

MABS response to The Law Reform Commission's Final Report on Debt Management and Debt Enforcement 15/12/10

The Money Advice and Budgeting Service (MABS) welcomes the Law Reform Commission's detailed and insightful report published today and the opportunity to respond. We appreciated the opportunity to make a contribution to the consultation process and together with staff and management prepared a detailed submission based on the MABS experience of working with overindebted people over almost two decades. Our response to the consultation paper, as outlined in our submission, sought to set out the position of MABS, following internal consultation, as well as addressing other issues of interest to MABS and MABS clients. MABS also contributed to the work of the group that assisted the Law Reform Commission with its Interim Report published in May.

This report and reforms in the Irish debt management and debt enforcement regime have been long awaited. MABS views reform as pivotal in ensuring necessary improvements in both processes and outcomes for overindebted people in Ireland. While there is much in the report that will require more detailed consideration, the report is welcomed by MABS as it makes recommendations on many of the issues previously identified by MABS as requiring legislative, policy or regulatory change. We realise that the proposals for change in this report will also, potentially, have a major bearing on the future role of MABS.

In an effort to influence change MABS has made, over the years, a number of submissions on issues associated with the legal process and consumer debt. As far back as 1999, out of concern for their clients, MABS money advisers made a submission to the Department of Justice, Equality and Law Reform seeking an overhaul of the way non-contested consumer debt was processed in the legal system and seeking an out-of-court procedure which would recognise a debtor's overall situation and their ability to pay. In addition, in association with the Irish Banking Federation (IBF) and FLAC, MABS has endeavored to put in place 'out-of-court' debt settlement and debt management mechanisms in order to holistically address consumers' financial difficulties. The general ethos that MABS applies to its work for, and on behalf of, over-indebted clients, the many submissions we have made on the need for change over the last several years, and the initiatives we have undertaken to effect a better balance between creditors and debtors collectively provide an overview of the key legislative, regulatory and policy changes which MABS believe are necessary to effect positive change in the Irish debt management/debt enforcement regime. We therefore welcome the Commission's proposals for the enactment of a non-judicial debt settlement regime and the

establishment of a Debt Enforcement Office which would oversee the proposed new non-judicial debt settlement arrangements for creditors and debtors.

I am mindful in making this response that this is a preliminary response and that policy makers and the agency with responsibility for MABS and our funders the Citizens Information Board, as well as the MABS staff nationwide will need time to consider in depth the proposals and the likely impact they will have.

In responding to the Commission's recommendations we have therefore looked at the report from three perspectives

1. The first is the perspective of the MABS client who has always been, and must remain, the central focus of the work of MABS.
2. The second is the wider societal perspective - again based on its experience MABS has long held the view that providing a resolution to personal debt difficulties and opportunities for the rehabilitation of debtors would yield significant societal returns.
3. Finally, we look briefly at the recommendations as they relate to the Money Advice and Budgeting Service.

What do the Recommendations mean for MABS clients?

As the report highlights MABS is a service that assists low income families and our statistics indicate that we are still working primarily with people whose income is social welfare. One feature that has become more manifest over the last number of years is that many of our clients currently in receipt of social welfare were recently in employment and may have had a relatively good income. Their difficulties are compounded by the fact that their borrowings are commensurate with the income they had when employed and they now find themselves struggling to manage their commitments on a significantly reduced income.

Such clients may not always be 'no income – no asset' clients but are often low income and the only asset they have is the family home. MABS clients are not so readily segmented and this has always been the case with between 30 and 35 % of clients consistently waged or self employed.

In this context the introduction of a Debt Relief Order, which would grant debt discharge after a short waiting period to individuals whose income and assets are so limited as to make bankruptcy

proceedings or a repayment plan inappropriate, is welcomed. We also welcome the fact that our own statistics and the data collected by the Vincentian Partnership, with whom we have a long relationship, might be used to inform the setting of relevant income thresholds. Again, while we accept that secured debts may not be subject to discharge we are concerned that some of our clients present with difficulties arising from the fact that they have perhaps unwisely secured some of their personal debts on their family home.

Again, because MABS has long believed that debtors need an opportunity to 'move on', we welcome the proposal that the Debt Relief Order should impose a moratorium on the enforcement of any of the debts included in the order for a period of 12 months, after which the debts are discharged.

We have some concerns about the realisation of this proposal in practice – it is sometimes necessary for MABS to make a 'nil-offer' to a creditor in a situation where there is simply no income available to service a particular debt. This is the exception rather than the rule, and is generally offered on a temporary basis, until such time as the debtor's situation improves.

While, it has been argued that people on social welfare or a basic income do not have the means to repay debts – taken to the extreme, the corollary of this argument is that credit should never be extended to this group. While not arguing against debt discharge, this approach could do a disservice to the many people on social welfare who access credit and repay it effectively and to the many people on social welfare who want to repay their debts and manage to make repayments with MABS' assistance.

We wonder how in practice the provision that the moratorium should not prevent a secured creditor from enforcing its security will apply.

While there is a logical rationale to the proposed restriction on credit during the period of the moratorium, we believe that there must be some provision for amounts of credit that facilitate crisis payments. There must also, of course, be lenders through which such credit is available at affordable interest rates.

MABS welcomes the suggestion that the process itself should be educational and rehabilitative and again this has always been one of MABS' objectives. We hope that MABS will continue to be resourced in this regard.

Fundamental to the MABS ethos and key tenets of the success of the model to date is the fact that MABS is free, independent, and confidential – for this reason, and while understanding the rationales for both proposals, we have concerns in relation to:

Both the proposal to charge a nominal fee for applicants for a debt relief order **and** the way in which the debt relief order should be publicised.

In our experience, the fewer barriers to access the better, and debtors should be encouraged to address their difficulties rather than have barriers put in their way. We would be concerned therefore that the charging of a fee, however small, could act as a deterrent to action when the goal should be to encourage ‘no income - no asset’ debtors to address their difficulties at an early stage.

We also know, from experience, that the confidentiality of the service we currently provide is greatly appreciated by our clients and again we believe that the impact of publication of Debt Relief Orders would act as a very serious deterrent to would-be participants.

I will now go on to consider the relevance of the Non-Judicial debt settlement for the MABS client group. In my reading of the report it is not wholly clear that the Commission envisages a *specific* role for MABS or its clients in these proposals and yet, in many regards, many of the steps in this process are very much MABS territory and we could envisage many of our existing clients benefitting from the proposed approach.

In our view the proposals in relation to non-judicial debt settlement provide a legislative and formal basis for much of the work MABS is already engaged in on behalf of clients and in particular the strategic approach we have been deploying through our Protocols with the IBF and other major creditor groups. The most significant and most welcomed change is that the debt settlement arrangement provides for the discharge of debt after a specified period of time.

We recognise that the ‘fit’ between the current role of money adviser and that of Personal Insolvency Trustee is imperfect and that the Commission has carefully analysed and taken due cognisance of the current role and functions of money advisers in mapping out the role envisaged for the trustees. Certainly there are differences in the areas of mediation and also with regard to the element of supervision of payments to creditors. However, based on the fact that MABS currently achieves voluntary debt repayment arrangements for up to 80% of its clients annually,

while still carrying out its money advice and educational functions we would not agree that the risk of dilution of the role of money advice is a real one.

With regard to MABS current client base – due to pressure on resources, MABS has had to remain highly focused on its target group. It is true that not all of the people presenting in Services are ‘no income-no asset clients’, but they are ‘low income - low assets debtors’ and in MABS’ view, and following a review of their financial situation, they have the capacity to make a level of repayment on their debts while not having the resources to pay for a commercial resolution to their difficulties. In some instances and although they may retain some income, their situation can be much worse than clients who are solely reliant on social welfare. The boundaries between different segments of the low income target group are simply not as clear as they once were. Of course where those presenting have a significant income and significant assets – MABS does not engage other than to provide information resources and encourages that they seek professional help and this is as it should be for a state funded service with limited resources.

Against all of this – we are very mindful that the Commission has taken a considered approach and agree with the Commission’s view that the role of Personal Insolvency Trustee should ‘not be confined to money advisors’, however, we anticipate that a considerable proportion of MABS’ existing client base and its target group *will* require the assistance of MABS money advisers in availing of the debt settlement arrangements.

Of course a fundamental change here is the potential for MABS to adopt a supervisory role in relation to the debt settlement arrangement. This arises from the proposal that the role of administrator and intermediary are incorporated into a single position of Personal Insolvency Trustee. Heretofore the arrangements put in place by MABS have always been voluntary and we would argue that, in a sense, this has contributed to their efficacy as debtors want to work with MABS to make repayments. The movement into a more supervisory role of course poses ethical questions for the Service which would need further consideration.

The Wider Societal Perspective

The second aspect we wish to address is the wider societal perspective - again based on its experience, MABS has long held the view that providing a resolution to personal debt difficulties and opportunities for the rehabilitation of debtors would yield significant societal returns. I quote from

the address of Margaret Chan, Director General of the World Health Organisation on World Mental Health Day October 2008 “We should not be surprised or underestimate the turbulence and the likely consequences of the current financial crisis... It should not come as a surprise that we continue to see more stress, suicides and mental disorders”. This is exactly what MABS advisers are now experiencing more and more.

The current adversarial approach to over-indebtedness has the effect, in our view, of compounding an already serious human problem. In MABS we have experienced the appropriateness and efficacy of a more holistic approach to over-indebtedness and the sustainability of its outcomes. We therefore look forward to the modern, humane and realistic approach to over-indebtedness outlined in the report. In this regard we welcome the abolition of imprisonment for non-payment of debts and the regulation of debt collection activities and undertakings.

Future role for MABS

I will not comment in-depth on the future role of MABS. As I have said the report requires due consideration by policy makers, our funders, and indeed by the management and staff of MABS before any definitive statement could be made.

However, it is worth noting that the MABS service, as currently provided, is viewed as amongst the best and most effective free money advice services in Europe.

MABS is held in very good standing by both its clients and the credit industry with whom we work on a daily basis.

Yes, there are pressures in meeting the needs of the growing number of over-indebted persons now presenting in MABS services, but we have remained focused on our target group and MABS has managed to retain the quality of its service despite the increasing demand. MABS has also innovated over the years to provide better solutions to the problems clients are presenting with; the pilot debt settlement project with the IBF is one such example, and more recently, the debt management protocol operational with IBF creditors and now being extended to other major creditor groups such as energy suppliers, is another example of MABS working to find new models in the absence of the necessary legislative reform.

Through its voluntary management structure and the strong relationships it has established with all of the relevant stakeholders (Citizens Information Centres, charities, legal NGO's, creditors, local

authorities, the community welfare service and others) MABS brings significant added – value to its work for clients and it would be important that this valuable work is not displaced within the new regime. There is a very considerable, and regrettably heretofore unquantified, societal return to the work that MABS does in leveraging these relationships to enable our clients to repay their debts and go on to achieve sustainable lifestyles. It would be unfortunate if this work were diminished or lost, as, in our view; commercial agents are neither interested in, nor positioned to achieve, these returns.

Now that legislative reform seems imminent it would be important to ensure that MABS and its cadre of trained and experienced staff can continue to play a central role and to utilize fully their experience in assisting over-indebted clients.

This will necessitate a careful analysis and definition of the needs of the MABS client group.

If, as the report indicates, substantial change is envisaged, it is vital that all of the skills of MABS are harnessed for the benefit of those clients who need the service most. It goes without saying that changes must be planned for and thoroughly thought through, and that MABS must be both prepared and resourced to continue to provide a high quality of service in a reformed debt management regime, while informing the standards of any proposed “regulated” debt advice sector.