who qualify for a DRN are in a particularly challenging and vulnerable position. They have very little assets and very little disposable income, if any.

The ISI believes if the above proposals were adopted, there would be a significant increase in those availing of DRN solutions.

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6 Additional PC, DSA and PIA Enhancements

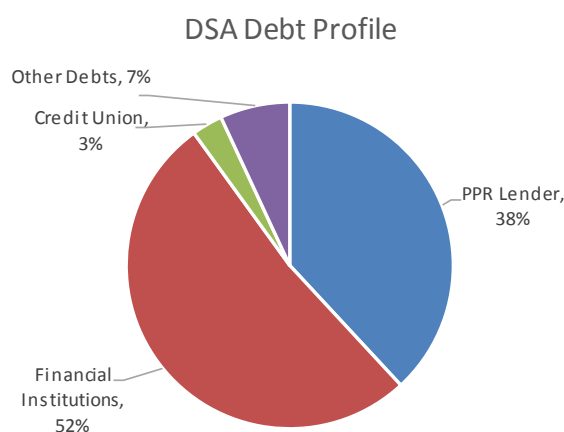
6.1 Introduction

In addition to the ISI's core recommendation contained within Section 4 that DRNs, PCs, PC Extensions, DSAs, PIAs and Variations should be approved by the ISI rather than requiring a Court to make an order for their approval, the ISI has also identified a number of PC, DSA and PIA specific enhancements, details of which are set out at Appendix 6, and summarised below.

6.2 DSA

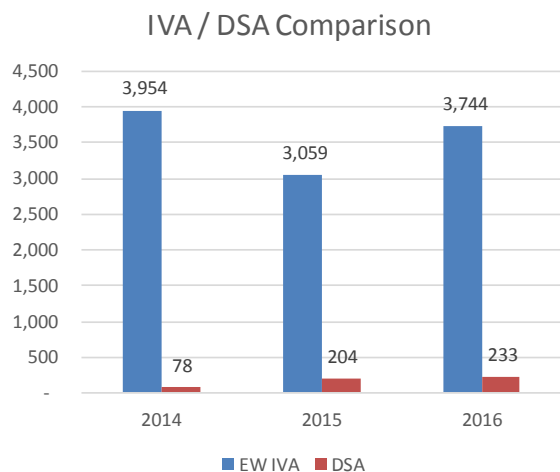
A DSA is applicable to debtors who have unsecured debts such as credit cards or personal loans, or residual debt arising from the sale of a previously-owned property. A DSA is a formal agreement that sets out a payment plan for a period not exceeding 5 years and the write-off of any residual debt. There is no limit to the amount of unsecured debt that can be included in a DSA. A PIP acts for the debtor in preparing a DSA proposal and negotiating with creditors.

Figure 6.1: DSA Debt Profile



A typical DSA debtor is a married employed person in their 40s with children and an average debt figure in excess of €250,000, of which €150,000 of unsecured debt is dealt with in the DSA. In 2016 Principal Private Residence secured debt represented 38% all debts: this secured debt is dealt with outside the DSA.

Figure 6.2: IVA / DSA Comparison



A population-adjusted comparison to activity levels in England and Wales, indicates that there should be over 3,000 DSA cases per year. In 2016 there were 233 cases, indicating the potential for a 16 fold increase.

The principles underpinning the IVA in England and Wales are similar to the DSA in Ireland, yet the annual number of DSAs represent just 6.2% of IVAs in England and Wales in 2016, even when population adjustments are made.

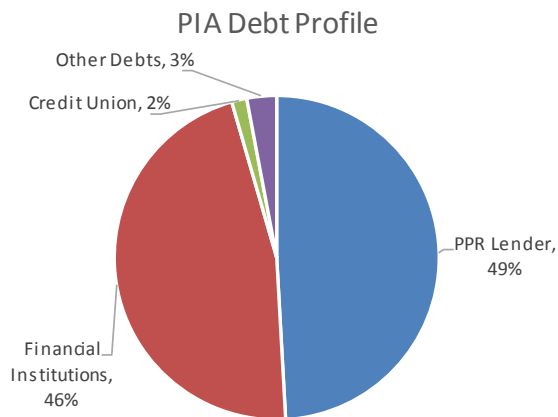
Insolvent debtors in the UK do not have the option of availing of a statutory solution covering secured debt similar to the PIA in Ireland. Due to the dual options of a DSA and PIA in Ireland, a direct comparison between DSAs and IVAs may not offer a complete picture. However, even if DSA and PIA activity levels were combined, there remains a significant shortfall in activity compared to IVAs in England and Wales (by a factor of 4 in 2016).

It is worth noting that it does not appear that the option contained within Section 68 of the Act has been availed of in many instances. Section 68 envisages a secured lender entering into an agreement with the debtor to vary the terms of the secured debt, including a variation of the terms of the secured debt that would reduce the amounts payable by the debtor in respect of the secured debt, for the duration of the DSA.

6.3 PIA

A PIA is applicable to debtors who have secured debts such as a PDH or BTL mortgage, and unsecured debts such as credit cards or personal loans. A PIA is a formal agreement that sets out a payment plan for a period of time not exceeding 6 years and may provide for the write-off of unsecured debt and the restructuring or write off of secured debt. A PIP acts for the debtor in preparing a PIA proposal and negotiating with creditors.

Figure 6.3: PIA Debt Profile



A typical PIA debtor is a married employed person in their 40s with children and an average debt figure in excess of €500,000 made up of a PDH mortgage of €240,000, a BTL mortgage of €180,000 and unsecured debt of €80,000.

Section 3.3 explains that Ireland is unique in having the PIA solution that seeks to address secured debt problems.

6.4 Recommended Arrangement Improvements

Debtors avail of PIAs in the ratio of 3:1 when compared to DSAs. The legislation and operational steps involved in processing a DSA and PIA are largely similar, hence this section covers both DSAs and PIAs ('Arrangements').

The following sections describe legislative improvements that are aimed at increasing the numbers availing of DSAs and PIAs and making the process more efficient.

Proposals are broken down into 11 categories:

1. Generic PC
2. PC Extensions
3. Minor operational changes to the PC process
4. Interlocking/Joint Applications
5. PIP delegation
6. Creditor meeting adjournments
7. Application to the appropriate court for directions
8. Section 115A Reviews
9. Removal of certain 'gateway provisions'
 - a. Removal of MARP eligibility criterion
 - b. Removal of €3 million secured debt threshold

- c. Relevant debt – section 115A(9) – Removal of the cut-off date of 1 January 2015

10. Removal of 'excludable creditor' category

11. Other

6.4.1 Generic PC

At present a PIP, when applying for a PC on behalf of a debtor, must specify if it is for a DSA or PIA. A generic PC would enable the PIP to defer the decision as to the most suitable type of proposal for the debtor until all debtor information has been gathered and initial negotiations have taken place with creditors. The ISI recommends the introduction of a Generic PC to increase flexibility and the likelihood of a PIP securing a successful Arrangement.

6.4.2 Extension of PC

There are circumstances where a second 40-day extension to a PC is required to allow a PIP's proposed arrangement gain creditor support. The ISI recommends that a second PC extension be provided for to cater for exceptional circumstances where there is the likelihood of creditor agreement being reached within the time of the second extension. It is worth noting that should the Consultative Forum proposal, to define days in the Act as only referring to working days, be implemented then the resulting increase in the standard PC period together with the existing PC extension option would be sufficient.

6.4.3 Minor operational changes to the PC process

The ISI recommends two minor but important amendments to address:

1. notifications that are required regarding an objection to a PC, and
2. notifications that are required relating to a creditors' meeting.

6.4.4 Interlocking/Joint Applications

Where there are two (or more) debtors who are jointly liable for all of the debts to be included in a DSA or a PIA, a joint application can be made.

An interlocking application would be appropriate where two (or more) PIAs are to be administered in common - usually because of the financial relationship of the debtors involved. Examples would be a couple or business partners, where they are jointly liable for some - but not all - of the debts to be included in the PIA.

There is no specific provision in the Act for interlocking DSA cases, or interlocking DSA/PIA cases. In practice, there have been several DSA cases that, while individual, are interlocking in all but name, with usually two linked debtors. The ISI recommends that legislation be reworded to expand the circumstances where interlocking applications can be made (i.e. DSA and DSA/PIA applications to be administered in common).

6.4.5 PIP delegation

As PIPs deal with an increasing number of cases, it is essential that they can delegate certain tasks to staff while retaining ultimate responsibility. Currently, PIPs are required to attend court at levels not originally foreseen within the legislation and often with relatively short notice. To provide greater flexibility to PIPs the ISI recommends that the current provisions that require a PIP to personally and physically discharge certain functions be adjusted to allow:

- a suitably qualified individual, nominated by the PIP and acting under the direction and control of the PIP, to carry out those functions, including meeting a debtor and chairing a creditor's meeting; and
- a PIP to hold virtual as well as physical meetings.

6.4.6 Creditor meeting adjournments

The ISI recommends that the legislation be amended to cater for two adjournments.

This would be helpful to facilitate the passing of arrangements by allowing for further consideration of an amended proposal, as long as the adjournment takes place within the standard PC period, or any extension granted to it. A number of cases have arisen where such flexibility would have been of benefit to all parties involved.

6.4.7 Application to the appropriate court for directions

The ISI recommends it should have the facility to apply to court for general directions where there may be an issue around interpretation of the Act or other clarification is required.

6.4.8 Section 115A Reviews

Since the introduction of s.115A allowing for a court review of a PIA proposal rejected by creditors, the last 18 months has seen a large volume of applications (over 400 to

date) being made, with many cases still going through court case management. The process has given rise to a new and growing body of insolvency case law, which should, in time, assist the speed with which cases can be dealt with, as more issues of law become clearer.¹⁰

Based upon experience of court hearings to date, the ISI recommends that the Court that has heard the review should have the power to refer its considerations back to a creditors' meeting for further consideration. The ISI further recommends amending the timeline within which a creditor may object to an application by a debtor and amending the time limit in section 115A(3) to provide certainty.

6.4.9 Removal of certain 'gateway provisions'

Three gateway provisions have been identified as ones that, if amended, could assist more debtors in availing of the solutions provide for under the Act. These are:

1. removal of the MARP eligibility criterion;
2. removal of the €3million secured debt threshold, and
3. removal of the cut-off date of 1 January, 2015.

Each of these is examined in turn.

6.4.9.1 Removal of MARP eligibility criterion

The ISI recommends that the PIA eligibility criterion of the debtor participating in the MARP process should be removed, as remaining eligibility criteria will ensure only those debtors who need to avail of the solutions provided for under the Act can do so.

6.4.9.2 Removal of €3 million secured debt threshold

The ISI recommends that the eligibility criterion that a debtor's aggregate secured debt cannot exceed €3 million without creditor consent should be removed, as this is a barrier to entry for debtors with significant personal debts.

¹⁰ Summaries of the relevant cases are contained in the ISI's Stakeholder e-Briefs, which can be found at [https://www.isi.gov.ie/en/ISI/Pages/Stakeholder Information](https://www.isi.gov.ie/en/ISI/Pages/Stakeholder%20Information)

6.4.9.3 Relevant debt – section 115A(9) – Removal of the cut-off date of 1 January 2015

The ISI recommends that the cut-off date of 1 January 2015, referred to in the definition of relevant debt as set out in the Act, should be removed as the ISI is of the view that it deprives some insolvent debtors of a debt resolution mechanism.

6.4.10 Removal of ‘excludable creditor’ category

The concept of excludable debt does not exist in other jurisdictions and means that an insolvency solution may only address most but not all of a debtor’s debts and that the insolvency solution cannot be said, in certain instances, to return a debtor to solvency if excludable debt has to be dealt with outside of the solution either during the term of the solution or beyond its term. In addition, the point is made that creditors holding preferential status are doubly indemnified under the Act.

The ISI recommends that the definition of excludable debt be deleted from the Act.

6.4.11 Other

The ISI recommends further amendments to provisions relating to notifications required following DSA/PIA approval, termination and deemed failure of Arrangements, and issues around Register entries.

In addition, the ISI recommends a clearer process regarding the provisions in relation to proof of debt, and the specification of a default jurisdiction for debtors who were not resident in Ireland within the year prior to an application.

6.5 Conclusion

The design of the PIA to address secured debt within a voluntary statutory arrangement, while also seeking to keep as many insolvent debtors in their home as possible, is ground-breaking. It has been proved to work. PIAs are now the most popular solution of all provided within the Act - outnumbering DRNs and DSAs combined and also outnumbering bankruptcy cases.

The ISI has identified a number of proposals that are necessary to bring greater levels of speed, efficiency and cost-effectiveness to the insolvency process, with consequent benefits to all stakeholders. It is important to note that while some of the proposals

of themselves may be seen as minor in nature, taken as a group, and seen in the context of a number of such occurrences, the proposals will be of significant benefit of all stakeholders in adding certainty, clarity and efficiency to the process.

The ISI has also identified certain 'gateway' clauses that it proposes are removed taking into account the careful balance between debtor and creditor rights already struck within the act.

7 Creditor and Debtor Engagement

7.1 Creditor and Debtor Engagement - Introduction

Since its inception the ISI has been extremely conscious that the manner in which it operationalised the legislation would have a significant bearing on the success of the take-up of the insolvency solutions. The ISI realised that its solutions could only be delivered through the positive engagement of key stakeholders and it focused on establishing and maintaining good relationships with its stakeholders, including creditors, practitioners and debtor advocacy groups. Conscious that debtor engagement is linked to the psychology of debt, the ISI has invested in significant debtor awareness campaigns which have demonstrably increased its awareness and resulted in significant increase in website traffic.

7.2 Creditor/PIP engagement

The ISI hosted an operations-focused conference in Dublin Castle in 2014 to encourage information sharing between creditors and insolvency practitioners. This led to the establishment of a Protocol Steering Group that developed standard DSA and PIA protocols that drew on best practice in other jurisdictions and made the insolvency application process both simpler and faster for creditors, practitioners and debtors.

The introduction of the protocols was a key building block that promoted efficiency in the DSA and PIA process and reduced costs for all stakeholders. The protocols delivered proposal certainty and consistency, reduced the time spent on proposal formation and negotiation and allowed all parties to concentrate on the commercial rather than the procedural aspects of a proposal. The protocols also assisted credit committees and creditor legal divisions to consider proposals more quickly. A Protocol Oversight Committee monitors how the two protocols are working in practice and ensures they remain relevant by incorporating relevant legislative and other amendments.

In addition, the ISI has published a number of sample case scenarios on its website to aid understanding of the debt solutions available. The scenarios explain some of the personal insolvency concepts and illustrate how each of the debt solutions may operate in practice for a debtor, insolvency practitioner, creditor and the Court. The

scenarios have been used by stakeholders, for example the Institute of Banking and the Revenue Commissioners, in training modules. The ISI specifically developed two of the scenarios to assist practitioners in making comparisons to the financial outcome for creditors in Bankruptcy.

The ISI believes that in many cases clarity around a creditor's preferred position on the treatment of their debt is not conveyed to PIPs at a sufficiently early stage during a PC.

In this regard the ISI would encourage each main creditor to:

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

7.3 Debtor Engagement - Introduction

The statutory solutions provided by the ISI are voluntary in nature and therefore insolvent debtors need to be both aware of the solutions available to them and encouraged to avail of them where it is appropriate to do so.

Early engagement by debtors with PIPs is particularly important. The ISI recognises that it has an important role to effectively communicate and drive awareness of its range of solutions. As a result, the ISI undertook specific work to increase debtor awareness which has developed over time, details are set out at section 7.5 below and at appendix 7.

7.4 Psychology of debt

The psychological effects of debt underpin the ISI's approach in reaching out to debtors. Research undertaken by the ISI over the past 3 years, along with feedback from ISI customers has highlighted that the effects of debt on mental health can be severe and can prevent people seeking the help they need. There is a correlation in behaviour patterns of those experiencing problem debt and those with depression.

Debtors have spoken about feelings of isolation, shame and stigma towards their financial situation.

For many there is a real sense that their debt is a sign of failure in life. They don't want to admit their problems or disappoint others. Their debt problems are closely associated with losing independence.

Some comments from participants of focus groups held by ISI, where people discussed their feelings about being in debt, were as follows:

"Sometimes I wish I could crawl into a black bag and zip it up and stop. Sometimes you feel like everything is coming at you."

"Unless you are in this situation and you know that you have done and tried everything you can to fix the situation unless you've done that you really can't explain to people. They just don't understand."

"I feel all that my family is in at the moment is of our own doing. I feel it is our fault and we need to try and get out of it."

There is a sense of fear about the implications of missing loan repayments. In particular, concerns about the effect on their credit rating looms large and they anticipate problems in the future when they might need a loan or further support from a financial institution.

Debtors can be reluctant to engage with creditors or seek assistance from an advisor such as a PIP. The relatively low number of house repossessions in Ireland may be an influencing factor in this area.

7.5 Awareness campaigns

Since its establishment, the ISI has held a number of information campaigns and undertaken a range of awareness raising initiatives. The ISI's most recent awareness campaign finished in March 2017. Pre and post campaign research was carried out to measure the sentiments of the general population towards financial matters and their awareness levels of the ISI's campaign and solutions.

Results showed that awareness levels of the ISI had increased, approximately a third of the population were aware of the ISI. 30% of those surveyed were aware of the term 'Personal Insolvency Practitioner'. Half of all adults had seen at least one of the two elements of the campaign that were measured (TV and Print advertisements). Website traffic to www.backontrack.ie during the advertising period increased dramatically with 82% of traffic comprising new visitors to the site. The increase in visitors to the website was over 700% when compared to a three month period where the ISI was not advertising.

7.6 Conclusion

Awareness raising and encouraging debtor engagement is an ongoing piece of work for the ISI, particularly as the solutions are still relatively new. The ISI has and continues to focus on and invest in measures designed to increase the take-up of its debt solutions.

Debtor awareness campaigns have increased awareness of the ISI and its solutions but the psychology of debt outlined above presents complex challenges and it will take time for people to accept that there is no stigma or shame in seeking professional assistance for unmanageable debt.

Good relationships with all stakeholders and the development of protocols have provided guidance and ground rules for putting in place debt solutions. Creditors are encouraged to engage with PIPs as early as possible during a PC and also, at a general level, to set out details of the range of options that they will broadly support within a DSA or PIA proposal.

8 Supplementary Issues

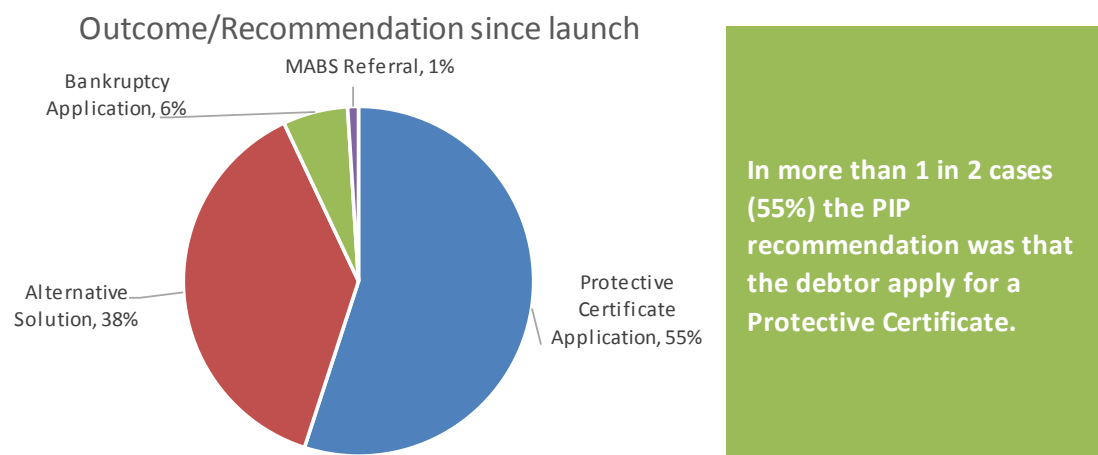
8.1 Introduction

Insolvency legislation does not operate in a vacuum. It is continuously impacted by changes in the external financial, economic and political environment. Set out below are some of those external factors.

8.2 Abhaile Service

Since July 2016 a range of free, independent, professional advice services is available through Abhaile, to a person who is insolvent and at risk of losing their home due to mortgage arrears. One of these services is financial advice and assistance from a PIP. Since the introduction of Abhaile in July 2016 the number of PIA applications per quarter to the ISI has increased significantly in comparison with the equivalent quarter 12 months previously. For example, the number of applications in first quarter of 2017 was 1,144 in comparison with 407 for the equivalent quarter of 2016. Almost two-thirds of these debtors have mortgage arrears of more than two years. Further information is provided in Appendix 3.

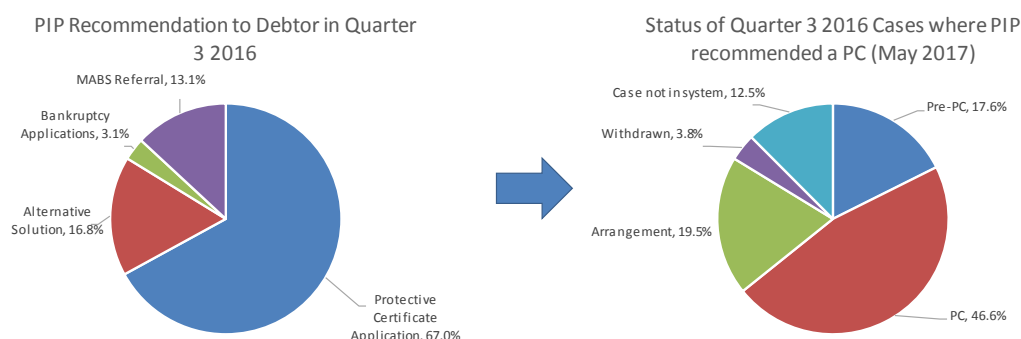
Figure 8.1: Abhaile - PIP recommendation following consultation



The PIP financial advice under the Abhaile scheme has significantly increased the number of debtors availing of the services of a PIP. The outcomes (as of May 2017) of cases where PIPs advised borrowers under Abhaile between 22 July and 30 September 2016 and where the PIP recommended seeking a Protective Certificate, were that nearly two-thirds of the debtors recommended for a PC had either an arrangement or

a PC in place within 6 months of the PIP consultation. The translation rate from PIP consultation to PC/arrangement is shown in Figure 8.2.

Figure 8.2: Abhaile - Outcome of cases where a PC was recommended



8.3 Small and Medium Entrepreneurs

The Department of Justice and Equality's advertised consultation specifically asked for submissions on the thresholds and processes under Part 3 for PIAs (*including for insolvent persons who are unincorporated small or medium entrepreneurs*) and on whether these should be changed (emphasis added).

Appendix 7 contains an analysis of the business debts of sole trader applicants for ISI solutions. The analysis shows that the percentage of unincorporated Small to Medium Enterprises (SMEs), as a percentage of both applications and court approved arrangements, is in line with their representation in the population as whole. Debtors who had unincorporated SME debts have the same success rate in obtaining an ISI debt solution as all other debtors.

The analysis does not present a case for a change in thresholds or processes that are specific to unincorporated SMEs.

8.4 EU Developments

The EU's current political priorities are promoting economic recovery and boosting growth and employment. The approach to insolvency has evolved towards a 'second chance approach' for businesses and entrepreneurs in financial difficulties, and moves towards enhanced cooperation and coordination in cross-border insolvency proceedings.

The recast Insolvency Regulation has just come into force. Under the Regulation an EU-wide insolvency register is being established. In order to improve the provision of relevant and timely information to creditors and courts and to prevent the opening of parallel insolvency proceedings, the ISI is preparing to have its registers of DRNs, DSAs and PIAs interconnected with, and available via, an EU-wide system of web-based insolvency registers by June 2018, in full conformity with the European legislation on data protection.

A draft Directive was published in November 2016 which seeks to introduce a harmonised approach to insolvency across EU member states. It contains some elements that would have significant impact on the Act and also new pre-insolvency elements that are not currently available for non-incorporated enterprises. The ISI believes that the main areas that may impact on the Act and its operation are:

1. the introduction of a distinction between entrepreneur and non-entrepreneur debts for natural persons that is not operated in practice;
2. the introduction of a preventative restructuring framework for pre-insolvency that may co-exist with insolvency arrangements under the Act;
3. the potential impact of the 'absolute priority rule' on the manner in which insolvency arrangements are currently negotiated;
4. the impact of the reduction in the maximum term of an insolvency arrangement to 3 years; and
5. the data collection requirements imposed on Member States particularly in relation to informal arrangements entered into between debtors and creditors.

The ISI will contribute to the development of these major policy initiatives based on its expertise and knowledge of personal insolvency. The ISI believes that the data collection requirements in Article 29, although onerous, would bring transparency to both the solutions offered through the Act and the informal solutions negotiated between debtors and creditors which number in excess of 120,000 for PDH mortgages.

8.5 Conclusion

The PIP financial advice under the Abhaile scheme has significantly increased the number of debtors availing of the services of a PIP. Preliminary data suggests that the

majority of debtors availing of the Abhaile scheme who consult a PIP would benefit from a PIA. Preliminary data also shows that where it is recommended that a debtor avail of a PIA, the majority of debtors act on such a recommendation.

The ISI solutions are available to, and availed of by, debtors regardless of whether they are employed or self-employed.

EU regulations and Directives continue to move in the direction of a harmonised EU approach to insolvency and move away from the traditional liquidation approach towards more of a “second chance approach” for businesses and entrepreneurs in financial difficulties while moving towards enhanced cooperation and coordination in cross-border insolvency proceedings. The ISI will address and adapt to these external financial, economic and political challenges.

Appendix 1 - Terms of the Department's Consultation

This consultation takes place in response to section 141 of the Act, which requires the Minister for Justice and Equality (in consultation with the Minister for Finance) to review the operation of Part 3 of the Act, to complete the review within one year, and to report on its outcome to both Houses of the Oireachtas.

Section 141 provided for this review to start not later than 3 years after the commencement of Part 3 (i.e. after 31 July 2013). In practice, Part 3, and its operation, have been very extensively reviewed, amended and developed throughout that intervening period. This includes:

- significant amendments to Part 3 made by the Courts and Civil Law (Miscellaneous Provisions) Act 2013 and by the Personal Insolvency (Amendment) Act 2015;
- important amendments to bankruptcy law which affect the operation of Part 3, made by the 2013 Act and by the Bankruptcy (Amendment) Act 2015;
- the reform of personal insolvency fees and charges in 2014; and
- the implementation in 2015 and 2016 of Government commitments to strengthen support for those in home mortgage arrears, particularly the launch in October 2016 of the Abhaile scheme of State-funded financial and legal advice and assistance for those in home mortgage arrears (including advice and assistance on personal insolvency).

This consultation is intended to complete the overall review envisaged by section 141, by giving stakeholders an opportunity to make known their views on the operation to date of Part 3, including the impact to date of the various changes set out above. The submissions received will be analysed and considered within (at most) 12 months of the date of this notice, and a report will be prepared and laid before each House of the Oireachtas, as soon as reasonably practicable thereafter. Submissions are specifically invited on the thresholds and processes under Part 3 for Personal Insolvency Arrangements (including for insolvent persons who are unincorporated small or medium entrepreneurs) and on whether these should be changed. The Government has committed to review this issue, under the Programme for Partnership Government.

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Appendix 2 - The ISI Functions, Mission and Strategic Direction

A2.1 ISI Mission Statement

By operating the statutory framework for personal insolvency solutions, return insolvent people to solvency and full participation in social and economic activity.

A2.2 ISI Strategic Goals

The ISI's strategy for the period 2016-2019 set out its key goals as:

- To process personal insolvency debt solutions
- Ensure enhanced communications and increased public awareness
- Ensure effective and appropriate regulatory controls (Authorise, Regulate, Supervise, Support)
- Contribute to policy development and legislative improvements
- Provide corporate support and development of our staff.

A2.3 ISI Functions

The principal functions of the ISI are set out in section 9 of the Act as including:

- to operate the system to support the three alternatives to bankruptcy – the DRN, DSA and PIA
- to administer the estates of bankrupts
- to regulate authorised practitioners around the country who offer personal insolvency advice and assist debtors in seeking a DRN, DSA or PIA
- to promote public awareness and understanding of the personal insolvency solutions available to people
- to prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses for debtors
- to contribute to the development of policy in the area of personal insolvency.

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Appendix 3 – Statistical Information

This Appendix contains statistical information covering the following areas:

1. Analysis of DRN, DSA and PIA Debt and Debtors
2. Progression of DRN, DSA and PIA applications
3. Analysis of Abhaile Scheme
4. Comparisons to activity levels in England and Wales
5. Detailed Analysis of a sample of 100 PIAs.

A3.1 ISI Yearly Statistics: Applications, PCs issued and Arrangements Approved

Figure A3.1 gives details of the number of applications received by the ISI and the numbers who ultimately availed of the 4 ISI solutions – DRN, DSA, PIA and Bankruptcy. The Figure shows that the number of applications and solutions increased each year since the ISI was established in 2013.

Figure A3.1: ISI Yearly Statistics: Applications, PCs issued and Arrangements Approved.

ISI Yearly Statistics												
Period	New Applications				Protective Certificates			Arrangements Approved				Bankruptcy
	Total	DRN	DSA	PIA	Total	DSA	PIA	Total	DRN	DSA	PIA	
2013	112	0	29	83	11	5	6	1	0	1	0	58
2014	1,331	297	243	791	661	153	508	453	249	78	126	448
2015	2,028	372	365	1,291	1,371	327	1,044	1,170	347	204	619	479
2016	3,329	371	428	2,530	1,756	312	1,444	1,283	357	233	693	526
Total	6,800	1,040	1,065	4,695	3,799	797	3,002	2,907	953	516	1,438	1,511
Percentage change, year on year:												
2014 to 2015	52%	25%	50%	63%	107%	114%	106%	158%	39%	162%	391%	7%
2015 to 2016	64%	0%	17%	96%	28%	-5%	38%	10%	3%	14%	12%	10%

A3.2 DRN, DSA and PIA Debt Profile 2014 - 2016

Figure A3.2 sets out the profile of the total debts and average debts included in DRN, DSA and PIA solutions for the years 2014 through 2016.

The Figure shows that the average DRN debt over the 3 years was €14,045; the average DSA unsecured debt was €135,110 and the average unsecured debt included in approved PIAs was €78,301.

All 3 solutions result in unsecured creditors taking a very significant debt-write down, generally, in excess of 90%. Applicants for all 3 solutions complete a Prescribed Financial Statement that sets out details of all debts.

Details of secured debts are included in the DSA profile even though DSA applicants cannot have secured debt included in a DSA arrangement. The profile shows that DSA applicants have secured debts of an equivalent value to their unsecured debts. It is assumed that the DSA applicants have the ability to deal with these secured debts without the need to include them in a PIA.

The profile shows that the average PIA applicant had a PPR mortgage of €240,000, other secured loans of €180,000 and unsecured debt in the region of €80,000.

Figure A3.2: DRN, DSA and PIA Debt Profile 2014 - 2016

Arrangements 2014 - 2016								
	Number	Individual	Joint	Interlocking	Total Debt	Secured Debt PPR	Other Secured Debt	Unsecured Debt
DRN Approved								
2014	249	249	-	-	€ 3,079,050.35	-	-	€ 3,079,050.35
2015	347	347	-	-	€ 4,062,614.97	-	-	€ 4,062,614.97
2016	357	357	-	-	€ 6,243,909.39	-	-	€ 6,243,909.39
Total	953	953	-	-	€ 13,385,574.71	-	-	€ 13,385,574.71
Average Debt					€ 14,045.72	-	-	€ 14,045.72
DSA Approved								
2014	78	78	0	-	€ 17,800,688.82	€ 9,253,614.13	€ 759,917.24	€ 7,787,157.45
2015	204	201	3	-	€ 63,895,735.65	€ 27,447,475.48	€ 10,783,902.31	€ 25,664,357.86
2016	234	233	1	-	€ 61,780,379.12	€ 23,294,312.04	€ 2,220,522.06	€ 36,265,545.02
Total	516	512	4	-	€ 143,476,803.59	€ 59,995,401.65	€ 13,764,341.61	€ 69,717,060.33
Average Debt					€ 278,055.82	€ 116,270.16	€ 26,675.08	€ 135,110.58
PIA Approved								
2014	126	37	5	84	€ 60,296,772.25	€ 28,544,928.64	€ 25,163,076.73	€ 6,588,766.88
2015	619	205	11	403	€ 334,766,840.90	€ 153,806,130.30	€ 126,327,649.10	€ 54,633,061.50
2016	692	197	13	482	€ 318,336,703.80	€ 160,164,239.50	€ 106,875,529.90	€ 51,296,934.40
Total	1437	439	29	969	€ 713,400,316.95	€ 342,515,298.44	€ 258,366,255.73	€ 112,518,762.78
Average Debt					€ 496,451.16	€ 238,354.42	€ 179,795.59	€ 78,301.16

*Arrangements approved at court

Note: Secured Debts of DSA applicants are included for information: such debts would not form part of a DSA arrangement.

A3.3 DRN Debtor Profile 2014 - 2016

The profile of a typical DRN debtor is a single, unemployed person in their later 40s who has about 4 debts whose value in total is less than €20,000.

Figure A3.3: DRN Debtor Profile 2014 - 2016

DRN Profile and DRN Debtor Profile	2014	2015	2016
Average Debt Figure	€12,267	€11,436	€17,637
Average Number of Debts per Debtor	3.5	3	4
Average Value of Debtor Assets	€34	€77	€65
Age of Typical Debtor	48 years	48 years	47 years
Typical Employment Status of Debtor	Unemployed	Unemployed	Unemployed
Average Income Before RLEs (Monthly)	€1,077	€1,114	€1,181
Average total RLEs (Monthly)	€1,308	€1,280	€1,287
Gender of typical debtor	Male (52%)	Male (53%)	Female (51%)
Typical Marital Status	Single, never married	Single, never married	Single, never married
Household Composition (%)			
One adult household, no children	57%	53%	47%
One adult household, has children	19%	13%	17%
Two adult household, no children	6%	8%	16%
Two adult household, has children	19%	27%	21%
Employment Status Breakdown (%)			
Unemployed	79%	72%	67%
Employed	8%	10%	12%
Other	14%	18%	22%

A3.4 DSA Debtor Profile 2014 - 2016

The profile of a typical DSA debtor is a married employed person in their 40s with children and an average debt figure in excess of €250,000, of which unsecured debt of €150,000 is dealt with in the DSA arrangement.

Figure A3.4: DSA Debtor Profile 2014 – 2016

DSA Profile and DSA Debtor Profile	2014	2015	2016
Average Debt Figure	€228,214	€308,675	€262,657
Average Number of Debts per Debtor	6	6	6
Average Value of Debtor Assets	€78,400	€100,821	€70,662
Age of Typical Debtor	44 years	44 years	46 years
Typical Employment Status of Debtor	Employed	Employed	Employed
Average Income Before RLEs (Monthly)	€2,755	€2,660	€2,365
Average total RLEs (Monthly)	€1,542	€1,615	€1,618
Gender of typical debtor	Male (53.8%)	Male (56.0%)	Male (56.6%)
Typical Marital Status	Married	Married	Married
Household Composition (%)			
One adult household, no children	24%	17%	20%
One adult household, has children	8%	9%	9%
Two adult household, no children	18%	21%	20%
Two adult household, has children	50%	53%	51%
Employment Status Breakdown (%)			
Employed	69%	72%	58%
Unemployed	14%	12%	21%
Self-employed/Trading	8%	9%	12%
Other	9%	7%	9%

A3.5 PIA Debtor Profile 2014 - 2016

The profile of a typical PIA debtor is a married employed person in their 40s with children and an average debt figure in excess of €450,000.

Figure A3.5: PIA Debtor Profile 2014 – 2016

PIA Profile and PIA Debtor Profile	2014	2015	2016
Average Debt Figure	€460,281	€530,469	€448,104
Average Number of Debts per Debtor	5	6	5
Average Value of Debtor Assets	€153,482	€162,992	€153,079
Age of Typical Debtor	44 years	46 years	47 years
Typical Employment Status of Debtor	Employed	Employed	Employed
Average Income Before RLEs (Monthly)	€2,705	€2,633	€2,423
Average total RLEs (Monthly)	€1,774	€1,696	€1,710
Gender of typical debtor	Female (51%)	Female (50.6%)	Male (50.6%)
Typical Marital Status	Married	Married	Married
Household Composition (%)			
One adult household, no children	19%	15%	14%
One adult household, has children	6%	5%	7%
Two adult household, no children	19%	24%	21%
Two adult household, has children	56%	56%	58%
Employment Status Breakdown (%)			
Employed	66%	62%	59%
Unemployed	13%	16%	13%
Self-employed/Trading	11%	13%	16%
Other	10%	9%	12%

A3.6 DRN Application: Average Time at each stage

A typical DRN takes 15.6 days from the time the documentation is finalised to the time the court grants the DRN.

Figure A3.6: DRN Application: Average Time at each stage

DRN - All Time	Average
Complete to Submitted	0.9 days
Submitted to Approved by ISI	5 days
Approved by ISI to DRN Granted	9.6 days
Complete to DRN Granted	15.6 days

'Complete' is when the Approved Intermediary has all the statutory documentation finalised with the exception of the statutory declaration. A preliminary review is carried out by the ISI at complete stage.

'Submitted' is when the application for a DRN is submitted to the ISI for final checking and forwarding to Court. The date of the application is the date the application is submitted to the ISI.

A3.7 DSA Application: Average Time at each stage

A typical DSA takes 138.4 days from the time the documentation is finalised to the time the court grants the DSA. A typical DSA is approved by court 43.6 days after creditors have approved the proposal.

Figure A3.7: DSA Application: Average Time at each stage

DSA - All Time	Average
Complete to Submitted	18.8 days
Submitted to Approved by ISI	4.4 days
Approved by ISI to PC Issued	10.7 days
PC Issued to Arrangement Approved at Court	105.2 days
<i>Of which the average time from creditors' approval to court arrangement approval was</i>	43.6 days
Complete to Arrangement Approved at Court	138.4 days

'Complete' is when the PIP has all the statutory documentation finalised with the exception of the statutory declaration. A preliminary review is carried out by the ISI at complete stage.

'Submitted' is when the application for a PC is submitted to the ISI for final checking and forwarding to Court. The date of the application is the date the application is submitted to the ISI.

A3.8 PIA Application: Average Time at each stage

A typical PIA takes 155.5 days from the time the documentation is finalised to the time the court grants the PIA. A typical PIA is approved by court 48.3 days after creditors have approved the proposal.

Figure A3.8: DRN Application: Average Time at each stage

PIA - All Time	Average
Complete to Submitted	17.4 days
Submitted to Approved by ISI	3.9 days
Approved by ISI to PC Issued	11.2 days
PC Issued to Arrangement Approved at Court	124.2 days
<i>Of which the average time from creditors' approval to court arrangement approval was</i>	48.3 days
Complete to Arrangement Approved at Court	155.5 days

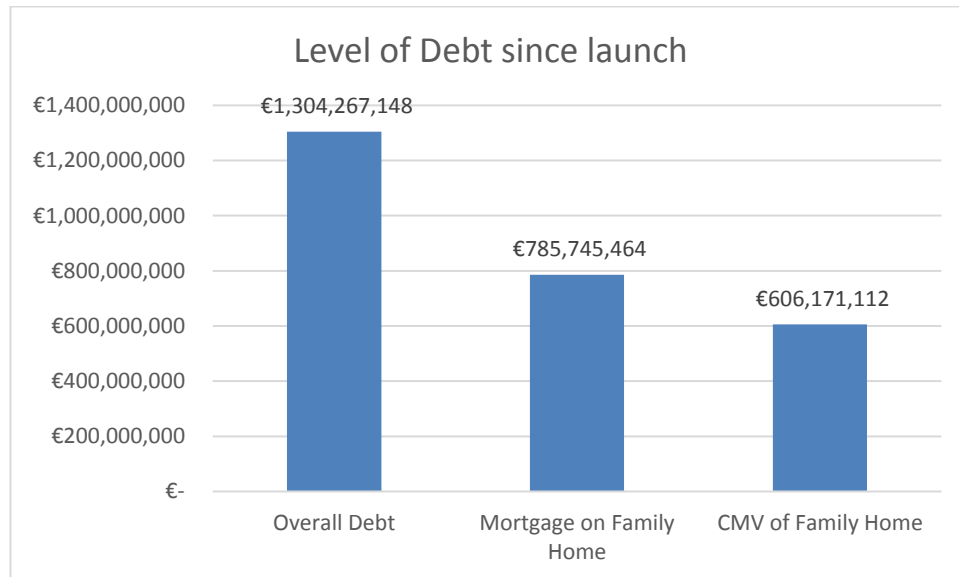
'Complete' is when the PIP has all the statutory documentation finalised with the exception of the statutory declaration. A preliminary review is carried out by the ISI at complete stage.

'Submitted' is when the application for a PC is submitted to the ISI for final checking and forwarding to Court. The date of the application is the date the application is submitted to the ISI.

A3.9 Abhaile: Level of Debt

Over 2,700 Abhaile consultations have been concluded. These consultations covered debt of over €1.3 billion of which €800 million related to mortgage debt on the family home where the current market value of the mortgaged properties was €600 million.

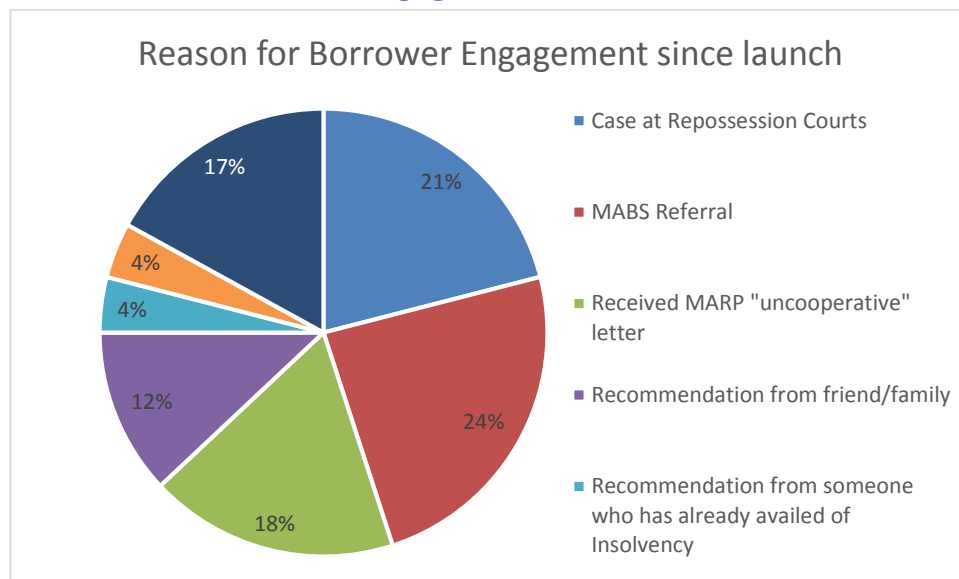
Figure A3.9: Abhaile: Level of Debt



A3.10 Abhaile: Borrower Engagement Reason

Around 1 in 5 borrowers (21%) contacted the PIP because their case was before the repossession court. In general, a debtor will be given a 4-month adjournment by the court to consult a PIP. Almost 1 in 4 (24%) debtors were referred by MABS for a PIP consultation and almost 1 in 5 debtors (18%) consulted a PIP on receipt of a MARP “uncooperative” letter.

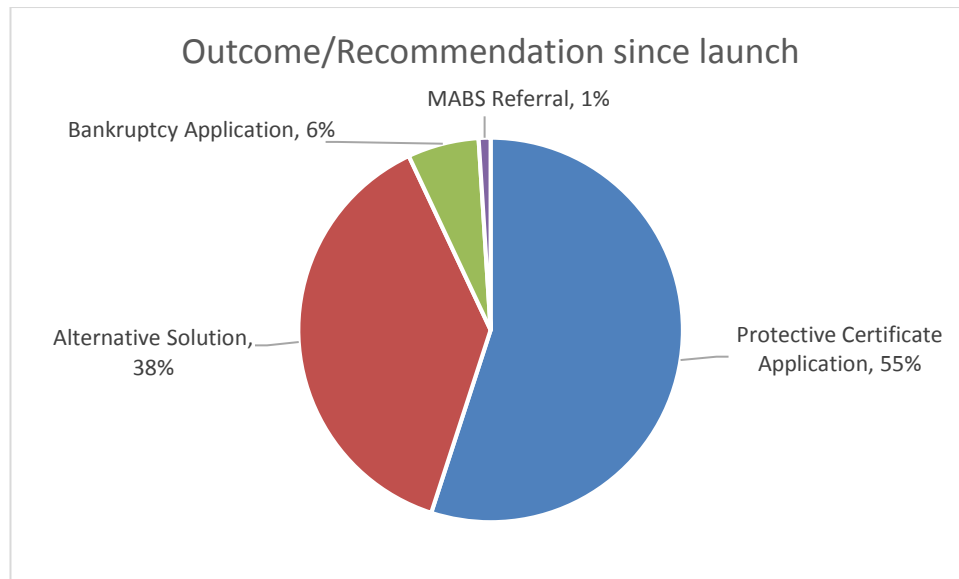
Figure A3.10: Abhaile: Borrower Engagement Reason



A3.11 Abhaile: PIP Recommendation

In over 1 in 2 (55%) of cases the PIP recommendation was that the debtor apply for a PC which is the first step in applying for a PIA. In almost 2 in 5 cases (38%) the PIP recommendation was that an alternative solution be explored which could involve mortgage restructure, mortgage to rent, etc.

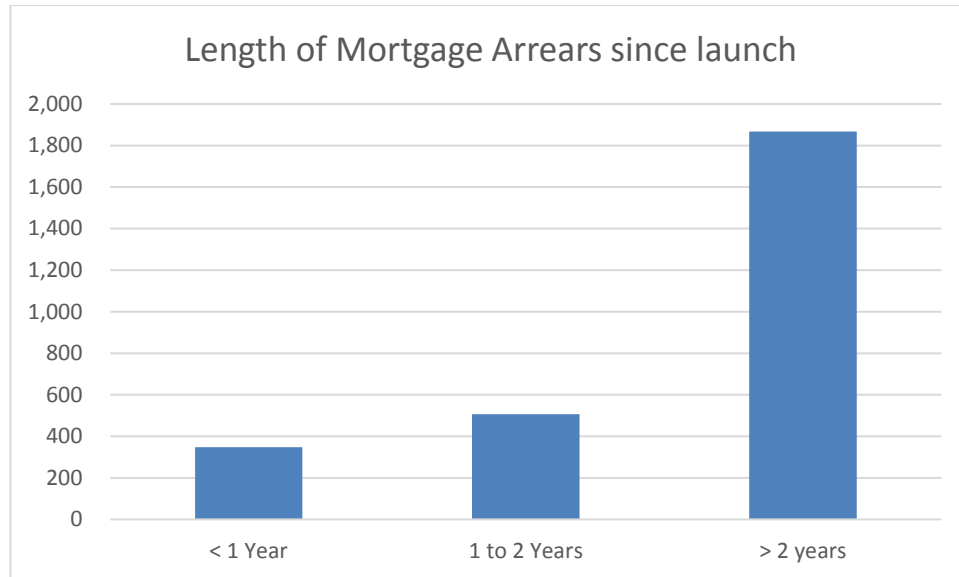
Figure A3.11: Abhaile: PIP Recommendation



A3.12 Abhaile: Length of Mortgage Arrears

A key success of the scheme to date is that 2 out of 3 debtors (67%) have been in mortgage arrears over 2 years. It appears that the Abhaile Scheme has acted as a catalyst for these debtors to take the first step on the road to engagement with their creditors and, in time, a sustainable resolution to their mortgage arrears.

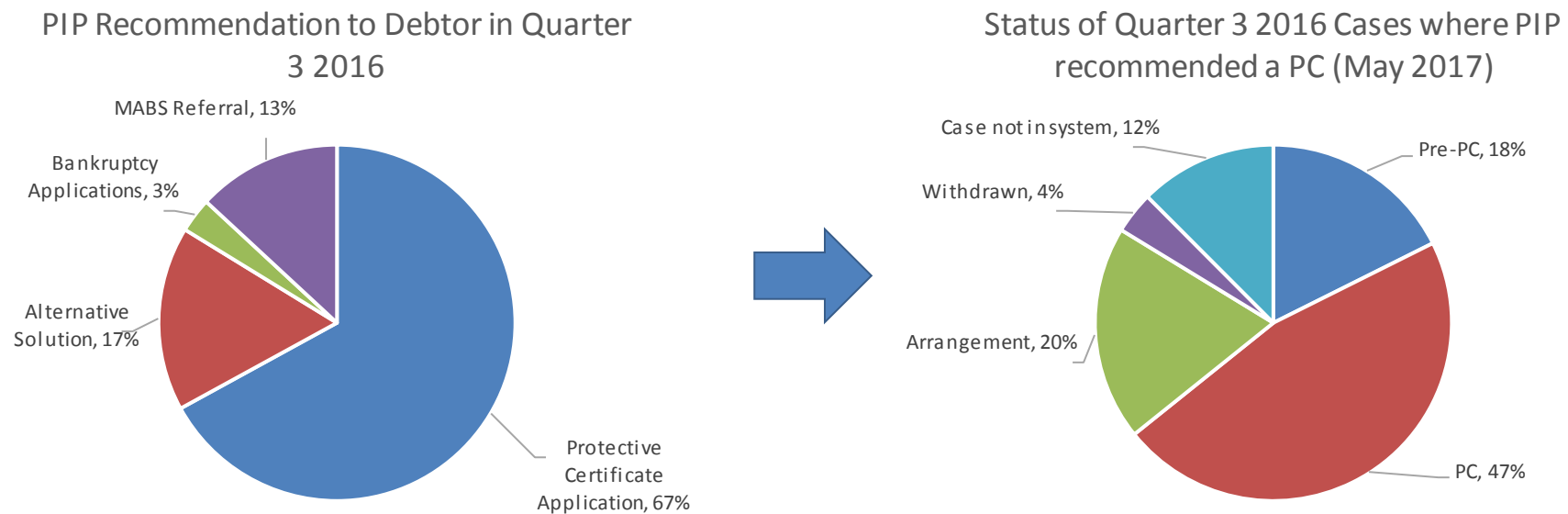
Figure A3.12: Abhaile: Length of Mortgage Arrears



A3.13 Abhaile PIP Financial Consultation Conversion Rate

This Figure shows what happens following a PIP recommendation to apply for a PC. PIPs recommended to two-thirds of debtors who consulted a PIP in Quarter 3 of 2016 to apply for a PC, the first stage in applying for a PIA. Of those debtors advised to apply for a PC, two-thirds had either an arrangement in place (20%) or a Protective Certificate (47%) by May 2017.

Figure A3.13: Abhaile PIP Financial Consultation Conversion Rate



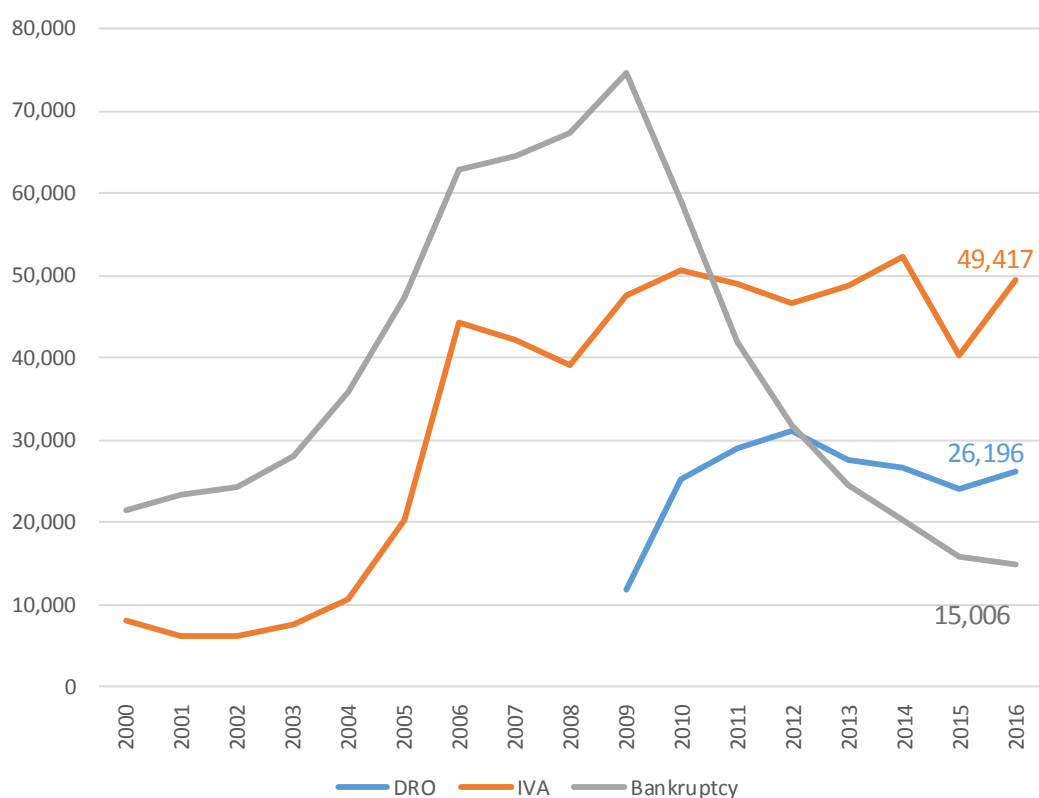
A3.14 Comparison of Irish and England and Wales Number of Solutions

This Figure provides line graph details of the number of bankruptcies, IVAs and DROs in England and Wales for the years from 2000.

The increase in IVA activity in the mid 2000s coincided with the introduction of the IVA Protocol - a voluntary agreement, which provides an agreed standard framework for dealing with straightforward consumer IVAs and applies to both IVA providers and creditors.

The fall in bankruptcies since 2009 coincided with the introduction of DROs.

Figure A3.14: England and Wales Number of Solutions

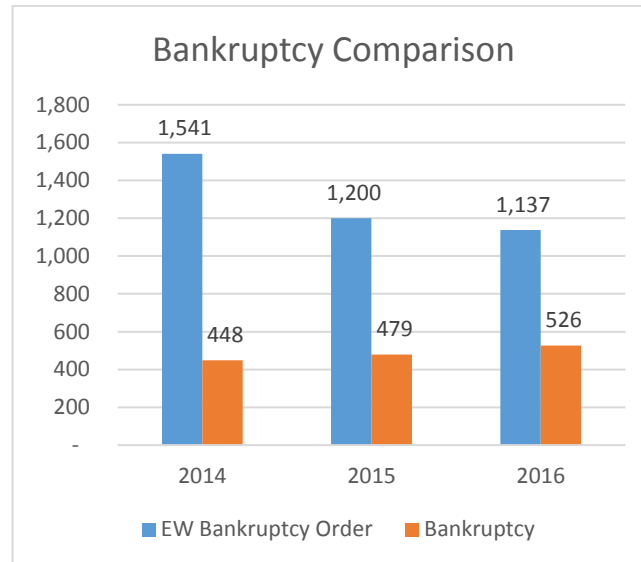


Source: The Insolvency Service (UK)
<https://www.gov.uk/government/collections/insolvency-service-official-statistics>

A3.15 A Bankruptcy Comparison with England and Wales

The figure compares the number of Irish bankruptcies with the population-adjusted numbers for England and Wales for the years 2014 to 2016.

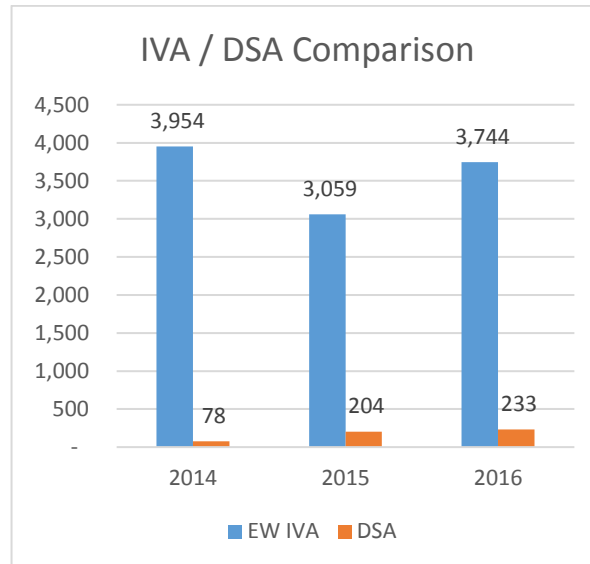
Figure A3.15: A Bankruptcy Comparison with England and Wales



A3.16 A DSA/IVA Comparison with England and Wales

The figure compares the number of Irish DSAs with the population-adjusted number of IVAs for England and Wales for the years 2014 to 2016.

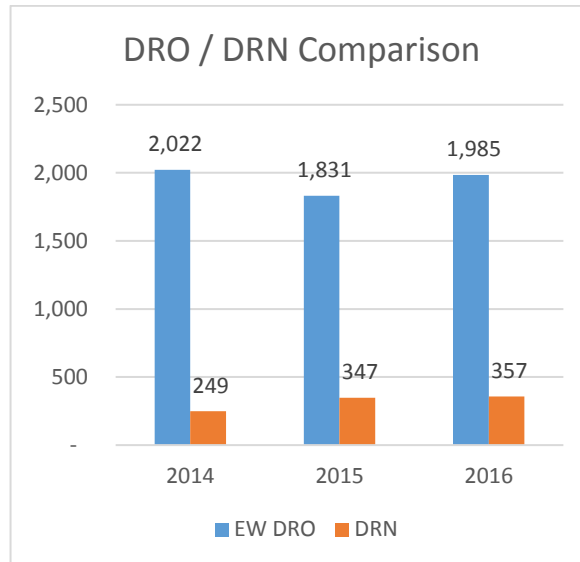
Figure A3.16: A DSA/IVA Comparison with England and Wales



A3.17 A DRN Comparison with England and Wales

The figure compares the number of Irish DROs with the population-adjusted number of DRNs for England and Wales for the years 2014 to 2016.

Figure A3.17: A DSA/IVA Comparison with England and Wales



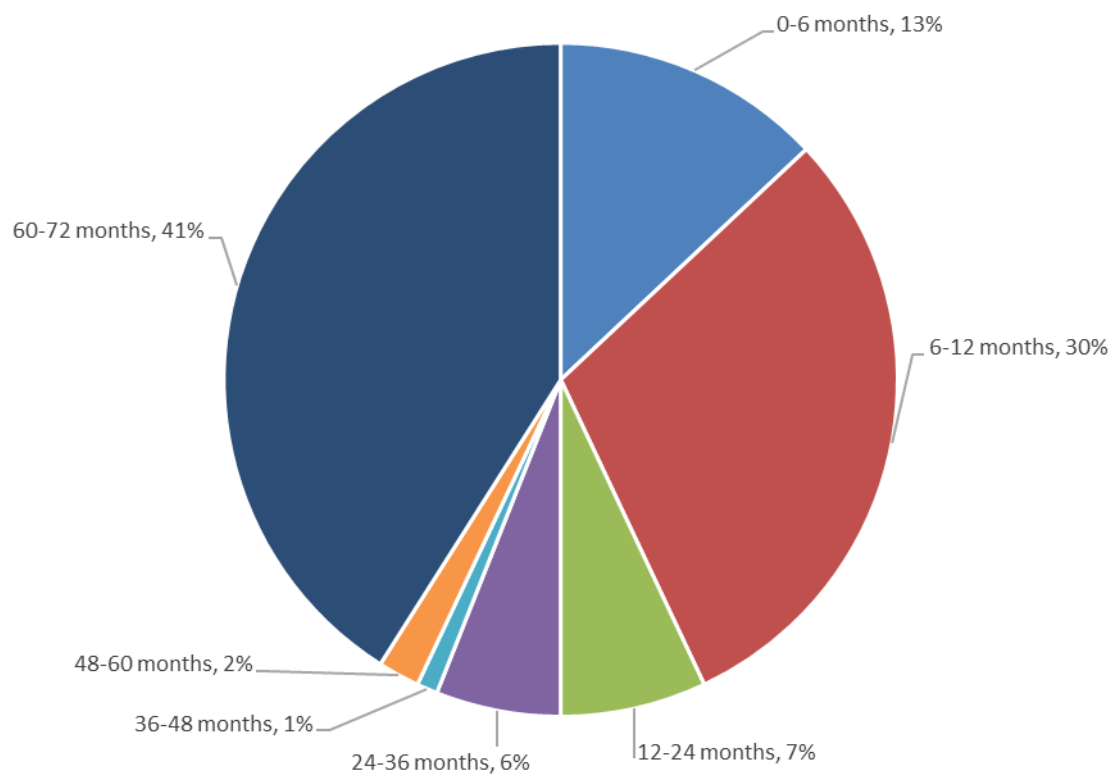
A3.18 ISI Sample - 100 PIA Cases¹¹ : Arrangement Durations

A PIA is permitted to last for up to 6 years.

The analysis shows that 43% of PIA arrangements had a duration of 12 months or less and 41% of PIA arrangements had a duration of 60 months or more.

PIAs tend to be for shorter periods where a debtor offers a lump sum settlement or where there is limited funds available to any remaining creditors after family home mortgage payments.

Figure A3.18: ISI Sample - 100 PIA Cases: Arrangement Durations

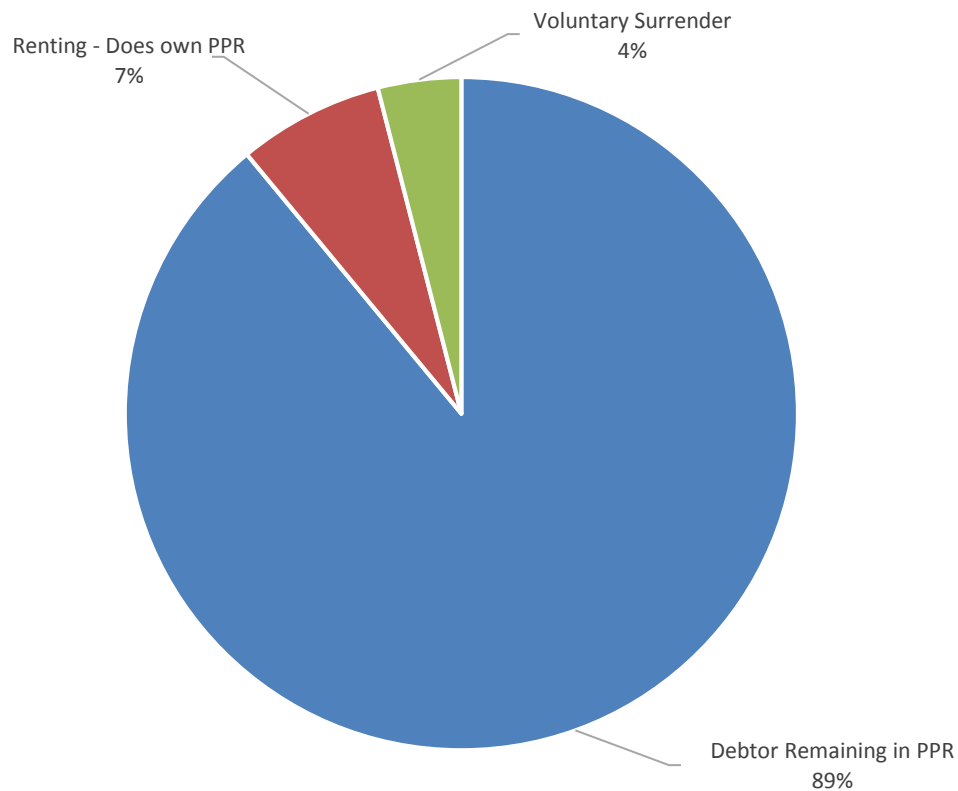


¹¹ This is an analysis of 100 court approved PIA cases where a Protective Certificate issued during 2016.

A3.19 ISI Sample - 100 PIA Cases: Treatment of Debtor Home

The analysis shows that a core objective behind the introduction of the Act – to keep people in their homes – has been achieved. The Figures shows that 89% of debtors remained in their home and just 4% of debtors left their home by voluntary surrender.

Figure A3.19: ISI Sample - 100 PIA Cases: Treatment of Debtor Home

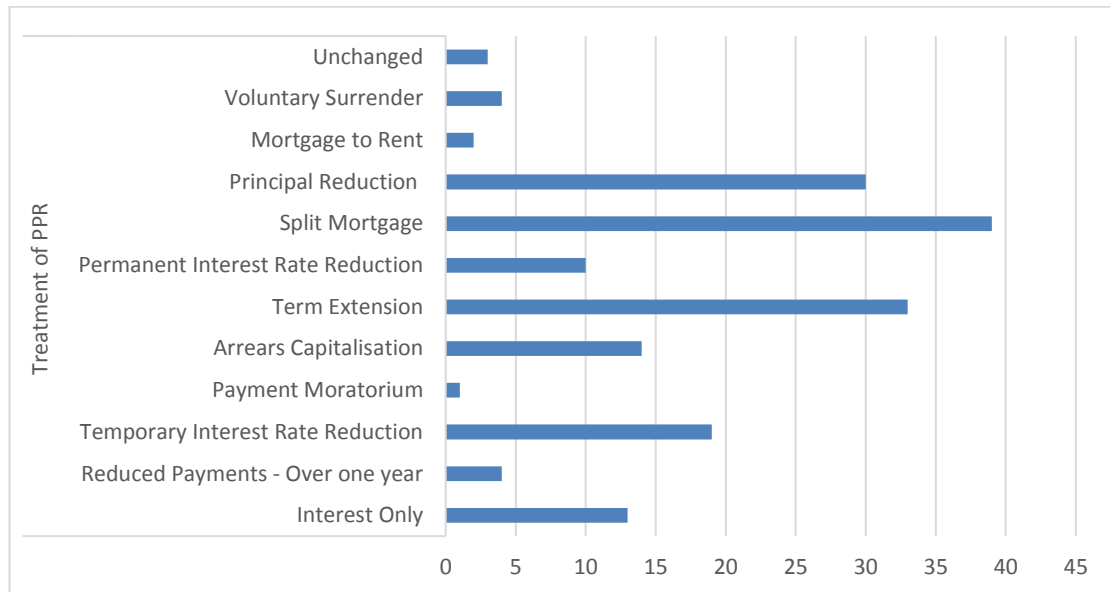


A3.20 ISI Sample - 100 PIA Cases: PPR Mortgage Restructure

The Figures shows that the three most frequently used restructuring methods were split mortgage, term extension and principal reduction.

A principal reduction was applied in 30 cases and the average principal reduction for the 30 cases was €93,000.

Figure A3.20: ISI Sample - 100 PIA Cases: PPR Mortgage Restructure¹²



¹² A PPR Mortgage may have been subject to one or more of the treatments shown.

Appendix 4 – ISI to approve DRNs, PCs, PC Extensions, DSA, PIAs, and Variation

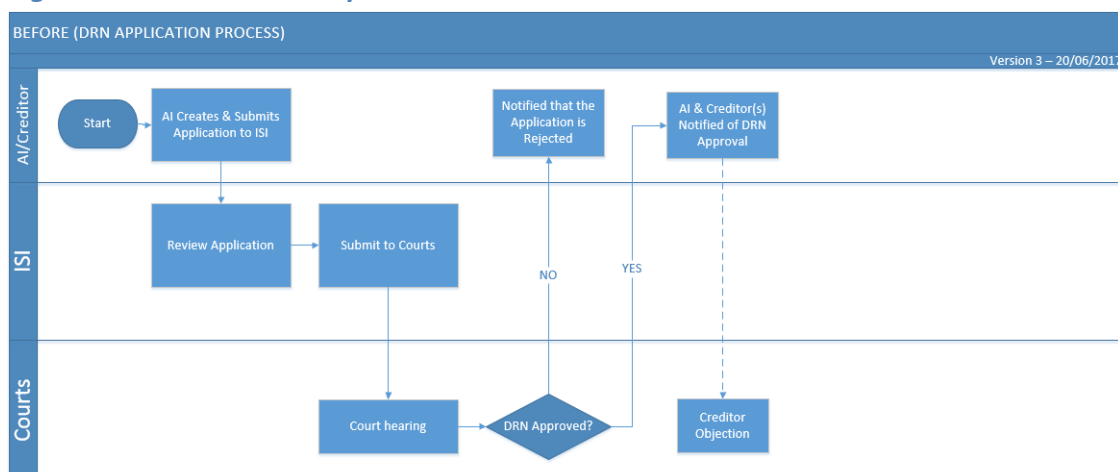
The table below sets out the number of objections raised against PCs, DRNs, DSAs and PIAs in the period since the beginning of 2015. The table also gives a breakdown of the outcome of the objections.

Figure A4.1: No. of Approvals and Objections raised

Case type	Approvals	Objections	% of Approvals	Successful Objections	Unsuccessful Objections	Ongoing Cases
PC	3,623	11	0.30%	4	3	4
DSA	464	12	2.59%	5	4	3
PIA	1,491	29	1.95%	9	16	4
DRN	759	3	0.40%	1	1	1
Total	6,337	56	0.88%	20	24	12

The tables below set out the current DRN, PC, PC Extension, DSA, PIA and Variation procedures and the proposed procedures were the ISI's functions extended to approve these measures rather than the court granting an order for their approval.

Figure A4.2: Current DRN procedure

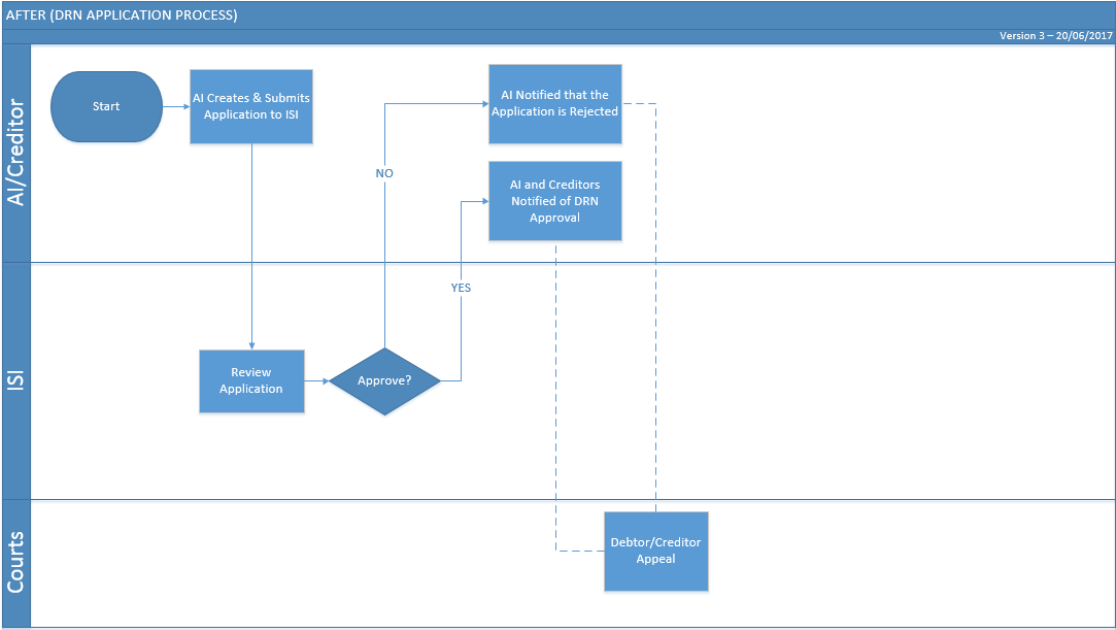


An application for a DRN is made by an Approved Intermediary on behalf of a debtor to the ISI. The ISI reviews the application, and when the ISI is satisfied that the application is in order having regard to specified criteria, forwards it to the appropriate Court for decision. Where the Court is satisfied that the specified criteria have been

satisfied and that the debts specified in the application are qualifying debts, it shall issue a DRN. Where the Court is not so satisfied it shall refuse to issue a DRN.

A specified creditor under a DRN who is aggrieved by the inclusion of its debt in a DRN may lodge a notice to the appropriate Court within the supervision period and on specified grounds.

Figure A4.3: Proposed DRN procedure

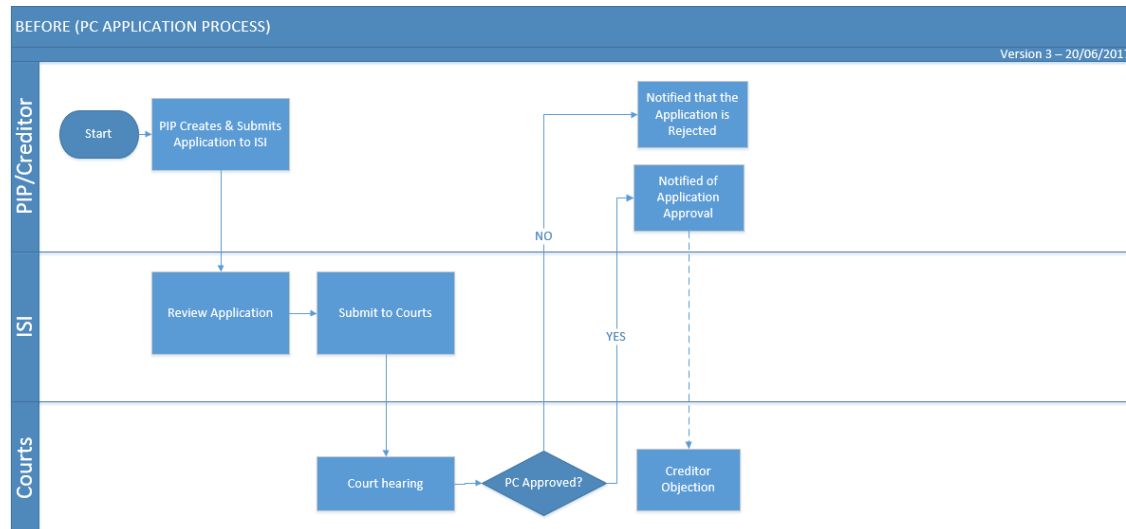


An application for a DRN shall be made by an Approved Intermediary on behalf of a debtor to the ISI. The ISI shall be given all necessary powers to consider an application for a DRN. Where the ISI is satisfied that the specified criteria have been satisfied and the debts specified are qualifying debts, it shall issue a DRN. Where the ISI is not satisfied, it shall refuse to issue a DRN.

Where the ISI has refused to issue a DRN, the ISI shall set out the reasons for same and the Approved Intermediary on behalf of the debtor may, within a specified period and on specified grounds, appeal this decision to the appropriate Court.

A specified creditor under a DRN who is aggrieved by the inclusion of its debt in a DRN may, within a specified period and on specified grounds, appeal the ISI’s decision to the appropriate Court.

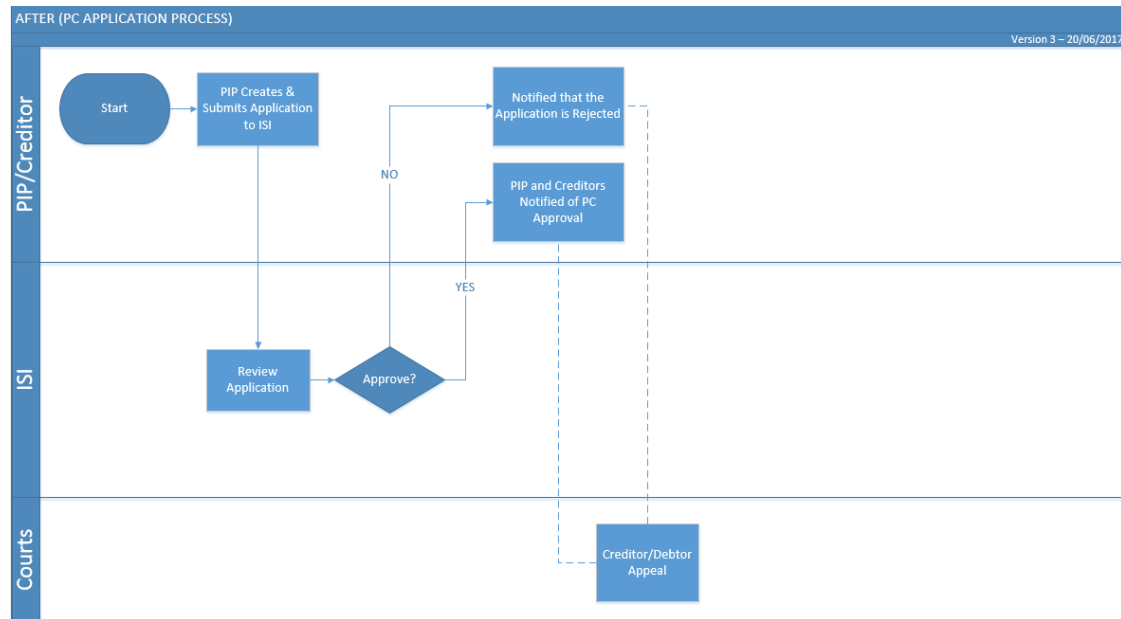
Figure A4.4: Current PC procedure



An application for a PC shall be made by a PIP to the ISI. The ISI reviews the application, and when the ISI is satisfied that the application is in order having regard to specified criteria, forwards it to the appropriate court for decision. Where the Court is satisfied that the specified criteria have been satisfied and that other relevant requirements have been met, it shall issue a PC. Where the Court is not so satisfied, it shall refuse to issue a PC.

Where a creditor is aggrieved by the issuance of a PC, they may lodge within a specified period, a notice to the appropriate Court, with must be determined by the Court in accordance with the Act.

Figure A4.5: Proposed PC procedure

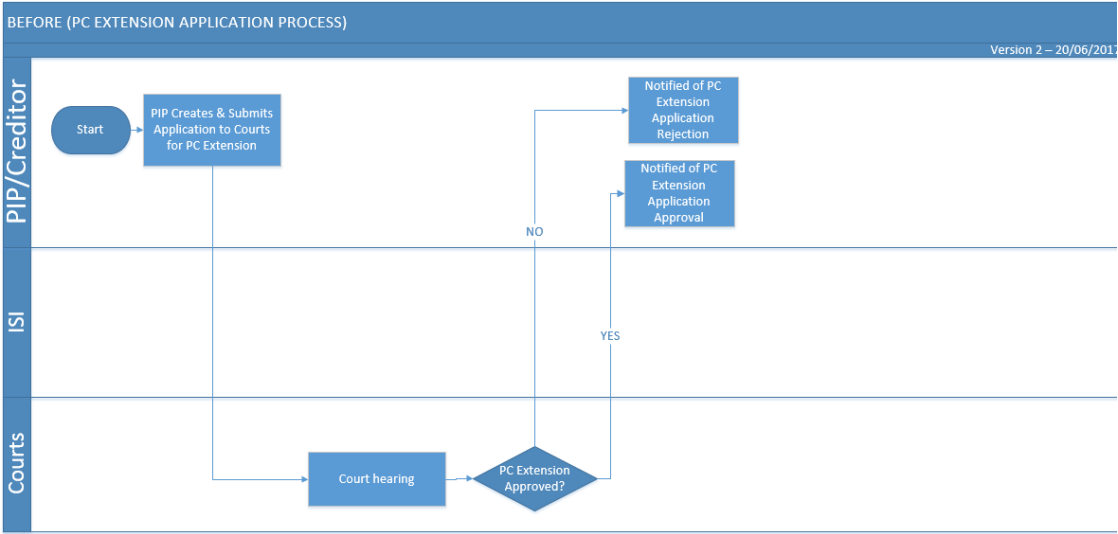


An application for a PC shall be made by a PIP to the ISI. The ISI shall be given all necessary powers to consider an application for a PC. Where the ISI is satisfied that the application is in order having regard to specified criteria, it shall issue a PC. Where the ISI is not satisfied the application is in order having regard to specified criteria, it shall refuse to issue a PC.

Where the ISI has refused to issue a PC, the ISI shall set out the reasons for same and the PIP on behalf of the debtor may, within a specified period and on specified grounds, appeal this decision to the appropriate Court.

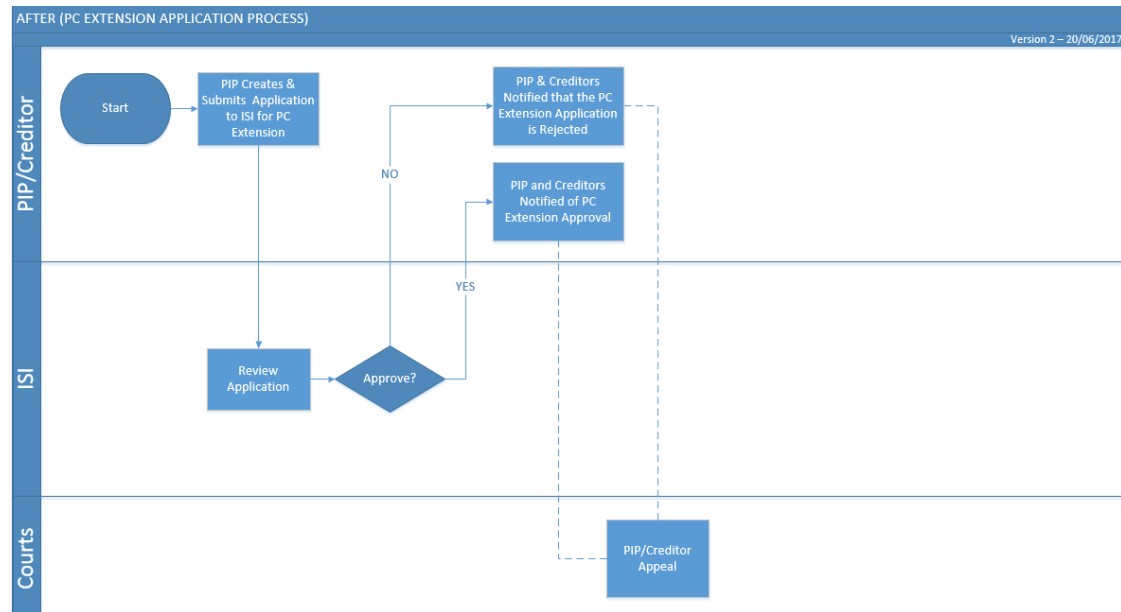
Where a creditor is aggrieved by the issue of a PC, they may within a specified period and on specified grounds, appeal the ISI’s decision to the appropriate Court.

Figure A4.6: Current PC Extension procedure



Where a PC has issued, the appropriate Court may, on application by a PIP, extend the period of that PC for further specified periods, where the Court is satisfied as to specified matters.

Figure A4.7: Proposed PC Extension procedure

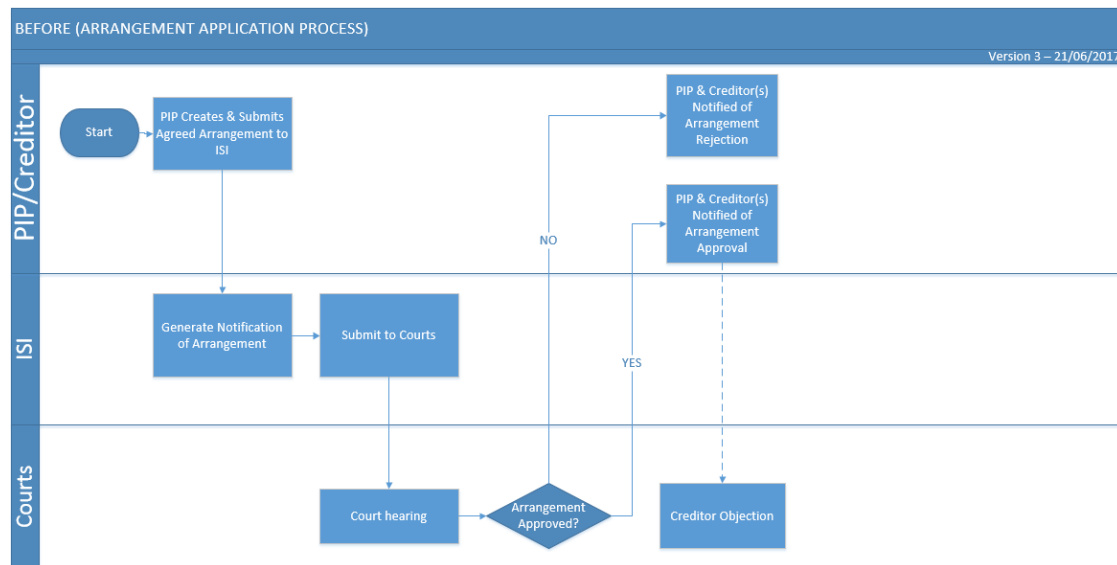


Where a PC has issued the ISI may, on application by a PIP, extend the period of that PC for further specified periods, where the ISI is satisfied as to specified matters.

Where the ISI has refused to extend a PC, the ISI shall set out the reasons for same and the PIP may, within a specified period and on specified grounds, appeal this decision to the appropriate Court.

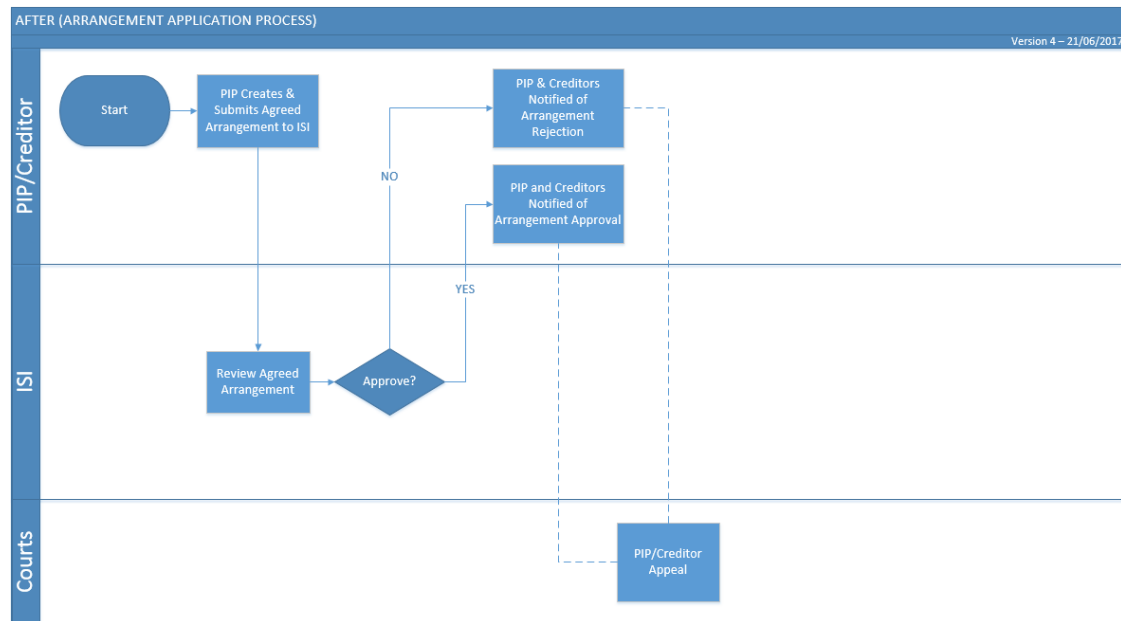
A creditor aggrieved by the extension of a PC may, within a specified period and on specified grounds, appeal the ISI's decision to the appropriate Court.

Figure A4.8: Current Arrangement approval procedure



Where a DSA/PIA ('Arrangement') is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI and each creditor of this approval and shall provide the ISI with all necessary documentation. Where there is no objection to the proposal, the appropriate court will proceed to consider it, and may approve or refuse to approve it. A creditor may lodge a notice of objection to the coming into effect of the Arrangement with the appropriate Court within a specified period and on specified grounds. Where satisfied that the objection should not be allowed and that the Arrangement satisfies specified criteria, the appropriate Court shall approve the Arrangement. Where the Court is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the appropriate Court shall refuse to approve the Arrangement.

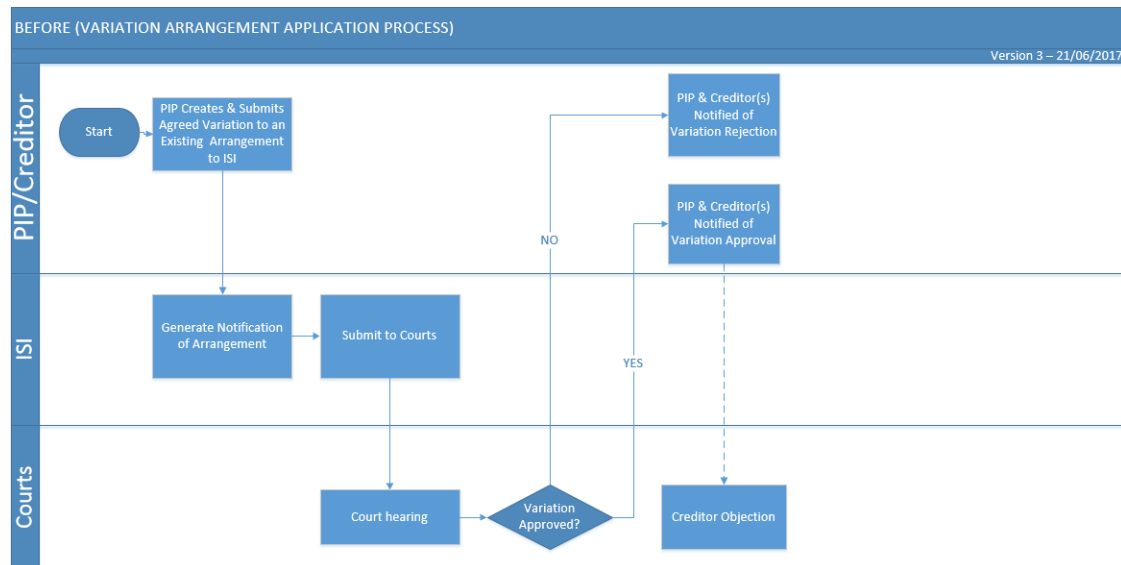
Figure A4.9: Proposed Arrangement approval procedure



Where an Arrangement is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. Where there is no objection to the proposal, the ISI will proceed to consider it, and may approve or refuse to approve it. A creditor may lodge a notice of objection to the coming into effect of the Arrangement with the ISI within a specified period and on specified grounds. The ISI shall be given all necessary powers to consider the coming into effect of the Arrangement and any objections thereto. Where satisfied that the objection should not be allowed and that the Arrangement satisfies specified criteria, the ISI shall approve the Arrangement. Where the ISI is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the ISI shall refuse to approve the Arrangement.

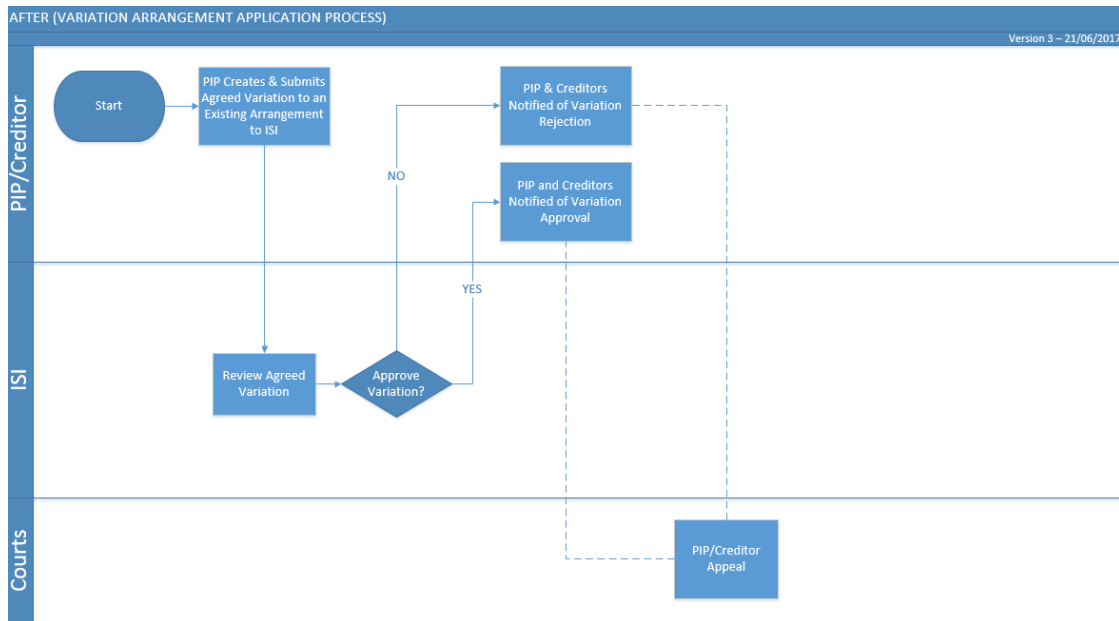
Where the ISI has approved or refused to approve the Arrangement, the ISI shall set out the reasons for same and any affected party may, within a specified period and on specified grounds, appeal this decision to the appropriate Court.

Figure A4.10: Current Variation approval procedure



Where a proposed variation to a DSA/PIA ('Variation') is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. A creditor may lodge a notice of objection to the coming into effect of the Variation with the appropriate court within a specified period and on specified grounds. Where satisfied that the objection should not be allowed and that the Variation satisfies specified criteria, the court shall approve the Variation. Where the Court is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the Court shall refuse to approve the Variation.

Figure A4.11: Proposed Variation approval procedure



Where a Variation is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. A creditor may lodge a notice of objection to the coming into effect of the Variation with the ISI within a specified period and on specified grounds. The ISI shall be given all necessary powers to consider the coming into effect of the Variation and any objections thereto. Where satisfied that the objection should not be allowed and that the Variation satisfies specified criteria, the ISI shall approve the Variation. Where the ISI is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the ISI shall refuse to approve the Variation.

Where the ISI has approved or refused to approve the Variation, the ISI shall set out the reasons for same and any affected party may, within a specified period and on specified grounds, appeal this decision to the appropriate Court.

Appendix 5 - DRN: Recommended Amendments

A5.1 Introduction

Details of the amendments being recommended are set out below.

A5.2 DRNs

A5.2.1 Term of Supervision

A DRN enables a qualifying debtor to write off low-level debt, primarily unsecured, up to a ceiling of €35,000. Usually a DRN debtor will be receiving social welfare payments, be unemployed, or be in low income-earning employment, possibly part time. They have multiple creditors who are owed reasonably small amounts of money. These creditors encompass credit card debt, credit union debt, utility debt, some Revenue debt, Social Welfare debt and other general unsecured loans.

Section 34 of the Act provides for the duration of a DRN. This is currently a three-year period, known as the DRN supervision period. It is recommended that the supervision period for a DRN be reduced from three years to one year.

Approved Intermediaries (AIs) in MABS, who have been supporting eligible borrowers with the DRN application process since the commencement of operation of the process in September 2013, view the cohort of potentially eligible DRN applicants as amongst the most vulnerable of its clients. MABS believe that the financial situation of these debtors is often very fragile, mainly unsustainable, and the debtors are inclined to manage their money day-by-day or, at best, week-by-week. In this context, while such debtors stand to benefit from the DRN process, in that their debt is written off after the supervision period, they perceive the duration of the supervision period as lengthy, somewhat penal, disproportionate and onerous for this level of debt. MABS advisers/AIs find that prospective applicants are reluctant to make a DRN application due to the current three-year supervision period.

An argument for the reduction in the supervision term is easily referenced to the United Kingdom, where the duration of the equivalent debt solution and supervision period – a Debt Relief Order (DRO) - is for a 12-month period. The United Kingdom has seen a much greater uptake on its DRO solution compared to Ireland and it is believed the shorter period of supervision to which a DRO debtor is subject is a key factor. It is

a short sharp fix, not a punishment. The purpose of the DRN is to deal with and extinguish a cohort of low-level debt which is time-consuming for creditors to pursue, possibly unrecoverable and of little strategic value or benefit to the creditors owning it. DRN debt takes time and resources to manage and supervise.

The Consultative Forum— comprising various sectoral stakeholders - has discussed the proposal to reduce the supervision period to one year and it is in broad agreement with the proposal. Credit Unions, while supportive of the reduced supervision period did express on one occasion the view that any section 36 contributions that arise in the reduced supervision period should operate for a three-year period. This point was raised as there is a similar three-year period income payment order applied in bankruptcy. As will be seen below, the section 36 debtor contributions to date have been small, arising in circa 3% of all DRNs in place, and do not generate significant financial returns for creditors.

The table below shows the level of contributions made by debtors to date during the supervision period.

Figure A5.1: Details of Debtors' Contributions

Category	Number of cases	Average value of contribution per case
Paid debt back in full	1	€9,711
Paid 50% of debt	9	€6,429
Partial payment below 50% of debt	11	€1,640
Total	21	€4,076

One debtor repaid their debts in full notwithstanding a provision in the Act that permits a DRN debtor to stand discharged from their debts by making a payment of 50% of the total amount owed to the creditor(s) specified in a DRN.

A5.2.2 Asset Threshold

Section 26 of the Act sets out the eligibility criteria for a DRN. The ISI recommends that the qualifying asset threshold be increased from a maximum value of €400 to a maximum value of €1,000. This increase is consistent with the increase to the qualifying debt threshold from €20,000 to €35,000 introduced by the Personal

Insolvency (Amendment) Act 2015. There was no adjustment at that time to the upper limit of assets a debtor may hold.

In recent times, the equivalent limit in the UK moved from £300 to £1,000. The equivalent limit for Irish bankruptcy is €6,000, including a car.

A5.2.3. Additional Income

Section 36 (3) of the Act provides, subject to subsections (4) and (5), that the specified debtor whose income increases by €400 or more per month during the supervision period must surrender 50% of that increase to the ISI. The ISI has already dealt with a number of cases where a debtor, notwithstanding the increase in income, was still living below RLEs. As the current statutory provision makes no exception for such a circumstance, the debtor was obliged to surrender 50% of any additional income received to the ISI. This can give rise to a situation where a debtor is obliged to give up additional income, while continuing to live below the RLEs. However, had that same debtor applied for the DRN after receipt of the increase in income, he or she may still be eligible for a DRN and, as such, be able to utilise that additional income to improve personal circumstances. This proposal has the support of the Consultative Forum.

Set out below is an example of the application of an income increase to a debtor subject to a DRN.

Figure A5.2: Working example of additional income in a DRN

Female, 35, one child	
RLE when DRN issued	€1,571.58
Income when DRN issued	€1,213.44
Net disposable prior to servicing debt	(€358.14)
Increase in income during DRN	€456.83
Automatically required to pay 50% towards repayment of debts	€228.41
RLE remain the same at	€1,571.58
Income after increase	€1,441.85
Net disposable after increase in income remains negative	(€129.73)

In the above example, the DRN debtor is required to make a €228.41 contribution towards repayment of their debts notwithstanding that they are living below the ISI Guidelines covering a Reasonable Standard of Living and Reasonable Living Expenses by €129.73.

A5.2.4 Eligibility criteria relating to undervalue and preference

The deletion of section 26 (2)(f) of the Act is recommended, which would change the eligibility criteria for a DRN so that a debtor is no longer ineligible due to entering into a transaction at an undervalue (subparagraph (i)), or giving a preference to a person (subparagraph (ii)). This amendment is important, as where an individual has been struggling with problem debt for a period of time, it is likely that he or she may have at some stage preferred one creditor over another in order to pay for utilities or services, for example, heat their home or keep the electricity on. Currently, such actions make the debtor ineligible for a DRN. In order to protect creditors' interests, the above amendments will require the inclusion in section 43 (Creditor objection during supervision period) of a further amendment which will add entering into a transaction at an undervalue or giving a preference to a person as a ground for objection by a creditor during the supervision period. In essence, the provisions covering transactions at an undervalue or preference move from an eligibility test to grounds for appeal. This proposal has the support of the Consultative Forum.

A5.2.5 Power to amend DRNs

Currently the Circuit Court grants a DRN. Section 39 of the Act provides for an application to court by the ISI to amend a DRN, after it has been granted, but only for minor amendments, which address ambiguities or rectify errors or omissions.

Subsequent to some DRNs being granted, a number of minor issues have arisen over the accuracy of creditor titles and the names of specified creditors appearing in the DRN. On being identified, an application is made by the ISI to court by way of a notice of motion, grounding affidavit and exhibits, seeking a rectification to the details in the DRN. A court date is provided to the ISI and the ISI, at the hearing, advises the Court of the issue and what specific rectification is required to the DRN. This is a time consuming and costly process.

It is recommended that the ISI be granted, without the need for any court application;

- a) the power to amend a DRN – this would cover minor administrative amendments to the personal and financial details appearing on the DRN, such as creditor title
- b) the ability to add in additional debts, not disclosed or overlooked by the debtor at the time the DRN application was made, or to alter the debt amount in a DRN. Any financial change possible would be restricted to the statutory ceiling of €35k

Any DRN change contemplated by the ISI during the supervision period over which there might be uncertainty would still require, under the provisions of section 41 of the Act, an application to court for general directions in relation to it.

If the ISI is granted the power to issue DRNs, the power to add in a debt should also be included, provided the €35,000 threshold is not breached as a result.

A5.2.6 Distributions to DRN creditors

Dividend payments can arise when a debtor surrenders any sum received (e.g. a gift or payment, or an increase in income) during the supervision period. The ISI oversees the distribution of such sums to creditors.

Some of the payments to creditors are very small, often for less than €1. The resources involved for both the ISI and creditors to process small payments are disproportionate. It is recommended the legislation be amended to allow for half-yearly payments to creditors (currently monthly).

A breakdown of distributions covering DRN cases to date is set out below:

- Lowest monthly payment by debtor - €80
- Average monthly payment by debtor – €178
- Highest monthly payment by debtor - €370

- Lowest monthly payment to a creditor - €0.28
- Average monthly payment to a creditor – €127
- Highest monthly payment to a creditor - €356

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Appendix 6 – PC/DSA/PIA: Recommended Amendments

A6.1 Introduction

Details of the amendments being recommended are set out below.

A6.2 Generic PC

A legislative change is sought to enable an application be made for a PC that is non-specific to a DSA or PIA, before the PIP confirms which type of arrangement would best address the circumstances of the debtor, and remove the provisions relating to separate applications for a PC from the DSA and PIA chapters of the Act.

A PC would be put in place covering all of a debtor's debts and as the PIP develops the application for the arrangement, he/she can then decide which debt solution is more suitable for the debtor. For example, in relation to PIA applications, it has been mentioned more than once in court that based on the facts, it might have been possible for the debtor to have got agreement to restructure the mortgage outside an arrangement, and instead, they could have applied for a DSA.

A6.3 PC Extensions

Pursuant to sections 61 and 95, PIPs may seek a PC for a period of 70 days. Sections 61(6)/95(6) of the Act permit a further PC extension not exceeding 40 days to be sought from the Court where the Court is satisfied that it is likely that the proposed DSA/PIA will be accepted by the creditors and successfully completed by the debtor.

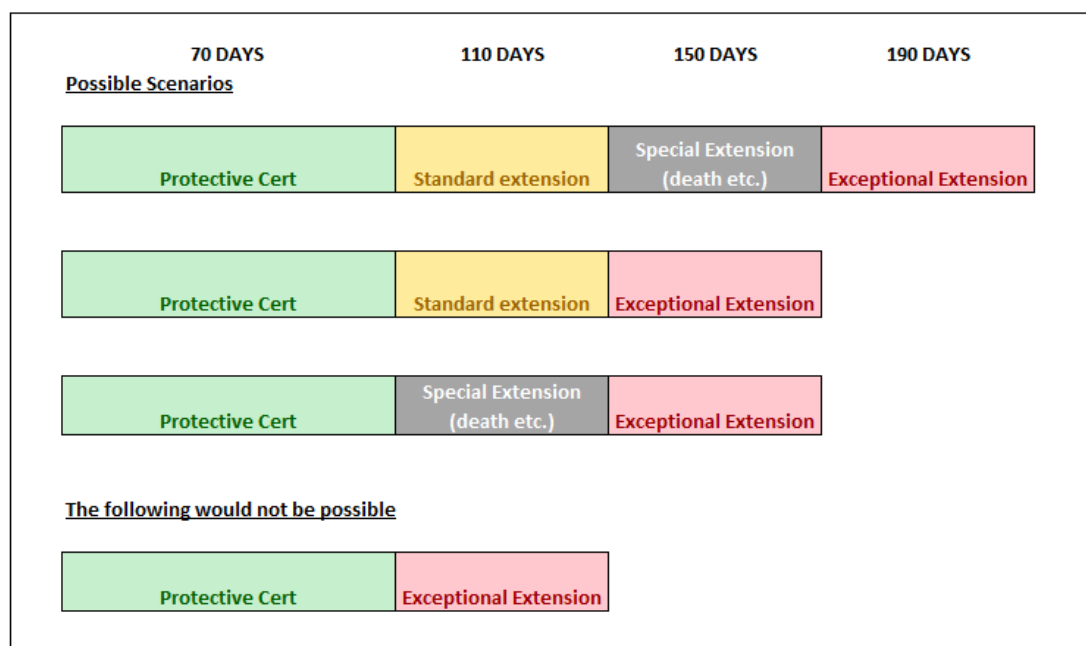
Having a limit on the maximum length of a PC, which the ISI understands was the intention of the Legislature, should have the effect of 'concentrating minds' and achieving a solution that is acceptable to both sides in a reasonably short period of time. This should be all the more so as parties become increasingly familiar with the process. The ISI is of the view, however, that a further extension, where the PC has already been extended under (a) sections 61(6)/95(6), or (b) sections 61(7)/95(7), could be of benefit in exceptional circumstances only.

In Examinership, the default period of protection (70 days) can be extended for 30 days. In exceptional circumstances the Court has the right to extend this period further

– such an extension is, however, very rare. Accordingly, the ISI recommends a new provision to facilitate a further PC extension in exceptional circumstances. The exceptional circumstances provision as proposed could only be used where the PC has already been extended under (a) and (b) above and as demonstrated on the below chart, and could not be used to extend the original PC issued pursuant to section 61(2)(a)/95(2)(a) of the Act.

The ISI also recommends the insertion, at section 61(7) and 95(7) of the Act, of the words ‘by a personal insolvency practitioner’, following the words ‘on application to that court’ to ensure/confirm that PIPs have the right to make the necessary application to the Court without the necessity to appoint a solicitor. Sections 61(6) and 95(6) already expressly provides that the application can be made by PIPs, however as currently drafted there is no reference to the application being made by PIPs in section 61(7) and 95(7).

Figure A6.1: Chart Illustrating the Effects of Proposed Amendments



Should the ISI be given the function of approving (and extending) the PC it will obviate the requirement to apply to the court for any extension. It should be noted that the Consultative Forum is supporting in principle the Banking and Payments Federation of Ireland (BPFI) proposal to amend the definition of ‘days’ in the Act which would allow for consistency as to how various ‘non-working’ days might be counted. This will have

the effect of extending the practical length of a PC by over 20 days. If the BPFI proposal were adopted, the need for the change contained in this section would be reduced.

A6.4 Minor Operational Changes to PC Process

A6.4.1 Minor operational changes to PC process: Notification re PC objection

In the case of a creditor's right to object or appeal the issue of the PC, the legislation (sections 63 and 97) does not provide for notification of the result to the ISI, PIP or specified creditors of the court's decision and this requirement should be added. In the event the ISI is given the power to approve PCs, an equivalent provision should be inserted so a notification will still issue to the PIP and specified creditor of the ISI's decision.

A6.4.2 Minor operational changes to PC process: Notification re creditor's meeting

There is no provision in the Act (sections 70 and 106) for notification of the outcome when the DSA/ PIA procedure comes to an end where the creditors' meeting does not take place before the expiry of the PC. A provision should be added to ensure clarity of process, by the PIP confirming to creditors and the ISI if the creditors' meeting does not take place.

A6.5 Interlocking/Joint Applications

Figure A6.2: Current provisions in the Act

	Provided for in the Act
Interlocking PIA	✓
Interlocking DSA	X
Interlocking PIA with DSA	X
Joint PIA	✓
Joint DSA	✓
Joint DSA/PIA	X

Where there are two (or more) debtors who are jointly liable for all of the debts to be included in a DSA or a PIA, a joint application can be made.

An interlocking application would be appropriate where two (or more) PIAs are to be administered in common - usually because of the financial relationship of the debtors involved. Examples would be a couple or business partners, where they are jointly liable for some - but not all - of the debts to be included in the PIA.

There is no specific provision in the Act for interlocking DSA cases, or interlocking DSA/PIA cases. In practice, there have been several DSA cases that, while individual, are interlocking in all but name, with usually two linked debtors.

The current provisions have proven problematic in a number of cases. Often, the court will want to be aware of any case that is related to another case being dealt with, so they can understand the overall picture in a household. Should the ISI be given the function of approving DSAs/PIAs, it would be of assistance to be able to cross-check the information contained in any related applications.

For example, in many cases a husband and wife may have 99% of their debts in joint names (usually the mortgage) and there may be one minor unsecured debt (such as a credit card, in only one name). This has required two applications managed in an interlocking fashion notwithstanding the fact that the dividend to such an unsecured creditor is minimal.

Also in many interlocking cases, PIPs tend to treat income, expenditure, and the proposed creditors' dividend under the arrangement as joint for the purposes of the Arrangements. This has caused some confusion for the courts as to whether these figures relate to each individual case, or are joint figures.

In a sample of 70 cases (35 pairs of interlocking cases), approximately 75% of that sample (26 pairs of interlocking cases) had less than 10% of the value of debt which was not shared debt, with 89% having less than 20% of debt value which was not shared.

A rewording is recommended to expand the circumstances where interlocking applications can be made (i.e. DSA and DSA/PIA applications to be administered in common). It is recommended that the description of a joint application for both DSAs and PIAs be amended to include:

- a) two or more debtors who are jointly party to a number of debts, and

- b) two or more debtors who are jointly party to all of the debts to be covered by a DSA/PIA (s.53/89).

A6.6 PIP Delegation

As PIPs deal with an increasing number of cases, it is essential that they can delegate certain tasks to staff while retaining ultimate responsibility. While there are existing provisions within the legislation dealing with the delegation of certain administrative tasks, it is necessary to extend these to other areas such as the chairing of creditors meetings. Currently, PIPs are required to attend court at levels not originally foreseen within the legislation and often with relatively short notice. A consequence of this is that the PIP has to balance prescheduled meetings with clients and chairing of creditors meetings with short-notice summons to attend court.

The constraining effect of current provisions was not fully envisaged when the legislation was drafted but such requirements are burdensome on PIPs dealing with an increasing number of cases.

A sample of eight PIPs were requested to provide the number of creditor's meetings that were called by them and the number of meetings at which a creditor physically attended. Two recent time periods were selected; the 12-month period January to December 2016 and the five-month period to May 2017.

Figure A6.3 Sample details of creditors' meetings called and attended

	No. Meetings JAN – DEC 2016	No. Meetings JAN – MAY 2017	No. Creditors who attended
Average across 8 PIPs	71	27	0

Since no creditor physically attended a meeting this means that all creditor meetings consisted of the PIP dealing with proxies received from creditors. However, the Statutory Instrument, drafted with reference to the requirements of the Act, requires the PIP to be present at the notified location of the creditor's meeting on the date and at the time notified. It also prohibits the PIP, as chairperson, from being outside the State during the holding of a creditors' meeting or delegating the role of chairing the

meeting. This results in creditors' meetings being scheduled for non-court dates and being postponed in the event that a PIP is called to court, is ill or otherwise unavailable.

It is recommended that the current provisions that require a PIP to personally and physically discharge certain functions be adjusted to allow:

- a) a suitably qualified individual, nominated by the PIP and acting under the direction and control of the PIP, to carry out those functions including meeting a debtor and chairing a creditor's meeting; and
- b) a PIP to hold a virtual as opposed to physical meetings.

A6.7 Creditor Meeting Adjournments

Currently under the legislation (s.72(4)/s.109(6)), an adjournment for the purpose of preparing an amended proposal may occur only once. The ISI recommends that the legislation be amended to cater for two adjournments, which would be expected to deliver more agreed proposals.

It would be of assistance to facilitate the passing of arrangements to allow two adjournments as long as the adjournment takes place within the standard PC period, or any extension granted to it.

A number of cases have arisen already where such flexibility would have been of benefit to all parties involved.

A6.8 Application to the Appropriate Court for Direction

The ISI is required, under sections 31(1)(a) (DRN), 61(1)(a) (DSA) and 95(1)(a) (PIA) to certify that an application is 'in order' before referring the relevant application to the appropriate court. To be in a position to certify this, the ISI carries out a series of checks on each application to ensure the application and accompanying documents comply with the applicable statutory requirements. The ISI does not verify the factual data entries, which are solely within the competence and control of the AI and PIP and his/her client. The ISI ensures that the mandatory requirements of the Act are met for the application made.

There have been some issues with courts around what the term 'in order' actually means.

Further, there has been an issue with MABS over preference payments and whether or not the ISI could either:

- a) send a “qualified” certificate over to courts or
- b) ask the court to deal with the preference point (or indeed any point) as a preliminary point for determination, which if approved, could lead to the full application going over to court

In order to deal with the above mentioned issues, an amendment is recommended allowing the ISI make an application to the appropriate Court for general directions in relation to any matter where an application has been submitted to the ISI and does not, on its face, appear to be ‘in order’ as per the qualifications set out in the Act. On application by the ISI, the Court may give such directions as it deems appropriate, make an order confirming it is in order for the ISI to issue a certificate under section 31(1)(a)(i), 61(1)(a)(i), or 95(1)(a)(i) as applicable, or make such order as it deems appropriate.

If the ISI is granted the statutory function to grants DRNs, PCs, PC Extensions, PIAs, DSAs and Variations, a similar power to seek directions will be required.

A6.9 Section 115A Reviews

Provisions allowing for the referral by a debtor to court for a review of a PIA proposal rejected at a creditors’ meeting were introduced at the end of 2015. The throughput of applications since their introduction (over 400) indicates that the review mechanism is being utilised in a significant number of cases. There has been a build-up of insolvency case law not previously available, which it is expected will, in time, inform the process to a greater extent, and allow for more certainty and quicker decisions being made by the courts. Courts have already made some key precedent decisions¹³.

The following are a number of further recommended amendments which are based on experience of operation of the process over the last 18 months:

¹³ Summaries of the relevant cases are contained in the ISI’s Stakeholder e-Briefs, which can be found at [https://www.isi.gov.ie/en/ISI/Pages/Stakeholder Information](https://www.isi.gov.ie/en/ISI/Pages/Stakeholder%20Information)

A6.9.1 Allow a proposal to be amended by the courts.115A review

In a section 115A review, it is recommended that jurisdiction be provided to the Court to direct an amendment to the proposal, similar to the practice currently provided for in Examinership, where the High Court can order the amendment of certain provisions in the arrangement voted on by the creditors. If necessary, the amended proposal could be returned to a further meeting of creditors.

A6.9.2 Timeline for applying for a variation of a PIA approved under s.115A

Section 119A of the Personal Insolvency Act 2012 (amended by Personal Insolvency (Amendment) Act 2015) provides for the variation of a PIA confirmed by order under section 115A.

Subsection (13) provides: ‘An application for an order under this section shall be made not less than 14 days after receipt by the personal insolvency practitioner of the notice of the creditor referred to in subsection (9) ... ,’.

It is recommended that an amendment be made, the purpose of which is to replace the words ‘not less’ with ‘not later’, clarifying the time frame for applying for a variation order. As currently drafted, the date for applying for such an order is open ended.

A6.9.3 Creditor objection to s.115A review application

Under the current wording of section 115A(3), the ISI understood that the provision meant that the creditor could object to a review application, and must do so within 14 days of receiving the notice referred to in section 115A(2).

The courts have interpreted section 115A(3) that, even if a creditor’s objection is filed outside of the 14-day period referred to, the fact that the wording says the creditor MAY lodge a notice leaves open:

- i. that the interpretation that the 14-day deadline is not adhered to,
- ii. that the judge can extend the time under powers they have under s.189 of the Act, and
- iii. that a creditor could file an objection on the day of the hearing of the review, leading to further delay and cost.

An amendment making the 14-day period within which to lodge the objection mandatory would give greater certainty to the process from a timeline point of view. The obligation to file an objection with 14 days of receipt of the notice from the PIP is required to ensure a smooth, efficient and cost-effective review process.

A6.10 Removal of certain ‘gateway provisions’

A6.10.1 Removal of MARP eligibility MARP eligibility criterion

One of the debtor eligibility criteria (section 91(1)(g)) for a PIA is that a borrower must co-operate with the mortgage lender under the MARP process approved by the Central Bank of Ireland to the extent that the borrower and lender have been unable to agree an alternative repayment arrangement or, that having entered an alternative repayment arrangement in good faith, the debtor is unable to comply with the alternative. The debtors to whom the subsection is addressed are those who are in ongoing contact with their mortgage provider and are seeking to address their debt situation with the mortgage provider. This cohort is the cohort most likely to seek the services of a PIP to try to negotiate a debt solution with the mortgage provider. In order to seek the engagement of the remaining ‘hard to reach’ cohort of those with arrears over 720 days, the ISI recommends that this eligibility criterion be removed. It is important to note that all applications to the ISI are overarched by the provisions of the Act which require the utmost good faith from the debtor, and that the information provided is true, complete and accurate, as reflected in the current declaration.

A6.10.2 Removal of €3 million secured debt threshold

A debtor eligibility criterion [section 91(1)(a)] for a PIA is that the debtor’s aggregate of secured debts cannot exceed €3 million. An exception is where all the secured creditors of the debtor consent in writing, then the €3 million threshold does not apply.

The ISI does not have data on the number of potential PIA cases that have not proceeded because secured debts exceeded €3 million and the consent of all creditors was not forthcoming. The €3 million cap is cited on occasion, including at the Consultative Forum, by PIPs as a barrier for some debtors availing of a PIA. The debt landscape and the balance sheet position of financial institutions has changed significantly since 2012. The core protections for creditors contained within the Act will continue to apply in all cases. These include that, not least, a creditor must not be

unfairly prejudiced. In light of the careful balance between debtor and creditor rights already struck within the Act and the fact that a PC provides simply for a suspension of creditor enforcement action on a short term basis (not usually exceeding 70 days), the ISI recommends that the €3 million provision be removed. In the alternative, the ISI recommends that the requirement for all creditors to consent be amended to require the active rejection by a majority of creditors within a specified timeframe.

A6.10.3 Relevant debt – section 115A(9) – Removal of the cut-off date of 1 January 2015

Section 115A provides debtors with the facility to request a court review of a proposed arrangement rejected by creditors. The section is focused on those in home mortgage arrears and a rebalancing of the rights of this group with those of secured creditors. To be eligible to avail of the facility a debtor must have a “relevant debt”, the definition of which refers to a debtor who was in arrears with his or her payments to a secured creditor on or before 1 January 2015. The cut-off date was considered recently in the High Court (Hill Case), when Baker J concluded that missed payments did not necessarily amount to arrears with payments and that an alternative payment arrangement is one that amends the contractual terms of the mortgage.

Some stakeholders have argued that having a cut-off date of 1 January 2015 is inequitable since the purpose of the legislation is to provide all insolvent debtors with a resolution mechanism. The insertion of 1 January 2015 in legislation was explained in the Committee stage debates as being there ‘to avoid any negative impact on new mortgage lending’. A case can be made that there are sufficient creditor safeguards within the Act to more than counter any negative effect on new mortgage lending. The ISI recommends that the date set out in the definition of “relevant debt” should be removed.

A6.11 Removal of ‘excludable creditor’ category

Excludable debt is defined in the Act (section 2) as including debts to the Revenue Commissioners, the Department of Social Protection, local authorities (rates and household charges), the Health Service Executive and management companies of multi-unit developments. A creditor, whose debt is defined as excludable, must consent to their debt being included in an insolvency solution. In many cases creditors

will withhold their consent. For example, the Revenue Commissioners in general will only consent if tax returns are up to date and there are no other excludable creditors or such excludable creditors have consented. The Department of Social Protection will not consent in any circumstances to its debt being included in an arrangement.

Allied to excludable debt is preferential status. For example, the Revenue Commissioners have the general protection of preferential debt for tax and interest for the fiduciary taxes (VAT/PAYE/PRSI/RCT) for the 12-month period up to the date of the PC.

To avail of an insolvency solution a debtor must be insolvent as defined under the Act. The concept of excludable debt means that an insolvency solution can only address some but not all of a debtor's debts and that the insolvency solution cannot be said, in certain instances, to return a debtor to solvency if excludable debt has to be dealt with outside of the solution either during the term of the solution or beyond its term. In addition, the point is made that creditors holding preferential status are doubly indemnified under the Act.

The ISI does not have data on cases where the withholding of creditor consent led to the abandonment of consideration of a solution although anecdote suggests this happens. The ISI suggests that the definition of excludable debt be deleted from the Act.

A6.12 Other

A6.12.1 Proof of Debt

There is a degree of confusion among practitioners over how a creditor, who does not provide Proof of Debt before the creditors' meeting takes place, is to be dealt with. The section provides that Paragraphs 1 to 22 of Schedule 1 to the Bankruptcy Act 1988 can be read to allow PIPs to have the same functions and powers as the Official Assignee.

Section 64(2)(b) & section 98(2)(b) provide that where Proof of Debt is not produced following the request from the PIP, the creditor cannot vote at the meeting or share in the distribution. However, 64(2)(c) & 98(2)(c) appear to allow for inclusion when Proof of Debt is presented after the arrangement is in place.

The lack of clarity is in relation to the interpretation of 64(2)(c) and 98(2)(c). Having provided under sections 64(2)(b)/98 (2)(b) that a creditor not providing Proof of Debt is not entitled to vote or share in the dividend, sections 64(2)(c)/98(2)(c) provide that they can, but is unclear as to how it would work in practice.

It is recommended that amendments be made which would require creditors to:

- i. return proof of debt within 14 days, before the creditors' meeting, and
- ii. apply to court to have proof of debt accepted in the event the 14-day deadline is not met.

With regard to disputes over proof of debt, an issue that has arisen in a number of cases is that where such proof is in dispute, there is no mechanism to allow a PIP bring a case to court, a mechanism that exist for a creditor. It is further recommended that the relevant Paragraphs of Schedule 1 to the Bankruptcy Act that apply to PIPs (currently 1 to 22) be expanded to include Paragraph 24 (re: Secured Creditors) so that a PIP can have a right of audience in the court where any disputes arise regarding proof of debt.

A6.12.2 Court upholds a DSA/PIA objection

There is a lack of clarity regarding the outcome after a DSA/PIA objection is upheld by the Court in sections 77 and 114. There is no provision for a follow-on procedure. Neither is any procedure set out in the rules of court. A provision needs to be added to ensure clarity of process so that the registrar of the appropriate court notifies the ISI and the PIP concerned where the court upholds the objection to the DSA/PIA. This amendment is to ensure consistency with other provisions where the legislation provides that the court registrar notify the ISI and the PIP.

There are a number of other sections where the court registrar notifies the ISI and the PIP simultaneously:

- S.61(10)/S.95(10) regarding issue/refusal/extension of/decides to hold hearing re PC
- S.78(6)/S.115(6) where court approves or refuses to approve the coming into effect of the DSA/PIA or decides to hold a hearing
- S.82(9)/S.119(9) – provisions of s78/s.115 apply in case of variation of DSA/PIA.

A6.12.3 Notifications from Court where PIP application made to Court to have the Arrangement terminated

The legislation (section 83(4) and 122(4)) provides that the registrar notifies the ISI and the ISI notifies the PIP regarding the outcome of a court hearing in a creditor application to terminate an arrangement. In other court hearings in the Act, the usual process is that the registrar notifies both the ISI and the PIP.

The other sections where the court registrar notifies the ISI and the PIP simultaneously in this regard are as stated in the preceding paragraph. An amendment is sought to ensure consistency with other provisions where the legislation provides that the court registrar notifies the ISI and the PIP.

In the event this function reverts to the ISI, the ISI would be the notifying party to the PIP.

A6.12.4 DSA/PIA deemed to have failed

Where the DSA/PIA Arrangement is deemed to have failed under section 84 or 123 as appropriate, the legislation is unclear when exactly the PIP should notify the ISI. It is recommended that the wording be amended to bring a definite timescale within which such notification should be made – 14 days would be consistent with similar timelines in the Act. In addition, specified creditors do not require to be notified under these sections, it would be preferable to include them in such notification.

A6.12.5 DSA/PIA Registers

DRNs, DSAs and PIAs become effective upon being registered by the ISI in the respective Registers (s.78/s.115). This is different to the case of the PC under s.61(5)/s.95(5), where PCs become effective for a period of 70 days from the date of issue by the Court.

To ensure a consistent approach to the effective date of all such Court approvals and in order to reduce the risk of possible delays in the coming into effect of Arrangements, an amendment is sought to make DRNs, DSAs and PIAs effective from the date of issue by the Court.

In the event that responsibility for this function transfers to the ISI, it is recommended that the effective date for the arrangement is the date of issue by the ISI, rather than the date on which it is registered in the Register.

A6.12.6 Domicile

The ISI has dealt with a number of cases where the debtor has not resided in the State within one year of the date of application nor had a place of business within one year of the date of application. The Courts have had difficulty in determining where such cases should be heard. The ISI proposes amending Section 5 (2) (a) such that there is a default court in such instances. It is suggested that the default jurisdiction be the primary Circuit Court (i.e. Dublin).

Appendix 7 – Insolvency Awareness Campaigns

A7.1 Introduction

Since its establishment in 2013, the ISI has continued to evolve its messaging with debtors based on research it has carried out with people experiencing debt, ISI customers and the general public.

Debtor engagement has its complexities. Compared to several other European jurisdictions, including those with lower levels of non-performing loans, the legal process through which lenders effect security takes substantially longer in Ireland. To date, the number of house reposessions in Ireland is low and this may be an influencing factor in debtor reluctance to engage when they are behind on repayments.

Research undertaken by the ISI over the past 4 years along with feedback from ISI customers has highlighted that the effects of debt on mental health can be severe and can prevent people seeking the help they need. There is a correlation in behaviour patterns of those experiencing problem debt and those with depression. Debtors have spoken about feelings of isolation, shame and stigma towards their financial situation.

The ISI has used the above research findings to tailor its messaging and increase awareness raising efforts. A summary of the phases of debtor outreach and communications work to date is set out hereunder.

A7.2 ISI launch 2013 - Information Campaign

In 2013, the ISI developed a communications strategy and public information campaign which was designed to provide information to the public and all stakeholders about the workings of the Act.

The ISI launched a public information campaign on the new debt relief solutions available to insolvent debtors as introduced by the Act. A Press conference was held at Government Buildings to coincide with the campaign at which representatives of major broadcast and print media were in attendance. Detailed guides outlining the main features of the three new debt solutions were published together with sample case scenarios and step-by-step guides to aid people in understanding the processes

involved. Printed versions of these guides were distributed to local libraries, Citizens Information Centres and MABS offices throughout the country. The ISI also launched its website www.isi.gov.ie which contained detailed information on all the new debt solutions for all stakeholders including insolvent debtors, creditors and potential practitioners and opened a telephone Information Line for the public.

A7.3 2014 – Development of ‘Back on Track’ Information Campaign

In 2014 the ISI identified the need to develop an information campaign specifically targeted at insolvent debtors.

In preparation for organising an information campaign, the ISI carried out consultations with 13 key stakeholders and in August commissioned qualitative research to better understand how to reach people struggling with debt and to inform the upcoming information campaign. A series of focus groups were held around the country to establish why more insolvent people were not availing of the new debt solutions available through the ISI. The reasons put forward included:

- debtors not realising they were insolvent
- an absolute commitment to finding their own way out of debt rather than seeking help
- a lack of awareness of the practical help available
- perceived cost of solutions
- a belief that insolvency solutions were for cases more extreme than their own
- a lack of awareness of the ISI and of the range of solutions
- conflicting information in the public arena

Based on the above findings, the ISI launched the ‘Back on Track’ information campaign in October 2014. The campaign represented a strategic change in how the ISI provides information to debtors. It included the development of a debtor-friendly website (www.backontrack.ie) and series of information booklets. It also included publicity posters and focused advertisements on local, national, online and social media, as well as in-transport advertising on a national basis (bus, Luas and DART).

The campaign also involved hosting 21 townhall meetings and communicating with representative groups. Townhall meetings were directed towards local opinion

formers and community leaders. These regional events provided an opportunity for the ISI to inform people about personal insolvency and the debt solutions available.

As part of the campaign the ISI met with, and provided information to, representative groups including professional organisations, trade unions and membership groups.

Debtor friendly booklets and posters were distributed to over 600 locations countrywide including the Dáil and constituency offices of T.D.s and Senators, PIPs, MABS, Citizen Information and Family Resource offices and centres. Information packs were also circulated to libraries nationally.

After the launch of the campaign, the ISI saw a marked increase in customer contacts, including calls to the ISI Information Line. During the first three months of the campaign the number of PIAs approved exceeded the previous nine months combined. The number of PCs issued since the campaign launch also increased significantly.

A7.4 Communications 2015

A Government Decision in May 2015 set out a requirement for a sustained ISI awareness campaign. Recognising the important role of communicating effectively, the ISI established a Communications Project Group in October. The group comprises representatives from each business area of the ISI and is tasked with planning and coordinating communications activities to ensure that key messages are disseminated through the appropriate channels to each stakeholder in a cohesive way.

Under this stream of work, a variety of outreach and awareness-raising initiatives were undertaken. This includes delivering presentations to organisations, liaising with the media, development and rollout of information campaigns, identifying information requirements and making improvements to ISI websites, publications and related information sources.

ISI staff also attended a large number of courthouses around the country. The primary purpose was, in conjunction with MABS, to provide on-site information and assistance to those people whose homes were at risk of being repossessed by their secured lender. This initiative increased awareness of the services provided by the ISI.

A7.5 Communications 2016

During 2016, the Communications Group organised and delivered presentations to organisations, liaised with the media, and made improvements to the ISI websites, publications and related information sources.

Pursuant to a new statutory function to promote public awareness of the personal insolvency solutions and in response to various commitments in the Programme for Government, the ISI developed new marketing assets for its 'Back on Track' campaign, including TV, digital, radio and print advertisements.

The campaign, which launched in October of that year, saw the ISI taking its communications with the public in a new direction and this shift came about on foot of further research with people in debt, including those who have availed of ISI solutions. It highlighted how overwhelming debt can be and the sense of relief a person gets once they ask for help. People in debt spoke of 'fear, anxiety and isolation'. However, those who availed of an ISI solution spoke of the immense sense of relief once they took the first step to address their debt problems and the breathing space that comes with the PC.

The new campaign featured:

- A 40-second TV advert
- A 20-second Video On Demand advert
- 3 weeks of national and regional radio
- 2 weeks of outdoor advertising

A free text facility was also set up to enable debtors to text the ISI at no cost, requesting a callback from the ISI's information line.

During 2016 PIP/debtor debt advice events were held around the country. The primary purpose of these events was to bring the range of options available to the attention of those who find themselves struggling with their debts. The events also gave debtors the opportunity to engage directly with a PIP, in a confidential setting, thereby making insolvency solutions more accessible to them.

Some feedback from people who attended the ISI Free Debt Advice Meetings:

“Delighted with information provided. Was close to jumping off a bridge over financial issues.”

“Very helpful, nice to see that there is help out there. - Took several information packs to pass on to other people in similar situation.”

A7.6 Abhaile – Free Mortgage Arrears Support

Abhaile, the service to help homeowners find a resolution to home mortgage arrears, was commenced by Government in July 2016. It provides a range of services to help people in mortgage arrears to deal with their situation and offers free access to financial, legal and insolvency advice.

The service is coordinated by the Departments of Justice and Equality and Social Protection and is operated by MABS in conjunction with the ISI, the Legal Aid Board and the Citizens Information Board. Panels of qualified and regulated professionals have been set up to provide the necessary services.

Abhaile has resulted in a significant level of engagement between debtors and advisors, and has increased the level of cross-referral between MABS and PIPs.

A7.7 Communications 2017

A second phase of the new ‘Back on Track’ campaign ran from January to March. This phase of the campaign featured TV, Video on Demand, Outdoor (including billboards and bus shelters), Press, Radio, Digital Display (online) and Paid Search advertisements.

Pre and post campaign research was carried out by a firm, Behaviour & Attitudes, to measure the sentiments of the general population about their financial situation and awareness levels of the ISI’s campaign.

Results showed that awareness levels of the ISI had increased, approximately a third of the population were aware of the ISI. 30% of those surveyed were aware of the term ‘Personal Insolvency Practitioner’. Half of all adults had seen at least one of the two elements of the campaign that were measured (TV and Print advertisements).

Website traffic to www.backontrack.ie during the advertising period increased dramatically with 82% of traffic comprising new visitors to the site. The increase in visitors to the website was over 700% when compared to a three month period where the ISI was not advertising.

The ISI continues to promote the 'Back on Track' campaign and the ISI's range of debt solutions at every opportunity and in a range of ways including:

- targeted advertising campaigns
- hosting Debt Advice meetings at which debtors can avail of a free consultation with a PIP
- distributing booklets to locations countrywide (TDs offices, libraries, MABS offices, hospitals and GP waiting rooms, etc)
- delivering presentations to a range of organisations
- attending appropriate events for awareness raising purposes
- social media.

Appendix 8 – Unincorporated Small or Medium Entrepreneurs

A8.1 Background

The Department of Justice and Equality's advertised consultation specifically asked for submissions on the thresholds and processes under Part 3 for Personal Insolvency Arrangements (including for insolvent persons who are unincorporated small or medium entrepreneurs) and on whether these should be changed (emphasis added).

The focus of this Appendix is on insolvent persons who are unincorporated small or medium entrepreneurs.

A8.2 What is an Unincorporated SME

An unincorporated small to medium enterprise (SME) is an SME that does not have the protection of limited liability afforded by incorporation under the Companies Act. An unincorporated SME comprises three different sized self-employed individuals:

- an enterprise that has fewer than 10 employees and has either an annual turnover and/or annual balance sheet not exceeding €2 million (Micro Enterprise);
- an enterprise that has fewer than 50 employees and has either an annual turnover and/or an annual balance sheet total not exceeding €10 million (Small Enterprise);
- An enterprise that has fewer than 250 employees and annual turnover below €50 million or balance sheet below €43 million (Medium Enterprise).

A8.3 How many Unincorporated SME are there

The Central Statistics Office (CSO) data shows there were 237,753 SMEs employing 919,985 persons in 2014.

Figure A8.1: CSO 2014 Business Demography

CSO 2014 Business Demography		
Enterprise Type	Number	Employees
Micro	219,880	373,342
Small	15,224	291,714
Medium	2,649	254,929
Total	237,753	919,985

The Revenue Commissioners 2015 Tax Registration data shows that for every 5 employees there was 1 self assessed individual, which includes all unincorporated SMEs. The Value Added Tax (VAT) Registrations would include incorporated and unincorporated enterprises but would exclude those whose turnover was below the VAT registration threshold – generally €75,000 – and those whose professions are exempt from VAT such as the medical profession, the education sector and landlords.

Figure A8.2: Revenue Commissioners Tax Registrations

Revenue Commissioners Tax Registrations		
Number of employees records returned by employers	3,185,485	100%
Self Assessment (Income Tax) Registrations	665,216	21%
Value Added Tax Registrations	250,185	8%

In summary, it is difficult to arrive at a definitive number or percentage of unincorporated SMEs but a conservative figure would be that unincorporated SMEs represent around 10% of those in employment.

A8.4 How many SMEs have sought ISI Solutions

The total number of applications for DRN, DSA and PIA solutions exceeds 8,300. Of these applicants 857 debtors identified themselves as a sole trader. This represents 10.3% of applicants.

The number of arrangements approved by court is in the region of 2,300. Of these 259 debtors have identified themselves as a sole trader. This represents 11.3% of arrangements.

The percentage of sole trader applicants and those who secured court approved arrangements is in the region of 11% which is in line with the percentage of unincorporated SMEs in the population. In addition, the percentage of unincorporated SMEs as a percentage of both application and court approved arrangements is in the region of 10% to 11% which suggests that unincorporated SMEs have the same success rate in obtaining an ISI debt solution as all other debtors.

A8.5 What level of business debt have SMEs included

Three categories of business debts can be identified from the debt categorisations on the ISI systems, namely, trade creditors, personal guarantees and business loans. The 259 sole traders who secured a court approved arrangements had total debts of €146 million shown on their Prescribed Financial Statements. Around 1 in 5 of the sole traders included business related debts and the total of those business related debts was in the regions of €4 million analysed as follows:

- 39 cases had trade creditor debt totalling €2 million with the average number of trade creditors being 4 and the average amount of trade creditor debt being €61,000;
- 9 cases had personal guarantees totalling €1 million with the average being a single personal guarantee of an average amount of €147,000;
- 17 cases had business loan debt totalling €1 million with the average being a single business loan of an average amount of €79,000.