Personal Insolvency:
I am drowning in debt – what can I do?

by Mark Ryan

Mark Ryan discusses the questions he regularly gets asked as a Personal Insolvency Practitioner and how a debtor can avail of the personal insolvency legislation to help resolve their debts

This would reflect the mood of the people who I have met over the last few years since I became a licensed Personal Insolvency Practitioner (PIP) in August 2013. It still surprises me that following our meeting they almost always tell me how much better they feel after sharing their problems and how they now understand that there are solutions to dealing with their debts. This meeting is the first big step on their journey to returning themselves to solvency. I have to admire the people that I meet as it must be tough opening up to a complete stranger about their problems and then telling the story about how they got to where they now find themselves. I would like to think that after they meet with me, they feel that someone is finally in their corner.

Under the personal insolvency legislation, the PIP effectively steps into the person's shoes and starts dealing directly with their creditors on their behalf. This means the letters; phone calls and any legal proceedings will stop to allow time (70 days) for the PIP to make a proposal to their creditors to resolve their debts. In most cases this will involve a substantial write down of debt.

One important statistic from the recent report to Q4 2018 which was issued by the Insolvency Service of Ireland (ISI), was that 95% of those who avail of the Personal Insolvency legislation retain their family home whilst also returning to solvency. Although the number of people who have availed of the new personal insolvency legislation is still quite low (just over 5,300 to date), we would estimate that there are a couple of hundred thousand people out there who need help and advice on how to resolve their indebtedness.

There are over 500 personal insolvency arrangements (PIA) that were rejected by creditors that are currently being appealed to the insolvency courts. The appeals process is very slow but a number of the PIAs that were initially rejected by creditors have been subsequently approved by courts. I have had a number of successful appeals approved in the last 12 months.

It is important to note that although there are currently over 100 licensed PIPs nationwide, the ISI confirmed less than half of these licenced PIPs are active and as such have the relevant experience of how the personal insolvency legislation works. As you only get one shot at availing of the legislation to resolve your debts, it is extremely important to choose an advisor carefully, and it is advisable to ask a PIP how many cases they have dealt with and how long they have been operating as a PIP.

The Government launched a debtor's support scheme in 2016 called 'Abhaile'. This is a government funded scheme that allows a debtor to meet with a PIP for a 'free' consultation to assess their case and provide advice to the debtor in writing on how they can avail of the personal insolvency legislation to resolve their debts.

I have set out below a number of questions that I get asked regularly by clients that I meet.

1. How does it work and what is the term for each arrangement?

PIA – Up to a 6-year term for secured and unsecured debts (extendable to 7 years in certain circumstances).

DSA – Up to a 5-year term for unsecured debts only (extendable to 6 years in certain circumstances).

DSN – 3-year term for debts less then €35,000.

Under the legislation there is also the option of an accelerated PIA or DSA.

This involves a lump sum payment (for example through family member support) payable normally within 3 to 12 months from the date the arrangement is court approved. For a DSA or PIA arrangement to be approved it must have 65% of creditors voting in favour of the proposal at a creditors meeting. In addition, for a PIA arrangement to be approved creditors representing more than 50% of the value of the secured debts, participating and voting at the meeting, must vote in favour of the proposal and creditors representing more than 50% of the value of the unsecured debts, participating and voting at the meeting, must vote in favour of the proposal for a PIA.

2. What are Reasonable Living Expenses (RLEs) and how are they calculated?

They are the cost of living expenses for the standard term of the arrangement (5/6 years). They would allow someone to live a basic standard of living but not a normal standard of living. In my experience these allowances would be 30%/40% lower than a person would normally live on outside of a PIA/DSA. These allowances are also used in bankruptcy for the assessment of a 3-year income payments order.

For example: a family of 2 adults and 2 children in secondary school, with a car in the household, would look like this:

Net income (take home pay after taxes)	€5,000
RLE's	
1. Total Set Costs	€2,240
2. Childcare	€500
3. Mortgage Payment	€1,250
4. Special Circumstances	€0
Total RLE Allowances	€3,990
Net Dividend available to creditors (per month)	**€ 1,010**

This is the maximum dividend a debtor can offer to their creditors over the 5/6-year term of the relevant arrangement regardless of whether their debts are € 50,000 or € 50m.

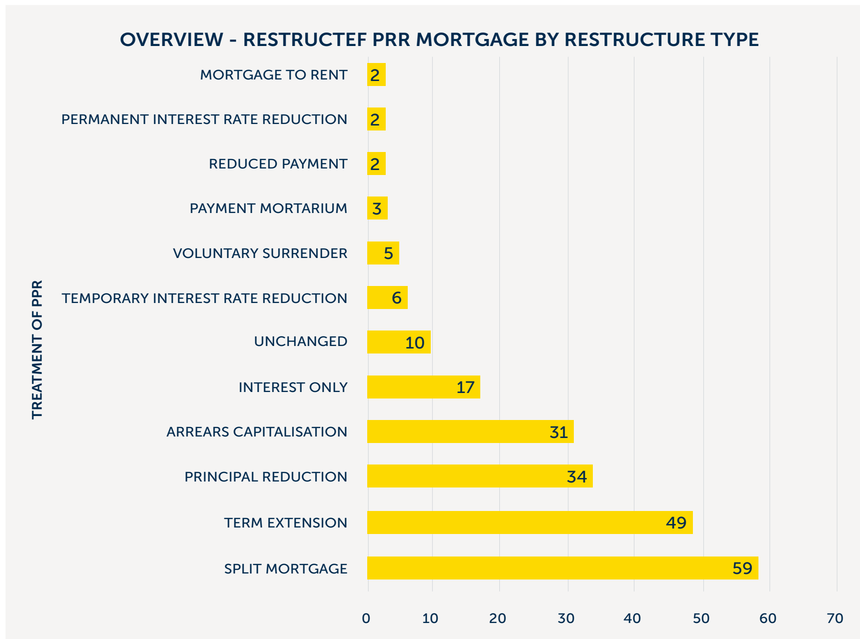
3. How is the family home is dealt with in a personal insolvency arrangement?

A core part of the legislation is the protection and retention of the family home.

As stated above 95% of debtors who avail of the legislation retain their family home.

The Principal Private Residence (PPR) loan can be restructured in a number of ways as outlined below. It will give certainty to the debtor as regards their financial position in the future, once the arrangement has been completed.

In most cases it will involve a write off of the mortgage on the family home. Below is a list of how 128 cases which involved a family home mortgage were resolved under successful PIA applications.



4. What do you think of Vulture Funds in the context of recent announcements made by the main banks to sell on non-performing loans?

They are a necessary evil and they are not new. They are investment funds that buy 'bad loans' from banks at substantial discounts and their goal is then to recover as much as possible from the borrower.

They have a very commercial attitude, but you need a good advisor to assist you with the negotiations.

They don't want a long-term relationship with borrowers unless they must. They will honour contracts they have purchased if they are being complied with or you can show that it's in their interest to support a long-term restructure.

It can get very personal if the debt is a family home.

Based on recent news announcements the main banks are considering selling on a further 25,000 to 30,000 'bad loans' in early 2019. Borrowers would still be entitled to court protection through the Personal Insolvency legislation.

5. Split loans have been in the news recently – can you explain what they are?

The easiest way is with an example.

A property was purchased in 2008 for € 500,000 with a 100% mortgage. This property is now worth € 250,000 and the outstanding debt now stands at € 460,000 with arrears. Under the Code of Conduct on Mortgage Arrears, the bank could propose to split this loan as follows:

Loan A € 250,000 repaid under an affordable mortgage term and monthly repayment.

Loan B: € 210,000 parked at 0% interest charged on the loan; but it will be repaid from the sale of the property or a lump sum payment at the end of the mortgage term.

This obviously would leave the individuals homeless at one of the most vulnerable times of their lives should they not be in a position to pay the lump sum at the end of the term. It would likely lead to them having to rely on the State to provide them with housing. I would estimate that there are over 100,000 split loans in the country.

Based on recent Central Bank statistics there were over 70,000 loans (10% of the total loans) in arrears at the end of 2017. 48,000 loans were in arrears by more than 90 days.

6. How are Revenue dealt with under the personal insolvency legislation?

Under the legislation Revenue are a Preferential Creditor but they can opt into an arrangement to be treated as an unsecured creditor. In most cases Revenue partially opt into an arrangement and they are treated partly as a preferential creditor and the balance is treated as an unsecured creditor.

In the case of the preferential debt, it is repaid over the 5/6-year term. The unsecured debt portion will allow Revenue to share a dividend pro rata with the other unsecured creditors and the balance of the debt is then written off at the end of the 5/6-year term. No further interest or penalties are applied to the Revenue debt that is included in the arrangement.

This would be in stark contrast to a Phased Payment Arrangement which we as accountants would frequently assist our clients with in dealing with Revenue tax arrears on behalf of our clients. I have set out a case study below that includes Revenue debt and which shows how I would resolve a case using the personal insolvency legislation.

PIA Case Study – Fred and Wilma Flintstone

The scenario below is based on all their assets and debts being held jointly. I have included notes below on how we would deal with the hardcore debts.

Step 1 - Overview

Assets	Values	Liabilities	Notes
PPR	€250,000	€400,000	Includes Arrears of € 25,000
Buy-To -Let (BTL)	€235,000	€475,000	Property is in Receivership
Car	€3,500	€0	
Savings	€1,500	€0	
Credit Union	€2,500	€25,000	
Credit Card	N/A	€7,798	
Business Debts	N/A	€52,500	Loans and Overdraft
Judgment Mortgage	N/A	€150,000	BTL sold 2 years ago
Personal Overdrafts	N/A	€7,500	
Revenue Debts	N/A	€50,000	I.T., VAT and PAYE/PRSI
Personal Guarantees (PG)	N/A	€250,000	Business PG
Total:	€492,500	€1,417,798	

Step 2 – How the debts are treated and restructured in a PIA

Note 1: PPR – It is proposed the PPR loan will be reduced to € 250,000 in line with the CMV. The Tracker Rate will be retained and repayments of € 1,250 p/m over 20 years to clear this restructured debt in full.

Note 2: BTL – This asset will be surrendered, and the residual debt will form part of the unsecured debts.

Note 3: Credit Union – Set off will be applied and the net balance of € 22,500 will be included as an unsecured debt.

Note 4: Judgment Mortgage – This debt has been charged against the PPR and BTL. As there is no equity in either the PPR or BTL this debt will be treated as an unsecured debt.

Note 5: Revenue Debts – Revenue agreed to Opt in to treat 25% of the debt as preferential and the balance of 75% will be treated as an unsecured debt. The preferential debts will be repaid over the 6-year PIA term.

Note 6: The legislation includes an annual review clause whereby if the debtors combined net monthly income (after taxes) increases above € 100 this will be shared on a 50/50 basis with the unsecured creditors.

Step 3 – Resolution of Residual Debts

Assets	NRDs	Notes
PPR	€150,000	Residual Debt on PPR loan above CMV
BTL	€275,250	CMV less Costs for Sale of Asset (15%)
Credit Union	€22,500	Set off applied
Credit Card	€7,798	
Business Debts	€52,500	
Judgment Mortgage	€150,000	
Personal Overdrafts	€7,500	
Revenue Debts	€37,500	Revenue Opt in at 75%
Personal Guarantees	€250,000	
Total:	€953,048	

Step 4 – Monthly Dividends available to Creditors in PIA

Assets	NRDs
	During PIA (6 years)
Net Income	€5,000
Total Set Costs (based on note above)	(€2,740)
PPR Loan	(€1,250)
Preferential Debts – Revenue	(€174)
PIP Mgt Fees	(€200)
Total Allowances	(€4,364)
Net Surplus/Dividend (p/m)	**€636**

Step 5 – % Return to Unsecured Creditors in PIA

Assets	NRDs
Net Dividend (72 months)	€45,792
Total Unsecured Creditors	€ 953,048
% Total Dividend (72 months)	4.8%

Step 6 – Debtors Monthly Financial Circumstances Post PIA (this is for the years after they exit their PIA)

Assets	NRDs
	Post PIA
Net Income	€5,000
RLEs (Increased post PIA by 30% to reflect a normal living expense allowance)	(€ 3,600)
PPR Loan	(€1,250)
Preferential Debts – Revenue	(€0)
PIP Mgt Fees	(€0)
Total Allowances	(€4,850)
Net Surplus/(Deficit) (p/m)	**€ 150**

Note:
As can be seen from the above after the 6-year term of the PIA in which the debtors have offered the maximum of their income less allowances and they have fully complied with the terms of the legislation, this effectively returns them to solvency and to what would just be considered a normal standard of living.

Mark Ryan,

Director at Quintas.

Mark has worked in practice since 1998 and has experience in all aspects of an accountancy firm. Mark is responsible for providing debt resolution, personal insolvency and bankruptcy services. He also provides business advisory services to a wide variety of clients in different business sectors.