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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

Dé hAoine, 12 Iúil 2013

Friday, 12 July 2013

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Land and Conveyancing Law Reform Bill 2013 - Committee Stage, to be taken at 1 p.m.

Senator Paschal Mooney: In recent days, a budgetary provision Members discussed and debated some months ago in this Chamber with the Minister for Social Protection, Deputy Burton, has come into effect. It will have an impact on single-parent families and according to reports from the Department, approximately 25,000 single parents will now move from direct payments to the jobseeker's category, which will mean a reduction of approximately €60 in their weekly intake. A number of bodies and organisations representing lone parents have criticised severely this move, which has been signalled for quite some time. This comes in the context that at the time the announcement was made, the Minister, Deputy Burton, was outlining her own philosophical views on how she perceived the challenge facing her in respect of the €440 million cut she will be obliged to engineer within her Department's budget later this year. The question as to how she will square this circle obviously remains speculative at this point but she has gone on record, including yesterday, in a view that is confirmed by those representing single parents, that there is a need to improve child care facilities. I hope there might be an opportunity for the Minister to come before the House at some point in the early stages of the new term, if not before the recess, to advance her philosophy in this regard. Both she and the Minister for Children and Youth Affairs, Deputy Fitzgerald, have indicated they would like to see some rearrangement of the child benefit scheme that would be used towards improving child care facilities.

I also bring to the attention of Members that yesterday, the Taoiseach visited Ringaskiddy, County Cork, where he officially opened a centre to be known as the Beaufort Laboratory. It will mean that hopefully, Ireland will come to be at the forefront of wave energy scientific research. The launch of the centre yesterday, which will create 700 jobs once it is up and running, is of great and far-reaching significance for Ireland because it has the highest potential in the entire world for the generation of electricity through wave and wind energy off our western

coasts. It came on the same day the European Union announced its intention to fund approximately €22 billion in research over five areas, one of which was to be in respect of alternatives to fossil fuels. I ask the Leader to request the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, to come to the House at some point in the near future to give Members an indication of what is the Government's thinking on the subject of alternatives to fossil fuel energy, with particular emphasis on wave and wind energy. Last Monday, I visited the Orkney Islands as part of a delegation from Committee C of the British-Irish Parliamentary Assembly, the purpose of which was to visit the European Marine Energy Centre there, which at present is the world leader in that regard. Now that the Ringaskiddy centre has been launched - it will take approximately 12 months for it to open and get up and running - I would like to think Ireland will take the lead in this regard given it has such considerable assets in this area.

Senator Ivana Bacik: First, I welcome the passage in the Dáil early this morning of the Protection of Life During Pregnancy Bill. It is welcome that after 21 years of legislative inaction, legislation finally is being put in place. I am pleased the Seanad will have the Bill before it next week. I asked the Leader previously to arrange a debate in the autumn, after the Bill has been passed, to discuss crisis pregnancy in Ireland. I am conscious that today's newspapers report figures from Britain showing that 4,000 women continue to travel from Ireland to England every year for abortions. Since the eighth amendment was inserted in the Constitution some 30 years ago, more than 150,000 Irish women have had abortions in England. We must recognise and seek to address that matter once the legislation dealing with the most difficult cases, namely, where women's lives are at risk, is in place.

I ask the Leader to arrange a debate on cyberbullying. Senator van Turnhout referred yesterday to the report published by the Special Rapporteur on Child Protection, Mr. Geoffrey Shannon. One of the key recommendations of Mr. Shannon's report is to provide for a specific offence of cyberbullying. The existing offence of harassment in the Non-Fatal Offences against the Person Act is inadequate for dealing with the serious and tragic cases of cyberbullying such as those which have come to our attention in recent years. The House should debate this issue and address the difficulties arising in respect of how one frames the offence of cyberbullying.

A theme that has been sadly present all week has been the dangers of taking to the water in hot weather. We had two more tragic deaths from drowning yesterday. In the circumstances, it would be useful to have the debate on water safety for which other Senators have called.

Senator David Norris: I note the Minister of State, Deputy Lucinda Creighton, resigned from her job. She did so in an honourable manner, although I do not agree with her. I do not think much of the Bill that was passed last night - I have not yet had an opportunity to say that. Deputy Creighton's decision led within two hours to the promotion to the position of Minister of State of Deputy Paschal Donohoe, formerly of this parish, who arrived in the Seanad some eight years ago as a kind of a mushroom in one of the rotten boroughs. I was interested to listen to him state on radio this morning that he was being humble. He certainly used the word frequently, a little like Uriah Heep who got the monitor-medal for being "umble" and found it was a great help to him in his career.

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator David Norris: Yes. Can we continue to follow the jobs' trail because it appears that anybody on the Government side who behaves treacherously towards Seanad Éireann receives a very nice little pat on the head and other rewards? This is interesting as it is similar to

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what took place in Gandon's parliament. We should do a study of former Senators who go to the Lower House and rubbish the House they were glad enough to use. That they suddenly do extraordinarily well is remarkable and is an issue we should examine. The Government was cute to bounce the extinction of the Seanad, a mutilation of the Constitution and Oireachtas, right into the middle of a period when it knew the issue would not receive media coverage because Deputies were either murdering each other or behaving indecorously in the other House. The Government wants to preserve the Lower House in order that Deputies can have their horseplay or whatever they want to call it, continue to drink until 5 a.m. and make nonsense of various serious Bills. It bounced the Bill to abolish the Seanad into the House in the silly season and in the middle of a row in the other House.

An Cathaoirleach: The Order of Business is about the business of this House, not the other House.

Senator David Norris: That is the reason I am asking the Leader to take all these matters into account and to consider, as a matter of honour, voting with us on Report Stage of the Bill when it comes before the House. We are being sold a pig in a poke and this particular pig is unattractive, despite all the lipstick that has been applied, the pink bows that have been placed on its tail and the brushing down it has received. The Government still cannot sell it to the public because people are too cute. It then decided to put it into a nice little wickerwork poke so that nobody would see the pig. If the Government is serious about democracy, let---

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator David Norris: Yes, will he and his Government let the people see the pig? The people want to see it. Citizens have one free shot at goal and will be able to administer revenge on the Government for what it has done and the way it has treated them in cutting funding for carers and shoving taxes on them at the instigation of Frau Merkel and the rest of them. This is their one chance and it will not cost them anything to give the Government a right good kick.

Senator John Kelly: Yesterday, I raised on the Adjournment the withdrawal by the Health Service Executive of discretionary medical cards from cancer patients. This is one of many serious issues in the health service. The main issue with the HSE, however, is its creation and the fact that it has turned into a complete waste of money, as acknowledged by everyone from the Minister down. I read in the newspapers this morning that the HSE or Minister has decided to appoint more managers to find more savings in the health service. The number of managers created in the HSE in the past ten years is the root of the problem. It is ridiculous that more will be appointed in an effort to solve the executive's financial problems.

I reiterate the call I made last week for a debate on health matters. As far as I can discern, Ministers in the Department of Health are not managing but delegating work to managers who are being paid €150,000 per annum. This is ridiculous and lies at the root of the problem. Ministers need to take stock and get rid of these guys. When I was employed by a health board in the 1980s, staff officers made decisions. The small number of section officers in place then have gone by the wayside as they no longer make decisions because one must now be on a salary of €150,000 to make decisions in the health service. We will soon have to appoint a super-duper manager to oversee the work of all the other managers. Eventually, he or she will get rid of all the managers. The current position is outrageous. I call for a debate on health matters at the earliest convenience in order that we can solve some of the problems in the health system.

Senator Denis O'Donovan: I seek a debate early in the next term on the abuse and misuse of the Garda PULSE system. I will give three brief examples of serious abuse of the system. This morning, I received a telephone call from a professional person, a young man, who was involved in a road traffic accident which resulted in him taking a breathalyser test. The judge in the subsequent case before the courts applied the probation Act. However, when the man in question found employment, his employer ran a check and despite not having a conviction, he lost his job because the incident featured in the PULSE system. This an abuse and misuse of the system. When the young man complained to the sergeant, the latter indicated that it was his view that the judge had made a mistake. Sergeants, superintendents and gardaí may not act as judge and jury. The case was decided in court and was not appealed. The matter should have rested at that.

In a second case, a young man who I knew well got a job driving for the new travelling banks which have replaced bank branches that have been closed. When a check was done on him, it was found that he had been convicted for a small misdemeanour at the age of 17 years arising from a Mickey Mouse charge that was brought when he and a few other young fellows who had attended a party were found on a pub premises about half an hour after closing time. Despite the nature of the charge and the fact that nobody was hurt, the young man's name came up in the PULSE system. Following six weeks of employment, he was sacked for having a criminal record. Is that fair?

The third case relates to a young man who was the innocent party in an affray five or six years ago in which he had the hell beaten out of him and was left with severe bruising. I know the family in question. When he subsequently went for a job, his name featured on a check of the PULSE system, despite the fact that those who assaulted him had been convicted in court and received suspended sentences and heavy fines. A friend of the family, a sergeant in Dublin, asked how the young lad's name featured on PULSE given that he had not done anything wrong and had not been charged. I am sure Senators will see what the problem is from these three examples. In my view, the PULSE system is being misused. I think it is worthy of a debate here. A professional was refused a job. The telephone call I received this morning angered me. He has done nothing wrong. In one case, the judge applied the Probation Act, which means the man in question has no criminal record. It is an absolute disgrace that the garda is using the PULSE system to stop people from getting work. I hope we will have a debate on justice matters, with specific reference to this issue, when the new term starts in September. We need to consider whether the PULSE system is working or is being abused. It seems to me, based on what I have heard, that it is being scandalously misused.

Senator Michael Mullins: I strongly support Senator O'Donovan's call for a debate on the PULSE system. The examples he has given the House this morning are very worrying. It would be a major injustice if somebody's access to employment or somebody's career prospects were endangered in any way simply because information of a minor nature is held on a computer system. The Minister for Justice and Equality needs to clarify the matter and assure the House that insignificant information about people that is stored on the PULSE system is not used in a prejudicial way.

I ask the Leader to arrange a debate with the relevant Minister - probably the Minister for Health - on the issue of gambling addiction at an early stage in the autumn session. I heard something worrying on the radio this morning. People in the UK can now access the Paddy Power gambling service online via Facebook. I am sure it is only a matter of time before people here can access it too. There needs to be a great deal of discussion on online gambling and the

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taxation of gambling activities. Many lives are being ruined by excessive gambling. There is anecdotal evidence of a close link between excessive gambling and suicide. We all know of many families that are in grave financial difficulties as a result of excessive gambling. A significant debate on this issue is needed because it has significant social and health implications for many people. When a calm atmosphere descends on this House again in the autumn, we should discuss how we can tighten the laws that govern online gambling, secure more taxation from such activity, make gambling less attractive and examine the significant health issues associated with gambling.

Senator Sean D. Barrett: We are usually treated to a *tour de force* from the Leader when he responds to the questions we ask on the Order of Business. I sometimes think he must be using radar to know what is going on in people's offices. He always seems to have the answers. That is important because it contrasts with what happened here yesterday. The manner in which the troops of advisers who sit in the chairs beside the Cathaoirleach came in and out of the Chamber and engaged in conversation interrupted the business of the House on several occasions.

Senator Brian Ó Domhnaill: Hear, hear.

Senator Sean D. Barrett: Members of this House had to stop speaking. The Minister of State seemed to find many of the anecdotes that were being shared with him entertaining. He did not listen to Senators. It looked particularly bad on television. Perhaps Members of the House are conditioned not to look and see who is present. Ministers and Ministers of State should master their briefs. Those who sit the junior certificate and leaving certificate examinations are not allowed to bring two or three chums in with them to prompt them on the correct answers.

Senator Brian Ó Domhnaill: Well said.

Senator Sean D. Barrett: It contrasts unfavourably with what happens in Westminster, when the Prime Minister stands at the despatch box and has to answer without any obvious prompters about the place. The same thing applies in the Northern Ireland Assembly. I ask the Leader to prepare a new protocol for advisers when they enter this House. Perhaps he could start by confining Ministers and Ministers of State to one adviser at a time.

I have to diverge from Senator Norris with regard to the promotion of Deputy Donohoe to the rank of Minister of State. I do so not least because the new Minister of State is a former student of mine. We always follow the rule set by an old tutor in TCD - we hope our students learn as much from us as we do from them, and about half as much from us as from their fellow students. I suggest that Deputy Donohoe would have spotted the design faults in the euro, for example, if he had been around at the time. When we win the referendum and he comes to address this House in its next term, I hope we will be magnanimous in victory. I will try to persuade Senator Norris to be magnanimous too. I wish the outgoing Minister of State every success. She is a woman of principle and that is always to be admired.

Senator Brian Ó Domhnaill: Hear, hear.

Senator Sean D. Barrett: I would like to conclude by giving the House a warning based on what is happening across the water. It appears that the Tory Party has a public relations consultant who also advises the tobacco industry and, as a result, a delay in the UK Government's proposals to provide for plain cigarette packaging is being announced as we speak. Senator

Crown has warned us about the power of the tobacco lobby. We cannot relax on that front.

Senator Martin Conway: I would like to concur with Senator Barrett's views about cigarette companies. On the Adjournment last week, I spoke about the sneaky tactics being applied by cigarette companies to make young people more comfortable with their products.

Senator Sean D. Barrett: Hear, hear.

Senator Martin Conway: Their latest insidious stunt is the introduction of a packet of 25 cigarettes that costs €9.90. In other words, the unit cost of a single cigarette has been reduced. I believe that contravenes the minimum pricing laws. It is regrettable that the European Court of Justice has a different view on these things. Senator Barrett is right to remind us to keep the foot on the pedal when it comes to this legislation.

I would like to join others in expressing concern about gambling. I know the Leader made a significant contribution in this area in the previous Seanad. We have been promised legislation in this regard. The traditional betting shop form of gambling is on the decrease throughout the world, including in Ireland. That is probably unfortunate, in a way, because if human beings are responsible for taking bets from people there is some chance that this activity can be policed properly - that bets will not be taken from young people, for example. The huge increase in the amount of Internet gambling has been an unfortunate result of the development of modern technology. In my view, online gambling has very serious consequences for society, particularly people who have a propensity towards addiction. Online gambling is being used as part of the refusal kit by financial institutions when refusing mortgage applications. If they see *paddypower.ie* or any of the other major gambling companies on a person's bank statement or a credit card statement, that information is used as part of the refusal kit even though that person might be gambling just €20 or €40 a month. This country is losing significant revenue as a result of its failure to regulate online gambling.

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator Martin Conway: Yes, I have. I am coming to it.

An Cathaoirleach: The Senator has gone over time.

Senator Martin Conway: Along with other members of the Joint Committee on Justice, Defence and Equality, I have been to the Betfair headquarters in Dublin. That company is keen for Internet gambling to be regulated. In fairness, all of the big Internet gambling companies want online gambling to be regulated. I have two questions for the Leader. When can we expect proper betting legislation to be brought before the House? Can we have a debate in this House on the effects of gambling on society and on people's mental health? We need to have a debate on this important matter.

Senator David Cullinane: I would like to propose an amendment to the Order of Business, calling on the Minister for Health to come to the House today to discuss the health service generally, the reform of the health service and the medical card eligibility scandal. People are having their medical cards taken from them for all sorts of reasons.

11 o'clock

The reality is that this Government promises reform in the health service. It promised us the abolition of the HSE and free GP care for all, which is a bit of a sick joke when one consid-

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ers that since it came into office, it has taken free GP care from people who already have it by taking their medical cards. The Government promised universal health insurance, yet that has not been delivered. Where is universal health insurance? It promised reform of mental health services and we have not seen that. All we have had from this Government in terms of health care is cutback after cutback. In the last budget, €750 million was taken from the health budget and we saw the consequences of that in hospitals throughout the country.

Over recent days, we have seen the most reprehensible and cruellest of all the cuts. This was taking medical cards from cancer patients. That is truly reprehensible. I dealt with 14 cases in Waterford involving people whose medical cards were taken off them. I am sure there are thousands of people throughout the State who are losing their medical cards, yet the Minister talks about free GP care for all when he is stripping people of their entitlements. All we are getting is cutback after cutback. Yes, the Minister will attend the House next week to discuss a very important Bill that I will support but I want the Minister to come in to discuss his failure in respect of the health service because that is what it is. He talked tough and promised a lot, but he simply has not delivered. Those cuts are having a very serious impact on families, individuals and patients across the State and we need the Minister to come to the House to account for his failures in the health service.

Senator Paul Coghlan: I remind the Leader of the concern many people have about the future of the IFSC and the banks, about which I spoke about here some time ago. I know a number of the banks are, unfortunately, winding down. I am talking about foreign-owned banks. I am worried about competition but there is a much more immediate threat reported in *The Irish Times* this morning. It concerns a radical new plan or rethink for the IFSC. Something is badly needed there. There has been such investment in infrastructure down there and there are some iconic buildings. It will not serve the capital city well if jobs are lost and people are less inclined to live down there. I know the Leader is anxious to have a debate on banks. At a meeting of the Oireachtas Committee on Finance, Public Expenditure and Reform, I raised the threat of foreign-owned banks winding down and possibly exiting our market, which would be very serious. We had hoped to have the debate, but I think we have run out of time to do it this session. It is urgent. I urge the Leader to arrange a combined debate or two separate debates when we come back.

Senator Brian Ó Domhnaill: I second the amendment to the Order of Business proposed by Senator Cullinane. It is vital we have a debate on the health system, particularly in light of events happening across the sector. Attention was drawn yesterday and this morning by Senator Cullinane to the medical card fiasco and the withdrawal of medical cards from individuals. The response given yesterday, and I appreciate that it is a response from the Department of Health to the Leader of the House, is that a high percentage of the population have medical cards. That is correct, but a high percentage of the population have medical cards through no fault of their own. They have them because they are unemployed and on social welfare because the domestic economy is stagnant and no jobs are being created.

This Government promised a single tier health system when it came into office. It involved the removal of charges for seeing a GP, the shortening of waiting times in hospitals and a move from reimbursement based on fixed amounts to the money follows the patient model. None of that has happened. Waiting times have increased in all of the hospitals throughout the country.

Senator John Gilroy: That is nonsense.

Senator Brian Ó Domhnaill: I can prove it and have the facts to show it.

An Cathaoirleach: Senator Ó Domhnaill, without interruption.

Senator Maurice Cummins: The usual rubbish.

An Cathaoirleach: Has Senator Ó Domhnaill a question for the Leader?

(Interruptions).

Senator Martin Conway: Can we get to specifics?

An Cathaoirleach: Senator Ó Domhnaill, without interruption. Senator Conway has already spoken.

Senator Brian Ó Domhnaill: I will provide one specific figure.

An Cathaoirleach: Has Senator Ó Domhnaill a question for the Leader?

Senator Brian Ó Domhnaill: The National Treatment Purchase Fund was axed. Anyone waiting over three months was allowed to go on to that and get their procedure, but that is now gone and there is nothing to replace it.

I commend a Member of the other House who has been referred to here, the former Minister of State, Deputy Lucinda Creighton, on the very determined and conviction-driven stand she took because she believed she was right. The manner in which she was treated by her own party was quite disgraceful.

An Cathaoirleach: We do not have a role in respect of what goes on in the other House.

Senator Brian Ó Domhnaill: Her ministerial office was barely left but a replacement was provided.

An Cathaoirleach: We do not have a role in respect of the employment of junior or senior Ministers. Has Senator Ó Domhnaill a question for the Leader?

Senator Brian Ó Domhnaill: Yes, I do.

(Interruptions).

An Cathaoirleach: Senator Ó Domhnaill, without interruption. He is way over time.

Senator Brian Ó Domhnaill: Could the Leader tell me why the Taoiseach is trying to get rid of this House when the man he replaced Deputy Creighton with is a former Member of this House?

An Cathaoirleach: This House has no role to play in that.

Senator Brian Ó Domhnaill: Why is the Taoiseach doing that? Does that not show that he is talking out of both sides of his mouth?

Senator Colm Burke: Senator Ó Domhnaill obviously does not read the newspapers because yesterday Pfizer announced a €100 million investment in this country - €23 million in Cork and €78 million in Clondalkin. That will create jobs.

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Senator Brian Ó Domhnaill: That has nothing to do with waiting times.

Senator Colm Burke: The Senator alleged that we are not creating jobs.

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Colm Burke: I have a question relating to the health service but I just want to congratulate Pfizer, the IDA and the Minister for Jobs, Enterprise and Innovation on all the work they are doing in job creation and getting money invested in this country. We are creating 2,000 jobs per month while the previous Government was losing 1,250-----

Senator Brian Ó Domhnaill: There are more jobs being lost than are being created. For God's sake, wake up and smell the coffee.

(Interruptions).

Senator Brian Ó Domhnaill: I spent two days in Cork and saw 30 businesses in a constituency in west Cork that had closed in the past year.

An Cathaoirleach: Senator Burke is in danger of going over time. Has he a question for the Leader?

Senator Colm Burke: I know the heat is getting to everyone.

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Colm Burke: I have no difficulty with having a debate in this House on the health service. Let us be fair in respect of the medical card system. We have gone from more than 1.6 million medical cards when we came into Government to-----

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Colm Burke: I have a question but I think it is important that we-----

An Cathaoirleach: The Senator is way over time. Has he a question for the Leader?

Senator Colm Burke: I was interrupted.

An Cathaoirleach: Has the Senator a question for the Leader?

Senator Colm Burke: I am looking for a debate because by the end of this year, 48% of the population will have a medical card or GP card so please stop giving misinformation in this House.

Senator Trevor Ó Clochartaigh: Ba mhaith liom tacú leis an moladh atá déanta ag mo chomhghleacaí go dtiocfadh an tAire Sláinte isteach, ar nós mar a mholamar inné. D'aontaigh an Ceannaire linn go bhfuil sé tábhachtach go dtabharfadh an tAire soiléiriú maidir le ceist na gcártaí leighis.

Gealladh dúinn freisin go mbeadh an athbhreithniú ar Acht na dTeangacha Oifigiúla againn roimh deireadh an tsamhraidh. Níl aon rian de sin agus tá an próiseas comharliúcháin críochnaithe le bliain go leith. B'fhéidir go mbeadh an Ceannaire in ann soiléiriú a thabhairt dúinn ar chéard atá ag tarlú maidir le hAcht na dTeangacha Oifigiúla.

After last year's budget, the Leader indicated that we would have a comprehensive series of pre-budget debates this year. I note we have not had any of those yet. By the time we come back, it will be close to the end of September. I would imagine the troika this week is indicating to the Government what budgetary measures it would like to see put in place. It is disappointing we have not had a full series of debates before the break to inform the thinking of the Ministers as to what should be done in the upcoming budget in October. It is very disappointing but even at this late stage perhaps some of the senior Ministers who are dealing with budgetary portfolios could come in and draw on the expertise that is in these Houses in order that they can reflect over the summer on thoughts about what should be put into the budget. If possible, the Leader should give us a listing of the debates to be scheduled when we come back in order that we can have the preparatory work done for those debates come the autumn.

An Cathaoirleach: Did Senator Gilroy indicate that he wished to speak?

Senator John Gilroy: I support the call by Senator Colm Burke and others for a debate on the health service. Senator Ó Domhnaill's remarks about him visiting Cork for two days and becoming an expert on what happens there-----

Senator Brian Ó Domhnaill: It is a good job I did not stay for a week.

An Cathaoirleach: Has Senator Gilroy a question for the Leader?

Senator John Gilroy: It reminds me of a former presidential hopeful, Sarah Palin, who said she was an expert on Russian policy because she lives in Alaska. We will compare Senator Brian Ó Domhnaill to Senator Palin from Alaska.

Senator Brian Ó Domhnaill: Some 100 companies have gone out of business in my own county in the past year.

An Cathaoirleach: Senator Ó Domhnaill has spoken already.

Senator John Gilroy: It is always great to get advice from Solomon on the other side of the House. It is always very worthwhile.

Senator Maurice Cummins: Senator Paschal Mooney raised the question of wind and wave energy. There is a lot of wind energy in the House this morning.

Senator Michael Mullins: The winds of Donegal.

Senator Maurice Cummins: I will ask the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, to come to the House to give an update on both wave and wind energy early in the next session in the autumn.

Senator Ivana Bacik called for a debate of cyberbullying, noting the fact that Geoffrey Shannon has mentioned that it should be a specific offence. We will ascertain if the Minister will introduce legislation to deal with that issue. I will invite him to the House to address the matter.

Senator David Norris rightly praised the former Minister of State, Deputy Lucinda Creighton. The former Minister of State gave a great contribution in the House on many occasions. On behalf of the House I thank her for her time, courtesy and ability in reporting and addressing European affairs matters, in particular, and the way she handled the EU Presidency.

Senator Sean D. Barrett: Hear, hear.

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Senator Maurice Cummins: She was an excellent Minister of State and I wish her well for the future.

Senator John Kelly and other Senators raised the question of discretionary medical cards. The matter was raised yesterday on the Order of Business. I gave a fairly detailed reply in which I stated that 48% of the people are on medical cards and more than 2.1 million will be on medical cards by the end of the year. I am repeating myself for those who did not attend yesterday and have raised the issue today. It is wrong. If it is the situation that people who have cancer and have their medical cards withdrawn that is absolutely disgraceful. If that is the situation-----

Senator Trevor Ó Clochartaigh: May I clarify-----

Senator Maurice Cummins: I did not interrupt the Senator.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Maurice Cummins: Allow me to finish, please. I will make representations to the Minister for Health. As regards calling for the Minister for Health to come to the House, we will have the three Ministers for Health in the House for 24 hours, at least, on a Bill next week.

Senator David Cullinane: That is disingenuous.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Maurice Cummins: To ask them to come in to address other matters-----

Senator David Cullinane: That is disingenuous.

Senator Maurice Cummins: -----when they are in the House for 24 dealing with legislation is disingenuous.

Senator David Cullinane: The Leader is being disingenuous.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Maurice Cummins: The Senator is being disingenuous.

(Interruptions).

An Cathaoirleach: Senator Cullinane has spoken already.

Senator Maurice Cummins: It is like a mantra. He comes in every week.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Maurice Cummins: Senator Denis O'Donovan raised a very serious issue of the alleged abuse of the PULSE system. This is a very serious matter which needs to be addressed. I note the examples the Senator gave and I will request the Minister for Justice and Equality to come to the House for a debate on that item.

Senator Michael Mullins and Senator Martin Conway raised the issue of gambling addiction and online betting. A vast amount of gambling is done online on the Internet. For the information of the House, the betting (amendment) Bill will be going to Cabinet next week and will

come before the House in the autumn. That Bill will address the whole area of online betting. Senator Conway mentioned that I introduced a Private Members' Bill in the House which was rejected in the last session. I still believe it is a disgrace that we have a State-sponsored body, Tote Ireland, where children under the age of 18 cannot buy a national lottery ticket or go into a bookie shop and so on and yet children making their first Holy Communion children can queue up at race meetings and dog meetings, in particular. To date, no Government has taken on the vested interests in that regard. I believe that is disgraceful. People would say I am a killjoy.

Senator Susan O'Keeffe: Hear, hear.

Senator Maurice Cummins: I have been accused of being a killjoy in that area.

Senator Diarmuid Wilson: The Leader is far from a killjoy.

Senator Maurice Cummins: We can make those points when we are dealing with the betting (amendment) Bill.

Senator Sean D. Barrett raised the issue of advisers and their presence in the House. That is a matter for the Ministers themselves. I do not think we can lay down protocols in this House as regards how many advisers can come in. The issue is probably outside our remit. The Senator complimented his former pupil and former Senator, Deputy Paschal Donohoe, on become a Minister of State.

Senator David Norris: Will the Leader pass on my congratulations to him on being a Minister of State?

Senator Maurice Cummins: I am sure he will be an excellent Minister of State and will come to the House early in the new year, if not before it.

Senator David Cullinane raised the question of free GP care. I can assure the Senator that is far from being abolished and that we will have free GP care before the end of this Government. He can quote me on that if I am wrong. With regard to universal health care, the Government never said it would introduce universal health care in this term.

Senator David Cullinane: The Leader-----

Senator Maurice Cummins: The Senator should read the manifesto. When the Senator speaks he should know what he is speaking about.

Senator David Cullinane: Universal health insurance.

Senator Maurice Cummins: I have told the Senator what the Government said. I ask the Senator to read it again. I ask the Senator to speak correctly when he comes in here and quote it correctly.

Senator David Cullinane: The Leader is very touchy today, it must be the heat.

Senator Maurice Cummins: I am very touchy because when people come in with misinformation I am expected to-----

Senator John Gilroy: Even when the sun is shining, Sinn Féin is negative.

An Cathaoirleach: The Leader to continue, without interruption, please.

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Senator Maurice Cummins: The Senator comes in with the usual negative mantra. It was the typical Sinn Féin mantra that we had again today.

Senator Paul Coghain called for a debate on the future of the IFSC in conjunction with the banking debate. I will raise that matter with the Minister for Finance.

What can I say to Senator Brian Ó Domhnaill?

Senator John Gilroy: The Leader should not bother.

Senator Maurice Cummins: It is very difficult. As Senator Gilroy say, he goes to Cork for two days and now he is a historian and an expert on Cork.

Senator Martin Conway: He should try going to Meath for a while.

Senator Brian Ó Domhnaill: I would prefer to go to Waterford.

Senator Maurice Cummins: I will not even deal with some of the issues. As regards shortening the waiting lists, the Senator is totally incorrect. The special delivery unity has delivered significant benefits in terms of shortening waiting lists throughout the country.

Senator Brian Ó Domhnaill: That is not true in Donegal.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Brian Ó Domhnaill: It is reaching 30%.

Senator Maurice Cummins: The Senator may like to think that Donegal is the country but it is not all the country.

Senator Brian Ó Domhnaill: It is within the State. Are we to abandon Donegal?

Senator Maurice Cummins: Senator Colm Burke raised the question of job creation. I remind Senator Ó Domhnaill that 2,000 extra jobs per month are being created in the economy at present, where 250,000 were lost in the three years preceding our taking over government. The Senator need not lecture me on jobs and job creation. Some 2,000 jobs per month are being created now where 250,000 were lost in the last three years of the previous Government..

Senator Brian Ó Domhnaill: Some 1,000 jobs per week are being lost between people emigrating and losing jobs.

An Cathaoirleach: The Leader to continue, without interruption, please.

Senator Maurice Cummins: The Senator is not helping the situation by mouthing in that way.

Senator Brian Ó Domhnaill: People are leaving the country and jobs are being lost.

Senator Maurice Cummins: The Senator went to Cork for two days and is an expert in job creation as well. It is no wonder jobs are going in the Senator's area.

Senator Diarmuid Wilson: The Government is trying to get rid of 60 other jobs, through legislation.

Senator Brian Ó Domhnaill: The Leader is very touchy.

Senator Maurice Cummins: Senator Trevor Ó Clochartaigh raised the issue of pre-budget debates. We had them last year and we will do our best. The Minister for Social Protection, Deputy Joan Burton, has met more than 30 organisations which made pre-budget submissions and has discussed them with the relevant people, those dealing with the areas. The Minister does not go second-hand.

Senator Trevor Ó Clochartaigh: Are we second hand?

Senator Maurice Cummins: She gets the information from the organisations themselves.

Senator Trevor Ó Clochartaigh: On a point of order, I ask the Leader to retract that statement which is very disrespectful.

Senator Maurice Cummins: I will not retract it. The Minister goes to the people herself.

Senator Trevor Ó Clochartaigh: He is saying that Senators-----

An Cathaoirleach: That is not a point of order.

Senator David Cullinane: The Leader is a disgrace.

Senator Maurice Cummins: It is typical of Sinn Féin.

An Cathaoirleach: The Senator should resume his seat.

An Cathaoirleach: An amendment to the Order of Business has been proposed by Senator Cullinane, "That a debate on the health service and eligibility for medical cards be taken today". Is the amendment being pressed?

Senator David Cullinane: It is.

Amendment put:

The Seanad divided: Tá, 10; Níl, 27.	
Tá	Níl
Cullinane, David.	Bacik, Ivana.
Mooney, Paschal.	Bradford, Paul.
Norris, David.	Brennan, Terry.
Ó Clochartaigh, Trevor.	Burke, Colm.
Ó Domhnaill, Brian.	Clune, Deirdre.
O'Donovan, Denis.	Coghlan, Eamonn.
Reilly, Kathryn.	Coghlan, Paul.
van Turnhout, Jillian.	Conway, Martin.
White, Mary M.	Cummins, Maurice.
Wilson, Diarmuid.	D'Arcy, Michael.
	Gilroy, John.
	Harte, Jimmy.
	Hayden, Aideen.

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	Healy Eames, Fidelma.
	Henry, Imelda.
	Higgins, Lorraine.
	Keane, Cáit.
	Kelly, John.
	Landy, Denis.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	O’Keeffe, Susan.
	O’Neill, Pat.
	Sheahan, Tom.
	Whelan, John.

Tellers: Tá, Senators David Cullinane and Trevor Ó Clochartaigh; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

Order of Business agreed to.

Senator Maurice Cummins: I propose that we suspend the sitting until 1 p.m.

An Cathaoirleach: It that agreed? Agreed.

Sitting suspended at 11.35 a.m. and resumed at 1 p.m.

1 o’clock

Land and Conveyancing Law Reform Bill 2013: Committee Stage

Acting Chairman (Senator Diarmuid Wilson): I welcome the Minister, Deputy Shatter, back to the House.

Section 1 agreed to.

SECTION 2

Question proposed: “That section 2 stand part of the Bill.”

Senator Trevor Ó Clochartaigh: Sinn Féin Members want to note that we still have some misgivings about section 2, particularly that subsection (2) allows a court to adjourn repossession proceedings for a period of two months to allow for the making of a proposal for a personal insolvency arrangement. We would like clarification as to what that will mean in reality. We believe a different approach is needed. We would protect the family home and establish an independent body to make banks pursue reasonable arrangements. We are looking at that again and reserve the right to table a number of amendments to section 2 on Report Stage. I will speak to the overall Bill later.

Minister for Justice and Equality (Deputy Alan Shatter): We dealt with this at length previously in the context of Second Stage. This is the section that allows the courts, where an application is made for repossession, to adjourn the proceedings so that the possibility of an individual entering into a personal insolvency arrangement can be looked at. This is a radical change to the law. There was no connectivity in the past between the court jurisdiction where an application is made to repossess a home and any possible alternative insolvency arrangement into which an individual might enter. The personal insolvency arrangement provisions in the insolvency legislation contain a specific provision to try to ensure, in the case of someone who is seriously indebted but where, by rearranging their finances, they can be put back into some sort of economic health over a period of years, that their family home or principal private residence could be protected in the context of any appropriate arrangement that might be entered into between a debtor and creditors with the assistance of a personal insolvency practitioner. When that legislation went through the House I said that when we dealt with this Bill, I would provide the connectivity between the two. This does that. It allows initially for a two month adjournment of the repossession proceedings to examine the practical possibilities of a personal insolvency arrangement being put in place and if, after the two month period, some work has been done on that and it appears that it could be feasible, there would be a further adjournment, and the legislation does not specify the length of that adjournment.

This is designed to ensure debtors can avail of this as a last resort if they are confronted by repossession but it is also designed to encourage those in debt and creditors to use the mechanisms under the insolvency legislation before anyone embarks on repossession proceedings in respect of an individual's family home. This is very important reform. When the original legislation was enacted in 2009 it was not envisaged any change was being made to the law; it was assumed with regard to pre-2009 mortgages the law would continue as it had been in the preceding centuries. The technical issue which arose as a result of the judgment delivered in the *Start Mortgages* case has resulted in us having to bring forward this legislation. It has also given us the opportunity to provide for very important reform designed to ensure where an individual or family is in financial difficulty and the difficulties include mortgage arrears, and where it is possible financially over a period of time to resolve these arrears through concluding a personal insolvency arrangement, that homes will not be repossessed. Obviously where there is no possibility of entering into a personal insolvency arrangement the ordinary rules which apply to the recovery of a home in circumstances where it has been used as security for borrowings will be applied by the courts. I hope that rather than Members of the House having any difficulty with the provision, it will be very substantially welcomed.

Senator Trevor Ó Clochartaigh: I outlined on Second Stage some of our issues with this and our main concern is fact there is no incentive for the banks to engage with the personal insolvency process in a fair and reasonable manner prior to seeking repossession. The code of conduct is skewed against the mortgage holder and there are insufficient protections for fami-

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lies who are in the most distress. Neither is there sufficient scope in the Bill for judges to assess whether the banks are being reasonable in their assessment of cases. The Bill should be part of the solution and not the problem. Once again the Government has left the power in the hands of the bankers and we will table amendments on Report Stage.

Question put and agreed to.

Section 3 agreed to.

NEW SECTIONS

Government amendment No. 1:

In page 6, between lines 7 and 8, to insert the following:

“Provision in respect of certain proceedings

4. (1) Where after the coming into operation of this section a mortgagee commences proceedings seeking possession of land in which they rely upon the statutory provisions or the amended provisions, the proceedings shall be deemed to be commenced within time for the purposes of section 9 of the Civil Liability Act 1961 where the conditions specified in *subsection (2)* are met.

(2) The conditions referred to in *subsection (1)* are that—

(a) prior to the coming into operation of this section the mortgagee had commenced proceedings seeking possession of land relying on the statutory provisions or the amended provisions,

(b) the proceedings concerned were commenced within the time limit applicable for the purposes of section 9(2) of the Civil Liability Act 1961,

(c) the proceedings concerned were not determined before the coming into operation of this section,

(d) the mortgage concerned was created prior to 1 December 2009,

(e) the land the subject of the proceedings referred to in *subsection (1)* is the same land or a part of the same land as the land the subject of the proceedings referred to in *paragraph (a)*.

(3) *Subsection (1)* shall only apply to proceedings issued within 6 months from the coming into operation of this section.

(4) In this section—

“Act of 2009” means the Land and Conveyancing Law Reform Act 2009;

“amended provisions” means section 62(2) and (6) of the Act of 1964 as those provisions stood immediately prior to the coming into operation of section 8(1) and Schedule 1 of the Act of 2009;

“mortgage” has the same meaning as it has in the Conveyancing Act 1881;

“mortgagee” includes a person deriving title from a mortgagee and a receiver appointed by a mortgagee;

“statutory provisions” means sections 2 and 18 to 24 of the Conveyancing Act 1881, sections 3, 4 and 5 of the Conveyancing Act 1911 and section 62(3), (7) and (8) of the Act of 1964.”.

Deputy Alan Shatter: This is a technical amendment in which I seek to address a particular issue raised in submissions to the Department. It was submitted the possibility existed that proceedings against the estate of a deceased person, which had been issued prior to the Dunne judgment but had not been determined and were adjourned with liberty to re-enter pending the outcome of the appeal of that case would not be saved under section 1(5) of the Bill if the proceedings must be reissued following enactment. This potential difficulty arises from the provisions of section 9(2) of the Civil Liability Act 1961, which states no proceedings shall be maintainable in respect of any course of action whatsoever that has survived against the estate of a deceased person unless either proceedings were commenced within the normal limitation period and were pending on the date of death or are commenced within the normal limitation period, or within two years after death, whichever period first expires.

This issue has been discussed extensively with the Office of the Attorney General and the conclusion is there is need to make provision in the Bill for this situation. Amendment No. 1 therefore inserts a new section into the Bill, which addresses the issues raised regarding estates of deceased persons. Subsection (1) provides that where a repossession proceeding is commenced after the coming into operation of the section this proceeding will be deemed to be within time for the purpose of section 9 of the Civil Liability Act 1961 where the conditions outlined in subsection (2) satisfied.

Subsection (2) outlines the conditions which would allow the proceedings to be considered to be within the time limit specified in the Civil Liability Act. These are that proceedings had been commenced prior to the commencement of the section; that the proceedings were initially commenced within the time period specified in the 1961 Act; that the proceedings were not determined; that the mortgage was created prior to 1 December 2009; and that the land in the proceedings under subsection (1) is the same land in the proceedings mentioned in the proposed subsection (2)(a). Only where all five of these conditions are met will a derogation under subsection (1) apply. I am providing pursuant to subsection (3) that this derogation from the time limits to the 1961 Act will only apply to proceedings issued within six months from the coming into operation of the section. Subsection (4) is a standard provision relating to certain definitions used in the section.

Amendment agreed to.

Senator Denis O'Donovan: I move amendment No. 2:

In page 6, between lines 7 and 8, to insert the following:

“Power of Court to determine the rejection of a proposal for a Personal Insolvency Arrangement as unreasonable

4. (1) Where in an application by a mortgagee for repossession of a property to which *section 2(1)* applies, a proposal for a Personal Insolvency Arrangement made pursuant to section 98(1)(c) of the Act of 2012 which included the debt of the prop-

erty had been rejected by reason, in whole or in part, of a vote by the mortgagee at a creditors meeting held pursuant to section 109 of the Act of 2012, the Court shall, with the consent of the mortgagor, direct the Personal Insolvency Practitioner concerned to provide to it a report in writing which shall include the content of the proposal, and any amendments made thereto, for a Personal Insolvency Arrangement.

(2) The Personal Insolvency Practitioner shall cooperate in providing the written report to the Court within a period prescribed by the Court to be not more than 2 months. In making the report to the Court under this section the Personal Insolvency Practitioner shall provide an opinion as to whether the rejection by the mortgagee of the proposal for a Personal Insolvency Arrangement was reasonable.

(3) In providing an opinion pursuant to *subsection (2)* the Personal Insolvency Practitioner shall have regard to whether the proposal of a Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current value of the property and any other matter considered relevant by the Personal Insolvency Practitioner having regard to his or her experience in the proposing of Personal Insolvency Arrangements.

(4) The Court on receipt of the written report from the Personal Insolvency Practitioner shall cause to be made available to the mortgagor and to the mortgagee a copy of the report and shall provide a reasonable period of time for any response in writing to be provided by either party such period not to exceed one month.

(5) On receipt of any response provided by the parties the Court shall proceed to fix a date of a hearing for the purposes of determination by the Court of the reasonableness or unreasonableness of the rejection by the mortgagee of the mortgagor's proposal for a Personal Insolvency Arrangement.

(6) Any creditor being the subject of the proposal for the Personal Insolvency Arrangement shall be notified in advance of the hearing and shall, on request, be provided with a copy of the report of the Personal Insolvency Practitioner and any responses provided by the mortgagee or mortgagor and shall be entitled to make submissions at the hearing under this section.

(7) In determining whether or not the rejection of the proposal for a Personal Insolvency Arrangement was reasonable or unreasonable the Court may have regard to the following matters:

(a) the report of the Personal Insolvency Practitioner and any responses received by the mortgagee or mortgagor;

(b) the submissions of any creditor;

(c) whether the proposal of the Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current value of the mortgaged property;

(d) the housing needs of the mortgagor and his or her dependants;

(e) the conduct of both parties including the conduct of the mortgagee in underwriting the loan/s secured by the mortgage;

(f) any other circumstances or matters that the Court considers relevant.

(8) If the Court determines that the mortgagee's rejection of the proposal for a Personal Insolvency Arrangement was unreasonable the Court may do any one or more of the following:

(a) adjourn the application for repossession for such time as is necessary to enable the mortgagor make another proposal for a Personal Insolvency Arrangement and for a vote on such proposal to be taken pursuant to section 109 of the Act of 2012;

(b) stay the coming into effect of the Order of repossession for a period not exceeding 24 months;

(c) without prejudice to the Courts discretion as to any order for costs it might make order that the mortgagee pay the costs or part costs of and incidental to the following, such costs to include the reasonable costs of the Personal Insolvency Practitioner:

(i) the making of the proposal for a Personal Insolvency Arrangement;

(ii) the application for the Order of repossession;

(iii) the hearing under this section.

(9) A copy of the Personal Insolvency Practitioner's report together with any responses received and any Order made under this section shall be provided to the Insolvency Service of Ireland."

I will not push the amendment to a vote today but I would like the Minister to consider it, and my plan is to re-submit next week on Report Stage. In a nutshell, there seems to be a problem in that it is far too easy for a bank or building society to repossess a family home. The rules existed eight or ten years ago when things were crazy and the banks were throwing out money willy-nilly and people got into trouble. Much has changed since then, and the Minister knows well thousands of home owners have their backs to the wall and are doing everything possible to try to deal with the banks or building societies. There is also a percentage giving the two fingers to the banks but I do not speak for them. I am speaking for the genuine hard-pressed people who, perhaps because they have lost jobs, their income has been reduced or where there was two incomes there is now one, they are pulling out their hair trying to negotiate with the banks.

I am much older than some Members of the House and I have been dealing with banks since I was 17 or 18 years old and I have never seen them as intransigent and difficult than they are now. There is a reason for this, but a distinction must be made between commercial debts and second homes and apartments and genuine family homes. This is why I strongly feel the banks' powers have in no way been diminished in the past four or five years. When the Bill was originally planned the landscape was better for borrowers. As the Minister is aware this has completely changed, and we can blame governments or international trends for this.

This side of the House is deeply concerned the power of the banks, even today, is far too great to the detriment of the customer doing his or her best. The purpose of the amendment is to give greater leverage to the borrower and court system. If one goes to court against the banks

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very little by way of defence is available. I believe that at least 70% of what happened in the bubble, the property boom and the crash lies at the door of the banks and the regulator and we must be cognisant of this. Were it not for the Dunne case, which is now under appeal, many more repossessions would have taken place. It is disenchanting and difficult for the ordinary people who have a roof over their heads. In a case of repossession involving children the family must be rehoused by the local authority.

We should make no excuse for giving powers to the court in some instances to tell parties they must return in 18 months or two years, after sitting down with the customer and doing everything humanly possible to defer the debt. Nothing has changed in the past four or five years. In the same way as was done by the previous Ministers with responsibility for finance and justice, the banks are being empowered to the disadvantage of the unfortunate customers who find themselves in negative equity and arrears and not in a position to pay.

Senator Aideen Hayden: I have great sympathy with the amendment proposed by our colleagues and I welcome a full debate on it on Report Stage. There is considerable concern over the veto banks and lenders have both in the insolvency legislation and in the mortgage arrears resolution process. For example, in the updated MARP, a tracker mortgage may be withdrawn when a bank has made a proposal that it considers to be reasonable and affordable to the borrower. The determination as to what is reasonable and affordable rests with the lender and there is no independent arbitrator to determine whether an offer that has been made is reasonable and affordable.

As somebody who has worked for many years in the area of housing, I am well aware that we have been hearing a very distinct change in the rhetoric from the banks in recent months. It is an aggressive rhetoric that is epitomised by the observations of the CEO of Ulster Bank when talking about the category of borrowers he determines as “those who won’t pay”. None of us would stand over those borrowers who will not pay. However, from my personal experience, I have no doubt that the proportion that is suggested as in the category of “won’t pay” is a gross exaggeration of what is happening in the real world. I have a very serious concern over the lack of an independent arbitrator, ombudsman or some mechanism either through the courts system or the creation of an independent body. To give the kind of confidence that people deserve to have in the process and to restore confidence in the banks and the legal system, there must be some recourse to the courts or to an independent ombudsman. I do not believe the final decision should rest with a lending institution.

On many occasions I have congratulated the Minister on introducing the personal insolvency legislation. Having listened to him on many occasions, I know he believes that the existence of the personal insolvency legislation will encourage banks to behave in a reasonable fashion in order to avoid persons entering into the personal insolvency process. However, as he knows, a person wishing to avail of the insolvency process must demonstrate that he or she has co-operated with the MARP. The determination of whether someone has co-operated rests with the lending institution.

I reiterate that far too much power rests with the lending institutions. Section 2 of the Bill before us provides that the court can determine whether a mortgagor has participated. That is the kind of change I would like to see permeated through all the provisions relating to mortgage debt.

My colleague mentioned the importance of the principal family home. I have made this

point on a number of occasions and it is worth making again. The Governor of the Central Bank, Professor Honohan, has indicated that he does not foresee many principal private residences being repossessed. However, one in five families is living in a rented home and in Dublin it is one in three. There is a very significant cohort, 30,000, where mortgages are in arrears. Families in those homes stand to have their homes repossessed through the process without any MARP or other safeguards being put in place for those families.

Senator Trevor Ó Clochartaigh: I generally agree with what has been said. It is good that Senator O'Donovan notes that there was a kind of consensus between the banks and Fianna Fáil when it was in government. However, that is just being followed through with this Government. There is a very cosy relationship with the banks which are being given preferential treatment. It is a disgrace that the Government has not stood up to the banks after we pumped so much money into them and the Bill must be opposed.

I agree with everything Senator Hayden has said, but if she votes for the Bill she is making herself out to be a complete hypocrite because she is not standing on her principles.

Acting Chairman (Senator Diarmuid Wilson): That is an unfortunate word.

Senator Aileen Hayden: I am sure the Senator heard my Second Stage speech.

Acting Chairman (Senator Diarmuid Wilson): Perhaps Senator Trevor Ó Clochartaigh would withdraw that word.

Senator Trevor Ó Clochartaigh: Which word?

Acting Chairman (Senator Diarmuid Wilson): The word "hypocrite" is unparliamentary.

Senator Trevor Ó Clochartaigh: My apologies. I retract the word "hypocrite".

Senator Denis O'Donovan: Disingenuous.

Senator Trevor Ó Clochartaigh: Disingenuous is a good word, is it not?

Acting Chairman (Senator Diarmuid Wilson): Senator Trevor Ó Clochartaigh on the amendment, without interruption.

Senator Trevor Ó Clochartaigh: It is very disingenuous to make those very valid points but then to support the Bill. The reality is that the Government has not grasped the dire situation in the market. One in four households, 180,000 in total, is in mortgage distress. These are real families who need to be taken care of and it is our job, as legislators, to ensure they are taken care of. There is no point in making heartfelt speeches and then supporting a Bill that will hammer them once more.

The banking veto is disgraceful and puts people under more pressure. As Senator Hayden mentioned, we have called for an independent body that would force the banks to accept reasonable arrangements on a case-by-case basis. We must oppose the Bill if we are to do the right thing by the people. We need to stand up for the people and oppose the Bill.

Senator Martin Conway: Senator O'Donovan's amendment is certainly worthy of consideration and I am sure we can have a frank and honest debate on Report Stage. I do not necessarily believe in the blame game although history and the facts will speak for themselves. We

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are here to try to do a job and try to have balanced and constructive debate. The contributions by and large are balanced and constructive. Ultimately, we need to have an effective working banking system while at the same time protect as many people as possible and keep them in their homes. The amendment is worthy of consideration, perhaps on Report Stage. I did not have a chance to study it ahead of coming in here because I was asked to do this at the last minute. Having reviewed it and listened to Senator O'Donovan's contribution, I have no doubt the Minister will reflect on it positively.

Acting Chairman (Senator Diarmuid Wilson): I call Senator Barrett.

Senator Sean D. Barrett: As I wish to propose a new section, perhaps I should wait until you call me on that. It is not related to the amendment.

Senator Denis O'Donovan: I wish to clarify in case there is any misunderstanding of what I said. This has been the case for decades if not hundreds of years. The problem is probably far more acute now because of the crash, but in reality we are dealing with a David and Goliath situation with the banks in the role of Goliath. They have a powerful legal system of barristers and lawyers behind them and a wonderful background team. I regard the Government through the Minister for Finance or the Minister for Justice and Equality as the middleman or referee to ensure fair play. Historically, whereas I would agree, I do not think there is any collusion between the current Government or a previous government with banks - that is a load of rubbish. The problem is that the Goliath has the power and strength. There is a duty on the Government and the regulator to ensure that the David gets some fair play, regardless of whether it is a rental situation or an unfortunate householder. The ongoing David and Goliath battle is probably now more acute because of the recession. That battle was ever there - the banks were always too powerful.

Senator Aideen Hayden: I wish to respond to Senator Trevor Ó Clochartaigh's comments. I refer him to my Second Stage speech. I cannot remember if he was in the Chamber to hear it.

Senator Trevor Ó Clochartaigh: I was present.

Senator Aideen Hayden: I know the Minister was not in the Chamber. I will reiterate some of the points briefly. I said that I felt the timing of the legislation was unfortunate for a number of reasons that I will not outline again. I am not like King Canute. I do not believe we can turn back the tide. We need a functioning mortgage market and a functioning banking system. This is a technical amendment relating to a bank or any other lender being able to rely on a mortgage document. Let us not lose the run of ourselves completely. On Second Stage I said that it is by and large a technical amendment, mistimed unfortunately owing to the lack of confidence in the banking system among the general public. However, it is a necessary amendment. It is important that we have a functioning mortgage market, which we do not have at present.

Deputy Alan Shatter: Amendment No. 2 seeks to rewrite provisions in the Personal Insolvency Act, which is not the purpose of this Bill. The House should be aware that the protection to mortgage proposed by this Bill is to require the court to allow for a personal insolvency regime to be considered where, for example, none previously had been attempted, as with the requirement now in bankruptcy petitions, not that the court should direct first to a new personal insolvency arrangement and effectively determine its outcome, as is suggested in this amendment. Once the PIA proposal has been rejected by the creditors' meeting and no subsequent proposal is made during the protective certificate period, the personal insolvency practitioner's

role as a mediator and negotiator for the debtor ends. It should also be noted, however, that where a proposal is rejected at a creditors' meeting and where the protective certificate period is still extant, this does not stop a personal insolvency practitioner from making a different proposal that creditors might accept. Therefore, once a proposal has been rejected and where there is no other proposal that can properly be made within the timeframe, the personal insolvency practitioner has no standing whatsoever in the repossession process and the law does not provide for the court to appoint him or her as an officer essentially to force a settlement on creditors, as such a practitioner cannot do that.

The amendment ignores the fact that the personal insolvency legislation is designed to allow agreed settlements to be reached as an alternative to court-ordered settlements. This amendment would overturn this carefully calibrated approach. In addition, the proposed provision that a proposal should only offer to repay the current value of a property would represent a huge interference in commercial contractual and property rights and is likely to be subject to swift challenge in the courts. Furthermore, it makes no reference to the repayment capacity of the debtor, which it appears essentially would be determined by the current value of the property. This would have obvious negative consequences for banks, other financial institutions and ultimately taxpayers in the country. The amendment could encourage delinquent behaviour on the part of all debtors, nearly 90% of whom are repaying their mortgages in order to get their mortgages reduced to present value. This would result in a serious risk of complete collapse in the property market and would threaten the solvency of the financial institutions and of the economy. In case there is any misunderstanding, I do not look favourably on the amendment.

Finally, this amendment would run the risk of turning every proposal for a PIA into a costly preliminary to repossession proceedings. I am conscious of the contributions all Senators have made, but they essentially are about reopening a debate we had on the insolvency legislation, and I will not do that. That legislation is now in place and is about to be implemented. Let us see how it works in practice. I reiterate what I said in this House and elsewhere previously - that, should there prove to be difficulties, we will address them if necessary.

I remind Senators that the provision in this Bill has the added value of seeking to encourage financial institutions to engage with debtors where there is some realistic prospect of matters being resolved and where the financial circumstances of the debtor give rise to a reasonable possibility of a personal insolvency arrangement. If a financial institution fails to do so, for example, and takes repossession proceedings, section 2(3)(d) is of importance. In considering how to proceed and whether to ultimately order repossession or whether to adjourn proceedings, one of the issues the court must have regard to is, as Senator Hayden mentioned, the conduct of the parties to the mortgage in any attempt to find a resolution to dealing with the arrears of payment due on foot of the mortgage. Without the enactment of this legislation there have already been cases in which the courts have adjourned repossession proceedings and encouraged parties, including financial institutions, to engage to resolve issues in which it looked as if there was a practical possibility of financial issues being resolved without the need for the court to make a repossession order.

Clearly, if a person who owned a family home was in financial difficulties and a repossession application was made to the court, and if it was clear that the person had funds out of which mortgage repayments could be made that were reasonable and realistic in the current environment, and the financial institution had refused entirely to engage with the person, under that provision it is inevitable that the court would adjourn the proceedings and would not grant repossession, and the financial institution would be required to engage. It would not be required

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to reach agreement but it would be required to engage, and the essence of engagement is that there is ultimately an agreed solution. If there is not, somebody in financial difficulties has another remedy, which I will not go into now because I do not wish to turn the debate on this Bill into a reopening of every section of the insolvency legislation.

Amendment put and declared lost.

Question proposed: "That the new section stand part of the Bill."

Senator Sean D. Barrett: I wish to propose a new section for consideration by the Minister on Report Stage. It arose out of the very interesting discussion we had with the Minister of State, Deputy Kathleen Lynch, on the last day. It is some measure of protection for those for whom a rented property is their principal private residence. I gather this market has been increasing extremely rapidly and they face the problem of receivers. I will come to what I have in mind shortly.

We will probably have to recapitalise the banks. I do not see a change in corporate culture. I wish I did, but I am afraid that is the situation. I am slightly worried to see in the briefing document we received that the repossession rate is too low, at 0.3%, when it should be 3.5%. There is some reference from the IMF to the need to strengthen the efficiency of the repossession regime. That is a totalitarian type of language. It refers to a more efficient way of getting people out of their houses. Contracts must be valid. With regard to tracker mortgages, if banks made a mistake, it is a binding contract and they should not try to inveigle people to depart from a contract which was legally entered into.

I am worried about situations in which receivers take possession of a block of houses and attempt to change the conditions under which those for whom the house is their principal private residence have been paying rent and so forth, and try to force them to leave, or increase rents. In my view, what they buy is a lot of rent books, an income flow and a set of duties and obligations to maintain the property and so forth. That is binding. It shows the indifference to the tenant that a different landlord has now bought it, regardless of whether the previous landlord went broke. I am trying to protect the tenant. In countries such as Switzerland and Germany there is a much higher proportion of rented properties. Ireland was traditionally an owner-occupancy society but the renting percentage is high in Dublin and particularly high in Galway. These people face pressures when the properties are sold.

We had a discussion about this with the Minister of State, Deputy Kathleen Lynch. If I had not been so involved in the debate about whether we should have a Seanad, I would have tabled an amendment on Committee Stage, but it does arise from the last debate. I wish to table one on Report Stage for the Minister's consideration. It would be a new section and would provide that where the property being repossessed is the subject of a residential tenancy, the protections afforded to tenants under the Residential Tenancies Act 2004 must be complied with by the financial receiver and that the receiver must comply with all legal obligations of landlords under that Act. Apparently this has become a problem where properties are sold on. It is the principal private residence for the tenant and in countries such as Germany, the tenant, under different lease arrangements, would have anticipated living there for 40 years, but they come under pressure from a different landlord to get out or to have their rents increased. Perhaps the Minister would consider some form of protection for them.

I realise what happens when there is a bank boom. The rough estimate is that in a period

when incomes doubled property rose by 500%, so it was bound to catch people in the type of situation the Minister is now dealing with. I greatly admire how the Minister transferred insolvency from the courts to an arbitration procedure. We have had several long evenings of debate and he was always willing to accept our amendments.

Unfortunately, insolvency is another part of this disastrous period in banking and I fear that the banks have not changed their corporate culture. I wish to give notice that I shall think of, file and submit an amendment for Report Stage to take account of insolvency. An insolvency programme will become more important and it already is with bodies like Threshold and New Beginnings. I hope that the Minister will consider my amendment on Report Stage.

Question put and agreed to.

Title agreed to.

Bill reported with amendments.

Acting Chairman (Senator Diarmuid Wilson): When is it proposed to the next Stage?

Senator Martin Conway: Next Tuesday.

Acting Chairman (Senator Diarmuid Wilson): Is that agreed?

Senator Trevor Ó Clochartaigh: Not agreed.

Question put: "That Report Stage be taken on Tuesday, 16 July 2013."

The Seanad divided: Tá, 27; Níl, 8.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Bradford, Paul.	Heffernan, James.
Brennan, Terry.	Mooney, Paschal.
Burke, Colm.	Ó Clochartaigh, Trevor.
Clune, Deirdre.	Ó Domhnaill, Brian.
Coghlan, Paul.	O'Donovan, Denis.
Conway, Martin.	White, Mary M.
Cummins, Maurice.	Wilson, Diarmuid.
D'Arcy, Michael.	
Gilroy, John.	
Harte, Jimmy.	
Hayden, Aideen.	
Healy Eames, Fidelma.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	

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Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
O’Keeffe, Susan.	
O’Neill, Pat.	
van Turnhout, Jillian.	
Whelan, John.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Paschal Mooney and Trevor Ó Clochartaigh.

Question declared carried.

An Cathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: Ag 2.30 i.n. an Luan seo chugainn.

The Seanad adjourned at 1.55 p.m. until 2.30 p.m. on Monday, 15 July 2013.