Poverty and Policy

A Policy Framework for Addressing Over-indebtedness

Stuart Stamp

Combat Poverty Agency
working for a poverty-free Ireland

A POLICY FRAMEWORK FOR ADDRESSING OVER-INDEBTEDNESS

Stuart Stamp

Combat Poverty Agency
Bridgewater Centre
Conyngham Road
Islandbridge
Dublin 8

ISBN: 978-1-905485-81-9

CONTENTS

ACKNOWLEDGEMENTS

Combat Poverty acknowledges the work of Stuart Stamp as author of this discussion paper.

Caroline Corr, Jim Walsh, Margaret O'Gorman, Seán Mistéil, Kasey Treadwell-Shine and Julie Smyth made significant contributions to the drafting of this paper.

We hope this discussion paper stimulates debate on how over-indebtedness can most appropriately be defined, measured, prevented and dealt with in Ireland.

Combat Poverty
April 2009

1. INTRODUCTION

The recent economic downturn has highlighted the problem of consumer over-indebtedness both in Ireland and elsewhere in Europe. Over the last two decades, Ireland has developed an innovative approach to dealing with this problem. This approach is based primarily on a network of government-funded 'Money Advice and Budgeting Services' (MABS). The issue of over-indebtedness has also been the subject of attention at European Union (EU) policy level in recent years. It has also been the subject of a good deal of research at a wider European level.

This paper brings together the key findings of European and Irish studies with regard to over-indebtedness. It concentrates on how the problem may be most appropriately measured and dealt with in Ireland. It focuses on three main issues:

- Defining and measuring over-indebtedness
- The characteristics, nature and causes of over-indebtedness
- Policy interventions for preventing and dealing with over-indebtedness

Two key European policy documents inform this analysis. Firstly, there is a recent study[1] commissioned by the European Commission as part of the EU Social Protection and Social Inclusion process. This study, undertaken by a consortium of organisations[2] (referred to in this paper as "the Consortium"), contains recommendations as to how over-indebtedness could most appropriately be measured and addressed throughout the EU. Secondly, a set

1 European Commission, 2008.

2 The study was undertaken by a Consortium of organisations from three different countries: The Observatoire de l'épargne européenne (Paris, France); the Personal Finance Research Centre (University of Bristol, United Kingdom); and the Centre for European Policy Studies or CEPS (Brussels, Belgium).

of recommendations has been agreed by the Council of Europe on the legal and practical solutions which need to be put in place by member countries in order to address over-indebtedness.[3] Irish research and policy analysis is used wherever possible to compare the Irish policy response to over-indebtedness with that employed by other countries. [4]

This paper begins by discussing how the extent of over-indebtedness might most appropriately be measured in Ireland and across Europe. Our current data-gathering instruments in this regard are also reviewed (Section 2). It goes on to examine how the characteristics, nature and causes of over-indebtedness in Ireland compare with other European countries. Ways of gathering data on each of these things are also considered (Section 3). The paper then compares the Irish policy response to over-indebtedness with that of other countries within the EU (Section 4). It concludes by recommending a series of measures to both prevent and deal with over-indebtedness in Ireland (Sections 5 and 6).

---

3 Council of Europe, 2007. The Council of Europe seeks to develop common democratic and legal principles based primarily on the European Convention on Human Rights.

4 Daly and Walsh, 1988; Daly and Leonard, 2002; Joyce, 2003; Hughes and Duffy, 2005; Hughes and Duffy, 2006; Conroy and O'Leary, 2005; Corr, 2006.

2. DEFINING AND MEASURING OVER-INDEBTEDNESS

There is no official definition of "over-indebtedness" in Ireland and few suggestions have been proposed or discussed. For the purposes of this paper, the following definition of over-indebtedness is used. It is based on applying the key components of previously proposed European definitions to an Irish context:

> ***People are over-indebted if their net resources (income and realisable assets) render them persistently unable to meet essential living expenses and debt repayments as they fall due.***[5]

In terms of the measurement of over-indebtedness, the Consortium study identifies five key components of the problem at the household level, namely:

- Persistency (a prolonged as opposed to a once-off problem)
- Lack of payment capacity (an inability to meet debt-related repayments and other commitments)
- Problems with a range of contractual financial commitments (defined broadly to include mortgages, household bills and consumer credit)
- An inability to maintain a reasonable standard of living (i.e. an inability to live reasonably and to repay debts)
- Illiquidity (an inability to realise assets to discharge outstanding debts).

Over-indebtedness can be measured in various ways. Administrative sources of data, for example legal records of debt judgments, are used in some countries, although such sources of data have been found to be of limited use for this purpose in Ireland.[6] The main problem is that these data are based on the number of summonses issued and court orders made, not the number of individuals or households involved. One person may be the subject of several summonses or orders. In any event, people with debt problems may have no

5 Stamp, 2006. 'Debt repayments' include household bills.

6 Joyce, 2003; Redmond, 2002.

engagement with the legal process. Where they do, the challenge is to identify those that relate specifically to civil debt. An interesting model here is the Enforcement of Judgments Office in Northern Ireland which deals solely with civil judgments, and collates and publishes data in this regard. City and County Councils are another potential source of administrative data in relation to the extent of (local authority) rent and housing loan arrears. Again, these data could be collated centrally and used to monitor upward or downward trends.

Administrative records of arrears kept by creditor organisations have also been used to measure over-indebtedness in other countries although, again, such "anonymised" data are largely unavailable in Ireland. The UK Council of Mortgage Lenders (CML), which collates and publishes data on mortgage arrears and possessions, is an example of how the credit industry can provide ongoing data on national trends in relation to over-indebtedness. In Germany, information gathered by SCHUFA, a credit information provider (similar to the Irish Credit Bureau), is used to measure the "economic climate of private debt and over-indebtedness".[7] In terms of measuring the extent of household over-indebtedness across Europe, however, data gathered by creditor bodies (e.g. credit reference agencies) and the Central Bank, are generally considered to be unsuitable. [8]

Information gathered from national surveys can also be used. In the Consortium's view, endorsed by the European Commission, this is the most practical way of gathering data on over-indebtedness across the EU. Further, both the Consortium and the Commission strongly propose that the EU-Survey on Income and Living Conditions (EU-SILC) is the most appropriate instrument for this purpose. This survey is carried out annually in Ireland by the Central Statistics Office (CSO).

7 Workshop on "Over-indebtedness Prevention", Cagliari, 13th February 2009.

8 European Central Banks such as the Central Bank of Ireland are generally considered to be inadequate sources of data on consumer debt. The reason for this is that such institutions gather data at macro-economic level rather than at household or individual level. Private sources such as credit reference agencies are also generally considered unsuitable for cross-country or EU-wide comparison. Such agencies do not exist in every member state and even where they do, different recording criteria are used which are not comparable across countries. SCHUFA are, however, proposing the establishment of a European Barometer or "Debt Compass" that would use data gathered by credit reference agencies across Europe to monitor trends in both private debt and over-indebtedness.

European Survey on Income and Living Conditions (EU-SILC)

EU-SILC has a number of advantages as a potential data source on over-indebtedness. Firstly, it is an EU-wide survey. Secondly, it is cross-sectional and longitudinal. Hence it provides opportunities to measure over-indebtedness both at a given point of time and over time. Thirdly, there are already a number of questions incorporated within the survey that could be directly used or adapted as indicators of over-indebtedness. Fourthly, EU-SILC and its predecessor the Living in Ireland Surveys (LIIS) have already been used to indicate the extent of debt problems in Ireland.[9] Finally, the survey is carried out at the household level, which is generally considered to be the most appropriate level for measuring over-indebtedness.

EU-SILC does, however, have one major disadvantage in this regard in that it is a survey of private households only. Thus, certain groups particularly at risk of over-indebtedness such as people who are homeless, and members of the Traveller community, may not be surveyed. Other ways of gathering data on the extent and nature of the problem among such groups will therefore be required.

The Consortium propose that households that answer "yes" to specific questions currently contained within the EU-SILC questionnaire would be considered to be "over-indebted". The proposal is that a household would have to answer "yes" to <u>all</u> of the questions which relate to the following:

- Where there are persistent (structural) arrears on at least one credit commitment or household bill
- Where commitments are considered (by the household) to be a heavy burden
- Where ability to pay debt is considered (by the household) to be "difficult" or "very difficult"
- Where there is an inability to meet a major unexpected expense (for example of €875).

9 Whelan et al., 2003; Central Statistics Office, 2007; Stamp, 2006.

Measuring over-indebtedness using the EU-SILC

The first of these questions (the "arrears" one) is an **objective** indicator in that it concerns what has or has not happened. The other three are **subjective** indicators in that they are more concerned with peoples' feelings, perceptions or views. Using a combination of indicators (and particularly objective and subjective ones) is more likely to accurately identify those who are over-indebted rather than relying solely on any one indicator. It may prove to be the case, however, that two or more of these indicators (particularly the subjective ones) are in fact measuring the same thing.

The 2008 EU-SILC questionnaire contains a module on financial exclusion and over-indebtedness. The specific questions on arrears (rent, mortgage, utility and consumer credit), used in previous EU-SILC questionnaires, have been re-worded for 2008 to reflect persistency as opposed to a once-off occurrence.[10]

Responses to these questions could be used to identify over-indebted households and compare across member states. The Consortium found, using data from EU-SILC 2005, that 10% of households reported arrears on at least one credit commitment or household bill in 2005. Ireland was slightly below the European average at 8%.[11] This latter figure is very much in line with other research which suggests that between 7– 10% of private Irish households are over-indebted.[12] These estimates are based on data which pre-date the current economic downturn. Thus, the likelihood is that the extent of over-indebtedness in Ireland is now substantially higher. Recent data published by MABS, for example, show that there was a 33% increase in queries to MABS services in the first half of 2008 compared to the same period in 2007.[13] This trend has continued with 9,777 new clients using

10 Prior to the 2008 module, households were asked solely whether they had gone into arrears *at any time* during the previous 12 months. The arrears questions in the 2008 module ask households to specify whether they have been in arrears during the previous twelve months on just one occasion or *twice or more*.

11 European Commission, 2008, p.10.

12 Central Statistics Office, 2007; Stamp, 2006; Watson and Williams, 2003.

13 MABS National Development Limited, *Pre-Budget Submission* 2009, p.1.

MABS services in the last two quarters of 2008 compared with 7,395 during the corresponding period in 2007, an increase of over 32%.[14] Ireland has also experienced a dramatic increase in financial vulnerability relative to other European countries. According to the Genworth Index, the Irish population has moved from a position of feeling relatively financially secure in Summer 2007 to being the third most financially vulnerable (of the 12 countries surveyed) by Autumn 2008.[15]

14 Figures provided by MABS National Development Ltd.

15 Genworth Financial, 2008, p.14-15. The Genworth Index is compiled from responses to survey questions on current financial difficulties and future financial prospects.

3. CHARACTERISTICS, NATURE AND CAUSES OF OVER-INDEBTEDNESS

There are three key characteristics, highlighted by the Consortium in the European Commission report, that are strongly associated with over-indebtedness in other European countries. These characteristics are as follows:

- Personal characteristics, such as being young, single and having children
- Economic circumstances, namely low income, economic inactivity, renting a home and possession of little or no savings
- Attitudes towards money management, paying bills, spending and credit use.[16]

International research further shows that debt problems are commonly caused or triggered by a combination of factors rather than any one single factor. However, there are three major causes, namely:

- Persistent low income
- Adverse shocks such as illness or unemployment
- Money mismanagement and over-borrowing.

The research that has been undertaken in Ireland[17] has found the factors which give rise to over-indebtedness to include those described above. However, in comparison to other countries[18], little empirical research has been carried out in Ireland into over-indebtedness.

16 People who are less concerned about money and bill payment, and more inclined to be heavy spenders and credit consumers, are more likely to get into debt problems.

17 Daly and Walsh, 1988; Daly and Leonard, 2002; Conroy and O'Leary, 2005.

18 The following are just some of the national studies that have been carried out in the UK for example: Berthoud and Kempson, 1992; Kempson, 2002; Kempson, McKay and Willitts, 2004; Department for Social Justice and Regeneration in Wales, 2005.

The EU-SILC 2008 module on over-indebtedness and financial exclusion has enabled a lot of relevant information in relation to these things to be gathered.[19] It should be possible, for example, to identify the various characteristics of (persistently) over-indebted households. In terms of the nature of over-indebtedness, there are a number of types of debt covered by the questionnaire. These are: rent, mortgage, utilities, hire purchase and other loans, other bills (e.g. education, health), overdrafts, and credit cards. Again, it should be possible to identify from the questionnaire responses whether specific types of debt are associated with certain categories of households. Finally, it should also be possible to determine the amount of arrears owed in respect of different types of debt by different categories of household. The module could be repeated at some point in the future for the sake of comparison.[20]

Although the responses to EU-SILC 2008 may help address many of the data gaps identified above, the questionnaire does not appear to cover a distinctive aspect of the Irish credit market, namely sub-prime lending, and the extent of this. This element could be incorporated into a repeat module. Ireland, unlike most of Europe, has a significant "sub-prime" sector that differentiates the Irish credit market from most of Europe. This sector consists mainly of moneylenders, sub-prime mortgage providers, pawnbrokers, mail order catalogues and illegal lenders. It also includes personal lending at high interest rates by some entities using their EU banking licence. The UK also has a significant sub-prime market. Other EU countries have a smaller, but growing, sub-prime market (for example Bulgaria, Lithuania, Slovakia and Poland), whilst the majority have no sub-prime activity, except for anecdotal evidence of some illegal lending.[21]

19 Data are currently being collated and findings should be available towards the end of 2009.

20 It may be possible to include the module within other surveys such as the Household Budget Survey and the Quarterly National Household Survey. As with EU-SILC, these surveys are conducted by the CSO.

21 Corr, 2007.

In the interim, data gathered on an ongoing basis by MABS services[22] is an important resource and could be used more effectively for policy purposes. An opportunity exists, for example, for greater synergy between the data gathering instruments used by MABS and by the CSO. Currently, "headline" data on client profiles, gathered by the various services, are published on the MABS website. The technology used by MABS services provides an opportunity for these data to be cross-tabulated and particular trends identified. For example, the specific types of debt clients owe can be related to the income source of those clients. MABS data have already been used in this way for the purposes of research. Those on lower incomes have been found to owe lower than average amounts of debt, predominantly to utility companies and other priority creditors. In contrast, those on higher incomes have been identified as owing significantly higher amounts to banks and other mainstream financial institutions.[23] There is also the facility to record the causes of clients' debt problems on the MABS database.

The relationship between income poverty and debt problems has been consistently highlighted in periodic Consumer Sentiment surveys.[24] It is also evident within the various Irish research reports mentioned throughout this study. Such research shows that over-indebtedness can be both a cause and a consequence of poverty. On the one hand, a need to borrow to survive on low income can push households below the poverty line. On the other, repaying loan instalments on a low income with few or no assets can intensify peoples' poverty. People who are over-indebted may have been in poverty for a considerable period. However, redundancies and unemployment due to the current economic downturn may be bringing people on higher incomes below the poverty line, perhaps for the first time. Such people are likely to have multiple creditors and higher levels of debt than those who are more persistently poor. Thus the associated debt problems will be complex, long-term and hard to resolve. Research based on the views of a sample of MABS clients has found that it would take the majority at least five years to clear their outstanding debts.[25]

---

22 Data on service clients is recorded by individual MABS services on a computerised recording and payments system referred to as *MABSIS*. These data are collated centrally by a company set up to support the work of these services, MABS National Development Limited.

23 Stamp, 2007.

24 Hughes and Duffy, 2005; Hughes and Duffy, 2006.

25 Stamp, 2007.

4. THE POLICY RESPONSE TO OVER-INDEBTEDNESS IN IRELAND: A COMPARATIVE CONTEXT

The Council of Europe has recently made a series of recommendations to assist national legislators to develop policies to deal with over-indebtedness. These recommendations apply to the 47 countries which are members of the Council. These recommendations address the following concerns:

1. There is always a downside to the extension of credit (i.e. a certain number of people will almost certainly experience debt problems).
2. Young people are particularly at risk of over-indebtedness.
3. Severe social and health consequences often follow as a direct result of debt problems.

The Council of Europe recommends that national governments need to take a number of measures to address this issue. Similar conclusions were reached independently by the work for the Commission. A range of policy measures are proposed. These measures are categorised under three headings:

1. **Preventative** measures such as financial literacy, budgeting advice, responsible lending and information for borrowers
2. **Remedial or curative** measures such as protected earnings levels, debt adjustment, realistic repayment plans, extra-judicial settlements and legally-binding arrangements
3. **Rehabilitative** measures such as debt write-offs, the right to a "fresh-start" and a clean slate as a user of credit.[26]

---

26 Council of Europe, 2007.

In comparison to this range of measures, Ireland's policy response to over-indebtedness is largely one-dimensional. It is focused almost entirely on the establishment and development of MABS, an initiative that is highly regarded at both national and European level.[27] Other countries, such as the Nordic countries, Austria, Belgium, Germany, France, the Netherlands and the UK, have made significant changes to their systems, and, in particular, their legal systems, in order to deal with past economic downturns, whereas Ireland has not. As a consequence, the Consortium that undertook the European Commission report classifies Ireland as having 'limited policy interest in the area of over-indebtedness'[28] along with the accession states and Southern European countries such as Greece, Italy, Portugal and Spain. [29] There are, nonetheless, some noteworthy initiatives other than MABS taking place in Ireland and these are discussed below.

The Irish policy response must also be set against the backdrop of consumer credit growth in Ireland in recent years in comparison to elsewhere in Europe. In 2007, the Irish Central Bank noted that Ireland had the second largest ratio of personal-sector credit to GDP, and the largest ratio of personal-sector credit to GNP, of the countries in the Euro area. In the region of 80% of this debt related to the accumulation of housing debt secured by way of mortgages, in contrast to the EU average of 60%.[30] The ratio of personal debt to disposable income has increased significantly in Ireland in recent years from 48% (of income) in 1995, to 113% in 2004.[31] It is now estimated to be in the region of 170%.[32]

Both the Consortium and the European Commission propose a number of essential building blocks that, in their view, are needed if over-indebtedness is to be addressed comprehensively throughout the EU. These are very much in line with the recommendations put forward in the Council of Europe report. No country is actively pursuing all of these and different countries are focusing

27 Korczak, 2004.

28 European Commission, 2008. p.58

29 There is little or no debate on over-indebtedness in accession states such as the Czech Republic, Lithuania and Poland.

30 Central Bank of Ireland 2007, p.5-6.

31 Kelly and Reilly, 2005, p.88.

32 'We're saving, not spending - and a good thing too!', Money Times, *Munster Express*, 30th January 2009.

on different measures. These various measures and their relevance to an Irish context are now considered under two main headings - firstly, **preventative** measures (designed to stop the problem occurring in the first place) and secondly, **curative** measures (designed to deal effectively and appropriately with the problem once it has occurred, and to **rehabilitate** the debtor).

5. PREVENTATIVE MEASURES

There are five measures to prevent or minimise the extent of over-indebtedness that are discussed below. These are: income and asset adequacy; financial inclusion; financial capability programmes; responsible lending and borrowing; and finally, arrears avoidance, management and recovery procedures.

Income and asset adequacy

Income and asset adequacy is generally considered to be the most important measure for the prevention of over-indebtedness, given its strong association with poverty and low income. Other measures (see below) are important but are only likely to work effectively if people have the resources both to manage and to repay debts in the first place. Recent research has found that, on average, over-indebted households in Ireland receive **30% less net income** than households in general and that they have significantly fewer savings.[33] A seminal report into credit and debt in the United Kingdom carried out some years ago for the Policy Studies Institute argues: '*if the risk of debt is directly related to levels of income, raising the income of the poorest would reduce the extent of debt'.*[34]

Enabling people on low incomes to get better value for the resources they have is another option for increasing people's disposable income. An example of this approach is the use of "social tariffs" in the UK as a means of providing cheaper energy to low-income utility consumers.[35] It is important that income is related to needs. "Standard budgets" (sometimes called budget standards) or lists of goods and services that a family of a specified size and composition would need to live at a designated level of well-being, together with the costs of those goods and services, have been developed

33 Stamp, 2007.
34 Berthoud and Kempson, 1992, p.181.
35 Thomas, 2008, p. 245.

in Norway, Sweden, the Netherlands and Germany.[36] Pioneering work in this area has been undertaken in Ireland by the Vincentian Partnership for Social Justice (VPSJ).[37] The budget standard approach implies that social welfare rates should be set to meet the consumption needs of different households in contrast to the current system, where people are largely provided with a set amount and expected to manage on it.

Financial Inclusion

Financial inclusion measures to help people make the best use of the resources available to them are also important in preventing over-indebtedness. Research shows that particular financial products (banking, credit, savings and insurance) are required to suit the needs of low income consumers. It also shows that people in poverty do not access or use these products (and in particular, savings and insurance products) for three main reasons. Firstly, they generally lack the means to afford these products. Secondly, these products are often inappropriate to the needs of low-income consumers. Thirdly, there is little incentive for such consumers to engage with these products.[38]

Research, nationally and internationally, also shows that low income consumers do not use mainstream banking and credit services for societal, supply and demand reasons. People are sometimes unable to access such services in the first place on account of being unable to satisfy specific identification requirements.[39] Even if they are, they are often unable to access these services for various reasons such as the perceived complexity of products. Use or demand barriers include mistrust of providers, fear of form-filling and fear of losing control of an already limited income. The preferred money management option for many low income consumers is, therefore, cash.[40]

There are a number of initiatives that other countries have undertaken to provide or facilitate access to more appropriate financial services for people on low incomes. One example is home insurance products provided by some

36 Saunders, 2004.
37 Vincentian Partnership for Social Justice, 2004; Vincentian Partnership for Social Justice, 2006.
38 Kempson and Whyley, 1999; Opinion Leader Research, 2006; Corr, 2006.
39 Such as the provision of a passport or driving licence and utility bill as proof of identity.
40 Kempson *et al.,* 2000: Corr, 2006; Hohnen, 2007; Welsh Consumer Council, 2008; Farrell and O'Connor, 2003; Pahl, 1999.

local/public authorities as part of their rental schemes.[41] Savings incentive schemes such as the UK Savings Gateway and Child Trust Fund are other examples. These schemes involve the UK Government supplementing peoples' savings in order to support a savings' culture, and to provide people with a realisable asset. The feedback on such schemes has proved to be extremely positive in terms of people feeling more in control of their lives and more financially secure for the future.[42] Ironically, the only similar scheme provided in Ireland (the Special Savings Incentive Accounts or SSIA scheme), benefited those on *middle to higher* incomes more than it did those on lower incomes. The regular, minimum qualification contribution (€12.70 per month) proved to be a barrier for many in the latter group. A proposal for a parallel savings scheme, aimed specifically at low-income MABS clients, was not accepted by the government.[43]

In the case of credit, low cost, accessible, appropriate, local sources in the form of credit unions are considered as one way of providing people with alternatives to high cost sources such as moneylenders.[44] However, limitations in the appetite and capacity of credit unions to lend to what is perceived to be a "high-risk" market have been noted in the UK. These reservations may not apply in Ireland where the credit union movement is much more developed and widespread.

In terms of what governments can do to support affordable lending, there are a number of noteworthy initiatives taking place. In the Netherlands, a network of "municipal banks" is used, among other things, to make social loans available to people who may not be able to avail of commercial banking facilities.[45] In Italy, funds have been established to assist those who may become, or have been, victims of usurious (money-) lending.[46] In the UK, a government-provided "growth fund" supports the work of third sector organisations such as credit unions by facilitating access to immediate credit. Another initiative is the Government Social Fund, an interest free scheme for

41 Kempson and Whyley, 1999.
42 Kempson, McKay and Collard, 2005.
43 Corr, 2006, p.125-6.
44 Sinclair, 2001; Carbo *et al.,* 2005.
45 Norder, 2006.
46 European Commission, 2008, p.74

recipients of income-based social welfare payments, which given the limited development of credit unions in the UK, is the only provider that seriously competes with moneylending or "doorstep" credit.

The introduction of basic bank accounts, as advocated by the Combat Poverty Agency, could act as a gateway to a range of appropriate financial products (including affordable credit and weekly direct debits) for people on low income.[47] The banks which have been recapitalised as part of the Government's recapitalisation package[48], are required to provide and promote such accounts in cooperation with the Financial Regulator. Credit unions are also developing such accounts, referred to as "service accounts".[49] However, for these products and services to be of real value to people, they need to be accessible and affordable and people need to be given support to use them appropriately. Under the Credit Institutions (Financial Support) Scheme 2008, covered institutions are required to submit a bi-annual report to the Minister for Finance on the goals and targets laid down by the Minister in relation to corporate social responsibility. This includes the promotion of financial inclusion.

Financial Capability

Financial capability programmes are highlighted in both the European Commission study and the Council of Europe recommendations as having an important role to play in the prevention of debt problems. Such programmes involve making consumers of credit, or future consumers of credit, more aware of the money they are managing and the options available to them. They also focus on imparting skills and building peoples' capacity to deal with money. Thus the emphasis of these programmes is on enhancing both peoples' knowledge and skills or what is sometimes referred to as "financial literacy". The European Commission's "Communication on Financial Education",[50]

47 Combat Poverty Agency, 2008.

48 The recapitalisation scheme, announced by the Government in December 2008, aims to ensure stability in the Irish banking sector. In return, the scheme obliges the two banks in question (AIB and Bank of Ireland) to promote basic bank accounts to low-income groups and to develop and support financial education initiatives.

49 As regards current accounts, Postbank has developed an "Everyday" account available through its nationwide network of post offices.

50 European Commission, 2007a.

adopted in December 2007, stresses the importance of financial education in preventing over-indebtedness. An EU-wide online financial education training programme for consumers has been developed by the Commission, incorporating modules relating to specific topics such as money management and financial services.[51] It would be useful to know whether such initiatives are useful in practice and perhaps more importantly **how** current consumers educate themselves on issues to do with money and managing it.

The main emphasis throughout Europe at present is on the provision of *information* to current and potential consumers rather than on building the skills and competencies of adults most at risk of over-indebtedness (such as people in poverty or people with literacy difficulties) and of the consumers of the future (i.e. children and young people). The growing amounts of student debt and aggressive marketing of financial products at new students, coupled with often "laissez faire" attitudes towards credit and debt among students, have been highlighted as particular issues in this context.[52] There are examples of innovative programmes targeted at both "at risk" and "younger" groups although they appear in the main to be somewhat ad-hoc and un-co-ordinated.

The level and quality of financial education in schools varies considerably across countries. The absence of national finance education curricula, supported by relevant education departments, is highlighted by the Consortium as the main reason for this. An exception is the Netherlands which has a national strategy to combat over-indebtedness, including a strong education component. Another way of co-ordinating such initiatives is through a national dedicated body. A good example here is the Personal Finance Education Group (PFEG), a registered charity in the UK, which focuses on encouraging and supporting teachers to incorporate financial education into their teaching.

In terms of "at risk" adults, most countries focus on a more generic approach, which involves the provision of budgeting advice and assistance aimed at adults in general (such as by way of an online budgeting facility in Austria), although there are examples of more targeted initiatives in

51 The EU "DOLCETA" programme.

52 O'Loughlin and Szmigin, 2006.

Belgium (aimed at those with low education levels) and Poland (aimed at those in poverty). A recent government-sponsored initiative in the UK is a "financial capability pilot" which involves a one-to-one approach, based on integrating financial literacy with money advice casework. This is very labour intensive but the initial results of the pilot are positive in terms of peoples' ability to communicate with creditors, to budget, to save and to understand borrowing costs and interest rates.[53]

In Ireland, as throughout Europe, the main emphasis is on the provision of information to current and potential consumers.[54] There have been a number of initiatives aimed at encouraging the provision of financial education in schools. Resources have been developed by community organisations, creditor groups and statutory agencies[55] but these resources appear to be under-used. The "Get smart with your money" programme, a joint initiative by MABS and the Financial Regulator, aimed at Transition Year students, is a positive and focused move in this regard.[56] In 2006, the Financial Regulator established a Steering Group on Financial Education. A more recent development is the requirement on the recapitalised banks to provide funding and other resources to support and develop financial education initiatives, again in conjunction with the Financial Regulator. The setting of clear goals for such initiatives would be important, for example, to improve people's understanding of their **rights** and **options** as consumers of financial services, their **responsibilities** as potential borrowers and users of these services, and their **capacity** to use these services appropriately and effectively.

In terms of "at risk" adults, initiatives have been undertaken both by MABS services and by the National Adult Literacy Agency (NALA).[57] As in other

53 Workshop on "Over-indebtedness Prevention", Cagliari, 13th February 2009.

54 For example the "It's Your Money" initiative (www.itsyourmoney.ie) undertaken by the Financial Regulator. The Regulator has also produced *Managing Your Money* (which deals with issues such as future planning, control of spending and debt avoidance) and a *Managing Your Money* Pack to help consumers manage their finances in the current market.

55 For example, *Cash Conscious…a young person's guide to money* produced by the PAUL Partnership; *Money-Go-Round*, produced by the Irish Banking Federation; and *Towards a critical understanding of the market place* produced by the Curriculum Development Unit.

56 MABS National Development, 2008.

57 See for example *Making Cents, a guide to financial literacy* produced by NALA.

countries, the provision of budgeting advice is the main "preventative" tool used to build financial capability among adults in Ireland. Such advice is, however, most often sought once debt problems have occurred. Thus, it is more accurate to describe budgeting or money advice in Ireland as a "curative" than a "preventative" measure (see below) although MABS is also engaged in local and national community education initiatives, in addition to casework.

Again, in common with most other European countries, the lack of an Irish national strategy for dealing with over-indebtedness appears to be the main reason for the overall lack of a co-ordinated approach to building peoples' financial capability, and, in particular, that of children, young people and "at risk" adults.

Responsible lending and borrowing

Responsible lending and borrowing is also highlighted as a key issue in both the European Commission and Council of Europe reports. The view in both reports is that lending institutions, in general, are best placed to assess the repayment ability of a potential borrower. As a result, it is these institutions which should take the primary responsibility for lending prudently to potential borrowers. How this responsibility is actually assigned in practice varies considerably between countries. In Ireland the Financial Regulator is the statutory body with responsibility for regulating firms that provide financial products and services. The "Knowing The Consumer" and "Suitability" provisions of the Financial Regulator's Consumer Protection Code[58] apply to this area, as do the General Principles of the Code.[59] The Code is issued under statute and any breaches are sanctionable under the Administrative Sanctions Procedure. The Financial Services Ombudsman (FSO) can also consider the terms of the Code in making a judgement on individual redress. The Code now covers sub-prime lenders. The Financial Regulator has also introduced a Consumer Protection Code for Licensed Moneylenders (ML Code). Both codes apply to outsourced activities such as debt collection. Traditionally, the

58 Financial Regulator, 2006. Chapter 2 (Provisions 24-31). Lenders are required to seek relevant information from consumers in order to provide or recommend services or products appropriate to individual consumers.

59 Financial Regulator, 2006. Chapter 1.

emphasis throughout Europe to date has been on self-regulation although this may change in the light of the current "credit-crunch", and the need for stronger regulation has recently been advocated by a number of independent experts.[60] In a recent submission to the European Commission on *Financial Inclusion*: *ensuring access to a basic bank account*, Combat Poverty highlighted the need for much stronger regulation in Ireland and a greater emphasis on the social rationale for regulation. Noteworthy policy developments in this area include a project on responsible lending being carried out by the UK Office of Fair Trading; the provisions of the revised EU Consumer Credit Directive on pre-contractual information and credit checking; and, finally, the work of the European Coalition on Responsible Credit (ECRC). Lending institutions in a small number of countries have developed codes of practice on responsible lending through their trade bodies (for example, Finland and the UK).[61]

Some countries regulate the behaviour of their credit institutions much more strongly although in only 7 of the 19 countries surveyed by the Consortium for the European study are there laws requiring lenders to check affordability. In Belgium, credit providers are required both to consult a central credit register and to comprehensively assess a person's ability to repay. Debts can be written off if these procedures are not followed.[62] An onus is also placed on the potential borrower to provide the credit provider with the information they require to make such a decision. In most countries there are usury laws which prohibit the charging of exorbitant or excessive interest rates. A number of countries have an actual interest rate ceiling whilst a number (including Ireland) have provisions which allow the courts to review interest rates on application by a consumer. These provisions are, however, rarely used as people tend to be reluctant, or lack the capacity, to take lenders to court. In Greece, there is a legal provision setting a maximum amount of debt that can be recovered in relation to any kind of credit.[63]

Another mechanism for ensuring lending is carried out responsibly is the development and maintenance of credit scoring registers by government or by private companies. Such companies are commonly referred to as "credit

60 Workshop on "Public authorities and financial services providers' responses to tackle financial exclusion", Brussels, 27th January 2009.

61 The Finnish Financial Services Code of Good Conduct and the UK Banking Code.

62 European Commission, 2008, p.68.

63 Workshop on "Over-indebtedness Prevention", Cagliari, 13th February 2009.

reference agencies". The thinking behind the registers maintained by such agencies is twofold - firstly, that lenders need to be aware of the extent of a potential borrowers' current obligations and past history in order to make an informed decision about whether to lend to him/her or not and secondly, that such knowledge will help to prevent over-indebtedness by preventing over-lending and hence over-borrowing.

Although virtually all countries have such registers and/or agencies, there are considerable differences in the way these are administered and regulated. Many of these registers are privately maintained (although there are some publicly maintained registers). In the majority of cases, data sharing between lending institutions is voluntary although in some countries lenders are legally obliged to lodge information about default. Consumers are generally given the legal right to access information held about them and to have this information corrected if it is inaccurate.

In Ireland, the main credit scoring register is maintained by the industry-funded Irish Credit Bureau (ICB). Virtually all mainstream institutions subscribe to the register. The register is limited to some extent in that it is a voluntary members' only database. Certain credit providers who do not subscribe to membership, including licensed moneylenders and the majority of credit unions, are thus not covered by the database. However, several credit unions now subscribe to membership of the ICB and this number is increasing. The issue of non-registration or subscription arose as part of an investigation of the home credit (moneylending) market in the UK. The Competition Authorities there concluded that this practice was 'anti-competitive'. UK moneylenders now have to share data as one of the remedies imposed.

In terms of primary Irish legislation, the Consumer Credit Act (1995) contains provisions in relation to interest rates.[64] Although there is no interest rate ceiling as previously mentioned, there is a ceiling in practice. This is the maximum rate that moneylenders are licensed to charge by the Financial Regulator. This rate is currently just below 190% APR. In comparison, the maximum interest rate in France is 20.35% and in Belgium it is 21%. However, neither of these countries

64 There is a right for a court to revise or set aside certain agreements where the interest charge is "excessive". However this right does not apply to credit advanced by credit institutions such as mainstream banks and by mortgage lenders (s.47. Consumer Credit Act 1995).

has a sub-prime market as Ireland does. The line policymakers have to tread in each country is a fine one: to prevent lenders charging usurious rates whilst, at the same time, allowing companies to charge a rate that enables them to continue to trade. Driving such companies out of business could be counter-productive. Their customers might then be consigned to using the "services" of illegal and unregulated lenders. These "services" may transpire to be the only option for some people at times of economic downturn when the supply of credit from mainstream sources is restricted. The development of measures to provide appropriate, affordable and competitive **alternatives** to both forms of moneylending (such as a "growth fund" in partnership with credit unions as discussed above) is, therefore, crucial.

Arrears avoidance, management, and recovery procedures

Arrears avoidance, management, and recovery procedures are highlighted in the European Commission study as having key roles to play in the prevention of over-indebtedness. These procedures are usually set out in codes of practice or sets of guidelines. In some cases they relate to types of debt (for example mortgages) and in others to types of lender (for example banks). In many countries, there is no industry-wide approach to dealing with particular types of arrears and individual institutions tend to go it alone. In other countries, codes of practice have been agreed by certain sectors of the credit industry, for example, the Czech Banking Association Code of Practice in the Czech Republic.

These procedures tend only to be effective in practice when they are monitored and enforced by **independent** watchdogs or regulators. The Financial Services Authority regulates mortgage lending in the UK according to a specific set of "conduct" rules [65] whilst a voluntary banking code is monitored and enforced by an independent Banking Codes Standards Board. Another example is a set of guidelines for the recovery of water debt in England and Wales, laid down by the industry's independent regulator (OFWAT). These guidelines are designed to strike a balance between the rights of the private water companies to recover their charges, whilst at the

65 European Commission, 2008, p.68.

same time dealing sensitively with customers in difficulty. They incorporate five basic principles which could apply to any type of debt:

- Pro-active early intervention upon default
- Provision of a range of payment frequencies and methods
- Provision of clear but non-threatening information about the possible consequences of default
- Taking customers' individual circumstances into account when agreeing realistic and sustainable payment arrangements
- Ensuring that customers being dealt with by third party agents (for example debt recovery agents or solicitors) receive the same level of service and care as those being dealt with by the water company.

Codes are flexible and can be adapted to suit changing circumstances. What is important, however, is the specific provisions that they contain and how they are adhered to and enforced in practice. Codes of practice/guidelines have been developed in Ireland in relation to three principal types of arrears, namely: mortgage arrears, arrears owing to local authorities and fuel arrears.

A statutory Code of Conduct on Mortgage Arrears was recently published by the Financial Regulator as a response to the current arrears crisis[66], building on a similar voluntary code adopted some years ago by the Irish Banking Federation (IBF).[67] The Code is designed to ensure that lenders take action to assist householders who are in arrears and applies to all mortgage lenders.The idea of such a code has been welcomed but its scope, provisions (in particular a six-month moratorium on enforcement) and the sanctions for non-compliance have been criticised as being an inadequate response to the current situation.[68] A particular concern is that a six-month respite may turn out to be merely postponing the inevitable (repossession or voluntary sale) for many borrowers.[69]

---

66 1.44% of residential accounts (or nearly 14,000 mortgage accounts) were three months or more in arrears as at June 2008 – an increase of nearly 24% compared to the end of December 2006 (Financial Regulator, 2008). The likelihood is that this figure is now substantially higher.

67 Irish Banking Federation, 2001.

68 Free Legal Advice Centres, 2009.

69 A 12-month moratorium provision exists under the government's recapitalisation scheme. This applies to the two recapitalised banks (Bank of Ireland and AIB).

Longer-term solutions to the current mortgage crisis such as payment deferments and interest suspensions, based on ability to repay, are likely to be required. For those who are particularly vulnerable, a mortgage-rescue scheme may be appropriate. In the UK, such a scheme, in partnership with local authorities, housing associations and money advice services, has been put in place.[70] State support by way of Mortgage Interest Supplement (MIS) clearly has an important role to play in the interim.

The Housing Unit (now the Centre for Housing Research) has developed a set of guidelines[71] for local authorities covering, among other things, the management of rent arrears. There are also Consumer Codes covering users of both electricity and gas in Ireland. A distinctive feature of these utility codes is that they make specific provision for "vulnerable consumers". The definition of a "vulnerable consumer" is, however, very narrow and does not include those living in poverty or with a medical or psychological illness.[72] The extent to which such codes are currently being used or monitored in practice is largely unknown.

It seems an anomaly that people who are encountering problems for the same reason, namely as a result of the economic downturn, have different levels of (consumer code) protection depending on the nature of their tenure, and the type(s) of arrears they are experiencing as a result of this downturn. The recent policy focus has been on addressing an increase in the extent of mortgage arrears. However, mortgage arrears are only one part of a much broader problem involving those with other types of tenure such as public tenants, private tenants and home owners[73], and with other types of debts.

---

70 Local authorities or housing associations can assist in three ways, namely: buy to rent; part-ownership; or an equity loan.

71 Housing Unit, 2001.

72 'MABS Welcomes Gas and Electricity Consumer Codes but are disappointed at the narrow definition of "vulnerable customer", MABS Press Release, 26th March, 2007.

73 According to the 2006 Census, only 39.0% of the private household population was "owner occupied with loan or mortgage" with an additional 1.6% "being purchased from a local authority". This leaves nearly 60% in other tenure situations including 34% of households which are "owner occupied without loan or mortgage" (some of whom may be in arrears with other types of commitment) and the balance (around a quarter) in mainly rented accommodation.

6. CURATIVE MEASURES

There are four measures to deal with over-indebtedness, once it has occurred, that are discussed below. These measures focus both on dealing with an immediate problem and rehabilitating the person or household experiencing that problem. These measures are: money or debt advice; debt settlement and "fresh start"; personal insolvency provisions; and, finally, appropriate procedures for dealing with outstanding civil debt.[74]

Money or debt advice

Money or debt advice (sometimes referred to as "debt counselling") is highlighted in both the European Commission and Council of Europe reports as having a key role to play in addressing over-indebtedness. In practice, money advice services tend to be used by consumers who are already experiencing debt problems. At times of economic downturn, they become, by and large, full-time fire-fighting or crisis management services. It is at these times that service capacity (in terms of the ability of the services to handle significantly increased demands on them) becomes a particular issue.

In most countries, money advice services operate as a complementary policy response to over-indebtedness rather than the principal one. This is particularly so in countries that have made significant changes to their legal systems and procedures for dealing with situations of multiple over-indebtedness (see the discussion on "debt settlement" below).

The downside of money advice being viewed as complementary to other measures is that in many countries services are under-funded. In some

74 Civil debt is a term used to describe a debt owed by one person to another person or institution such as a credit provider as a result of a contract. This is distinct from other debts which can arise by way of statute such as TV licences.

countries (for example Greece, Lithuania, Bulgaria and Spain) there are few or no money advice services. By contrast, in others (for example the Scandinavian countries), a legal obligation is placed on local authorities to make sure that people have access to money advice.

Overall, money advice provision varies considerably throughout Europe. Services derive funding from a range of different sources such as central government, local government, registered charities and creditor organisations. In some cases, money advice is provided through specialist, stand-alone services, whilst in others it is provided as part of other work or functions, for example, by social work/social service departments or by generalist advice agencies.

The somewhat ad-hoc development of services has led to concerns about the quality of service provision. Countries have addressed this issue in various ways. Several (for example Belgium, Germany, UK) require agencies providing money advice as part of their work to hold a debt counselling licence. Others go further and require the relevant staff/ individuals within these agencies to be accredited in some way. An advanced vocational qualification is required in the Netherlands and, in Austria, a certified mark is required for debt counsellors.

Money advice services are much better developed in Ireland than in most other European countries. This development has been underpinned by direct central government funding through the Department of Social and Family Affairs. A further development in recent years is a MABS Helpline established to support the work of local services. The partnership with the credit union movement is unique to Ireland and provides clients of MABS potentially with both payment facilities and access to credit. The MABS model has consistently been posited as a model of best money advice practice in Europe.[75] Statutory recognition of the service has been mooted for some time but has yet to be implemented. Thus co-operation with MABS on the part of creditors and state bodies remains voluntary rather than a requirement. Recent research suggests that the MABS model is very effective in helping people to manage their (often limited) resources, their debts and their poverty and to deal with immediate crises. It also provides

75 Korczak, 2004; European Commission, 2007b.

vital emotional and practical support to people experiencing debt problems. However, it has less impact in helping people overcome their debts and their poverty and in dealing with future crises because in many cases, clients lack the basic resources to do so.[76]

Debt settlement provisions

Debt settlement provisions are used in many European countries as a way of dealing with complex debt problems. Such settlements or schemes can be imposed by a court ("judicial debt settlement") or can be agreed out of court or amicably ("non-judicial debt settlement"). Debt Arrangement Schemes, administered through approved money advisers and independent administrators in Scotland, are an example of the latter. Many countries developed broadly similar types of schemes in response to the effects of the economic recession in the early 1990s. People who had taken on credit commitments and mortgages prior to the recession were becoming over-indebted in large numbers due to economic circumstances beyond their control. Several (particularly northern European) governments, recognised that their existing legal procedures were inappropriate for dealing with such situations.

The emphasis had, heretofore, been on designing a system to deal with debtors who "wouldn't pay". Now, by and large, the casualties of the economic recession were found to be debtors who "couldn't pay". It was thus necessary to design a more appropriate and holistic system to deal with unforeseen changes in circumstances. As a result, legally-recognised debt settlement schemes (both judicial and non-judicial) were set up in Scandinavia, Germany, the Netherlands and elsewhere.

The details of such schemes differ in practice but there are a number of similarities. Firstly, they generally involve a legal order to repay a set amount over a set period. The amount is determined with regard to the debtor's means and their needs. In some countries, a protected earnings limit is set. In Norway for example, this is set at 85% of the level of the minimum pension. [77] Debt repayments cannot push a person below this limit. The most

76 Stamp, 2007.

77 European Commission, 2008, p.89.

common repayment period is five years although this can be considerably shorter or longer depending on the circumstances.

Secondly, creditors are required, in most instances, to agree to the terms of the settlement. They are thus precluded from pursuing their own debt recovery methods once a legally binding settlement has been granted. Thirdly, the courts can order the balance of any residual debt remaining at the end of the settlement period to be written off in full, or in part, or to be unenforceable within a prescribed period. The idea behind this is to give an "unfortunate" debtor the opportunity to have a "fresh start" or a "clean slate" as a rehabilitated credit consumer.

Finally, the focus of debt settlement procedures is on the **person** not the individual debts concerned. The terms of the settlement can normally be varied if a person's circumstances change. Procedures are designed to assist people whose debts have arisen as a result of unforeseeable circumstances. People who have recklessly run up debt are not eligible for such a settlement in some jurisdictions.

Some countries (for example France and the Netherlands) provide judicial debt settlement arrangements as a back up or "last resort" to non-judicial or amicable schemes. In others (for example Germany and Norway), judicial procedures are automatically activated when non-judicial ones have failed. Another group of countries (for example the UK and Finland) focus entirely on judicial procedures but have no non-judicial ones. Ireland belongs to yet another group of countries (predominantly southern European countries) that do not have any type of legally recognised debt settlement scheme. The Law Reform Commission is looking at debt settlement as part of its third programme of reform.

A voluntary pilot scheme, agreed between MABS, the Irish Banking Federation and Free Legal Advice Centres in 2001, has ceased to operate and there appear to be no plans to extend it. The limited length of the pilot, and the relatively low number of people who participated in it, make it impossible to draw definitive conclusions. However, there are many lessons that could be learned from the experiences of those involved. One of many innovative elements of this scheme was agreement that at the completion of a successful debt settlement repayment programme, a person's credit file would include a specific code "debt settled to the satisfaction of the creditor" i.e. a person would then have a "clean slate" or "fresh start" as a credit consumer.

Personal insolvency provisions

Personal insolvency provisions are also highlighted in both the European Commission study and the Council of Europe report as having an important part to play in tackling over-indebtedness, albeit as a last resort. Most countries have some types of insolvency provision but there are considerable differences between the lengths of time to discharge debts. In England and Wales alone, depending on the reasons why a bankruptcy is being sought, the discharge period can range from one year to fifteen years.

Formal bankruptcy provisions tend to involve a lengthy, cumbersome, embarrassing and stigmatising process. Personal insolvency provisions, on the other hand, can act as an alternative to bankruptcy and the stigma associated with it. There are many alternatives that are legally recognised in other countries. One example is an "Individual Voluntary Arrangement" (IVA) which is available in England and Wales. An IVA is a legally binding arrangement between a debtor and his or her creditors drawn up by a certified insolvency professional or practitioner (normally an accountant). The arrangement (which has to be voted on by creditors at a creditors' meeting) protects the debtor from interest charges and the threat of enforcement. Agreed payments must be maintained for a specified period, normally five years. A disadvantage is that people must have a certain amount of disposable income to avail of this option. Debt relief orders[78] are due to be introduced in April 2009 for those in England and Wales with little income and few or no assets. Ireland has no personal insolvency procedures of this nature and has a much longer period than most countries before a 'bankrupt' may be discharged, namely 12 years.[79] This procedure is rarely used in the case of consumer debt.

78 The Insolvency Service, 2005.
79 Bankruptcy Act, 1988.

Reform of the Irish legal system for dealing with civil debt

Reform of the Irish legal system for dealing with civil debt has been persistently advocated by the Free Legal Advice Centres (FLAC).[80] FLAC has pointed out for some considerable time that Irish legal procedures and systems for dealing with civil debt are out of date, inadequate and inappropriate. [81] Representatives of both debtor and creditor groups are broadly in agreement that Irish procedures are in need of major reform.[82] A person can still end up in prison in Ireland as a consequence of owing a **civil** debt.[83] 276 people were jailed for debt default to bankers and other financial institutions in 2008, around 3% of all offenders imprisoned.[84] An alternative approach based on out-of-court "alternative dispute resolution" (ADR) has been put forward by both FLAC and by MABS, as a more appropriate method of dealing with civil debt, given that a person's ability or inability to repay the outstanding debt is generally the sole issue, whereas liability for the debt is rarely in dispute. In Belgium, competency for settling debt issues was transferred to the Labour Court in 1999 which is considered to be better placed to comprehend the "social reality" of over-indebted people.[85]

---

80 Joyce, 2003; Joyce, 2007. A major study into the enforcement of civil debt in Ireland and proposals for reform is currently being finalised by FLAC and is due for publication in 2009.

81 Primarily as a result of FLAC's work, the Law Reform Commission is currently considering the legal treatment of debt as part of its third programme of reform.

82 Joyce, 2007.

83 Technically for being in wilful refusal or culpable neglect of a Court (Instalment) Order made in relation to that debt.

84 'Courts jail 276 people for debt default', Irish Examiner, 30th January 2009.

85 Workshop on "Over-indebtedness Prevention", Cagliari, 13th February 2009.

CONCLUSION

1. Ireland has no policy framework for dealing with over-indebtedness. This is a major deficiency, given the consequences of the current economic downturn and the associated increase in people experiencing debt problems. A policy framework would provide for a more strategic response to debt problems than we have at present. An "official" definition of over-indebtedness, and an agreed way of both measuring and monitoring the extent of the problem, should be at the core of such a framework. This paper proposes an official definition, and recommends that EU-SILC be used to determine the extent of over-indebtedness in Ireland on an annual basis (additional methods will, however, be needed to include groups not covered by the survey). The revised questions included in the 2008 module to reflect persistency should continue to be included in future EU-SILC questionnaires.

   An onus should be placed on major credit providers (such as mortgage lenders) to collate and publish regular statistics on the extent of arrears and repossessions, following the Council of Mortgage Lenders' model in the UK. These data would enable trends in the extent of (mortgage) arrears to be monitored on a more frequent basis. There is also potential, as in Germany, to use anonymised data collected by creditor bodies (such as the Irish Credit Bureau) to monitor trends in relation to outstanding debt and default. Finally, administrative data collected by public bodies (such as local authorities and the Courts Service) could also be collated and used more effectively.

2. A national study into the characteristics, nature and causes of over-indebtedness in Ireland, has long been overdue. Data from the 2008 EU-SILC module on over-indebtedness and financial exclusion should therefore be the subject of dedicated analysis, to maximise its potential to provide heretofore unavailable data on the characteristics, nature and causes of persistent over-indebtedness in Ireland. A slightly refined module, to incorporate the distinctive "sub-prime" aspect of the Irish credit market, should be repeated in 2-3 years time for the sake of monitoring and comparing trends. In the interim, MABS data could be used more effectively to provide an ongoing picture of trends in relation to debt problems in

Ireland. It may also be possible to use other surveys for specific purposes (for example the Quarterly National Household Survey) to identify how people currently educate themselves with regard to financial issues.

3. In order to prevent over-indebtedness occurring in the first place, or at least to minimise the chances of it happening, a greater emphasis needs to be placed on prevention. Income and asset adequacy measures are crucial to ensure that people have sufficient resources to manage on (relative to current living costs) and to repay debt in the first place. The evidence suggests that increasing the resources of those on lower incomes (net income, disposable income and savings) in line with their needs is the most likely way to reduce the incidence of over-indebtedness. In terms of the tools to manage these resources, more appropriate financial tools such as banking, credit, savings and insurance products, tailored to people's needs, are required for people currently excluded from accessing and using basic financial services i.e. those most at risk of over-indebtedness. People also require the skills and knowledge to avail of these services. Information alone is not enough. Education and skills programmes on responsible borrowing and money management should be more comprehensively incorporated within the school curriculum. Similar programmes should be targeted at "at risk" adults such as those with literacy difficulties and other marginalised groups.

4. Greater emphasis is needed on the social rationale for regulation. An explicit, legal duty should be placed on all lenders to lend responsibly. Loans granted without thorough checking of a potential borrower's capacity to repay should be legally unenforceable as in Belgium (i.e. the credit institution would not be legally entitled in such circumstances to recover the money it has loaned). A corresponding duty should also be placed on potential borrowers to provide the necessary information requested by lenders to enable such checks to be properly made (again as in Belgium). A more inclusive data sharing system would facilitate this. The development of appropriate alternatives to high cost credit is urgently needed and the government has a key 'facilitative' role to play in this regard.

   Codes of practice and guidelines on arrears management and recovery should be more widely developed for different types of arrears and harmonised to ensure that people with different types of debt problems, (and in different types of tenure), are treated fairly, equitably and appropriately. Consultation with a range of stakeholders is important to ensure that the experience of consumers is taken into account in the development of such codes. Specific provisions to deal with vulnerable consumers are particularly important. Independent monitoring and swift enforcement mechanisms whilst allowing for due process, are also crucial to ensure compliance with these codes and guidelines. Without such monitoring and enforcement, codes are unlikely to be as effective as they might be.

5. Finally, where over-indebtedness does occur, independent money advice services, statutorily recognised, have an important role to play. At a time of recession, services need to be bolstered to deal with increased demands and to enable staff within them to cope with increased workloads. The work of such services also needs to be supported, not hindered, by the legal system as is the case at present. Judicial or legally-backed schemes such as debt settlement should be established in Ireland. The purpose of these schemes would be to facilitate the rehabilitation of debtors who have undergone adverse shocks or changes in circumstances. Rehabilitation of debtors should also be encouraged by the establishment of non-judicial procedures such as personal insolvency schemes. Reform of the legal system is also urgently required, and a more appropriate and user-friendly forum for dealing with debt is needed. Where appropriate, those in debt should be able to access state-funded legal advice and representation. Other countries made significant changes to their systems, laws and procedures at previous times of recession which have stood the test of time. It is now time for Ireland to do the same.

   To conclude, debt problems caused by external or unforeseeable events such as the current economic and credit crises need to be dealt with holistically, humanely and appropriately. The establishment of a high level government committee, comprising representatives of key stakeholders and charged with the remit of drawing up, implementing and monitoring a national strategy or action plan for addressing over-indebtedness, may act as the catalyst to ensure that a co-ordinated response is adopted during the current debt crisis.

REFERENCES

Berthoud, R. and Kempson, E., 1992. *Credit and Debt: The PSI Report.* London: Policy Studies Institute.

Carbo, S., Gardner, E. and Molyneux, P., 2005. *Financial Exclusion*. Hampshire: Palgrave Macmillan.

Central Bank of Ireland, 2007. *Sectoral Developments in Private-Sector Credit, June 2007*. Dublin: Central Bank of Ireland.

Central Statistics Office, 2007. *EU Survey on Income and Living Conditions, 2006.* Cork: Central Statistics Office.

Combat Poverty Agency, 2008. *Tackling Financial Exclusion in Ireland*. Dublin: Combat Poverty Agency.

Conroy, P. and O'Leary, H., 2005. *Do the Poor Pay More? A Study of Lone Parents and Debt.* Dublin: OPEN – One Parent Exchange and Network.

Corr, C., 2006. *Financial Exclusion in Ireland: An Exploratory Study and Policy Review*. Dublin: Combat Poverty Agency.

Corr, C., 2007. *Alternative Financial Credit Providers in Europe*. www.fininc.eu.

Council of Europe, 2007. *Legal solutions to debt problems: Recommendation Rec(2007)8 and explanatory memorandum*. Strasbourg: Council of Europe.

Daly, M. and Leonard, M., 2002. *Against All Odds: Family Life on a Low Income.* Dublin: Combat Poverty Agency.

Daly, M. and Walsh, J., 1988. *Moneylending and Low Income Families.* Dublin: Combat Poverty Agency.

Department for Social Justice and Regeneration in Wales, 2005. *Deputy Minister's Review of Over-indebtedness in Wales, July 2005.* Cardiff: Department for Social Justice and Regeneration.

European Commission, 2007a. *Communication on Financial Education*. Brussels: European Commission.

European Commission, 2007b. 'Confidential service offers practical advice for getting – and staying – out of debt'*. The EU Social Protection Social Inclusion Process > Good Practice Article*. Brussels: European Commission.

European Commission, 2008. *Towards a common operational European definition of over-indebtedness*. Brussels: European Commission.

Farrell, C. and O'Connor, W., 2003. *Low-income families and household spending*. London: Department for Work and Pensions.

Financial Regulator, 2006. *Consumer Protection Code*. Dublin: Financial Regulator.

Financial Regulator, 2008. *Findings of Arrears and Repossessions Handling Procedures Examination*. (Press Release: 16th December 2008). Dublin: Financial Regulator.

Free Legal Advice Centres, 2009. *FLAC Policy Briefing on Code of Conduct on Mortgage Arrears*. 16th February 2009. Dublin: Free Legal Advice Centres.

Genworth Financial, 2008. *The Genworth Index: Measuring consumer financial vulnerability in 12 European markets*. Vol. 2, 4th Quarter 2008.

Hohnen, P., 2007. 'Having the wrong kind of money. A qualitative analysis of new forms of financial, social and moral exclusion in consumerist Scandinavia'. *Sociological Review*, Vol. 55 (4), p.748-767.

Housing Unit, 2001. *Guidelines for Local Authorities: Rent Assessment, Collection, Accounting and Arrears Control*. Dublin: The Housing Unit.

Hughes, A. and Duffy, D., 2006. *In too Deep? Preliminary findings of a survey-based assessment of the burden of personal debt in Ireland.* Dublin: Economic and Social Research Institute and IIB Bank.

Hughes, A. and Duffy, D., 2005. *Consumers and Debt; Are they worried? Should we be? Preliminary findings of a survey-based assessment of the burden of personal debt in Ireland.* Dublin: Economic and Social Research Institute and IIB Bank.

Irish Banking Federation, 2001. *IBF Code of Practice on Mortgage Arrears*. Dublin: Irish Banking Federation.

Joyce, P., 2007. 'Debt Enforcement; The Case for Reform' in *About Banking*, June 2007.

Joyce, P., 2003. *An End Based on Means: A Report on How the Legal System in the Republic of Ireland Treats Uncontested Consumer Debt Cases with an Examination of Alternatives and Proposals for Reform.* Dublin: Free Legal Advice Centres.

Kelly, J. and Reilly, A., 2005. 'Credit Card Debt in Ireland: Recent Trends', *Central Bank of Ireland Quarterly Bulletin.* No. 1 (February 2005), p.85-100.

Kempson, E., 2002. *Over-indebtedness in Britain – A Report to the Department of Trade and Industry.* London: Department of Trade and Industry.

Kempson, E., McKay, S. and Collard, S., 2005. *Incentives to Save: Encouraging Saving Amongst Low-Income Households.* Bristol: Personal Finance Research Centre, University of Bristol.

Kempson, E., McKay, S. and Willitts, M., 2004. *Characteristics of Families in Debt and the Nature of Indebtedness* (DWP Research Report 211). Leeds: Corporate Document Services.

Kempson, E. and Whyley, C., 1999. *Kept out or opted out? Understanding and combating financial exclusion*. Bristol: The Policy Press.

Kempson, E., Whyley, C., Caskey, J. and Collard, S., 2000. *In or Out? Financial Exclusion: A Literature and Research Review*. London: Financial Services Authority.

Korczak, D., 2004. *The Money Advice and Budgeting Service Ireland. A Service to Help People with Financial Problems and to Tackle Over-Indebtedness. Synthesis Report.* Peer Review and Assessment in Social Inclusion Programme: www.peer-review-social-inclusion.net.

MABS National Development Limited, 2008. *New Programme Encourages Students to Get Smart with their Money.* Press Release, 25th September 2008. Dublin: MABS National Development Limited.

MABS National Development Limited, 2009. *Pre-Budget Submission 2009*. Dublin: MABS National Development Limited.

Norder, H., 2006. *Responsible lending and debt solving in the Netherlands – Host Country Report of the Peer Review Meeting in Rotterdam, 6-7 November 2006*. Report for DG Employment, Social Affairs and Equal Opportunities. Brussels: European Commission.

O'Loughlin, D. and Szmigin, I., 2006. "I'll always be in debt": Irish and UK student behaviour in a credit led environment'. *Journal of Consumer Marketing*, Vol. 23 (6), p.335-343.

Opinion Leader Research (OLR), 2006. *Financial Inclusion Deliberative Workshops*. London: HM Treasury/Financial Inclusion Taskforce.

Pahl, J., 1999. *Invisible Money: Family Finances in the Electronic Economy.* Bristol: The Policy Press.

Redmond, D., 2002. *Imprisonment for Fine Default and Civil Debt*. Dublin: Nexus Research Co-operative.

Saunders, P., 2004. 'Budget Standards Alive and Well'. *Social Policy Research Centre Newsletter*, 87, July 2004, New South Wales: University of New South Wales.

Sinclair, S., 2001. *Financial Exclusion: An Introductory Survey*. Edinburgh: Centre for Research into Socially Inclusive Services (CRSIS), Edinburgh College of Art/Heriot Watt University.

Stamp, S., 2007. *'If Budgeting is the Answer, What is the Question?* Paper presented to the Combat Poverty Agency Research Seminar Series, Dublin, 4th December, 2007.

Stamp, S., 2006. 'Research Highlights Need to Focus on Higher Persistent Debt Risk to Poor Households'. *Action on Poverty Today*. 14: 12–13, Autumn.

The Insolvency Service, 2005. *Relief for the Indebted – An Alternative to Bankruptcy*. London: Department of Trade and Industry.

Thomas, S., 2008. 'Energy' in *Poor Choices: The limits of competitive markets in the provision of essential services to low-income consumers*. London: Public Services International Research Unit, University of Greenwich, p.211-280.

Vincentian Partnership for Social Justice, 2004. *Low Cost but Acceptable Budgets for Three Households.* Dublin: Vincentian Partnership for Social Justice.

Vincentian Partnership for Social Justice, 2006. *Minimum Essential Budgets for Six Households.* Dublin: Vincentian Partnership for Social Justice.

Watson, D. and Williams, J., 2003. *Irish National Survey of Housing Quality 2001-2002*. Dublin: Economic and Social Research Institute.

Welsh Consumer Council, 2008. *Access to Cash*. Cardiff: Welsh Consumer Council.

Whelan, C., Layte, R., Maitre, B., Gannon, B., Nolan, B., Watson, D. and Williams, J., 2003. *Monitoring Poverty Trends in Ireland: Results from the 2001 Living in Ireland Survey*. Dublin: Economic and Social Research Institute.

design by www.reddog.ie

Ireland is facing a growing household debt crisis. More and more people are struggling to make ends meet and are falling into arrears on day-to-day living expenses.

While certain initiatives have been put in place, including recent measures to assist people who are struggling with mortgage repayments, there is no strategic or comprehensive response for tackling the issue of consumer debt.

This paper draws lessons from the experiences of other European countries and applies these to an Irish context. It proposes a range of preventative, remedial and rehabilitative measures which could form the core components of a national strategy to tackle the problem in a co-ordinated way

Combat Poverty Agency
working for a poverty-free Ireland

Bridgewater Centre, Conyngham Road, Islandbridge, Dublin 8

Tel: 01 670 6746 Fax: 01 670 6760 Email: info@combatpoverty.ie Website: www.combatpoverty.ie