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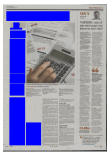

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Day of reckoning arrives as insolvency service begins work

Fiona Reddan

The insolvency process offers hope for those with both secured debt – such as mortgages – and unsecured debt, including credit cards

Finally, it's here. As of yesterday, the newly constituted Insolvency Service of Ireland (ISI) started taking applications from people hoping to escape from under the burden of their debt as they seek to enter arrangements with creditors.

It's been a long time coming. The new service will provide not just a chink of light but hopefully a resolution of their debt problems.

Who will use the service?

The Government has predicted that about 18,000 people will avail of the new service, while *Stubbs Gazette* puts it higher – at about 25,000 – in the first year alone.

Regardless of the exact number, advisers across the State are experiencing demand for their services and it's an issue that's very much on the minds of those who have struggled to deal with their debts as austerity has bitten over the last five years.

"I had an email about it last night at about 12.05. It shows that people are staying up thinking about the idea of insolvency, asking themselves, 'Is this the right thing for me to do?'" says financial adviser and personal insolvency practitioner Frances O'Hanlon.

The process is suited to those with both secured debt – such as mortgages – and unsecured debt, including credit cards and personal loans, who are technically insolvent and cannot meet repayments on their loans. The new service presents a possible way out.

According to a spokesman for Mabs, people are calling the advisory service to talk about a variety of debts, ranging from car loans to personal loans, to money lenders, but that mortgages are "the main area of focus".

"The biggest fear for people is retaining their family home," says Mark Ryan, and providing for this is a key facet of the new regime.

However, insolvency is not going to be for everyone.

"This is a serious road – it's not to be feared by people who genuinely need it, but we have said to some people, 'This is not for you'," O'Hanlon says, adding that some people might have options to broker a deal with their creditors outside of the insolvency process.

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"If I felt some day a bank would write it [your debt] down anyway, I'd say don't dream of going through an insolvency arrangement; you might be better off holding tight for now."

Getting advice

The new insolvency regime is creating a new type of professional – a personal insolvency practitioner or PIP.

Authorised by the Insolvency Service, a PIP will be a solicitor, a barrister, a qualified accountant or financial adviser, and will guide people through either a debt settlement arrangement or a personal insolvency arrangement.

"Our role is clear: we're there as mediators to broker a fair deal between the individual and the creditor," says O'Hanlon.

"Authorised intermediaries" will advise on debt relief notices, which in practice is likely to mean a visit to your local branch of the Money Advice and Budgeting Service (Mabs).

Choosing the right PIP for you is going to be an important part of the process. As Ryan, a PIP and accountant with Quintas in Cork notes, a debt arrangement can only happen "once in a lifetime".

So it will be hugely important that you – and your adviser – get it right.

How long will it take?

While the Insolvency Service of Ireland has had almost 5,000 inquiries to date, it's likely that there will be a certain hesitancy in availing of the service.

"People might be a bit reluctant to be the guinea pigs. It will be quite slow at the beginning, as I suspect people will want to see how these things operate first and learn from other people's experience," says a spokesman for debt advisory agency Mabs.

And some people may simply not be ready for the process yet. As O'Hanlon notes, some people are coming to see her without full awareness of all the elements

18,000

Number of people the Government predicts will use the service

5,000

Numbers of inquiries the Insolvency Service of Ireland has had to date

70

Number of days insolvency adviser and creditors have to sign off an agreement

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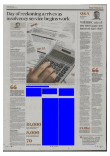

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in their case, citing an example of someone who had potential tax issues from not paying tax on rental income.

"If there's a revenue liability, we need to incorporate it into the scenario," she says, adding the advice is often for people to "step back" and sort out certain issues first.

"You've one shot at this, and everything has to be brought to the boil at the same time," she says.

If not, and if someone goes ahead and pursues an insolvency arrangement without sorting out their affairs first, they will find that certain debts will be left outside the "cage" of the new arrangement – which will leave them open to being pursued for the full amount of these debts by their creditor.

"One of the critical things I'd say is 'tell me everything'. If we miss something because it's not included in the scheme, that could pull the whole thing down," warns Ryan.

Once someone has an application ready, their adviser will file for a protective certificate from the Insolvency Service, at which point their debts are frozen, and their adviser and their creditors will have 70 days to sign off an agreement. This means that, by Christmas of this year, there will be people who have successfully come out the other side.

From that point on, they will pay an agreed monthly sum – say €500 – to their PIP, who will then distribute it to creditors. This will cover all debts in the arrangement and will last for five or six years. Their name will also be added to the relevant register, which will be publicly available.

If someone tries to borrow more than €650 while they are subject to either a personal insolvency arrangement, debt settlement arrangement or debt relief notice, they must inform the lender of their situation.

At the end of the agreed term, the debtor will be discharged from the process, their name will be removed from the register within three months, and, provided that they have complied with all the terms of the agreement, some debt may be written down, under the terms of the arrangement.

What happens next is unclear – for instance will people be precluded from borrowing again?

"Whether they will be able to borrow or not we don't know. We just won't know until they apply for a loan," says Ryan.

What if it doesn't work?

If, at the end of the 70-day period, a deal has not been struck, it will be either back to square one, or pursue bankruptcy. While the new regime is significantly quicker than the previous one, and allows you to be discharged from bankruptcy quicker than from the insolvency regime – three years compared with five or six – the major risk with going down this route is that you might lose your family home.

"It's quicker and gets you out in three years, but you lose everything," says Ryan, noting that, with insolvency, efforts will be made to keep the family home, with the possibility of negotiating to keep other assets too.

If you're not happy with the advisory services you received during the process, you will be able to make a complaint, with the Insolvency Service indicating that it will publish regulation in this regard "in the coming weeks".

How much will it cost?

With respect to a debt relief notice, Mabs won't charge a fee for its service, but the Insolvency Service imposes a charge of €100.

When it comes to a personal insolvency arrangement or a debt settlement arrangement, on the other hand, you can expect to pay considerably more.

O'Hanlon, for example, charges €300 for an initial consultation, adding that total costs will depend on the complexity of the case at hand. But further fees of anything between €1,000 and €5,000 are likely, and may even top €10,000 for more difficult cases. And there is no alternative to going through a PIP, no do-it-yourself option.

Given that people applying for the process are technically insolvent, the great unanswered question is how they will be able to afford paying the service?

Dealing with debt: The options for relief

A debt relief notice
For: People who have little or no disposable income (less than €60 a month after reasonable living expenses are deducted) or assets (max €400)
Deals with amounts up to: €20,000
Goal: To prove that you can't repay your debts and get them written off
Adviser: An approved intermediary, typically a branch of Mabs

A debt settlement arrangement
For: People looking to deal with unsecured debts, such as credit card loans
Goal: To come to an agreement on dealing with the debt that satisfies 65 per cent (by value) of creditors
Adviser: PIP

A personal insolvency arrangement
For: People looking to come to an arrangement on their unsecured debt, such as credit cards, as well as secured debt, such as a mortgage.
Deals with amounts up to: €3 million
Goal: To either restructure, or write down debts
Adviser: PIP

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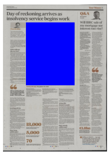

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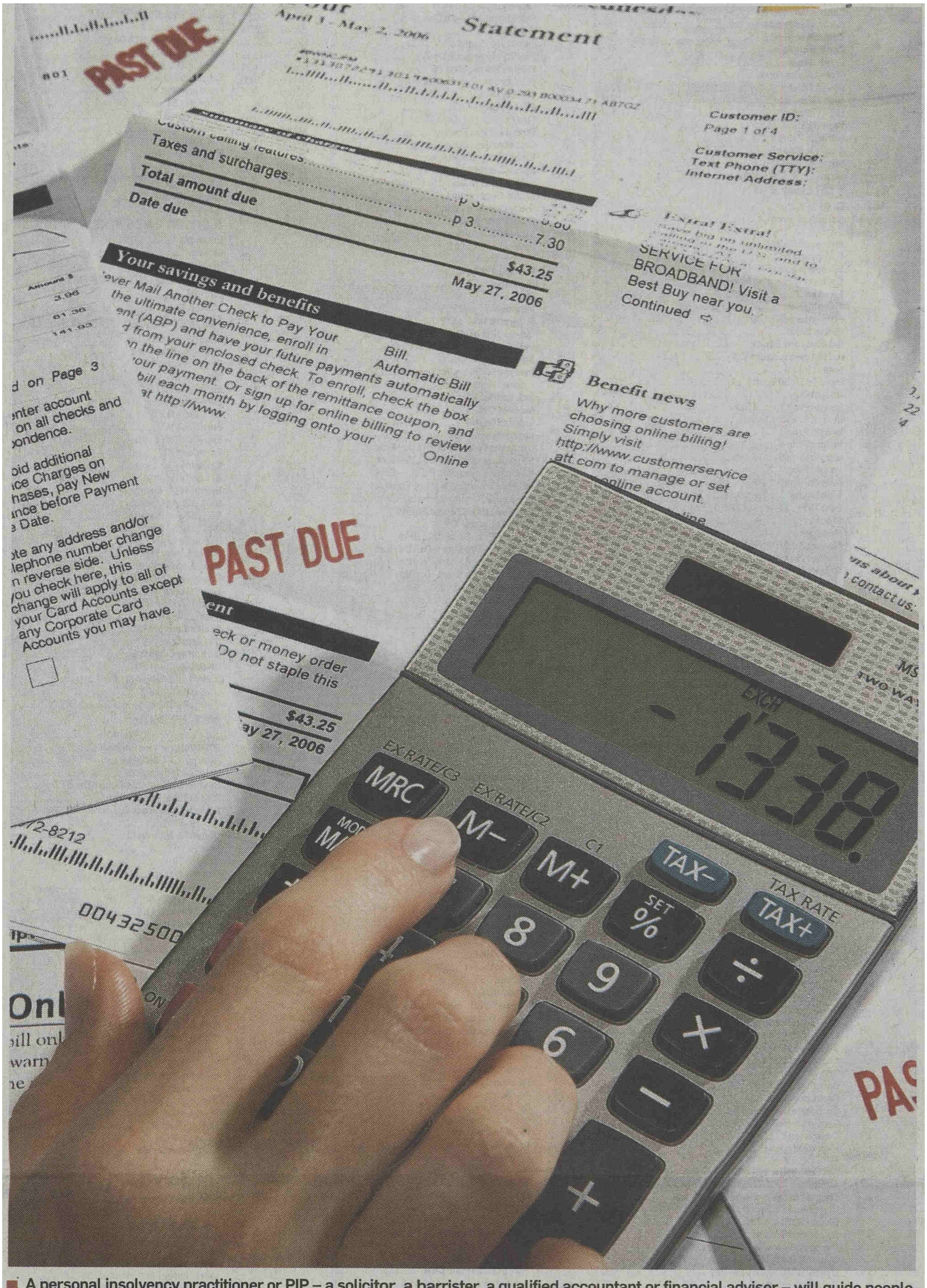

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