

# Pipped

## AT THE POST



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The economic crisis has produced an enormous level of insolvency and resultant misery. However, the *Personal Insolvency Act* has the aim of making things easier for both debtors and creditors, write **Paul Keane** and **Mark Homan**

“Annual income 20 pounds, annual expenditure 19 pounds 19 and 6, result happiness. Annual income 20 pounds, annual expenditure 20 pounds ought and 6, result misery.” These were the words

of Mr Micawber, a character with considerable personal experience of insolvency, in Charles Dickens’ *David Copperfield*.

The *Personal Insolvency Act 2012* has the objectives of:

- Ameliorating the difficulties experienced by debtors in discharging their indebtedness due to insolvency,
- Enabling creditors to recover debts due to them in an orderly and rational manner, and
- Enabling insolvent debtors to resolve their indebtedness without recourse to bankruptcy and thereby facilitating their active participation in economic activity.

The Minister for Justice has estimated that, in the first year of its operation, the new legislation will result in nearly 20,000 applications for the debt relief mechanisms and 3,000 bankruptcies.

Three mechanisms have been introduced by the act for the resolution of the debts of insolvent persons: debt relief notice (DRN), debt settlement agreement (DSA)

and personal insolvency arrangement (PIA).

The DRN is designed for no income, no asset consumer debt cases where the levels of qualifying debts do not exceed €20,000. The authorised intermediaries responsible for supporting applications will be MABS or similar organisations.

### Insolvency Service of Ireland

The Insolvency Service of Ireland (ISI), established with effect from 1 March 2013, will administer the provisions of the *Personal Insolvency Act* and oversee the implementation of the legislative regime. The ISI will be responsible for overseeing the three new debt settlement arrangements contained in the act. It will serve as a checks and balances mechanism to ensure compliance with the act, and it shall have the structures, functions and powers consistent with an effective independent body.

The principal functions of the ISI are set out at section 9(1) of the act. They are to:

- Monitor the operation of the arrangements relating to personal insolvency,
- Consider applications for DRNs,
- Process applications for protective certificates,
- Maintain the registers,
- Provide information to the public,



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***“PIP applicants must provide evidence of professional indemnity insurance, and a compensation fund of not less than €9,000,000 is envisaged for the protection of debtors and creditors”***



Wilkins Micawber: "Welcome poverty! Welcome misery, welcome houselessness, welcome hunger, rags, tempest and beggary! Mutual confidence will sustain us to the end!"

- Advise the Minister for Justice and Equality in relation to its functions,
- Authorise persons to perform the functions of an approved intermediary,
- Authorise individuals to carry on practice as personal insolvency practitioners,
- Supervise and regulate persons practising as personal insolvency practitioners,
- Prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses,
- Arrange for the education and training of approved intermediaries and personal insolvency practitioners (PIPs), and
- Contribute to the development of policy in the area of personal insolvency.

**FAST FACTS**

- > Three mechanisms have been introduced by the act for the resolution of the debts of insolvent persons: debt relief notices, debt settlement agreements, and personal insolvency arrangements
- > The Insolvency Service of Ireland will be responsible for overseeing the three new debt settlement arrangements contained in the act
- > Another key function of the service is its role in authorising and supervising personal insolvency practitioners



The ISI will be more directly involved with the implementation of DRNs than DSAs or PIAs. In the case of DRNs, the ISI must assess the application and, if appropriate, certify to the court that the application is in order. In relation to the DRN process, the ISI may liaise with creditors and other parties, make payments under the DRN, investigate relevant matters, seek to extend the process, and bring the DRN process to an end if necessary.

The ISI has recently embarked on an information campaign. Pursuant to section 23(1) of the act, the ISI has published guidelines as to what constitutes a reasonable standard of living and reasonable living expenses for debtors (see [www.isi.gov.ie](http://www.isi.gov.ie)). The guidelines will effectively inform an intermediary or PIP, when compiling an arrangement, as to what level of living expenses are reasonable for a debtor after the payment of a portion of debt – that is, after the payment of debt, what will be left for the debtor to live on?

The publishing of these guidelines is a crucial role for the ISI. The act provides that the ISI must have had regard to certain considerations in doing so, including poverty indicators, CSO surveys in relation to household income and expenditure, the Consumer Price Index, differences in household size and composition, differing needs of persons, and the need to facilitate social inclusion of debtors and their active participation in economic activity.

While having regard to the differing needs of persons, the ISI should pay particular regard to the age and health of family members and whether they have a physical, sensory, mental health or intellectual disability. The ISI must consult widely on this matter, and the guidelines will be reviewed annually.

#### Personal insolvency practitioners

Another key function of the ISI is its role in authorising and supervising PIPs. As stated above, we are not concerned in this article in the ISI's role *vis-à-vis* the authorised intermediary's role in DRNs, as these positions will be taken up mostly by MABS or similar organisations

In order to avail of a DSA or PIA, a debtor must appoint a PIP, which will invariably be an accountant or lawyer, although qualification for the role is not confined to those two professions. PIPs will be responsible for providing advice to a debtor and making the

application for the particular arrangement.

Section 161 of the act provides that the ISI may regulate the procedures governing the authorisation of persons to carry on practice as a PIP, standards to be observed by a PIP, qualifications (including levels of training, education and experience) of a PIP, records to be maintained, and the information and returns to be provided to the ISI. The ISI may authorise or refuse applications. However, when exercising this discretion, it must provide the reasons for such a refusal and inform the PIP applicant of his/her entitlement to make representations in this regard.

The PIP authorisation process is rigorous. Applications must be accompanied by evidence of competency and proof of satisfactory

knowledge of the act and the law generally in relation to the insolvency of individuals. In consultation with the ISI, the Law Society and some of the accountancy bodies are set to run short courses, which will culminate in an exam. Applications must also be accompanied by a report by a qualified accountant, in the prescribed format, confirming that the appropriate financial systems and controls are, or will be, in place for the protection of debtors' monies.

PIP applicants must provide evidence of professional indemnity insurance, and a compensation fund of not less than €9,000,000 is envisaged for the protection of debtors and creditors. Finally, a registration fee, as of yet

undetermined, will be payable to the ISI.

The ISI may also prepare and publish guidelines in relation to the duties of PIPs, which the PIP must have regard to in carrying out his/her duties.

Once authorisation is granted, it remains in force for one year and, unless revoked, may be renewed by the ISI. Upon appointment, the PIP must confirm consent in writing to the debtor and notify the ISI. Similarly, should the PIP resign, he/she must notify the ISI and provide a statement of reasons for the resignation. The ISI will have investigatory powers and may inspect PIPs and investigate complaints made against them.

In becoming a PIP, the practitioner will agree to keep proper books and records and dedicated DSA and PIA accounts.

#### Role of PIPs

The PIP holds meetings with the debtor and advises whether or not the eligibility criteria for a proposal have been satisfied. The PIP

#### WHAT PIPS DO

- Act on behalf of a debtor for DSA and PIA,
- Analyse debtor's financial position,
- Advise in relation to appropriate arrangement,
- Apply for protective certificate,
- Arrange and manage creditors' meeting,
- Draft DSA or PIA,
- Manage the process throughout the lifetime of the arrangement.

must provide the debtor with information on the procedure, general effect and the likely costs. The PIP is also responsible for preparing proposals to creditors regarding the arrangement.

PIPs are responsible for assisting debtors in compiling a prescribed financial statement and, in doing so, they must give full and honest disclosure of all the facts. Based on this statement, the PIP will advise the debtor as to any alternative options.

PIPs will have ongoing supervision by the ISI to ensure compliance with the act, ISI guidelines and regulations.

Section 161 of the act provides that the ISI may regulate the circumstances and purposes for which a PIP may charge fees, costs or seek to recover outlays. The payment of fees is ultimately a contractual matter between the PIP and the debtor, subject to the agreement of the creditors. The PIP should provide the debtor with details of fees and the likely cost of the arrangement. It is envisaged that the regulations will provide that the fees should be paid throughout the life of the arrangement, as opposed to them being paid all up front. While some level of upfront fees will be allowed, the structure will be designed to avoid all fees being paid up front for fear that the incentive for a PIP to push through a particularly difficult arrangement might be lessened. Anecdotally, it appears from other jurisdictions that the banks, who are ordinarily the largest creditor and who usually hold the veto, have a view in relation to what the PIP's fee should be and will only agree fees within that band. It remains to be seen what level of fees will be palatable for the creditors.

#### The court's role

The final piece of the new personal insolvency structure is, of course, the court. Applications for DSAs and PIAs are brought to the Circuit Court, except in circumstances where the debtor's debts are over €2.5 million. The Circuit Court applications will be dealt with by specialist judges, who mostly currently comprise county registrars. **G**