



ISI

Seirbhís Dóchmainneachta
na hÉireann
Insolvency Service
of Ireland

Annual Report 2023

isi.gov.ie

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Foreword by the Director

As Director of the Insolvency Service of Ireland (ISI) I am pleased to present our annual report for 2023.

Last year was another difficult year for households and individuals who had to cope with significantly elevated cost of living levels. Although the rate of inflation eased somewhat over the course of the year, interest rates continued to rise with the ECB interest rate on main refinancing operations peaking at 4.5 per cent in August 2023. Against this backdrop, the ISI saw an increase in demand for its services with applications for insolvency solutions, other than bankruptcy, increasing by 20 per cent compared to the previous year while the number of Protective Certificates (PC) issued increased by 15 per cent. Preliminary figures for the first quarter indicate this trend is continuing into 2024.

In the context of increasing demand for insolvency solutions, the Government announcement of the extension of the Abhaile scheme until December 2027 was welcomed by the ISI and its stakeholders. The Abhaile scheme offers free support services to people in mortgage arrears. It is one of the main gateways to a Personal Insolvency Arrangement (PIA), the solution dealing with mortgage arrears, and its extension is especially important as the majority of debtors availing of the service are in mortgage arrears of more than two years.

In 2023 the ISI launched its refreshed and updated awareness campaign with the message “Don’t let debt unravel you.” Research undertaken by the ISI along with feedback from debtors has highlighted that the effects of debt on mental health can be severe and can prevent people from seeking the help they need. The aim of the campaign is to encourage people to talk about their financial problems and to source professional help by accessing the information

on our dedicated [Backtrack.ie](https://backtrack.ie) website.

The ISI will continue to promote awareness of our solutions through dedicated campaigns and through training initiatives and workshops. In 2023 we facilitated three such workshops around the country for Personal Insolvency Practitioners (PIPs), their staff and our MABs colleagues. These events were key in helping to build relationships and increased collaboration between two of our most important stakeholders, both of whom are in the front line dealing with the debtors who need our solutions.

The ISI welcomed the passage of the Courts and Civil Law (Miscellaneous Provisions) Act 2023, which introduced a number of amendments to the Bankruptcy Act 1988. This coincided with the implementation of a new Bankruptcy Case Management System which went live in September. Both initiatives will enhance the ability of the Official Assignee (OA) to manage bankruptcy estates and particularly those complex estates with a European wide dimension, given the increase in the numbers of adjudicated bankrupts who have recently established their centre of main interest in Ireland.

The ISI marked its 10th year of operations in 2023. During that period over 14,000 debtors have used the solutions available through the ISI to return to solvency. The framework has matured with a network of very experienced Personal Insolvency Practitioners and Authorised Intermediaries (AIs) providing a vital service to both debtors and creditors in meeting the challenge of resolving unsustainable debt situations. Improving engagement between PIPs and creditors has led to more innovation

and better outcomes for debtors. Our statistics show that where a mortgage debtor is granted a Protective Certificate there is now a 70 per cent likelihood that they will go on to achieve a successfully restructured and sustainable mortgage solution. This is real progress and we want to see this momentum continue. To that end, we would like to see the proposals for reforms contained in our submissions to the Department of Justice implemented as soon as possible by Government.

Finally, I would like to acknowledge the dedication and hard work of our staff and to thank our key stakeholders for their help and guidance throughout the year and we look forward to working with them in 2024.

Michael McNaughton
April 2024



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The ISI – What We Do

The ISI is an independent statutory body established in 2013 to deal with personal insolvency. We aim to return people to solvency and full participation in social and economic activity.

The principal functions of the ISI are set out in section 9 of the Personal Insolvency Act 2012 (the “2012 Act”). These include:



To operate the system to support the three alternatives to bankruptcy – Debt Relief Notice (DRN), Debt Settlement Arrangement (DSA) and Personal Insolvency Arrangement (PIA)



To administer the estates of bankrupts



To regulate authorised practitioners around the country who offer personal insolvency advice and who assist debtors in seeking a DRN, DSA or PIA



To promote public awareness and understanding of the personal insolvency solutions available to people



To prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses for debtors



To contribute to the development of policy in the area of personal insolvency

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The ISI – Who We Are



**Michael
McNaughton**

Director

Responsible for the overall management and control of the ISI's staff, administration and business.



Trevor Noonan

Case Management

Responsible for managing and processing the three debt relief solutions under the Personal Insolvency Acts 2012 to 2015 and operating the Information Line.



Liza Doyle

Legal Services

Responsible for the provision of legal services to all divisions of the ISI.



Ian Larkin

*Official Assignee
Bankruptcy*

Responsible for the administration of bankruptcy estates under the Bankruptcy Acts 1988 to 2015.



John Phelan

*Policy, Regulation and
Corporate Affairs*

Responsible for research and policy development, the regulation and supervision of personal insolvency practitioners and approved intermediaries, all governance matters and the provision of a range of support services.

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Infographics – 2023 Statistics at a Glance

1,565
new insolvency
applications made



1,325
Protective
Certificates issued –
90% of which were for
PIAs, the solution that deals
with mortgage debt



1,001
debt solutions
put in place



The representative sample from the **Abhaile Deep Dive** exercise in 2023 shows that, of those borrowers who availed of a PIA, **96%** had terms which saw them remain in their family home while **42%** of borrowers had a reduction in their mortgage debt through a write-down of the principal



64 PIPs

+ 10 AIs authorised
at year end



1,625

Abhaile vouchers issued
for a free PIP consultation



72 people
adjudicated bankrupt
with **99** people exiting
bankruptcy

€960,000

in dividends paid
from bankruptcy
estates to creditors



32

family homes re-vested



10

Bankruptcy Payment
Orders were granted

87,791
visitors to ISI websites



355

new section 115A
applications lodged, up
from 237 in 2022

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Operations

The ISI administers four distinct schemes to allow people in debt to seek to resolve their debt problems – DRN, DSA, PIA and Bankruptcy. The ISI has facilitated over 14,000 solutions for insolvent debtors since its inception over 11 years ago¹.

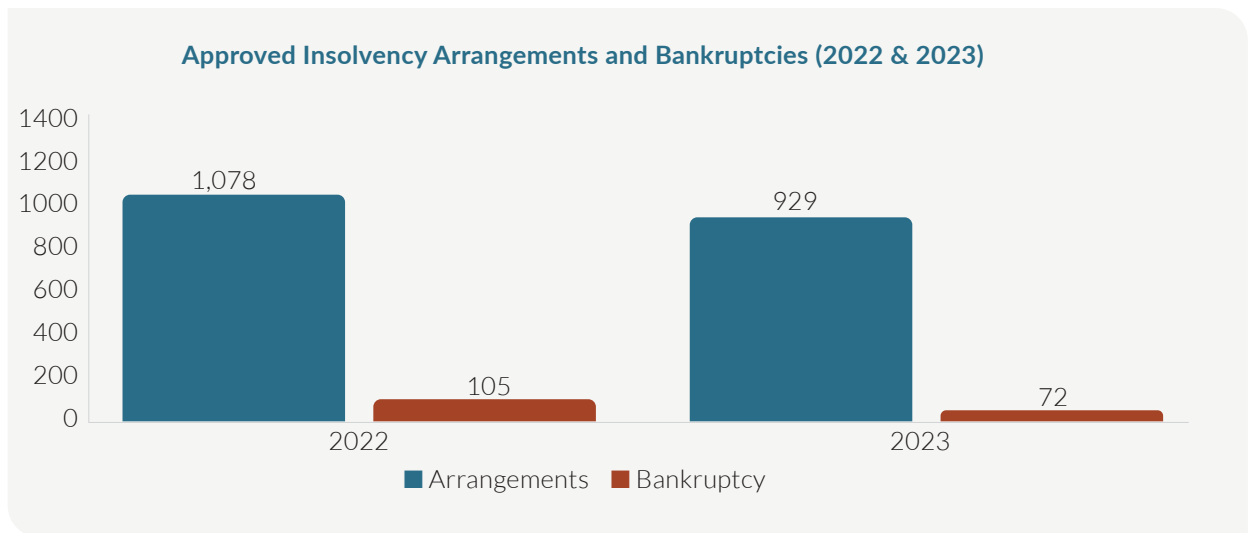


Figure 1: *Approved Insolvency Arrangements and Bankruptcies (2022 & 2023)*

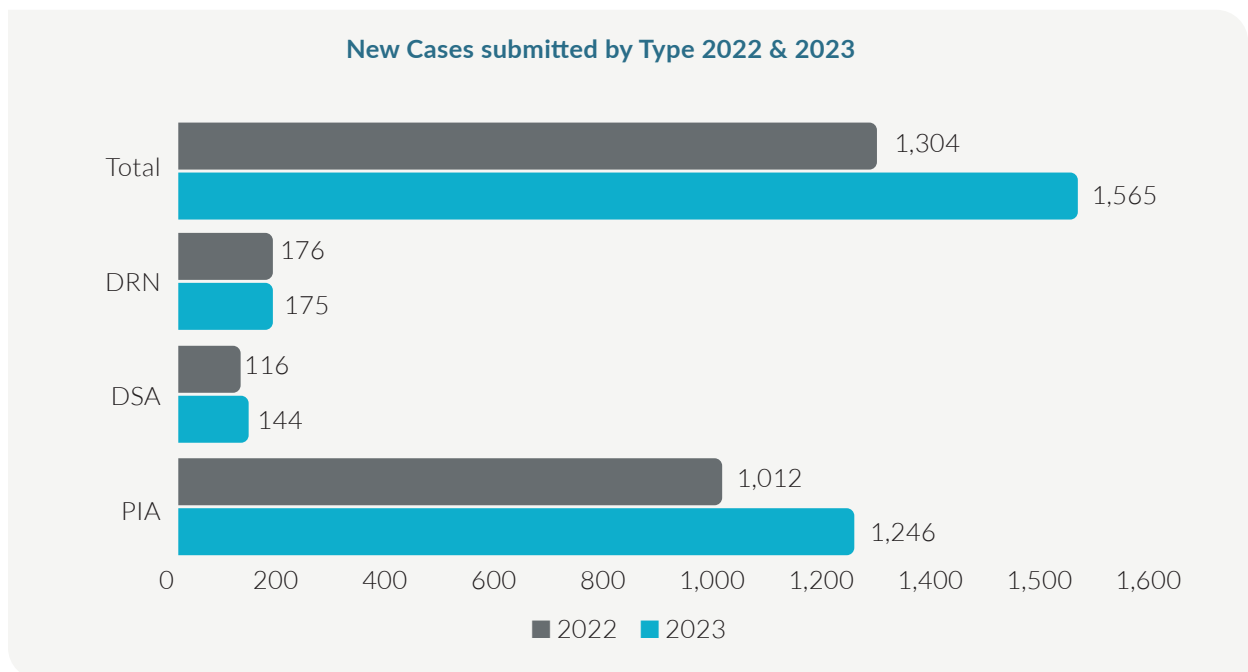


Figure 2: *New Cases Submitted to the ISI 2022 & 2023*

¹ Every quarter the ISI publishes on its website detailed statistics covering its work.

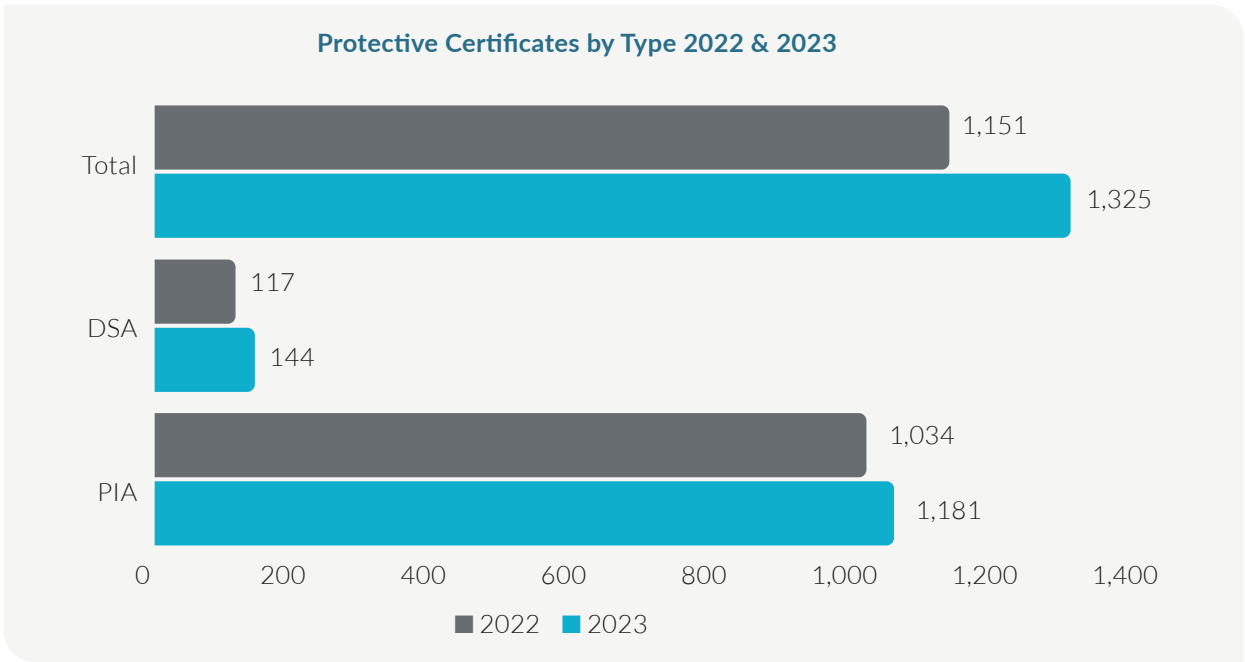


Figure 3: Protective Certificates by Type 2022 & 2023

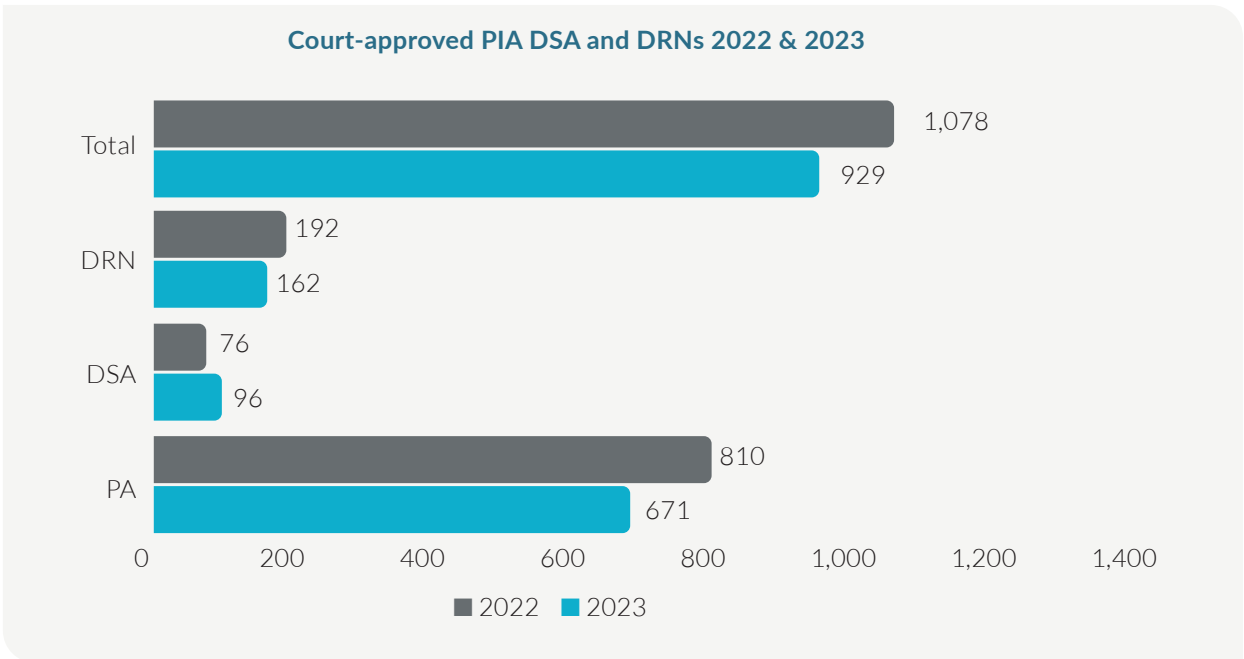


Figure 4: Court-approved PIA DSA and DRNs 2022 & 2023

Protective Certificates and Arrangements Impacted by Cost of Living Increases

The declining trend in activity which occurred during Covid through to end 2022 was reversed somewhat in 2023. The increase in both applications for insolvency solutions and in approvals of PCs is attributable to a number of factors including the significant increases in the cost of living which occurred alongside a steep rise in interest rates. This cause a great deal of uncertainty in individuals' personal circumstances during 2023 and it is expected this will remain a further challenge in 2024. The overall numbers of

Arrangements decreased in 2023 although, given the increases in both applications for insolvency solutions and in PCs approved, there will likely be an increase in the number of arrangements put in place going forward.

While the overall number of Arrangements fell in 2023, the table below shows a clear trend in recent years of greater levels of acceptance by creditors from PC stage to acceptance of the proposal put forward at creditors' meetings. Our statistics show that if a debtor takes out a PC now he or she has an almost 70% chance of turning that into a long-term sustainable arrangement, which is a significant improvement on recent years.

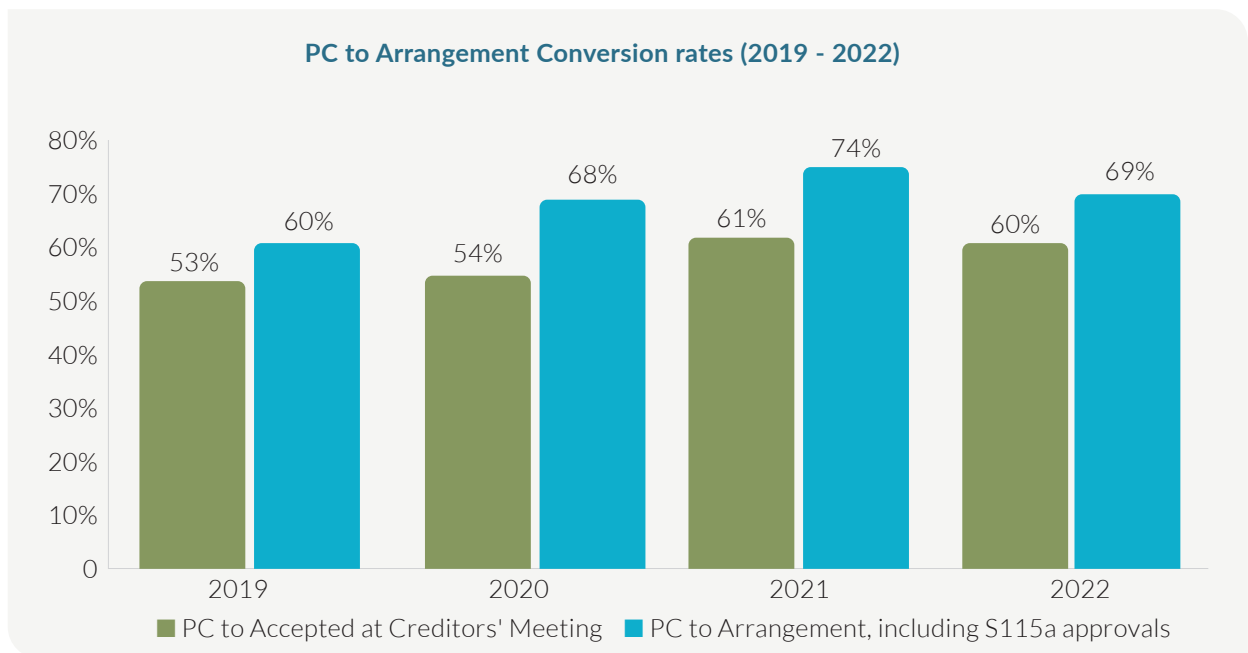


Figure 5: PC to Accepted at Creditors' Meeting and PC to Arrangement including S115A approvals %

Court Review of Rejected PIAs (Section 115A Reviews)

The 2012 Act was amended in 2015 to introduce a new section 115A, the purpose of which was to provide a mechanism whereby the Courts could be asked to review proposed PIAs that were not accepted by creditors at the statutory creditors' meeting. Further amendments to this section of the 2012 Act were introduced in 2021, the main one being the removal of the requirement that a debtor had to have been in arrears at 1 January

2015 or, having been in arrears before 1 January 2015, had entered into an alternative repayment arrangement with the secured creditor concerned. A PIP, acting on instruction from a debtor, can make an application for an order from the court confirming the coming into effect of the proposed PIA. If, following such review, the application is approved, the court grants the order and the PIA comes into effect. The table below shows the number and status of section 115A review applications received and progressed up to the end of the year.

Arrangements Approved	On Review	On Review - Creditor Appeal Active	Confirmed on Creditor Appeal	On debtor Appeal	Total	%
Uncontested	519				519	
On Consent	121		6	45	172	
On Consent - Subject to Variation	156		1	71	228	
Contested	293	3	19	79	394	
Total Arrangements Approved	1089	3	26	195	1313	51.33%
Arrangements Not Approved	On Review	On Review - Debtor Appeal Active	Revoked on Creditor Appeal	On debtor Appeal	Total	%
Withdrawn	30				30	
On Consent	172			244	416	
Refused	640	12	1	146	799	
Total Arrangements Not Approved	842	12	1	390	1245	48.65%
Total Applications With Decisions	1931	15	27	585	2558	
Active Applications on Review					422	
Total applications Made					2980	
S.115A decisions 2021-2023						
Arrangements Approved				525		55%
Arrangements Not Approved				438		45%
S115A Applications in 2023	355					
Creditor Objections						264 (74%)

Figure 8: Total Section 115A applications and outcomes to end 2023

Section 115A Court Reviews as at end December 2023

The majority of review applications are decided on the basis of arguments put forward that relate to the commercial merits of each case, including the sustainability of proposals and the extent of alleged unfair prejudice suffered by creditors. The conclusion of live cases continued to be a challenge in 2023 given the circumstances in which many debtors found themselves following the after-effects of the Covid-19 pandemic and the significant increases in the cost of living and interest rates subsequent to that. However, Courts continue to emphasise on regular occasions the need for cases to be concluded at the earliest possible opportunity.

The trend in applications in 2023 has seen a significant upward curve, and has reversed the downward trend seen over the past number of years. The number of applications made in 2023 (355) shows a large increase on the 2022 figure (237). This represents a 50% increase, albeit still well below the 2018 peak of 523.

The rate at which creditors are objecting to those section 115A applications shows that of the 355 applications made in 2023, 74% were objected to, up from 58% in 2022 but still down from a peak of 89% in 2017. While the trend of decline in both figures has been reversed, it may reflect the impact of dealing with a more challenging and rapidly changing cost of living and interest rate environment. It may also flow from the challenges being faced by many creditors in the context of a rapidly changing environment of loan ownership more recently, which is causing some logistical issues in terms of the ability of creditors to be able to give full consideration to proposals prior to creditors' meeting. However, we believe that the further steps in the process are showing that many of those objections are falling away prior to Courts' consideration of them. It is also acknowledged that there is a continued proactive approach to engagement later in the process which has led to an increased number of

The trend in applications in 2023 has seen a significant upward curve, and has reversed the downward trend seen over the past number of years.

appropriate resolutions through discussion and through the variation of initial proposals which are ultimately approved at creditors' meetings. In the meantime, the ISI continues to keep stakeholders informed of developments through its periodic e-Briefs and one-to-one meetings with both PIPs and creditors.

Year	Applications	Objections	Creditor Objection Rate
2019	432	342	79%
2020	402	277	69%
2021	282	190	67%
2022	237	137	58%
2023	355	264	74%

Figure 9: Section 115A creditor objection rates 2019 – 2023

Summary of Significant Court Rulings in 2023

The table below sets out significant decisions of the High Court during 2023. Unlike previous years, there was only one prominent decision that was decided in the High Court but not progressed to a higher court. This is also available on the Courts Service website www.courts.ie.

High Court


Case	Main issues dealt with	Date	Hyperlink to judgment
Mansour	Inequity of creditor treatment, proof of debt.	20/04/2023	

Figure 10a: Significant High Court Outcomes in 2023

Procedural requirements, insolvency of debtor

This matter concerned an appeal by creditors from a judgment of the Circuit Court at which the Court approved the coming into effect of a Debt Settlement Arrangement (“DSA”) relating to a debtor pursuant to the Personal Insolvency Act 2012 (as amended) (“the 2012 Act”). The creditors were excluded by the PIP from the debts included in the DSA. The creditors neither participated in a creditors’ meeting nor participated in the resulting DSA, which was approved on a single creditor basis.

The issues relating to the appeal concerned whether the Court was satisfied that the debtor was insolvent and thereby eligible for a DSA, whether the DSA unfairly prejudiced the interests of the creditors to the extent that it was unjust, and whether the decision by the PIP to exclude the creditors’ debt on the grounds that they had not proved their debt was in accordance with the procedural requirements of the 2012 Act. The creditors also submitted that it was incorrect for the PIP to require them to file a proof of debt. The debtor’s only other creditor proved their debt.

With regard to notifications required to be sent to the creditors, and the manner in which this is done within the Act, Judge Sanfey determined that the procedural requirements had not been properly complied with, which was fatal to the application.

He also made it clear that the PIP was entitled to require creditors to prove their debt in circumstances where they had a judgment that was included in the prescribed financial statement and draft DSA. He did not, however, express a view on whether the debtor was insolvent and if the DSA unfairly prejudiced the interest of the creditors. He allowed the creditors’ appeal and their objection to the DSA.

A more detailed summary of this matter can be found in Appendix 3.

Circuit Court

Case	Main issues dealt with	Date	Hyperlink to judgment
O’Reilly	Mortgage extension at low fixed rate of interest	11/5/2023	No written judgment

Figure 10b: Significant Circuit Court Outcomes in 2023

Extended mortgage at fixed interest rate

This case concerned a married couple (“the debtors”) who ran into mortgage difficulties following a loss of employment and ill health issues. The debtors were paying a high rate of interest (5.5%) on a mortgage of €286,000, which contributed to the level of their debt.

The proposal was to be a 10-month arrangement, with a write-down of just over €6,000. The main feature of the PIA was the mortgage being restructured to 25-year (300 months) at a fixed rate of 2.5% per annum, with the creditor to be repaid in full. A counterproposal was offered of a 10-month arrangement, write-down to €280k, interest rate of 3% variable and term extended to 300 months.

The Court noted the purpose of the Act was to try to keep people in their principal private residence (“PPR”) if it did not unfairly prejudice the creditor. While noting the main issue between the parties as being the extended duration of a low fixed rate of interest, the creditor had not offered any evidence to support their contention that they would suffer any clear loss on its application. The Arrangement was approved, and the judgment was not appealed.

A more detailed summary of this matter can be found in Appendix 3.

Supreme Court

Case	Main issues dealt with	Date	Hyperlink to judgment
1. O'Connor	Meaning and application of test for insolvency	30/11/2023	🔗
2. O'Driscoll	Locus standi of creditor to object	30/11/2023	🔗

Figure 10c: Significant Supreme Court Outcomes in 2023

Two significant rulings were made by the Supreme Court in relation to insolvency matters in 2023, the first time a decision of a Court had been referred to the Supreme Court on a point of law since the commencement of the Personal Insolvency Act 2012 (as amended). Brief summaries of the cases are set out below. A more detailed summary of these matters can be found in Appendix 3

The meaning and application of the test for insolvency

The primary question for consideration in this matter concerned whether the debtor was insolvent within the meaning of the 2012 Act and that question turned on the meaning of the phrase “readily realisable asset” in the context of insolvency and section 99(1)(d) of the 2012 Act. In this case, what was at issue was the question of the possible sale of agricultural lands owned by the debtor. The creditor in this matter argued that the sale of lands would generate ample funds to repay the debtor’s debts and restore him to solvency.

Two significant rulings were made by the Supreme Court in relation to insolvency matters in 2023, the first time a decision of a Court had been referred to the Supreme Court on a point of law since the commencement of the Personal Insolvency Act 2012 (as amended).

The Circuit Court had held that the Debtor was insolvent for the purposes of the 2012 Act and that the agricultural land belonging to him was not a “readily realisable asset” for the purposes of assessing his solvency. The appeal to the High Court was dismissed. The matter was then remitted to the Supreme Court to determine the meaning of “insolvent” for the purposes of the 2012 Act or what is precisely meant by the statutory definition that a person is insolvent if he or she is “unable to meet one’s debts when they fall due”.

Ultimately, the Supreme Court held that the debtor was insolvent within the meaning of the 2012 Act and allowed the appeal in part. However, the Court also ordered that the application under section 115A of the 2012 Act be remitted to the High Court for further determination.

Proof of Debt and Locus Standi to lodge an objection to a PIA

A creditor failed to file a proof of debt when requested to do so by the debtor's PIP. The PIP informed the creditor in accordance with section 98(2)(b) of the 2012 Act that a creditor who does not file a proof of debt is not entitled to vote at a creditors' meeting or share in any distribution made under the PIA.

The creditor disputed the Debtor's Prescribed Financial Statement ("PFS") and inter alia claimed that the Debtor was not insolvent and that his PFS was incorrect, and requested an extension of time to lodge a proof of debt, a request that was denied by the PIP who called on the creditor to file a proof of debt within the prescribed time period. However, a second PFS was completed by the debtor and notice of the creditors' meeting was issued to the creditor together with the documentation required. The creditor responded to the PIP indicating that he would not be attending or voting at the creditors' meeting, and subsequently issued a notice of motion seeking leave to execute against the Debtor pursuant to section 96(3) of the 2012 Act and an order refusing the coming into effect of the PIA pursuant to section 115(2)(b) of the 2012 Act.

Following the approval of the PIA at the creditors' meeting, the PIP wrote to all creditors, including the creditor in this case, informing him that the PIA had been approved but a notice of objection in accordance with section 112(3) of the 2012 Act could be lodged within 14 days. The Circuit Court dismissed the creditor's appeal to the approval, noting that he had no locus standi to pursue an objection to the PIA as he had not proved his debt in accordance with the procedure set out in the 2012 Act. The matter was then appealed to the High Court, arguing that he was a creditor who had standing to make an objection under section 120 of the 2012 Act. The High Court upheld the decision of the Circuit Court.

The creditor was granted leave to appeal to the Supreme Court as the Court considered that this case raised important questions on the interpretation of the 2012 Act. The Court concluded that in the absence of express language

to the contrary in the 2012 Act, a creditor who did not file a proof of debt is entitled to lodge an objection and thus, has the requisite locus standi to make such an objection to a PIA and be heard on foot of that objection, thereby allowing the appeal of the Appellant.

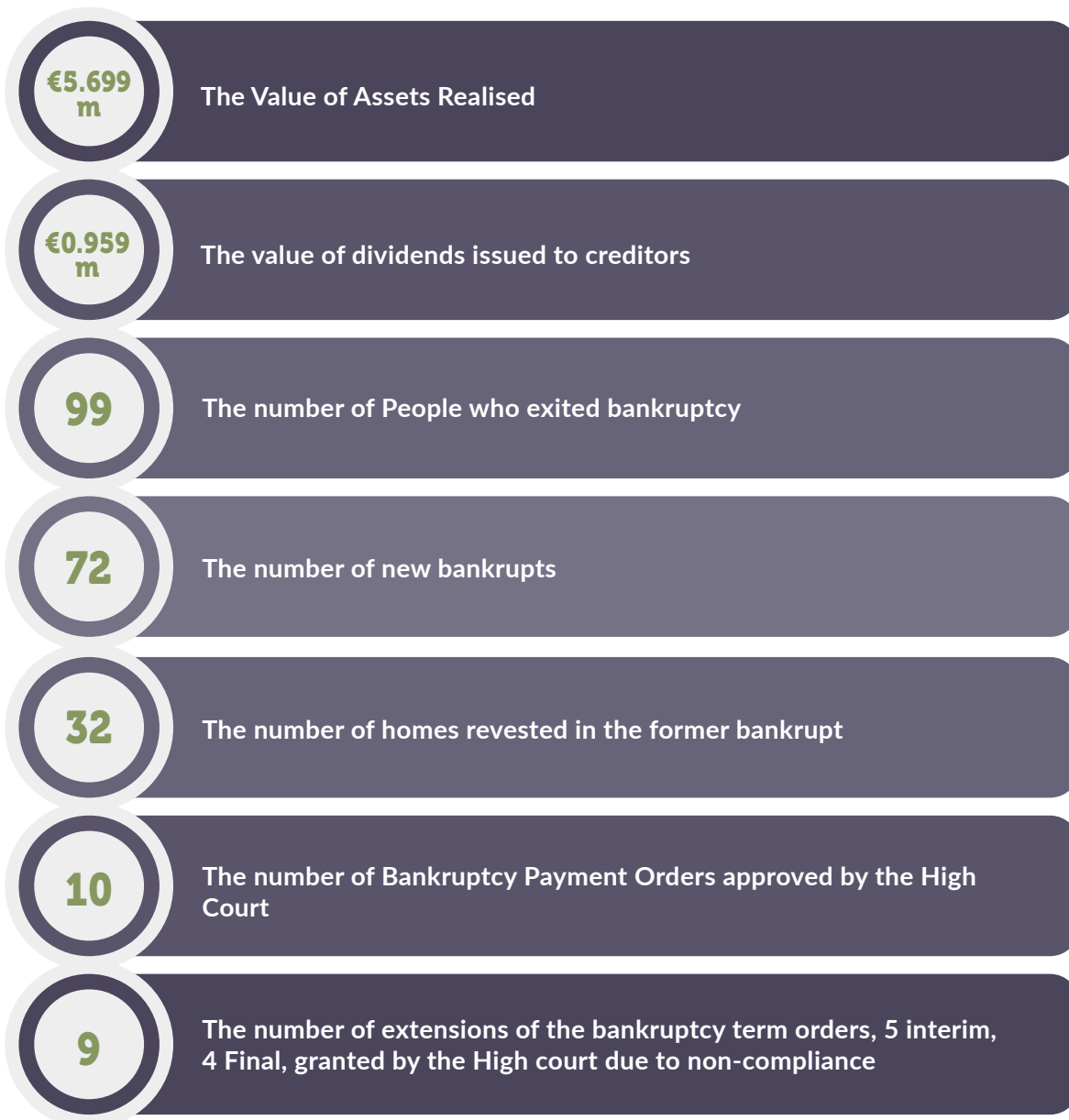
Review of Bankruptcy Cases

Proceeds form Land & Buildings	€2,354,993
Encashment of Pension Plans	€646,012
Proceeds from debts due	€560,277
Rental Income from properties	€617,997
Income Payment Orders	€244,605
Sale of Securities	€28,996
Miscellaneous Income	€672,946
Bank accounts Remitted	€46,486
Other Sources	€526,343
	€5,698,655

The decrease in cases in Ireland in 2023 was not reflected in England and Wales where there was an increase of 15% from 2022 to 2023. Despite this increase throughout 2023, numbers of both creditor and debtor bankruptcies in 2023 remained low compared to pre-2020 levels. The number of bankruptcies in Northern Ireland increased substantially from a historically low base².

The number of debtors petitioning the High Court for their own bankruptcies was 68, compared to 93 in 2022. There were 4 creditor-petitioned bankruptcies compared to 12 in 2022. The percentage breakdown of bankruptcies in 2023 was 94% self-petitioned Vs 6% petitioned by creditors.

² UK Insolvency Service Commentary - Individual Insolvency Statistics October to December 2023 - GOV.UK (www.gov.uk)



Breakdown		
Case Type	2022	2023
Self-Petitioning	89%	94%
Petitioned	11%	6%
Total	100%	100%

The administration of bankruptcies remains complex and challenging. Over 2023 the noticeable trend of debtors who have established their centre of main interest (“COMI”) in Ireland being adjudicated bankrupt in Ireland has continued. This trend has seen, inter alia, an increased number of investigations into assets that may be located outside the jurisdiction of Ireland and brings into consideration the EU Insolvency Regulation (2015/848) as well as the Bankruptcy Act 1988 (the “1988 Act”).

Bankruptcy Case Management System Update

The development and implementation of a new Bankruptcy Case Management System (BCMS) progressed during 2023 and the new system went live in September 2023.

The objective was to ensure the ISI had a system to manage bankruptcy estates. This was particularly important given that the original system was implemented at the beginning of the Official Assignee office being integrated into the ISI and there have been significant developments in legislation, policy and process that needed to be supported by a new ICT solution.

A key objective delivered was the development of a suite of reporting tools to provide statistical data for external reporting and monitoring of trends etc., plus various operational reports to enable effective workflow management and provide

staff and management with appropriate data to effectively discharge their specific duties.

Aligned to the BCMS implementation, the Division continued to monitor and improve upon its operations to foster an innovative and efficient approach to reaching its business goals and objectives. These factors should contribute to the orderly management of estates providing debtors with the benefits of the Bankruptcy system and result in the prompt realisation of assets and payments of dividends to creditors.

Enhancements to the Phoenix Case Management System

The ISI improved the functionality of the Phoenix Case Management system in 2023 to facilitate compliance with GDPR requirements around data retention. The ISI plans to continue to improve this functionality in Phoenix over the coming year.



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Legislation

The ISI made a comprehensive submission to the Department in 2017 following the Department’s request for views of interested parties on the operation of Part 3 of the 2012 Act. Since its submission in 2017, the ISI continues to engage with the Department, making recommendations to drive efficiencies, reduce barriers to entry and improve the overall personal insolvency process. In May 2021, the Personal Insolvency (Amendment) Act 2021 (No. 10 of 2021) introduced a number of significant changes to the 2012 Act and the ISI anticipates, following consultation with the Department, that further important changes will follow soon. The ISI is committed to continue to work closely with the Department to progress these necessary changes to the personal insolvency regime under the 2012 Act.

The Courts and Civil Law (Miscellaneous Provisions) Act 2023 introduced a number of amendments to the 1988 Bankruptcy Act which will facilitate a more effective and efficient administration of bankruptcy estates. These amendments include: (a) the removal of the requirement for the Official Assignee to obtain leave of the Court before disclaiming onerous property; (b) a provision providing for the Official Assignee to check and stamp information before it is filed in Court; (c) a mechanism to streamline the payment of dividends to creditors; and (d) provisions to prevent abuse of the bankruptcy payment order process.

The following secondary legislation was made in 2023:

S.I. No. 682/2023 - Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2023

These Regulations amend Regulation 6 of the Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015 (S.I. No. 620 of 2015) (the “2015 Regulations”) by substituting “31 December 2026” for “31 December 2023”. As a consequence of this substitution, the temporary waiver of fees as set out in Regulation 6 of the 2015 Regulations now applies to an application made under section 29(1), 59(1) and 93(1) of the Personal Insolvency Act 2012 where such application is made after the date of the coming into operation of the 2015 Regulations and on or before 31 December 2026.

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Communications

The ISI has a dedicated Communications Project Group. The group comprises cross-divisional representatives of the organisation and is tasked with planning and coordinating communications activities to ensure that key messages are disseminated through the appropriate channels to each stakeholder.

During 2023, this group coordinated information campaigns, liaised with the media, and ensured that ISI websites, publications and related information sources were readily accessible to our target audience.

2023 Information Campaign

The consequence of personal debt can reach far beyond simply the financial issues – as demanding as these are. Debt can place an extraordinary amount of stress on an individual, their relationships, home life and work. Too often, the embarrassment about it, coupled with consequent anxiety, means the individual wants to ignore it and hope it goes away. Meanwhile, life is unravelling. With new campaign assets, in both Irish and English, the ISI media campaign for 2023 brought the unravelling metaphor to life in a sensitive way; with the message Don't let debt unravel you.

The campaign ran in two bursts over the course of the year. Burst one ran from 30th January until 16th April and burst two ran from 1st September until 10th of December.

The aim of the campaign was to:

- create awareness of the ISI and what it does
- build understanding of the debt solutions that the ISI can help a person with, and
- drive response with the call to action of help and support at www.backontrack.ie.



Through the campaign, we made people aware of the following four core factors:

1. It is good to talk about money. Being open about debt can help avoid problems.
2. If you are in debt, do not ignore it. Take control of your situation. There is help and support out there.
3. Debt can be overwhelming but there is a sense of relief once a person asks for help.
4. There is a way out of financial difficulty, no matter what the situation.

The campaign used a range of media channels, including TV, video on demand, digital display, radio, digital audio, out of home, social media and press advertisements. The campaign highlighted how overwhelming debt can be and the sense of relief people get once they take control of their situation and ask for help.

To coincide with the campaign, the ISI's Director also took part in a number of radio interviews urging people in debt to take control of their situation and to contact a PIP or AI to find out what their options are.

ISI Corporate Website

Following work with the Office of the Chief Information Officer to move the ISI's corporate website to the gov.ie platform, in line with other government departments and agencies, the new isi.gov.ie site went live in early 2023.

10th Anniversary of the of the establishment of the ISI

To mark the 10th anniversary of the ISI opening to accept applications for the then new statutory solutions, an event was held for staff on 12 October 2023.

The Minister for Justice, Helen McEntee TD, delivered the opening address. Other speakers included the former Director of the ISI, Lorcan O'Connor, Judge Mary O'Malley Costello, the chair of the Association of Personal Insolvency Practitioners, Alan McGee, and the Accountant in Bankruptcy and Chief Executive Officer of Scotland's Insolvency Service, Richard Dennis.



Helen McEntee, Minister for Justice and Michael McNaughton, Director of the ISI



Judge Mary O'Malley Costello



John Phelan, Trevor Noonan, Minister Helen McEntee, Judge Mary O'Malley Costello, Michael McNaughton, Liza Doyle, Ian Larkin



Alan McGee and Lorcan O'Connor



Helen McEntee, Minister for Justice



Richard Dennis, Accountant in Bankruptcy Scotland



Lorcan O'Connor, former Director of the ISI

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Abhaile

The Abhaile Scheme was originally launched on 22 July 2016 for a 3 year period and was due to finish on 31 December 2019. However, the scheme has been extended several times since then with the latest being announced in November 2023 extending the scheme until December 2027. The Scheme is coordinated jointly by the Department of Social Protection and Department of Justice. It is jointly operated by a number of agencies including the Money Advice and Budgeting Service (MABS), Legal Aid Board (LAB), Citizens Information Board (CIB) and the ISI. The scheme provides a range of services to help people in mortgage arrears and offers free access to financial and legal advice through panels of qualified and regulated professionals by way of a voucher issued centrally by MABS.

ISI maintains a panel of PIPs, who are funded to provide independent financial advice and assistance free of charge to eligible borrowers, and processes their payment claims under the scheme. The current Abhaile PIP panel became operational in early March 2020 following a revision of the terms and conditions and as of December 2023, there were 44 PIPs on the panel. An updated version of the Terms and Conditions was issued on 30 January 2023.

The Abhaile scheme allows for a seamless flow of information between MABS and PIPs in particular, which is important when endeavoring to reach and help borrowers in an integrated way at the most appropriate time. In 2023:

- 1,625 vouchers were issued to borrowers for a free consultation with a PIP according to MABS records, and
- PIPs who completed borrower consultations redeemed 1,075 vouchers.

The number of Abhaile PIP vouchers issued and subsequently redeemed in 2023 increased in comparison with 2022 by 32.5% and 10.6% respectively. This increase in activity shows that the negative impact of external factors such as Covid-19 have eased and both issuance and redemption volumes are recovering toward pre-2020 levels. There was a continuance in 2023 of the positive trend observed in the previous years where the majority of borrowers engaging with PIPs have been in mortgage arrears for more than 2 years, which is the scheme's target cohort.

Analysis of the outputs of the Abhaile PIP panel from the launch of the scheme to the end of 2023 is presented below followed by a deeper analysis of the outcomes for debtors whose vouchers were redeemed by PIPs in Q3 2022.

In summary, solutions are being achieved for borrowers through the Abhaile PIP panel in a timely manner, with MABS colleagues being an important route of referral. For the vouchers redeemed in 2023, 74% of the borrowers were in mortgage arrears for more than 2 years while 79% of them were recommended a statutory solution.

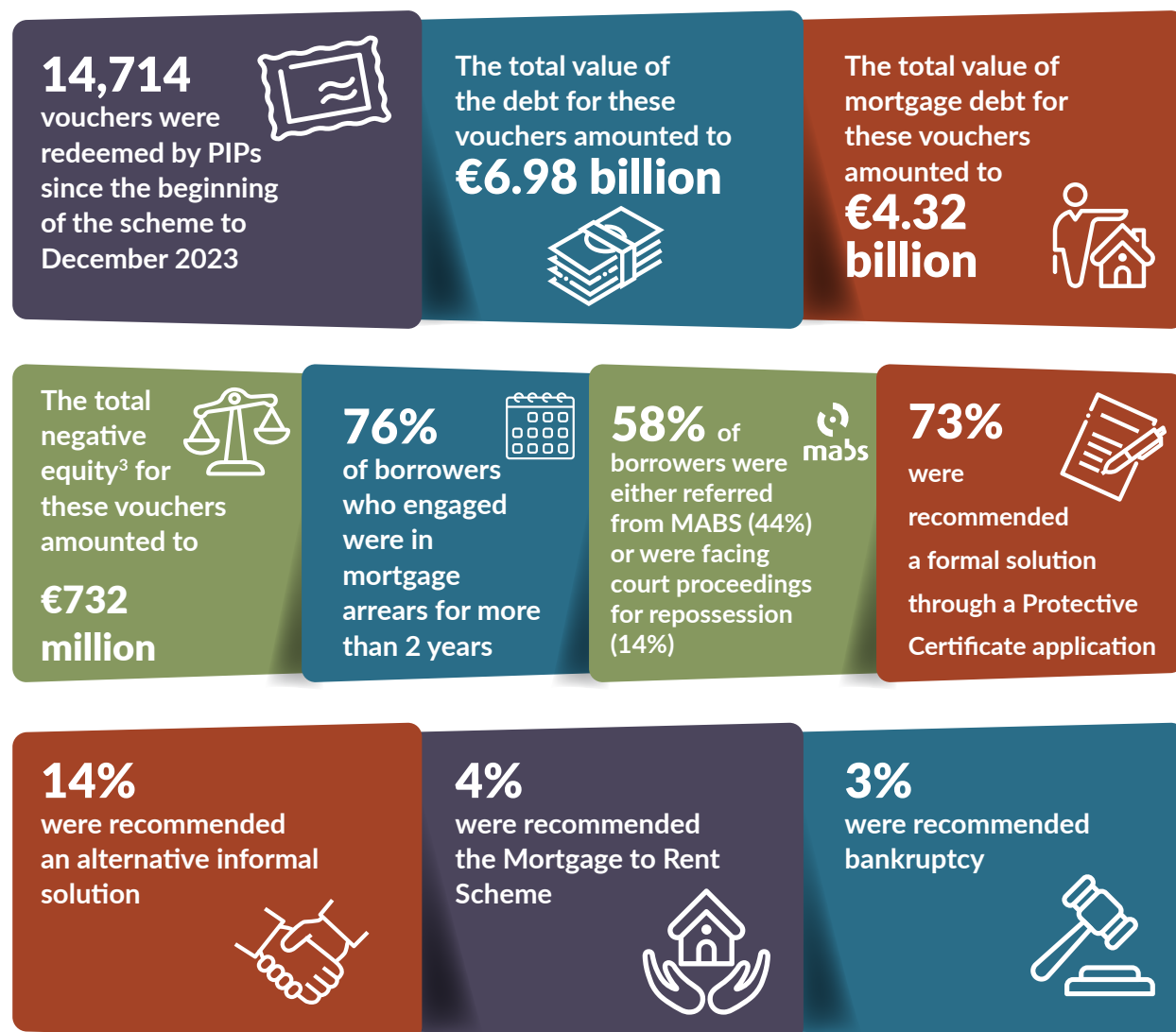
Analysis of the Abhaile PIP Panel – Outputs and Debtor Outcomes

There are two forms of indicator used to analyse the success of the PIP panel through the Abhaile scheme:

A. Output indicators which provide background information relevant to the uptake of the scheme through PIP voucher issuance and redemption (shown below from the launch of the scheme in 2016 to the end of 2023); and

B. Outcome indicators which show the outcomes achieved as at July 2023 for borrowers for whom PIP vouchers were redeemed in Q3 2022 (based on a representative sample from the 'Deep Dive' exercise).

ABHAILE OUTPUT INDICATORS



A. OUTCOMES – DEEP DIVE 2023 ANALYSIS

Under the scheme, the PIP reviews the borrower’s financial circumstances and makes a recommendation to address their financial difficulties. The purpose of the annual ‘Deep Dive’ is to examine what has happened to the borrower following this recommendation. Such an examination can only take place in retrospect - ISI data shows that for Abhaile vouchers claimed in 2023, which have resulted in an approved PIA, on

average they took just over four weeks to obtain a Protective Certificate once the case was submitted and a further eighteen weeks (over four months) for an Arrangement to be approved by a court.

The ‘Deep Dive’ analysis conducted in 2023 relates to 259 borrowers for whom a PIP redeemed a voucher in Q3 2022. A breakdown of the outcomes achieved for these borrowers as of July 2023 is provided immediately below (Figure B1). The infographic that follows provides an overview of the main findings of the Deep Dive.

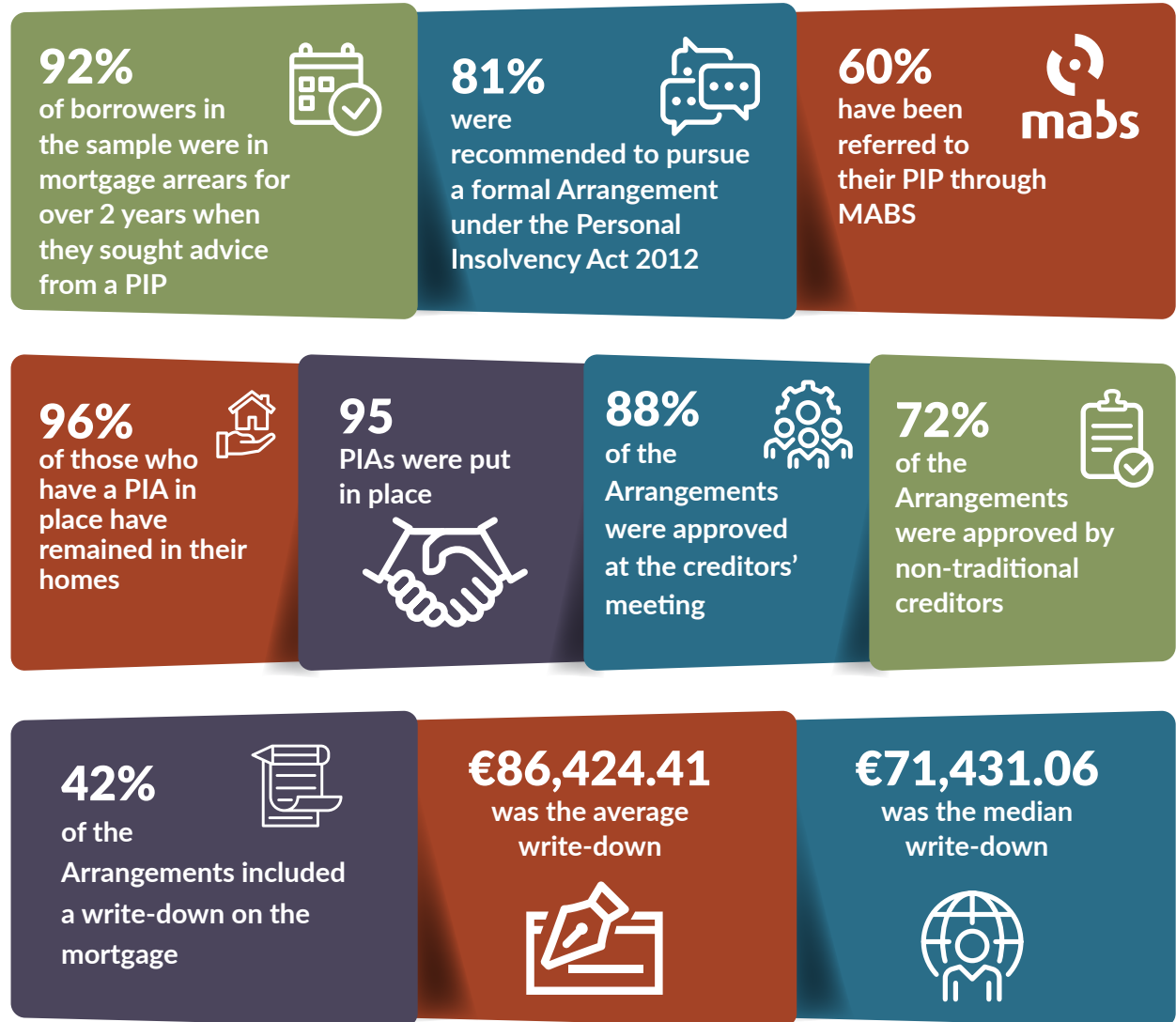
³ Negative equity – the value of the property is less than the mortgage owed



Figure B1: Breakdown of borrower outcomes from Q3 2022 as relayed by PIPs in July 2023: 259 borrowers in sample

- There are 102 (40%) borrowers that have solutions in place; both formal (37%) and informal (3%) – of these solutions, 95 are PIAs, 8 are informal solutions. There were no successful informal Mortgage to Rent applications and no cases where the borrower had been adjudicated bankrupt at the time the data was collated.
- 59 borrowers (23%) were working with their PIP to find a formal solution – of these 17 are in the section 115A review process, 27 are considering a formal solution, 7 plan to reapply for PIAs after their initial proposal for an arrangement was rejected, 7 did not pursue a further solution after their initial proposal for an arrangement was rejected, while 1 borrower was considering petitioning for bankruptcy.
- 28 borrowers (11%) were in the process of seeking an informal solution – of these 12 are working with their PIP on securing an informal arrangement and 4 are pursuing Mortgage to Rent. In addition, 12 have been referred back to MABS for support.
- 63 borrowers (24%) did not engage further following receipt of the PIP’s recommendation.
- 3 borrowers (1%) were classified as on hold due to cost of living related income issues. In 2 instances the recommended solution for these borrowers was to proceed with a PIA application.

ABHAILE OUTCOME INDICATORS



Arrears capitalisation and term extension remain the most prevalent restructure types found in arrangements for both traditional and non-traditional creditors, with the third most popular restructure type being principal reduction / write down for non-traditional creditors and reduced payment for traditional creditors.

9

Stakeholders

The ISI acts as both an authority on the statutory personal insolvency options available to individuals in financial difficulty and as custodian of the overarching framework which has been developed and enhanced since 2013. To this end, the ISI engages regularly with a broad range of stakeholders and aims to provide insight in particular through statistical data and trends of interest with respect to the uptake of these options. Such interaction also provides a mechanism to discuss both challenges and opportunities given the ever-evolving environment in which the personal insolvency legislation operates. Of particular significance is the ISI's ongoing engagement with a number of key stakeholders such as PIPs both directly and through the Association of Personal Insolvency Practitioners (APIP), creditors through the Banking and Payments Federation Ireland (BPF) and MABS. The legacy of the Covid-19 pandemic has further highlighted the importance of all stakeholders working together to achieve fair outcomes for debtors and creditors. Despite challenges during the year, the personal insolvency framework has continued to evolve for the benefit of all stakeholders, including those individuals in need of assistance.

Reasonable Living Expenses (RLEs)

The ISI is required to prepare and issue guidelines as to what constitutes a reasonable standard of living, these guidelines are called reasonable living expenses (RLEs). The Vincentian MESL Research Centre at the St. Vincent de Paul (SVP) completed its 2023 annual review of the Minimum Essential Standard of Living (MESL) to update for consumer price inflation. Revised RLE guidelines were issued by the ISI in October 2023 and are published on the ISI website. In addition to the standard adjustments, the figures in the RLEs reflect a number of the cost-of-living measures announced at the time of compilation. In November 2023 the ISI attended a presentation by the Vincentian MESL Research Centre on the findings of the latest MESL Working Paper 'The cost of adequately heating the home'. The ISI acknowledges the significant contribution of the Vincentian MESL Research Centre in its work on RLEs and will continue to engage actively with the Vincentian MESL Research Centre at the SVP.

Protocol Oversight Committee

The committee was established in 2015 to promote and monitor the practical implementation of the DSA and PIA Protocols agreed by the various stakeholders to enhance the overall operation of the insolvency framework. The committee, comprising representatives of creditors, debtor groups, PIPs and others, met in May 2023. Members agreed to amendments of the Protocol 'Dividend Reduction' clause in the context of the increasing cost of living and revised RLEs and further amendments to the Protocols are being considered by the Committee in this area.

PIP Newsletter

A PIP newsletter issued in May 2023. These newsletters, which are issued to all authorised PIPs by email, are used to update PIPs on policy, technical issues and practical items in respect of interacting with the ISI, particularly through its case management system. PIP newsletters are archived and available through the PIP professional development portal. The portal and newsletters are intended to act as a repository of information for practitioners, including those recently authorised.

Stakeholder e-Brief

Three e-Briefs were issued in 2023. One issued in May 2023 and two in December 2023, the second of those was a supplemental e-brief. This publication aims to keep stakeholders informed of ongoing activities of the ISI and key metrics of interest captured through our systems. In particular, the e-Brief aims to support and facilitate development of the personal insolvency process through the reporting of detail on court case decisions considered relevant for our stakeholder community. This document along with other resources can be found in the Stakeholder Information section on our website.

PIP Authorisation & Renewal Meetings

The authorisation interval for PIPs is three years. Twenty one PIPs were due for renewal during the year. Of these, sixteen renewed their authorisation, four made a decision not to seek renewal, while one application is in review. There were no new applications received for authorisation to carry on practice as a PIP in 2023.

There are different operating models employed by PIPs and, in circumstances where fewer than three court-approved Arrangements are put in place in the preceding three-year period, PIPs wishing to renew their authorisation in 2023 may be required to meet with the ISI Regulation Division. The purpose of such meetings is to establish if the resources (including financial capacity), policies, procedures, systems and controls necessary for a PIP to comply with their obligations under the Act and regulations made under the Act remain in place and are adequate. In addition, the meetings are an opportunity to further build relationships and to discuss matters of interest or concern to the PIP and the broader community. Four such meetings were held in 2023.

Continuous Professional Development (CPD) for PIPs

In consultation with the ISI, APIP identified a number of areas for focus in respect of CPD for PIPs. APIP developed and ran a comprehensive programme of webinars during late spring and summer. Topics included Central Credit Register Reports and the Mortgage Arrears Resolution Process (MARP). As part of the programme the ISI delivered a webinar on the PIP renewal application process. These webinars were recorded for ease of subsequent access for PIPs through the professional development portal in place.

PIPs and MABS Workshops

The ISI coordinated a series of interactive workshops held in Dublin, Cork and Athlone in May for PIPs, their staff and MABS colleagues. The objective of the workshops was to share knowledge amongst the communities and to further develop relationships.

There were practical discussions on issues of concern to the parties involved. Presentations were given by PIPs and MABS on the top three challenges that they have experienced as part of their role which included case study examples which demonstrated the specific complexities of certain insolvency cases. A series of break-out sessions on practice and challenges were facilitated by PIPs and ISI staff based on the subjects of PIA and MTR, DSA, DRNs and Bankruptcy. A total of 163 PIPs and MABS representatives participated at the events which were well received. It is envisaged that similar events will be held in the future.

”

The ISI coordinated a series of interactive workshops held in Dublin, Cork and Athlone in May for PIPs, their staff and MABS colleagues.

Engagement with MABS

The ISI continues to interact with MABS through the administration of the Abhaile scheme and as a core stakeholder. In March, the ISI was invited by Citizens Information Board to make a presentation to MABS colleagues on the DRN supervision period as part of MABS spring webinar. In May, the ISI welcomed MABS colleagues to its offices to discuss in particular facilitating an increase in the numbers of debtors availing of DRNs through promotional activities and the training of AIs.

Creditor Engagement

The ISI coordinated a series of dialogue meetings throughout 2023 with the main retail lenders, credit servicers and funds. The purpose of these meetings was to gather feedback on the implementation of provisions in the 2012 Act and to facilitate discussion on matters influencing the personal insolvency framework as it evolves. These regular dialogue meetings seek to ensure open engagement to facilitate enhancement of the framework given trends and feedback. The analysis of the Abhaile 'Deep Dive' provided earlier in the report shows the continuing trend of recent years towards greater involvement of funds in approved Arrangements.

The ISI continued to liaise with the Central Bank of Ireland and the Banking and Payments Federation Ireland (BPF) in the context of progressing relevant work programmes.

PIP Engagement

A series of focused dialogue meetings between the ISI and the ten most active PIP practices in terms of volume of arrangements took place between April and June. In particular, discussions centered on strategic matters of mutual interest and their impact on the personal insolvency framework, including promotion of statutory debt solutions.

The ISI also participated in APIP's annual general meeting held in June.

International Association of Insolvency Regulators (IAIR)

The ISI continued to engage with IAIR in respect of remaining abreast of international issues in personal insolvency in addition to availing of networking opportunities to share good practices. In September, the ISI participated in the IAIR conference and annual general meeting held in the Belgrade, Serbia, where it co-presented a comparator workshop on low-income insolvency solutions. The overall theme was "Digitalisation/IT Developments in the Insolvency World".



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Corporate Updates

Staffing

The ISI has an operational requirement for 86.5 staff. As of 31 December 2023, there were 82.2 full time equivalents (“FTE”) employed in the ISI when work patterns are taken into account. The table below shows the staff numbers (FTEs) broken down across divisions:

Divisional Breakdown	
Director	1
Bankruptcy	39.1
Case Management	24
Policy & Regulation	9.6
Legal Services	2
Corporate Affairs	6.5
Total	82.2

Code of Practice for the Governance of State Bodies

In the absence of a statutory board, the ISI has a senior management team (SMT) which meets under the chairmanship of the Director. The role of the team is to provide strategic leadership, direction, support and guidance for the ISI and to promote commitment to its core values, policies and objectives. There were 12 meetings of the SMT in 2023. Generally, where a member was unable to attend a representative attended in their place.

Number of Senior Management Team Meetings Attended	
Michael McNaughton	12
Trevor Noonan	10
Liza Doyle	12
John Phelan	11
Ian Larkin	9

As an independent statutory body, the ISI has adopted comprehensive corporate governance structures and procedures to ensure that it applies high standards of corporate governance in line with the requirements set out in the Code of Practice

for the Governance of State Bodies (2016). All appropriate procedures for 2023 with regard to financial reporting, internal audit, procurement and asset disposals were followed by the ISI. The ISI accounts and internal controls are subject to internal and external audit. The administration of bankruptcy estates is also subject to independent review with an annual report issuing to the High Court. The ISI has complied with all its obligations under taxation law.

Oversight Agreement

The ISI and the Department were party to an Oversight Agreement and Performance Delivery Agreement for 2023. The agreements document an agreed level of service between the parties. They set out respective commitments on which performance should be measured and support the mission expressed in ISI’s Strategic Plan of returning insolvent people to solvency and full participation in social and economic activity.

Public Spending Code

The ISI continued to adhere throughout the year to the applicable measures of the Public Spending Code published by the Department of Public Expenditure and Reform.

2022	Budget €'000	Expenditure €'000	Variance €'000
Pay	5,072	4,456	616
Non-pay	3,250	2,994	256
Total	8,322	7,450	872

The savings of €872,000 compared to the original estimate provision arose due to delays in filling staff vacancies during the year. Lower than anticipated spend on legal costs also contributed to the budget surplus, as did a delay in incurring costs associated with the ISI’s move to a new building.

Risk Management

The ISI operates a formal risk management policy and maintains a risk register, in accordance with guidelines issued by the Department of Public Expenditure and Reform. The risk register is designed to ensure that risks are identified and assessed and that, where necessary, appropriate mitigating actions are put in place. The risk register is reviewed on a monthly basis at the SMT meeting.

Additionally, the Risk Committee meets quarterly, under the chair of the Director, to review the register and agree any necessary amendments. Reflecting the key priorities for the organisation, the main potential risks managed by the ISI in 2023 were:

- Maintaining adequate and experienced staff levels in a competitive HR environment
- Timely completion of IT projects within budget, and
- Data and IT systems security and resilience.

Public Sector Duty

Section 42 of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public sector bodies to have regard for the need to eliminate discrimination, promote equality, and protect human rights in their daily work. This is known as the 'Public Sector Equality and Human Rights Duty'. Under this statutory duty every public body is required to assess, address and report on how they incorporate equality and human rights into their work.

The ISI is committed to the promotion of equality and human rights in all aspects of our work for both staff and service users, a commitment stated in our Strategic Plan 2022-2024. That plan also commits the senior management team to conduct a review in line with the requirement to assess where the ISI stands, before taking measures to address issues identified during the course of the assessment. The assessment began in late 2022 and was planned to complete by the end of 2023.

Staff

The ISI is an agency of the Department of Justice and staff of the ISI are civil servants. As such, all staff are subject to the policies and codes of the Department of Justice and the wider civil service. Those policies and codes include the Civil Service Code of Standards and Behaviour, Dignity at Work,

and Equality Policy. Civil service policies relating to flexible working practices apply, and the ISI put in place a blended working policy for all staff in 2022.

Staff of the ISI have access to the Civil Service Employee Assistance Service and to the Disability Liaison Officer in the Department of Justice. As part of the assessment phase, the ISI circulated an assessment paper to all staff and invited them to a workshop to explore these issues and to gather ideas on how they might be addressed.

Commencing in 2022, all staff are required to complete the IHEC's e-learning module on Equality and Human Rights in the Public Service, building our capacity to incorporate equality and human rights in the workplace. In addition, two members of staff have completed, and one is undertaking, the Professional Diploma in Human Rights and Equality in the Institute of Public Affairs.

Service users

Irish Sign Language, or ISL, is an officially recognised language of Ireland. Having identified a need to better facilitate users of this language, and make them feel welcome to use it in their dealings with the ISI, we developed an action plan to enhance our services and ensure equal access for people who use ISL, promoting inclusion and improving the overall experience for Deaf individuals. The action plan commits the ISI to identifying potential barriers to accessing services and to developing strategies to minimise or remove them and to establishing clear guidelines for staff members to follow when serving Deaf individuals, including following respectful and inclusive communication practices.

Our office building is accessible for to wheelchair users and persons with physical disabilities, though the ISI does not provide services in-person to the public.

Research undertaken by the ISI along with feedback from customers has highlighted that the effects of debt on mental health can be severe and can prevent people seeking the help they need. There is a similarity in behaviour patterns of those experiencing problem debt and those with depression. Debtors have spoken about feelings of anxiety, fear, isolation, shame and loss of control towards their financial situation. The ISI has prepared its communications accordingly.

Following an extensive revamp in 2022 to make it more accessible, our website for debtors (backontrack.ie) uses decision-trees, a technique found to be effective for debtors by the behavioural analysis unit of the ESRI, to deliver to people the information relevant to their situation. We are conscious that not everyone can access our information digitally. Accordingly, we also have a telephone service providing information about the debt solutions we offer. We also distribute information in leaflet form and the National Adult Literacy Agency (NALA) has approved all of our short leaflets. The ISI works with MABS and the Citizens Information Board in disseminating information. We identify distribution channels to try to reach marginal and disadvantaged groups, such as through placement in health centres and doctors' surgeries.

The ISI is required to prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses for people using the personal insolvency solutions we offer. Reasonable living expenses are the expenses a person necessarily incurs in achieving a reasonable standard of living, this being one which meets a person's physical, psychological and social needs. The Personal Insolvency Act 2012 contains a requirement to take account of the differing needs of people, in regard to matters such as their age, health and whether they have a disability, as well as the need to facilitate social inclusion. The most recent guidelines were published on our website in October 2023.

In the belief that it would be important to hear directly from the people with the best experience of our service, the ISI decided to design and administer surveys of people who had availed of the solutions we offer. The first survey, of people who have had a DRN, was conducted in 2023. A further survey of people who have had a DSA or a PIA is being conducted and will conclude mid-2024.

Freedom of Information (FOI)

The ISI continued to meet its obligations under the Freedom of Information Act 2014. In 2023 the ISI dealt with four FOI requests.

Data Protection

The ISI protects the integrity of data supplied to us by users of our services and third parties. In 2023, we conducted further staff training to help ensure that we continue to comply with our legal

obligations, including under the EU General Data Protection Regulation (GDPR). The ISI responded to 15 data subject rights requests during the year.

Protected Disclosures

Under the Protected Disclosures Act 2014, the ISI is required to publish an annual report on the number of protected disclosures made to it and the action, if any, taken in response to those protected disclosures. There were no protected disclosures notified to the ISI during the year.

Customer Charter

The ISI's Customer Service Charter is available on its website, www.gov.ie/isi. The charter sets out the standards of service a customer can expect to receive from the ISI. No complaints under the Customer Service Charter were received in 2023.

Overview of Energy Usage 2023

The ISI must report annually on the energy consumption of its office and on initiatives undertaken to improve energy performance. The table below sets out the return made by the ISI to the Sustainable Energy Authority of Ireland (SEAI) in compliance with S.I. No. 426 of 2014.

	Electricity (MPRN)	Gas (GPRN)
2023	201,134kWh	132,574kWh
2022	170,481kWh	38,932kWh
2021	306,775kWh	209,183kWh

The ISI is currently located in building which is rented by the Office of Public Works (OPW) and occupies two of the four floors. The building has a single meter for both Gas and Electricity.

Contact Us

Information Line: 01 106 4200 / +353 1 106 4200
 Freetext: ISI to 50015 or Free text GETHELP to 50015

Email: info@isi.gov.ie press@isi.gov.ie

Websites: www.isi.gov.ie

Facebook: <https://www.facebook.com/backontrack.ie>

Twitter: @ISIbackontrack

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Appendix 1 Case Studies

Case Study 1: Bankruptcy

Brenda's marriage broke down and she applied for bankruptcy to enable her to have protection in relation to her debts which she was unable to pay as they fell due.

The adjudication helped her put a line under her financial difficulties and removed some of the stress of dealing with her creditors on a constant basis.

The former family home was eventually sold when it returned to positive equity and Brenda's share of the surplus cleared her other debts in the bankruptcy estate and resulted in a small return to herself.

Case Study 2: Debt Relief Notice Extension

Imelda entered into her DRN in 2020. In early 2023, she informed the ISI under section 36 that she had experienced a change in circumstances as a result of commencing a new job. However, she also experienced increased expenses as her job required her to travel across the country. The ISI considered her increased expenses and was able to consider them towards her Reasonable Living Expenses. Notwithstanding that these adjusted RLEs could be taken into account, she accrued a significant liability which she was required to pay as part of her DRN. Upon assessment of payment due and possible payment plans, it was clear that she would not be able to repay the liability before the date of the end of her period of supervision. As a result, the ISI applied to the Court on her behalf for an extension to the date of the end of her DRN supervision period. The Court granted a further extension to the duration of her DRN which enabled Imelda to repay the debt due over a more manageable time period. The extension is to allow her to pay the assessed liability over a longer timeframe. Any increase of income or payments received during the additional months will not be assessed or added to her total liability.

The adjudication helped her put a line under her financial difficulties and removed some of the stress of dealing with her creditors on a constant basis.

Case Study 3: Accelerated Debt Settlement Arrangement

Piotor is married with one child. He is self employed as a sole trader. He has a mortgage on his principal private residence ("PPR"), but has kept up to date with the payments and there is positive equity in the property. However, he had accrued significant debt of over €60,000 with his local credit union, which he was unable to pay off without jeopardising his mortgage. He received advice from a PIP that he may be eligible for a Debt Settlement Arrangement ("DSA"). Although he had a secured asset, this did not need to be included in the DSA proposal. The PIP proposed an accelerated DSA, which was only to last 3 months. This was facilitated by Piotor receiving a lump sum payment from a third party which he was able to pay towards the credit union debt. This proposal did not put the creditor in a worse position than were the debtor to be adjudicated a bankrupt, which would likely necessitate selling the family home. This proposal allowed Piotor to keep his family home. As part of this DSA the remaining debt was then written off and Piotor returned to solvency at the end of the arrangement.

Case Study 4: Personal Insolvency Arrangement

Patricia is a divorced woman in her 50s with one child. She works in the pharmaceutical sector but only recently returned to work from long-term sick leave due to cancer treatment. Her son has just completed his first year in university, and as he does not qualify for a SUSI grant, Patricia pays for the tuition. Prior to her divorce, in 2008 she and her husband had re-mortgaged their home to facilitate the purchase of two investment properties. Following the crash, the investment was lost and the couple were left with devalued properties and an extra mortgage. In the divorce, a Property Adjustment Order transferred the principal private residence ("PPR") to her sole name, while ownership of the two investment properties was transferred solely to her ex-husband.

Patricia sought advice from a PIP who advised that a PIA may address the remaining mortgage balance of €420,000 on her PPR. Under the PIA, the current arrears will be capitalised and the mortgage will be discharged in full. Patricia will make payments towards her liability during the 6 years of the PIA term. She will then trade down to a smaller dwelling on the PPR site and sell the main house to discharge the remaining debt at the end of the PIA term. If the property is not sold at the end of the term, the property will be surrendered to the secured creditor. The PIA also confirms the transfer of the two investment properties to her ex-husband and clears her remaining liabilities relating to them. At the end of the 6-year term, Patricia will return to solvency.

Case Study 5: Personal Insolvency Arrangement

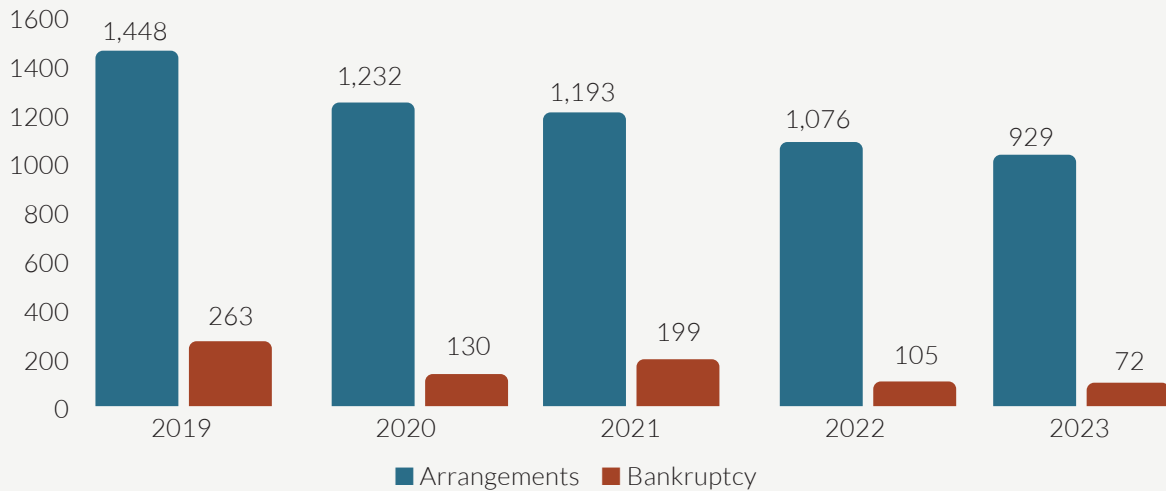
Ken and Jane are a couple in their 70s with three adult children. They live together in their 3-bedroom home that Ken built more than 40 years ago. Ken and Jane are both directors of their property investment company which they began together in the mid-1990s. Their debts arose through an investment in a fund which failed to provide the projected returns, as well as the crash of 2008 which forced them to sell many of their investment assets at significant loss. In total they accrued over €10 million in debts relating to their home – which was re-mortgaged – and the lost investments. On advice from a PIP, they were informed that a PIA may address their

liabilities. Under the terms of the PIA, their PPR was purchased by their son, allowing them to stay in the family home, and the mortgage lender wrote off over €800,000 in negative equity. Through the PIA it emerged that almost half of their debts were residual and the creditors failed to prove their debts. These were considered written off and the remaining creditors were given a joint lump sum from Ken and Jane which amounted to a write-down of over €5 million. This arrangement lasted 1 year and returned Ken and Jane to solvency. This case was objected to by a creditor but approved on appeal, but with a promised variation to follow. The case was completed and Ken and Jane have returned to solvency and remained in their family home.

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Appendix 2 Further Details and Key Statistics – DRN, DSA, PIA

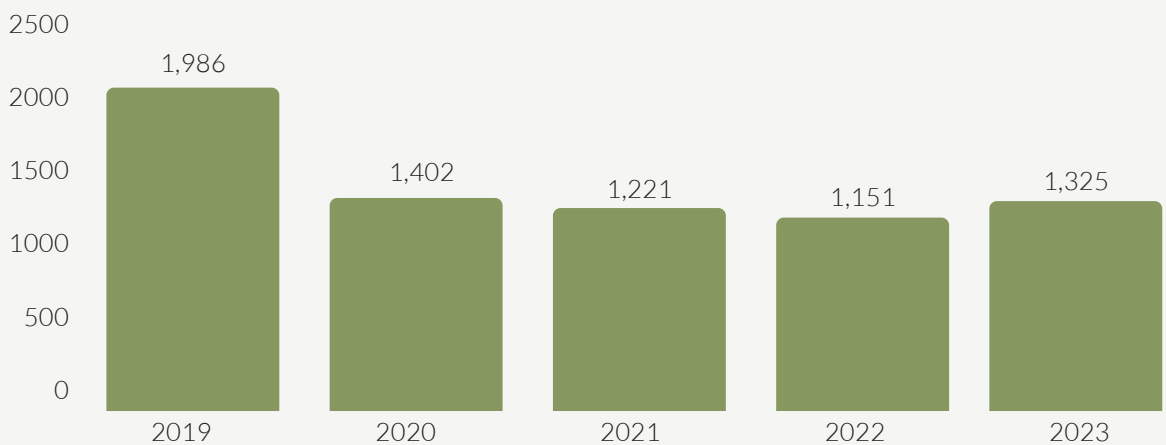
Approved Insolvency Arrangements and Bankruptcies (2019 - 2023)



Protective Certificates Up 15% in 2023

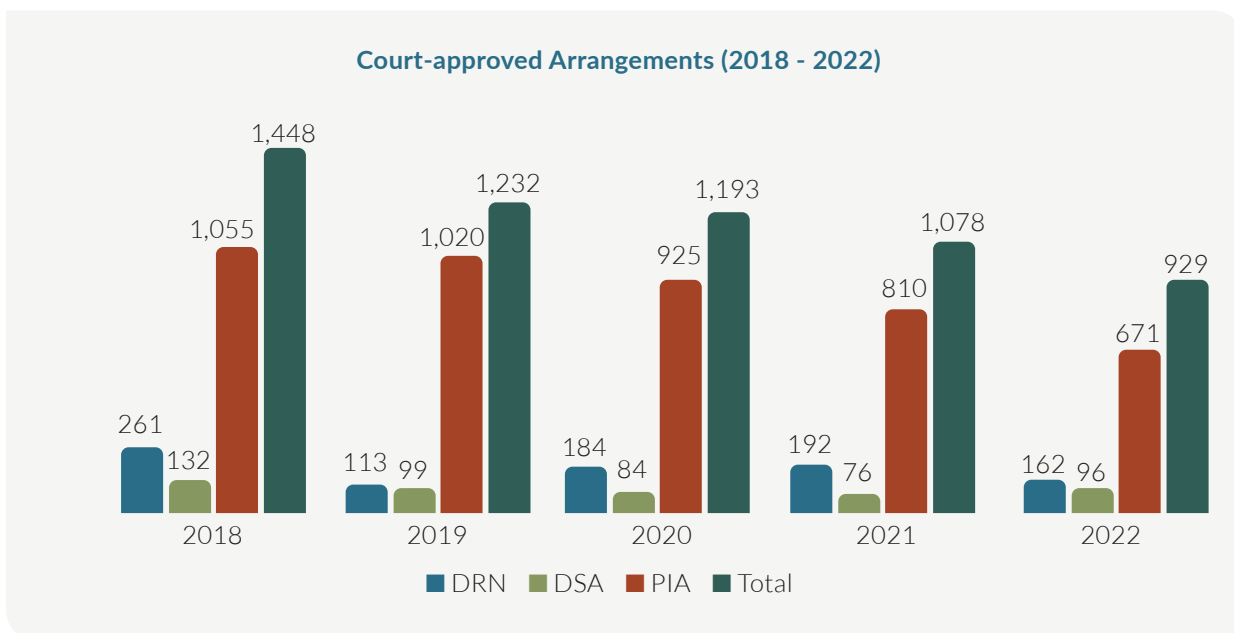
The number of Protective Certificates issued by the Courts showed a moderate increase in 2023, from 1,151 to 1,325. The increase is partly a result of the steep increases in both the cost of living and mortgage interest rates that occurred from 2022 and which have fed in to the difficulties giving rise to these applications. This represents a lead indicator of debtors who will, in time, enter into a DSA or PIA.

PCs issued by year (2019 - 2023)

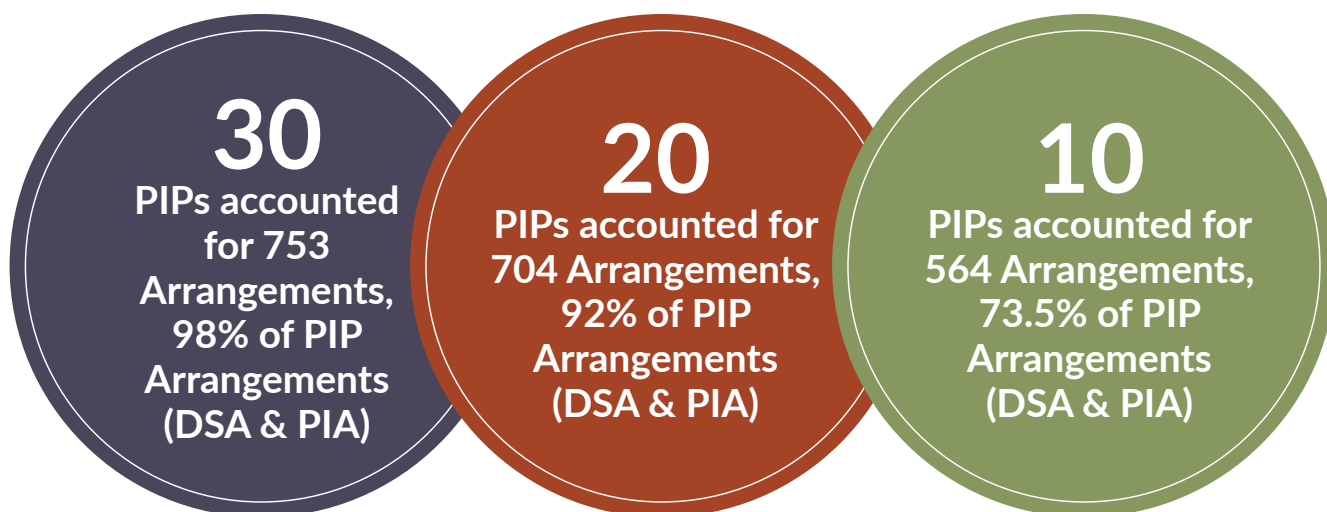


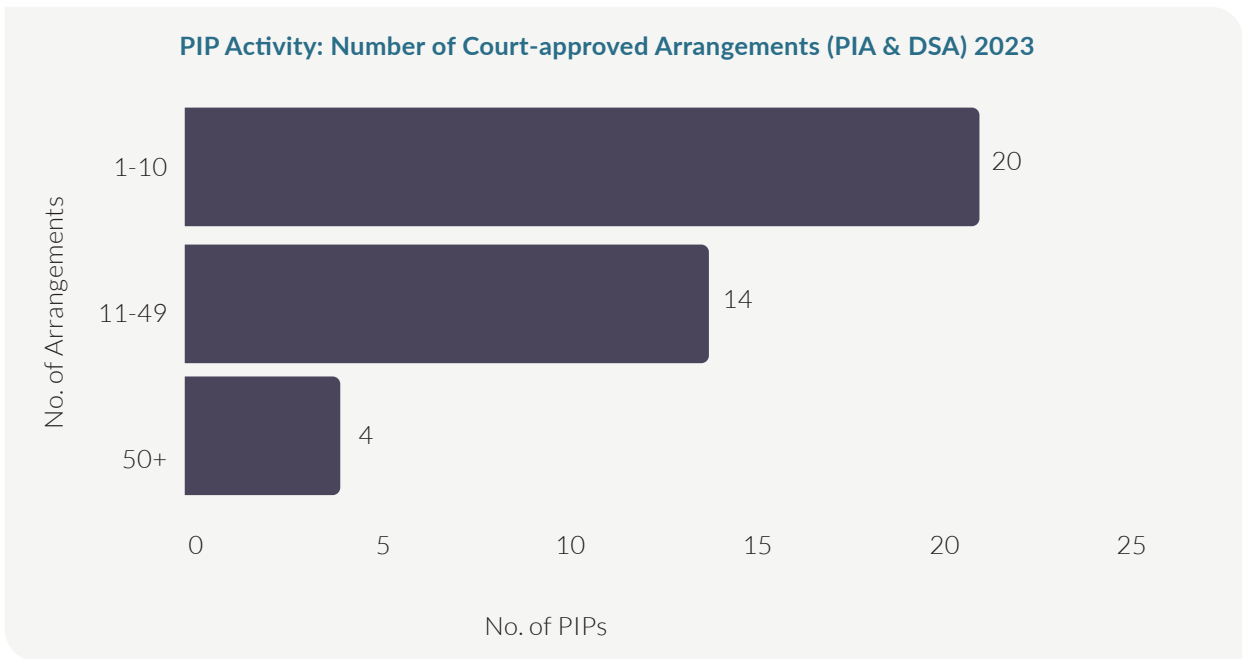
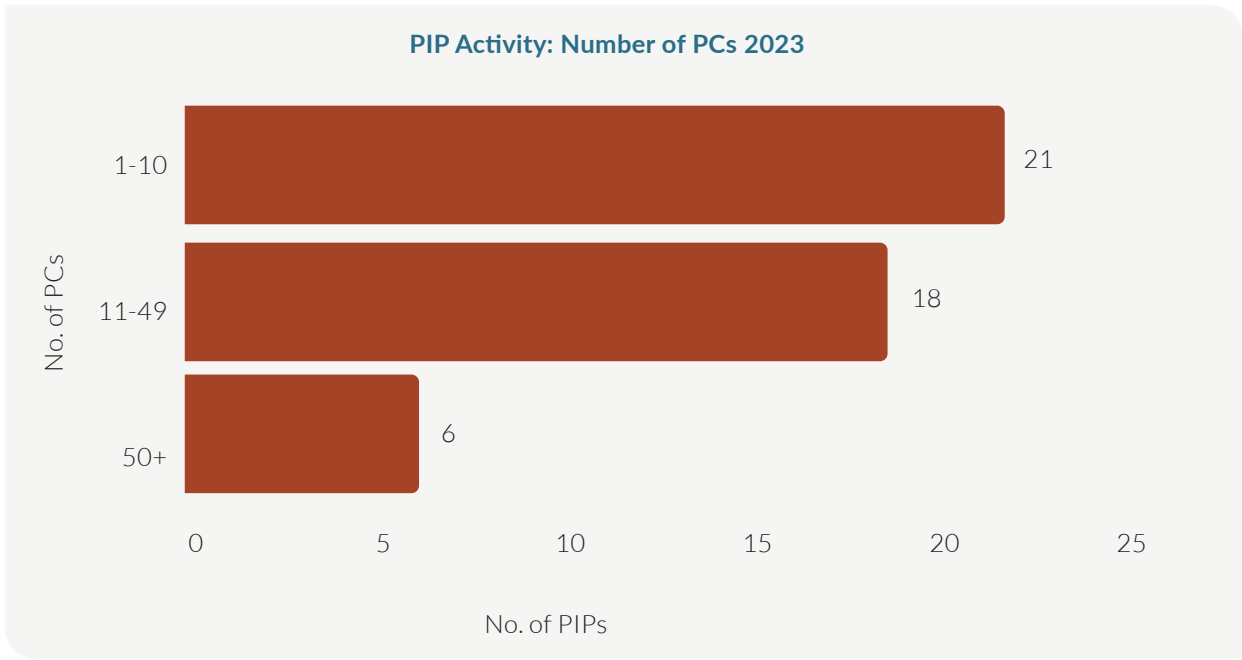
Court-approved Arrangements Down 13.8% in 2023

The number of Arrangements approved by the courts decreased in 2023, from 1,078 to 929. Due to the time lag between the issuing of a PC and the consideration of the Courts of an arrangement, there will always be a delay in the numbers of Arrangements showing a corresponding level of increase as the number of PCs issued.



12.3 PIP Performance 2022



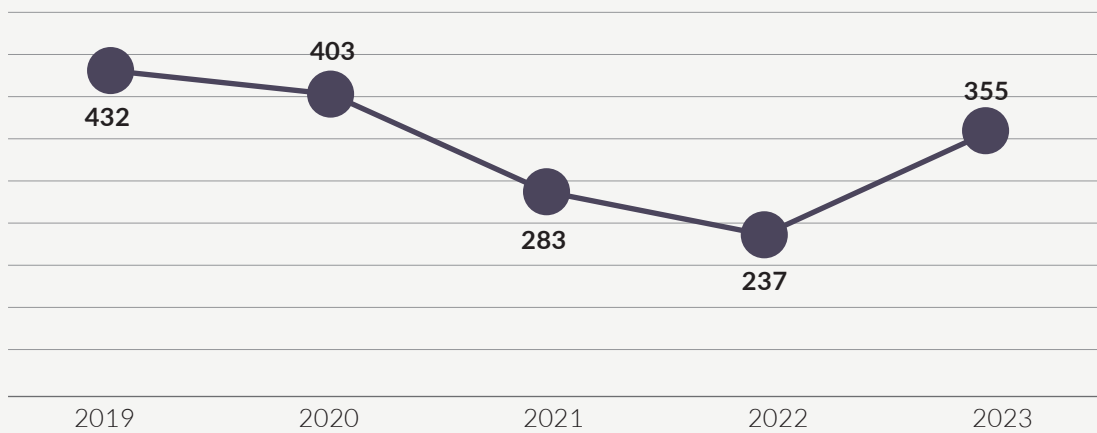


Further Statistics on s.115A Applications

There has been a total of 2,980 S.115A applications to date. There were 355 new S.115A applications submitted to Court in 2023, a 50% increase on 2022.

Year	S.115A Applications	% Change
2019	432	
2020	402	-7%
2021	282	-30%
2022	237	-16%
2023	355	50%

S.115A Applications

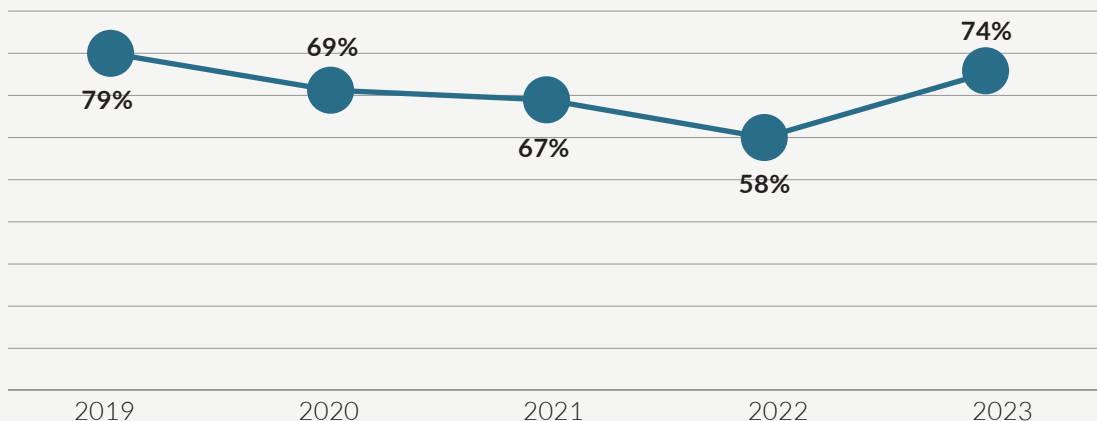


Creditor Objections

The rate at which creditors are objecting to S.115A applications has risen for the first time since 2016. 74% of applications in 2023 were objected to, up from 58% in 2022.

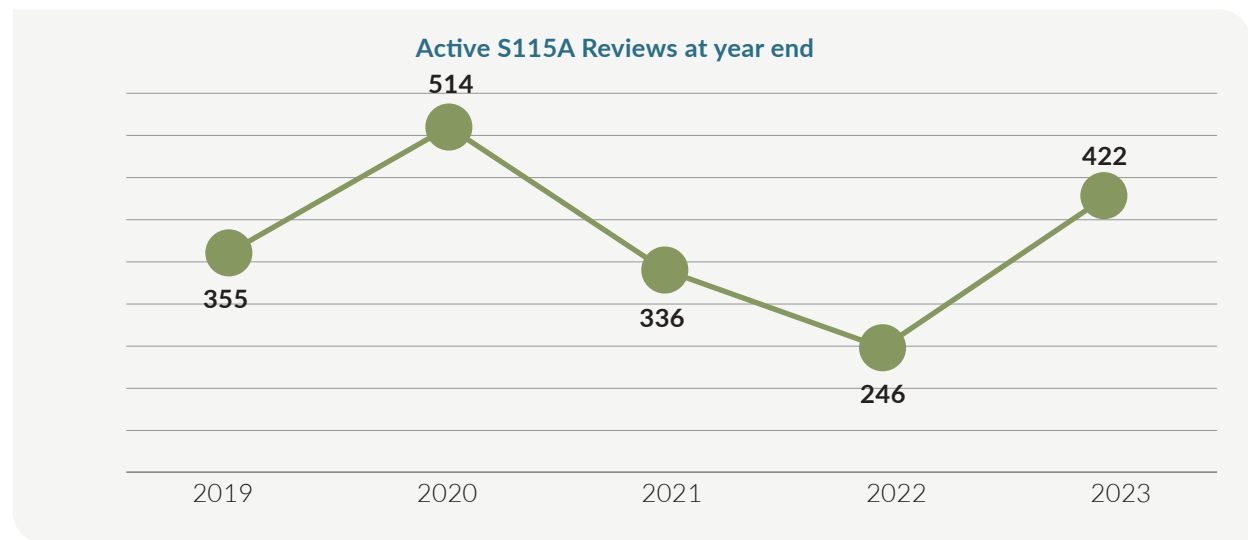
Year	Applications	Objections	Creditor Objection Rate
2019	432	342	79%
2020	402	277	69%
2021	282	190	67%
2022	237	137	58%
2023	355	264	74%

Creditor Objection Rate



Active S.115A Reviews

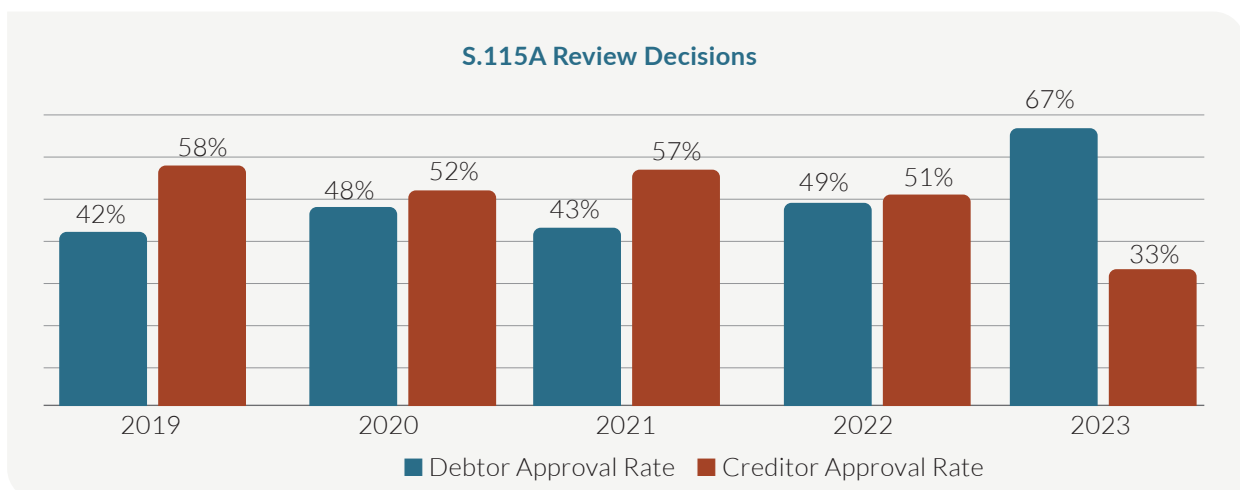
Year	Active S.115A Reviews at year end
2019	432
2020	402
2021	282
2022	237
2023	422



S.115A Review Decisions

67% of review decisions went in favour of the debtor in 2023, the most it has been since the s.115A process was introduced.


Year	For Debtor	Debtor %	For Creditor	Creditor %	Total
2019	229	42%	318	58%	547
2020	228	48%	247	52%	475
2021	205	43%	268	57%	473
2022	153	49%	160	51%	313
2023	118	67%	58	33%	176



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Appendix 3 Further Details – Significant Court Decisions

Supreme Court

Case	Main issues dealt with	Date	Hyperlink to judgment
Mansour	Inequity of creditor treatment, proof of debt.	20/04/2023	

Two significant rulings were made by the Supreme Court in relation to insolvency matters in 2023, the first time a decision of a Court had been referred to the Supreme Court on a point of law since the commencement of the Personal Insolvency Act 2012 (as amended). The summaries of the cases are set out below.

A. The meaning and application of the test for insolvency

Judge Baker delivered the judgment of the Supreme Court which related to an appeal by Promontoria Oyster DAC (the “Appellant”) of an order of the High Court on an appeal from the Circuit Court approving the coming into effect of a PIA pursuant to section 115A of the Personal Insolvency Act 2012 (as amended) (the “2012 Act”).

The Supreme Court granted leave to appeal, being satisfied that the issue identified by the Appellant met the threshold of exceptional circumstances for a further appeal.

The primary question for consideration in the appeal concerned whether the respondent to the appeal (the “debtor”), was insolvent within the meaning of the 2012 Act and that question turned on the meaning of the phrase “readily realisable asset” in the context of insolvency and section 99(1)(d) of the 2012 Act.

Background to the Appeal

The Circuit Court made an order pursuant to section 115A of the 2012 Act approving the coming into effect of the debtor’s proposed PIA, notwithstanding that it had not been approved at

the statutory meeting of creditors. The Appellant objected to the approval of the PIA on the ground, inter alia, that the debtor did not meet the threshold requirement of being insolvent under the 2012 Act.

The debtor is a farmer and operates a farming business over eleven folios totalling approximately 190 acres. The debtor is also the owner of a rental property on a separate folio.

The debtor is indebted to the Appellant on foot of two separate loan facilities. The Appellant is the largest creditor of the debtor and holds security over some, but not all, of the lands of the debtor, including the folio lands on which the debtor’s principal private residence (“PPR”) is situated. The Appellant argued that the sale of lands would generate ample funds to repay the debtor’s debts and restore him to solvency.

The PIA provided for a restructure of the debtor’s liabilities to the Appellant and for a full discharge of the debts to the other creditors. The liabilities to the Appellant are to be paid in full, but the term for the debt due to the Appellant is to be extended to a period of thirty years. For the first 36 months of the PIA, 50 per cent of the debt is to be warehoused. The PIA does not require the debtor to dispose of any real property assets, or of his chattels and items of personality, including the farm machinery and animals used in his farming enterprise.

In the Circuit Court, Judge Enright held that the debtor was insolvent for the purposes of the 2012 Act and that the agricultural land belonging to him was not a “readily realisable asset” for the purposes of assessing his solvency.

On appeal before the High Court, Judge Owens considered that three questions arose for consideration in determining whether the debtor was insolvent within the meaning of the 2012 Act:

1. The meaning of the statutory test for insolvency;
2. Whether only realisable assets can be used to determine solvency; and
3. Whether evidence about future funding was credible.

He adopted the test that only “readily realisable” assets fell for consideration in the calculation of insolvency for the purposes of the 2012 Act. Judge Owens held that the land and other assets of the debtor, referred to as “tools of the trade”, including his PPR, would take a “considerable amount of time to sell”, and that to compel the debtor to dispose of these assets to satisfy the debt would result in the loss of his livelihood, and thus fell to be excluded from the PIA under section 99 of the 2012 Act. The appeal of the Circuit Court order was therefore dismissed by Judge Owens in the High Court.

The Appeal before the Supreme Court

The central legal issue before the Supreme Court concerned the meaning of “insolvent” for the purposes of the 2012 Act or what is precisely meant by the statutory definition that a person is insolvent if he or she is “unable to meet one’s debts when they fall due”. The issue arose because the value of the assets of the debtor far exceeded the amount of his liabilities. The Appellant argued that if the debtor disposed of assets, he could discharge his liabilities in full and remain a person of substantial net worth. The debtor argued that should he dispose of his assets he would not, as a result, achieve a return to solvency because his farming enterprise would thereafter be unsustainable and not viable.

Judge Baker in considering the meaning and application of the test of insolvency in the 2012 Act was of the view that it is relevant that the Oireachtas deliberately chose to define insolvency by reference to an inability to pay debts as they fell due, thereby introducing a temporal element to the analysis, rather than testing solvency by the mathematical calculation of whether assets exceed liabilities. She found that *“the test for insolvency is not so narrow as to mean that a debtor is insolvent if he or she cannot pay liabilities as they fall due from immediately accessible or available cash assets. The legislation envisages an inability to pay in the broad sense and requires an assessment of available assets and whether they can in fact be used to pay a liability. The test is one of timing and of the nature of the assets”*.

Judge Baker determined that a debtor ought not to be considered insolvent, even where his cash flow does not allow him to meet his current liabilities, provided that he has assets which could be sold without legal impediment in relatively short order. She was of the view that this is particularly so in respect of assets for which there is an established,

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liquid market, such as that which exists in real property.

She was further of the view that the appropriate test requires a court to have regard to the speed and ease with which an asset may be realised for the purposes of ascertaining whether the asset is “readily realisable” for the purposes of ascertaining insolvency.

Consequently, Judge Baker held that in the application of the statutory cash flow test in the High Court, Judge Owens had sufficient evidence before him on which to determine that the debtor was insolvent, having regard to the impediments in the particular circumstances of the debtor to a swift sale of assets and that the debtor’s current income was insufficient to meet his current liabilities.

Judge Baker also analysed the particular role played by a PIP in the operation of the 2012 Act and considered that the role placed the PIP in the position of independent intermediary by which a PIP has an obligation to both creditor and debtor, the ISI and to the relevant court.

Judge Baker determined that the consideration of an application under section 115A of the 2012 Act requires that the court must be satisfied that the proposed arrangement is not “*unfairly prejudicial to the interests of any interested party*”, and the exercise of judicial functions involves a balancing of interests, and an assessment of reasonableness and proportionality.

Judge Baker held that “*nothing in section 115A [of the 2012 Act] mandates the absolute protection of the PPR, and the section is rather one which permits the continued protection of ownership or occupation of a PPR provided that it is reasonable, and not unfairly prejudicial to the creditors. Equally, the [2012] Act does seek to preserve the business and employment assets of a debtor, so that he or she may continue to be an economic actor in the State, but the protection available to the debtor to resolve debt inter alia by a rescheduling or reduction in liabilities, and the rights and interests of creditors, including property interests, requires an analysis of whether the proffered solution is proportionate, not excessive and affords protection to the creditor by not being unduly prejudicial*”.

Judge Baker stated that it was unsatisfactory that there “*is in the present appeal no useful evidence regarding the possibility that the lands of the debtor could be sold or that part of his lands could be sold. There was no proper analysis...*” of the liabilities of the debtor or burdens on the property folios. Judge Baker was therefore of the view that a robust analysis of the facts was not conducted to properly balance the competing rights and obligations of the parties, nor was there a sufficient and robust assessment of whether the proposed PIA was sustainable, fair and equitable in accordance with the 2012 Act.

Having regard to the fact that a court considering an application under section 115A of the 2012 Act must itself be satisfied that a PIA is fair to the creditors who will be affected by a rescheduling or forgiveness of some or all of its debts, Judge Baker considered that the present application should be returned to the High Court for

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Judge Baker held that “nothing in section 115A [of the 2012 Act] mandates the absolute protection of the PPR, and the section is rather one which permits the continued protection of ownership or occupation of a PPR provided that it is reasonable, and not unfairly prejudicial to the creditors.

proper consideration of whether the statutory requirement of fairness and the other provisions in section 115A of the 2012 Act are satisfied on the facts of the case.

Accordingly, while the Supreme Court held that the debtor was insolvent within the meaning of the 2012 Act and thereby allowed the appeal in part, the Court ordered that the application under section 115A of the 2012 Act be remitted to the High Court for further determination.

B. Proof of Debt and Locus Standi to lodge an objection to a PIA

Judge Dunne delivered the judgment of the Supreme Court which considered whether a creditor (the “*Appellant*”) who has failed to prove their debt under section 98(2)(a) of the Personal Insolvency Act 2012 (as amended) (the “2012

Act”), has locus standi to object to the coming into effect of a PIA pursuant to section 112 of the 2012 Act. The ISI being a notice party to the proceedings did not intend to advocate for a construction of the 2012 Act which was favourable to either party but wished to be of assistance to the Court.

Background to the Appeal

The Appellant is a creditor of the first named respondent (the “debtor”) and failed to file a proof of debt when requested to do so by the Debtor’s PIP, the second named respondent. The PIP informed the Appellant in accordance with section 98(2)(b) of the 2012 Act that a creditor who does not file a proof of debt is not entitled to vote at a creditors’ meeting or share in any distribution made under the PIA.

The Appellant disputed the debtor’s Prescribed Financial Statement (“PFS”) and inter alia claimed that the debtor was not insolvent and that his PFS was incorrect. The Appellant, through his solicitor, requested an extension of time to lodge a proof of debt. This request was denied by the PIP and the Appellant was called on to file a proof of debt within the prescribed time period. The Appellant once more contended that the debtor was abusing the insolvency process and that the information contained in the PFS was not complete and accurate. A second PFS was completed by the debtor and on the same date, notice of the creditors’ meeting issued to the Appellant together with the documentation required pursuant to section 107 of the 2012 Act. The Appellant issued correspondence to the PIP to indicate that he would not be attending or voting at the creditors’ meeting. The Appellant, while still failing to prove his debt, issued a notice of motion seeking leave to execute against the debtor pursuant to section 96(3) of the 2012 Act and an order refusing the coming into effect of the PIA pursuant to section 115(2)(b) of the 2012 Act. The PIA was subsequently approved at the creditors’ meeting and the PIP wrote to all creditors, including the Appellant, informing him that the PIA had been approved and if an objection was forthcoming, a notice of objection in accordance with section 112(3) of the 2012 Act could be lodged within 14 days. The Appellant lodged a notice of objection in accordance with section 112(3) of the 2012 Act.

The Circuit Court dismissed the Appellant’s motion and objection to the PIA, holding that the Appellant had no locus standi to pursue an objection to the

PIA as he had not proved his debt in accordance with the procedure set out in the 2012 Act. Consequently, the Circuit Court did not consider the substantive objections raised by the Appellant and approved the PIA. The Appellant appealed to the High Court, arguing that he was a creditor who had standing to make an objection under section 120 of the 2012 Act, that the same constitutional rights as those in *Re Varma* [2017] IEHC 218 were engaged, and furthermore that the only restrictions on the participation of a creditor who failed to prove their debt were contained in section 98(2)(b) of the 2012 Act. Judge Owens in the High Court upheld the decision of the Circuit Court that the Appellant did not have locus standi to make an objection as he had failed to prove his debt and also did not consider the substantive objection made by the Appellant.

The Appeal before the Supreme Court

The Appellant was granted leave to appeal to the Supreme Court as the Court considered that this case raised important questions on the interpretation of the 2012 Act.

The Appellant’s overarching submission was that the High Court gave an overly broad interpretation to section 98(2)(b) of the 2012 Act and that the decision of the High Court had the effect of limiting a creditor in a third way that is not envisioned by the 2012 Act. The Appellant further argued that section 120 of the 2012 Act must be read alongside section 112 of the 2012 Act as otherwise a creditor who has not proved his debt cannot object, even though that same creditor is entitled to be informed of his right to object. It was submitted by the Appellant that this is an absurd result that could not have been intended by the Oireachtas.

The debtor submitted that when the words of section 120 of the Act are read in the context of the 2012 Act, it is clear that a creditor stands outside of the arrangement until they prove their debt, and is not, in fact, a creditor for the purposes of the 2012 Act at all. The debtor further argued that section 112 of the 2012 Act as a whole indicates that only “creditors concerned” are entitled to notice of their right to object to the approval of a PIA. It was submitted on behalf of the debtor that “concerned” suggests that the creditor has proved their debt and is entitled to a distribution under the PIA and that a creditor who has not proved their debt is not “concerned” with the PIA at all.

The PIP's submissions were in essence that as the Appellant had failed to prove his debt and was thereby not entitled to share in any distribution or vote at the creditors' meeting, he fell outside the definition of "creditor" within the meaning of the 2012 Act.

The Supreme Court considered the interpretation of sections 98 and 112 of the 2012 Act. Judge Dunne was of the view that section 98(2)(b) of the 2012 Act is unambiguous in its terms setting out the consequences for a creditor who does not comply with a PIP's request to furnish a proof of debt and that there is no category of creditors described as non-proving creditors that are required to be treated differently by virtue of any of the provisions of the 2012 Act, save for those contained in that section. Furthermore, Judge Dunne observed that section 98(2)(c) of the 2012 Act clearly envisages that a creditor may take part in the process subsequent to the approval of a PIA or after a distribution has been made, if granted an extension of time within which to furnish a proof of debt.

Judge Dunne considered submissions in respect of the phrase "each creditor concerned" in sections 112(1) and 112(1A) of the 2012 Act, and whether it had any bearing on the question of locus standi. Judge Dunne rejected the contention that only creditors who have proved their debt and are thereby entitled to participate in creditors' meetings and share in the dividend are "creditors concerned" for the purposes of lodging an objection under section 112(3) of the 2012 Act. Rather, Judge Dunne held that the phrase "creditor concerned" encompasses those who are affected by the process of the PIA and that the use of the word "concerned" did not appear to her to alter the status of the creditor in any given situation. Judge Dunne held that it is clear from the provisions of section 116(2) of the 2012 Act that there is no dispute whatsoever that once a PIA comes into effect, a specified creditor with a specified debt is a creditor concerned and is bound by the terms of the PIA, notwithstanding that they have chosen not to prove their debt. She determined that it cannot be said in those circumstances that the creditor has "dropped out" of the process as they are bound by the process and cannot recover the debt due to them. Judge Dunne stated that "as a matter of fairness, it must be the case that in order to be in a position to make an objection, a creditor, even one who has not proved their debt, requires to be notified of the matters provided for in section 112 [of the 2012 Act]". Judge Dunne was of the view

that "it is hard to conceive of any similar situation in which a party bound by a decision of a court, such as the one in this case, would not have a right to be heard before a final decision was made".

Judge Dunne held that given the presumption against unclear changes in the law, had the Oireachtas wished to exclude a creditor, one would have expected that this would have been done in express terms by means of a specific prohibition in the 2012 Act and not in some indirect or oblique fashion.

Judge Dunne was therefore satisfied that in the absence of express language to the contrary in the 2012 Act, a creditor in the position of the Appellant, who did not file a proof of debt, is entitled to lodge an objection and thus, has the requisite locus standi to make such an objection to a PIA and be heard on foot of that objection, thereby allowing the appeal of the Appellant. She also concluded that there is nothing in the 2012 Act which precludes a creditor who has not proved his or her debt when requested to do so by the PIP from doing so at a later stage in the terms prescribed by paragraph 2 of the First Schedule of the Bankruptcy Act 1988 (as amended). Judge Dunne further held that it would therefore be appropriate for the matter to be remitted for

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Judge Dunne was of the view that "it is hard to conceive of any similar situation in which a party bound by a decision of a court, such as the one in this case, would not have a right to be heard before a final decision was made".

further consideration of the issue, and the matter was adjourned for submissions from the parties within a period of two weeks as to which court to remit the matter and in respect of any ancillary orders to be made by the Supreme Court.

High Court

Case	Main issues dealt with	Date	Hyperlink to judgment
O'Reilly	Mortgage extension at low fixed rate of interest	11/5/2023	No written judgment

Procedural requirements, insolvency of debtor

This matter concerned an appeal by creditors from a judgment of the Circuit Court at which the Court approved the coming into effect of a Debt Settlement Arrangement (“DSA”) pursuant to the Personal Insolvency Act 2012 (as amended) (“the 2012 Act”). The creditors were excluded by the PIP from the debts included in the DSA. The creditors who, at the time of the DSA, represented 71.6% of the debtor’s indebtedness neither participated in a creditors’ meeting nor participated in the resulting DSA, which was approved on a single creditor basis.

The issues relating to the appeal concerned whether the Court was satisfied that the debtor was insolvent and thereby eligible for a DSA, whether the DSA unfairly prejudiced the interests of the creditors to the extent that it was unjust, and whether the decision by the PIP to exclude the creditors’ debt on the grounds that they had not proved their debt was in accordance with the procedural requirements of the 2012 Act. The creditors also submitted that it was incorrect for the PIP to require them to file a proof of debt.

Judge Sanfey dealt firstly with the third issue as it would only be necessary for him to consider the first and second issue in the event that the third issue was not decided in the creditors’ favour.

Background

The creditors are creditors of the debtor due to a judgment of 11 July 2018 for €91,300 together with taxed legal costs of €43,351.58, totalling €134,651.58. The judgment arose from the debtor’s default in relation to a commercial agreement with the creditors.



The draft DSA showed that the judgment in favour of the creditors was included in the proposal and they would receive payments over five years resulting in payment of 100% of their debt.

The creditors issued bankruptcy proceedings against the debtor. The debtor’s solicitors wrote subsequently to the creditors’ solicitors by email enclosing a “Draft Debt Settlement Arrangement” and a summary of affairs. The draft DSA showed that the judgment in favour of the creditors was included in the proposal and they would receive payments over five years resulting in payment of 100% of their debt. The draft DSA specifically acknowledged the debt owing to the creditors as “accepted”. The debtor applied for a Protective Certificate and an adjournment of the bankruptcy proceedings was granted on consent.

By email on behalf of the PIP dated 4 November 2020, the debtor’s solicitors and creditors’ solicitors were advised that a PC had issued and were asked “can you confirm you are willing to accept these documents by way of email”. A reminder was sent to the creditors’ solicitors on 6 November 2020, who replied stating “...we can accept by email given the circumstances”. Later that afternoon, an email was sent on behalf of the PIP which attached four documents: a letter of 4 November 2020 to the creditors’ solicitors, the PC, the debtor’s application for a PC and the debtor’s prescribed financial statement. The letter from the

PIP to the creditors' solicitors dated 4 November 2020 requested that a proof of debt be provided within 14 days; however, the letter referred to sections 96, 98 and 101 of the 2012 Act which are applicable to a PIA rather than a DSA. The creditors acknowledged by affidavit that there was no response to this letter "...as unfortunately it was overlooked" and averred that the email that was attached to the letter stated "[p]lease find attached the Protective Certificate for the debtor and supporting documentation" and did not specifically refer to a notice for the purposes of the 2012 Act.

The debtor's only other creditor proved their debt.

Compliance with procedural requirements

Judge Sanfey referred to section 64(1) and section 134(1)(a) of the 2012 Act. Section 134 of the 2012 Act sets out provisions relating to the service of notices on a natural person such as creditors or their solicitors. Judge Sanfey posed the question of what exactly was being accepted by email and what was intended by the phrase "these documents" and "supporting documentation". Judge Sanfey noted that section 64(2)(a) of the 2012 Act does not expressly require "written notice" of a requirement to file a proof of debt to be given, and section 64(2)(b) makes it clear that serious consequences ensue for a creditor who, having been requested to do so by a PIP, does not comply with that request. Judge Sanfey further stated that in accordance with section 134(1)(a) of the 2012 Act, an "electronic alternative" to service of the notice must be "agreed in advance between the person giving and the person receiving the notice...". Judge Sanfey stated that the emails from the PIP did not expressly or otherwise seek agreement to service by email of the notice required under section 64(2) of the 2012 Act and the use of the phrases "these documents" and "supporting documentation" suggested that they were relevant to the grant of the PC.

Judge Sanfey further noted that the letter of 4 November 2020 referred throughout to section 98 of the 2012 Act, which is solely concerned with a PIA and not a DSA.

Conclusion

Judge Sanfey considered the reference to the incorrect section of the 2012 Act in the letter of 4 November 2020 to be a significant defect in the notice. Judge Sanfey was not willing to overlook the fact that the notice was not properly served

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Judge Sanfey considered the reference to the incorrect section of the 2012 Act in the letter of 4 November 2020 to be a significant defect in the notice.

in the absence of an express agreement to serve the notice by email, given the extremely serious consequences of the notice for the creditors. He stated that the notice was in any event defective in relying on the wrong statutory provision in a different chapter of the 2012 Act, which was a significant defect, and was therefore fatal to its validity.

Judge Sanfey wished to make it clear that the PIP was entitled to require creditors to prove their debt in circumstances where they had a judgment that was included in the prescribed financial statement and draft DSA. He furthermore did not see any difficulty in principle with the 14-day limit imposed by the PIP. He noted that the PIP could, perhaps, before the expiry of the 14-day period, have reminded the creditors' solicitors that they were required to file a proof of debt in order to be able to vote for or against the DSA. However, Judge Sanfey noted that the PIP was under no obligation to do so.

Judge Sanfey considered that it would be unhelpful to express a view on whether the debtor was insolvent and if the DSA unfairly prejudiced the interest of the creditors. He therefore allowed the creditors' appeal and their objection to the DSA.

Circuit Court

Case	Main issues dealt with	Date	Hyperlink to judgment
1. O'Connor	Meaning and application of test for insolvency	30/11/2023	
2. O'Driscoll	Locus standi of creditor to object	30/11/2023	

Extended mortgage at fixed interest rate

This case concerned a married couple (“the debtors”), one of whom was employed while the other was in receipt of an invalidity pension. The couple had 2 dependants. Their mortgage arrears arose after a loss of employment and commencing self-employment which had to cease during Covid. The wife, in this case, fell into ill-health as a result of their financial situation and is on invalidity pension. Her husband had secured work as a lorry driver.

The debtors were paying a very large rate of interest of 5.5% on a mortgage of €286,000, which contributed to the level of their debt. The remaining term was 156 months.

The proposal was to be a 10-month arrangement, with a write-down of just over €6,000, less the monthly dividend for unsecured creditors (in this case only Pepper), and to pay 2.5% interest-only for the 10 months on an agreed CMV of €280,000. At the end of that period, the unsecured portion of the mortgage would be written off. The debtors would then have their mortgage restructured to a 25-year (300 months) mortgage on €280,000 at a fixed rate of 2.5% per annum, with Pepper to be repaid in full.

A counterproposal was offered of a 10-month arrangement, write-down to €280k, interest rate of 3% variable and term extended to 300 months.

The PIP argued that given the nature of the debtors’ income and circumstances, an Arrangement where it could be subject to possibly major fluctuations would render it unaffordable,

but in circumstances of a fixed rate, it was affordable, and therefore justifiable in this case.

Pepper argued that a fixed rate for 25 years was practically unheard of in the Irish market, and that it did not offer fixed rates to its customers. They also argued that it would be fundamentally unfair for the insolvency process to foist this rate on them. Pepper also argued that the rate took no account of interest rate and cost of living fluctuations, and that Pepper might end up getting a negative return for a period of time under the arrangement. They felt there would be a larger buffer available to the debtors when their children became independent, and that there would be a level of affordability to pay at a higher rate. While accepting that rates could be fixed (Re Hayes), they argued there was no justification in this case.

The Court was satisfied, having looked at the figures, that there would be a buffer of approx. €283 per month. Judge O’Malley Costello noted the purpose of the Act was to try to keep people in their principal private residence (“PPR”) if it did not unfairly prejudice the creditor. While noting the main issue between the parties as being the extended duration of a low fixed rate of interest, she said that Pepper had not offered any evidence to support their contention that they would suffer any clear loss on its application, so she approved the Arrangement, further noting that the decision was on all fours with the Hayes decision of the High Court in 2017. The judgment was not appealed.

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Appendix 4 Further Details and Key Statistics – Bankruptcy

Breakdown of Bankruptcy Realisations

Year	For Debtor
Proceeds from Land & Buildings	2,354,993
Encashment of Pension Plans	646,012
Proceeds from debts due	560,277
Rental income from properties	617,997
Income Payment Orders	244,605
Sale of Securities	28,996
Miscellaneous Income	672,946
Bank Accounts Remitted	46,486
Other Sources	526,343
	5,698,655

Asset Realisations

Assets with a value of approximately €5.699 million were realised into 412 bankruptcy estates. €3.344 million was received from moveable assets and other sources and €2.355 million was realised from the sale of immovable assets.

Investigations and Asset Recovery

Bankruptcy is a process that delivers debt relief to bankrupts while transferring all their assets to the OA. The integrity of the system depends on bankrupts making full disclosure and cooperating with the OA. This OA will continue his policy to vigorously pursue the recovery of assets not declared.

During 2023, 4 new investigations were undertaken; in many instances investigations have resulted in the identification of undisclosed assets such as bank accounts, cars, properties, rental income, and transfers of assets prior to bankruptcy (these investigations resulted in realisations of c.€3million in 2023).

Enforcement and Compliance

The Enforcement and Compliance Team was set up to manage petitioning creditor cases, manage properties in which the OA has rental interest, inspect bankruptcy assets and carry out asset seizures in situ, and ensure that bankrupts comply with the terms of their bankruptcy, and, ensure they cooperate fully with the OA. During 2023, proceedings for non-cooperation led to bankruptcy term extension orders in 9 cases. Of these 9 orders, 5 were interim orders and 4 were final orders. The final extension order terms granted were for durations of between 7 months and 7 years.

Bankruptcy Payment Order

BPOs are orders of the Court for the payment by the bankrupt of a defined sum on a monthly basis to the OA for a maximum period of three years. The order amount is calculated as the surplus of income earned by the bankrupt on a monthly basis over the reasonable living expenses allowed to them under the RLE Guidelines (issued by the ISI) and any allowable special circumstances expenses.

In 2023, 10 BPOs were put in place through the High Court resulting in an average monthly figure of €864.02 per case being made available for the benefit of creditors.

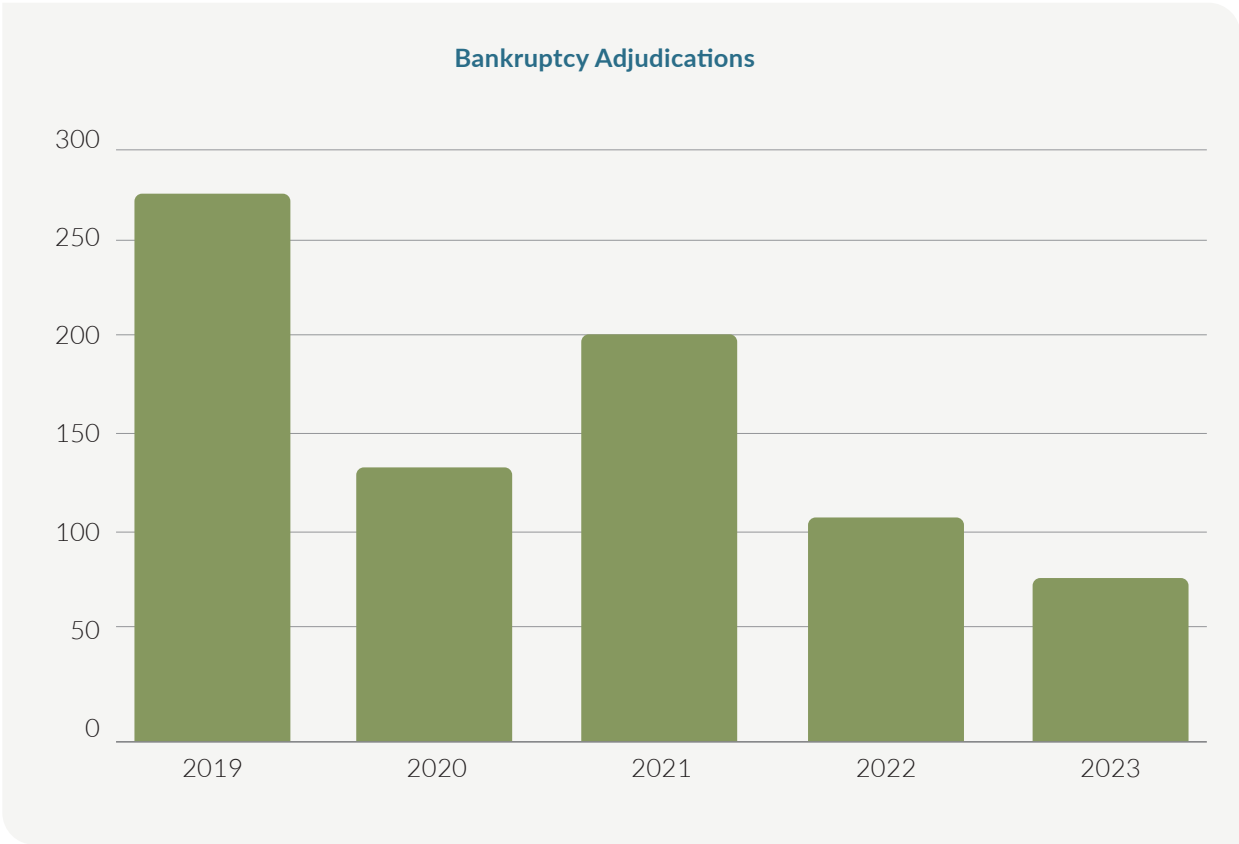
Family Home/Principal Private Residence (PPR)

32 family homes/PPRs re-vested in former bankrupts under the 3-year rule. Bankruptcy Division completed 2 settlements with either the former bankrupt or the bankrupt's spouse in relation to these properties. The OA took 2 applications to sell his interest in the Family Home/PPR during 2023.

Payment of Dividends

Dividends with a cumulative total of approximately €0.959 million were paid out to 65 creditors in 19 cases by year-end.

Adjudications by Year



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Appendix 5 Further Details and Key Statistics – Policy and Regulation

Breakdown of Bankruptcy Realisations

Summary of Status of Authorisations	
Authorised PIPs at end of year	64
New authorisations during 2023	0
Renewal of authorisations during 2023	16
Non-renewal of authorisations during 2022	4
Renewal of authorisation – application in review	1
Cessation of authorisation before expiry	1
Als at end of year	10
Responsible persons linked to AI authorisations	75

An authorisation as a PIP normally lasts for three years and the first authorisations of PIPs occurred in 2013.

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Appendix 6 Glossary of Terms

The “1988 Act”

Bankruptcy Act 1988

The “2012 Act”

Personal Insolvency Act 2012

The “Bankruptcy Acts”

Bankruptcy Acts 1988 to 2015. A consolidated text, prepared by the Law Reform Commission, can be found here.

The “Personal Insolvency Acts”

Personal Insolvency Acts 2012 to 2021. A consolidated text, prepared by the Law Reform Commission, can be found here.

Abhaile - Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears

Abhaile is a free service to help homeowners find a resolution to home mortgage arrears. It provides a range of services to help people in mortgage arrears to deal with their situation and offers free access to financial, legal and insolvency advice.

Approved Intermediary

An Approved Intermediary (AI) is a person or class of persons authorised by the ISI to support a debtor to make an application for a Debt Relief Notice. A list of AIs is available on the ISI’s website.

Bankruptcy

Bankruptcy is a personal insolvency process available under the Bankruptcy Acts where a person cannot pay his or her debts. In most cases, once a person has been made bankrupt, an official (the “Official Assignee”) takes control of the person’s property and realises that property to discharge debts of the bankrupt person.

Bankruptcy Payment Order (BPO)

BPOs are orders of the Court for the payment by the bankrupt of a defined sum on a monthly basis to the OA for a maximum period of three years. The order amount is assessed as the surplus of income earned by the bankrupt on a monthly basis over the reasonable living expenses allowed him or her under the Reasonable Living Expense Guidelines issued by the ISI.

Debt Relief Notice (DRN)

A DRN is a solution for people with low income, no mortgage and very few assets. This solution allows for the write-off of debts up to €35,000 and can be applied for through an AI.

Debt Settlement Arrangement (DSA)

A DSA allows a debtor settle their unsecured debts over a period of time (usually up to five years), with any remaining balance written off. Deep Dive Analysis Detailed review of borrower circumstances, arrangement proposal (if any) and outcomes for Abhaile vouchers redeemed in Q3 of any given year.

The “Department”

Department of Justice.

Formal Arrangement / Solution

Statutory debt solutions available.

Informal Arrangement / Solution

Debt solution outside of the statutory solutions available.

Insolvency Service of Ireland (ISI)

The ISI is a statutory body established under the 2012 Act. The functions of the ISI are set out in section 9 of the 2012 Act.

Official Assignee (OA)

The Official Assignee is an officer of the Court, based in the ISI, whose function is to get in and realise the property of a bankrupt, to ascertain the debts and liabilities and to distribute the assets in accordance with the provisions of Bankruptcy Acts.

Personal Insolvency Arrangement (PIA)

A PIA, while similar to a DSA in respect of unsecured debts, also deals with secured debts. Secured debts are restructured or settled during a PIA. It contains a number of protections for debtors in mortgage arrears who wish to retain their family home where possible.

Personal Insolvency Practitioner (PIP)

A personal insolvency practitioner (PIP) is a person authorised by the ISI under Part 5 of the 2012 Act to act as a PIP. A PIP liaises between the debtor and their creditors in relation to a PIA or DSA. A list of PIPs is available on the ISI website.

Protective Certificate

A Protective Certificate is a certificate issued by the court that offers a period of protection to a debtor from creditors when applying for a DSA or PIA. Creditors cannot contact the person during this time. In general, a Protective Certificate remains in force for 70 days but it may be extended in limited circumstances.

Responsible Person

A responsible person is a person who provides approved intermediary services on behalf of the Approved Intermediary.

Reasonable Standard of Living / Reasonable Living Expenses

The ISI is required, under section 23 of the 2012 Act, to prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses. The guidelines are relevant to the assessment of a debtor's eligibility for a DRN, the formulation of DSA and PIA proposals and the Court's making of a bankruptcy payment order. In particular, they are intended to give direction to AIs and guidance to PIPs in assessing, for relevant provisions of the Act, what may be considered 'reasonable' in the context of a standard of living and living expenses. The guidelines are available on the ISI's website.

Senior Management Team

In the absence of a Statutory Board, the ISI has a Senior Management Team that meets under the chairmanship of the Director. The role of the Senior Management Team is to provide strategic leadership, direction, support and guidance for the ISI and promote commitment to its core values, policies and objectives.



ISI

Seirbhís Dóchmainneachta
na hÉireann
Insolvency Service
of Ireland