

CHECK AGAINST DELIVERY

**Law Reform Commission's Interim Report on
"Personal Debt Management and Debt Enforcement"**

**Launch by Mr Dermot Ahern, T.D.,
Minister for Justice, Equality and Law Reform
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President of the Law Reform Commission, Mrs. Justice McGuinness.
Commissioner Rickard-Clarke.
Ladies and Gentlemen.

I am pleased this afternoon to launch the Law Reform Commission's Interim Report on "Personal Debt Management and Debt Enforcement".

This Report focuses on some early initiatives or actions already being taken or being contemplated as regards personal indebtedness by various Departments and agencies. These measures are being done in advance of the Commission's Final Report on the subject later this year.

I spoke at the Law Reform Commission's Annual Conference last November, the theme of which was "Reforming the Law on Personal Debt".

My speech on that occasion was heavily influenced by the Commission's Consultation Paper on "Personal Debt Management

and Debt Enforcement", which had been published some weeks prior to the Conference.

I commented then on the timeliness of the Consultation Paper - which contains a very extensive list of provisional recommendations for reform of the law on personal debt.

I stressed the need for the system to take action where possible on putting measures in place to alleviate the difficulties people are experiencing in making various repayments.

I reaffirmed that the Government attaches great importance to the examination of the law on personal debt, and that the system for dealing with personal debt must become humane, more efficient and more effective.

I emphasised that new measures must be put in place quickly, and that a system for debt collection and enforcement must acknowledge the exceptional circumstances currently existing.

I requested that the Commission's consultation process be concluded "in as timely a fashion as is possible," but that it should consider releasing some finalised proposals as soon as they are concluded, rather than awaiting the completion of its Final Report.

At my suggestion, the Commission very kindly agreed to focus, where possible, on proposals for publication at an earlier stage than the Final Report.

It is against this background, that I would like to thank most sincerely the President of the Law Reform Commission, Mrs. Justice McGuinness, Commissioner Rickard-Clark and their officials for their prompt response to my request and for their willingness to examine the scope for early initiatives in this area.

Indeed, I would also like to commend the hard work of all of the members of the Working Group established by the Commission, which contributed to the timely production of the Report.

I should also mention that the Government in February of this year established the Mortgage Arrears and Personal Debt Review Group.

The initial focus of the Debt Review Group has been on examining solutions to assist those with mortgage arrears problems. The Group will later consider other non-mortgage debt issues. In this regard, the recommendations of the Commission, both in the Interim and Final Reports, will surely influence their deliberations.

The Commission, along with my own Department is represented on the Debt Review Group. All concerned are agreed that a holistic approach to debt requires that both mortgage and non-mortgage personal debt must be addressed.

This Interim Report from the Law Reform Commission sets out in some detail:

- (a) its summary of the actions taken, and agreed to, by the members of the Working Group;
- (b) other actions agreed by other representative bodies arising from bilateral discussions between the Commission and those bodies;
- (c) a digest of other relevant actions already taken or planned, of which the Commission is aware, aimed at tackling the problem of personal indebtedness; and
- (d) a summary of the long-term reform issues which remain to be dealt with by the Commission in its final Report on Personal Debt Management and Debt Enforcement to be published by the end of 2010.

More specifically, the Action Plan, at Appendix A, lists 14 specific actions under 4 broad headings. These headings are:

1. financial regulation,
2. codes of practice,
3. legal processes and,
4. the distribution of information to consumers.

Each action is linked to specific organisations represented on the Working Group who have either already progressed the action to a conclusion or work is ongoing.

A particularly relevant topic, on which I know the Commission places significant importance, is the further development of a Standard Financial Statement. This will have a major practical effect in all matters concerned with debt management and enforcement because it will provide an agreed standard to assess an individual's income and outgoings. With such a Statement, all creditors could see and accept the reality of an indebted person's total debts when assessing how much they could reasonably expect them to repay.

Some of the 14 actions in the Plan relate to my Department including the Courts Service. I feel that it would be useful for me now to address some of them in more detail. Some of these actions - such as the proposed reduction in the 12 year period for a discharge under the Bankruptcy Act 1988 - are specifically proposed as interim solutions pending the development of a more complete and long-term framework to deal with personal indebtedness.

I very much support the proposal developed in conjunction with the Courts Service for a Pre-Action Protocol for Consumer Debt Cases. Appendix C to the Interim Report sets out in great detail the draft of the Statutory Instrument to amend the Rules of Court.

Essentially this proposal is designed to counteract the identified low participation rates of debtors in the legal processes for debt recovery which is a significant failing of the current system

As the name suggests, the Pre-Action Protocol would impose a mandatory requirement on creditors to issue a warning letter to the debtor before bringing debt proceedings in the court.

The warning letter would be in plain language, give clear information in regard to the amount owed, the creditor's intention to initiate proceedings in the Court and whether the creditor may be willing to accept payment of a lesser amount in satisfaction of the debt.

The warning letter would also state - and I believe this to be critical - that the debtor should urgently consider seeking the assistance of the Money Advice and Budgeting Service or another debt advice service or of a legal adviser.

Ideally, of course, this advance notice would facilitate the preparation of a Standard Financial Statement to give to the creditor before any potential court proceedings.

I understand that the aim is that the Court Rules Committees would consider the making of Rules of Court to give effect to the Pre-Action Protocol.

As Minister, I have a function in concurring with the making of Rules and I look forward to such draft Rules being sent to me. Moreover, if the Rules Committees require some statutory backing for making such Rules I will consider what needs to be done in that area.

The distribution of relevant information to borrowers in difficulty is also recommended by the Commission. In that regard, I am pleased to note that the Courts Service, has agreed to distribute such information through its information channels.

The issue of whether and under what conditions a right of participation for money advisers in court proceedings might be allowed has been initially examined. It is acknowledged that this proposal may raise certain issues of policy for bodies such as the Courts Service and the MABS. I await the conclusions of the Final Report in this regard with interest.

Let me turn to the specific matter of reform of the law on bankruptcy. Both the Consultation Paper and the Interim Report make it clear that the Commission considers that the comprehensive reform of Irish personal insolvency law is necessary.

There is acknowledgement, and I also have mentioned this previously, that such reform will require detailed consideration to develop complex legislation and if new structures were to be proposed, the likely commitment of significant resources. This will fall to be addressed in the Final Report.

However, the Commission today, in the Interim Report, suggests that a relatively modest adjustment could be made to the Bankruptcy Act 1988 in the more immediate future. This would be an amendment to the Act to reduce the 12-year period before

which a bankrupt may apply for a discharge under section 85 of the 1988 Act to a period of six years.

Currently under section 85 of the Act, a bankrupt whose estate has, in the opinion of the court, been fully realised shall be entitled to a discharge when provision has been made for the payment of the expenses, fees and costs due in the bankruptcy and the preferential payments, and all other creditors have received at least 50% of the debts or the bankruptcy has lasted for 12 years.

In such an application for discharge, the court must be satisfied that all after-acquired property has been disclosed and that it is reasonable and proper to grant the application.

The Commission acknowledges that its proposal to reduce the waiting period for an application for discharge may have limited effect.

This is because even after 12 years, or any shorter period of years that might be introduced, have expired, further obstacles exist such as payment of all expenses, fees and costs of the bankruptcy, as well as all preferential payments -especially those debts owed to the Revenue Commissioners - before a discharge may be obtained.

As these costs and preferential debts will often amount to significant sums, in the majority of cases a debtor will be unable to meet these amounts at any stage, and so may remain bankrupt

indefinitely. Anecdotal evidence exists of bankruptcies lasting from 25 years to a lifetime as a result of this provision.

Let me assure the Commission that I have asked my officials to study this matter and to determine whether and how such a move can be made. While I would be mindful of the legal complexities involved and of creating any unintended consequences, there is, I believe, merit to the proposal to reduce the discharge period.

I have also asked my officials to study how so-called "legacy bankruptcies", those existing now for many years and with effectively no hope of being resolved to any greater extent, might be fully discharged.

My officials will work with the Courts Service and other interested stakeholders to determine an efficient and realistic approach. I am conscious that a resolution of these legacy bankruptcies could help to alleviate the current pressures on the Courts Service and the office of the Official Assignee in Bankruptcy in particular.

Should a swift amendment to the law as proposed be possible, it would, as the Commission point out, be an interim solution. I would very much echo that view. Such an action would be on its own particular and immediate merits and would be without prejudice to the final recommendations of the Commission and the ultimate consideration of the Government in this area of the law.

Personal indebtedness and issues related to it are many, varied and complex. We cannot underestimate the complexity in regard to

the law. However, as I have said before, the system needs to become more humane, more efficient and more effective in this area.

I want to underline again the importance that the Government attaches to this examination of the law on personal debt. This is clearly indicated in the commitments contained in the Renewed Programme for Government of October 2009. The work of the Commission - through the intense effort involved in its Consultation Paper, today's Interim Report and in its anticipated Final Report - will significantly influence and help elaborate the political and policy choices available to the Government. In turn, this will inform the legislative proposals involved not only for my Department, but for other concerned Departments, in particular the Department of Finance.

In conclusion, I would like to thank the Commission again for so quickly stepping up to the plate and, through this Interim Report, in providing the Government with comprehensive information and recommendations on which to bring about interim solutions to this grave crisis which is impacting negatively on the lives of so many of our people.

Thank You