Insolvency Service of Ireland Stakeholder e-Brief

March 2018

ISI

Tackling problem debt, together

Insolvency Service of Ireland Stakeholder e-Brief March 2018

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1 Introduction

This is the fifth edition of the Insolvency Service of Ireland's (ISI) e-Brief. This document along with other resources can be found in the Stakeholder Information section on our website.

2 Courts

Set out below are summaries of recent Court cases.

2.1 McCarthy v Sheerin – Application to Extend Bankruptcy

The case related to the circumstances in which an estate creditor may successfully apply to the High Court seeking to extend a bankrupt's discharge period where the Official Assignee was of the view that there were insufficient grounds to extend the bankruptcy prior to the automatic discharge period (1 year).

In the first instance, the applicant established that she was a creditor of the bankruptcy estate and thus had locus standi to bring the application pursuant to section 85A(1) of the Bankruptcy Act, 1988 (as amended) ("the Act").

The applicant creditor sought an interim court order seeking the extension of the bankrupt's discharge period to facilitate ongoing investigations into the bankrupt's estate. This interim order could then be converted to a longer extension period depending on the outcome of those investigations. The applicant creditor raised a number of issues regarding the bankrupt's former business, which she claimed justified the reliefs sought. The Court accepted that the bankrupt did not conduct his business in a tax compliant manner at the relevant time, however the Judge said that it does not necessarily follow that an extension of the bankruptcy period is required to continue to investigate the affairs of the bankrupt.

The Official Assignee explained to the Court that the bankrupt had cooperated in the administration of his bankruptcy estate and he had disclosed the matters relied on by the creditor in her application which were being investigated by the Official Assignee. He advised the Court that he could continue his investigation and pursue the assets without the bankruptcy period being extended, and that he was not seeking an extension of the bankruptcy period.

It was noted by the Judge that the Official Assignee was not precluded from issuing proceedings seeking recovery of monies (e.g. loan re-payments) even if the bankrupt was discharged.

Judge Costello said that an applicant seeking relief under section 85 of the Act (i.e. to extend a person's bankruptcy period) is not required to establish that there has been a failure to cooperate with the Official Assignee or failure to disclose assets, but rather there "*must have been a belief to that effect, but the belief must be reasonable and it must be established on an objective basis".* Once such a belief is present, then the Court must assess whether an investigation of these matters is required, and whether an extension order is appropriate.

The Judge acknowledged that since the bringing of the creditor's application, the Official Assignee has had an opportunity to investigate the matters complained of, and the Judge determined that no further investigation was required. The Judge further acknowledged that the Official Assignee does not require an extension of the bankruptcy period for investigations into the bankruptcy estate to continue. The Judge underlined the penal nature of postponing the bankrupt's discharge period particularly in circumstances where it was not required to assist in the administration of the bankruptcy estate or to maintain the integrity of the bankruptcy process.

The reliefs sought by the applicant were refused, and the interim extension order was vacated. Costs of the now discharged bankrupt were awarded against the applicant creditor, and the Official Assignee's costs will be costs in the bankruptcy estate.

Although this judgment does not preclude creditors from applying for similar relief in other bankruptcies, it does establish that there are only limited circumstances (e.g. reasonable belief of non-disclosure of transferred assets, etc.) that would justify an order of this kind.

A full copy of the High Court judgment is available at the following link.

2.2 O'Shea Case – Bankruptcy – Family Home & Bankruptcy Term Extension

This judgment arose out of two motions issued by the Official Assignee. The first motion sought an order pursuant to section 61 of the Bankruptcy Act 1988 (as amended) ("the Act"), sanctioning the sale of the family home of the bankrupt and his spouse. The second motion sought two orders pursuant to section 85A of the Act, one of which was an order extending the bankruptcy period of the bankrupt to either the 8th or 15th anniversary of the date of adjudication or for such other term the court may deem appropriate.

Sale of Family Home

In this case the bankrupt, who was registered as the sole owner of the family home, took no part in the proceedings. The bankrupt's spouse, a notice party to the proceedings, opposed the Official Assignee's application for the section 61(4) order. The spouse's case included that she had invested all her savings in renovating the home, she was not a bankrupt or a debtor and was an innocent party. The property was the family home of herself and her two young children and the sale would be disproportionate in the circumstances.

Judge Costello in sanctioning the sale of the family home concluded that the decision of the Court of Appeal in *Muintir Skibbereen Credit Union Limited v Crowley* [2016] 2

I.R. 665 did not preclude her from doing so. In that case the Court of Appeal refused to order the sale of two family homes pursuant to section 31(2)(c) of the Land and Conveyancing Law Reform Act 2009 ("the 2009 Act"). The Court held that the rights of the judgment mortgagee could not prevail against the rights of two innocent parties who had nothing to do with the loan transactions. Judge Costello stated that the question for consideration in this case was whether the Oireachtas intended the same result in circumstances where the Official Assignee acting on behalf of all the creditors of the bankrupt seeks an order for the sale of the family home. In *Muintir Skibbereen Credit Union Ltd v Crowley* the decision of the court was based upon the fact that the Family Home Protection Act 1976 ("the 1976 Act") sought to prevent the sale of the family home by the unilateral act of one spouse at the expense of the other and nothing in section 31 of the 2009 Act affected the jurisdiction of the court under the 1976 Act. While in this case, the Oireachtas in enacting section 61(5) of the Act expressly provided that the court's powers to order postponement of the disposition of the family home applied notwithstanding the provisions of the 1976 Act. Judge Costello saw this as being the "*critical distinction*" between the two cases.

The Judge was further of the view that the provisions of section 61 of the Act were "*inconsistent with the conclusion that the interests of the spouse and any dependants must outweigh those of the creditor to the extent they preclude the court sanctioning the sale of the family home".* The Judge felt that the balancing of competing interests is to be achieved by the length of any postponement of the order sanctioning the disposition of the family home.

Having concluded that she would sanction the sale of the family home, Judge Costello then considered whether, and if so, for how long the sale of the family home should be postponed.

Having considered all of the factors set out at paragraph 21 of her judgment and balancing creditor's interests against those of the spouse and young dependants of

the bankrupt and all of the circumstances of the case, Judge Costello directed the sale of the family home and postponed the sale for a period of one year.

Bankruptcy Term Extension

In terms of the second motion brought by the Official Assignee, Judge Costello concluded that the evidence clearly established a total failure of cooperation by the bankrupt and there was a clear case of postponing the discharge from bankruptcy of the bankrupt. The Judge had been invited by counsel for the Official Assignee to make an order pursuant to section 85A(4) of the Act for the maximum period allowed in light of this total failure of cooperation and the evident prejudice to creditors. Counsel had submitted that in the event the bankrupt ultimately cooperated, an application could be made to court to have the order rescinded or varied.

Judge Costello, in accepting that a court could review, rescind or vary such an order, stated that she would prefer to have further information regarding the affairs of the bankrupt, the recovery of assets by the Official Assignee, information regarding other creditors and a clearer picture of the ongoing attitude of the bankrupt before she would decide to make an order postponing the discharge from bankruptcy of the bankrupt for a considerable number of years.

Judge Costello adjourned the extension application to February 2019 and requested that the Official Assignee deliver an affidavit in relation to the progress of the bankruptcy in the intervening period.

A full copy of the High Court judgment is available at the following Link.

2.3 Webster Case – Application to Extend Bankruptcy

The case highlights the integral role personal insolvency practitioners (PIPs) have in upholding the legitimacy of the bankruptcy process.

Background

The judgment arose out of an application by the Official Assignee to postpone the automatic discharge of a bankrupt in circumstances where a number of assets of the bankrupt were not disclosed to the Official Assignee. In addressing the issue of whether or not the bankruptcy should be extended, the Judge said that *"where there is an established breach of the obligations placed on a bankrupt the court is required to bear in mind the fact that the maintenance of the integrity of the bankruptcy process is of the utmost importance and requires to be encouraged by the imposition of sanctions for breaches".* The bankruptcy period was extended by nine months.

Commentary in relation to PIPs

The Judge noted that a number of expenses were incurred by the bankrupt in the months before her adjudication of bankruptcy. The Judge commented that had these expenses not been incurred, then the bankrupt would not have qualified to apply for bankruptcy. The Judge further noted that the final expenditure was incurred around the time the PIP was to advise on whether the bankrupt's debts could be dealt with by a debt settlement arrangement or personal insolvency arrangement. While not matters which could properly be taken into account in an extension application, the Judge said that *"It is the entitlement of debtors who are genuinely insolvent to seek a fresh start by means of petitioning for their own bankruptcy…Nonetheless it is important that this is not abused or that debtors who do not in fact satisfy the statutory threshold do not petition for bankruptcy…the court must rely upon the diligence and vigilance of personal insolvency practitioners to ensure, as far as possible, that this does not occur when they are advising debtors in relation to their financial affairs."*

The judgment highlights the need for PIPs to make appropriate and detailed enquiries into the financial circumstances of a debtor in order to establish whether there is an appropriate alternative to bankruptcy. In this regard, PIPs should be familiar with their obligations as set out in the High Court Practice direction '*HC66 – Personal Insolvency Practitioner letters in bankruptcy matters*' (link to practice direction) when providing advice to a debtor seeking a solution to their insolvency.

A full copy of the High Court judgment is available at the following Link.

2.4 Douglas Case – PIA - Classes of creditors, non-core assets.

The debtor lives apart from her spouse with three young dependant children. She runs a small business which generates her income. Her assets comprise her PPR subject to security in favour of a mortgage lender, a commercial unit subject to security in favour of a credit union, and a residential premises ("non-PPR") occupied by her parents rent free which is subject to security in favour of a separate mortgage lender.

The proposed PIA included (i) that the debtor retain her PPR at a reduced interest rate of 0.5% for the term of the PIA, thereafter interest would revert to a variable rate, and the term of the loan extended; (ii) the two other properties be retained, and the terms of the mortgage over the non-PPR be extended. The debtor had already agreed terms with the credit union in relation to the commercial property, and it was proposed that this agreement continue.

The PPR mortgage lender and an unsecured creditor objected to the PIA for a number of reasons – that the jurisdictional requirements for the making of a section 115 application have not been met in that a class of creditors did not vote in favour of the proposal; and that the PIA is unfairly prejudicial.

How is a class of creditor determined?

The Judge stated that it is the Court and not the PIP who will ascertain the classes of creditors, although the Judge acknowledged that the PIP proposes the distinct classes. In this case, the PIP put forward the non-PPR secured creditor and the credit union collectively as a class of creditor, both of whom had voted in favour of the proposal, and the credit union as a separate mutual lender class. The objecting creditors argued

that the distinction made in the voting certificate between two types of secured creditor were 'manufactured' or artificial, and not in accordance with section 115A(2) of the Act. They further argued that the interests or claims of the three secured creditors were not sufficiently different to justify identifying two classes; their view was that there was just one class of secured creditor.

Is the credit union a separate class of creditor?

The debtor argued that as a credit union acts under the provisions of the Credit Union Act 1997, with membership of a credit union limited to those who have a 'common bond', it is not within the class of "credit institution" and it was appropriate to characterise the credit union as a "mutual lender" class of creditor. The creditors argued, however, that the material defining characteristic is that the debt is secured.

The Judge said that a credit union or other mutual lender may not be characterised as a separate class of creditor merely because of the rules governing membership of the society. In relation to determining the class of creditors, the Judge said that consideration must be given to whether the loan is secured or unsecured, or whether the loan is secured on the PPR or on other property. The Judge determined that the credit union was not a separate and single class of creditor in this case, but rather was a class of secured creditor who does not hold security over the PPR. A creditor holding security over a PPR was, in the Judge's opinion, capable of *being considered as a separate class of security creditors for the purpose of section 115A "because its interest is at the centre of the considerations of the court under the section."*[1]

Unfair prejudice

The objecting creditors argued that the means of the debtor were not reasonably brought to bear in the proposed PIA primarily because the non-PPR, occupied by the debtor's parents, would be retained, thus imposing an unnecessary and unjustifiable burden on the debtor (particularly because no contribution to the mortgage was being made by the occupiers). The PIP argued that in caring for the debtor's children, her

[1] The Judge referred to the special protection afforded by section 115A in relation to PPRs, and the primary condition that the PIA will enable a debtor to remain in his/her PPR.

parents relieved the debtor of childcare costs, and the retention of the non-PPR could be described as "income benefit" in that it freed up income for the debtor which would otherwise be expended on childcare costs. However, in referring to confusion in the debtor's affidavit in connection with the non-PPR and the arrangement with her parents, and acknowledging that the likely and true costs of retaining the non-PPR were not accounted for in the proposed PIA, the Court upheld the creditors' objection that the retention of the non-PPR which derives no income is burdensome and not justifiable in the circumstances.

In referring to section 99(2)(d) of the Act which provides that an asset "*reasonably necessary for the debtor's employment, business or vocation*" should not be sold, the Court was satisfied with the retention of the commercial premises.

Is the arrangement sustainable?

In order for the PIA to operate, the debtor needed to earn a minimum income from her business of €49,000 per annum. The Court was of the view that the figures presented did not establish that this salary was achievable. There were also other concerns in relation to the business, including the migration of the business from a liquidated company to a new company. The Court accepted creditor arguments that the new company may not have the support of trade creditors and Revenue, given the liabilities of the liquidated company and this "probable lack of support" should be taken into account when assessing the financial strength of the company. The Judge said that she was not satisfied that the business of the debtor can sustain the proposed PIA.

Decision

The Court concluded that the application must fail and the appeal was dismissed. As well as the concerns in connection with the business, the Judge said that the financial basis on which the application was made had "*too many elements of uncertainty and conjecture*" for the Court to take a view that the arrangement was genuinely sustainable. Also, the Court was not satisfied that all of the means of the debtor had

been brought into account in the formulation of the proposed PIA, and the Court determined that the retention of the non-PPR was unfairly prejudicial to the creditors.

A full text of the judgment is available at the following **Link.**

2.5 Meeley, Taaffe and Foye cases – Locus Standi in Section 115A Applications.

On 5th February 2018, Judge Baker delivered her judgment in the Meeley, Taaffe and Foye cases[2], which were heard over four days in the High Court in late 2017 on a preliminary basis in one hearing. The hearing addressed the jurisdictional issue of the locus standi of applicants in section 115A applications and the issue of liability for costs in such applications. As noted by the Judge in her judgment, the Insolvency Service of Ireland (ISI) made submissions in the hearing by reason of its statutory function and as '*amicus curiae'*, friend of the Court.

Application under Section 115A

The Judge acknowledged that the power afforded to the relevant Court under section 115A is "*far reaching*", and noted that the primary purpose of the section is to allow a debtor to remain in his/her principal private residence. The Judge noted that the legislation is silent on how the application under section 115A is to be heard by the relevant Court. She noted that Order 76A, Rule 21A of the Rules of the Superior Courts provides that the Court shall give directions and make orders for the determination of any objections, but does not address how an application is to be heard. According to the Judge, the Rules of the Superior Courts, while they cannot be used as an interpretative tool in respect of a legislative provision, do make it clear that the mode of trial is a matter for the trial judge as to how the case is to be heard. The Judge determined that the mode of a section 115A hearing is a matter for the Court in the exercise of its jurisdiction to manage the process and the conduct of the application before it.

[2] [2018] IEHC 38.

In relation to the application, the Judge accepted "*in a broad way*" the ISI's arguments that the section contemplates a two-stage process – the first part being the making of the application, with the second part being the hearing.

Role of PIPs and Debtor in Section 115A Application

In the context of acknowledging that the involvement of a PIP in a section 115A application is mandatory, the Judge referenced the notable decision in *Re Darren Reilly*[3]*.* This decision is also authority for a debtor not having a "*free standing right*" to bring a section 115A application (i.e. without the involvement of a PIP). However, the Judge acknowledged that the *Reilly* judgment is not authority on whether the "*voice of the PIP is the sole voice to be heard on behalf of a debtor".*

It is the PIP who must bring the application, i.e. lodge and serve the initiating pleadings (notice of motion) and who "*has the statutory function of assembling the proofs*" and ensuring that the conditions for bringing an application are met. This is stage one of the process. Stage two is the hearing of the application.

The Judge reiterated her comments in *Re Nugent*[4] that the role of the PIP is to act as an independent intermediary, and she continued that the PIP does not cease to be an intermediary once the application has been lodged. As required by section 98 of the PI Acts, the Judge said that the PIP must "*engage in his professional capacity with both creditor and debtor and seek if possible to achieve a solution which is satisfactory to both".* The Judge said that she does not consider that the Oireachtas envisaged that a "*non-legally qualified intermediary*" to be the sole person "*entitled to argue the merits and legal principles*" arising in a section 115A application. The Judge acknowledged that the debtor has a "*vital interest in the outcome*" and that the Court must "*balance the interests of creditor and debtor*".

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[3] Reilly & Personal Insolvency Court Case Link (The December 2017 ISI Stakeholder e-brief summarised the case)

[4] [2016] IEHC 127.

"The principles of equality of arms and basic principles of fairness support a conclusion that a debtor who has a vital interest in the outcome should be entitled to be heard".

The Judge concluded that as to whether or not a debtor should be heard at a hearing, that it is a matter for the Court to determine in each case. If it is "*necessary, or regarded as appropriate, having regard to the circumstances of the case and the likely arguments to be advanced"*, then a debtor may be heard at the hearing through solicitor and counsel. The Judge determined that the PIP does not step away from the hearing, and she commented that the PIP is engaged at all stages of the process.[5] She said that the PIP is a "*statutory construct*" who has been "*designated as an essential element in the process*" and who "*performs a role of filtering unmeritorious applications, and assembling the proofs*". The Judge confirmed that a PIP has a right of audience before the Court in his/her representative capacity, although a PIP cannot instruct counsel directly, a solicitor must do so. In light of the comments of the Judge as to the mode of a hearing, i.e. that it is a matter for the Court to determine; whether or not a PIP may address the Court, or should instruct a solicitor, will depend on the particulars of each case, and the direction given by the Court for that case.

Liability for Costs

A decision of liability for costs in these particular cases (Meeley, Taaffe and Foye) was not made at the hearing. However, the ISI sought guidance from the Court on the approach of the Court to costs generally in section 115A applications. The Court stated that a section 115A application could not be regarded as inter partes litigation in the true sense. The Judge, acknowledging that a PIP has no economic[6] or personal interest in the outcome of an application, referred to the public interest that is performed by a PIP in the "*insolvency process*". The Judge stated as follows:

[5] The Judge acknowledged that the PIP is involved throughout the course of a PIA in a supervisory and notification capacity.
[6] Save fees due to a PIP under a PIA.

"I consider that a costs order would not be made, unless it can be shown that a PIP acted without bona fides or dishonestly, or "acted with any impropriety"[7]. *… The circumstances in which a costs order against a PIP would be made would be exceptional, probably more correctly, truly exceptional".* (Emphasis added).

In her judgment, the Judge indicated that the Court would not condone the practice of creditors writing to a PIP threatening a costs application against the PIP in a routine or ordinary case.

Form of Notice of Motion

The Judge addressed each of the notices of motion, which were submitted in the relevant cases[8]. The Judge determined that the PIP must be identified in the notice of motion as making the application.

Substitution/Amendment Applications

The Judge, at paragraph 154 of her judgment, indicates that the Court would be willing to hear applications for substitution or amendment to the Notices of Motion. We understand that the debtors in the two cases where the Court determined that the Notices of Motion failed to identify that the PIP makes the application[9] intend to apply to amend the respective Notice of Motion, and will first seek the consent of the relevant creditors to the amendment application.

A full copy of the High Court judgment is available at the following Link.

2.6 High Court - Application for costs against PIP

In a recent High Court case a creditor sought costs against the Personal Insolvency Practitioner in the context of an objection to a Protective Certificate in a Debt Settlement Arrangement (DSA).

[7] McIllwraith v His Honour Judge Fawsitt, Supreme Court, [1990] 1 I.R. 343.
[8] Please see paras 130 – 144 of the judgment.
[9] Meeley and Taaffe Notices of Motion each stated "solicitor/counsel on behalf of the Debtor", and the Judge determined that the motions did not identify that the PIP made the application.

In the case, a specified residual mortgage debt was designated as unsecured in the debtor's Prescribed Financial Statement. It was claimed in the Proof of Debt process to be a secured debt, with the creditor relying on the terms of an all sums due mortgage that the debtor had with the creditor in respect of another property. The PIP advised that the debtor was not aware of the status of the debt. On receipt of the copy of the deed from the creditor (December 1st) the PIP asked the debtor to seek legal advice.

The residual debt was a joint debt with a business partner secured on an asset jointly owned with the debtor's wife. Once the PIP received instructions from the debtor (January 12th), the PIP responded to the creditor accepting the objection.

Judge Baker advised that she accepted that the PIP did not know about the all sums due mortgage capturing the residual debt of a business loan. She accepted the residual debt was captured by a joint liability. She added that the all sums due mortgage is a complex legal instrument and the security over the property was not identified in any operative part of the schedule or deed. The property held in joint names was a commercial liability. The PIP did what was prudent in suggesting that the debtor get separate legal advice. She considered that the PIP did act bona fide at all times. Immediately on receiving a copy of the deed, the PIP asked the debtor to get legal advice. The delay in addressing the issue lay at the feet of the debtor and to the Christmas holiday period. The error was not in a class to award costs against the PIP. She noted that some blame could be levied for not withdrawing the DSA on December 1st. However, she did not blame the PIP personally, the issue was complex in nature and particularly so as the security relied on was in joint names. She set aside the Protective Certificate and refused the application for costs against the PIP.

A written Judgment did not issue in this case

3 Business metrics

3.1 ISI Quarter 4 2017

The ISI statistical report covering the fourth quarter of 2017 (Q4) was published on the 15th March 2018. The report is available at the following Link.

4 General

4.1 Protective Certificate Target Timeline

In December 2017, the ISI proposed a Protective Certificate (PC) Target Timeline to apply during the PC period. The purpose of the PC Target Timeline is to make the insolvency process more efficient and transparent and ultimately lead to better outcomes for debtors. Following consultation between the ISI, PIPs and Creditors (Mortgagees) the PC Target Timeline came into effect in February 2018. Since the PC Target Timeline commits Creditors and PIPs to certain obligations, a small working group will be established to oversee its operation.

The PC Target Timeline is included in Appendix 5. If you require any further information, please contact the ISI Policy team by email (policy@isi.gov.ie).

4.2 Law Reform Commission consolidation of the Personal Insolvency Acts

The Law Reform Commission have updated the consolidation of the Personal Insolvency Acts. It is available on their website at the following Link.

4.3 Note re change in ISI procedure for valuations sought under s.105(4)

The ISI has made some changes to the way in which it deals with requests made under s.105(4) of the Act to procure an independent valuation on a secured property. Once

a request is made to the ISI – by either the debtor, the PIP or the secured creditor – the ISI will engage in a procurement exercise in order to obtain the services of an appropriate independent valuer who must be;

- an auctioneer or estate agent licenced and regulated by the Property Services Regulatory Authority (and quote licence number)
- a valuer who is registered with a body using the:
    - Blue Book (used by the Institute of Professional Auctioneers and Valuers (IPAV),
    - TRV (TEGoVA Residential Valuer) and/or
    - the REV (Recognised European Valuer) designation, or
    - the Red book (used by the Society of Chartered Surveyors in Ireland (SCSI)/Royal Institute of Chartered Surveyors (RICS), using Valuation Registration (VR) designation).

Once the relevant expert is procured, the ISI will arrange with the parties to provide to the appointed valuer, any documents/reports that may be relevant to [the valuation of] the property. The parties will be requested to confirm the existence or otherwise of any further pertinent information that the valuer should have possession of in advance of the valuation being completed.

The ISI requests that valuations under s.105(4) should continue to be a last resort, in view of the tight timelines under which such procurement must be done. Typically a case from procurement to final valuation report takes ten days. It is essential that any requests be made in good time to facilitate a valuation being provided, without risk to any case deadlines that may be approaching and to avoid the necessity to look for PC extensions.

5 Appendix 1

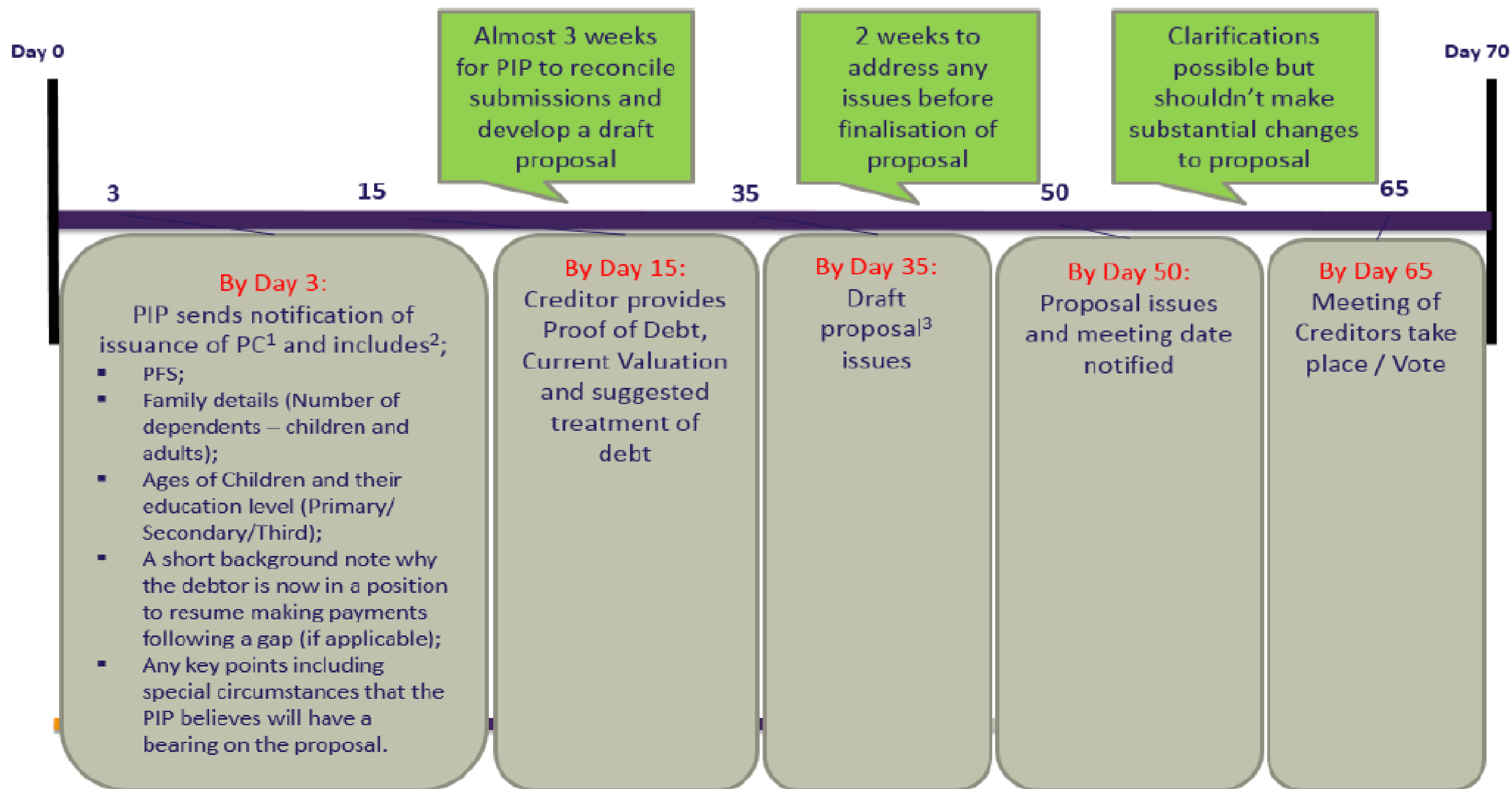
5.1 Protective Certificate Target Timeline

1. Background

The purpose of the Protective Certificate (PC) Target Timeline is to make the process more efficient and transparent and ultimately lead to better outcomes for debtors. The target timeline provided in section 5.2 requires proactive input from both PIPs and Creditors at various points during the 70-day PC period.

5.2 Target Timeline Overview

1. PIP will notify Creditors by day 3 of PC period and include the following;
    - Prescribed Financial Statement;
    - Family details (Number of dependents - children and adults);
    - Ages of children and their education level (Primary/ Secondary/Third level);
    - A short background note on why the debtor is now in a position to resume making payments following a gap (if applicable);
    - Any key points that the PIP believes will have a bearing on the proposal.
2. Creditors will return a completed Proof of Debt by day 15 accompanied by relevant current valuations and details around their suggested treatment of debt. (This then affords the PIP almost 3 weeks to reconcile submissions and develop a draft proposal).
3. PIP circulates a draft proposal to Creditors by day 35 for consideration. (This then affords the PIP and Creditors 2 weeks to address any issues before the proposal is finalised).
4. PIP circulates finalised proposal to Creditors along with notice of Creditors meeting by day 50. (While clarifications around the proposal may remain, the PIP shouldn't make substantial changes to the proposal after this point).
5. The meeting of Creditors will take place by day 65.



1. In circumstances where the PIP is aware that the PC has been issued by the Court but there is a delay with the PC being circulated (e.g. High Court cases) the PIP may notify Creditors of issuance of PC and initiate PC target timeline process.
2. Some of this information may be contained in the DSA/PIA application form; relevant extracts from that form may be provided to creditors subject to ensuring adherence to data protection requirements.
3. Alternatively, the PIP may issue a report to Creditors, which sets out details of the proposed arrangement, including the proposed treatment of secured debt, Creditor repayments schedule, etc. Where a debtor has not been making repayments, details of debtor's capacity to make such repayments should be included in the report.

The next ISI e-Brief is scheduled to issue in summer 2018.

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