

Owner-Occupier Mortgage Arrears: What progress has been made towards resolution?

FLAC

January 2015

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OWNER OCCUPIER MORTGAGE ARREARS – WHAT PROGRESS HAS BEEN MADE TOWARDS RESOLUTION?

Summary

As 2015 begins and coming up to two years since the Central Bank announced the imposition of a Mortgage Arrears Resolution Targets (MART) programme for the principal mortgage lenders in the State in March 2013, FLAC believes there is a need for a detailed analysis of what progress has been made to resolve the owner-occupier mortgage arrears problem.

In the context of the broader housing crisis, it is understandable that the mortgage arrears issue has received less attention in 2014. Nonetheless, the spectre of increased levels of repossession for owner occupiers is itself a critical aspect of that housing crisis. This paper analyses in detail the available data on arrears, restructuring and legal proceedings provided by the Department of Finance and the Central Bank respectively from the end of September 2013 to end September 2014. It assesses the success - or otherwise - of state and lender efforts to resolve difficult mortgage arrears cases without resort to repossession. Our overall conclusion is that these efforts are broadly failing and that there is likely to be a substantial spike in repossessions unless far more radical action is taken.

This paper makes some findings and raises a number of concerns based on the data summarised in a series of tables, focusing in particular on the problem category of accounts that have been in arrears for more than 90 days. In general terms, it is clear that far greater progress has been made during the 12-month period in question in reducing the number of accounts in the 90 days plus arrears category than in increasing the number of restructures of such cases, when one might have expected the reverse to be the case. In turn, restructures of accounts in arrears over 90 days in turn form a small percentage of the overall number of restructures compared to accounts in arrears less than 90 days. Taken together, these two findings lead to the inevitable conclusion that the more difficult cases are not being resolved. Thus, more than 48,000 accounts in arrears for over 90 days held by the six main lenders remained to be restructured at the end of September 2014. Over 17,000 accounts provided by the remaining mortgage lenders have been in arrears for over 90 days but there is no specific information on how many of these have been restructured. Counting all mortgage lenders, there were over 37,000 accounts in the most serious category – in arrears for over two years - at the end of September 2014. An average arrears amount of almost €50,000 is due on these accounts.

It is unclear exactly how and why substantially more accounts are exiting arrears entirely than are being restructured and the relevant supervisory authorities - and the lenders - need to explain this. Improved financial circumstances, financial help from relatives and the likelihood that some “won’t pay” borrowers always had the capacity to pay are all likely to be factors. There is also, however, concern that in a number of cases the arrears are being classified as ‘cleared’ based on the type of restructure offered by the lender – for example capitalising arrears or offering a split mortgage product – rather than on the borrower actually clearing the arrears from their own financial resources.

Capitalisation of arrears and split mortgages increasingly dominate the restructuring options being offered by many lenders. For example, together they amounted to half of permanent restructures offered by the six main lenders at the end of September 2014, up from a third at the end of September 2013. The long-term sustainability of both these forms of restructure is questionable in some respects. Capitalisation of arrears, for example, involves the borrower making a greater monthly repayment than when the arrears occurred and at the end of September 2014 almost one in every three such cases had lapsed back into arrears. There

is already evidence of a small number of split mortgages also failing and there are serious concerns that many borrowers signed up to these arrangements without a proper objective assessment of their capacity to service them.

The 12-month period in question saw a dramatic rise in the number of applications to repossess family homes, though this has not, as of yet at least, translated into a significant increase in actual repossessions. Nonetheless, it is a stark fact that during a 12-month period when 10,372 new applications to repossess family homes were brought by lenders generally, the number of mortgages in arrears over 90 days that were rescheduled by the six main lenders under the MART only increased by a net 1,298. This, in our view, is entirely the wrong sort of ratio.

The impact of the Personal Insolvency Act 2012, in particular the Personal Insolvency Arrangement (PIA) mechanism designed to resolve secured and unsecured debt, has so far been negligible in terms of attempting to resolving mortgage arrears cases, with only 80 PIA's approved in the 12 month period. In the context of the ongoing arrears numbers, this is a drop in the ocean so far and the imbalances that are arguably in the lender's favour in the legislation would appear to make it unlikely that there will be a substantial increase any time soon.

The main piece of good news is that mortgage arrears are generally reducing and therefore the problem has become more finite and measurable. In our opinion, this presents the best opportunity yet for brave remedial action. FLAC's analysis makes it clear that allowing lenders to clean up the mess they had the major part in creating, albeit with some prodding, pushing and cajoling from supervisory authorities, is not working. If the government is serious that its core policy objective in this area is to avoid repossessions of family homes, it should step in and set up an independent authority to assess the viability of mortgages in arrears and this authority must have the powers, where required, to impose solutions on lenders that may involve compulsory write-down. To accompany this, a ramped up mortgage-to-rent scheme for mortgages that are manifestly unsustainable should be put in place to avoid contributing further to an already deepening housing crisis.

Introduction

The current administration, under pressure from the ‘Troika’, began to introduce more concrete action in the course of 2013 to force lenders to properly confront the mortgage arrears problem, cranking up the pressure for more decisive action by setting targets for the resolution of mortgage arrears cases. The primary method by which this was to be achieved was through the **Mortgage Arrears Resolution Targets 2013 (MART)** and in March 2013 the Central Bank set the first ‘performance targets’ for the principal mortgage lenders to resolve mortgage arrears cases, on both principal (owner occupied) dwelling houses and on buy-to lets.¹ In terms of principal dwelling houses (PDH) which are the exclusive focus of this paper, the process by which these targets were to be delivered was via a refined Code of Conduct on Mortgage Arrears (CCMA) with its Mortgage Arrears Resolution Process (MARP). This Code revised in July 2013 to simultaneously widen the range of ‘alternative repayment arrangements’ that lenders might consider as an alternative to the repossession of family homes, whilst effectively allowing lenders quicker access to repossession action where mortgages were declared by those lenders to be unsustainable.

Since November 2013, the Department of Finance has been publishing monthly figures, six weeks in arrears (thus the first set are dated September 2013), of the progress of the six principal lenders in both reducing the number of arrears cases and increasing the number of restructures of mortgages in difficulty. The latest dataset examined here, again focusing exclusively on the figures related to principal dwelling houses, was published on 13 November 2014 and provides figures up to the end of September 2014.² A significant caveat with these figures is that they remain unaudited, having as yet ‘*not gone through the lender’s quality control processes*’ according to the Department. Although these datasets could be more comprehensive (and a number of recommendations in this regard are made below), they have provided 12 months of sufficient information in a number of respects for an analysis of the progress made in resolving the owner occupier side of mortgage arrears crisis and that is the primary purpose of this paper.

It will also therefore go on to look at related statistical information, including the quarterly figures published by the Central Bank over the same period of September 2013 to 2014. These statistics provide a picture of the overall level of arrears across all mortgage lenders³ and crucially contain details of repossession activity in the courts during the same period. The paper will also examine the latest information available from the Insolvency Service of Ireland (ISI); the body set up by government to oversee, administer and monitor applications, proposals and approved arrangements under the Personal Insolvency Act 2012, which in practice came into effect in the autumn of 2013. This examination will be confined to looking at the information concerning Personal Insolvency Arrangements (PIA) – the arrangement that covers both secured and unsecured debts – and therefore most relevant to the question of mortgage arrears.

¹ The targets only apply to ACC Bank, Allied Irish Bank (including EBS), Bank of Ireland, KBC Bank, Permanent TSB and Ulster Bank. They do not, for example, apply to sub-prime mortgage lenders, though more comprehensive figures from the Central Bank released on a quarterly basis monitor the overall arrears figures for lenders generally, excluding local authority housing loans.

² A further set was recently published on 11 December covering the period to the end of October 2014. These have not been included in this paper as we wished to focus exclusively on a 12 month period to get an indication of trends.

³ The six lenders covered by the MART only represent 90% of the market according to the Department of Finance, whereas the Central Bank figures purport to cover all mortgage lenders, apart from local authorities. However, given the widespread sale of mortgages from regulated to unregulated entities recently, it is unclear how these mortgages are reflected in the figures. In response to an email from FLAC on this issue, the Bank seemed to suggest that it estimated the number of such mortgage in arrears but that they were low in number.

This is primarily an analysis of figures with a number of conclusions drawn from that analysis. However, as an organisation that has advocated for reform of debt enforcement, repossession and personal insolvency laws for almost two decades now, FLAC is acutely conscious that each household represented in this data has its own story, and many have contacted our helpline and visited our centres to try to find a way out of their financial problems, in addition to the other hard working organisations – statutory and non-governmental - that are routinely approached for assistance. There is a sense both at home and abroad at the moment that Ireland’s economy has stabilised and is well into its recovery, with unemployment levels decreasing and a more buoyant property market in certain areas, evidenced as examples. These developments must not be allowed to mask a major housing crisis, with a depressing dearth of social housing options despite recent announcements and the consequences of private rented accommodation costs accelerating rapidly, frequently highlighted in the course of 2014 by a number of colleague organisations, far more expert in the housing rights arena than FLAC.

In that broader context, it would also be foolish to assume that the mortgage debt problem is being resolved, just because it is no longer making headline news. Thus, this paper sets out to examine the statistical evidence of mortgage arrears trends over the 12 months from the end of September 2013 to the end of September 2014 as presented to us by the State, focusing exclusively on the position of over-indebted owner occupiers, conscious too that some buy-to-let arrears may simultaneously be a contributory factor in a number of cases. It asks and attempts to answer the core question - some 18 months on from the announcement of mortgage arrears resolution targets, what progress has been made and what does that tell us about where we are going with the mortgage arrears problem?⁴

1. Trends with residential mortgage arrears and mortgage restructures based on the Department of Finance Mortgage Arrears Resolution Targets (MART) monthly figures for the six main lenders from the end of Quarter Three 2013 to the end of Quarter Three 2014.

2.1 Arrears

Table One – Reductions in arrears per category for principal dwelling houses from end Sept 2013 to end Sept 2014

Period	Under 90 days	Over 90 days	Total
End of Sept 2013	37,282 (31.5%)	81,156 (68.5%)	118,438 (100%)
End of Dec 2013	35,139 (30.6%)	79,782 (69.4%)	114,921 (100%)
End of Mar 2014	32,631 (29.4%)	78,435 (70.6%)	111,066 (100%)
End of June 2014	30,342 (29.4%)	72,897 (70.6%)	103,239 (100%)
End of Sept 2014	28,261 (29.4%)	67,854 (70.6%)	96,115 (100%)
Total decrease	9,021 (24.2%)	13,302 (16.4%)	22,323 (18.8%)

⁴ It should be noted for the record that in the course of the research leading to the preparation of this material, FLAC held exploratory meetings with the Department of Finance, the Central Bank and the Department of Justice respectively.

Of the total number of accounts of the six main lenders in arrears, the percentage that have been in arrears for over 90 days has remained consistent over the period at approximately 7 out of 10 (or approximately 70%) of accounts. **The number of accounts in arrears has, however, steadily declined and that at least has been a welcome development. A net 22,323 accounts (or almost 19% of the total) have exited arrears, 9,021 in the less than 90 days arrears category and 13,302 accounts that had been in arrears over 90 days. Nonetheless, there remain some unanswered questions as to the reasons for these reductions and these are discussed in more detail below.**

Table Two – Percentage reductions in arrears per category for principal dwelling houses from end Sept 2013 to end Sept 2014.

Period	Under 90 days	Over 90 days	Total
From Sept - Dec 2013	5.7%	1.7%	3.0%
From Dec - Mar 2014	7.1%	1.7%	3.4%
From Apr – June 2014	7.0%	7.1%	7.0%
From July – Sept 2014	6.9%	6.9%	6.9%

This table shows that the reductions in arrears appear to have accelerated over the period under review, with over twice as many mortgages exiting arrears in the second and third quarters of 2014 compared to the previous two quarters – Q.4 2013 and Q.1 2014. The numbers of mortgages in arrears that moved out of arrears had been far greater in the under 90 days category until the two most recent quarters when the greater than 90 days category decreased by close to 7% in both quarters, significant percentages compared to the previous two quarters.

2.2 – Restructures

The Department of Finance MART figures insofar as it concerns restructures of mortgages classify a restructure as either being permanent or temporary. Curiously, neither of these terms is defined in the datasets or it would appear in the original Mortgage Arrears Resolution Targets document first published by the Central Bank in March 2013. Clearly, however, in terms of making progress on resolving an individual residential mortgage arrears problem, a permanent restructure (as long as it is sustainable) is far preferable and the emphasis has been on moving away from stop gap temporary arrangements such as the payment of ‘interest only’ to more permanent long term solutions such as a split mortgage. Thus, in general terms, as the next table demonstrates, the twelve months under review has seen an increase in permanent restructures and a decrease in temporary ones, with a number of temporary restructures likely to have been converted into permanent ones.

Table Three – Restructures for principal dwelling houses from end Sept 2013 to end Sept 2014.

	Perm	Temp	All Restructures	Perm	Temp	Over 90 days
End Sept 2013	45,177	28,365	73,542	11,516	6,997	18,513
End Dec 2013	51,188	21,338	72,526	13,985	6,571	20,556
End Mar 2014	62,065	18,575	80,640	14,604	5,905	20,509
End June 2014	72,819	17,407	90,226	15,022	5,822	20,844
End Sept 2014	83,588	14,002	97,590	14,971	4,840	19,811
Increase/ Decrease	+38,411	-14,363	+24,048	+3,455	-2,157	+1,298

This table shows on the left –hand column that an increase of 38,411 (from 45,177 to 83,588) in permanent restructures of all PDH mortgages (including accounts in arrears over or under 90 days or not in arrears at all) took place in the 12 months under review. There was a reduction in the number of temporary restructures of 14,363 (from 28,365 to 14,002), leaving an increase of 24,048 restructures in total.

On the right side of the column, comparable figures are provided for the progress of the restructuring of mortgages 90 days or more in arrears. The 90 day plus arrears category is examined separately here because these accounts are clearly the more difficult to resolve. This shows that the increase in the number of permanent restructures in the 90 day plus category was 3,455 (from 11,516 to 14,971). There was a reduction in the number of temporary restructures of 2,157 (from 6,997 to 4,840), leaving an increase of only 1,298 restructures in total.

- **The increase of 3,455 in permanent restructures in the 90 days plus arrears category amounts to only 9% of the increase in the total number of permanent restructures of 38,411 (one in eleven).**
- **The increase of 1,298 in restructures (permanent and temporary) in the 90 days plus arrears category amounts to only 5% of the increase in the total number restructures (permanent and temporary) of 24,048 (one in twenty).**

It has been suggested that the MART restructuring process so far has largely been an exercise in dealing with the ‘low hanging fruit’. These figures confirm this view. They clearly show that mortgage accounts that have been in arrears for less than 90 days (or that may not have been in arrears at all but are restructured before they go into arrears) are being restructured in comparatively large numbers. The more problematic accounts that are in arrears for over 90 days, on the other hand, amount to only small percentages of restructures under the MARP between the end of September 2013 and the end of September 2014.

Table Four – Percentage increases in restructures for principal dwelling houses in 90 days plus category from end Sept 2013 to end Sept 2014.

Period	Permanent	Temporary	Total restructured
From Sept - Dec 2013	21.4%	-6.1%	11.0%
From Dec - Mar 2014	4.4%	-10.1%	0.0%
From Mar – June 2014	2.9%	-1.4%	1.6%
From July – Sept 2014	0.0%	-16.9%	-5.0%

A significant increase in the number of permanent restructures of accounts in arrears over 90 days took place during the final quarter of 2013 amounting to over 21% (or almost 2,500 accounts). This suggested that the MART process was achieving reasonably quick results. However, progress in 2014 has ground to a halt with a significant decline in the total number of restructures (permanent and temporary together) of 5% (or 1,033 accounts) from July to the end of September 2014. The number of temporary restructures has continued to decline in 2014, suggesting that this category is unreliable as an indicator of a restructure that will hold in the long term.

Taking permanent and temporary restructures together, an overall net decrease in the number of restructures occurred in the first nine months of 2014 so far of 745 in total (from 20,556 to 19,811). Again, this is a disturbing finding and clearly indicates that in terms of its restructuring element, the MART programme is working less and less effectively for mortgages in the 90 days plus arrears category.

2.3 - Arrears and restructures in the 90 day plus arrears category compared

Table Five – Reductions in 90 days plus arrears cases compared with increases in restructures in the 90 days plus arrears category for principal dwelling houses from end Sept 2013 to end Sept 2014.

Period	In arrears over 90 days	Permanent	Temporary	Total restructured
End of Sept 2013	81,156	11,516	6,997	18,513
End of Dec 2013	79,782	13,985	6,571	20,556
End of Mar 2014	78,435	14,604	5,905	20,509
End of June 2014	72,897	15,022	5,822	20,844
End of Sept 2014	67,854	14,971	4,840	19,811
Decrease/Increase	-13,302	+3,455	-2,157	+1,298

The left-hand column of this table shows the reduction in the number of accounts in arrears over 90 days over the 12 months under review – down from 81,156 to 67,854, a reduction of 13,302 accounts. The right-hand columns of the table show the progress being made on restructures in the 90 days plus arrears category already set out at Table Three – an increase of 3,455 in the number of permanent restructures and an increase of 1,298 in the number of restructures overall (permanent and temporary).

- **While a total of 13,302 accounts that had been in arrears over 90 days exited the arrears category completely during the 12 month period, only 1,298 such accounts were restructured taking permanent and temporary restructures into account.**
- **At the end of September 2014, therefore, a total of 48,043 (67,854 minus 19,811) mortgages in arrears over 90 days (71% of the total in arrears over 90 days) remained to be restructured, 18 months after the announcement of the MART targets.**

2.4 - Some issues arising from these tables

The foregoing tables demonstrate that much greater progress has been made during the 12 month period under review in reducing the number of accounts in arrears in the 90 days plus arrears category than in increasing the number of restructures of such cases.

In addition, the rate of decrease in arrears cases in the 90 days plus category is accelerating while the rate at which arrears cases in this category is being restructured has slowed to a standstill and has now actually gone into reverse.

For example, in terms of **arrears**, 2,721 mortgages (from 81,156 to 78,435) that had been in arrears for over 90 days exited the arrears category in the six months from September 2013 to the end of March 2014. However, 10,851 mortgages (from 78,435 to 67,854) that had been in arrears for over 90 days exited the arrears category in the six months from the end of March 2014 to September 2014 - almost exactly four times the number.

On the other hand, in terms of **restructures**, while the number increased by 1,996 (from 18,513 to 20,509) in the six months from September 2013 to the end of March 2014, it actually decreased in the six months from the end of March 2014 to September 2014 by 745 (from 20,509 to 19,811).

To what can the growing reductions in the number of cases in arrears over 90 days be attributed? What is causing a number of mortgages to exit the arrears category completely whilst progress on restructures seems to be going into reverse?

A number of lenders have stated - for example during the course of the series of Joint Oireachtas Finance and Public Expenditure Committee meetings on mortgage arrears in 2014 - that a significant part of their delivery of the MART was to write to a number of borrowers who had allegedly failed to engage or ceased to engage under the Code of Conduct on Mortgage Arrears (CCMA), threatening legal proceedings to repossess.⁵ Have a number of borrowers cleared their arrears and resumed full payments when faced with such potential proceedings?

⁵ Joint Oireachtas Committee on Finance and Public Expenditure hearings on mortgage arrears, April 8th – 10th 2014.

If this is so, does this add weight to the theory that some of these mortgage arrears cases were so called 'strategic defaulters' who always had the capacity to pay? On the other hand, it is likely that some may have genuinely experienced an improvement in their financial circumstances, enabling them to clear their arrears problem. Others may have obtained financial help from family and friends, particularly when faced with legal proceedings for repossession. The knock-on effect for people in this category, however, is the danger of lapsing back into arrears. A final potential category (discussed in greater detail below) may be a number of borrowers who were offered and accepted a restructure during this period – such as a capitalisation of arrears or a split mortgage – which is also counted as an account that is no longer in arrears, even though the arrears have not actually been cleared by the borrower.

This is the level of detail that the figures currently fails to capture and the Department of Finance must insist that the six lenders the subject of the MART provide much more specific information, particularly on how accounts in the problem category of being in arrears over 90 days are appearing to be cured.

One way or another, the clear dominance of the clearing of arrears over restructuring, together with the small numbers of restructures in the over 90 days arrears category compared to the less than 90 days arrears category broadly confirms that those with apparent capacity are getting solutions and those without still await a resolution of their case, apart from the nuclear option of repossession.

2.5 - Gaps in statistical information gathered by the Department

Some comments about the nature of the figures published by the Department of Finance may be timely at this point. In summary, the following statistics are available on the residential mortgage arrears profiles of the six main lenders:

- Total number of Principal Dwelling House (PDH) mortgage accounts
- Total number of such accounts not in arrears
- Total number of such accounts in arrears
- Total of accounts in arrears for greater than 90 days
- Total of accounts in arrears for less than 90 days
- Total number of restructures of accounts greater than 90 days in arrears
- Total number of permanent restructures of accounts greater than 90 days in arrears
- Total number of temporary restructures of accounts greater than 90 days in arrears

A major gap in information then occurs in our view.

The next set of figures provided by the Department in their monthly releases includes the total number of permanent restructures and temporary restructures and breaks them down into the relevant categories of restructure – such as term extension, arrears capitalisation, payment of interest plus a portion of capital, split mortgages and other options.

This total number, however, includes not just mortgages in arrears for more than 90 days but also includes those less than 90 days in arrears and mortgages that are not in arrears at all, where for example a restructure may have taken place in advance of an arrears problem developing.

The key point here is that there is no specific table breaking down the permanent and temporary restructures for mortgages in arrears over 90 days - the obvious problem category and the one where it appears that little progress has been made, as clearly demonstrated at Table Three above.

Thus, we know that as of the end of September 2014, there had been 19,811 restructures of mortgages in arrears over 90 days, 14,971 of these were (described as) permanent and 4,840 as temporary, but we do not know what form these restructures have taken. Without specific details of the type and number of restructures being offered in this category, it is therefore very difficult to assess their sustainability into the future. **This is also a statistical deficiency that the Department of Finance should set about rectifying as soon as possible by again obliging lenders to provide this information.**

2.6 – Sustainability of restructures - capitalisations of arrears and split mortgages

- **Capitalisations of arrears – Restructuring the mortgage and exiting arrears simultaneously?**

Notwithstanding the limited information that is available, one category in the permanent restructures data that requires further examination is ‘**Arrears Capitalisation**’. By the end of September 2014, a total of 24,482 residential mortgages (almost three out of every ten of the total of 83,588 permanent restructures) had been restructured in this manner.

As we understand it, capitalising arrears involves setting the arrears back to zero and recalculating an increased monthly instalment for the payment of capital and interest over the remaining term of the mortgage. Three key points are relevant to such restructures therefore:

1. These accounts were in arrears before being restructured
2. Once restructured in this manner, such an account is no longer in arrears (unless a further default takes place)
3. With such a restructure, the borrower must go from a position of having apparently failed to pay the previous monthly instalment to now paying an increased monthly instalment in full.

From a statistical perspective, one question immediately occurs. If such accounts were in arrears immediately before being restructured and once restructured are no longer in arrears, then are they being recorded not just as restructured accounts but also as accounts that were in arrears but are no longer so? In other words, are they being counted under both categories in terms of the MART targets? A similar question might well be posed in relation to split mortgages.

Once again, these are matters that both the six lenders and the Department should immediately clarify as it might lead to a distortion of the picture being presented of the progress being made on resolving the mortgage arrears problem.

- **Sustainability of capitalisation of arrears as a form of restructure**

In addition, some concerns in relation to the viability of permanent restructures are apparent when the increase in the number of capitalisations of arrears is examined. Similar concerns exist in connection with the increases in the split mortgages and this is explored in the following section. These two types of permanent restructures have been the options that have been increasing in by far the largest percentages in

the period under review. For the sake of completeness, the other categories in the suite of permanent restructures in the MART figures are:

- Term Extension,
- Interest Only (for a period),
- Fixed Repayments greater than Interest Only/Interest modifications
- Hybrid (Combination of treatments)/Other⁶

Table Six – Increases in arrears capitalisation and split mortgages categories as a percentage of total number of permanent restructures for principal dwelling houses from end Sept 2013 to end Sept 2014 (All mortgages - over 90 days in arrears, less than 90 days in arrears and not in arrears).

Period	No of restructures	Split mortgages	Capitalisations of arrears
End of Sept 2013	45,177	3,688 (8.2%)	12,237 (27.1%)
End of Dec 2013	51,188	6,239 (12.2%)	13,975 (27.3%)
End of Mar 2014	62,065	10,044 (16.2%)	18,030 (29.1%)
End of June 2014	72,819	14,158 (19.4%)	21,333 (29.3%)
End of Sept 2014	83,588	17,083 (20.4%)	24,482 (29.3%)

Capitalisation of arrears is the largest restructuring category and now amounts to almost three in ten restructures. It is important to emphasise again at this point that this total of 24,482 arrears capitalisations at the end of September 2014 is not further broken down into accounts that were in arrears for over 90 and for less than 90 days respectively at the time of the restructure. This is very important information not provided. **It may be for example that a disproportionate number were in the less than 90 days arrears category and are therefore much more amenable to arrears capitalisation as a suitable restructure. We simply cannot tell with the information to hand.**

Again, there is likely to be a number of such cases where the borrower has shown the capacity to clear the arrears and resume payment of the mortgage in full and will be able to sustain that arrangement in the long term. Some may be borrowers who always had capacity to pay in full and chose not to in the hope that some debt write-down might materialise. Again, we simply cannot tell with the information provided and it seems to us that there is only one source which can attempt to quantify this - the lending institutions themselves - and to our knowledge there has been no concrete attempt to do so that is publicly available.

⁶ This category is described in the figures as either a 'Combination of treatments' – for example a capitalisation of arrears coupled with a term extension – or 'Other'. 'Other' here is likely to include what write-downs there are of the principal amount owing, as write-down does not otherwise merit a separate category in the figures.

For others, financial circumstances may genuinely have improved with new employment opportunities and access to other supports. Others faced with the possibility of legal proceedings may pull out all the stops – borrow from relatives, compromise on household expenditure and other credit obligations – to avoid repossession for the moment.

In the absence of more specific information, however, the large number of arrears capitalisations (now three out of every ten restructures under the MART) should certainly give pause for thought in terms of sustainability. As pointed out above, capitalising arrears involves the borrower going from a position of having failed to pay the previous contractual monthly instalment to paying an increased monthly instalment in full.⁷

It is worth noting that, in the past, prior to the boom and the bust, such an arrangement would only have been offered by a lender after a borrower had demonstrated the capacity to pay the existing monthly instalment in full and a portion off the arrears every month, usually for a minimum of six months. It is uncertain that this is still the norm in a majority of such cases, given the substantial increase in numbers offered this kind of restructuring arrangement. It must then be asked - how are the borrowers who have been offered this option actually faring and how will they fare down the line?

- **Capitalisation of arrears cases lapsing back into arrears**

The MART figures do not provide any further detail in this regard but it is clear is that a significant number of borrowers offered arrears capitalisation do lapse back into arrears. **Again this is a statistical deficiency that should be remedied by the Department of Finance and the six main lenders.**

However, the Central Bank's Quarter 2 arrears figures for 2014 considered in more detail below (covering all commercial mortgage lenders, not just the six lenders covered by the MART) show that at the end of June 2014, a total of 25,677 accounts had been restructured by way of an arrears capitalisation. The Bank also recorded that an ongoing total of almost €120 million in arrears existed on these accounts. When asked by FLAC⁸ whether this was a figure for further arrears that have accumulated since the original arrears were capitalised, the Bank replied in the affirmative and went on to point out that *'for PDH mortgages only 66.8 per cent of those accounts in arrears capitalisation arrangement are meeting the terms of the arrangement, meaning that 33.2 per cent of these accounts have re-defaulted'*. One in three appears therefore to have failed to keep up agreed repayments and the average arrears figure on these accounts is in the order of €14,000.

By the end of Quarter 3 2014, the total number of arrears capitalisations had further increased from 25,677 to 28,473. 68% of those accounts were meeting the terms of the arrangement, a small improvement on the previous quarter but still suggesting a failure rate of close to one in three. By this time, €124.3 million in arrears existed on these accounts, an average arrears figure of €13640. While it may be that the more recent capitalisations of arrears cases are faring better than the older pre MART ones and are more sustainable, there is no published information to this effect.

⁷ For the sake of clarity, the capitalisation of arrears figures cited here refer to cases where this option is offered on its own as a restructure and not in tandem with another option.

⁸ By email 15 September 2014, reply also sent 15 September 2014

- **Increases in capitalisation of arrears cases since the MART began**

A second point is also worth noting when on the subject of capitalisations of arrears and the Central Bank figures. **For over two years from the end of 2010 until the end of 2012, the arrears capitalisation figure hovered at around 12% of the total number of restructures of PDH mortgages.** During 2011 and 2012, the Central Bank requested the six principal lenders to look at their arrears book, with a view to initiating a Mortgage Arrears Resolution Strategy (MARS), and the MART was clearly on the horizon. **From March 2013 when the MART was announced, a very significant and ongoing increase in the number of arrears capitalisations began. Arrears capitalisations have more than doubled since the beginning of 2013 and at the end of September 2014 accounted for 26% of all PDH mortgage restructures, according to the Central Bank's figures.**

- **Sustainability of split mortgages as a restructure**

Table Six (repeated) – Increases in arrears capitalisation and split mortgages categories as a percentage of total number of permanent restructures for principal dwelling houses from end Sept 2013 to end Sept 2014 (All mortgages - over 90 days in arrears, less than 90 days in arrears and not in arrears).

Period	No of Restructures	Split mortgages	Arrears capitalisations
Sept 2013	45,177	3,688 (8.2%)	12,237 (27.1%)
Dec 2013	51,188	6,239 (12.2%)	13,975 (27.3%)
Mar 2014	62,065	10,044 (16.2%)	18,030 (29.1%)
June 2014	72,819	14,158 (19.4%)	21,333 (29.3%)
Sept 2014	83,588	17,083 (20.4%)	24,482 (29.3%)
Increase	+38,411	+13,395 (34.9%)	+12,245 (31.9%)

Table Six also demonstrates how split mortgages have become the fastest growing permanent restructuring option over the last 12 months, increasing from 8.2% (or one in 12) of total permanent restructures at the end of September 2013 to 20.4% (or one in five) at the end of September 2014, 12 months later.

Thus, 13,395 new split mortgages have been put in place by the six main lenders in the 12 months under review.

The table also shows that split mortgages and capitalisations of arrears between them amounted to 49.7% (one in every two) of permanent restructures at the end of September 2014, as opposed to just over one in every three at the end of September 2013.

Finally this table shows that split mortgages and capitalisations of arrears together made up 66.8% (two in every three) of the increase of 38,411 in restructures in the 12 month period.

Again, the information provided on split mortgages is very basic. More detailed information that might enable some kind of an assessment to be made on the potential sustainability of these splits in the long term is not available. Thus, important matters such as the age profile of the borrower/s at the time the offer is made and accepted, the duration of the split mortgage, whether interest is charged on the warehoused part, the division of the split between the part to be serviced and the part to be warehoused and whether any write-down of capital occurred is not available. **Again, the Department of Finance should attempt to redress this so as to enable a more complete assessment to be made of the sustainability of these arrangements in the long term.**

The corresponding Central Bank figures considered in more detail below (again covering all commercial residential mortgage lenders, not just those the six principal lenders covered by the MART) suggest that at the end of Quarter 2, 2014, 96.4% of split mortgages were meeting the terms of the arrangement. By Quarter 3, 2014, this figure had declined slightly to 95.6%. In terms of numbers, this means that some 720 split mortgages were no longer meeting the terms of the arrangement.

These are small numbers but they do indicate that the long term viability of a number of split mortgages must, nevertheless, be called into question. At least it can be said that a split mortgage involves a reduced monthly mortgage payment for the borrower/s over the longer term, unlike a capitalisation of arrears. Our experience, however, with callers to our information line and visitors to our centres, together with support work provided for the Money Advice and Budgeting Service (MABS) staff and clients, and discussion with other groups providing advice and assistance, would suggest that significant numbers of borrowers in arrears have signed up to split mortgages without being afforded a proper examination of their sustainability, so relieved were they to be offered an arrangement that would allow them to remain in the family home.

The absence of a free and comprehensive system of detailed financial and legal advice for borrowers presented with these options with very serious long term consequences must be emphasised. Trying to keep other (unsecured) creditors at bay by making some limited payments, coping with increased charges and unforeseen events and retaining enough disposable income to meet household expenses are huge challenges to the welfare of a split mortgage in the long term. The risk of a dis-improvement in the borrower's income during the course of the split as an additional difficulty and its consequences are self-evident.

It is also clear, certainly in the split mortgage proposals that we have reviewed on behalf of clients, that there are no written guarantees as to how the lender will treat the capital in the warehouse at the end of the split mortgage term. On the contrary, that capital lump sum will be owed (unless it is paid down progressively as the split evolves) and will often become due at a time in the borrower's life when retirement and a more restricted income may have already occurred or may be looming.

There has been some speculation that lenders will not seek to repossess at this point if the borrower/s is unable to discharge the debt and that some other accommodation will be found, for example, granting the borrower/s a right of residence for their lifetime following the completion of the split mortgage, with the lender being repaid the remaining capital upon death. This is as close as we have seen to a commitment to not repossess when the time comes.

3. Trends with residential mortgage arrears, mortgage restructures and mortgage repossession proceedings based on the Central Bank quarterly reports September 2013 to September 2014

3.1 - Sub-prime and sold-on arrears cases as a distinct category

Parallel to the Department of Finance figures, the Central Bank publishes quarterly figures on mortgage arrears. According to the Bank, these figures include *'the total stock of mortgage accounts in arrears of more than 90 days, as reported to the Central Bank of Ireland by mortgage lenders'*. In addition to the six main lenders, these figures therefore cover other mortgage lenders like the sub-prime companies who are regulated as retail credit firms. Mortgages sold on from regulated entities to now unregulated entities also appear to be covered by these figures. In response to an email question from FLAC⁹, the Central Bank suggested that reclassification adjustments and some estimation to cover loan books sold in recent quarters is made to ensure coverage of all outstanding mortgages in Ireland, as far as possible.

The latest arrears figures under this heading date from Q.3 2014 (the end of September) thus enabling a comparison to be drawn with the MART figures analysed in detail above. In terms of the overall number of accounts in arrears (both over and under 90 days), the Central Bank reports an overall total of 117,889 at the end of September 2014. The Department of Finance reports 96,115 for the six main lenders at the same period. Thus an additional 21,784 accounts in total were in arrears at the end of September 2014 that do not belong to the six main lenders. This is 18.5% of the total number.

In terms of the greater than 90 days arrears category, the Central Bank reports that 84,955 principal dwelling house accounts had been in arrears for over 90 days at the end of September. The Department of Finance reports that the six main lenders covered by the MART had a total of 67,854 such accounts in arrears at this point. Subtracting these, an additional 17,101 accounts have been in arrears for over 90 days that do not belong to the six main lenders. This is over 20% of the total number.

Thus, taking into account the Department of Finance's assertion that the six main lenders the subject of its MART figures constitute 90% of the market, then the remaining 10% of the market accounts for around 20% of the arrears, in terms of both the total number in arrears and the number in arrears over 90 days. This is significant because these lenders are not subject to the Mortgage Arrears Resolution Targets (MART) and are therefore free to resolve or not resolve their arrears cases without scrutiny, as long they comply with the processes laid down by the Code of Conduct on Mortgage Arrears (CCMA), insofar as such compliance is monitored by the Central Bank.

⁹ 2 September 2014.

3.2 - Arrears

Table Seven – Reductions in arrears per category for principal dwelling houses from end Sept 2013 to end Sept 2014.

Period	Under 90 days	Over 90 days	Total
Sept 2013	42,331 (29.9%)	99,189 (70.1%)	141,520
Dec 2013	40,090 (29.4%)	96,474 (70.6%)	136,564
Mar 2014	39,111 (29.6%)	93,106 (70.4%)	132,217
June 2014	35,662 (28.3%)	90,343 (71.7%)	126,005
Sept 2013	32,934 (27.9%)	84,955 (72.1%)	117,889
Decrease	9,397 (22.2%)	14,234 (14.4%)	23,631 (16.7%)

Of the total number of accounts in arrears, the percentage that have been in arrears over 90 days has remained consistent at approximately 7 out of 10 (or around 70%) of accounts, similar to the Department of Finance figures for the six main lenders at Table One above. **A net total of 23,631 accounts (or close to 17% of the total) have exited arrears, 9,397 in the less than 90 days arrears category and 14,234 accounts that had been in arrears over 90 days.**

Table Eight – Percentage reductions in arrears per category for principal dwelling houses from end Sept 2013 to end Sept 2014

Period	Under 90 days	Over 90 days	Decrease total
Sept - Dec 2013	5.3%	2.7%	3.5%
Jan - Mar 2014	2.4%	3.5%	3.2%
April – June 2014	8.8%	3.0%	4.7%
July – Sept 2014	7.6%	6.0%	6.4%

Following steady increases in arrears cases from September 2009, when the Central Bank first started to publish its quarterly figures, each of the last four quarters have seen the total number of PDH accounts in arrears start to decline in both in the under 90 days category and the over 90 days category and these decreases have by and large accelerated over the 12 month period. The overall total decrease of just 16.7% in total over the 12 month period is somewhat short of the 18.8% of the total decrease recorded for the MART lenders (see Table One above).

Table Nine - Arrears figures over 90 days broken down by category for principal dwelling houses from end Sept 2013 to end Sept 2014

Period	91 – 180	181 – 360	361 – 720	Over 720 days	Total over 90 days
Sept 2013	16,680 (16.8%)	22,665 (22.9%)	28,010 (28.2%)	31,834 (32.1%)	99,189
Dec 2013	15,273 (15.8%)	20,779 (21.5%)	26,833 (27.8%)	33,589 (34.8%)	96,474
Mar 2014	13,604 (14.6%)	18,953 (20.4%)	25,235 (27.1%)	35,314 (37.9%)	93,106
June 2014	12,447 (13.8%)	16,901 (18.7%)	23,929 (26.5%)	37,066 (41.0%)	90,343
Sept 2014	10,763 (12.7%)	14,827 (17.5%)	21,881 (25.8%)	37,484 (44.1%)	84,955

This table clearly illustrates what is still the most worrying trend with the mortgage arrears problem in Ireland. Although the number of accounts in arrears for over 90 days has fallen in four successive quarters indicating that the problem has started to become finite, the number of accounts that have been in arrears for over 720 days (i.e. two years) has grown from 32% to 44% of the total number over 12 months. The average amount owed on these mortgages has also increased with each quarter as follows:

- Sept 2013 - €41,224
- Dec 2013 - €41,650
- Mar 2014 - €46,092
- June 2014 - €47,294
- Sept 2014 - €48,681

37,484 mortgages on principal dwelling houses have been in arrears for over two years and the average arrears figure is very sizeable. Both the numbers in this category and the amount they owe is growing (though the most recent increase is smaller). It is also worth noting that as a percentage of the number of accounts in arrears over 90 days, the two years category is growing and may reach 50% in 2015. It is suggested that these accounts remain largely untouched by any concrete resolution proposals from the relevant lenders.

3.3 - Restructures

We have seen with the Department of Finance MART figures that capitalisation of arrears and split mortgages increasingly dominate the permanent (as opposed to temporary) restructuring arrangements put in place (see Table Six above). Given that the six principal lenders appear to account for 81.5% of mortgage arrears cases, one would expect this to be replicated with the Central Bank figures.

Here, however, the Central Bank figures provide less detail than their Department of Finance equivalents. Thus, they simply record the total number of restructured accounts all together, comprising accounts that are not in arrears at all, those in arrears under 90 days and those in arrears over 90 days. There is no single figure provided for the total number of restructures of accounts in the problem over 90 days in arrears category and no breakdown of restructures into permanent and temporary categories, let alone any breakdown of the types of restructures of accounts taking place in this category. **These are statistical deficiencies that the Central Bank should set about rectifying as soon as possible.**

Table Ten – Increases in arrears capitalisation and split mortgages categories as forms of restructure for principal dwelling houses (mortgages over 90 and less than 90 days in arrears and not in arrears).

Period	Restructures	Arrears	No arrears	Split mortgages	Capitalisation
Sept 2013	80,555	37,521 (47%)	43,034 (53%)	1,154 (1.4%)	16,146 (20.0%)
Dec 2013	84,053	38,416 (46%)	45,637 (54%)	3,268 (3.9%)	18,516 (22.0%)
Mar 2014	92,442	38,862 (42%)	53,580 (58%)	8,388 (9.1%)	22,624 (24.5%)
June 2014	101,973	39,473 (39%)	62,500 (61%)	12,882 (12.6%)	25,677 (25.2%)
Sept 2014	109,911	38,973 (35%)	70,938 (65%)	16,326 (14.9%)	28,473 (25.9%)
Increase	+29,356	+1,452	+27,904	+15,172	+12,327

The left-hand columns of this table show that a total increase of 29,356 restructures took place in the 12 month period under review. Only 1,452 of these restructures are classified as now being in arrears. This has led to the percentage of restructured accounts that are classified as not being in arrears increasing from 53% to 65% of the total number over the 12 months. Correspondingly, the number of restructured accounts in arrears has fallen from 47% to 35% of the total.

The right-hand columns show the substantial rises in the same period of split mortgages and capitalisation of arrears as forms of restructure. **Curiously, the number of new split mortgage and capitalisation of arrears cases when added together (15,172 + 12,327 = 27,499) is very close to the 27,904 increase in restructured cases that are not classified as being in arrears. This may support the suggestion that both these forms of restructuring arrangement may be simultaneously counted as accounts exiting the arrears category. Arguably, this may distort the level of progress being made to resolve the mortgage arrears problem generally, a point already made in relation to the MART figures above, as the borrower does not actually clear the arrears in either of these to restructuring scenarios.**

Split mortgages and arrears capitalisation categories are also the fastest growing restructures options in the Central Bank figures as with the Department of Finance MART figures. At the end of September 2013, together they amounted to just over **one in five** (21.4%) of all restructures; by the end of September 2014, that figure had increased to over **two in every five** (40.8%).

Again, the increase in split mortgages is particularly pronounced, increasing by over 15,000 during the 12 months in question. Curiously, however, there is a significant disparity between the Department of Finance’s and the Central Bank’s figures on split mortgages. At the end of September 2014, the MART figures record **17,083** split mortgages for the six main lenders whereas the Central Bank only records **16,326** split mortgages for all lenders! One (or both) of these figures is clearly wrong and this disparity should be examined.

It is curious that although ‘*reducing the principal sum due to a specified amount*’¹⁰ is listed as one of the alternative repayment arrangements potentially on offer under the terms of the Central Bank’s Code of Conduct on Mortgage Arrears (CCMA), it does not merit a separate category in the figures published by the Central Bank (or the Department of Finance) as the other options do. The rationale for this is likely to be the reluctance of lenders, and perhaps the Central Bank and the State, to publicly acknowledge write-down.

It is hard not to conclude, nevertheless, that the mortgage lending industry knows well at this point that many of the 37,484 mortgages in the two year plus arrears category, with deep and growing arrears, can only be potentially resolved with a significant rescheduling of payments or face repossession. It is also likely in turn that lenders are aware that a number of the restructuring arrangements, particularly capitalisations of arrears but also some split mortgages, will break down sooner rather than later and so will also require significant rescheduling or again face potential repossession.

4. Central Bank figures on repossession applications and Possession Orders

Table Eleven - Latest repossession applications figures on principal dwelling houses (PDH)

Period	Number	Orders granted	Properties repossessed	Voluntary surrenders
Jan – Mar 2013	255	105	49	117
Apr - Jun 2013	270	350	63	160
Jul – Sep 2013	1,830	89	76	133
Oct – Dec 2013	1,491	82	63	105
Jan – Mar 2014	3,093	69	54	227
Mar – Jun 2014	3,274	296	89	210
July – Sept 2014	2,514	289	47	255

While there has been no significant rise in the number of Possession Orders granted by the courts during this period, there has been an astronomical rise in the number of cases in the system. In the 12 months from September 2013 to September 2014, 10,372 new applications to repossess family homes have been brought.

¹⁰ Rule 39 (k)

The initial catalyst for the large increase in the third quarter of 2013 may have been the passing of the Land and Conveyancing Law Reform Act 2013, legislation which was commenced on 31 July 2013. Amongst other measures, this Act repealed the effect of the Dunne judgment¹¹, making it in effect easier for lenders to repossess family homes and ensuring that all repossession cases in relation to family homes would henceforth be brought in the Circuit Court. However, any suspicion that the increase was mainly attributable to the release of a logjam of stalled cases was removed by a largely comparable number of new cases in the final quarter of 2013. The first quarter of 2014 saw the largest rise yet - over 3,000 new cases in three months, i.e. 250 a week - and another increase in the second quarter to 3,274 cases confirmed that this was unlikely to be a temporary trend. Whilst there was a decrease to 2,514 in Quarter Three 2014, at least some of this may be attributable to the summer months.

It is a matter of complete guesswork how many of these cases will eventually result in actual repossession, whether by way of Possession Order or voluntary surrender/abandonment. One straw in the wind may be that in the first nine months of 2014, **692** houses were voluntarily surrendered or abandoned, a significant increase on 2013 rates. Many of these surrenders may well have been a response to the service of legal proceedings. On the other hand, it is also apparent, if the submissions of the principal mortgage lenders to the Finance Joint Oireachtas Committee are to be relied upon, that a number of legal actions have been brought not out of a desire to repossess but to encourage engagement with a view to arranging a restructure.

It can take a considerable period of time for a repossession case to work through the system. According to Circuit Court practice directions,¹² solicitors for lenders must inform the defendant borrower that at the first return date before the County Registrar, the case will be automatically adjourned and other adjournments may follow especially where the defendant enters an appearance and follows it up by filing a defence in the form of a replying affidavit. The recent substantial increases in the number of cases in the system will also have led to a longer interval between the date of service of the Civil Bill for possession and the first return date, with the likelihood of knock-on effects for further hearings.

One stark fact emerges from this analysis which should give both the government and the supervisory authorities cause for serious concern. During a 12 month period when 10,372 new applications to repossess family homes were brought by lenders generally, the number of mortgages in arrears for over 90 days rescheduled by the six main lenders under the MART only increased by 1,298 (see Table Three above).

When the very limited progress on permanently restructuring mortgages in arrears for over 90 days, together with the questionable nature of some of the restructures that have taken place, is contrasted with the dramatic rise in the number of new repossession cases from September 2013 to September 2014, a sense of the potential rise in repossessions that may be looming is apparent, unless more fundamental action is taken to tackle the arrears problem. There is little sign based on the analysis of the figures above that such fundamental action is envisaged on the part of lenders and the State would appear to neither have the powers nor the will to impose such action.

¹¹ *Start Mortgages & others v Gunn & others* [2011] IEHC 275.

¹² See www.courts.ie - CC11 Actions for Repossession

In this regard, it is notable that the Central Bank recently released data on December 8th 2014 suggested that the six mortgage lenders were meeting their targets under the terms of the MARP. Insofar as it concerned principal dwelling houses, however, it suggested that this would involve ‘loss of ownership’ in **31,085** out of a total of 74,350 ‘solutions’. The ramifications of such an eventuality from a social and housing perspective hardly need elaboration.

5. Insolvency Service of Ireland (ISI) figures on applications for a Personal Insolvency Arrangement (PIA) under the under the Personal Insolvency Act 2012

As outlined in the introduction, the amended Code of Conduct on Mortgage Arrears (CCMA) 2013 puts in place a revised Mortgage Arrears Resolution Process (MARP) which widened the range of ‘alternative repayment arrangements’ that lenders might consider putting in place to prevent the repossession of family homes in mortgage arrears cases, but allows lenders quicker access to repossession action where they decide mortgages are unsustainable. It should be noted that any borrower, however, in receipt of what he or she may regard as an unfavourable decision made under the MARP has a right to consult with a Personal Insolvency Practitioner (PIP) to look at his or her options under the Personal Insolvency Act 2012. Even if repossession action is brought against a borrower in the courts, a judge has the power to adjourn the action to allow the defendant borrower to consult a PIP under the terms of the Land and Conveyancing Law Reform Act 2013.¹³

Three possible arrangements under that Act are available to resolve a debtor’s insolvency; a Debt Relief Notice (DRN), a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA). In addition, where a debtor has attempted to utilise his or her options under the legislation to no avail, a petition for bankruptcy may be brought to the High Court. Only the PIA covers secured as well as unsecured debt so that, in practice, it is the generally recommended option for an insolvent debtor with mortgage arrears. In order to apply for a PIA, the debtor must instruct a PIP who in turn must apply for a Protective Certificate via the Insolvency Service of Ireland (ISI) from the Circuit Court. In order to apply for a Certificate with a view to proposing a PIA, the insolvent debtor must make a declaration in writing declaring that he or she has co-operated for at least with a Central Bank process relating to mortgage arrears; namely the MARP.

Assuming that the Protective Certificate is granted by the Circuit Court, the legislation obliges a PIP, when making a PIA application, to make the proposal on terms that protect the debtor’s interest in the family home, unless the costs of remaining there are disproportionately large. It also therefore envisages that a PIP may propose that a secured debt such a residential mortgage be rescheduled under a PIA in a similar manner to the range of alternative repayment arrangements set out in the MARP, such as, for example, payment of interest and part capital, extension of the term and even reduction of the principal sum due.

The Department of Justice has suggested that the PIA is quite novel in this regard and would substantially add to the range of options open to debtors. When posed the question as to what would influence a lender to accept a proposal from a PIP under the legislation that had not been offered to the borrower under the Mortgage Arrears Resolution Process (MARP), some politicians on the government side suggested that the proposal, coming from a PIP, might be taken more seriously. This is notwithstanding the structural difficulties that the legislation presents in terms of the creditor/s right to vote against proposals and the lack

¹³ Section 3

of any right of appeal for the debtor in that event. To these may be added the difficulty of getting a PIP, in business to make a profit after all, to take on the debtor’s case in the first place, especially where there is little or no surplus income available to

12 months since the legislation effectively got up and running, how effective has the PIA been as a means of rescheduling secured debts (including residential mortgage debt) and the unsecured debts of insolvent debtors? The available evidence is presented in the next table.

Table 12 – Personal Insolvency Arrangements - Insolvency Service of Ireland (ISI) Case Management Statistics, September 2013 to September 2014

	New Applications	Protective Certs	Approved PIA’s
Sept – Dec 2013	90	6	0
Jan – March 2014	196	35	5
Apr – June 2014	205	106	27
July – Sept 2014	205	149	48
Total	696	290	80

These figures would firstly suggest that it is very early days to come to any conclusion as to how successful the PIA mechanism is likely to be. Two things are relatively clear, however. First, PIA activity has been slow so far, given the length of time it took to put the personal insolvency legislation in place and the number of insolvent debtors who were therefore likely to have been waiting for its commencement. Second, although the number of applications is growing, it is frankly miniscule when put in the context of the scale of the residential mortgage arrears problem and when it is likely that some of the applications for PIA’s may not have involved residential mortgage debt at all.

Other than that, there is again a lack of depth in these figures that the ISI should attempt to remedy. For example, it is not clear if all 696 applications made to date have actually been decided or whether some of those applications remain to be considered. It is also likely that a number of applications were brought without ever really intending to actually obtain a Protective Certificate and apply for an arrangement, but with a view to influencing a voluntary arrangement outside the legislation. On the face of it, though, the apparent rejection rates are high, with only 42% of applications (290 out of 696) for Protective Certificates appearing to have been ultimately approved by the Circuit Court.

The same caveat applies to approvals. There is no figure provided for rejections, so it is unclear whether work is still ongoing on a number of the 290 Protective Certs already granted with a view to applying for a PIA, rather than what appears to be 80 approvals out of 290 applications. One way or another, however, only 80 Personal Insolvency Arrangements have been approved in 12 months and at this rate of progress, the PIA is set to make negligible impact as an instrument to resolve mortgage arrears.

Ultimately, the significant problems with the legislation as noted above - for example, difficulty of access for those on low to middle incomes, an effective creditor veto and no right of appeal for debtors whose

proposals are unreasonably rejected - make it unlikely that there will be the kind substantial rise in PIA activity required to make any marked impact on the mortgage arrears problem, with the urgency that the figures above would indicate is required.

6. Concluding comments

The government has insisted for some time that a significant rise in repossessions can be avoided and that this is government policy. However, an analysis of the mortgage arrears restructures and repossession figures respectively presented above would suggest that this cannot be done without the lending institutions having to incur some losses in the form of write-downs, and the evidence would suggest that this is simply not happening to any significant degree.

The rise in property values that have been experienced in some parts of the country, which may gradually extend to other parts, has already removed some of the financial obstacles to repossession from the lender's perspective. Some properties in negative equity that would have resulted in significant mortgage shortfalls if they had been repossessed may now be close to 'break even' stage or even in positive equity. Thus, the financial disincentive to repossess may have disappeared in a number of cases. It would also seem to be the case that lending to owner occupiers (as opposed to cash buyers) has begun to grow again. For example, the Irish Independent, 26 August 2014 reported that *'the number of families taking out mortgages and moving home has surged, as thousands of properties are lifted out of negative equity by rising prices'*¹⁴. The article also notes that *'young people are also eager to get on the property ladder, although there is still a shortage of supply in urban areas'*. Logically, repossessions may also serve to increase supply and this may help a resurgent property market from the lender's perspective.

On this issue, the broad view of the government's 'Expert Group on Repossessions' expressed in its December 2013 report, becomes increasingly telling:

'The Expert Group acknowledges that while the law must seek proportionately to safeguard the interests of borrowers, especially those who may be in default (and some of whom also find themselves in negative equity), there is a strong countervailing public interest in protecting the interests of lenders, not least in order to ensure that funding continues to be made available for the purchase of residential and other property and also where there is an equity in property, to release funding for other productive purposes. The Expert Group acknowledges the need for a properly functioning mortgage market in which the rights of both lenders and borrowers under their mortgage contracts are seen, subject to appropriate public policy regulation, to be enforceable'.¹⁵

Entering the realm of conjecture here, it may therefore be that both the lending institutions and the State have now made the fundamental choice between repossession and the kind of restructuring arrangements that might involve significant write-downs and which might in turn jeopardise the balance sheets of lenders. It is not, however, in the interests of either lenders or the government that a dramatic rise in the level of repossessions takes place. Putting in place what may be considered to be unrealistic restructuring arrangements that foreseeably will break down in time, in lieu of bringing legal action now, may be one way

¹⁴ Mark Keenan – 'Cash buyers move out as families start trading up', Irish Independent, 26 August 2014.

¹⁵ Report of the Expert Group on Repossessions, Chapter 7 – Conclusion and Recommendations, page 60

of spinning out the trauma and there is some evidence presented in the analysis of the figures above to indicate that this is what is happening.

Equally, bringing legal proceedings for repossession but then withdrawing some cases where last minute and perhaps equally unrealistic 'accommodations' are arrived at, will help spread out the inevitable flow of repossessions over a longer period of time. Such strategies may render the reality of repossession less dramatic and less politically, socially and legally unacceptable but will not, ultimately, prevent them from occurring in a significant number of cases.

In the end, it is hard not to conclude that despite much of the negligent lending which has caused the pain of persistent over-indebtedness for many households over a prolonged period, the interests of financial institutions and the perceived primacy of the financial system yet again trump those of the hapless consumer and the roof above his or her head, the sacrificial lamb of the credit boom. The can that was kicked repeatedly down the road may be about to end its journey at Circuit Courts all over the country in 2015.

7. Recommendations

There are of course potential alternatives and this paper concludes with some short recommendations.

As mentioned in the introduction to this paper, the mortgage arrears problem cannot be separated from the broader housing crisis currently being endured in Ireland. The one encouraging aspect of the analysis above is that the numbers in arrears is falling (though this may necessarily not be guaranteed to continue depending on economic developments). It is more difficult for any administration to take dramatic action that may expose the institutions to financial risk while the problem is escalating and the cost is therefore unknown. The current improvement in the arrears situation (open to question though some of it may be), however, presents an opportunity to grasp the nettle of arrears for once and for all and sort out a situation that all agree cannot and must not ever be allowed to happen again.

The unacceptable delay in introducing personal insolvency legislation and the conservative nature of the regime when introduced demonstrates that indecisive action has many costs, not just social but also economic. Considerable resources have gone into devising an infrastructure with a number of elements but one fatal flaw still exists in our view – the lending institutions that largely caused the problem are still in charge of the potential solutions. In the course of meetings held to research the preparation of this material, it became clear that the State does not currently have the powers required to dictate a solution. If this does not change, the government's position that repossession is a last resort appears to be no longer tenable or believable.

- **Statistics**

Finding effective solutions to the array of personal debt problems in this country has always been bedevilled by the lack of access to proper information on the exact nature and scale of the problem and the success of any measures that may have been adapted to confront it. Whilst this situation has somewhat improved, this paper has pointed out a number of areas where the information provided is simply not detailed enough and these are bolded in the text.

Again, it would appear that those officials in governments departments and supervisory authorities responsible for monitoring this situation have sometimes had to cajole the lending institutions to furnish the limited information that has been provided, rather than having the right to demand it. Given the sacrifices made by so many to bail out those same institutions, this is simply unacceptable.

We need to know immediately and in some detail the current scale and extent of the problem and what is working and not working in terms of proposed resolution, in order to adapt practice to resolve this crisis. Far more comprehensive information gathering and monitoring is required and lenders should be legally obliged to provide this data to the regulatory authorities. Substantial penalties should apply for lenders who breach these requirements.

- **Resolution**

At the end of September 2014, there were well over 37,000 mortgages on principal dwelling houses provided by lenders generally that had been in arrears for over two years and the average arrears figure is very sizeable.

Some 48,000 mortgages in arrears over 90 days (71% of the total) provided by the six main lenders the subject of the Mortgage Arrears Resolution Targets (MART) remained to be restructured at that time, 18 months after the setting of the first targets under the MART programme.

The sub-prime lenders and the unregulated mortgage purchase companies, neither of which are subject to the requirements of the MART, account between them for over 17,000 accounts that had been in arrears for over 90 days. There is no figure available for the number of these accounts that have been restructured.

If the lending industry will not tackle these troubled accounts that are in arrears in a more realistic and effective manner and the evidence presented in our analysis of the figures is that they are not doing so, then an alternative approach must be put in place.

In our view (and this is not the first time that we have suggested this option) an independent **Mortgage Arrears Restructuring Authority** should be temporarily established on a statutory basis. All borrowers, whose mortgage on a principal dwelling house is in arrears over 90 days and has not been restructured up to the point of the establishment of the authority, should be allowed to present their case to it. It would be hoped that the mere existence of an authority with such powers would concentrate the mind of lenders to come to more realistic arrangements with borrowers in distress in the first place.

In order to ensure an effective and efficient use of the Authority's resources, borrowers presenting their case for resolution should have prior access to assistance to frame that presentation. In this regard, the state-funded Money Advice and Budgeting Service (MABS) and other specialist non-governmental organisations such as, for example, the Irish Mortgage Holders Organisation (IMHO) and others could play a key role in providing such a service. Clearly the relevant lenders and their Arrears Support Units would have the right to put forward their own view on potential resolution or repossession as the case may be in each instance. In the absence of an agreed solution, the Authority would have the right to make a legally binding decision on the appropriate resolution for each case and this should include, where appropriate in the authority's view, the write-down of the mortgage to an affordable amount. Lenders (or indeed any borrower) unhappy with any such decision would have the right to appeal to the Circuit Court.

It has been suggested by many that any potential legislation that might provide for the compulsory write-down of mortgage (or any) debt would be unconstitutional, as it would infringe private property rights enshrined in Bunreacht na hEireann 1937. However, the exercise of right to own private property is subject to the exigencies of the common good and it is arguable that a swift resolution of the residential mortgage arrears problem now would serve that common good, particularly in light of the bailout of the financial institutions by the taxpayer. There is only one way to find out and that is to publish a Bill and refer it to the Supreme Court for its constitutionality to be tested under the procedure the Constitution itself provides for in Article 26.

- **Mortgage-to-Rent scheme**

A restructuring authority would simply not be able to work effectively without a much expanded and reformed mortgage-to-rent scheme as part of the suite of options open to it to resolve particularly difficult cases. It is no overstatement to say that the scheme up to now has been a major disappointment, with various reports citing the relative large number of cases being put forward and, in contrast, the very low number of houses actually bought by housing associations and rented out to former borrowers, now tenants, under the terms of the scheme.

It is unfortunately likely that a number of the 37,000 PDH mortgage accounts in arrears over two years are unsustainable and even with a substantial write-down may not be financially viable. The availability of a mortgage-to-rent option makes sense in these cases. At present, however, the scheme is too restrictive and needs to be substantially overhauled. The valuation thresholds of the relevant properties, the income means tests for applicants, the requirement that the property must be in negative equity, the requirement for the lender to offer participation in the scheme and the low level of state investment in the scheme should all be urgently reviewed.