



Briefing Paper BP7-2017

Delay and Pray?

Data deficits, policy implementation disorder, the downplaying of non-mortgage debt, and the prolongation of the Irish household debt crisis

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September 2017

Introduction

It is now almost some nine years since the Global Financial Crisis (GFC) and the rapid associated 'bailout' of the Irish banks. Given this considerable time-period, and numerous positive indicators of economic recovery in recent years, we may reasonably expect the household or personal debt crisis that followed in its wake to be finally nearing resolution. The evidence, however, suggests that we remain a long way from the end of this particular tunnel:

- Although the number and percentage of PDH¹ mortgage accounts in arrears has reduced considerably from "peak" in June 2013 (due principally to widespread, though not always successful, re-structuring), as of March 2017, over 76,000 accounts remained in arrears,

¹ Principal Dwelling Houses. The figures cited in this article do not include Buy to Lets (BTL).

with over 53,000 of these 90 days or more past due (of which almost 33,000 are in arrears of over two years);²

- Personal insolvency options – available by way of the Personal Insolvency Act 2012³ - in theory provide an opportunity for debtor discharge and a fresh start, but in practice have been significantly under-utilised; the statutory body responsible, namely the Insolvency Service of Ireland (ISI), estimates that compared to similar provisions in England and Wales, Irish equivalents are being under-used by a factor of between four and five,⁴ although this is starting to change a little at the time of writing;⁵
- Financial exclusion, an issue strongly associated with personal over-indebtedness,⁶ remains a pressing issue for many in Irish society; in the most recent relevant enquiry, around one in five households were found to be credit constrained.⁷

Lack of resources to discharge personal debts, arguably the key underlying issue, remains a persistent, yet often under-acknowledged feature of the continuing crisis. In the most recent survey into the living conditions of Irish households, around four in ten reported being unable to afford at least one of eleven, basic, conventionally necessary items through lack of money.⁸

² Central Bank of Ireland, Mortgage Arrears Statistics (various years). See <https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/mortgage-arrears>. Worryingly, the number of new accounts in arrears (i.e. those of less than 90 days) has increased, albeit marginally so, in each of the last two quarters.

³ These consist of: Debt Relief Notices (DRN) which are modelled on Debt Relief Orders (DRO); Debt Settlement Arrangements (DSA) which are based on Individual Voluntary Arrangements (IVA); Personal Insolvency Arrangements (PIA), which factor in secured debt in the form of the family home; and Bankruptcy (now reduced to a one-year discharge period).

⁴ Insolvency Service of Ireland, (2017). 'Section 141 Consultation, ISI Submission to the Department of Justice and Equality, June 2017'. See: <https://www.isi.gov.ie/en/ISI/S141%20Review%20%20ISI%20Submission%20to%20DJE%20June%202017.pdf/Files/S141%20Review%20-%20ISI%20Submission%20to%20DJE%20June%202017.pdf>

⁵ The principal reason is the introduction of a right of appeal to the Circuit Court for insolvent borrowers whose application for a Personal Insolvency Arrangement (inclusive of a family home mortgage in arrears) has been rejected by the secured creditor but is approved by a class of creditors.

⁶ Gloukoviezoff, G., 2007. 'From Financial Exclusion to Overindebtedness: the Paradox of Difficulties for People on Low Incomes?' In L., Anderloni, M., Braga and E., Carluccio, Eds. *New Frontiers in Banking Services*, Berlin: Springer.

⁷ Central Statistics Office (2015). Household Finance and Consumption Survey 2013. Cork: Central Statistics Office. <http://www.cso.ie/en/media/csoie/releasespublications/documents/socialconditions/2013/hfcs2013.pdf>

⁸ Central Statistics Office (2017). Survey on Income and Living Conditions 2015. Cork: Central Statistics Office. <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2015/>

Data deficits

One might be forgiven for thinking that the above snapshots illustrate a society well on top of the figures at least, with a firm evidence base for policy development to tackle personal financial difficulty and its various components, and this is indeed the case in certain respects. For example, we have solid - though rarely referenced - annual figures as to the number of judgments and enforcement orders pertaining to civil debt.⁹ Quarterly data are also available on those approaching Money Advice and Budgeting Services (MABS)¹⁰, on mortgage accounts in arrears¹¹ and on the number of debtors using the various insolvency provisions referred to above, including bankruptcy.¹² Such data provide at least a sense of the ongoing impacts of related policy interventions, not least the Central Bank's Code of Conduct on Mortgage Arrears (CCMA), at the cornerstone of which is the Mortgage Arrears Resolution Process (MARP) that sets down the rules of engagement for regulated lenders with their borrowers, and is arguably the key form of protection for distressed mortgage holders.

However, there are also notable data deficiencies, particularly in the mortgage arrears' data. For instance, although we know the number of mortgage accounts in long-term arrears, the repayment capacities of those who owe them remain a mystery. This is due in no small measure to the fact that the Central Bank gets its information from the banks it regulates but very rarely speaks to borrowers about their experiences; such data source imbalance also allows stereotyping of the conduct of borrowers to take place, with many being categorised as strategic defaulters or not engaging.¹³ Furthermore, a lack of available information on the dynamics of cases going through the MARP process - for example, on those which result in subsequent repossession proceedings, and how proposals, arrangements and declarations of unsustainability break down by lender – makes it difficult to evaluate its detailed impact on the ground.¹⁴

⁹ These data are gathered from various courts, collated and published by the Courts Service.

¹⁰ A state-funded network of money advice centres, which incorporates a helpline.

¹¹ Collected from institutions, and collated and published by the Central Bank (ibid).

¹² Collated and published by the Insolvency Service of Ireland.

¹³ See for example 'Borrowers defaulted on home loans in hope of debt write-downs', Irish Independent, 4th Feb 2016.

¹⁴ General 'trend' data were published by the Central Bank in its Consumer Protection Bulletin on the Code of Conduct on Mortgage Arrears, Edition 3, May 2016. See: <https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/compliance-monitoring/reviews-and-research/gns4-2-1-1-cbullet-coc-mort-arrears-310516.pdf?sfvrsn=6>

More broadly, what is particularly striking in the midst of a much broader housing and personal debt crisis, is the lack of available, periodic data on such things as the incidence of rent arrears nationally, the numbers experiencing difficulty paying their utility bills, and the extent and characteristics of default across the spectrum of non-secured credit agreements¹⁵. The Insolvency Service of Ireland itself has recently expressed concern about “the dearth of statistical information available covering personal unsecured debt”.¹⁶ By way of example, there are no collated statistics on levels of unsustainable unsecured debt to the best of our knowledge, although the amount of unsecured credit extended at given points in time is publicly accessible.¹⁷

Moreover, an apparent societal disinterest in framing an inclusive (operational) definition of household “over-indebtedness” is not just indicative of a lack of concern about the broader problem as a whole, but renders it difficult both to measure its full extent and nature, and to track changes over time. It also means that we lack a baseline for evaluating policy measures with a non-mortgage debt dimension, such as money advice services¹⁸ and certain insolvency provisions.¹⁹ Furthermore, with the notable exception of MABS, the information that is collated tends to focus on the ‘account’ or ‘process’, as opposed to the ‘person’ or ‘household’, and as a consequence, we know comparatively less about the latter.

Finally, the near ten-year research gap in re-visiting financial exclusion in the round²⁰ is perhaps indicative of a more profound indifference to gathering related evidence on marginalised or distressed households, and to addressing their particular concerns; the disappearance of the

¹⁵ The Central Bank does, however, collate and publish data from selected lenders on arrears’ rates on revolving credit, secured term loans and unsecured term loans. See: <https://www.centralbank.ie/publication/household-credit-market-report>. In March 2016, the Bank published a high level overview of trends in respect of personal loan and credit card account arrears. See: <https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/compliance-monitoring/reviews-and-research/gns4-2-1-1-cp-bulletin--personal-credit.pdf?sfvrsn=4>.

¹⁶ See Insolvency Service of Ireland (2017), *ibid*, p17.

¹⁷ Credit and banking statistics are published monthly by the Central Bank. See: <https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics>

¹⁸ MABS deals on average with around 20,000 new clients each year, many of whom continue to present with a wide range of non-mortgage debts, with approaching half being non owner-occupiers. See MABS statistics, various years: https://www.mabs.ie/en/about_us/mabs_statistics.html

¹⁹ These provisions also illustrate the less favourable treatment of unsecured debtors. Whereas there is a right to appeal a rejected PIA (see above), there is no such right for insolvent borrowers with unsecured debt only who do not qualify for a Debt Relief Notice (DRN) and whose application for a Debt Settlement Arrangement (DSA) is rejected.

²⁰ According to Eurostat, “data for a revised ad hoc module of the EU-SILC on Over-indebtedness and Financial Exclusion will be collected in 2017”. See: http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Over-indebtedness_and_financial_exclusion_statistics. The last such survey was carried out in 2008.

once-heralded 2011 ‘Strategy for Financial Inclusion’ from the Department of Finance’s own website²¹ does little to dispel this conclusion. As it stands, in the age of “big data”, we are at best relying on partial - and selective - information to tackle widespread societal problems that are among the most pressing of our time, thereby further marginalising those (such as non-mortgage holders) whose problems are seemingly considered to be less socially important than others.

Implementation deficit disorder

Irish policy towards those experiencing financial difficulty has historically been characterised both by its conservatism and Catholic-familiarity,²² through its assigning of blame to the debtor²³ but with ‘repentance’ available – if willing to help oneself - by way of access to budgeting services or lengthy discharge periods.²⁴ Against this backdrop, related post-Crisis policy and legislative developments indicate a shift in a more social-liberal direction. However, what is also notable about the latter developments is that these are often characterised by what has been termed ‘Implementation Deficit Disorder’,²⁵ thereby prolonging, and arguably compounding in some cases, the difficulties of those ostensibly targeted by such provisions. Three such examples relate to payment of fines, credit referencing, and civil debt-related imprisonment.

The Fines Act, which came into law on the 2nd June 2010, ostensibly addressed twin concerns within the then Irish penal system, namely widespread imprisonment for non-payment of fines and the related lack of a mechanism for being able to pay such fines by instalments.²⁶ However, implementation of an instalment system was subsequently delayed for several years for reasons to do with ICT issues and the development of a suitable payment channel.²⁷ The issue

²¹ Accessed 11th July 2017.

²² Stamp, S (2016) “Personal Finance: Financial Services, Access to Credit and Debt Management”, in M Murphy and F Dukelow, *The Irish Welfare State in the Twenty-First Century: Challenges and Change*. London: Palgrave Macmillan (p.119-140).

²³ As illustrated below, imprisonment arising out of a civil debt is still possible.

²⁴ Prior to 2012, the bankruptcy discharge period was twelve years.

²⁵ Kirby, P and Murphy, M (2011) *Towards a Second Republic: Irish Politics after the Celtic Tiger*. London: Pluto Press, p62.

²⁶ Irish Penal Reform Trust (2011), 6,681 imprisoned for non-payment of fines in 2010, Press Release, 2nd February 2011. <http://www.iprt.ie/contents/1943>

²⁷ Courts Service Annual Report 2015, p15.

[http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/B97E066344D4880080258083003407DF/\\$FILE/Courts%20Service%20Annual%20Report%202015.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/B97E066344D4880080258083003407DF/$FILE/Courts%20Service%20Annual%20Report%202015.pdf)

was revisited by way of the Fines (Payment and Recovery) Act 2014, with the relevant provisions finally being commenced on 11th January 2016, some five and a half years after the enactment of the initial legislation.²⁸ This delay has had serious consequences. According to the Irish Penal Reform Trust (IPRT):

*The number of persons committed to prison due to non-payment of a court ordered fine during 2015 increased by 10.1% on the 2014 figure. The numbers rose from 8,979 in 2014 to 9,883 in 2015.*²⁹

If this is a “chronic” case of the Disorder, the delay to the establishment of a Centralised Credit Register (CCR) is perhaps an example of a “severe” one. The lack of access to such a database during the “boom” is considered by many to be a deficiency that contributed to the extent of catastrophic lending during that period.³⁰ Again, the initiative is progressive, in this case aimed at promoting informed lending, responsible borrowing, and financial stability.

In this instance, the clock really began to tick in November 2012 when a government commitment to establish such a register was embodied in a letter to the International Monetary Fund (IMF)³¹ as part of the EU/IMF Programme of Financial Support for Ireland initially agreed in December 2010³². This commitment was subsequently given legislative force with the enactment of the Credit Reporting Act in 2013.

However, despite repeated concerns about delays,³³ it is only now (or June 2017 to be precise, some four and a half years post-commitment) that the CCR is to become operational and even

²⁸ Irish Penal Reform Trust (2016), IPRT welcomes commencement of fines legislation, Press Release, 11th January 2016. <http://www.iprt.ie/contents/2843>

²⁹ Irish Penal Reform Trust 2017: Facts and Figures. See: <http://www.iprt.ie/prison-facts-2>

³⁰ See: Weston, C. 2016. ‘Central Bank admits new delay to credit register plans’, Irish Independent, 30th June 2016.

³¹ Government of Ireland (2012). Letter of Intent to the International Monetary Fund, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, November 29th 2012. See: <https://www.imf.org/external/np/loi/2012/irl/112912.pdf>

³² European Commission (2010). Memorandum of Understanding between the European Commission and Ireland. Brussels: European Commission. See: <http://www.finance.gov.ie/sites/default/files/euimfrevised.pdf>

³³ See for example: ‘Central Bank plans to introduce credit register by 2018’, RTE News, 23rd November 2015- <https://www.rte.ie/news/business/2015/1123/748674-central-bank-strategy/>

then, only partially so.³⁴ In this instance, the fall-out from the “credit crunch”, together with a more cautious or pragmatic lending environment, and the impact of Central Bank mortgage lending rules,³⁵ appear to have mitigated the consequences of delay to date. Notwithstanding, the extent of the delay may be seen as yet another indicator of the apparent policy downgrading of unsecured debt.

The third and final example, of a more “acute” nature, relates to the abolition of imprisonment for civil debt by way of the Civil Debt (Procedures) Act, signed into law in July 2015.³⁶ In this instance, the delay in issuing the relevant commencement order had catastrophic consequences for at least one debtor, whose unlawful imprisonment in March 2017 - both highlighted and successfully contested by the human rights organisation Free Legal Advice Centres (FLAC) - starkly portrays the human consequences of policy implementation failure. In its case commentary, FLAC concludes:

No person in financial difficulty and poor health, or indeed any citizen, should be treated this way... This is particularly the case where the State claims to have brought an end to debtor imprisonment. Furthermore, legislation passed in 2015 - which should have removed all possibilities of a person being imprisoned on foot of a debt – has not been commenced by the Minister for Justice and Equality.³⁷

³⁴ According to the Central Bank: “the Register will not collect information about smaller loans of less than €500. The Register will initially include information on loans such as credit cards, overdrafts, personal loans and mortgages. In time, information on other types of lending, such as hire purchase agreements and personal contract plans, will also be included.” See: <https://www.centralbank.ie/consumer-hub/explainers/what-is-central-credit-register>

³⁵ See: <https://www.centralbank.ie/financial-system/financial-stability/macro-prudential-policy/mortgage-measures>

³⁶ Our suspicion is that the principal motivation for the 2015 Act was to allow for the attachment of earnings or social welfare payments of persons who did not pay their water charges (re-introduced in Ireland in 2015 after being abolished in 1978 – see <http://www.irishtimes.com/news/politics/a-brief-history-of-water-charges-in-ireland-1.2007574>). The reason that the imprisonment provisions were never commenced is possibly related to a loss of political interest that followed from a subsequent policy reversal in 2016 not to impose water charges.

³⁷ Free Legal Advice Centres (2017), ‘Man unlawfully jailed for failure to pay debt released by High Court’, Press release, 30th March 2017.

Conclusion

The household debt crisis may have peaked, but it remains a major problem both within and for Irish society as a whole. Much has been done in the policy sphere, in terms of mortgage arrears and personal insolvency particularly, but the data deficits and policy implementation delays highlighted in this article are, we conclude, symptomatic of a degree of indifference or complacency within Irish policymaking towards personal finance as a whole, and in particular as regards unsecured debt, which is not without its consequences as we have shown. The Government's "Abhaile" scheme, rolled out in 2016, is a further case in point, with various supports (including access to legal and financial professionals) being made available to debtors, but only to those with mortgage arrears facing loss of their family home who are also deemed insolvent.

Our societal inability to readily answer such basic questions as to how many tenants are in arrears³⁸ or the number of households more broadly "over-indebted", clearly hinders evidence-based policymaking, as does the lack of timely information on households in difficulty. Also noteworthy, but beyond the scope of this paper, is a related phenomenon, which we term 'Policy Evaluation Disorder', or a persistent failure in the personal finance domain to evaluate measures expediently with a view to amendment or reform as necessary, once it becomes clear that change is needed.

To conclude, although it is unreasonable to expect policymaking to always produce the right answers, it should at least involve asking the right questions; this may be a good place in which to start, as we approach the tenth year of the Irish household debt crisis.

The views expressed in this Briefing Paper are the views of the authors and do not necessarily represent the views of CHASM as an organisation or other CHASM members.

³⁸ There is clearly a role for the statutory Housing Agency here (<https://www.housingagency.ie>).