

DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 11 Feabhra 2015

Wednesday, 11 February 2015

The Select Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Deputy Pádraig Mac Lochlainn,
Deputy Alan Farrell,	Deputy Gabrielle McFadden,
Deputy Frances Fitzgerald (Minister for Justice and Equality),	Deputy Finian McGrath.
Deputy Seán Kenny,	

DEPUTY DAVID STANTON IN THE CHAIR.

Personal Insolvency (Amendment) Bill 2014: Committee Stage

Chairman: I welcome the Minister and her officials to the meeting. I ask everybody to please turn off all mobile telephones or put them on aeroplane mode so as to ensure they will not interfere with the sound system.

Section 1 agreed to.

NEW SECTIONS

Deputy Niall Collins: I move amendment No. 1:

In page 3, between lines 10 and 11, to insert the following:

“Amendment of section 16 of Principal Act

2. Section 16 of the Principal is amended by the insertion of the following new subsection after subsection (2):

“(2A) Where a Debt Relief Notice, a Debt Settlement Arrangement or a Personal Insolvency Arrangement as outlined in the Principle Act is rejected by a majority of creditors, this information will be included in the Annual Report of the Insolvency Service of Ireland.”.”.

This is self-explanatory. Where a proposal for a debt settlement or personal insolvency arrangement, PIA, is rejected by a majority of the creditors, this information will be included in the annual report of the Insolvency Service of Ireland, ISI. This is a public information initiative.

Minister for Justice and Equality (Deputy Frances Fitzgerald): I advised the Deputy on Second Stage that the departmental review of the insolvency legislation had taken place towards the end of last year. The Department met with all the key stakeholders in terms of the commitment we gave in May to review the legislation. I intend to bring forward proposals to the Government shortly based on that review to ensure the insolvency legislation can work effectively to help people trapped in unsustainable debt so that they can arrive at sustainable solutions. Subject to Government approval, I intend to introduce a number of amendments on Report Stage arising from that review. I would like to address some substantive issues when I do that. At the discussions today, I would like committee members to be aware that this is the context. I will be going to the Government based on the review and hopefully bringing forward some further amendments for which I would need Government approval.

I appreciate the intention behind Deputy Collins's amendment, which seeks to ensure that information about creditor refusals is publicly available. I am not sure it is necessary and there are some workability issues associated with it as well. The ISI has already announced that from the first quarter of this year, 2015, it will publish on a quarterly basis details of debt settlement and personal insolvency arrangements that have been voted down by creditors. That information is now going to be available on a quarterly basis and that will make it available much more quickly, instead of waiting for an annual publication. I believe this is the right direction to take so that it can be seen clearly what is happening when people are trying to deal with these debt issues.

Debt relief notices would not be included in the proposed amendment, since the Personal Insolvency Act does not provide for a creditor vote for this type of arrangement. If it is a limited

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write-down of unsecured debt for persons with very little income or assets which is approved directly by the court, a creditor can object to the court but no creditor vote is required because of the specific and limited nature of the debt solution. Perhaps the Deputy would take the points I am making in this regard.

Deputy Pádraig Mac Lochlainn: I support Deputy Collins's amendment. Under the Act as it is now, trying to get information from the banks is like pulling teeth from a hen. The amendment seeks to ensure that the public has the full understanding of how successful the Act and the legislation are as well as ensuring that we as Oireachtas Members can see on an annual basis the issues that are emerging. We would also be looking to amend the Act ourselves moving forward.

Chairman: How stands the amendment?

Deputy Niall Collins: I am pressing the amendment.

Amendment put and declared lost.

Deputy Pádraig Mac Lochlainn: I move amendment No. 2:

In page 3, between lines 10 and 11, to insert the following:

"Amendment of section 26 of Principal Act

2. The Principal Act is amended in section 26(2)(a) by the substitution of "€30,000" for "€20,000".

Whenever we dealt with the original Bill and Act, this was a significant issue and we want to raise it again. I appreciate that the Minister has undertaken a review of these matters but we want to take this opportunity again to flag the key issues as we see them. We believe that the threshold is prohibitively high in terms of the debt relief notices and we will be seeking to reduce it to €20,000.

Deputy Frances Fitzgerald: I see why Deputy Mac Lochlainn is saying this and perhaps he might take note of what I said about the review. I have an open mind on this issue and take the point he is making on the amount. A number of organisations working with debtors have made this point and I believe it is very relevant. In terms of the amendment, could I suggest to the Deputy that this is part of the review and will be one of the issues I will bring to the Cabinet? Hopefully by Report Stage I might be in a position to deal with the amendment.

Deputy Pádraig Mac Lochlainn: That is acceptable to me. I will withdraw the amendment in good faith, based on what the Minister has said.

Amendment, by leave, withdrawn.

Section 2 agreed to.

Sections 3 to 11, inclusive, agreed to.

SECTION 12

Deputy Pádraig Mac Lochlainn: I move amendment No. 3:

In page 14, between lines 15 and 16, to insert the following:

“(2) Section 110 of the Principal Act is amended in subsection (1)(a) by substituting “30 per cent” for “65 per cent”.”.

This amendment deals with the crux of the issues we have with the original Bill. It concerns the bank veto. Anecdotally, we hear stories that banks are working reasonably but then within Oireachtas committees we detect, reading between the lines, that the banks are making it clear it is one veto after another. We considered this to be a weakness with the Act. Giving a bank the ability to prevent a deal stacks the deck against the person who is trying to get their life moving again. For example, looking at the evidence the banks gave to the finance committee, they were quite strong in suggesting they would not be engaging in write-downs and so on. This is the key problem with the original Bill that we would want to see revisited. We are using this opportunity today to flag the issue with the Minister and I hope she can revisit the whole issue. The veto is the one area that is a fundamental flaw in the original Bill.

Deputy Frances Fitzgerald: The effect of the Deputy’s amendment is to reduce the proportion of debt required to approve a personal insolvency arrangement, from 65% to just 30%. That proposal, as the Deputy says, was made on Report Stage of the Bill in 2012 and it was opposed at that point on the basis that it seems unlikely that creditors would accept or agree to be bound by a solution which was only approved by a minority - the Deputy is saying 30% - of value of the overall debt. There would be a situation where, out of all of those creditors, it would only require 30% of them to agree that the arrangement was acceptable.

I am aware of the issue the Deputy is trying to deal with and I believe there are other avenues open to us which we will be considering as a result of the review. The courts might be able to play a further role, for example, and be in a position to make further interventions. There are obviously different definitions of “unreasonable” for different people. A court might make a call where there had been a particular situation in which a solution was being refused by a creditor. We are concerned here with striking a delicate balance between the rights of creditors and debtors.

I agree with the Deputy that we have to be clear that the banks must and should engage constructively on these issues and help people come to resolutions. That is a key issue. Although the solution suggested here is not the right solution and I am not in a position to accept the amendment, I intend to bring forward changes and proposals for the Personal Insolvency Act and will be considering very carefully the range of possible approaches, also in the context of any legal advice. There will be some constitutional property rights, for example, that would impact on this type of decision. I would point out that in the UK, the percentage is 75%. We have 65% here and the Deputy is suggesting going down to 30%. I understand the problem he is trying to deal with but it is a very dramatic reduction in the percentage where agreement is needed in order for it to be accepted. In the circumstances, I am not in a position to accept the amendment but there may be other ways of dealing with this issue.

Deputy Pádraig Mac Lochlainn: As I said on Second Stage, the previous Minister, Deputy Alan Shatter, predicted that 15,000 people would avail of this when the Bill was enacted but the actual figure was, I understand, around 10% of that figure. The difficulty is that the perception and the message that came from the banks in the finance committee was that they are not in the mind-set in terms of dealing with write-downs and that they want to send out a robust message in this respect.

We must do something radical, although I do not know if that is the right word, to remove the veto. It is ensuring that the banks do not have the percentage on their side to stall a settlement. There is also a balance of responsibility and, at present, they have all the chips on their

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side. There is a flaw in the legislation and my party feel strongly about it. When this was going through originally, the entire Opposition took this position. Those who take up the option vindicate our view. We may not convince the Minister today but I ask her to deliberate further on the matter to see if we can make changes.

Chairman: When the committee reported on this, we spoke about an appeal mechanism. That was one of our recommendations.

Deputy Frances Fitzgerald: That was what I was suggesting when I referred to the review and seeking further changes. I can envisage a situation where it might be possible to draft changes to consider a court review of the reasonableness of bank decisions on debt settlement arrangement, DSA, or personal insolvency arrangement, PIA, proposals. We will consider it further to see if we can examine the court's powers to take a stronger approach on the issue.

With regard to the ISI, I informed the Dáil during the debate on Second Stage that we saw dramatic changes towards the end of last year when we changed the fee structure. The ISI carried out an information campaign on its service and there was a large increase in the number of people using it in the last quarter of last year. Hopefully, this will continue. In establishing an insolvency service, the experience in the UK was that it took several years to be effective. We want to make it as effective as we can as quickly as possible. In the review, we have examined any actions we can take to strengthen the possibilities of this kind of debt resolution being agreed by banks.

Two weeks ago, we had a meeting with insolvency experts working directly with individuals. Some banks are engaging to a much greater extent than others. It is very uneven. Some banks are working very well with the insolvency people who are representing clients while other banks are not working as effectively as they could.

Amendment put and declared lost.

Section 12 agreed to.

Sections 13 to 17, inclusive, agreed to.

NEW SECTIONS

Deputy Niall Collins: I move amendment No. 4:

In page 23, between lines 38 and 39, to insert the following:

“Amendment of section 161 of Principal Act

18. Section 161 of the Principal Act is amended by the insertion of the following new paragraph after paragraph (f):

“(g) where fees are charged by a personal insolvency practitioner or the Insolvency service of Ireland in the course of their work relating to the mechanisms outlined in the Principle Act, their fees shall not exceed those as stated in January 2015.””.

This gives a degree of certainty and clarity about fees. When fees are stated at a certain point in time, we do not want to find later that they have increased.

Deputy Frances Fitzgerald: I have already provided for a complete waiver of all fees payable to the ISI by a person wishing to apply for any of the three statutory debt solutions offered

by the ISI introduced by the Personal Insolvency Act. These include the debt relief notice, the debt settlement arrangement or the personal insolvency arrangement. The waiver is in force since October. That being the case, the amendment is not relevant.

There is an issue in regard to the wording of the amendment. It is unclear from it whether it prevents the ISI charging a fee to credit rating agencies or other persons who wish to consult the ISI register. It is also unclear whether it prevents the official assignee in bankruptcy, whose functions are exercised partly under the Personal Insolvency Act, from collecting the remaining contributions to the cost of bringing in an estate at bankruptcy. We have already provided for a reduction of costs to a person entering bankruptcy, from some €1,350 in 2012 to approximately €275. I made these changes towards the end of last year. We have done a lot in terms of fees representing a barrier. I met the CEO of the ISI, who was concerned that the upfront fees were a barrier to people. That is why we waived them, which has been in effect since October. The reduction in the bankruptcy fees is substantial. There are increased numbers using the service.

Deputy Niall Collins: Have we done anything about fees for the practitioners?

Deputy Frances Fitzgerald: There is not a set scale at present. I am concerned to ensure no one is denied access to the personal insolvency practitioner service because of concerns about fees. I will examine what action we can take in that area.

Deputy Finian McGrath: I strongly support the amendment tabled by Deputy Collins. Families in those situations have enough financial problems and this is the issue I am concerned about in regard to fees. Is there any way of assisting people with fees? This refers specifically to fees paid to personal insolvency practitioners.

Deputy Frances Fitzgerald: We have waived upfront fees and made it much easier to access the service in the first place. We have reduced fees considerably. Personal insolvency practitioner fees are not fixed but must be set out in writing in the personal insolvency agreement or the debt settlement agreement. They must be agreed by the debtors and creditors. There is considerable variability in terms of whether banks are working closely with the ISI. If banks make arrangements, they usually assume costs of €5,000 for an agreed personal insolvency arrangement. That is the current situation. Normally, creditors pay but the problem arises when a deal is refused. That is something I want to examine further to see how we can work on the issue.

Amendment, by leave, withdrawn.

Deputy Pádraig Mac Lochlainn: I move amendment No. 5:

In page 23, between lines 38 and 39, to insert the following:

“Report by Minister

18. Within one month of the coming into force of this Act the Minister shall lay before the Houses of the Oireachtas a full review of the Principal Act.”.

The intent of the amendment is clear. We are anxious to see a full review of the Act laid before the Houses of the Oireachtas within one month. The intention of the Bill to amend the original Bill is fine but we feel the core issue is the veto. We all respect organisations like Free Legal Advice Centres, FLAC, working on the front line. This is not just about statistics, it is about people’s lives and being trapped in misery. The Bill was intended to find a pathway

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for people but there have been problems. From talking to groups on the front line, we know what they think are the issues. As soon as we can, we should deal with the problems that exist and make the Bill deliver what it was originally intended to. If the Minister cannot support the one month limit perhaps the review could be undertaken as soon as possible.

Deputy Frances Fitzgerald: I thank the Deputy. I appreciate his intention of providing for a review of the Personal Insolvency Act 2013. The amendment is not necessary because the Act provides for a statutory review. Section 141 requires the Minister for Justice and Equality to carry out a full review of the operation of insolvency arrangements under the Act, including DNRs, DSAs and PIAs within three years of its commencement, that is, by 21 July 2016. The review is to be completed within one year and the resulting report laid before each House of the Oireachtas.

We have completed a departmental review having met the various stakeholders, including MABS and others involved in this area, following the statement of Government priorities last May and I will bring forward proposals based on that review. The review has examined the full scope of the Act. Perhaps the Deputy will consider withdrawing the amendment because it may serve to unnecessarily duplicate the review work, which is provided for in the Act. I will speak fully on many of the issues in the review on Report Stage. I understand that Stage will not be taken next week and it will be some weeks away. That will give me time to bring forward amendments following the review, which has just been completed but which has not been submitted to the Cabinet or a Cabinet sub-committee.

Deputy Pádraig Mac Lochlainn: Is the Minister saying that Report Stage is a number of weeks away but she will have an opportunity to examine the lessons that emerge from the review and potentially table additional amendments on Report Stage?

Deputy Frances Fitzgerald: That is what I hope to do and I will take account of what members said today. I will table as many amendments as is feasible at the time.

Deputy Pádraig Mac Lochlainn: Will the Minister provide us with a copy of the findings of the review?

Deputy Frances Fitzgerald: It is a departmental review, which I have not discussed with the Cabinet, but I am not sure that I will be able to publish the review in full. I will undertake to provide as many details as possible and to outline the main aspects of the review.

Amendment, by leave, withdrawn.

Section 18 agreed to.

Title agreed to.

Chairman: I thank the Minister and her officials for attending.

Bill reported without amendment.

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

MESSAGE TO DÁIL

The Select Committee on Justice, Defence and Equality has completed its consideration of the Personal Insolvency (Amendment) Bill 2014 and has made no amendments thereto.

The select committee adjourned at 2.40 p.m. *sine die*.