

SCHEME OF AID AND ADVICE ON HOME MORTGAGE ARREARS

OUTLINE OF THE SCHEME

1. OVERVIEW

The Government has put in place an innovative new Scheme to help people who are struggling to pay their debts, and are at risk of losing their homes due to mortgage arrears.

The overall objective of the Scheme is to ensure that a person in this situation can access free, independent expert financial and legal advice and support, which will help them to identify and put in place their best option to get back on track. Priority is given to finding solutions which will allow the person to remain in their home, wherever that is a sustainable option.

Government Departments and bodies are working together to deliver the Scheme, which is coordinated by the Department of Justice and Equality and the Department of Social Protection, and implemented by the Money Advice and Budgeting Service (MABS), working with the Insolvency Service of Ireland (ISI), the Legal Aid Board, and the Citizens' Information Board.

Help is already available under the Scheme, which issued its first vouchers for free advice on 22 July 2016. Contact the MABS Helpline at 076-1072000, or the local MABS office, for help and information.

The Scheme is an important component of the new national Mortgage Arrears Resolution Service announced under the Programme for Government. It is expected to be formally launched by the Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD, and by the Minister for Social Protection, Leo Varadkar TD, in October 2016.

The Scheme is being put in place for a maximum duration of three years from July 2016, at an expected total cost of up to € 15 million. This includes funding for a significant information and promotion campaign, targeted to ensure that those most in need of help are aware of the supports available, which is expected to roll out in autumn 2016.

The Scheme also builds on recent legal changes and on previous Government initiatives to help people to recover from indebtedness and return to solvency, particularly in relation to home mortgage arrears.

2. HOW DOES THE SCHEME WORK?

The Scheme is designed to help borrowers who are insolvent and at risk of losing their homes, to get the help they need as quickly and effectively as possible. Aid and advice provided under the Scheme are provided free of charge to eligible borrowers.

Anyone interested in seeking help under the Scheme should start by contacting MABS. They can call the MABS Helpline for help and information, at 076-1072000 (Monday-Friday, 9 a.m. to 8 p.m.), or call to their local MABS office (there are over 50 MABS offices around the country). Details are also available on www.keepingyourhome.ie.

MABS is the Government's 'one-stop shop' point of information and guidance for homeowners in mortgage arrears, and will be the single universal gateway for aid and advice under the Scheme. All applications for aid and advice under the Scheme must go through MABS.

MABS will quickly assess the borrower's financial situation. If the borrower is eligible for the Scheme (see section 5 below), MABS will direct them to the expert likely to be best placed to help them. Depending on the borrower's situation, this expert may be a dedicated mortgage arrears adviser in MABS, or it may be a personal insolvency practitioner ('PIP'), a solicitor, or an accountant. If MABS directs the borrower to a professional adviser, it will give the borrower a voucher for free provision of the relevant services.

Priority is given to obtaining financial analysis and advice, as this is the most likely to identify a long-term financial solution which can help the borrower to get out of debt and get back on track.

Once the financial analysis and advice is available, the borrower can also be referred to a 'consultation solicitor', for advice on any legal issues which arise.

The Scheme will also provide a new 'duty solicitor' service at all Circuit Court repossession hearings, to help unrepresented borrowers who are receiving advice under the Scheme.

In addition, the Scheme can provide legal aid for a borrower who considers that their creditors have unfairly refused a personal insolvency proposal which includes the home mortgage arrears, to seek review of that refusal by the Courts.

The Scheme provides five different fixed packages of professional financial or legal advice and help, all free of charge to the borrower. These are: the PIP Service, the Accountant Service, the Consultation Solicitor Service, the Duty Solicitor Service, and the Personal Insolvency Court Review Service. Each of these is explained in more detail below, at section 6.

MABS can refer a borrower to one or more of these services, depending on their needs. The intention is that a borrower in need can be routed as quickly as possible to the expert best placed to help them, and that expert advisers can work together to help the borrower to get the best available solution into place.

Advice under the Scheme can cover all options for resolving the borrower's home mortgage arrears. Depending on the borrower's individual circumstances, these options may include restructure, personal insolvency, bankruptcy, sale or surrender of the home. The decision on what option to take remains the borrower's, but the Scheme aims to ensure that the borrower can make that decision with the benefit of independent expert advice.

For example, a borrower in mortgage arrears may turn out to be able to pay their debts, once they can access advice and help from MABS. Another borrower may be insolvent, yet able

to keep their home under a personal insolvency arrangement or alternative restructuring arrangement, once they have access to expert financial advice. Or the borrower may not have the financial capacity to keep their home, or may not wish to keep their home, and may need independent advice and assistance on their best alternative options.

3. WHO ARE THE ADVISERS?

MABS has put in place a new network of in-house Dedicated Mortgage Arrears (DMA) advisers, who are located in MABS offices around the country. These DMA Advisers are able to provide a high level of independent expert advice to people in difficulty with mortgage arrears.

Under the Scheme, professional panels have also been established, consisting of qualified and regulated personal insolvency practitioners ('PIPs')¹, accountants² and solicitors, who have appropriate knowledge of mortgages, insolvency, bankruptcy and/or repossession. These panels are established and supervised respectively by the Insolvency Service of Ireland, the professional accountancy bodies and the Citizens' Information Board, and the Legal Aid Board.

The professionals participating in the panels are private practitioners who have agreed to provide borrowers with independent advice and help under the Scheme, free of charge to the borrower, and at fixed cost to the Scheme. The borrower can choose their advising PIP, solicitor or accountant from the Scheme panels, subject to availability.

In order to provide help to the borrower as quickly and efficiently as possible, any adviser providing analysis and advice to them under the Scheme may share that information with any other expert who is advising that borrower under the Scheme. This will be done only with the borrower's prior agreement, and only refers to confidential sharing of information *within* the Scheme, between any experts the borrower has chosen to advise them.

4. OBJECTIVES OF THE SCHEME

The detailed objectives of the Scheme are as follows:

- To provide access to independent expert advice (both financial and legal) to borrowers in serious mortgage arrears on their homes.
- To address fear and stress among many unrepresented borrowers, provide assistance to them, and ensure that sustainable solutions can be identified and put in place as early as possible.

¹ PIPs are specialists in debt advice and personal insolvency solutions, and can also give financial advice on bankruptcy. They are supervised and regulated by the Insolvency Service of Ireland.

² The solicitors' panel and the personal insolvency practitioners' panel are already operational. The accountancy panel is currently being established (August 2016) and is expected to become operational very shortly.

- To help those in mortgage arrears who have already been issued with repossession proceedings against their homes, out of those proceedings and into alternative solutions, where that is possible.
- To address the high number of borrowers in serious home mortgage arrears, particularly those in arrears of more than 720 days, and to ensure that the home mortgage cases currently in arrears of less than 720 days are helped not to progress beyond that point.
- To support earlier, more effective and more widespread constructive engagement between borrowers and lenders where there are serious arrears on a home mortgage – right from the point where the borrower receives a proposal for surrender or other loss of the home, or is deemed ‘non-cooperating’ by the lender - so that the borrower may be assisted ‘upstream’ of the issue of repossession proceedings.
- To provide solicitor advice and assistance to those homeowners in respect of whom either surrender of ownership, or court-ordered repossession, are likely.
- To support the Courts in ensuring fair process for large numbers of otherwise unrepresented defendants in repossession actions, support MABS in dealing with cases requiring more complex financial advice, and support MABS (or PIPs on referral from MABS) in dealing with legal aspects of debt and repossession.
- To ensure access to legal aid for the new Court review under s. 115A Personal Insolvency Acts, where creditors reject a Personal Insolvency deal proposed by a Personal Insolvency Practitioner on behalf of an insolvent person, which includes mortgage arrears on their home.

5. WHO IS ELIGIBLE?

A person will be eligible for advice and assistance under the Scheme if they:

- a) are insolvent (as defined under the Personal Insolvency Act 2012: this simply means that the person is ‘unable to pay their debts in full as they fall due’), and
- b) are in mortgage arrears on the home in which they normally reside (their principal private residence), and
- c) are at risk of losing their home (for example, they may have received from their mortgage lender repossession proceedings, a letter indicating that such proceedings will issue, a letter indicating that they are deemed non-cooperating, or an invitation to consider sale, surrender or other loss of all or part of the home).

A person will be eligible for the Personal Insolvency Court Review Service under the Scheme if they satisfy conditions (a) and (b) above, and they have already made a proposal for a Personal Insolvency Arrangement including their home, but that proposal has been rejected by their creditors. In this case, the Personal Insolvency Practitioner concerned must also certify to the Legal Aid Board that the borrower satisfies the conditions required under s. 115A of the Personal Insolvency Acts for seeking Court review.

A person will *not* be eligible for the Scheme, if the above conditions are satisfied, but the home is disproportionate to the reasonable living accommodation needs of the borrower

and his or her dependents, taking account of the criteria set out at section 104 of the Personal Insolvency Act 2012.

The Scheme focuses on risks to the borrower's home, and therefore does not cover a person whose mortgage arrears relate only to a buy-to-let property. However, a person in mortgage arrears on their home, who *also* owns a buy-to-let, will still be eligible, if he or she satisfies the conditions above.

The eligibility criteria set out above are designed to ensure that a person in serious mortgage arrears can be 'triaged' quickly. This will help MABS to easily identify the most suitable likely pathway to resolving their indebtedness, and to refer the borrower quickly to the appropriate expertise. The borrower's financial situation will be examined in full detail when their Financial Statement (a detailed written analysis of the borrower's financial situation) is being prepared. The initial triage may be revised by MABS, if information later comes to hand which makes this appropriate.

6. WHAT SORT OF ADVICE AND HELP IS COVERED?

The five services available under the Scheme are explained in detail below.

a. *The PIP Service*

If the borrower wishes to explore their options under personal insolvency, MABS can give them a voucher for free advice and help from a personal insolvency practitioner ('PIP'), who is a member of the Scheme panel. The borrower can choose their PIP from the Scheme panel, subject to availability.

The voucher will entitle the borrower to a face-to-face consultation with a PIP, who will carry out a full assessment of the borrower's financial situation, explain to them all the available options and the best option for them to deal with their mortgage arrears, and confirm that advice to the borrower in writing. As part of this service, the PIP will also prepare, with the borrower's co-operation, a 'Prescribed Financial Statement' (PFS), which is the detailed written analysis of the borrower's financial situation, as required under the Personal Insolvency Acts.

If the panel PIP advises that the borrower's best option is personal insolvency, they will also help them in taking the next steps. If the PIP advises that the borrower's best option is bankruptcy, they will also provide the borrower, under the voucher, with the certificate required by the bankruptcy court, confirming that the borrower has first been advised regarding their options under personal insolvency.

b. *The Accountant Service*

If the borrower's case involves more complicated financial issues, but is not suited to personal insolvency, MABS may direct them for financial advice to an accountant who is a member of the Scheme panel. The borrower can choose their accountant from the Scheme panel, subject to availability.

To get free advice from an accountant under the Scheme, the borrower will need to first work with a MABS Adviser to complete the Standard Financial Statement (SFS) required by lenders under the MARP (Mortgage Arrears Resolution Process). The accountant will need a copy of this, in order to give them financial advice.

The voucher will entitle the borrower to a face-to-face consultation with the panel accountant, who will advise them on any financial issues relating to resolution of their mortgage arrears and on possible solutions, and will confirm that advice to them in writing.

c. *The Consultation Solicitor Service*

After the borrower has completed their financial statement (SFS or PFS- see above) and received financial advice under the Scheme, their financial adviser (PIP, MABS adviser or accountant) may recommend that they also consult a solicitor from the Scheme panel, if the case raises legal issues. For example, the borrower may have received correspondence from their lender, seeking repossession or proposing surrender of their home.

The financial adviser can then apply to MABS for a legal advice voucher for the borrower. The borrower can choose their solicitor from the Scheme panel, subject to availability. The solicitor will need to see any relevant documents in the borrower's case, and particularly their up to date SFS or PFS (see above), and any written financial advice they have received under the Scheme.

The legal advice voucher will entitle the borrower to a face-to-face consultation with a solicitor, who will assess and explain their legal position, and advise them on any repossession proceedings and any legal issues arising for resolving their mortgage arrears. The solicitor will also confirm that legal advice to the borrower in writing. If repossession proceedings have already been issued by the lender, the consultation solicitor may in certain circumstances be able to negotiate on the borrower's behalf to settle the proceedings out of court.

d. *The Duty Solicitor Service*

If the borrower is facing Circuit Court repossession proceedings against their home due to mortgage arrears, they may be able to get some help at Court from the Duty Solicitor.

The Duty Solicitor is a solicitor from the Scheme's solicitor panel, who will normally be on duty at a Circuit Court on the date where the Court is due to deal with repossession cases. The borrower cannot choose their Duty Solicitor, who will be the panel solicitor assigned by the Legal Aid Board to be present at the Court on that date.

Normally, the borrower should already have obtained written financial and legal advice under the Scheme, including advice from the consultation solicitor on any repossession proceedings. This will allow the Duty Solicitor to help the borrower more effectively.

If the borrower has not applied in time to do this, the Duty Solicitor may still be able to give them some more limited help, but only if they have already applied to MABS. **Any borrower who has already received repossession proceedings against their home from their mortgage lender, and hasn't yet applied for the Scheme, should contact MABS as soon as possible (076 107 2000).**

The Duty Solicitor Service is a limited service to provide advice and help to unrepresented borrowers at court. The borrower's consultation solicitor will explain this in more detail.

The Duty Solicitor may be able to speak for the borrower in Court, to explain what steps they are taking to try and deal with their mortgage arrears, and may be able to apply for the court proceedings to be adjourned, if the borrower is trying to put a solution in place.

The Duty Solicitor may also be able to explain to the borrower what is happening in the proceedings. However, he or she may be Duty Solicitor for a number of Scheme borrowers whose repossession cases are listed on that day, so the borrower should make sure to attend Court well in advance of the time shown on the Court papers, and should ask for MABS when they arrive. (MABS Advisers also attend at the Circuit Court on repossession hearing dates. They can provide borrowers with information and support, but they cannot provide legal advice or speak for the borrower in Court.)

The Duty Solicitor *cannot* act as the borrower's legal aid solicitor, or defend the repossession proceedings on their behalf. This Scheme does not cover legal aid for defending repossession proceedings. If a borrower is in mortgage arrears on their home, the lender will normally have a legal right to seek to take back the home, and the borrower may not have a valid legal defence to prevent repossession. The consultation solicitor will advise them about this. In a small number of situations, the borrower may have a valid legal defence to repossession, but this applies to relatively few cases. If they do have a valid legal defence and want to apply for legal aid, they will need to apply for that to the Legal Aid Board, separately from this Scheme, and different conditions may apply. The consultation solicitor can explain this to the borrower.

e. *The Personal Insolvency Court Review Service*

The borrower will only need this service if they have already worked with a PIP, have proposed a Personal Insolvency Arrangement ('PIA') to their creditors, and the creditors have refused that proposal although the borrower's PIP considers it fair and reasonable to all concerned.

Under the change made to the Personal Insolvency Acts in 2015, a borrower in this situation can ask the Courts to review the PIA proposal. If the Court agrees that the proposal is overall fair and reasonable, using the criteria set out in section 115A of the Personal Insolvency Acts, it has power to impose the proposal on the creditors.

Under the Personal Insolvency Court Review Service, the Legal Aid Board can provide the borrower with legal representation by a solicitor and barrister to make the Court review application, as part of their Civil Legal Aid service.

For this service, the borrower's PIP applies on their behalf to the Legal Aid Board, using a Scheme reference number for the borrower provided by MABS. The PIP must also certify to the Legal Aid Board 'that the borrower has reasonable grounds for seeking the court review and satisfies the other conditions for review laid down by the Personal Insolvency Acts.'

If the Legal Aid Board is satisfied with the application, it can then issue a Legal Aid Certificate for the borrower. The Legal Aid Board is aware of the time limits under the Personal Insolvency Acts for seeking the Court review, and will decide quickly on any fully completed application for legal aid.

If the Legal Aid Board grants a Certificate, the borrower and their PIP can select a solicitor from the Scheme solicitors' panel to act on their behalf. (Under the Personal Insolvency Acts, it is the borrower's PIP who must apply to Court on their behalf for the review.) The Legal Aid Board will normally also cover the cost of a barrister from the Civil Legal Aid barristers' panel. Fixed payment rates apply.

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