

## **Navigating the Irish Personal Insolvency regime - Part I**

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### **Introduction**

Ever tried googling "Personal Insolvency in Ireland" or "How to protect family home from bank" or, more ambitiously, "How to escape mortgage debt"? If so, you are probably overwhelmed with the scale of information returned by your simple query. That's no coincidence, and neither should it come as any real surprise. After all, this is what people in Ireland have been talking about for the past ten years. Do you also find that you are more confused and unsure by the end of your search than you were when you began? Again, that would come as no surprise. Between PIPs, MABs, PIAs, DSAs, Mortgage-to-rents, MARPs, CCMAAs and so on, it can soon become pretty overbearing. Not to mention frustrating. Surely a silver bullet should not be this hard to find!

Below are a few modest tips to help you navigate the murky waters of personal insolvency in Ireland. This is Part I of an article of two parts. Here we are talking about finding the best insolvency advisor. In Part II we consider some of the options available to a person in mortgage arrears.

### **MABs and PIPs and Lawyers (Oh my!)**

First, there are the professionals. Which one do you go to? How much will it cost? In general, that depends on what you are trying to achieve and, as with most things, your budget. The Money Advice and Budgeting Service (MABS) is useful if you're after an intermediary on a tight budget (it's free) - they will lend a sympathetic ear and will explain your options to you. They can also liaise with your bank on your behalf. The great drawback of MABS is that they do not provide legal advice, but this has recently been tempered to some extent by the Government's Abhaile<sup>1</sup> scheme. Under that scheme, which is administered by MABS, a person in mortgage arrears can apply for a "voucher" entitling him or her to a free consultation with a financial advisor (either a PIP or accountant). If the financial advisor thinks you may have a legal defence to your case, he/she can apply for you to receive a second voucher entitling you to a free consultation with a solicitor. You can probably already see the problem with having an accountant decide if you have a legal defence or not.

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<sup>1</sup> <https://www.mabs.ie/en/abhaile/>



Accountants are great of course, but they are not meant to be lawyers. Most accountants will probably err on the side of caution and recommend you get the free solicitor's voucher whether or not they see a legal defence. But make sure to request it if it is not offered! Oh and the good news is that MABS are local - with more than 60 offices around the country, you do not have to be rushing to Dublin and back!

Then there are the PIPs. You can access one of them through the Abhaile scheme or engage one privately. PIPs (aka Personal Insolvency Practitioners) are a new species of financial advisors created by the Government in 2012 to help people reach compromises with their banks and other creditors. They have sort of grown since then, both in numbers and powers. They even have their own association.<sup>2</sup> Most PIPs are also accountants and you should be able to find one<sup>3</sup> in your locality. What exactly do they do? First of all, they find out about your financial situation by asking you to complete those dreaded financial statements listing all of your assets and liabilities. After that, they can come up with possible solutions for helping you pay your debts or, more probably, a portion of your debts along with some sort of forgiveness from your creditors. But then the creditors have to vote on whether or not they will accept the plan and some of them might decide they'd rather sell your family home instead! The good news is that, since 2015, PIPs can apply to the court on your behalf to effectively force your creditors to accept the survival package. The bad news is that, if the application does not succeed, you will probably have to pay the costs of it. If all else fails, PIPs can also help you apply for bankruptcy which, though it has its drawbacks, will effectively give you a clean slate after one year of pain. Read more about it in this post. PIPs tend to be reasonably inexpensive and are well worth consulting if you have an income, even if it will never suffice to discharge all of your debts. They can help you reach some extraordinary resolutions without having to sell your home or revert to bankruptcy. For their part, banks are increasingly willing to accept these resolutions.

Where does that leave the solicitors? Since the financial crisis, more and more solicitors are finding that they are acting in the capacity of financial advisors as well as lawyers. That, of course, is not their natural role. You go to your solicitor either because the bank has issued legal proceedings against you, or because you feel you may have a defence to the bank's claim, or perhaps even because you want to see if you may have a technical defence which only a lawyer would spot (you'd be surprised!). Since mortgage defence is now very much a specialist area of law with bulks of legislation and judicial authority, your solicitor may need to obtain specialist opinion (which is where barristers like me come in). Finding flaws in the bank's case sounds great in theory, but it costs money. Even the Abhaile scheme will give you a single consultation with a solicitor. It does not generally cover the costs of any

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<sup>2</sup> <http://www.apip.ie/>

<sup>3</sup> <http://www.isi.gov.ie/en/ISI/webPIParea?OpenView&Count=-1>



meaningful legal research or the costs of instructing a barrister. Inevitably, this will result in some legal defences slipping through the net. You have to understand that what the solicitor is looking out for at that single meeting is any signs of the most obvious legal defences. Did you sign the mortgage/guarantee under pressure from your husband? Were you offered independent legal advice? Was the mortgage appropriate in your circumstances? Is the bank statute-barred? But defences in mortgage cases are becoming increasingly technical and far from obvious. Whether or not you pay the extra few euro for a thorough review of your case will depend on a number of factors, but is ultimately a judgment call for you. What I would say is this: paying for the extra research may uncover some ingenious legal defence (or "buy more time", as so many of my clients come to me for) but unfortunately lawyers cannot work miracles. I think the reason most people instruct barristers in those situations is for the peace of mind of knowing they did everything they could to protect their home or farm or business.

### **But wait, there's more**

And don't forget, there is always the DIY option of making a complaint to the Financial Services Ombudsman (FSO). You can complain about virtually any aspect of your bank's service, and it's completely free. This is fast becoming a popular option for customers, but a word of caution before you proceed. First of all, if the bank has already issued proceedings against you in court, you cannot raise the same issues with the FSO. Secondly, any issues raised by you in a complaint to the FSO cannot generally be litigated in court. That means that, if you lose at the FSO stage, you cannot have a second bite of the cherry by going to court in respect of the same matters (you can appeal the decision of the FSO but on limited grounds). So, if you think you have a good case against your bank, it might be a good idea to go see your solicitor before doing a DIY job at the FSO. The last thing you want is to find you lost a winnable case because you decided to go it alone.

### **And finally...**

As you can see, getting the right advice in an insolvency case is very much about getting the right advisor. There are a few different options. Accountants for financial advice, PIPs and MABS for liaising with banks, PIPs for finding workable compromises, solicitors and barristers for legal opinion and court representation. In reality, most people will consult a combination of these. After all, they all play different roles for a common goal: putting an end to your debt issues and letting you get on with life!



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**Important Note**

This article is intended to be an introduction to this area of law and should not be taken as constituting legal advice. If you require more information about this subject or require legal advice or representation, please contact us by visiting [www.legalcounsel.ie](http://www.legalcounsel.ie)