

13 Lower Dorset St
Dublin 1

t 01-874 5690
f 01-874 5320

e info@flac.ie
w www.flac.ie



Minister for Justice and Law Reform,
Dermot Ahern TD
Leinster House
Kildare Street
Dublin 2

31 March 2010

Re: FLAC's short-term proposals for action on debt crisis

Dear Minister Ahern ,

Yesterday, 30 March 2010, FLAC (Free Legal Advice Centres) issued a statement calling on the government to strike a balance in its approach to Ireland's debt crisis between bailing out banks and supporting indebted consumers who are desperately in need of solutions.

We recognise that the expert group called together to tackle the issue of debt is currently seeking solutions. However FLAC has assembled remedies that might be put in place immediately to assist ordinary people struggling with debt. At the consultation of the Law Reform Commission last autumn, you expressly called for short-term solutions to be presented to government as quickly as possible. To this end, we list below some proposals you might consider:

1. Extending the Irish Banking Federation (IBF)/Money Advice and Budgeting Services (MABS) Protocol

This protocol states that, wherever possible, the IBF member and MABS representative should attempt to formulate a mutually-acceptable, affordable and sustainable repayment plan. However, the Protocol applies to members of the Irish Banking Federation only. It would be useful to apply the rules of engagement in the Protocol to all creditors so that there is consistency of treatment for indebted clients, the money advisors who are working on their behalf and certainty for creditors as to how cases will be dealt with.

2. Elevating the IBF/MABS Protocol to a statutory footing

There is a risk that the terms of the Protocol might be ignored or not adhered to by creditors. There is no substitute in FLAC's view for having a measure in place that has some element of legal enforceability about it. In our opinion, it is feasible to take the Protocol (with adaptations if necessary) and elevate it to a statutory code of practice.

3. Extending the IBF Voluntary Code of Conduct on Mortgage Arrears

FLAC believes that the current Code of Conduct on Mortgage Arrears is in need of strengthening from the borrower's perspective. This could be done by extending the moratorium on legal proceedings, the framing of more precise obligations on the lender to explore alternative payment mechanisms and the insertion of clear obligations on the lender as to its practices in the matter of negative equity and the debt shortfall. A lender should be obliged to produce documents which prove that repossession was the last course of action in any given case.

4. Elevating the Code of Conduct on Mortgage Arrears to a statutory footing

Another difficulty with that Code, apart from FLAC's above contention that it is by no means strong enough, is that it is not expressly admissible in legal proceedings. The Financial Regulator describes it as a 'statutory' code, but that seems to merely mean that it has been issued in the exercise of a statutory power.

5. **Mandatory referral to MABS**

FLAC's report on debt enforcement, *To No One's Credit* (2009), showed that it is often too late when people in debt often get money advice (and indeed legal advice). FLAC believes that it is therefore critical that the creditor pro-actively advises the consumer of the existence of money advice services at the earliest possible juncture.' FLAC argues it should instead be mandatory for creditors under the relevant codes to refer customers in payment difficulties to MABS rather than the current system whereby such referrals are made only 'where the circumstances warrant it.' Details of state civil legal aid services and other legal support services should also be provided as a matter of course. Lenders should be obliged to show evidence of such referrals before bringing any proceedings against the debtor.

6. **Regulation of debt collection**

Debt collectors should be subject to regulation. There is evidence to suggest that some collectors overstep the mark in terms of persistent contact with those in debt. This approach is not only personally very stressful for those in debt but it also may undermine the conclusion of a *pro rata* accommodation for borrowers and creditors. There are also the parallel questions of intimidation and breaches of the criminal law.

7. **Regulation of 'for profit' debt counselling**

FLAC would suggest that a registration system should be in place for those who propose to charge fees to indebted people to enter into negotiations and payment arrangements with creditors. Some of these operators are allegedly informing potential clients that MABS offices have long waiting lists in order to discourage them from availing of a free service, when in fact only some offices have waiting times and they are not generally speaking very long.

8. **Compulsory attendance at Instalment Order hearings**

In the event of a debtor's failure to attend the hearing for an Instalment Order, the matter should be adjourned and a firm reminder be sent to the debtor to appear at the next hearing. Instalment Orders set without regard to the debtor's financial circumstances and made in his/her absence simply do not work. FLAC also believes that civil legal aid should be made available to respondents in Instalment Order applications.

9. **Reducing or freezing the Courts Act interest**

In an environment of historically low interest rates, FLAC questions the appropriateness of the 8% interest rate on judgements that currently is imposed under the Court Acts. This is especially so in consumer debt cases where it is clear that the debtor does not have the means to properly pay the judgment.

It is vital that attention be devoted to this issue and we would urge you to consider these proposals immediately.

I am writing in similar terms to the Minister for Finance.

Please do not hesitate to contact us if you have feedback or need further information,

Kindest regards



Noeline Blackwell
FLAC Director General