# Opening statement to Joint Oireachtas Committee on Finance, Public Expenditure and the Taoiseach on the topic of Non-Banks/ Vulture Funds

**MARCH 2023**

## 1. Introduction

Free Legal Advice Centres (FLAC) welcomes the opportunity to contribute to today's (and last week's) discussion. We are happy to be here today alongside the Money Advice and Budgeting Service (MABS), with whom we have a long association.

For the Committee's general information, FLAC has recently published a series of (four) papers on matters relating to a wide range of consumer debt issues called Pillar to Post (PtP), compiled by Paul Joyce, Senior Policy Analyst, with substantial input from our colleague, Dr Stuart Stamp, Independent Social Policy Researcher and Research Associate, NUI Maynooth.

The initial impetus for these papers was the arrival of Covid and the concerns and worries that it created for households in precarious employment or business, on low incomes and already under financial pressure. We take very much a rights based approach to this work as we believe that consumers of financial services, in particular credit, are entitled to substantial levels of protection to reflect their economic contribution. These papers are as follows:

**Paper One - Setting the Context: A critical examination of data relating to consumer debt, welfare, labour market and the economy.** (Published June 2021)

**Paper Two - Ten years and counting: Conclusions from a decade of attempting to resolve family home mortgage arrears in Ireland.** (Published August 2021)

**Paper Three – Assessing current research data on the payment breaks on credit agreements offered by credit institutions as a result of the Covid 19 pandemic.** (Published November 2021)

**Paper Four - A review of debt resolution mechanisms and the debt support services: With final recommendations for reform.** (published November 2022)

The final paper contains a wide range of recommendations for reforming the existing debt resolution mechanisms in the Irish legal system, in addition to improving the debt advice and associated supports provided to those in financial difficulty.

## 2. Overview

It is almost four years since this Committee considered a Private Members Bill tabled by Pearse Doherty TD – the 'No Consent, No Sale' Bill 2019. This Bill broadly sought to reverse the position that the original lender, by virtue of a contractual power seldom if ever explicitly brought to the borrower's attention and of which the borrower was generally unaware, could sell on his/her loan to an entity of its choosing without consultation or consent, explanation or justification.

This organisation made a submission on the Bill and attended a sitting of this Committee to further discuss it on 21st March 2019. Our broad recollection is that this Bill received some sympathetic reaction but did not progress any further. (Former) Governor of the Central Bank of Ireland (CBI), Philip Lane suggested that the Bank's:

*"…twin focus on resilience and consumer protection explains why we have grave concerns about the "No Consent, No Sale" bill. Given that the consumer protection framework is identical whether a loan is held by a bank or a non-bank, the bill would not add any extra degree of regulatory protection for consumers. At the same time, it would severely damage resilience, since the transferability of loans is a central feature in a modern financial system. In addition to its impact on loan sales, the bill would limit the ability of banks to securitise loans or provide collateral to obtain liquidity from the inter-bank market or from the eurosystem[1].*

The suggestion in 2019 that the consumer protection framework is identical whether a loan is held by a bank or a non-bank has not been borne out. In an Irish Times opinion piece a few weeks ago, Brendan Burgess, of Ask About Money, who also appeared before this committee last week, pointed out that some 113,000 mortgage loans have been sold by the main banks to vulture funds in recent years, with a reassurance that such customers would not lose out by having their loans sold. He then went on to cite an example of the significant disparity between the variable interest rate currently charged by one fund and the far lower rate currently provided by the Bank who had sold on a significant portfolio of loans to that fund. He proposed that the existing variable rate should travel with the loan, a suggestion we agree with.

Such failure is indicative of a standard of consumer protection that is subservient to servicing the needs of the economy, the financial system and the institutions that serve it, especially as the primary responsibility for the credit boom and subsequent bust that gave rise to the Global Financial Crisis (GFC) lay with those financial institutions and their regulators in the first place, with the taxpayer picked up the tab.

The sale of loans, whether impaired or not, is now endemic in the financial system. Over the past decade, we have had three separate pieces of legislation further facilitating the growth of a loan sale and loan servicing infrastructure. These are respectively:

- Consumer Protection (Regulation of Credit Servicing Firms) Act 2015
- Consumer Protection (Regulation of Credit Servicing Firms) Act 2018
- Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022

There is to our mind some irony that each of these statutes leads with the words 'Consumer Protection' when, in fact, their primary purpose is to facilitate the development of a loan sale industry, whilst maintaining minimum standards of protection for borrowers through regulation.

The recent 2022 Act is a prime example, in our view, of regulating with one hand and rewarding with the other. After years of allowing non-Bank entities to provide sub-prime Hire Purchase finance agreements without any requirement to be authorised, a regulatory oversight of significant proportions, these providers must now become authorised as retail

[1] https://www.mccannfitzgerald.com/knowledge/financial-services-regulation/loan-sales-no-consent-no-sale-bill-faces-stiff-opposition.

credit firms regulated by the CBI. The legislation, however, goes on to allow that a HP agreement offered by a retail credit firm may charge up to astonishingly high rate of 23% APR, a maximum cost of credit that is eye watering for what are car finance agreements of three or up to a maximum of five years in duration.

**3. Data - Migration of Housing loans to funds/rates of repossession proceedings**

The principal area of concern with funds, as ever, remains the fate of family home mortgages that have been in arrears over lengthy periods of time, many of which are now owned by funds and are also in the repossession process. The most recent available CBI figures suggest the following:

***CBI Statistics - End of Quarter 3, 2022***

***PDH Mortgage loans in arrears***

| | Banks | Funds | Total |
|---|---|---|---|
| Under 90 days | 10,544 | 4,393 | 14,937 |
| 3-6 mths | 1,853 | 1,563 | 3,416 |
| 6-12 mths | 1,607 | 1,880 | 3,487 |
| 1-2 yrs | 1,469 | 2,239 | 3,708 |
| 2-5 yrs | 2,056 | 4,523 | 6,579 |
| 5-10 yrs | 1,804 | 5,939 | 7,743 |
| Over 10 yrs | 944 | 4,932 | 5,876 |
| Total | 20,277 | 25,469 | 45,746 |
| | (44.3%) | (55.7%) | (100%) |

Some points to note from these figures:

- The numbers of accounts in arrears has been decreasing, but only slowly. At a time during Covid when many households were said to be saving money, there was no significant reduction in arrears cases. Thus , the number in arrears at end Q.3, 2021 was 47,681 compared to 45,746 at Q.3 2022
- The proportion of loans owned by funds grows with each quarter, close to 56% at the last count.
- At the end of 2021, 21,234 accounts (45% of the total in arrears) were deemed to be co-operating with their lender but had no restructure in place, an indication of financial incapacity, not unwillingness to pay.
- Cost of living and interest rate spikes threaten an increase in new arrears cases. Despite recommending in PtP that the CBI publish two separate figures – one for accounts that go into arrears in a given quarter and one for accounts that exit arrears in that quarter, the CBI continues to publish a net figure only. In our opinion, we need to get a more dynamic view of what is happening from a data perspective.

***Loans in legal proceedings and time since 1st hearing***

| | Banks | Funds | Total |
|---|---|---|---|
| **Under 1 yr** | **844** | **743** | **1,587** |
| **Between 1-2 yrs** | **144** | **190** | **334** |
| **Between 2-5 yrs** | **214** | **1,446** | **1,660** |
| **Over 5 yrs** | **610** | **1,593** | **2,203** |
| **Total** | **1,812** | **3,972** | **5,784** |
| | **(31.3%)** | **(68.7%)** | **(100%)** |

Some points to note from these figures:

- Funds now own close to 7 in every 10 accounts that are in the repossession process, a figure that has increased steadily as loan sales have increased.
- A substantial number of these cases have been in the legal process for a lengthy period of time, and are often subject to recurring adjournments with County Registrars, often anxious to avoid Possession Orders being granted wherever possible.
- Of the 435 sets of repossession proceedings said to have been resolved (i.e. concluded) in 2021, it is notable that over 80% did not result in a Possession Order being granted, a significantly high percentage[2].
- The attrition, distress, cost and economic loss that results from lengthy repossession cases is both regrettable and unnecessary.

**4. A Mortgage Arrears Review Office**

In PtP Four, we suggest that it is past time that a concerted attempt was made to resolve long term legacy mortgage arrears cases outside the courts, and in this context, we propose that a Mortgage Arrears Review Office might be put in place. This is not of course an original idea. The current Minister for Finance, Michael McGrath, TD tabled a Private Members Bill (PMB) in 2017, the **Mortgage Arrears Resolution (Family Home) Bill 2017.** Then Minister for Justice, Charles Flanagan,TD suggested that this Bill *'appears to be incompatible with the Constitution and at a very high risk of constitutional challenge, following advice received from the Attorney General'* and it proceeded no further. We believe that the proposal we have made may possibly circumvent such constitutional difficulties and act as a carefully balanced and strictly proportionate intervention, which has taken full account of the respective rights and obligations of both lender and borrower.

Thus, we propose that the Review Office:

- Could act as an avenue of appeal/review for borrowers who are unhappy with their lender's handling of their case under the Mortgage Arrears Resolution Process of the CBI's Code of Conduct on Mortgage Arrears (CCMA). At present, the appeal is to an Appeals Board set up and controlled by the lender.

[2] See: Courts Service Annual Report 2021, p.51.

- Could oversee efforts to resolve long term arrears cases, working in conjunction with the borrower's advisors (MABS Dedicated Mortgage Advisors and Personal Insolvency Practitioners, for example) and the lender's staff and representatives, by modelling the application of resolution options to specific accounts in arrears.
- Could have the power to grant leave to a lender to bring repossession proceedings in the courts against a borrower in arrears, but equally could refuse to grant such leave on the basis that the lender had made insufficient efforts to resolve the case and avoid legal proceedings. An appeal would be available to the Circuit Court for the lender in that event.
- Where a Personal Insolvency Arrangement (PIA) proposal is made on behalf of the borrower in arrears and is rejected by the lender, the current right to seek a review in the Circuit Court under the Personal Insolvency Act 2012 would continue to apply. Thus, the integrity of the personal insolvency regime would remain unaffected.

**Some other recommendations**

In the final PtP paper, we are critical of the slow progress being made with the Department of Justice review of the Personal Insolvency Act 2012 (as amended). We pinpoint that a significant number of older borrowers in particular are in long term arrears but their properties are also in positive equity, making it very difficult to obtain an insolvency arrangement without creditor consent. Three recent High Court decisions are reviewed where the presiding judge, while declining to approve the proposal in each case, has suggested that an exploration of necessary reforms should be had amongst the relevant stakeholders as a matter of urgency.[3]

We also express concerns about the limitations of the Abhaile Scheme of support for those in mortgage arrears, in terms of the wide range of disparate elements involved, the slow progress being made in achieving legally binding as opposed to informal solutions and the comparative lack of access to insolvency advice for those with unsecured debt only, in addition to the lack of an appeal mechanism where Debt Settlement Arrangements (DSA) are proposed and rejected.

The final paper also contains a section on the Mortgage to Rent Scheme, a valuable option in some cases, but still delivering quite low numbers, despite some changes to the criteria introduced in January 2022.

**Unsecured loans and data deficits**

Loan sales are not entirely confined to buy-to-let and family home mortgages. Hire purchase agreements and credit card balances, in particular, have also been sold over the past decade. In 2019 Cabot purchased a portfolio of Rabobank (likely former ACC loans) unsecured loans, notionally valued at €1.5 billion.[4]

With the cost of living crisis having escalated in recent months and with a wide range of easily accessible credit products available – online credit sale platforms, buy now, pay later

[3] These are the Lowe, Fennell and McEvoy cases respectively.
[4] See https://assets.kpmg.com/content/dam/kpmg/ie/pdf/2021/06/ie-eds-report-2020-ireland.pdf.

facilities – and retail credit firms and credit servicing firms now authorised in Ireland, it is conceivable that sales of impaired loans in the unsecured debt space will increase, with the consequences that may have for households in difficult financial circumstances. There is also a significant data deficit here. While the CBI publishes family home mortgage arrears figures on a quarterly basis, there is no such data published on unsecured credit agreements in arrears. Without data, it is impossible to gauge the potential extent of the problem.