

## **Interim Report on Personal Debt Management and Debt Enforcement**

In 2010, the Commission published [an Interim Report on Personal Debt Management and Debt Enforcement \(LRC 96-2010\)](#), which followed a [Consultation Paper on Personal Debt Management and Debt Enforcement \(LRC CP 56-2009\)](#) which was published in September 2009 as part of its Third Programme of Law Reform 2008-2014 and which had made 122 provisional recommendations for reform of the law on personal debt.

### **Need for an Interim Report on Personal Debt**

Because of the urgency of the problems in this area, in January the Commission established a Working Group on Personal Debt Management and Debt Enforcement to bring forward solutions that could be put in place in the short term. The Interim Report contains the detailed elements of a 14 Point Action Plan arising out of the Commission's discussions with the Working Group.

### **Key elements in the Interim Report's 14 Point Action Plan**

Among the key elements in the Interim Report's 14 Point Action Plan are:

1. The further development of a Standard Financial Statement arising from the Review of the IBF-MABS Operational Protocol on Managing Debt which will provide an agreed Irish standard to assess an individual's total income and total outgoings. The Commission's Interim Report points out that some creditors do not take into account a person's total debts when assessing how much they expect them to pay: the Standard Financial Statement allows both the individual and all creditors to have a complete view of what would be a realistic amount to pay in a given situation.
2. Extension of the IBF-MABS Operational Protocol on Managing Debt: this will also bring more financial institutions and other creditors into a nationally agreed debt management process, so that it includes not just IBF members (as at present) but also credit unions and, potentially, the so-called "sub-prime lenders" as well as utility companies. The successful outcome of this extension would also make a significant change on the ground for people in difficulties.
3. Compilation and distribution of comprehensive information for consumer debtors, using a dedicated website (microsite). This would provide a one-stop-shop of all the available information, based on the detailed material compiled in the Interim Report.
4. Proposal by the Commission and Courts Service management for a Pre-Action Protocol for Consumer Debt Cases, based on Model Statutory Rules of Court set out in the Interim Report. This would impose a mandatory requirement on creditors to issue a warning letter before bringing debt proceedings, and would allow the individual to obtain advice from, for example, MABS, including preparing a Standard Financial Statement to present to the creditor before court proceedings even begin.
5. Proposal by the Commission to clarify the status of statutory codes of practice in court proceedings, for example the Financial Regulator's Consumer Code. At present, it is not clear

whether courts can take non-compliance with the Consumer Code into account, for example, by deciding to stay (postpone) a final order or to refuse legal costs.

6. Proposal by the Commission to reduce the waiting period for a discharge application under the Bankruptcy Act 1988 from the current 12 year period to six years, or less. This would not affect the detailed restrictions in the current bankruptcy law, but would be a modest stepping-stone towards more comprehensive reform, including the non-judicial debt settlement system to be proposed by the Commission in its final Report on Debt Management and Debt Enforcement, to be published by the end of the year.

### **The Interim Report and Mortgage Debt**

The Commission's Interim Report does not deal directly with the issue of mortgage debt, because this is currently being considered by the Government's Mortgage Arrears and Personal Debt Review Group, which was established in February of this year. The Interim Report notes that mortgage debt has two distinct aspects that mark it out as different from other personal debt: first, from a legal point of view, the fact that it is a secured debt; and, second, from a personal point of view, its connection with people's sense of safety and security in their family home. In addition, the Interim Report notes that unsecured personal debt can be "converted" into mortgage debt through the court process of a judgment mortgage.

### **List of Topics in the 14 Point Action Plan**

The full list of topics in the 14 Point Action Plan are:

- Reform of financial services regulation legislation
- Proposal for the regulation of money advice undertakings
- Proposal for the regulation of debt collection undertakings
- Reform of the credit union regulatory structure
- Proposal for the regulation of credit reporting practices
- Extension of the IBF-MABS Operational Protocol
- Review of the IBF-MABS Operational Protocol
- Development of a Standard Financial Statement
- Proposal to clarify the status of statutory codes of practice in court proceedings
- Proposal for a Pre-Action Protocol, based on Model Rules of Court, in consumer debt proceedings
- Proposal for a right of participation for money advisers in court proceedings
- Consideration of legal advice and legal aid for debtors
- Proposal to reduce the waiting period for a discharge application under the Bankruptcy Act 1988
- Compilation and distribution of useful information to consumer debtors.