

INFORMATION ON THE SCHEME OF AID AND ADVICE FOR BORROWERS IN HOME MORTGAGE ARREARS



This booklet explains who can get help under the Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears, how it works, and what sort of free expert legal and financial advice and help it can provide.

If you have any questions about the Scheme, or about whether it can help you with your home mortgage arrears, call MABS on 0761 07 2000 - Monday to Friday, from 9am to 8 pm.

1. What is the Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears?

The Government has put a new Scheme in place to help people who are insolvent and in serious mortgage arrears on their home to access free, independent, expert advice. A person is insolvent when they are unable to pay their debts in full when they are due.

The Scheme provides financial and / or legal advice and assistance to people in this situation. The aim of the Scheme is to help mortgage holders in arrears to find the best solutions and keep them wherever possible, in their own homes.

2. I am in mortgage arrears, what can this Scheme offer me?

The Scheme can help you in a number of different ways. Panels of qualified and regulated financial and legal professionals have been set up. You can choose someone from these panels to give you the advice you need. The panel details are available on the website www.keepingyourhome.ie.

a. Financial advice

If you need financial advice, you can get a free face to face meeting with an expert financial adviser. The adviser can help you to work through your money situation and explain to you what options are available to help with your mortgage arrears. Where possible the adviser will help you to find a way to keep you in your home.

The expert adviser could be a Money Advice and Budgeting Service (MABS) Dedicated Mortgage Arrears adviser, a Personal Insolvency Practitioner (PIP) or an accountant.

b. Legal advice and assistance

You may need legal advice on issues related to your mortgage arrears. Under the Scheme you can have a free face-to-face meeting with a solicitor, who will explain your legal situation and advise you how best to resolve it.

If you are called to court to face repossession proceedings on your home, you will be able to meet a Duty Solicitor at the court. The Duty Solicitor may be able to speak for you in court, and explain to you the proceedings.

A MABS staff member will also be present at court to help you.

3. Will I have to pay to get advice under the Scheme?

No. The Scheme is 100% State funded. If you qualify for the Scheme, you do not have to pay anything for these services.

All of the professional advisers working with the Scheme have agreed to provide a fixed amount of advice and help free of charge to people who meet the conditions.

4. How do I qualify for the Scheme?

To qualify for help under the Scheme, you must meet all of these four conditions.

YOU MUST BE

- a. In mortgage arrears on your home;

AND

- b. Insolvent. This means that you are unable to pay your debts in full as they fall due. MABS or your PIP will be able to help you to work this out;

AND

- c. At risk of losing your home because of arrears. For example, you may have received a letter from your lender to say that you are not co-operating, that your mortgage is unsustainable, or inviting you to consider selling or surrendering your home, or saying that they are going to begin repossession proceedings or that proceedings have already begun;

AND

- d. 'Reasonably accommodated'. This means that the costs of continuing to live in your home are not disproportionately expensive, bearing in mind your reasonable living accommodation needs and those of your dependants, and the costs of alternative accommodation in your case.

MABS or your PIP will be able to tell you whether you meet these conditions.



5. How does the Scheme work?

To get any help under the Scheme, you must apply to the Money Advice and Budgeting Service (MABS).

If you qualify for the Scheme, MABS will help you to get the assistance and advice you need. They could direct you to a MABS Dedicated Mortgage Arrears Adviser who can give you expert help and advice on dealing with debts. They could also direct you to a Personal Insolvency Practitioner (PIP), an accountant or a solicitor for specialised financial and legal advice and help.

A personal insolvency practitioner (PIP) from the Scheme's panel of PIPs can also help you to apply for the Scheme, through MABS.

To deliver this specialised help nationwide, three bodies have worked with MABS to set up panels of professional advisers with experience in mortgage arrears:

- The Insolvency Service of Ireland has set up a panel of personal insolvency practitioners (PIPs)
- The Legal Aid Board has set up a panel of solicitors
- The Citizens' Information Board has set up a panel of accountants.

6. How do I apply for the Scheme, and how do I get the free advice?

- a.** To apply, you can:
Contact MABS (0761 07 2000) or your local MABS office (see www.mabs.ie for details);

OR

Talk to a PIP on the Scheme panel (see www.backontrack.ie for the list of panel PIPs).

MABS or your PIP will help you with your application.

- b.** MABS or your PIP will explain whether you qualify for the Scheme - the conditions are listed on page 2.
- c.** MABS will direct you to a MABS adviser, a PIP or an accountant for financial advice, depending on which is most suited to your situation.

If directing you to a PIP or an accountant, MABS will give you a voucher for financial advice. You don't need a voucher to get advice from a MABS adviser.

- d.** You choose your preferred PIP or accountant from the relevant Scheme panel (see www.mabs.ie and www.keepingyourhome.ie for the lists of Scheme panel members) and they will give you the advice service (as set out below), in return for the voucher. You must get financial advice first, before seeking legal advice.
- e.** To receive free advice and help under the Scheme, you must agree to give a full, honest and complete picture of your financial situation to your financial adviser, so that they can prepare a written Financial Statement describing your financial circumstances (this is called a 'Standard Financial Statement or a 'Prescribed Financial Statement'). This is necessary so that you can get the best help available under the Scheme.
- f.** You will be asked to agree that this financial statement, and all other information that is relevant to your mortgage arrears, can be shared between the bodies and advisers working to help you under the Scheme. This is necessary so that anyone advising you under the Scheme has a full picture of your situation before giving you advice. For this reason, as part of your application for the Scheme you will be asked to sign the Scheme's Data Processing and Sharing Consent ('borrower consent' – see Section 9 below).
- g.** After you have received financial advice, MABS can give you a voucher for legal advice, if it is needed. You choose your preferred solicitor from the Scheme panel (MABS or your PIP will give you the list). The solicitor will give you the consultation service (as set out below), in return for the legal advice voucher.
- h.** Remember: if you are meeting any adviser under the Scheme, they will need to have a copy of the most recent financial statement that has been prepared by MABS or your PIP, and a copy of any written financial or legal advice you have already received. Your MABS adviser or your PIP can send this to your accountant or solicitor for you, or you can bring it with you when you meet them.
- i.** It is expected that you should have received financial advice under the Scheme, and seen a consultation solicitor, before you ask for the Duty Solicitor Service (as set out below). However, if you are already involved in repossession proceedings and your case is due in Court, a duty solicitor may be able to give you some help, provided you have already talked to MABS and applied for the Scheme. Contact MABS immediately, if you have not already done so.

7. How long will my voucher last?

You should use your voucher as soon as possible, and not later than 3 months after the date of issue. Remember to bring your voucher with you when you meet your financial or legal adviser.

8. What sort of free advice and help can I get?

If you qualify under the Scheme, it can provide you with financial advice and help, and (as needed) legal advice and help. There are five services available, depending on your personal financial and legal situation. MABS will direct you to the most relevant service for you.

The five services are:

- a. The PIP Service
- b. The Accountant Service
- c. The Consultation Solicitor Service
- d. The Duty Solicitor Service
- e. The Personal Insolvency Court Review Service

These are explained in detail below.

a. The PIP Service

If you wish to explore your options under insolvency, you can get advice from a PIP on the Scheme panel. PIPs are experts in debt advice and personal insolvency solutions, and can also give financial advice on bankruptcy.

Your PIP will carry out a full assessment of your financial situation, explain all the available options, and give you written advice on the best option for you to deal with your mortgage arrears. To do this, your PIP will have to prepare a statement of your financial situation called a 'Prescribed Financial Statement' (PFS).

Even if you have already been served with notification of repossession proceedings, the PIP may, in some circumstances, be able to help you put in place an arrangement that will allow you to keep your home. See www.backontrack.ie for more information.



If your panel PIP advises that your best option is personal insolvency, they will help you in taking the next steps.

b. The Accountant Service

If your case involves complicated financial issues, MABS may direct you to an accountant for financial advice. To get free advice from an accountant under the Scheme, you will need to first work with a MABS Adviser and complete a Mortgage Arrears Resolution Process Standard Financial Statement (MARP SFS). Your accountant will need a copy of this statement in order to give you financial advice.

The voucher will entitle you to a consultation with an accountant from the Scheme panel, who will advise you on any financial issues relating to your mortgage arrears and provide written advice to you about these. Even if you have already been served with repossession proceedings the accountant may, in some circumstances, be able to assist you to find a solution, without going to Court.

c. The Consultation Solicitor Service

After you have received financial advice under the Scheme from a PIP, MABS adviser or accountant – and if your case raises legal issues or you have received notification of repossession proceedings – you may be advised to see a solicitor from the Scheme panel. Your financial adviser can apply to MABS for a legal advice voucher. MABS or your PIP may also direct you to a consultation solicitor for legal advice.

To get free advice from a solicitor under the Scheme, you will need to already be working with a MABS Adviser and have completed a MARP Standard Financial Statement (MARP SFS) , or with a PIP and have completed a Prescribed Financial Statement (PFS). Your solicitor will need a copy of this statement in order to give you legal advice.

You choose your solicitor from the Scheme panel, subject to availability. The legal advice voucher will entitle you to a face-to-face consultation with a solicitor, who will explain your legal situation, and advise you on any legal issues relating to your mortgage arrears. They will also confirm that advice to you in writing.

If you have already been served with notification of repossession proceedings, the consultation solicitor may, in some circumstances, be able to assist you to find a solution without going to Court.

d. The Duty Solicitor Service

If you are facing Circuit Court repossession proceedings against your home due to mortgage arrears, you may be able to get some help at Court from the Duty Solicitor. The Duty Solicitor is a solicitor from the Scheme's solicitor panel, who will normally be on duty at a Circuit Court on the date where the Court is due to deal with repossession cases.

Normally, before getting help from the duty solicitor, you should already have your written financial advice under the Scheme and should have seen your consultation solicitor, who will have advised you on the repossession proceedings. This will allow the duty solicitor to help you more effectively.

IMPORTANT: If your mortgage lender has already sent you Court proceedings against your home, and you haven't yet applied for this Scheme, you should contact MABS as soon as possible (0761 07 2000). A duty solicitor may still be able to give you some limited help at Court, but only if you have already talked to MABS.

(MABS Advisers are also in attendance at Circuit Court repossession hearings. They can provide you with information and support, but they cannot provide any legal advice or speak for you in Court.)

What can I expect from the Duty Solicitor?

The Duty Solicitor Service is a limited service to provide advice and help to you in the courthouse. Your consultation solicitor will explain this in more detail.

The Duty Solicitor cannot act as your legal aid solicitor, or defend the repossession proceedings on your behalf, as that is not covered by this Scheme (see below).

The Duty Solicitor may be able to speak for you in Court, to explain what steps you are taking to try and deal with your mortgage arrears. The Duty Solicitor may also be able to explain to you what is happening in the proceedings.

The Duty Solicitor is best able to help you if you applied to the Scheme in good time, and you have already seen a consultation solicitor. If you have not yet seen a consultation solicitor, but have applied to the Scheme and talked to MABS, the Duty Solicitor may be able to provide some help, but it will be more limited.

You cannot choose your Duty Solicitor. Your Duty Solicitor will be the panel solicitor who has been assigned under the Scheme to be present at the Court on the day.

Your Duty Solicitor will also be the Duty Solicitor for other Scheme borrowers whose repossession cases are listed on that day, so may have a number of cases to attend to. Make sure you are at Court one hour before the time shown on the Court papers, and ask for MABS when you arrive.

What if I want to defend the repossession proceedings on my home?

This Scheme does **not** cover legal aid for defending repossession proceedings.

If you are in mortgage arrears, your lender will normally have a legal right to seek to take back your home, and you may not have a valid legal defence to prevent repossession. Your consultation solicitor will advise you about this.

In a small number of situations, you may have a valid legal defence to repossession, but this applies to relatively few cases. If you do have a valid legal defence and want to apply for legal aid, you will have to apply for that separately, to the Legal Aid Board, and different conditions may apply. Your consultation solicitor can explain this to you.

Remember that, depending on your situation and the amount of arrears, your financial adviser under the Scheme may be able to propose a solution which will prevent repossession of your home, or negotiate a better deal for you with your lender. **The sooner you talk to MABS or a PIP, the better your chances are.**

e. The Personal Insolvency Court Review Service

You will only need this service if you have already worked with a PIP, have proposed a Personal Insolvency Arrangement ('PIA') to your creditors, and your creditors have refused your proposal although your PIP considers it fair and reasonable to all concerned.

In this situation, you can consider asking the Courts to review your PIA proposal. If the Court agrees that the proposal is overall fair and reasonable, using the criteria set out in section 115A of the Personal Insolvency Acts, it can impose the proposal on your creditors.

Under the Personal Insolvency Court Review Service, the Legal Aid Board (www.legalaidboard.ie) agrees to provide you with legal representation by a solicitor and barrister to make the Court review application, as part of their Civil Legal Aid service.

Your PIP must certify to the Legal Aid Board that you are eligible for the Court Review Service under the Scheme. You may be eligible if:

Your PIP has already made a proposal for a Personal Insolvency Arrangement (PIA) on your behalf, and all the following 4 conditions apply:

- That PIA proposal includes a mortgage or other debt secured on your home which was in arrears on 1 January 2015 (or, if you were in arrears before that date, you entered into an alternative repayment arrangement with the secured creditor concerned, but remain insolvent)
- That proposal has been rejected by your creditor(s)
- Your PIP certifies that you have reasonable grounds to apply for a Court review of that refusal, under section 115A(9) of the Personal Insolvency Acts
- You are 'reasonably accommodated'; this means that the costs of continuing to live in your home are not disproportionately large, bearing in mind your reasonable living accommodation needs and those of your dependants, and the costs of alternative accommodation in your case.

How do I apply for the Personal Insolvency Court Review Service?

If your PIP informs you that you are eligible, and you want to apply for the Court Review Service, your PIP will help you to make the application.

You must have a Scheme Number from MABS. If you don't already have one, your PIP will apply to MABS to request one for you, certifying that you are eligible for the Scheme. (For this Service, you do not need a voucher.)

Your PIP will then apply to the Legal Aid Board for a Legal Aid Certificate under the Civil Legal Aid rules. Your PIP must provide the following:

1. Your MABS Scheme Number
2. Certification that you are eligible and in particular that you have reasonable grounds to apply for a Court review
3. A copy of your refused PIA proposal.

Is there a time limit to apply for the Personal Insolvency Court Review Service?

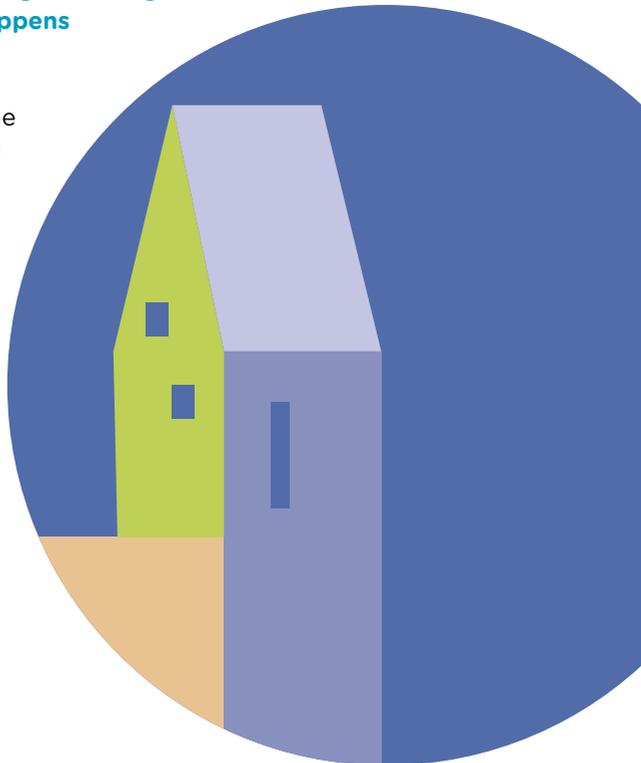
Under the Personal Insolvency Acts, if you want to apply to Court for a review you must do so no later than 14 days after your creditors notify your PIP of their decision to refuse your PIA proposal. There is no provision for this time limit to be extended.

You do not have to apply for, or obtain, legal aid within those 14 days. However, you may want to know as early as possible whether you can obtain legal aid.

The Legal Aid Board is aware of the time limit for seeking the Court review, and will decide quickly on any completed application for legal aid.

The Legal Aid Board has granted legal aid in my case, what happens now?

You and your PIP can select a solicitor from the Scheme solicitors' panel to act on your behalf. The Legal Aid Board will normally also cover the cost of a barrister and any essential witness expenses.



9. Data Processing and Sharing under the Scheme

a. How will my personal data be treated under the Scheme?

You will be asked for full details of your finances. This will include the extent of your debts and home mortgage arrears and any other personal data which is needed for a comprehensive view of your financial situation (and, where relevant, of your legal situation). This might include some information about your medical situation or personal relationship (which is called 'sensitive personal data') – for example, if you lost income through illness, or if you are separated from a partner who also signed the mortgage on your home.

This personal data will be treated in accordance with the law, including EU and Irish data protection law, the Personal Insolvency Acts, the Bankruptcy Acts and the Civil Legal Aid Acts.

Your personal data will only be processed (used) for the purposes of the Scheme and to try to find solutions as agreed with you.

b. How will my data be processed within the Scheme?

Your data may be processed (used) in two ways.

Firstly, for administrative purposes, some of your data may be shared between, and used by, the bodies working within the Scheme (including their staff and employees). These bodies are: the Money Advice and Budgeting Service (MABS), MABS ndl and, where applicable, the Insolvency Service of Ireland, the Legal Aid Board and the Citizens' Information Board. They will only use your data for the purposes of the Scheme.

This is necessary:

- to check that you are eligible for free financial and legal advice and aid under the Scheme
- to measure how effectively the Scheme is working to help borrowers using it. (Where data is shared within the Scheme for these statistical or monitoring purposes, it will only be shared in a way which does not identify you.)

Secondly, for advice purposes, more detailed data will be shared between the relevant advisers working with you. This will include your Standard Financial Statement or Prescribed Financial Statement and a copy of the written financial advice or legal advice provided to you.

The advisers are the MABS adviser, the Personal Insolvency Practitioner (PIP), the consultation solicitor, the duty solicitor and/or the accountant who are providing you with advice and assistance within the Scheme.

Sharing relevant data between the advisers working with you under the Scheme helps them to give you the best advice they can, without unnecessary duplication or delays.

Your data sharing consent also allows an adviser's relevant employees or staff to process your data, on his or her instructions, for the purposes of providing you with that advice and help.

c. Will my data be given to any person or body outside the Scheme?

You will be asked when you apply for the Scheme to consent to your personal data being used and shared **only within** the Scheme.

Your personal data will not be provided to any body or person outside the Scheme, unless you give an additional written agreement to that being done. Two examples of this are:

- Your adviser (the MABS adviser, PIP, consultation solicitor, duty solicitor or accountant, advising or helping you under the Scheme) may need to share your Standard Financial Statement or Prescribed Financial Statement with your creditors, in order to negotiate with them on your behalf. This can only be done if you give an additional written agreement.
- If you are involved in court proceedings and/or if you decide to take up some types of debt solution, there may be a legal requirement for your adviser to make public some of your personal information. Again, this can only be done if you give an additional written agreement.

d. How long will my data be kept?

Any personal data of yours which has been collected for the purposes of the Scheme will be deleted, or securely disposed of, 3 years after the termination of this Scheme. There is an exception to this rule for any personal data which the body or adviser has a legal requirement to keep for a longer period. For example, a solicitor or personal insolvency practitioner is obliged under professional oversight regulations to keep client files securely for a minimum period (seven years and six years respectively).

e. Who will be responsible for my data under the Scheme?

The name and contact details of the Data Controller nominated by each of the bodies sharing data within the Scheme will be published on that body's website.

10. Who is involved in the Scheme?

The Scheme is jointly coordinated and funded by the Department of Justice and Equality and the Department of Social Protection.

MABS, the Insolvency Service of Ireland, the Citizens' Information Board and the Legal Aid Board are working together to implement the Scheme.

MABS (www.mabs.ie) the Money Advice and Budgeting Service, funded and supported by the Citizens' Information Board, is a free, independent and confidential service for people who are in debt or at risk of getting into debt. MABS has offices at over 65 locations nationwide and has a Helpline 0761 07 2000, Monday to Friday from 9am to 8pm.

MABS has a role in providing direct support and advice to homeowners in mortgage arrears and directing them to free advice under the Scheme.

MABS ndl is a MABS company that is administering the Voucher system.

The Insolvency Service of Ireland (ISI) (www.backontrack.ie) is an independent government body set up to help tackle personal debt problems. The ISI has a range of debt solutions, including a regulated network of qualified professionals, which can help you to restructure and even write off debt that you cannot repay.

The Legal Aid Board (www.legalaidboard.ie) provides civil legal aid and advice to people who cannot afford a solicitor. The Legal Aid Board has set up a panel of solicitors to provide free advice to homeowners in mortgage arrears under this Scheme.

Please note:

This booklet is provided as a plain language aid to explain the basic features of the Scheme. It does not constitute a legal interpretation of the Scheme, or legal advice on relevant legislation, and should not be relied on as such.



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AN BORD UM CHÚNAMH DLÍTHÍÚIL



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