DÁIL ÉIREANN

AN COISTE UM THITHÍOCHT AGUS EASPA DÍDINE

COMMITTEE ON HOUSING AND HOMELESSNESS

Dé Máirt, 17 Bealtaine 2016

Tuesday, 17 May 2016

The Select Committee met at 10.30 a.m.

MEMBERS PRESENT:

Deputy Mary Butler,	Deputy Kathleen Funchion,
Deputy Catherine Byrne,	Deputy Michael Harty,
Deputy Seán Canney,	Deputy Fergus O'Dowd,
Deputy Joan Collins,+	Deputy Maureen O'Sullivan,
Deputy Ruth Coppinger,	Deputy Maurice Quinlivan,+
Deputy Barry Cowen,	Deputy Brendan Ryan,
Deputy Bernard J. Durkan,	Deputy Mick Wallace.

+ In the absence of Deputy Mick Wallace and Deputy Kathleen Funchion, respectively, for part of the meeting.

DEPUTY JOHN CURRAN IN THE CHAIR.

Insolvency Service of Ireland

Chairman: Before we commence, I draw the attention of witnesses to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

The opening statements will be published on the committee website after this meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I welcome Mr. Lorcan O'Connor, Ms Anita Jordan and Mr. John Warren from the Insolvency Service of Ireland and thank them for their attendance and the considerable documentation already submitted. I now invite Mr. O'Connor to make his opening statement.

Mr. Lorcan O'Connor: I thank the Chairman and the committee for the opportunity to contribute to its deliberations on the issues of housing and homelessness. I am joined by Ms Anita Jordan and Mr. John Warren. It is hoped that following the opening statements we will be able to answer any questions committee members might have.

As members are well aware, mortgage arrears is one issue among many that impacts on the issues of housing and homelessness. While it is not possible to keep every borrower who is in financial difficulty in their home, my message today is that there are a number of options open to such borrowers, that the personal insolvency Acts offer statutory protections to people in relation to their family home and that these should always be considered in advance of allowing repossession proceedings to commence.

I will start by giving the committee a brief overview of the Insolvency Service of Ireland, often referred to as the ISI. The Insolvency Service of Ireland is an independent statutory body established in 2013. Its main objective is to return insolvent persons to solvency. The service offers four debt solutions, including the debt relief notice, which is a solution for borrowers with very little income and few assets. This solution allows for the complete write-off of debts up to €35,000. The second solution is the debt settlement arrangement, which is a solution that allows borrowers to settle their unsecured debts for a period of up to five years, with any remaining balance at that point being written off. The third solution is the personal insolvency arrangement, known as the PIA. It is similar to the debt settlement arrangement in that it, too, deals with unsecured debts but it also settles or restructures secure debt, which includes family home mortgages. It also contains some specific protections for borrowers in mortgage arrears who wish to retain their family home. The ISI also administers the functions assigned to the official assignee in bankruptcy.

Personal insolvency can result in mortgage default and the ultimate loss of a home. For tenants, personal insolvency can have a similar outcome due to an inability to meet rent obligations. The solutions provided by the Insolvency Service of Ireland, ISI, can help in either

scenario. Our debt solutions deal with all levels and types of personal debt and they are life changing. In appendix 4 in our submission, I have shared some of the feedback from our customers on the solutions provided by the ISI and what it has meant for them. The reality is that thousands of borrowers in Ireland are insolvent and in fear of losing their home. For the short time I have today I intend to focus on the protection our solutions can provide to mortgage borrowers, in particular the personal insolvency arrangement, PIA, which enables a borrower to remain in the family home.

It is worth highlighting the importance of being able to remain in the family home and the fact that it is recognised in the PIA. A PIA is a court-approved agreement between creditors and a borrower that allows for the restructuring and write-off of debt while keeping the borrower in the family home in the majority of cases. We know that borrowers can feel intimidated at the prospect of dealing with a lender and we also know that when a person is behind on repayments, phone calls and letters from creditors can be overwhelming. Once a borrower decides to apply for a PIA, the personal insolvency practitioner will help in the negotiations with the lender. The first stage in the process involves the court issuing a protective certificate, which means the borrower is immediately protected from the lender, for an initial period of 70 days, from their creditors either enforcing their debts or contacting them while the personal insolvency practitioner works out an arrangement that will keep the people in the family home.

We give examples of successful PIAs in appendix 1 of our submission and features of many PIAs put in place to date include solutions like extension of mortgage term; a reduction in mortgage interest rate; and write-off of unsecured debts, with the average being 90%, which is important as the demands from unsecured creditors can often undermine an otherwise sustainable mortgage on a family home. We have also seen a large number of split mortgage solutions, with complete clarity as to what happens to the warehoused amount. That is certainly an important element and a necessity according to legislation. We have also seen some write-off of negative equity on the mortgage. In the minority of cases where creditors have rejected a proposed PIA developed by a personal insolvency practitioner, since the end of last year insolvent borrowers can now seek a review by the court. This legislative enhancement, in effect, means the so-called "bank veto" has been removed.

I will turn to the sensitive issue of repossessions. The fact that a borrower is facing repossession does not necessarily mean he or she will automatically lose the home. The Land and Conveyancing Law Reform Act 2013 contains a provision allowing for the adjournment of a home repossession case for up to two months to enable a borrower consult with a personal insolvency practitioner to explore if a personal insolvency arrangement can be put in place. Over the past year, representatives of the ISI, in association with the Money Advice and Budgeting Service, MABS, were present at courthouses around the country, providing borrowers attending repossession hearings with information on their options. It is important for borrowers to realise that even if they have received letters stating that their mortgage is unsustainable or threatening repossession, it is still not too late to sort out their financial difficulties. The first step is to contact a personal insolvency practitioner.

In the submission at appendix 1, I have included examples of some real-life cases where borrowers were faced with repossession and in court but, having contacted a personal insolvency practitioner, they reached a solution that kept them in the family home. The first case described is a husband and wife with two school-going children. They consulted with a PIP last summer but had resigned themselves to being homeless by Christmas. They had already contacted the local authority to see if alternative accommodation could be made available but

were told that, unfortunately, the list was so long it would be highly unlikely to come about. It just so happened that a personal insolvency practitioner was in court that day. Those borrowers had not been aware of the existence of a PIP or what they could do, but having engaged with that PIP, the PIP was able to put a solution in place and, I can only assume, the borrowers were able to enjoy that Christmas in their family home. They now have certainty in respect of that family home until the death of the longest-surviving spouse, so they no longer have to worry about losing that home, in effect, for the rest of their lives.

Where an insolvency arrangement under the personal insolvency Acts is not possible given a person's particular circumstances, bankruptcy may be the right course of action for him or her. As members will be aware, the bankruptcy term has recently been reduced to one year and under the amended bankruptcy legislation the family home can revest in a bankrupt person in specific circumstances. The official assignee, the official who manages the estates of bankrupts, is based within the ISI. Appendix 2 in the pack given to members sets out how he deals with the family home in bankruptcy. I am happy to talk through this appendix if members wish me to do so. While there are specific statutory protections around the family home under the personal insolvency Acts, it is not correct to say that a borrower will automatically lose his or her home in bankruptcy.

I now wish to turn to the issue of communications and supports for debtors. Since our establishment, the ISI has directly assisted over 3,000 borrowers. When one considers the number of people often involved in respect of mortgages, including extended family and children, one can multiply the number of people affected. As members will see from the testimonials contained in their pack, the feedback from those borrowers who have availed of our services is very positive. While not everyone in financial difficulty will need to avail of our services, and borrowers should always try to resolve their difficulties with their lender in the first instance, it is also clear that the ISI needs to get the message out to those in need that there is help available.

In May of last year, the then Government agreed a number of measures to support mortgage holders who are in arrears. Included in these measures was a requirement for the ISI to have a sustained awareness campaign. The ISI recognises the importance of communicating effectively and we have developed a campaign specifically aimed at debtors, known as the "Back on Track" campaign, to drive awareness of our debt solutions. We have developed a new website and new materials that are easy to understand, copies of which I have left with the committee secretariat. A variety of outreach and awareness-raising initiatives are also ongoing, along with various activities, including advertisements in several media. The ISI continues to expand this campaign, with plans for a renewed campaign to be rolled out later in the year.

In January of this year, the Minister for Justice and Equality announced a new scheme of access to independent legal and financial advice for those in mortgage arrears. In recent months, the ISI has been working closely with a number of other stakeholders, including the Department of Justice and Equality, the Department of Social Protection, the Citizens Information Board, MABS, the Courts Service and the Legal Aid Board to launch the scheme. It is expected to be launched in the near future. I believe this scheme will play a very important role in helping to address the issue of mortgage arrears. Borrowers will now get the appropriate professional advice they need when they need it and there will be no cost to the borrower. MABS will act as the gateway to this service and will refer cases to personal insolvency practitioners where appropriate.

It was clear to all observers during the recent election campaign and during Government formation talks that housing and homelessness are at the forefront of people's minds and, by

extension, so was the issue of mortgage arrears. The debt solutions offered by the ISI, which I have briefly outlined, can help. Whether it be a mortgage holder in arrears or a tenant unable to meet their rent due to other debts, our solutions restore people to solvency, aim to keep them in their homes and allow them a fresh start. Many of the 3,000 borrowers we have helped faced the threat of losing their home but no longer have the stress or the strain that insolvency can cause. I expect the numbers availing of our services to increase significantly in the coming months. This will be assisted by the new service of access to advice, to which I have just referred, further publicity campaigns, additional commitments contained in the new programme for Government and, no doubt, the valuable work of this committee.

I thank the Chairman for the opportunity to make these opening remarks. I am happy to take any questions.

Chairman: I thank Mr. O'Connor for his opening statement. I will take questions from a number of Deputies grouped together, following which I will call on Mr. O'Connor, Mr. Warren or Ms Jordan to respond. I remind colleagues that at the outset we agreed to keep the questions direct because of the time element and the fact that we are doing a double session this morning. I invite Deputy Bernard Durkan to commence.

Deputy Bernard J. Durkan: I welcome the guests. I note the reference to the gradual reduction in the number of mortgages in arrears. Can Mr. O'Connor give some indication as to the number of settlements reached by way of resolution to the satisfaction of the borrower or by way of repossession and the difference between the two? Mr. O'Connor mentioned that the Insolvency Service of Ireland assisted 3,000 borrowers. Can he indicate whether that was the totality of the number of cases it dealt with and what proportion of those cases was resolved to the satisfaction of the borrower? Will he also give some indication of the extent to which in the course of its work the Insolvency Service of Ireland has monitored the activities of lenders who have persistently pursued borrowers by way of telephone calls, e-mails and letters which would have the effect of intimidating and forcing the borrower into a situation where they were deemed to have voluntarily surrendered their home; in other words, it appears they voluntarily surrendered their home but did not?

To what extent did the Insolvency Service of Ireland examine a case with particular reference to the manner in which the borrowing was entered into in the first instance and the degree to which the lending authority applied good banking practice when awarding a loan which it is now vigorously pursuing in terms of potential repossession?

Chairman: I call Deputy Michael Harty.

Deputy Michael Harty: Two of my questions have already been asked.

Chairman: Ask a third one then.

Deputy Michael Harty: Is there a requirement on the banks to inform the client of the existence of the Insolvency Service of Ireland or do they have to find it out through advertising and local media? Is there an obligation on the banks to direct their clients towards the insolvency service?

Chairman: I thank Deputy Harty. I call Deputy Barry Cowen.

Deputy Barry Cowen: Many of us were disappointed that the issue of bank vetoes was not included in the initial legislation to establish the Insolvency Service of Ireland. Eventually

there was a change to that legislation which allowed the courts to consider and make a judgment on the proposals that were forthcoming, but there was a delay with the court rules on the provision of that authority to the courts. Has that been rectified and, if so, can the representatives give an indication of any such veto by the banks having been subsequently overturned by the courts? Such cases would seem to indicate the folly of the initial decision but at least it has been rectified and there is potential for it to improve in the coming years.

Chairman: I thank Deputy Cowen. The final speaker in this group is Deputy Maureen O'Sullivan.

Deputy Maureen O'Sullivan: I have two questions. Mr. O'Connor mentioned the new scheme and said he envisages that the numbers availing of the services will increase. He mentioned a range of organisations in connection with the new scheme. Will he indicate how that will work in practice for the person who needs that service and if he has the resources and staff to deal with the increase in numbers? Mr. O'Connor mentioned that the ISI works with tenants and their rents. Perhaps he can provide some more detail on what exactly it does in that case?

Chairman: I thank Deputy O'Sullivan. I call Mr. O'Connor to respond to a range of questions.

Mr. Lorcan O'Connor: I hope I have jotted then all down and, if not, please raise them again. The first set of questions had to do with the lending practices of the banks. From an insolvency perspective, I encourage creditors and debtors to always look forward rather than back. If one has a bad loan, it needs to be fixed. The reasons that gave rise to that loan going bad are - to a large extent - irrelevant. We do not look into the specific lending practices that gave rise to an arrears issue, but the personal insolvency practitioner deals with it in a way that returns the debtor to solvency.

In the context of engagement by the banks, I would have to say that it has been positive. We have been dealing with banks very closely in developing protocols that encapsulate the small print and the terms and conditions around our arrangements. We have had very constructive engagements with banks and all of other stakeholders, such as debtor advocacy groups, practitioners, MABS and the Courts Service, in the development of those protocols. We have also published statistics around the number of arrangements that failed to be delivered by personal insolvency practitioners when banks have chosen to vote against an arrangement. This pertains to Deputy Durkan's first question. Our statistics show that there is close to 80% acceptance rates for our arrangements. This would always be to the satisfaction of the debtor because it is the debtor who tables the proposal in the first instance. This is perhaps also linked to the so-called bank veto question. The relevant legislation was passed at the end of last summer. The Deputy is right to say that the court rules had to be developed to back it up but it went live at the end of November. We have a number of cases in the system of which only small number have come out the other end. As far as we are aware, there are just short of 50 court reviews in the system. These are 50 cases where a personal insolvency practitioner is saying to the court, "Judge, we do not think the banks or the creditors were acting reasonably and we would like you to review it. If you agree with us, impose the solution over the will of the banks." So far 11 cases-----

Deputy Bernard J. Durkan: This goes to the nub of the issue. Perhaps Mr. O'Connor could provide a quick clarification. Is there not a certain amount of timidity in the way the insolvency system approaches this? For example, I - and all of the members here - deal with cases on behalf of constituents. One of the issues that has arisen time and again relates to situ-

ations where the banks tell borrowers that they are insolvent and that their cases are unsustainable. However, four or five years previously, the same lending institutions deemed the cases to be sustainable and awarded loans that were way in advance of what could or should have been awarded under good banking practices. Unless the insolvency services challenge that in court, the borrower is always going to lose.

Mr. Lorcan O'Connor: I will finish my point on statistics and I will then return to Deputy Durkan's concern. Of the 11 cases that have gone through the process so far, one has been rejected by the court based on technical eligibility criteria. That leaves ten cases and in eight of these, the finding was in favour of the debtor. We are not aware of the outcome in the two other cases because they were withdrawn. However, eight have ultimately resulted in a solution that backs up the debtor's original position.

Deputy Barry Cowen: I do not want to cry over spilt milk but it is unfortunate that the same provision was not in the initial legislation in order to assist families which were not satisfied that the bank had exercised fair play in enforcing their power of veto.

Mr. Lorcan O'Connor: I would retain the hope that the actual number of court reviews will remain relatively low because it is to be hoped that those banks, faced with a similar solution in the future, will act differently. Ultimately, that would be in everybody's interest.

I will now turn to whether banks have an obligation to inform borrowers of the fact that the Insolvency Service of Ireland has solutions available. The banks have such an obligation and the Central Bank regulations, in the context of various notifications to borrowers, refer to our solutions. However, I think it would be fair to say that it is in legalese and in a letter that runs to several pages, so there is room for improvement in trying to make those communications. The Banking & Payments Federation Ireland has indicated that it is open to any suggestions in that regard.

It is telling, and it is a challenge for the Insolvency Service of Ireland and stakeholders more widely, that we had two very successful events recently in Mallow and in Castlebar. We invited debtors to book a free session with a personal insolvency practitioner for an hour to get some advice as to whether a solution could be found for them. Both of those events were oversubscribed. More than 100 debtors and borrowers were met through those two events and in more than 80% of those cases we were able to identify a solution for those individuals. In the majority of those cases, they have already moved to the first stage of a protective certificate, and that is in the space of only two to three weeks, so there are real solutions there. We asked those people why they had not gone to a personal insolvency practitioner sooner. The feedback was "I had never heard of them" or "I never knew of the solutions that you provided" or "I thought personal insolvency practitioners charged hundreds of euro, or thousands of euro even, for the service". That is not the case. As I said, the challenge for us is to get that message clearly out to the public and those in difficulty.

The last question related to this new service and how it will operate. At its most simplistic level, hopefully the message will be clear for borrowers, which is that they no longer have to worry about what specific solution is best for them or about having any money to pay for that service and that they should simply call MABS, which will act as a gateway and refer them to the right person there and then. With regard to our sector, that would be a personal insolvency practitioner. However, that is not to stop debtors who are informed going directly to a personal insolvency practitioner where they will get all the supports available.

The kind of supports debtors would get is, first, a free consultation with a personal insolvency practitioner. The practitioner would do a full review of their financial affairs and produce what is called a prescribed financial statement, which is a sort of snapshot of their financial circumstances, and give them written advice on what are their best options. If that is one of the solutions we provide, the practitioner will run with that case through to finalisation. If not, the practitioner will refer them back to MABS, so they are not left in limbo. They are constantly looked after from within the overall service.

Then there are other supports to ensure that borrowers, if they need to take a court review or a bank has voted against a proposal, do not have to worry about the cost of the review. Also, if there is a specific legal issue at play, whatever it might be, with regard to their arrears problem, they will have a free consultation with solicitors. Whatever the professional advice needed, it is free and available at the point of need. The simplicity of the message will, it is hoped, engage those who, perhaps through fear or for other reasons, have not yet engaged. That simple message is to call MABS or the helpline number, which will put them in touch with the right person, or to go to their personal insolvency practitioner, PIP, directly.

Deputy Maureen O'Sullivan: I asked about tenants and rents and the work the service does with tenants.

Mr. Lorcan O'Connor: This is an issue we have seen in a large number of cases. Quite often a tenant might have several debts such as credit card debt, an overdraft, a personal loan or whatever it might be. These are people knocking on the door making demands. In addition, the landlord is saying the tenant owes him or her several hundred euro every month. The difficulty is the tenant is robbing Peter to pay Paul or just cannot pay all of his or her debts. What a personal insolvency practitioner can do is issue a protective certificate. This stops everyone from making contact with the tenant. If a creditor were to phone the tenant or even issue a letter of demand, that creditor would be breaking the law. This gives comfort to the debtor, who no longer has worries in that regard and the personal insolvency practitioner then can make his or her debts sustainable. Within that, they will always allow sufficient moneys to keep a roof over the person's head. Therefore, let us suppose a person pays rent of €700 per month. They will allow that person to retain €700 per month before he has to offer anything to his creditors. The average write-off of unsecured debt is in the region of 80% to 90%. It a significant help to people who are renting.

Deputy Joan Collins: I thank Mr. O'Connor for his introduction. It seems that things are moving on and the situations now facing people in personal insolvency arrangements have changed. People seem to be in a better position to be able to negotiate with the banks through a personal insolvency practitioner. At the beginning, the belief was that it was only if a person had money that she could engage a PIP, but if she did not have money, she was high and dry. Who pays the PIPs now? Is it through the Insolvency Service of Ireland? Originally, it cost a great deal of money.

Mr. O'Connor stated that in 80% of cases the service deals with agreements are negotiated and the banks accept the proposals of the service. What happens to the other 20%? At the moment we are seeing many people who find themselves facing eviction and so on, particularly in rural areas. At what late stage can a PIP or the insolvency service intervene for those people in the courts? Can people immediately ring up the insolvency service for assistance or to enable them to stay for three or four months or whatever is necessary?

Does the insolvency service work with local authorities and, if so, how does the service find

that interaction? I know of one situation involving a man whose mother took out a vast mortgage with a bank. The mother died and he is left with it now. The local authorities are telling us that they cannot put this person on the housing list unless he has a housing need and that this would only be the case if he loses his home through the courts. At that stage he would have to go on a local authority housing list. What is the interaction between all the agencies that need to be involved around these issues?

Deputy Fergus O'Dowd: I welcome the work being done by the insolvency service and the excellent results. Mr. O'Connor referred to some statistics on pages 12,13 and 14 of his document. If I am not reading these correctly, please tell me straight away. However, if I am reading the first statistics correctly, it seems that people with mortgage difficulties in certain counties have a higher chance of success than those in other counties. That seems to me very strange. People in Waterford seem to have a 22% success rate in doing deals, if that is the correct way of reading the figures, compared with those in Dublin city who have a 6.2% rate of success. Are there geographic issues? The insolvency service seems to have worked out the figures nationally by county. Why did the service do that?

Are some mortgage lenders far more open to doing deals than others? My colleague, Deputy Durkan, raised the question of people who may have overstretched or borrowed from a difficult financial base and who may have got more money than they should have got from some of the less-well-known mortgage companies. They borrowed at extremely high rates even at the best of times. Does the service have issues with companies which will not do business? Does the service tend to do less business with some companies compared with others? Should we not go after those? I have no wish to name names, but I know there are some companies which charge higher interest rates than others. Are they inclined to do deals or do they push the client to the wall? Perhaps Mr. O'Connor will comment on that.

Deputy Ruth Coppinger: I am sorry I missed Mr. O'Connor's introduction. I have one question about the take-up of the person insolvency arrangements. Mr. O'Connor was referring to them as I joined the meeting. Given the level of indebtedness in respect of mortgages, we have to acknowledge that there has been a low take-up of the scheme. The point is important because this is one of the major Government-initiated schemes to deal with mortgage debt. If people are unable to participate or are not attracted to it, then we will continue to have a problem. At the end of 2015, a little under 62,000 owner-occupier mortgages were in mortgage arrears as well as 23,000 buy-to-let arrangements. Of 85,000 mortgages in arrears and 105,000 restructured, only 1,000 or 0.5% have involved a PIA. Why is there such a low take-up? The Government abolished some of the costs but people have other costs, such as an initial consultation fee and other fees. Even given that the Government abolished some costs, there has not been a huge take-up, as shown on the ISI graph. Is it so low because the terms of the PIAs are too punitive? For example, a single person with no car is allowed €218 a week to live on. Everything else must go into repaying debts for six or seven years while the PIA is in force. Some people might take the attitude that they will stay in arrears in the hope of getting a better job with an increase in income and sort out their debts later rather than live under a punitive regime, relatively speaking. It is not easy to live on approximately €200 a week, particularly in Dublin or any city. They may also hope that house prices will rise again and they can sell their houses. Would Mr. O'Connor agree that may be a factor, that people would find it difficult?

Does the ISI find any difference between State-owned and privately owned banks in their dealings with vulture funds, which now control 47,000 mortgages? How many dealings has ISI had with them? Does Mr. O'Connor agree with the Government's allowing them into the

system?

We need a write-down on mortgage debt to release people from the albatross. That would have a huge impact on society because young families would have money to spend on their children and so on. Does the ISI have any estimate of how much owner-occupier mortgage debt has been written off by the banks and how does that compare with the amount of developers' debts the banks have written off?

Mr. Lorcan O'Connor: I will take the last set of questions first. We have helped more than 1,000 people do PIAs and more than 3,000 people overall in the suite of solutions we provide. For those people it has been hugely valuable. Much of the feedback we have received is that it is life-changing or has even saved lives in some cases because we are dealing with such a sensitive subject. I would, however, have expected the numbers to be higher than they are, given what we have come through in recent years. Ours is a new organisation and it takes time for people to become familiar with the solutions, but we do need to work on communications.

Since the ISI opened, approximately 120,000 informal deals have been done by creditors. That number was zero before we opened. When people in mortgage arrears rang their banks to ask to talk and do something about it, the banks said they would phone them back when they were ready. All the negotiating power was on the banks' side, whereas as soon as we opened, the debtors were able to tell banks they would like to meet to try to do a mutually beneficial deal, and if the banks would not, they could say they would go to the insolvency service. It was an important catalyst or change point whereby all of a sudden it was in the interests of banks to start doing informal deals. There is no issue with informal deals if they are sustainable, but at least people have the option of going to the personal insolvency practitioner.

Deputy Coppinger asked if the reasonable living expenses were feeding into the low numbers. We have found that in the majority of cases people have been living on far less than we would allow until they have engaged with a PIP. As a result of the fact that they have been doing their best to pay off as much as possible every week, they have really been going in tight in terms of the amount of money they have available for food, clothing and so on. Our legislation specifies that a reasonable standard of living includes contributing to society and having an amount that can be saved each week for a rainy day, as well as social and other expenditure. It is not an easy amount to live on, yet we are finding that it is more than what a lot of people have been living on for the previous few years. It is a threshold below which no bank or creditor can force someone to live. That is not necessarily the case in other situations.

On fees, our feedback from debtors is a perception that it will cost money to avail of this solution. My message today is that it is free. It does not cost money to engage with a personal insolvency practitioner now that we have this new service. We will do our best to sing that from the rooftops because it will hopefully result in more and more people availing of the solutions.

Deputy O'Dowd mentioned the statistics relating to Dublin and Waterford. Perhaps we are not making it quite as clear as we should. The statistics do not identifying different acceptance rates. Rather, they reflect the number of people availing of solutions by county. In County Waterford, per 1,000 of population, there are three times as many people applying as is the case in Dublin. However, acceptance rates are not broken down by county. We do not have that information. It is simply activity levels rather than actual acceptance rates.

Deputy Fergus O'Dowd: That is what I thought.

Mr. Lorcan O'Connor: In terms of engagement on the part of lenders, it is constructive and positive to see it at this stage. Although we have this new phenomenon of the so-called vulture funds owning a number of mortgage books, the legislation does not make distinctions based on who is the owner of the loan. The solutions remain the same. Now that we have this court review process, if the personal insolvency practitioner, PIP, proposes a reasonable solution, then that is the solution that will be run with or imposed. As I mentioned, 11 or so cases that have gone through the court review process and many of these would have involved the so-called vulture funds. The legislation creates an even playing field for borrowers irrespective of who owns their loan.

Deputy Fergus O'Dowd: Mr. O'Connor is saying that regardless of who the lender is, there is a level playing field when one goes to court. It is a question of reluctance in that the lenders cannot not engage if the debtor goes through a PIP. Is that the point?

Mr. Lorcan O'Connor: Excuse me?

Deputy Fergus O'Dowd: If I have a problem with my mortgage and I go through a PIP, the lender must engage with me even though it may not want to. Is that correct?

Mr. Lorcan O'Connor: Correct.

Deputy Fergus O'Dowd: That is a very powerful tool.

Mr. Lorcan O'Connor: I worked on the corporate insolvency side before taking up this job and I advised companies that were in financial distress. Trying to get the lender to engage was very much down to whatever was the lender's preference. However, as soon as an examiner was appointed, the lenders would be breaking down the door to meet us because they realised that they only had a couple of weeks to influence what we might do. It is the same way now for a PIP. The lender will immediately engage with the PIP to try to work out a solution to the mutual benefit of all parties.

Deputy Fergus O'Dowd: That is the most important point of all for the public.

Mr. Lorcan O'Connor: On the question of the stage at which a PIP could help somebody in repossession, as is the case with many things, the earlier people engage the better. However, it is never too late. I cited an example of a couple who had resigned themselves to homelessness. They were in the repossession courts at the final stage. The court registrar was about to announce the date upon which the repossession order would be granted or become effective. However, the Land and Conveyancing Law Reform Act allows for a specific adjournment to consult a PIP. It is never too late, but the earlier the better.

We deal with local authorities on a number of levels. One is ensuring they are an outlet for passing on the information and materials we have available for debtors. We are making sure staff dealing with those on the housing lists are aware of our solutions in order that they can pass on that information. We also deal with local authorities which are landlords and encounter people who are in arrears. It is very constructive and both parties always have the debtors' interests at heart. We deal with larger local authorities on a one-to-one basis. We have also attended local authority conferences and so on to ensure they are aware of our services. I hope that deals with the question.

Chairman: I thank Mr. O'Connor. There are one or two remaining questions that I will take at this stage.

Deputy Brendan Ryan: I have a quick question. I am delighted to hear Mr. O'Connor describe the process as reasonably successful. Is there anything he would like to do, in terms of solutions, for which the legislation does not allow?

Chairman: I find myself somewhat in agreement with the Deputy Coppinger. The service has dealt with 3,000 clients, and in his opening statement Mr. O'Connor referred to the case of a couple who were in court and happened to bump into a PIP. It shocked me to think that somebody would end up in the courts having been unaware of the supports that are available. Mr. O'Connor went on to say the service had a section on communications, but referred he specifically to a promotional campaign for quarter one of 2016. Will that be a sustained campaign over the course of the year? Undoubtedly, the solutions have been successful but many potential clients do not seem to be aware of the service. I ask Mr. O'Connor to address that.

Of the 3,000 clients with which the service dealt, how many, in percentage terms, had issues that were primarily caused by their private residences, in other words, mortgage debt rather than additional loans? Everybody has credit cards and so forth, but for how many was the substantial issue principal private residences rather than buy-to-let mortgages or anything else? I think that concludes the questions.

Deputy Ruth Coppinger: On vulture funds, I understand they have to engage but are they willing to do so?

Deputy Bernard J. Durkan: The word "sustainability" is used regularly. The lender determines whether an individual's capacity is sustainable. Deputy Cowen referred to the right to appeal to the courts. What has been the experience of those who have done so? The banks said three, four or five years ago that mortgages were sustainable and awarded loans on foot of that. Now that they are totally unsustainable, there has to be an answer to the question that arises.

Chairman: Mr. O'Connor can correct me, but I understand that in his reply to Deputy Cowen he stated that eight of the 11 cases taken found in favour of the home owner rather than the banks. Mr. O'Connor can reply to that.

Mr. Lorcan O'Connor: That is correct. In terms of sustainability, the personal insolvency practitioner must undertake a number of statutory steps or duties under the Act as he or she is advising a debtor. One of those is to certify that the person returns to solvency, thereby underwriting the sustainability of the arrangement. Whether a bank or anybody else opines on what might be sustainable now or what may have been sustainable in the past, it is the personal insolvency practitioner, carrying out his or her statutory role, that ultimately determines that.

Deputy Bernard J. Durkan: That has not answered my question. I find it difficult to understand how a lending agency can have decided three, four or five years ago that a particular application for a loan was sustainable - it must have been because otherwise it would not have been approved - but has now determined that it is unsustainable and can demand repossession, the sale of the asset or whatever the case may be. I would be very interested in hearing a response to that point. I have dealt with many such cases.

Mr. Lorcan O'Connor: I suggest that question is probably more appropriate for creditors. The insolvency service does not have a remit to examine the origins of a loan, nor does it. However, as I said, as soon as a person engages with a personal insolvency practitioner they will fix that loan, whatever about its history. They do in the sense that over 80% of proposals are approved in the first instance and now we have the court review for the remaining portion

and we are seeing that at least eight out of 11 of those are resulting in the outcome that works for the debtors.

In terms of the other issues raised, and the so-called vulture funds, it is fair to say the legislation that we now have protecting debtors in the sphere of personal insolvency goes beyond that which exists in all other common law jurisdictions. Where vulture funds arrive - let us say it is the first time they have bought a loan book - there is a learning curve. We do as a matter of course as soon as we become aware of their activity contact them to make them aware of the protections that are there for debtors and what the operation of our insolvency legislation means for them. Once we have had that engagement, there is a respect for that and they would respect the protective certificate which stops those lenders from making contact with the debtor. We would have had instances where unbeknownst to them, they have continued to make contact, unaware that the legislation prevents them from doing so, but once we have told them, we are not aware of instances where they would continue to breach that.

Chairman: Is that the point Deputy Collins wishes to raise?

Deputy Joan Collins: When the vulture funds buy a loan book of distressed mortgages, let us say the majority of those mortgages would have been worth approximately €300,000 at the top of the boom, and they buy it at half the price, does the insolvency service negotiate on that amount or on the original mortgage?

Mr. Lorcan O'Connor: One negotiates at a level that is sustainable for the debtor, whatever that might be. However, it would be fair to say that if one has bought the loan at a lower amount, there is more room to do a deal because one is not looking at the amount it was lent out for initially, one is only looking at what one bought it for. My experience in the past was that in those scenarios it is easier to do deals, but it does very much depend on a case-by-case basis. It is not a hard and fast rule.

To return to the other issues relating to communications - it is correct to say that we reference our activities for quarter 1 - it is important that we do get the message out. It is important also that we move up a further level in terms of how we get that message out there, particularly now that we have this new service which is free for debtors. I welcome the fact that the programme for Government contains a commitment to an information campaign. We have ideas and plans in place and were we to receive a budget, we would be able to leverage off those to ensure that debtors are aware of them. We do have plans for later in the year-----

Chairman: I am sorry to interrupt, but if the workload doubled, does the service have the capacity to deal with it?

Mr. Lorcan O'Connor: Yes, we have the capacity and that is because we have authorised approximately 150 personal insolvency practitioners around the country. Some of those are local operators and others are national operators. There is ample capacity in the system and likewise in the Courts Service where there are specialist judges availing of this.

Finally, in terms of suggestions around legislative change, from a policy perspective - to repeat the point I just made - I think we already go beyond what is in existence in other common law jurisdictions. The ISI would not have any fundamental policy changes in mind. We do have a function to contribute to the development of insolvency policy but we have listed a number of operational tweaks or changes that could be made to the legislation that would make the operation that bit smoother. Those suggestions are with the Department of Justice and

Equality and it is considering them now. In terms of communications, we would be supportive of a general enhancement of an information campaign to ensure debtors are aware of the solutions that exist.

Chairman: Could Mr. O'Connor address the percentage of the 3,000 debtors whose debt was primarily on the principal residence and for whom difficulties arose?

Mr. Lorcan O'Connor: Invariably, people have more than the one debt so the mortgage probably dwarfs all others by a significant margin but, typically, they may have four or five other debts. Quite often, although one's credit card or credit union loan is only a few thousand euro, the fact that they are actively pursuing one for payment can mean that, unintentionally or otherwise, one's mortgage comes under threat simply because one is trying to pay other debts. In that case, a personal insolvency practitioner can deal with all those smaller distractions and focus on the mortgage. What a PIP can usually do in those circumstances is make that sustainable through various tweaks or adjustments to the mortgage. It is rare that it is a family mortgage and nothing else but in the vast majority of cases, it will always be the largest loan.

Deputy Joan Collins: I asked earlier who pays for the PIPs. Does the State pay for them through the insolvency service?

Mr. Lorcan O'Connor: Through the service, there will be a payment to PIPs from the State but the bulk of that fee is paid by the creditor. The banks, through the arrangement and other creditors, would fund the PIP.

Chairman: I thank Mr. O'Connor and his colleagues, Ms Jordan and Mr. Warren, for their attendance, the documentation and their opening statement. The direct answers they have given have been helpful and useful to the committee.

The committee went into private session at 11.31 a.m. and resumed in public session at 11.35 a.m.

Irish Mortgage Holders Organisation

Chairman: Before we recommence I remind colleagues to either switch off their mobile telephones or turn them to flight mode.

I must read a note on privilege. I draw the attention of witnesses to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. The opening statements will be published on the committee website after this meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I welcome the Irish Mortgage Holders Association, which is represented today by Mr. Da-

vid Hall and Mr. Stephen Curtis. The witnesses' documentation has been received and, as already stated, will be published on the website. I invite Mr. Hall to make an opening statement after which I will allow members to ask a number of questions.

Mr. David Hall: I wish the Chairman and members a good morning. To introduce ourselves, my name is David Hall and I am the chief executive of the Irish Mortgage Holders Association. I am joined by Stephen Curtis, a personal insolvency practitioner who leads our negotiation team. We are a charity and have in place 8,500 resolutions that are keeping people in their homes. We offer a free bankruptcy service. We are regulated, have a personal insolvency practitioner and are regulated to provide all the insolvency service solutions, as they are called. Moreover, we have styled and organised ourselves as a one-stop-shop representing those who are in debt. Over the past four years, we have been to the fore in advocating for people and assisting those who are in mortgage difficulties and are facing repossession.

This morning, I will focus mainly on what I believe is a looming catastrophe that could lead to the current homelessness crisis becoming significantly worse. To give the committee some context, at present, there are 5,241 people in emergency accommodation and 102 rough sleepers. I apologise, as members will be well aware of most of these figures, but it is important to set the scale because our submission today is made on the basis of this being a catastrophe rather than a crisis. The current figures before members regarding those who are facing homelessness or who are homeless will be dwarfed significantly by those who are in mortgage arrears in the event that they come into the system. The scale of the mortgage arrears crisis dwarfs the already chronic crisis. At present, 33,000 family homes are at risk of repossession and are in or are about to enter the court system. At present, 20,000 family homes are before the courts. The aforementioned 33,000 homes represent more than €2 billion in arrears and represent 84% of the entire arrears amount of €2.4 billion that currently is outstanding to all lending institutions. In other words, €2.01 billion of the €2.4 billion in arrears focuses the crisis clearly on this cohort of people who are in arrears of more than two years.

In addition, 15,000 investment properties have been in arrears for more than two years. They are at risk of receivers being appointed daily - they are being appointed daily - which results in tenants being evicted. These figures also include 13,000 mortgages owned by vulture funds that have been in arrears for more than two years. Despite the protestations of vulture lovers and the moral hazard brigade, vulture funds do not offer long-term restructuring to homes in arrears. They do not refinance or restructure investment properties and do not have long-term aspirations to support housing policy or the structure in Ireland in any shape or form. Between family homes and investment properties, 48,000 mortgages are facing either repossession or receivers. At a conservative estimate, this equates to 100,000 people. I stress the numbers I am presenting are conservative, are not exaggerated and err greatly on the side of caution. As big as is the existing crisis with 5,000 people being homeless, the spectre of a further 100,000 people or even a fraction of that number becoming homeless raises the prospect of a human disaster.

Most recently, we have been inundated by home owners and tenants who are in difficulty and who are facing receivers and the threat of being evicted from their homes. Both mortgage holders in difficulty and tenants who face being evicted are presented with a stark reality, namely, a dysfunctional rental market that is increasingly unaffordable. Moreover, in many cases it is not possible for tenants and home owners to rent and they, therefore, face homelessness. I am sure members will agree that were even 10% of the aforementioned 48,000 mortgage cases to result in the occupants becoming homeless, the current crisis would be doubled overnight.

We believe radical thinking and radical action are required. A previous Oireachtas guar-

anteed the liabilities of insolvent banks and provided €64 billion in funding to them. We hope the committee will take some radical approach to protecting citizens, as happened in the case of the banks.

As members will see from our document, we outline a number of suggested approaches to take. We are willing to go through those over the course of this session. Homelessness itself is a massive issue. The physical upheaval of losing one's home is horrific. However, along with homelessness, there is a huge mental health issue. Those in debt and facing homelessness suffer silently with significant mental health problems. A recent survey, which we conducted with Dr. Eddie Murphy, showed that 20% of those in debt difficulty and facing homelessness had planned to take their own lives in the four weeks prior to the survey.

The challenge facing this committee in resolving the problem could not be more stark. From our perspective, we will give the committee a full commitment in the context of our co-operation, support and help in any shape or form that can be given in facing that task.

Mr. Lorcan O'Connor and his colleagues from the Insolvency Service of Ireland, ISI, are an excellent team of people. The legislation established the ISI in the context of having over 100,000 properties at risk of repossession. There are four cohorts: those in arrears; those nearly in arrears; those in long-term arrears; and those hanging on by the skin of their teeth. I know that Deputies are aware of this.

It was a funny prospect to watch an organisation come in previously and be asked exceptionally knowledgeable and intelligent questions. We joked outside and said that I might do the opening remarks and let Mr. Stephen Curtis do the answers, which would be far more comfortable. Deputy Coppinger asked one of the key questions. Given the scale of this problem, the ISI, with the greatest respect to it, has resolved 0.085% of mortgages in difficulty. It has resolved only 1,000. The other important aspect is that it does not determine which of those are buy-to-let properties or family homes; it is 1,000 combined. In addition, the statistics from the ISI's report, only just published, indicate that 4,000 people applied to the service but that only 2,000 of those got deals. The extra 1,000 are bankruptcies. Thus, there is a 50% success rate in getting through a convoluted and complicated process. It is mentioned in the programme for Government, and I hope it is adhered to, that the process needs to be up-ended.

This is a crisis, a potential catastrophe. I met Fr. Peter McVerry on Friday and respectfully said to him: "You think 5,200 is a problem. It's nothing as to what is coming unless radical steps are taken to prevent that."

Chairman: I thank Mr. Hall, but he is not finished. If he does not object and before he take questions - I am quite serious about this - Mr. Hall said he has a number of recommendations. It might be useful to the committee if he provided a brief summary of those and then we will take the questions. That is, if he does not mind.

Mr. David Hall: Yes, perfect. No problem. The programme for Government states that the family home should not be unnecessarily repossessed and alternative solutions should be provided. This refers specifically to the code of conduct on mortgage arrears. That code should, and must, be put on statutory footing. These combined solutions in and of themselves will only tip off the crisis that exists but the code must be put on a statutory footing. The code of conduct is voluntary, it is not statutory.

In December 2014, Deputy Joan Collins brought before the House a simple piece of legisla-

tion. I know the landscape has changed radically and it may be better received now. However, it is absolutely incumbent upon this committee and the House to ensure that vulnerable people who face mortgage arrears and eviction have at least two solutions available to them and that these are compelled to be provided. To be fair, many of the mainstream banks do provide them. It is incumbent, however, that the code of conduct be put on a statutory footing and that mortgage-to-rent and split-mortgage models be the minimum solution offered by every single lender in the State prior to throwing someone out on the street.

If politicians are serious about protecting those facing an uncertain future, they need to draft appropriate legislation for compulsory purchase of properties and lands in order to protect citizens. I know the Master of the High Court was before the committee discussing both vulture funds and the taking over of those properties. There are two State-owned banks. A phone call to both tomorrow morning will give an answer that has yet to be disclosed by the Central Bank. How many customers in mortgage arrears have they got financial information on which they can confirm are going to lose their homes? By our calculations, the figure is approximately 7,500. On top of the cohort mentioned earlier, those lenders also know how many of the restructuring arrangements they have that are vulnerable. Those restructuring arrangements have been pulled out of circulation and removed from an at-risk register. As far as we are concerned, a significant percentage of those are at risk and they need to be dealt with. Those loans can be taken over. There are two State-owned banks. This will require emergency measures, not crazy ones. This is genuine stuff that needs to be taken on board. Those two banks should be here tomorrow morning to set out how many of their loans they have evaluated cannot be repaid. These are people who have co-operated. In respect of the far more serious question of those before the courts, the perception is these people are "messers" who are trying to pull a stroke. This suits the banking narrative. The question that should be asked of those banks that have brought people before the courts is how many have submitted financial information and how many of those people the banks initiated legal proceedings against in the full knowledge that they are goosed. That is a very serious barometer of those before the courts.

The State pays a form of rent allowance to those who cannot afford to pay rent. This is a significant economic burden on the State and the State gets no return for this money. We proposed and circulated a fair mortgage solution. A major cohort of people simply cannot pay. A further cohort can pay something but not enough to satisfy the criteria set by the Central Bank. The Central Bank is the ultimate court of the banks. It sets the sustainability arrangements relating to mortgages so Mary and Joe who could pay €500 on a €1,000 mortgage may not satisfy the Central Bank's requirements for sustainability. If, bizarrely, Mary and Joe get €200 from Uncle Seán, unless they can prove that this is full-time, permanent income, it does not count. If Mary and Joe were to lose their home, the entire country would pay possibly €650 in rent allowance for them. Why not take €200 or €300 of that, top up the €500 and leave them in their home? If the council wants to wake up one morning and become very clever and take ownership of that home, let it do so but let us have some economic benefit in respect of keeping those families in their homes and communities by using the existing structures. I do not say this very often but the banks have actually propped up this system for the past four years. The banks have *de facto* paid the rent allowance that should be paid by the local authorities because we have a cumbersome, slow and, thankfully, crap system of repossession. This dysfunctional system is the only grace that has saved us. Citizens own two banks and we should bring them in and identify and start with that cohort of people. They are our citizens and our banks and we need to know what the numbers are.

Finally, we have the big monstrosity that is NAMA, which seems to prefer a more elite co-

hort of debtors. This makes those type of debtors appear a bit better than ordinary citizens in debt. Bizarrely, they have a very good skill set. Legislation should be introduced at this late stage to ensure that NAMA uses the skill sets of its debtors before it favours them to keep family homes, pay it any more and write off their debt. All of these measures should only happen when they supervise a successful project involving the building of houses on NAMA-owned land. Then and only then should those people be released from their debts and allowed to get off scot free. Very few of our clients are stuck in €2 million homes, get paid €10,000 per month and have €100 million debt. There is inequality and a major imbalance and it is time to correct that imbalance before we have one of the largest catastrophes of all time.

Chairman: I will take a number of contributions and I remind colleagues to make their questions direct as we have a full committee here this morning.

Deputy Maurice Quinlivan: I thank Mr. Hall for the presentation, which was very interesting. He came up with some simple and practical solutions that should be implemented pretty much straight away. I was taken by his statement that 20% of those who were surveyed recently had mental health problems and a huge number of them had contemplated taking their own lives in the past four weeks. Obviously, we all deal with problems involving people who present themselves at our constituency offices. I have never held a constituency clinic without somebody coming to it with mortgage distress. It is a massive problem.

The head of the Housing Agency appeared before the committee at a previous meeting. He basically urged the committee to get the Government to make addressing this massive issue its highest priority. The Central Bank said that 88,292 people were in mortgage arrears in the first quarter of this year. Homes are being repossessed from or surrendered by four families per day. The number of people in mortgage arrears doubled under the previous Government while non-bank lenders hold almost 46,000 mortgage accounts for principal dwelling houses and buy-to-let combined, which is a massive problem. What would Mr. Hall's simple solution be to the mortgage-to-rent process given it does not work well? How would he speed up? What would he do to make sure people in mortgage distress can access the scheme as quickly as possible?

Deputy Bernard J. Durkan: I thank Mr. Hall for coming before the committee. He put forward a solution whereby the State should intervene because it owns a number of banks and should subsidise the system by entering the marketplace and writing down mortgages or paying the mortgage in the same way as rent support. What would be the cost to the State? Does he differentiate between those who are paying, trying to pay or making no effort to pay? How many of the mortgagees in arrears that he has dealt with or is aware of are not paying because they cannot pay or are trying to or are paying to the best of their ability within their means while recognising one third of the disposable income of a household is deemed to be eligible for payment of a mortgage? How many people refuse to pay anything? Does Mr. Hall believe they should also be helped in the context of support from the State?

I refer finally to the moral responsibility lending institutions might have towards borrowers to whom they lent in the past seven or eight years and whom they are now pursuing on the basis that their loans are unsustainable. To what extent is there a moral obligation on the lenders to carry some responsibility and some of the burden for their badly advised lending?

Deputy Michael Harty: In his opening remarks, Mr. Hall said his organisations had secured 8,500 resolutions. Have they been arranged between the borrower and the bank without a PIP or were they negotiated via a PIP? Those figures are much higher than the ISI figures. Is the IMHO using a different method? What is the difference in the arrangements used by the

IMHO and the ISI?

Mr. David Hall: I will take the easy ones and the hand the more difficult ones over to Mr. Curtis. In response to Deputy Durkan, in our experience, 5% of people are messing. The simple solution to them is they should just be nuked. None of us has the time, effort or inclination to in any shape or form deal with those people. Last Saturday, the *Irish Examiner* mentioned that MABS had 1,440 clients currently in mortgage arrears. We currently have 1,950 clients in mortgage arrears. Where is everybody else? We have no time for anyone who wants to try to pull a stroke and mess around. They should be nuked and dealt with in a separate forum. However, there needs to be a solution for those in difficulty and distress.

In response to Deputy Quinlivan, the mortgage-to-rent scheme conceptually was a great idea. It had two components under the Keane report in October 2010. Many of us, including ourselves, balked at the idea of a bank becoming a landlord coupled with a bank versus a vulture becoming a landlord. I know which one I would pick today. The scheme was a great idea, which was horrifically constructed. If one wanted to complicate something and find the sickest person in the country to do that, one could not do a better job than with mortgage-to-rent. Hopefully, we have just finished off a mortgage-to-rent deal for one of our clients, Danny, where the lender had refused to participate in the scheme. Unfortunately, his wife has passed away but he has three young kids. He is perfectly eligible for the scheme but the lender decided it did not participate in the scheme. We took a High Court case in February and Mr. Justice White ruled against us saying mortgage-to-rent is a voluntary proposal and solution. Everyone in the country could have seen that Danny was eligible for the scheme and he should have been on it within one hour. We did an analysis of how long it has taken us to deal with Danny - there were 201 emails, 73 phone calls, and 16 meetings over 80 hours. That is for one person with three young children who has already had a personal tragedy, with his wife dead. Only now, 18 months later, will mortgage-to-rent get across the line. There needs to be a body that can sit and deal with Danny in one hour, which compels the borrower and lender to comply with its decision. It will be in the best interest of the borrower and the State because the numbers are enormous. Danny is coupled, by our calculations, with another 20,000 people. It would take 276 years for the Insolvency Service to get through this, as well intended as it is.

Mr. Stephen Curtis will deal with the money - he loves money.

Mr. Stephen Curtis: I will return to Deputy Durkan's point about the people who cannot pay and those who will not pay. Something we have suggested for a number of years is the introduction of some sort of a certificate of affordability for anyone going into court or negotiations with the bank. It could be administered by personal insolvency practitioners or another body. It would say that a person is paying a certain amount, that it is all they can afford to pay, they can afford to pay more or they cannot afford to pay anything as the case may be. Our experience is that the vast majority of people who come to us are either paying as much as they can or more than they can and forgoing other things, for example, not paying their electricity bills or not paying for groceries. That would be one very simple way of determining that. I have been dealing with this for the past three years with Mr. David Hall and for longer elsewhere. The reality is that the vast majority of people pay as much as they can because the consequence is that they will lose their house - people want to co-operate as much as they can.

In terms of our figures versus those of the Insolvency Service, ours are significantly higher so obviously we are not doing them through the Insolvency Service mechanism. The majority of them have been through informal negotiations. I am a personal insolvency practitioner, PIP, registered and licensed with the Insolvency Service so I do not want to insult it too much. The

reality is that the operation of the Insolvency Service for the types of people we are dealing with is far too cumbersome. In the last session, Deputy Collins asked how the PIP is paid. The reality is that for an insolvency arrangement to happen there needs to be a pot of money brought to the table by the debtor. That is what the PIP gets paid out of. The debtor does not necessarily write a cheque to the PIP but the PIP is paid out of that pot. It goes through the creditors and back to the PIP. In order for insolvency arrangements to work on a wholesale scale, it requires money. PIPs are private operators; most of them are accountants or solicitors operating in a private practice. Being a PIP is a business, so if insolvency arrangements are to be done on a wholesale basis without a requirement for a profit to be made, there should be public PIPs. There should be PIPs licensed and run by the Insolvency Service who would go to people who cannot fund a PIP and tell them they could probably do a deal and that the Insolvency Service has five, ten or 20 PIPs working for it and that they should go to one of them to implement it.

In terms of the cost of our proposal on rent allowance, in some ways it is quite hard to judge because there are a number of people against whom the banks are taking repossession proceedings. There are about 20,000 of them before the courts at the moment and a lot of those people will be eligible for social housing if and when their houses are repossessed. The cost to the State will range from about €650 a month to about €1,900 or more depending on what county one is in. Our estimate is that there are 20,000 at imminent risk of that happening so €500 by 20,000 is the amount. The reality is that we do not know at the moment because nobody is paying it. They are sitting there not paying the banks because they cannot and are not being subsidised by the housing authority because they are still in their properties. If one wanted to solve the problem with mortgage to rent, one would go to the two State-owned banks, AIB and Permanent TSB, and ask them how many of the people they are currently taking to court who cannot pay anything will be eligible for social housing and will go into that system if and when they repossess their house. The two lenders could put a list together of all those properties and go to the approved housing bodies, the Clúids and Oaklees, and ask them to make an offer on the houses that are available. They could buy them and leave those people in their houses and let them stay there instead of this charade of them going through the court system where their properties will eventually get repossessed unless something happens. I agree with Mr. Hall that it is a very slow process and thank God for that. There is a need for radical action in this area. We spent two full working weeks on one case before it was resolved. We have been at this now for 18 months. This is not the way to go if this issue, in its totality, is to be resolved.

Mr. David Hall: The cost of being before the courts comes to the debtor eventually but, ultimately, it is the banks that are goosed. The cost associated with entering a legal process and the average cost of repossession varies. At a recent meeting, the Irish Banking Federation told us that 50% of all the people in long-term arrears are paying nothing. In an emergency and a crisis, one needs to get into those numbers very quickly.

I am aware that Mr. Paul Joyce of FLAC will be appearing before the committee later today and I am sure he will provide a lot more documentation than we have. At a FLAC conference I attended a number of years ago a man stood up and said, "Not everyone is going to get equal treatment." This is a crisis. I am sorry but not everybody will get equal treatment.

Deputy Bernard J. Durkan: Why not?

Mr. David Hall: Because the scale and the numbers are so big. From that perspective, it is extremely difficult to resolve matters. The are currently 20,000 cases before the courts. Those 20,000 cases need to be channelled through a new body that has the authority to engage with both parties in a swift and meaningful way. Administration of those cases, without the hundreds

of necessary staff required, will take a long time such that some people will, unfortunately, lose out.

Deputy Bernard J. Durkan: It does not take a long time if a general principle is established and adopted. What about the moral responsibility on the lenders who gave so freely and readily - almost unconditionally - to so many? I am differentiating in respect of those people who refuse to pay anything at all on the basis that everybody can pay a small amount, including those on social welfare benefits, all of whom have to pay local authority rent and so on. I would welcome a response to my question on whether the lender has a moral responsibility to look backwards and forwards at the same time in regard to whether the loans which they approved were approved in good faith or whether they were approved in the clear knowledge that the property would be repossessed at a later stage.

Mr. David Hall: I smile when I hear the words "moral" and "lender" in the same sentence.

Deputy Bernard J. Durkan: I do not.

Mr. David Hall: There has been much talk about vulture funds. Vultures feed on carcasses that are dead. There are lenders and vulture funds here that are currently eating on people who are alive. I am aware that Deputy Durkan has dealt with the banks on behalf of many people in his constituency.

Deputy Bernard J. Durkan: I have been in the courts as well many times.

Mr. David Hall: I am aware of that. I have been working in this area for the past five years and I have met face to face with every lender in this State, often in coffee shops because I was not allowed into the banks. Morality does not come into it. This is a production line. The banks have moved on. The time to hit them with the moral argument was in 2008, 2009, 2010 and 2011. They have moved on in terms of staff, ethos and so on. I am not agreeing with that. What I am saying is that the current situation is horrific. Dealing with the banks and getting them to show compassion is like walking through a swamp in a pair of wellies. Under the system currently operating within the banks, Johnny can be contacted by phone today by Mary and by John tomorrow. The code of conduct on mortgage arrears introduced in July 2013 was evaporated in order to allow bank staff to ring people any number of times and for site visits to be carried out by what are known as "field officers", many of whom think they are FBI agents. These officers are knocking on people's doors saying, "Hello, you owe us €200,000. How are you fixed?"

The entire consumer protection component has been - I say this respectfully - abandoned by the entire establishment, including the Central Bank, which is the greatest joke in terms of consumer protection in the history of this State. Consumer protection should never be dealt with within the walls of the Central Bank. Respectfully, I believe this committee has an opportunity to change all that. There needs to be a legislative basis for consumer protection such that every bank and lender in this State, and those sitting in armchairs in America, understands that they cannot throw people out of a house here if they are being reasonable and can contribute towards their mortgage. That is where we need to move to in a fast, industrial-scale way.

Deputy Ruth Coppinger: The unfairness with which people in mortgage distress in this country have been treated in the past eight years since the crash is mind-boggling. If anything shows how this system cares nothing for the majority in society, it is the fact that so little was done by the previous Government to help people. This was one of the key issues, as I am sure

people remember, in elections a few years ago. The personal insolvency practitioner service we heard about is not being taken up by many people.

I have a question about the vulture funds. It is interesting that it was mentioned that despite the protestations of the vulture lovers, vulture funds do not have a long-term interest in settling with people in distress. Is it fair to say the witness is in disagreement with the Minister for Finance who, when he came before us two weeks ago, made an analogy with vulture funds? He stated that vultures provide a very good service in ecology through cleaning up dead animals littered across the landscape. He has met representatives of those funds on several occasions, as have his departmental officials. Does the witness agree it was wrong to sell so many mortgages to vulture funds and the Government should not have allowed that to happen? We can only assume from the Minister's comments that he is likening mortgage holders and people in distress to dead animals that need to be cleared off the landscape. As has been noted, unfortunately, people are very much alive and it is a bit of an insult to vultures because they perform an important function in ecology.

The other point made by the witness is that radical action was taken by the Oireachtas in dealing with the banking crisis and €64 billion was passed over for that. Where did that €64 billion go? Did any of it go to releasing the debt on mortgage holders or did it all go to releasing debts on developers and the banks? Does the witness have any figures on that? For example, AIB wrote off €5.4 billion in construction and property loans in the past two years, compared with only €1.1 billion on residential mortgages. That relates to owner-occupier and buy-to-let loans.

I am glad the witness raised the issue of compulsory purchase orders, CPOs, as legislation is required in that regard. Does the witness advocate that the State should pursue this for mortgages in distress? Could the process be used by State-owned banks where possible to write down people's mortgage debt? At the end of 2015, AIB had €5.7 billion in impaired residential mortgages but it wrote down €5.4 billion in construction and property loans. What would have happened if the company used that money to write down debts on the mortgage holder rather than the developer?

I have many examples of statements from the Government indicating how there is a conscious policy to allow property prices rise in order to reduce negative equity for people so they will feel better about their debt. Does the witness agree that this has also led to the housing crisis as well? If a person is waiting for prices to rise, houses and land would be held back, contributing to the housing and homeless crisis.

In the interest of people knowing where Mr. Hall is coming from, I must ask him about his relationship with AIB. The Irish Mortgage Holders Association, IMHO, has had a connection with AIB since 2013. Will the witness outline the nature of that relationship so that people can be aware of it? In AIB's annual report last year, it indicated that to year-end 2015, some 2,370 people achieved a resolution with the bank through the IMHO, with 779 resolutions achieved during 2015. The IMHO website indicates it is funded by grant aid from AIB. How much does it get paid by AIB and is it essentially a contractor for the bank? The IMHO has been able to take on staff as a result of that arrangement. Does that compromise the IMHO in dealing with AIB, as it is one of the biggest mortgage providers in the country?

Chairman: I will take one or two other speakers, although I know there have been some specific questions.

Deputy Joan Collins: I have had dealings with the Irish Mortgage Holders Organisation, as have many other Deputies in this room under previous Governments, in relation both to themselves and to constituents who come in to them regarding this issue. I want to register again that I fully endorse the fact that we are in a housing emergency and we still have a tsunami coming down the road in respect of repossessions and evictions if we do not deal with the issues that have been raised here today. I would take cognisance of many of the points made by Mr. Hall and the Irish Mortgage Holders Organisation because every single day they are dealing with the issues that have confronted them. They are very complicated issues and I know some of the cases in which the organisation has tried to deal with and to resolve the issues with the banks. The Irish Mortgage Holders Organisation has been at the coalface of trying to understand the workings of the banks and how they process these matters.

The code of conduct is still voluntary. One of the first things this committee can do is to ensure it becomes a legal requirement, that the banks are forced to address split mortgages and mortgage to rent as part of the resolution, because they still have the opportunity to reject them. It is not going to solve the problem but it is an important part of the issue.

In respect of PTSB and AIB and the proposal to look at exactly where the banks have their distressed mortgages, looking at each case and then putting forward that idea to the voluntary organisations and local authorities and having a practical way of doing it, Edmund Honohan said the other day that we need a----- What was it he said? Can any members remember? The point he was making was that we need to deal with it very quickly - it cannot wait. We need a blanket intervention to deal with the issue. This would be part of the process that would help in respect of dealing with those banks.

Deputy Seán Canney: I thank the Irish Mortgage Holders Organisation for coming before the committee. Mr. Hall has described the charade around trying to get things going in respect of distressed mortgages, and how complicated everything is. He mentioned the idea of an agency or a court that would make a quick bullet point decision on such matters that would be binding. He talks about AIB and whether Bank of Ireland and the vulture funds can be made accountable to that agency or that court as well, so that we do not end up solving some of the problems but not others.

Deputy Coppinger raised this issue earlier, and I feel that what is happening at the moment is that the banks are waiting for the value of these houses to go up. That may be why the process of repossession is slow - they are waiting to repossess at a time when they will get most of their money back, so rather than doing it this year they will wait until next year, or whatever. Would that be Mr. Hall's view, that they are just stringing it out and letting the mortgage holder who is in distress suffer the mental strain of all these letters coming at them every couple of weeks but still leaving it until the value of the property gets to a level where they can sell it off, get the money back and hump off with the mortgage arrears? It is just an observation I have and I have a concern about it as well.

Mr. David Hall: I will deal with the last point made by Deputy Seán Canney, which was made by Deputy Coppinger as well. The Central Bank's quarterly report gives details of how many properties it takes possession of or sells on each quarter. Every single quarter since 2009, the figures have shown that there are 1,000 properties available that are being held by the banks. In response to Deputy Canney's question, I would 100% agree that there is nothing surer in the world than that the system has preferred the banks and has preferred the increase in property prices. It has undoubtedly been an intended project. Why else, in a housing crisis where mortgage brokers are looking for properties on behalf of customers, would one intentionally hold,

every quarter, 1,000 properties that one has on the books? Why would one do it?

Chairman: Are they vacant?

Mr. David Hall: Yes, they are all in the possession of the banks. They have either been given voluntarily or have been repossessed. Every quarter if one looks, the line is the same, it fluctuates between 920 and 1,020. It is exactly the same every time. They have no purpose other than controlling the market and they have always held those properties on their books. The number is the same each time. They repossess 179 or 240 per quarter. They sell 230 but they always keep 1,000 houses on the books. In any rational environment, those 1,000 houses would be gone. They would be given to or sold to a local authority and offered up as housing. They would be made good in the event that some of them were not up to standard. They would be dealt with instantly but that is not being done. I share Deputy Canney's concern on that issue.

Many people have buy-to-let properties as well as family homes. If someone's financial circumstances are evaluated and it is determined that they are in grave financial difficulty, the only reason for doing a deal with the person to hold on to the buy-to-let is for one to take rent while the price of the property increases. For an individual who owns a buy-to-let property, it is unclear what the bank intends to do with them in 12 or 24 months or at any time. I must inform Deputy Durkan that we say to people that there should be no surrendering of a property until such time as the residual debt is dealt with even if that means not paying the €300 someone may be able to afford to pay. If a bank takes someone to court and requires them to pay €1,300 and they can pay only €300, questions must be asked as to why they would pay the €300.

Deputy Bernard J. Durkan: I disagree. If one is refusing to pay anything until all is solved, that puts one in a weak position going to court.

Mr. David Hall: We may differ but the reality is that the law states categorically that is the case. In only a handful of cases has there been a failure to get repossession orders. Over time, a repossession order will be granted. In light of the current housing crisis, somebody may be better served holding on to the €300 for a deposit in this mad rental stage we are in. Ultimately, where someone has buy-to-let properties, a family home mortgage and one or two investment properties, only the rent is being taken. Many of the banks have a formula whereby they will tell people minus what percentage of rent they will accept but there is no certainty or long-term plan for those individuals. That is the great danger.

Deputy Coppinger asked about vulture funds. I agree with her 100% on that issue. I had a face-to-face conversation with the Minister for Finance, Deputy Noonan, on bank holiday Monday in which I gave views on mortgage arrears and solutions with the Independent Alliance. We had a very robust exchange and it is very clear that the Minister falls into the "vulture lover" category. He was very clear on his love for vulture funds, on which we had a robust exchange. Some would argue there is a place for vulture funds. If someone in business is goosed and is about to lose his or her property, it is likely that a vulture fund will write off the debt but in return it will want the keys to that property. At the moment, one of them is offering €5,000 if the person gets out of the house within six weeks. That is their intent. It is very clear. They are self-confessed predators. They circulate for five years. They suck an asset dry and then move on. My big concern is that we will end up with a situation where the current vulture funds will suck what they can and sell on to a super-vulture fund. I agree with the Deputy's comments. I think the Minister, Deputy Noonan, is badly advised. I think his preference to have met - I said this to him - vulture funds versus debtor advocates over the past five years was deeply concerning. However, I will say in his defence, I met a man a fortnight ago who clearly knew

the that system does not work and was exceptionally engaged for a number of days in trying to bring something about. I strongly recommend - Deputy Joan Collins referred to this - the use of mortgage-to-rent arrangements and split mortgages as part of the code of conduct. I also strongly recommend that the court should be centralised but it should also have an arm that could push through deals. As already stated, I saw a different reaction in respect of this matter. The vulture part was there but I did see a different reaction.

In regard to our own arrangement with AIB, people who are in debt either afford services themselves or, as is the process throughout Europe, the polluter pays. For 18 months. all our staff tried to deal with banks on behalf of debtors on a voluntary basis. It was impossible to deal with people like Danny over a two-year period, taking two full weeks to get one case across the line in the absence of having staff. We were doing those people an injustice. We approached AIB and asked it to fund a number of staff who would engage on doing deals. AIB did that for the first year. It was a huge success and there were 3,500 deals made with those customers in recent years. In the past year, they paid us approximately €680,000 and we hired staff. This is done on a grant basis. We are a charity so it is not done under service level agreements or on a contract basis.

In answer to the question and to give the committee some comfort - the same question was asked by their colleagues on the finance committee and they received a very robust response - I would safely say that since October last year, we reported all of the banks, including AIB, to the Central Bank. This was supported by the Oireachtas finance committee in relation to tracker mortgage issues and we probably cost AIB €200 million because of that letter. Our issues with regard to our debtor advocacy is 100% clear and 100% solid. I know that when I go to bed tonight, there are thousands of people who have been kept in their own beds with help from members of my team.

We also got €120,000 off KBC and I make no apologies for taking money from it because it should be paying for it. This goes back to Deputy Durkan's perspective regarding the morality of this. Those banks should be funding this and paying for these services. It is their obligation to fund these services, not to pursue people but to make sure the best protections are in place. I guarantee Deputy Coppinger that if she were to ask AIB whether I would be a friend or a foe, I believe she would get a very clear message. However, I respect the question and it is the right question to ask.

Deputy Bernard J. Durkan: Chairman, a reference was made to the fact the Minister for Finance was a vulture fund lover. I object to that and I want it corrected. The Minister has not given any indication to that effect at all-----

Deputy Ruth Coppinger: He has.

Deputy Bernard J. Durkan: The Minister said initially and more recently that so-called vulture or venture capitalists have been of benefit at a time when there was little money circulating in the system here and it was for that purpose only. It should be recognised by everybody, now and as time passes, that we should not come to a conclusion that in any way besmirches the reputation of someone who is not here but who can defend himself and quite clearly has done so in the past.

Chairman: I thank Deputy Durkan. The committee is not making any decision on that issue. At this point in time we are taking submissions and we are questioning witnesses. I am conscious-----

Deputy Ruth Coppinger: Chairman, can I just-----

Chairman: Please, Deputy Coppinger. Deputy Byrne had indicated to speak.

Deputy Ruth Coppinger: I know but Deputy Durkan made a point and-----

Chairman: Please-----

Deputy Ruth Coppinger: -----there is a lot of evidence that the Minister has a very positive attitude to vultures.

Chairman: That is a matter the committee can deal with separately. At the moment-----

Deputy Ruth Coppinger: Yes but I am just giving the corollary of what he said. He met them eight times.

Chairman: I call Deputy Catherine Byrne.

Deputy Catherine Byrne: I support what Deputy Durkan said. I believe it is wrong for anybody to come to the committee and make accusations about an individual, a Minister or a Deputy. In the Chairman's opening statement at all committees, it is clearly indicated that when people are not here to defend themselves, their names should not be used. I am disappointed that Mr. Hall has decided to use this opportunity - on live television - to make a statement about the Minister. It is wrong and it should be withdrawn.

Deputy Ruth Coppinger: Mr. Hall did not make a statement. I asked him a question about whether he agreed. Deputy Byrne is obviously political because she is in Fine Gael. The Minister himself made such a statement while before this committee so this is pathetic.

Deputy Bernard J. Durkan: Chairman, all the protests are directed at Fine Gael.

Chairman: I remind Deputy Coppinger and Deputy Durkan that Mr. Hall and Mr. Curtis are here to answer questions. The committee has made no findings. In due course, we will go through our own deliberations-----

Deputy Bernard J. Durkan: This cannot be left hanging in the ether and I want to state categorically that I reserve the right to object to any such intervention.

Deputy Ruth Coppinger: Deputy Durkan can object but-----

Deputy Bernard J. Durkan: I can object to Deputy Coppinger also.

Chairman: Deputy Coppinger, I will move on.

Deputy Ruth Coppinger: Chairman, we should not be trying to gag people when they come in to the committee.

Chairman: I am not trying to gag anybody. I am trying to move forward.

Deputy Bernard J. Durkan: I wish to make it quite clear that it is my right to challenge any issues that arise here, whether for political purposes or otherwise.

Chairman: Which you have now done.

Deputy Bernard J. Durkan: Good, and I want it recorded.

Chairman: I wish now to conclude the meeting because we have a session again this afternoon. I call Deputy Cowen.

Deputy Barry Cowen: I thank Mr. Hall for his contributions. I know he has said, and many people agree, that the mortgage-to-rent scheme had the potential to be a reasonable and good scheme to address the difficulties which existed for many people. Unfortunately, however, the way in which it has been administered leaves a lot to be desired. I hear what Mr. Hall is saying with regard to the contributions he has made towards the provision of a programme for Government and that he hopes to see improvements in that regard. Notwithstanding the time it may take for that to bear fruit, does Mr Hall believe emergency legislation could be brought to the House with a view to protecting those tenants caught in the middle of the mortgage-to-rent situation? Those properties are being repossessed and there is a new swathe of those now being brought to the courts. Many people find that their rights are null and void. They are completely at the behest of the courts and, unfortunately, the legislation does not protect them. Does Mr. Hall believe, or has it been suggested by anyone he has dealt with recently, that there could be protective legislation brought forward to allow them to remain in those homes for a period until the mortgage-to-rent situation has been rectified?

Chairman: As that concludes the questions, I invite Mr. Hall to respond.

Mr. David Hall: On that point, courage and leadership are two words that are bandied around regularly but we have 100,000 citizens who are in fear of what will happen in the future. It is incumbent upon the Dáil to draft legislation. We have a mechanism through the President, the Council of State and the Supreme Court if we want to stress-test legislation so why do we not stress-test legislation that starts to rebalance the imbalance that has existed for seven years? That is the courageous move that is required. It need not be something off the wall but something reasonable that protects those tenants, those who are most vulnerable and those who are on social welfare, having lost both incomes or the one income within the family and who may or may not have children in the household. These people will end up homeless. In parallel with the various homelessness crises we deal with at the moment, these people have dramatic mental health challenges as time goes on. That will come at a cost to the State.

Deputy Durkan asked about it earlier on, and he is right. There is a cost to the State relating to this but there are no free houses. No one is advocating a free house. We are advocating someone has a safe home and that requires courage, leadership and a massive rebalancing of a dramatic imbalance in favour of financial institutions. We guaranteed, without any legal instrument, €500 billion. We pumped €64 billion into banks. We had multiple late-night sittings of the Dáil to protect financial institutions. While we gave money to some banks, 56% of them, the others' existence is because the State stepped in. The entire system would not have been existing. There needs to be payback for those vulnerable customers and citizens who are now facing the abyss. Many organisations, including ours, have done and are doing their best but unfortunately the numbers are now in an emergency situation, require emergency legislation and this has to be grabbed firmly. As I said, with any major disaster, people who may be missing from this side of the fence when it comes to giving the committee evidence are major disaster planners. International major disaster planners who could tell the committee how to deal step by step with what is coming are what the committee needs.

Chairman: That more or less concludes this session. I thank Mr. Hall and Mr. Curtis of the Irish Mortgage Holders Association for their attendance today and for the submission, which, as I said earlier on, will be put on the committee's website.

Sitting suspended at 12.30 p.m. and resumed at 2 p.m.

Residential Tenancies Board

Chairman: I wish to draw your attention to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if you are directed by the committee to cease giving evidence relating to a particular matter and you continue to so do, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given and you are asked to respect the parliamentary practice to the effect that, where possible, you should not criticise or make charges against a person or persons or an entity by name or in such a way as to make him, her or it identifiable. The opening statements will be published on the committee website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I am pleased to welcome the representatives of the Residential Tenancies Board, Ms Rosalind Carroll, Ms Janette Fogarty and Ms Kathryn Ward. We have received your submission and it has been made available to the members of the committee. Ms Carroll, please begin your opening statement and we will take it from there. Members will then have a number of questions.

Ms Rosalind Carroll: I thank the Chairman and committee members for the opportunity to address the committee today. I wish the committee well and I am very happy to assist it in any way I can. I am accompanied today by my colleagues, assistant directors Janette Fogarty and Kathryn Ward.

In my statement today, I will concentrate on the rental sector. However, the dynamics of the rental sector are part of a much broader housing system and any policy recommendations or development in the housing area needs to consider fully the implications of that policy for all parts of the housing market. What I will briefly set out, based on the experience of the Residential Tenancies Board, are the current trends and issues affecting the rental sector, the steps that have been taken to date to address some of these issues and some thoughts on approaches to these and potential future issues.

The Residential Tenancies Board, RTB, formerly the Private Residential Tenancies Board PRTB, was established in 2004. It has 324,000 tenancies registered, representing 172,000 landlords and 705,000 occupants. Its remit is to regulate and support the rental housing market by operating a national system of tenancy registration, providing a quasi-judicial dispute resolution service for tenants and landlords and conducting research and providing advice to the Minister on matters impacting the sector. We produce a quarterly rent index based on one of the most extensive rental databases in the country.

Our remit has also just recently been extended to include approved housing bodies, otherwise known as housing associations, which provide housing for approximately 30,000 tenants. This change and hence our recent name change means that both tenants and landlords of these properties are now also protected by the residential tenancies Acts and have access to our dis-

pute resolution services. This is an important development as it breaks down the traditional distinction in the rental sector between social and private rented housing and moves us closer to models elsewhere where those differences cannot necessarily be identified.

The rental sector has grown considerably over recent years. Census 2011 showed that one in five were renting in the private sector and if the social rented sector is included, this figure increases to just under one in three. Therefore, the rental sector makes up a significant component of housing tenures in Ireland and this is likely to be a continued feature of our housing market into the future. The growth in the sector can partly be explained by the downturn in the economy, decreased mobility with fewer first-time buyers and the lack of new supply. It can also, however, be partly explained by long-term societal changes, and population growth. In particular, a rise in migration has given rise to an increasing demand for rental accommodation, 75% of non-Irish nationals were renting from a private landlord in our last census. Combined with this, there are more people living alone, and more people who need more flexible tenure options to facilitate more mobile work requirements. This means there is an increasing demand for rental accommodation. It is particularly important to take cognisance of these shifting demand patterns as they suggest that a significant part of our society will rent rather than own their homes. Therefore, we need to consider not just the much recognised need for more supply but specifically the need for more supply of rental accommodation.

The need for more supply is evident from the increasing level of rents across the country, which are being driven up by a lack of supply. According to our 2015 quarter 4 rent index, rents were 9.8% higher nationally than in quarter 4 of 2014. This is still 9.1% lower nationally than the peak in quarter 4 of 2007. What is a matter of concern is not just the increase but its pace. While in Dublin rents for the first time passed their peak levels in 2007, being 0.4% higher than ever before, the rate of increase has started to decline in the Dublin area. However, pressures on availability are still evident, with availability of rental accommodation nationally the lowest on record.

The trends in our annual number of new tenancy registrations also evidences the pressures on the rental sector and the lack of supply. Annual tenancy registrations peaked in 2011 with nearly 112,000 tenancies registered in that year but that has dipped consecutively in 2014 and 2015 while our overall numbers of registered tenancies have increased. This suggests that tenants are staying longer in their properties.

The volume of disputes referred to the RTB has increased steadily in recent years. This is to be expected given that ours is a large sector and the fact that we have undertaken education and awareness campaigns. What is significant is the changing nature of the disputes referred to us. Cases involving disputes over deposits used to be our most common dispute type whereas now rent arrears and over-holding make up our greatest number of cases. Such disputes account for over 33% of cases compared to 20% in respect of deposit disputes. Rising rent levels mean that tenants are finding it more difficult to meet rental payments, leading to a greater number of disputes regarding rent arrears and over-holding issues.

The overall vision of the RTB is to have a well-functioning rental housing sector that is fair, accessible and beneficial to all. This is a challenging vision in the current environment. The Minister has introduced a number of legislative changes to address some of the issues in the market. These include: new rent certainty measures whereby rent cannot be reviewed more than once in any 24-month period; an extension of the notice period of rent review from 28 to 90 days; a requirement on landlords when undertaking reviews to provide details of three similar properties in the area; and an extension of notice periods for both landlords and tenants in

respect of termination of longer-term tenancies of up to 224 days for the former and 112 days for the latter. Stronger verification procedures are required in terminating a tenancy where the landlord intends to sell or refurbish a property. Measures have also been introduced to ensure that both tenants and landlords know more about their rights and responsibilities.

It may be premature to assess how far these measures will go in addressing the current issues. As some of the measures have been introduced on a temporary basis and will expire at the end of 2019, it is important to consider not just the very real and immediate issues but also what the future of the rental sector should look like. In this, the committee is urged to consider the short-term and long-term implications of any policy proposal.

The vision of the RTB sets out that we should have a well-functioning sector that is fair, accessible and beneficial to all. We need to recognise the fact that renting will be a much more common choice for Irish households in the future. We need to accept and welcome a larger rental sector that is reflective of our modern economy and of a society with a more flexible and mobile workforce. We should no longer view the rental sector as a residual sector in which people serve their time on the way to something more long-term in nature. To accomplish this, we need the rental sector to be attractive to tenants and landlords alike.

There are a number of specific challenges to be addressed if we are to achieve this. How do we balance the needs of the tenants with the needs of the landlord? It is certain that we need a willing landlord and tenant to enter into a tenancy agreement. How do we ensure that we build to rent as well as building for purchase by owner-occupiers and that we build accommodation appropriate to our changing demographics? In the future, how do we ensure competition in the market to keep rents competitive?

At present, we estimate that approximately 80% of our landlords own only one or two properties. The profile of landlords is starting to evolve, however, with REITs and institutional investment now playing a bigger part in the sector. Looking at examples elsewhere, institutional investment in the rental sector, while common, is balanced between for-profit and not-for-profit providers. How do we deal with the immediate challenge of the 29,000 buy-to-let mortgages in arrears of over 90 days? How do we consider the needs of people as they grow older in rental sector and their disposable incomes reduce? How do we transition to whatever policy paths are chosen, taking account of the current profile of the sector?

Although a strategy specifically for the rental sector will not magically solve the much wider supply pressures experienced in all sectors of the market, it is critical to bring certainty to tenants and landlords on the long-term future of this sector. Investors need certainty - but so do tenants - on issues such as security of tenure and rent regulation. When looking at the overall housing landscape, it is also necessary to have an understanding of what tenure mix we are aspiring to and to develop suitable policies to make that mix happen. In a modern society and economy, a vibrant rental sector is vital. It is important that the rental sector does not become the forgotten sector again.

The RTB's role is not to develop policy but to regulate the sector in accordance with the legislation within which we operate. However, the services we provide in the rental sector give us a unique insight. We will support in any way we can the development of solutions to the current housing crisis and will continue to raise awareness of the rights and obligations of tenants and landlords to support a well-regulated sector.

Chairman: I thank Ms Carroll for her opening statement and invite members to put their

questions.

Deputy Maureen O'Sullivan: I am looking for the more definite proposals the witnesses would like the committee to pursue in regard to the difficulties they are having with the work they are doing. We know about the pace of rent increases. The legislation probably made the situation worse rather than better and I wonder whether that is the experience of the witnesses.

I am interested in hearing about the length of time it takes to settle disputes and the issues that are raised with the witnesses. There seems to be a disparity between settling a dispute and the implementation and enforcement of what has been agreed. I am interested in hearing the witnesses' views on that.

Tenants, in particular those in substandard accommodation, have a fear of making a complaint to landlords because of to what that could lead. Many tenants are living in very substandard accommodation. What can be done to remove their fear?

Deposits are still an issue. People are left waiting for their deposits to be repaid and need to rent a different property but do not have the required deposit.

Deputy Bernard J. Durkan: I welcome the witnesses and thank them for their submission. I compliment them on their work in determining disputes to the satisfaction of tenants. I have attended a number of meetings. They have done extremely well in establishing a respect for their office and coming down on the side of the person who is most vulnerable in a given situation while at the same time observing the rules and regulations.

Unfortunately, I do not agree with their assessment of the societal change to the effect that in the future we should rely more on rental property. In fact, that is the cause of our problem. I attended a meeting some years ago when that idea was first floated on the same grounds, namely, that it would facilitate society and job relocation to a greater extent than previously. It did not work that way.

In fact, it made rents as expensive as mortgages, which is the case today, and gave relatively no security of tenure to tenants. It placed a large amount of power in the hands of those providing properties. I do not want to go into all of the rights and wrongs because I am a strong supporter of the need to provide properties for direct purchase, either through local authorities or for allocation to tenants in the public sector or for purchase by potential owners in the private sector.

One of the problems associated with the boom was the extent to which multiple properties created a bubble for multiple speculators who, in turn, made massive fortunes from land and building properties to such an extend that nobody could afford rents or mortgages. I do not want to reiterate what I said. A person on my salary or that of the Chairman cannot afford the current average mortgage or rent. They are the things upon which we need to ponder.

Deputy Kathleen Funchion: I agree with a lot of what Deputy O'Sullivan said. I thought we would have a bit more detail on proposals. I would like to know about the length of time taken to resolve disputes. I do not expect the witnesses to have the information to hand but I would like a further breakdown, even on a regional basis, on the number of disputes and the length of time taken to resolve them. My experience is that people do not report problems in the first instance or abandon cases halfway through the process because they are afraid their landlords will kick them out. I would like to hear the comments of the witnesses on that.

Chairman: I ask Ms Carroll to address those questions first.

Ms Rosalind Carroll: I will start with the comments of Deputy O'Sullivan. In response to the first question in terms of more definite proposals, the RTB is a regulator and we do not make policy and, therefore, we have not strayed too far from that except to talk about the facts more than anything else. That is probably something we have a strength in trying to bring to the fore. That said, in 2014, we produced a report by DKM Economic Consultants, which went to the Minister with a series of recommendations - one of which related to rent certainty, and there were other recommendations on tax relief. The main recommendation in the report, which was independent of us, was that one needed to tie in tax reliefs with any regulation on the other side and that there had to be a balance between the two in order that it would not impact on supply. In terms of going further - I know the committee has talked about more measures on rent certainty, sale and security of tenure - some of that was discussed within that particular report. It is fair to say the issues that arose in 2014 have only increased since then so I would not take that report as being definitive. It was written at that time and the situation has continued to evolve since then.

The main point is that it is a matter for the policy makers and the Minister to make a decision on the recommendations of this committee in terms of what will be introduced. From the RTB perspective, we must think about the reactiveness of any decisions that are introduced, for example, if a further regulation is prompted on foot of the process. We must also think about the profile of our sector. I referred to the 29,000 landlords who have mortgage arrears of more than 12 weeks. We have indications that between 60% and 70% of landlords currently have a mortgage. Of those, we know perhaps 25%, if not more, are talking about wanting to sell. The difficulty with introducing regulation is how and when one gets there, for example, what is the direction of travel in order that one does not spark a reaction whereby one might want a more professional rental sector in the future but in the meantime, the 80% of landlords we currently have that own one to two properties decide to sell their properties tomorrow because they know that something is coming in.

Mention was made of rent certainty measures. Our experience is that they were talked about for 12 months and people started to increase their rent from 12 months prior to the discussions starting to take place and there was probably a little uplift straight after they came in. Our next rent index is not due out until June so we do not know if rents are starting to dampen as of yet. The reality is that we must bring certainty to where we are going or people will start to react in ways that we cannot determine. That is one of the key messages I want to give. It is not the role of the RTB to say one should do this or that, but we need a clear direction of travel for tenants so that they will understand where they want to go in the market but also for landlords in terms of increasing the supply of rental property and to try to give some understanding to the existing market in terms of where they will go. We must ensure that we do not create unintended consequences. Given our profile and knowledge of the sector, that would be where we could offer some assistance.

The length of time on disputes has been significantly reduced in the past three to four years. Now we provide two services in the case of disputes. We have a free mediation service and the waiting time for it is only four weeks to get an order. If a tenant or landlord chooses to go down the adjudication route, one is talking about two to three months to get a determination order. Those times compare to an average of approximately 18 months previously. Three or four years ago that is where the RTB's timelines were, which indicates that significant efforts have been made.

It is also worth mentioning that the mediation service we now provide is the first of its kind. There is no other telephone mediation service in Ireland. It is a non-adversarial approach in terms of trying to address issues between tenants and landlords. It has led to a situation wherein we have far fewer appeals which means both landlords and tenants are happy following the process and do not appeal further up the line.

Deputy Maureen O'Sullivan: What is the length of time from an adjudication to the implementation of the order?

Ms Rosalind Carroll: In terms of due process, if a party wants to appeal that to a tribunal, they have 21 days in which to do so. Therefore, by the time the case is heard, it can add a further two to three months to the process. Thereafter, if a party does not adhere to the determination order, it is a case of going to the courts. In terms of going to the courts, currently we approach the Circuit Court. The Circuit Court sits at different times throughout the country and we do not have any control over those periods. They vary depending on adjournments and so on. Therefore, we would not have a specific timeline on that for the Deputy. The only aspect we have control over is the period up to the tribunal and getting the determination order from that.

The Deputy mentioned substandard accommodation and the tenants' fear of making complaints. Currently, we do not deal specifically with the standard of accommodation. It is the remit of the local authorities to do that, although we will hear about a dispute if a tenant makes the complaint, but we fund the inspection services provided by local authorities to the tune of approximately €2 million per annum. My understanding is that the Department is examining a more efficient method for the inspection of properties. More inspections would mean fewer complaints from tenants and that fear would return. Proposals being examined are more shared services opportunities to try to increase the number of inspections that can take place. So far, we have funded up to €30 million in terms of inspections by local authorities.

The Deputy mentioned deposits. As he is aware, the amended Residential Tenancies Act provides for a deposit protection scheme. That is due to become operational in 2017. A significant amount of work needs to be done by us to prepare for that as the scheme involves a significant amount of money in terms of a potential €200 million to €300 million that we could end up holding. We need extensive IT services but we also need to be in a position where we can hand back that money quickly to tenants without causing their situation to worsen in terms of moving on. The timeline for that is 2017. We are beginning the procurement process in terms of the services we need to provide for that. As I mentioned in my opening statement, 20% of our cases are related to deposits, which is a decrease from the position previously. That means we have only 1% to 2% of disputes in our overall tenancies so quite a limited number of cases are coming through to us.

Deputy Durkan mentioned the reliance on the rental sector. I did not mean to insinuate that we should rely on the rental sector. I believe it is inevitable that we will have a bigger rental sector than traditionally was the case when we consider incoming migration. As I said, 75% of non-Irish nationals are currently in the private rental sector and we also have an economy whereby more workers coming into the country are choosing to rely on the rental sector.

The third point I would make in terms of that is that, from what we can see, tenants are staying longer in the sector. Therefore, their reliance on the sector is for a longer period than we would have seen in the past. Even if they are on a pathway to home ownership, they are taking longer-----

Deputy Bernard J. Durkan: Even though they cannot get out of the rental sector because they cannot save.

Ms Rosalind Carroll: Yes, and I am not commenting on whether that is right or wrong.

Deputy Bernard J. Durkan: I know. That is good.

Ms Rosalind Carroll: I am just commenting on the facts of the situation. I hope I have answered the Deputy's question on the disputes, and we can send further information on that.

Deputy Mary Butler: I thank Ms Carroll for the presentation. I have two questions. Ms Carroll said it is her organisation's remit to regulate and support the rental housing market, but how does it cope with the landlords who do not register or get involved? I had experience of that this week involving a single parent in a home where the landlord was trying to increase the rent for the second time in six months. He had already put up the rent when I got involved and pointed out the requirement for 90 days' notice but he knew he was just outside the timeline. Before somebody with some authority got involved, he was intimidating the tenant and she was finding it very difficult to cope. How does the board get involved in cases like that if the landlord is not registered with it?

I note the Residential Tenancies Board, RTB, has stated it has 324,000 tenancies and I am sure student accommodation must make up a large part of its remit, particularly when the colleges start up again. I will recount a personal case involving my son, who was in college in Cork. Four boys in a house were paying €350 per month each to make up a rent of €1,400. When I complained about the condition and cleanliness of the house, I was told to take a hike and to take my son with me as the landlord would have someone else in place within an hour and had a waiting list of 20 to 30 people. What role does the RTB play in such situations?

Chairman: I will take a few members together. I call Deputy Coppinger.

Deputy Ruth Coppinger: I wish to ask Ms Carroll about the massive increase in the private rented sector to which reference has been made. According to the figures of the RTB and the Department of the Environment, Community and Local Government, there were 282,918 rented properties at the end of 2013 and, without boring everybody with all the figures, basically by 2015, that number had increased dramatically and there now are 324,000 tenancies registered with 705,000 tenants. One must register just how big a sector this now is - so much for our love of home ownership - but how does Ms Carroll account for this increase? Is it because landlords are registering whereas they did not bother to so do previously? Alternatively, is it because, far from this flexible workforce that loves renting - a matter at which Ms Carroll hinted - there is actually no social housing and public house building has virtually ground to a halt? I agree with comments made and do not welcome this. Will Ms Carroll speak about what rights have tenants in Ireland compared with tenants in other countries? Can she provide some examples of security of tenure in Ireland compared with the position in other countries in Europe because this committee needs to hear about it?

As for another point to which Ms Carroll referred, members hear constantly that landlords will fly out of the rented sector if anything is done to inhibit them such as rent controls or anything like that. While such claims are made daily on the radio, despite the mild rent certainty measures that were brought in such as the two-year lease - which was not really rent certainty - there has been a major increase in the number of landlords in the sector. Does Ms Carroll agree this is all spoofing and there is plenty of money to be made in the private rented sector?

As for the changing nature of landlords, Ms Carroll stated in her submission that more than 80% of landlords own only one or two properties, whereas the PRTB's annual report gave a figure of 84%. Does this mean the percentage has fallen by 4% or is the profile of landlords changing because of the entry into the market of real estate investment trusts, REITs, for example? What does the RTB think about such landlords and how they treat their tenants? For example, one of the biggest REITs is the Irish Residential Properties, I-RES, REIT, which has increased the number of homes it owns from 1,500 apartments in Dublin to a current figure of more than 2,000. Technically, it is the biggest landlord in the country. Over the past year, it has increased its average rents by 9.1% from €1,250 per month to €1,370 per month and the rent is much higher in some cases. Tenants of this REIT now are shelling out €172 per month more from their own pockets than was the case a few years ago. That equates to €2,200 taken from their pockets per year. I raise this issue because some political parties in the Dáil have welcomed these REITs into the country. The evidence appears strong to me that their introduction has had an influence on rents increasing in Ireland because if they increase rents, other smaller landlords will follow suit. Members heard terms like "vulture lover" earlier and I will not go there again.

Chairman: Please do not. Thank you, Deputy.

Deputy Ruth Coppinger: The Chairman is welcome. For example, the Green Party and even the Labour Party welcomed REITs into the private rented market recently, as did the Department of Finance. As that Department gave them tax breaks, it must have welcomed them. Why would one give a tax break if one did not seek to have more of them? I wanted to ask about rent arrears and over-holding. Ms Carroll says that disputes have changed and it is no longer the deposit, which used to be the big thing. Rent arrears and over-holding now make up a large number of the board's cases. This is probably an obvious question but it needs to be asked - why has that now changed? Why are people over-holding? It means that people stay in a house or apartment beyond the time they have been told to leave. Is it because, in the cases mentioned, the lease has ended or that people have actually gone beyond notices to quit?

Would Ms Carroll agree that the reason people are over-holding is not because they have suddenly become greedy but that the alternative is homelessness and that is why they are over-holding? If tenants do not over-hold and remain in the property, they will be on the street literally and in emergency accommodation.

Chairman: I thank the Deputy.

Deputy Ruth Coppinger: It is important because the people out there who are listening to this have to understand that if they do not over-hold, they will be seeking emergency accommodation with all the other people.

Deputy Barry Cowen: I have a brief question on staffing levels within the Residential Tenancies Board. They have been reduced in the past five years despite the fact that the workload, I am sure, has increased very much, particularly in the past two years. Could Ms Carroll comment on what would be the position if, for example, the committee recommended improvements in staffing and resources to deal with the existing backlog and the time it is taking to adjudicate and make recommendations on cases?

Ms Rosalind Carroll: Deputy Butler asked about landlords not registering and how we deal with that. The first thing to say, regardless of whether a landlord is registered, is that a tenant is always entitled to make a complaint to the RTB. From a tenant's perspective, therefore, it does not matter whether a landlord is registered. That does not apply to landlords, by the way.

If landlords want to bring a dispute to us, they must be registered.

Deputy Mary Butler: I thank Ms Carroll.

Ms Rosalind Carroll: In terms of our overall compliance rates, it is quite difficult for us to determine where we are with them. As regards the absolute measure of the number of properties and tenancies, the only place one can find that is in the census. The 2011 census figures suggest that we had a compliance rate of approximately 85%. In 2013, we brought in some measures with the Department of Social Protection and a new system for checking compliance and data matching with them. We believe our compliance rates would be significantly higher since then. That might address some of Deputy Coppinger's questions on some of the increases we would have seen. The number of landlords would have been specific to the 2013 year because of the increase in our overall compliance at that time. I hope my answer deals with that issue.

As regards student accommodation, we estimate that in the region of 11% of overall tenancies are held by students at the moment. That is based on the sample we did in the DKM survey in 2014 so I presume it has not changed that much. If anything, it will have dropped somewhat because of the supply issues. In terms of trying to deal with that, there is no tenancy created in that situation so we can only deal with a dispute where there is a tenancy. If there is not a tenancy and there is an issue with standards, one can still make a referral to the local authority in respect of the standard of accommodation. However, we cannot deal with an issue until the tenancy exists.

Deputy Coppinger asked about the number of landlords registering and why the number of tenancies is increasing. We had a higher number increase in 2013 due to a compliance issue. What is happening is that the amount of people in the rental sector is increasing incrementally. The number of new tenancies created is stabilising because people are staying longer in their tenancies. Then there are new additions happening every year, so we do believe that it is increasing incrementally.

Deputy Coppinger asked whether social housing was the main driver for that. It is difficult for us to know. When we register a tenancy we do not register whether it is a rent supplement or HAP recipient, they are just tenants to us. We estimate that about 100,000 people in the rental sector are in some form of relief from the State, whether it is rent supplement or the housing assistance payment. The number would have been about 60,000 in 2004 or 2005 so there has been a net increase of 40,000 during those years.

I was asked to refer to other countries and examples elsewhere of regulation within the rental sector and there are many examples in Germany and the Netherlands. Rent regulation can be related to the consumer price index and there are other examples where a state might agree with rent setting and how rent setting is done for a particular district. The state would look at measures whereby one could only increase rent by a specific proportion and rents might be averaged over a four-year period. The state might say that one can only set rents within the average rent for a particular area over a four-year period so it dampens the overall effect of the increase over that period of time. Scotland has just introduced a new Bill that looks at rent pressure zones and controlling rents in these zones rather than affecting the entire rental sector. If a particular area has a particular issue, the local authority has the power to look at a rent pressure zone. This is another example of regulation. When we look at the rental sector in European countries, we can see that there is not such a major distinction between social housing and the private rental sector. Therefore, when one is introducing changes in regulation, the impact of them are slightly different. This is why I refer in my statement to understanding where we want

to get to and the transition we need to get there in terms of the impacts it might have. I was also asked about what will happen if we suddenly introduce regulations in terms of exits from the market. The Deputy is right in the sense that we have no evidence in light of the recent rent certainty measures concerning any mass exodus from the market. In the past year, our landlord numbers have increased rather than decreased.

Chairman: Has the number of units of property gone up as well?

Ms Rosalind Carroll: We register tenancies and the absolute number of tenancies has increased to 324,000. We had 319,000 at the end of 2015 so that was only in December. In that period of time, tenancies continued to increase, as did the landlord numbers. Given the legislation, there is not necessarily always an incentive for a tenant or landlord to tell us when a tenancy ends so our figures are not absolutes. They are guides to trends but they are probably relatively accurate.

In terms of rent certainty measures, not all landlords always increase rents. Perhaps that is reflected in the fact that we have not seen exits from the market. The changes introduced have been limited. The question about exits from the market depends on how broad-changing the changes affecting the market one intends to introduce would be and how quickly they would be introduced - whether they will come in overnight or over a periodic length of time. 123.ie published a survey last week; I am not sure if the committee is aware of it. The survey included landlords in a relatively large sample. It echoed much of our original DKM survey. It said that at least 29% of landlords were looking to exit the market but were waiting for their properties to return to a certain value before they did so. The question mark relates not so much to the rent regulation side as it does to the sale side and whether questions arise in respect of whether one can sell with or without vacant possession and whether that would suddenly lead to those people making decisions to exit the market now. Likewise, questions arise as to whether the banks will start pushing on in respect of the 29,000 people in mortgage arrears. We do not know the answer to these questions. Many of these are unknowns. We can only look at the data. I am not here to tell the committee what to do. It is more a question of whether when it does it, it is aware of where the impacts might be. Maybe it is about the direction of travel and having certainty on that and whether any uncertainties in the meantime will create more pressure points in terms of supply. That would be the main issue.

With regard to the security of tenure issue and the experience elsewhere, security of tenure is generally much stronger in our European counterparts and sale with tenants *in situ* is much more common. However, we are only at the start of a new culture of renting in this country and as well as changing the law, perhaps we need to consider a change of culture. It is common for people who rent commercially to sell with tenants *in situ* and that increases the value of the property at the point of sale. We work a lot with our stakeholders, both landlords and tenants, but the landlord representative groups to whom we have spoken have indicated that sale at the moment without vacant possession would lead to a decrease of approximately 25% in the property's value. Other countries protect against that in regulation by providing that people must sell with tenants *in situ*. They cannot evict tenants just because of a sale but if the property price is to change by more than 20%, that would be an exception. There are examples of trying to deal with those specific issues.

On the changing profile of the landlord sector, we do not have specific numbers. I referred to in excess of 80%. Our feel is that the REITs and the institutional landlords make up 1% to 2% of the sector but that is not necessarily 1% to 2% of the properties. We do not have the definitives on that yet but that is where we feel the figures are.

The Deputy asked my opinion on REITs and what impact they are having on the rental sector. Institutional investment in the rental sector has been called for as long as I have been in the housing business, which is more than 16 years. They have something to bring in terms of professionalism, quality of accommodation and so on. It is important to ensure competition in the market going forward and to monitor the rate of increase in significant landlords to ensure we suddenly do not have an overall investor of one size whereby the competition in the market would evaporate. I referred in my opening statement to how this is balanced elsewhere. The not-for-profit sector also provides rental housing to a much broader element of society and that helps to dampen the overall market.

The Deputy asked for an explanation as to why rent arrears are increasing. Our indications are rent arrears are increasing because people simply cannot afford the rents. The over-holding scenario tends to differ. There are genuine cases of over-holding and some of those come through our mediation service, which has been successful in securing voluntary agreements between landlords and tenants to give people time extensions to find properties where they think they can get a property in another three months rather than in a month's time. They are genuine cases where people cannot find alternative accommodation. There is a small cohort of people in over-holding cases which result from non-compliance. They are in arrears or they have never paid rent. The over-holding in those cases is slightly different. There is a mixture of cases, and over-holding only occurs in a small number of cases where people have not paid any rent whatsoever.

Deputy Cowen referred to our staffing levels. We had 70 staff at one point and that reduced to 33. We are now back up to 40 and we have sanction for a further ten, which is the result of the deposit protection scheme and the recent legislative changes. Depending on how far the rental sector expands, that will need to be increased somewhat, and depending on what comes out in terms of the overall reform of the sector, we may need further resources. At the moment, we rely heavily on an outsource centre to provide our services. While we have 40 staff, there are more than 30 staff working in an outsource centre providing our front-line customer service. We also have legal providers who provide us with legal advice on our judicial-type services. That is an overall reflection of our services at the moment.

Deputy Mick Wallace: On the point about 80% of landlords owning only one or two properties, I do not expect Ms Carroll to have the figure now but could she tell us how many properties are owned by the top 20 individual owners and whether they are investment funds or individuals? How much property does the top 20% control in the rental sector in Ireland? Ms Carroll referred to the need not to scare people out of the market and said that already many of the landlords who own one or two properties are going to get out. Does she not agree that it is not necessarily an argument for a lack of control and regulation? Has she looked at what is going on in Switzerland, which I find very interesting? The vulture funds have purchased much good development land in Ireland, especially in Dublin, with a view not to building and flogging them but to building and rental. Kennedy Wilson and Heinz are here for the long haul. They see a very lucrative rental market and they will exploit it to great benefit. Ms Carroll speaks about competition but competition is disappearing because of the influx of vulture funds. Does she not see the impact of a cartel of vulture funds? I have given the example a number of times of a two-bed apartment in Dominick Street, which has gone from €900 a month to €1,500 a month. It is directly linked to the fact that a few small players have gained a serious foothold in the market here.

Has Ms Carroll looked at Switzerland? If a developer or investment fund buys land in

Switzerland, when it is finished, the rent they can charge is determined by how much it cost to put them there. They have to open their books and prove every penny they spent so the state knows exactly what it cost to put them there. The rent is determined by that. They have another very positive initiative where if a landlord makes improvements to his property, he is allowed to charge more rent. He has to prove how much he has spent on the improvements, which makes the property better and encourages landlords to keep a better quality unit. Does Ms Carroll have any thoughts on that?

Ms Carroll has said that the new big landlord is more professional but he is also less affordable. I agree that the rental sector will grow. Even if we build a lot more social housing, as we should, fewer people will be able to afford to buy their home in Ireland. If we watch the rental sector grow and leave the best part of control and regulation to the markets, it will mean very little protection for the people who have no choice but to go into the rental market. What are Ms Carroll's thoughts on that?

Deputy Catherine Byrne: I thank the witnesses and have read their document. I concur with Deputy O'Sullivan's remarks on the standard of accommodation. Some of what I have seen is appalling and I am delighted to hear they are inspected. When properties are inspected and the landlord is asked to do certain things, is there another inspection to make sure it has been done?

Regarding rent certainty, people have informed me that they are being told the property will go up for sale. However, some months later the property is not for sale but the people have had to leave because the landlord is getting a higher income privately. That is what I can see happening with rent certainty.

Tenants are increasingly coming to me to find out what are their rights. What could be done to make people more aware of their tenancy rights? How could the committee enforce something like that in the future? What does the Residential Tenancies Board do for them?

Older people in the rental sector have increasingly reduced incomes. I would advocate that the council and voluntary housing agencies should build more for senior citizens. For the older people I deal with who are not in local authority senior citizen accommodation, the rents they are paying are huge compared with those of council tenants. Do the witnesses have any comments on that aspect?

Deputy Fergus O'Dowd: I am sorry for being late. I believe the Residential Tenancies Board's duties have been expanded recently to cover local authority tenancies and I have a question on that matter. This is not a criticism of anybody. Some tenants in local authority estates have been causing very significant anti-social problems. It may be drugs, alcohol abuse or dysfunctional people. They are intractable and have never been properly dealt with. I get very few complaints from people residing in private accommodation but I am getting some where local authorities own houses outside the local authority estate. How does the Residential Tenancies Board propose to tackle that problem? I believe the witness mentioned extra staff. Was that part of the board's ten extra people? How does the board see its role? It is critical to ensure that local authorities do their job. That is fair comment.

Chairman: I do not know if the witnesses have the answer to this question. Obviously a landlord completing the application must give details of the size of the house, who is living in it and so forth. From the information supplied to the Residential Tenancies Board, can it identify those properties that were bedsits rather than apartments? If it can do so, since the new regula-

tions were introduced has there been a reduction in the number of bedsit units in use?

Ms Rosalind Carroll: I will start with Deputy Wallace's comments. Off the top of my head I do not have the top 20, but we will look through our data and send it to him. It is something I thought of yesterday but I do not have it. I will look and see. If it is not readily available, I am sure we can dig down into it.

I was not aware of the specific model in Switzerland, which sounds very interesting. In terms of where we are at now, I would question the cost of provision in the first instance and whether that would lead to a more affordable rent for people within that model. I do not know enough about it, but I am happy to look at it. Those are my initial thoughts.

I know cost rental has come up here on a number of occasions, which is basically providing for the level of cost. I have looked at that previously and in certain areas in Ireland, it would lead to increases in cost unless a significant subsidy is provided from the State. We need to think how those things would happen. The cost benefit does not come until 30 years later on the basis of a maturation whereby the development cost and the mortgage cost come down over that period of time. We need to see how much that would benefit Ireland in terms of economies of scale. While it worked well in European countries, at what scale would we need to introduce it here in order for it to have an overall dampening effect on the rental sector? Nobody has dug down and come up with a quantitative answer.

In regard to regulation of the rental sector and whether it has a dampening effect on supply, what is important from our point of view is that there is a strategy around where we are going with the sector such that we are aware of any likely impact of regulation on supply. I am suggesting not that we do not go there but that we be aware of any likely impact, including a fall-off of landlords and what will happen to the tenants concerned. The point I was making is not that we should not regulate but that if we are to do so, what we are going to do at the weak points where we think issues might arise such should not cause a greater problem. That might require us to think differently about particular issues.

The committee will be aware that under the tax measures introduced prior to Christmas as part of the overall measures to address the rental sector, landlords who register with the Residential Tenancies Board to participate in three-year tenancies under RAS, HAP and the rent supplement scheme can avail of 100% tax relief from Revenue in respect of those tenancies. In this regard, existing landlords had to register with us by 31 March 2016. We estimate that there are approximately 100,000 tenancies eligible for that relief, although that number may be reduced to 60,000 to 70,000 when mortgage holders are taken into account. To date, only 750 landlords have applied for it. I am not sure that as a measure it has gone any way towards addressing the issue, perhaps because no thought was given to how it would impact on the landlord. For example, the fact that it is retrospective means that it is only after three years that the landlord will get the benefit of the tax relief. Other issues include whether the interest rate, which is currently low, is an incentive and that if the tenancy ends during the three-year period, there is no benefit to the landlord. This is not about whether regulations or incentives and so on should be introduced rather our understanding of what is being introduced and any likely impact thereof.

Deputy Catherine Byrne spoke about accommodation standards and asked if local authorities re-inspect properties. I will pass over to my colleague, Ms Ward, who may be able to answer that question more specifically.

Ms Kathryn Ward: Yes, they do. When a local authority carries out an inspection of a property and provides a list of issues that need to be addressed, the local authority officers re-inspect that property to ensure the necessary work has been carried out. There is a legal avenue available to the local authority officers through which they can pursue landlords for failing to meet standards. We have a very good relationship with a number of local authorities. Many local authorities check our published register to see if a tenancy is registered. If they find there is a tenancy in existence that is not on our register, they refer the matter to us. We will then follow up from a registration point of view with those landlords. Where that engagement happens there is great success. It would be great if we could get to a stage where all of the local authorities carrying out inspections would likewise engage with us. If a landlord does not comply and register with the board we can take him or her to court, which can result in a criminal conviction.

Ms Rosalind Carroll: Deputy Catherine Byrne also raised the issue of properties being put up for sale and landlords using that as an excuse to remove tenants. It is an offence under the Residential Tenancies Act to do that. Deputy Byrne also spoke about the necessity for people to be aware of their rights. I am not sure that tenants are specifically aware of their rights in this area, which is an issue we need to work on. Currently, a tenant who has been served notice to leave a property and takes up the matter with us, which is later deemed valid, has a right of recommencement of tenancy in the same property. Along with that, as I stated, it is an offence for the landlord and one we would take very seriously. Over the past week or two we had a quick look to see how prevalent that was, and of the disputes taken to us, it makes up less than 1% of current disputes. That does not mean it is not happening and it may mean that people just are not aware of their particular rights. It is an area we must do more on in order that tenants understand the issue.

We were asked more generally about what we can do to advertise and let tenants know about their rights. We have done two significant advertising campaigns and we will certainly continue to do that. We are also trying as much as possible to go out to community groups and other avenues through the local authorities and so on to get to tenants. On a more strategic level, we do not have a national tenant organisation in Ireland, which makes it very difficult for us even to engage with stakeholders. We speak with Threshold and organisations like it but there is no national tenant organisation so it is always difficult for us to communicate with the tenant. With the overall increase of non-Irish nationals in the rental sector, we have tried to ensure we produce materials in multiple languages and so on. We will continue to try to put ourselves out there more than we have done in the past. For example, we understand education and awareness is one of the critical issues for tenants in understanding their rights.

The Chairman asked about bedsits.

Chairman: What can be determined from returns?

Ms Rosalind Carroll: I will double-check with my colleague as we may be able to go back through them. We certainly do not have the figure off the top of our head but we may be able to look into it and report back to the committee with it and Deputy Wallace's information.

Chairman: That can be sent to the clerk to the committee so it can be distributed.

Ms Rosalind Carroll: I apologise as I forgot Deputy O'Dowd's question. We were asked about local authorities but they do not register with us. Approved housing bodies or housing associations register with us and local authorities are not currently under our remit.

Deputy Fergus O'Dowd: I have been informed that if there is a problem with a tenancy that was not resolved by the local authority, the Private Residential Tenancies Board could step in. Is that not correct?

Ms Rosalind Carroll: It is not correct.

Deputy Fergus O'Dowd: What if the case involves a private house owned by the local authority outside a local authority estate? Is there any role?

Ms Rosalind Carroll: No. We would have a role-----

Deputy Fergus O'Dowd: There is some role.

Ms Rosalind Carroll: With local authorities taking on responsibilities for the housing assistance payment, HAP, we would have cases coming through that.

Deputy Fergus O'Dowd: That is what it is.

Ms Rosalind Carroll: Under the 2014 Housing (Miscellaneous Provisions) Act, the power of the local authority with regard to anti-social behaviour is on a more strategic level. If there is a continuing issue with a tenant, there is power within that Act for the local authority not to give HAP in a specific area. That is one power. We have our power in terms of an overall landlord and tenant dispute. The landlord in that case is the private landlord. If a case is taken, we judge it on the evidence provided to us. Regardless of whether it is a tenancy involving HAP or a private rented dwelling, a third party can make a claim to us for anti-social behaviour.

Deputy Fergus O'Dowd: Yes. It is very important as the board can consider what the local authority is deemed not to have done.

Ms Rosalind Carroll: It is what the private landlord has not done. The local authority pays rent on behalf of the tenant. If the landlord has not taken action on anti-social behaviour and there is proven evidence, a third party can make the case that the landlord has not met his or her obligations. The case would be against the landlord and we would look at the dispute.

Deputy Fergus O'Dowd: The board may supervise the authority if it has not discharged its duties in dealing with an anti-social problem.

Ms Rosalind Carroll: I will go backwards a little to try to help in explaining the issue.

Deputy Fergus O'Dowd: Could Ms Carroll send us a note on it?

Ms Rosalind Carroll: I can send a note, but just to be clear-----

Deputy Fergus O'Dowd: Yes, because it is important.

Chairman: It relates to a private landlord with the payment coming through the local authority. Regarding one very specific point on that, Ms Carroll said that a third party can make a complaint if there is anti-social behaviour. Is it any third party or a third party that is adversely affected?

Ms Rosalind Carroll: Ms Janette Fogarty is our disputes expert so I will let her answer that.

Ms Janette Fogarty: Yes, it would be a third party that is directly and adversely affected.

Chairman: Therefore a public representative could not make a complaint on behalf of that

person.

Ms Janette Fogarty: Under the new amendments introduced in 2015, a third party group, such as a neighbouring group or management company, can bring a claim on behalf of a third party that is directly and adversely affected. However, it is all based on evidence, so the third parties potentially would have to come before the PRTB and produce the evidence that there is anti-social behaviour. There are two types of remedy available. If one goes down the adjudication route, one is looking for damages, which is the only remedy that would be available there, but we have seen that mediation is an option in the case of third party applications because they can reach a resolution to the dispute themselves. Some parties feel damages are not an adequate remedy so mediation has been seen as a successful route to go down.

Chairman: I thank the delegation. That concludes this part of the meeting. I thank Ms Fogarty, Ms Carroll and Ms Ward from the Private Residential Tenancies Board. We will suspend for a couple of moments as the next witnesses come in.

Sitting suspended at 3.10 p.m. and resumed at 3.15 p.m.

Free Legal Advice Centres

Chairman: Before we commence, I draw the attention of witnesses to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

The opening statements will be published on the committee website after this meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I am pleased to welcome the Free Legal Advice Centres represented by Mr. Paul Joyce, Mr. Ciarán Finlay and Ms Eithne Lynch. The full submissions have been circulated to the members. I invite Mr. Joyce to make his opening statement summarising the submission made to the committee.

Mr. Paul Joyce: I thank the committee and officials for the opportunity to address the committee on what, by common consent, is an extremely urgent issue. It is welcome that the committee has been appointed to examine these issues. Our emphasis primarily is on the mortgage arrears problem. It is the issue in connection with housing and homelessness with which we are most familiar, and the potential danger of loss of accommodation leading to potential homelessness. Our presentation looks at a few social welfare issues and also some legal aid issues and mentions the right to housing. I am conscious that members have had a long day with many presentations so we will skim over our submission.

We do not work in the broader housing area. We support and respect greatly a number of

the organisations with which the committee will be familiar, from charities and NGOs dealing with homelessness campaigning and services to a number of our colleague independent law centres, organisations such as Threshold and all the housing associations working throughout the country. On the broader housing issues, we have a couple of very short observations. First, we believe that the privatisation of the housing market into a mortgage lending market is the main cause of the housing crisis that we are dealing with.

We can also see evidence of a supply problem and concerns around development finance, planning and regulatory issues and obviously each of these issues needs to be addressed. We are of the view that rent certainty measures are unlikely to have any real effect on increased rents and associated evictions until the private and public housing supply is dealt with.

With regard to the mortgage arrears issue, we have presented a number of sets of statistics - damned lies and statistics and so on - which I will summarise. The clearer problem at present is the two years-plus category and the one year-plus category. One particular figure of importance is that the number of principal dwelling house mortgages in arrears over two years has grown exponentially as a percentage of the overall arrears total. It is now 40% and if one adds the one-year to the two-year category, it comes to over 50%. It is very clear where the intractable problem lies. It is in the two year-plus category, and the average amount owed by those accounts is considerable. It is 36,000 accounts. We do not know exactly how many households that is but we think it is fairly close to 32,000 or 33,000 households in danger of loss of accommodation, and that is an extremely urgent problem.

There has been a lot of restructuring over recent years but just because a mortgage has been restructured does not mean it is out of the woods. In our view there has been an over-reliance on split mortgages and particularly on the capitalisation of arrears as a sustainable restructure. There is already evidence of a number of these accounts getting into difficulty although they are restructured.

With regard to actual possession orders which have been executed, contrary to popular belief, there have been 1,300 in the past three years. There have been 2,300 voluntary surrenders of family homes. That is 3,600 family homes that have gone back to lenders in 2013, 2014 and 2015. We do not believe anybody is tracking what happens to those households once the property has been vacated.

There is also a clear and seemingly increasing problem in the buy-to-let sector with 1,500 buy-to-let mortgages repossessed in that three-year period, of which more than 800 were in 2015 alone. This is a growing problem with approximately 6,000 rent receivers brought in on buy-to-let properties.

The principal instrument for resolving mortgage arrears up to now has been the Central Bank's code of conduct on mortgage arrears, about which quite a lot of information is contained in our presentation. We believe it has been ineffective and very unbalanced with the balance of power remaining very firmly with the lender at all times. I can go into this in greater detail with members during the question and answer section if the committee wishes. For us it is a fair procedures nightmare and it would not stand up in a court. In many cases there is very little given to borrowers by way of proper written information about the decision-making process. Most important, there is no right of appeal to an independent third party.

To complicate matters further, in May 2015 the Supreme Court decided in the Dunne and Dunphy cases that the code of conduct is not admissible fundamentally in legal proceedings,

apart from the necessity to comply with the three-month moratorium. This means that when one is faced with repossession proceedings, non-compliance with the code is of no huge use as an argument in the courts. I would like to take a brief moment to quote from the decision given by the Supreme Court in the cases of Irish Life and Permanent plc *v.* Dunphy and Irish Life and Permanent plc *v*. Dunne and Dunne:

> If it is regarded, as a matter of policy, that the law governing the circumstances in which financial institutions may be entitled to possession is too heavily weighted in favour of those financial institutions then it is, in accordance with the separation of powers, a matter for the Oireachtas to recalibrate those laws. No such formal recalibration has yet taken place.

The Supreme Court is saying it is up to the Legislature to legislate in this area and the courts will not invent defences for borrowers. We know that in courts throughout the State, county registrars are doing their best to prevent the unnecessary repossession of family homes, but they are fighting against the tide. There is a new scheme of legal and financial advice about to be rolled out.

However, we would call into question at this point what use it will be fundamentally in the long run for borrowers to have access to this legal advice service when, first, anecdotally, only approximately 10% of borrowers turn up and respond to the proceedings and, second, because of the Supreme Court's decision. We believe - it will be no surprise - that there needs to be serious legislative amendment and we have listed a number of recommendations. We think the code of conduct on mortgage arrears should be a ministerial regulation expressly admissible in legal proceedings. We have been on the record saying that for many years at this point, going back to 2010.

A mortgage rescheduling tribunal should be set up to deal with appeals from decisions under the mortgage arrears resolution process, MARP, and should have the statutory power to impose solutions where necessary, including debt write-down. The one thing that is not happening is people remaining in their homes with a debt write-down, where the amount owed is reduced to something resembling the current market value of the property, which is provided for under the Personal Insolvency Act 2012.

Borrowers must be entitled to a full range of services, both financial and legal advice, to make their cases. The hearings need to take place in private. For those whose mortgages are manifestly unsustainable, access to an expanded and beefed-up mortgage-to-rent scheme seems to be absolutely essential at this point. The State needs to take responsibility and show leadership in terms of promoting access to these services as a way to finally solving a personal debt crisis that has been going on now functionally for about a decade.

A number of social welfare reforms are required. Mortgage interest supplement might be usefully reintroduced in cases of short-term arrears. There are cases still going into arrears for the first time. There has been a lot of discussion of the rent supplement and housing assistance payment, HAP, caps. Again, and as a temporary measure, it is agreed that those payments need to be increased. It is not a long-term solution but it will help in the short term. We believe the social welfare payments for those under 26 years of age causes serious danger of incipient homelessness. According to Focus Ireland, some 600 people under the age of 26 are homeless now. We support a legal right to housing, whether in the Constitution, through legislation or, belt and braces, through both.

FLAC has always been an organisation that focuses on improved civil legal aid services and has always campaigned for improved civil legal aid. The failure, for example, to have legal

aid available for local authority tenants faced with eviction really is something that needs to be immediately redressed.

As a final observation, it is obviously very welcome that this committee has been formed. We are a little uncertain as to why it is only on a temporary basis. Given a senior Minister with responsibility for housing has been appointed, it would be a good idea if this committee existed on a semi-permanent or permanent basis to monitor the plan that is to be put in place. I thank the committee for its attention.

Chairman: I will clarify the last point. This committee was set up in advance of a Government or the appointment of any Ministers and given a role until 17 June. In the ordinary run of events, other Oireachtas committees will be established and that will be a matter to be dealt with. However, this committee was set up and given a job of work to do before the Minister was appointed. I am not pre-empting what might happen afterwards but this is per this point in time. A number of members have questions. I call Deputy Quinlivan.

Deputy Maurice Quinlivan: I thank Mr. Joyce for his presentation and for mentioning that he believes the cause of the crisis is the reliance on privatisation. It is really important that we stress that each time and practically everyone on the committee will agree with that. The previous Government's plan, the 2020 plan, was to deliver 80% of housing through the private sector. That will not happen and it will not solve the problem. Therefore, I welcome the fact that Mr. Joyce said that in his opening statement.

On his list of recommendations, No. 7 is on the mortgage-to-rent scheme. Mr. Joyce used the term as well but the State needs to take "leadership". That is what must come out of this committee in a final report also. It has to be simplified for people. How does Mr. Joyce suggest we simplify it?

How long is the waiting list to access FLAC services? Does it have a waiting list or how do people apply for the services?

Mr. Paul Joyce: To take the last question first, Free Legal Advice Centres are often confused with the Legal Aid Board, which is the State civil legal aid service. We are a voluntary organisation. However, we have legal advice centres throughout Ireland. They are staffed by volunteer lawyers who are in private practice and who give of their time to offer basic legal advice, mostly at evening clinics. Generally speaking, there are no waiting lists but some centres operate by appointment only. Sometimes, a person might not get to a centre on a given evening because of a queue but, in general, the centres provide fairly quick access. However, the service is for advice only; it is not a legal aid service.

Another question was on the mortgage-to-rent scheme and how it can be improved. We are not intimately familiar with the scheme. Clúid Housing is the housing association with the most experience and it has processed the most cases under the mortgage-to-rent scheme. An announcement was made by the Government last May. The then Minister, Deputy Kelly, suggested the mortgage-to-rent scheme was to be expanded. However, there have not been any developments since then.

A number of the accounts in arrears for over two years are probably financially unsustainable by any yardstick. A mortgage-to-rent arrangement seems to be a necessary step at that point. Factors include the valuation of the property and the earnings of the individual. One problem which has not been mentioned to any great extent is the fact that quite a number of

these properties may have judgment mortgages registered against the property by an unsecured creditor who has obtained a court judgment. These may constitute a barrier in terms of the housing association being able to buy a property with a judgment on the title. That needs to be examined. The question of finance invested by the State in the scheme is also an important issue to address. The mortgage-to-rent option is not available if the property is in positive equity. Should that necessarily be the case if the borrower is in such clear arrears and financial difficulty? Clúid Housing undertook a review in 2013 and proposed a long list of potential improvements to the scheme.

Deputy Kathleen Funchion: FLAC has made several recommendations, including a mortgage reschedule tribunal, which it envisages as an appeals mechanism. Will Mr. Joyce give us some more information on that? I think that would be a good idea. I agree with the point Mr. Joyce made about not having an appeal. I used to work for a trade union. One of the fundamental things we always argued for was the right of everyone to an independent appeal. The fact is that we do not have this for people in mortgage distress. The committee could possibly explore these options more and it would be helpful to get some more detail on them.

Mr. Paul Joyce: Under the code of conduct for mortgage arrears, there is provision for an appeal from the lender's arrears support unit. This unit assess the financial information and standard financial statement and looks at the potential range of so-called alternative repayment arrangements. Then the unit decides to grant an arrangement or otherwise at its discretion. Then, there is an appeal from the lender's arrears support unit to the lender's appeals board. In our experience, many of those appeals are rubber-stamping exercises under which the appeals board upholds the decision of the arrears support unit, often with little detail on how the board has arrived at its conclusions.

In our view there should be a proper independent appeal to a third party. Furthermore, borrowers need to have the tools at their disposal to make the arguments and set out why they believe their mortgages are sustainable or may be sustainable in the long run. We have called for this since 2010. Unfortunately, the code of conduct on mortgage arrears is a very one-sided equation. It looks good in theory, with a series of criteria through which an assessment has to be made. Those involved are supposed to look at the current indebtedness of the borrower as well as the current income, the payment record in the past, future access and so on. It talks a good show but, unfortunately, when push comes to shove it is an imbalanced instrument. The fact that a person cannot use alleged failure to comply with the code in a repossession case in the court caps it off from the borrower's point of view. I do not think it would be a dramatic step to allow for an independent appeal.

Deputy Kathleen Funchion: It is a good idea and something we should definitely consider.

Chairman: Mr. Joyce mentioned that at the end of 2016 there were almost 6,000 buy-to-lets in the hands of receivers. They had gone beyond being in difficulty, the banks had taken action and appointed receivers. He mentioned that the future occupation by tenants of these dwellings is insecure. My sense, from dealing with constituents, is not that it is insecure but that in virtually all the cases we see, the tenants are served notice to quit and the properties are vacant and sold that way. Is that what Mr. Joyce finds?

Mr. Paul Joyce: No. In some instances tenants remain but the rent is being diverted from being paid to the landlord or borrower to the lender who lent under the buy-to-let mortgage in the first place. The tenants can remain *in situ*-----

Chairman: In practice, I find they are not remaining, the properties are being emptied and sold vacant. My concern is at a time of housing shortage or crisis, a substantial number of units are being taken out of circulation because by the time the bank goes through the whole process, a property could comfortably be vacant for a year or more while the receiver is appointed, the tenants are moved on and the property is sold. It is not a straightforward sale and is not as quick as selling a normal property. It is an extended period. That is what many of us see. When the receiver is appointed, the first thing that seems to happen is the tenants go.

Mr. Paul Joyce: That happens in several instances but it appears from the Central Bank figures that there are 6,000 rent receiver cases in place. The receiver is presumably appointed in order to take control of the rent. It assumes that if there is a rent receiver, a rent is being paid. It is also the case that some properties are being vacated in order to be sold. Many of those will be in negative equity. That is perhaps also one of the reasons there are several possession orders that have not been executed. They appear to be the figures: just short of 6,000 rent receivers but 1,500 properties repossessed that are buy-to-let mortgages in the past three years.

Deputy Ruth Coppinger: I was interested in Mr. Joyce's suggestion that we need legislation to make the code of conduct obligatory rather than voluntary in respect of mortgage distress and lenders. The committee had a session on legislation that we felt would be necessary to deal with the housing crisis. That suggestion should definitely be added into the mix. I will be interested to hear the comments of the other witnesses working in this sphere. We discussed rent controls. I do not know if the witnesses have an opinion on them but there has been a debate where the Minister suggested that there was a constitutional impediment to these. We heard speakers who said there is not. I would be interested in the witnesses' view.

The biggest increase in homelessness I see is due to people being asked to leave because the landlord wants to "sell" the property. In some cases, they are selling and in others, they are just getting rid of the tenant, particularly if the tenant is in receipt of rent allowance, in order that they can increase the rent. There is plenty of evidence of that. I would be interested to hear Mr. Joyce's view. Would he agree there should, for example, be a ban on evictions given that we have a housing emergency? The Government could impose a ban for a year or whatever period until the crisis eases and more houses are built or become available.

I am glad the mortgage writedown suggestion has been raised. We tend to hear more about split and stretched out mortgages. The problem is that one third of those are experiencing difficulties, from my reading of it. The point is that those people should not have had that debt in the first instance. It was not sustainable. They were sold overpriced housing.

Another issue I want to raise, which was mentioned by another witness to the committee and which might surprise a lot of people, is that somebody who is losing his or her home, which he or she might have been paying for over 20 years or whatever, does not have an automatic entitlement to free legal aid. We have all seen people showing up in the courts who have no legal teams with them and who are completely ignorant of their rights. I have seen a couple in my own area who are pensioners and who were renting a house for 12 or 15 years. They showed up in their dressing gowns. The witnesses might remember that case in the High Court. All through that process, they never received any advice whatsoever. It is shocking that this is happening to people now, while we see very wealthy individuals in and out of the courts every day. Would the witnesses agree that this right should become automatic for somebody who is facing the loss of what is probably the biggest thing in their life?

What do the witnesses think about awareness of tenants' rights? I find it shocking that the

people I deal with seem to have no conception of what I think we would all agree are the very limited rights of tenants in this country compared to others. There are still things people can do but they are completely oblivious of their rights. I am wondering why there are no education or awareness campaigns through the length and breadth of the country, considering that we have people being made homeless every day. People should be told what they can do if they are told to leave a property, what over-holding means - all of these things. People should not have to come to a Deputy to be told but they do not necessarily have the means to access the information easily. What would the witnesses think of that? It seems so surprising. People leave properties every day. Sometimes they could have done more to stay in them.

We all know that if people leave a house now, they are on the homeless list. There is nothing else for them, particularly if they are on rent allowance. Even if they are not, they will be on the list if they do not have a strong income. Has FLAC approached the Government about anything like that? I am sure it would be willing to give its services to an advertising campaign.

Mr. Paul Joyce: That is a large enough agenda. Starting with the final issue, that relating to awareness, there is a lot of information available. FLAC has a leaflet on tenants' rights, for example. Threshold, which we would view as the primary agency providing information on landlord and tenant law, has a lot of information and services available. Part of the problem we have seen over the years is that people in difficult situations - over-indebtedness, rent arrears and so on - are not necessarily feeling normally about their lives. That is a very bad way of putting it. We have carried out research that involved interviewing indebted people after they had gotten out of their problems and to the other side. They said they just temporarily did not really understand what was going on, found things very confusing, were very stressed and so on. It is very important to accept that over-indebtedness and being in financial difficulty are very disabling for people.

On the scheme that is about to be rolled out by the Legal Aid Board, MABS, the Department of Justice and Equality and the Department of Social Protection - a number of agencies are involved - the critical thing is to publicise it properly through the proper media. Leadership has to be taken. The State has to promote this, take ownership of it and explain why it is being introduced. It must articulate what the problem is and why we are trying to resolve it this way.

On the legal aid side, the Legal Aid Board has law centres all over the country. While it does an excellent job, it operates primarily in the family law area, where there is still huge demand. It is understandable that it would prioritise family law. However, the Civil Legal Aid Act 1995 only excludes certain areas of law. Debt is not one of them. Rights or interests over land are excluded areas under the civil legal aid legislation. This is something that needs to be amended. The board is doing the best it can with the resources that it has; it does not have the resources to cover a wide number of areas of law. Again, this is something for which FLAC would have campaigned for a long time.

On the mortgage write-down issue, under sections 102 and 103 and various subsections of the Personal Insolvency Act, there is a suggestion that a personal insolvency arrangement, PIA, application being made by an insolvency practitioner might propose the write-down of an existing secured debt to something approaching its current market value. For example, a person may owe €300,000 but the house is worth 200,000 and the PIA proposal would incorporate that write-down. There is even a right within that section, if the PIA is accepted, for the creditor to claw back the difference if the property is sold for a greater amount in the future. I contacted the Insolvency Service of Ireland this week, which told me it does not have a category for PIAs with the write-down feature because they do not appear to be happening.

Deputy Coppinger is quite correct about split mortgages being promoted as a kind of implicit write-down. However, a split mortgage involves servicing one part of the loan and warehousing another. The warehoused part will become due for payment some day and nobody is exactly sure how it will be treated at that point. It has been suggested by some credit institutions that there will be a right for borrowers to remain in the property for the rest of their lifetime but there is still a capital balance to be paid. Any of the split mortgage arrangements I have seen do not propose to write that down. There is evidence of split mortgages already. The number of split mortgages is well beyond 25,000 and over 20,000 have been agreed in the past three years. Some 5% of them are already failing. A quarter of the capitalisation of arrears restructures are now back in arrears. We think there is evidence that what looks like a restructure is likely to cause difficulties down the road.

We do not have particular expertise in cases where landlords want to sell. I understand that, under the residential tenancies legislation, if a landlord proposes to evict someone with a tenancy of between four and six years, he or she may evict on the basis that the property is to be sold within three months. The property would have to be sold within three months. However, I see no reason why a temporary amendment could not be introduced to put in place a moratorium on the amount of notice that might be required in a particular housing emergency.

That brings us back to the first question on constitutional issues. The committee has heard from a number of speakers about what is constitutional and what is unconstitutional. The Dáil will today debate a Bill that proposes to impose some kind of imperative on lenders not to increase variable rate mortgages and so on. Is that unconstitutional? I understand Mr. Edmund Honohan, when he came before the committee, summed things up fairly well when he said it is a question of competing interests. All personal rights in the Constitution, as I understand it, are subject to regulation in the public interest. There is only one way of finding out if something is unconstitutional and that is in the High Court or the Supreme Court.

We have had a personal debt crisis since 2008 but not many daring pieces of legislation. If something is unconstitutional or potentially unconstitutional, it can be referred to the Supreme Court before it is enacted and the Supreme Court can adjudicate upon it. A Bill has to be created in the first place, which has not happened in a number of instances. Whether it is compulsory purchase orders, compulsory write-downs or imposing a moratorium on how houses can be repossessed and tenants evicted, it is the same constitutional question.

Chairman: Mr. Joyce specifically referred to the right to housing and asked, in his opening statement, whether it should be a matter of law or a constitutional change. What is his preference and why?

Mr. Paul Joyce: The experts or those who have done the work in this area recently are those in the Mercy Law Resource Centre. Their view and the view of the Constitutional Convention is that a right to housing should be enshrined in the Constitution. It would take time to do that in the sense that a Bill would have to be put together and a referendum would have to take place but as an immediate priority, a right to housing could be put on a legislative basis. The view of the Mercy Law Resource Centre is that legislation could be amended and the intention of legislation could be reversed whereas if something is in the Constitution then it would require a further referendum to reverse it. The constitutional route has more firm grounds. I think both options should be taken.

Mr. Ciarán Finlay: Irrespective of the approach which is taken, having a right to housing would be important because if there is a right to housing that could be enforced, it would

guide and strengthen decision making and the development of laws, policies and practices. If Government decisions and expenditure were geared towards the goal of a right to housing and fulfilling that right, whether by means of the Constitution or in domestic law, it would be of benefit and would provide a legal remedy for people to enforce and vindicate their rights. FLAC is an organisation which promotes access to justice. When there is not a specific right on which to rely, it is very difficult to argue. I would say we could have either one or the other but both options would be great.

Deputy Catherine Byrne: My question might have been asked. I have read the presentation by FLAC. When people go to FLAC for legal advice, for example, in the context of court cases, how long does it take before they get help?

Mr. Paul Joyce: FLAC is a voluntary organisation so anybody can access the service. There is not a means test. Generally speaking, there is not any kind of waiting list but the person in the centre is a volunteer lawyer who is at work during the day and will give the person a steer on his or her legal query. Often it is a signposting service more than anything else and in many cases, an application for legal aid from the Legal Aid Board might need to be made at that stage, in particular if it is a family law matter. In some instances, the suggestion from the volunteer lawyer will be to engage a solicitor or to go to another organisation. It really depends. The most important thing to say is that those centres do not involve taking on clients or giving legal representation. FLAC does a small amount of casework but generally speaking with a public interest litigation focus to it. FLAC will take cases but usually in order to potentially benefit a wider range of people rather than act as a service provider.

Deputy Catherine Byrne: I thank Mr. Joyce.

Deputy Maureen O'Sullivan: I acknowledge FLAC's very focused recommendations, which is what people are being asked to do. What percentage of the work FLAC does involves housing issues? I am aware of the wide range of work in which FLAC is involved. Where does housing come in the bigger scale of things?

Chairman: I thank Deputy O'Sullivan. When Mr. Joyce is answering, to put matters in some perspective, could he give us an idea of how many centres there are and the number of clients FLAC might see over the course of a year?

Mr. Paul Joyce: I do not have those figures but perhaps my colleague, Mr. Finlay, does.

Mr. Ciarán Finlay: Yes, I have the figures in relation to the telephone information line, which we operate in addition to the advice centres. In relation to housing, 14.3% of all our calls were housing related in 2014. In the FLAC clinics, housing was 6.4% of all calls.

Mr. Paul Joyce: We have a telephone information and referral line as well as the centres. We have one office in Dublin but that office has a number of people ready to answer phone calls. We do not provide legal advice over the phone but legal information to improve people's knowledge of their position.

Ms Eithne Lynch: I might add that FLAC has a public interest law alliance project and within that, we are part of a group that brought a collective complaint before the European Social Charter. That was lodged in July 2014. The purpose of that collective complaint was to focus on the rights of local authority tenants. We were examining the adequacy of the accommodation and also the legal remedies available to local authority tenants. Deputy Coppinger raised the issue of awareness raising and access to legal aid. The complaint submitted has been

declared admissible. The Government has come back with responses on it and we are expecting a decision by the end of the year. It is looking at legal remedies and the fact that local authority tenants do not have access to a tribunal in the way they would have in terms of the Private Residential Tenancies Board. They do not have access to legal representation. If they have a dispute in that they are potentially being evicted from their home, they must go through a Circuit Court process without access to a lawyer.

In addition to that we have noticed, with our partners who have been involved in this collective complaint, that there are serious issues around adequacy and standards. That is the reason there have been many submissions on the standard of health of the family or the children and also social exclusion poverty because while Ireland ratified the charter 16 years ago, Article 31 on housing was unable to be argued. Additionally, we did not ratify the optional protocol, which means that non-governmental organisations or individuals in Ireland cannot make a collective complaint. However, we can do it through an international body, and that is what FLAC has done with our membership with the FIDH, which is an international human rights body. We are hopeful that by the end of the year, we will have an outcome from that. Those findings will be put to the Government and at that point it will have to respond. It is a topical issue. Yesterday, there was the decision on Traveller accommodation and there have been serious findings in that regard.

Deputy Catherine Byrne: On a previous occasion, we got a small pamphlet from FLAC. Would it be possible to get more of those because it was useful to give them to people who came to our clinics?

Mr. Paul Joyce: That landlord and tenant pamphlet is being updated to reflect changes in the residential tenancies legislation. I believe the new version will be available shortly. There are pamphlets and leaflets on many other areas.

Deputy Catherine Byrne: I know that. I thank Mr. Joyce.

Chairman: That concludes this afternoon's meeting. I thank the members of FLAC, Ms Eithne Lynch, Mr. Paul Joyce and Mr. Ciarán Finlay, for attending and not just answering the questions but providing the document they submitted. In particular, they adhered to our request and made specific recommendations. We always discuss the issue but we are trying to find solutions to improve the position. An issue raised a number of times today, which resonated with the members, is giving statutory recognition in terms of the code of conduct and so forth. The witnesses mentioned that today but that point has been made forcefully on other occasions.

The committee adjourned at 4 p.m. until 10.30 a.m. on Thursday, 19 May 2016.