

Society of St Vincent de Paul

Response to the Law Reform  
Commission's consultation paper on  
Personal Debt Management and Debt  
Enforcement.

SVP Social Justice & Policy  
February 2010

## **Introduction**

The Society of St Vincent de Paul welcomes the opportunity to make this submission to the Law Reform Commission. The SVP is the largest charity of social concern and action in Ireland, with a variety of services being provided by our 9,500 voluntary members and 500 staff across the country. These services include debt advice and the provision of direct financial assistance to individuals and families in need.

The Social Justice Committee of the SVP, a national Committee of the organisation, has a mechanism for gathering the experience of the membership as it relates to issues of social policy and concern. This is known as the 'From The Ground Up' project team, and it takes samples of the experiences of our local branches and services throughout the country which then inform our policy positions. This work gives SVP an insight into the issues which are affecting the people we assist and the impact of personal debt on their lives.

A case study from the SVP in Cork in Christmas 2009 puts a human face on the issue of debt and money-lending and highlights the fear and difficulties being faced by people who are over-indebted.

According to Mary, who was previously indebted to legal money lenders and is now a volunteer with a St. Vincent de Paul Resource Centre, legal money lenders are 'lashing out the cash - and not asking any questions'. Money lenders, she reported, are not only attracting new customers but are once again being used by people who haven't used their services in 10 years. These families are over borrowed and no longer have any credit rating with banks or credit unions. At a cost of €130 per €100 borrowed people are amassing great debts in order to bring their families through this Christmas.

People access money lenders by word out of mouth, from one neighbour to the next, and are relieved when they can access such cash so easily. Mary warns however, that as repayments become more difficult, families, in particular mothers, can find themselves under 'fierce pressure' when the money lenders turn up again and again on the doorstep demanding repayment. Retelling her personal past experience she says 'I used to hide behind the sofa so he wouldn't see I was in and I'd have to actually threaten my own children to keep quiet in case he'd see me'. Looking back now she says 'it's good to be reminded of that past because now that I'm debt free it helps me appreciate how good life is'. Thinking of people who are once again becoming indebted in this way Mary says she really worries for the vulnerable people who can't stand up to money lenders who are always looking for something back.

## Response to Law Reform Commission Consultation paper

- *Provisional Recommendation 7.12: Over-indebtedness*

The Society strongly supports the LRC's recommendation that preventing and remedying personal over-indebtedness should form a guiding principle of the law on debt enforcement and management. One aspect of preventing over-indebtedness involves tackling financial exclusion, by legislating for access to basic banking services for people on low incomes.

The experience of the SVP is that low income households and those on social welfare often experience barriers to accessing affordable credit and are often unbanked or underbanked. People who are unbanked or underbanked do not have access to savings, credit and banking services. This means they may be more likely to access high cost and/or illegal sources of credit, increasing the risk of over-indebtedness and making it more difficult to remedy this problem.

In addition to this, we are aware that creditors are currently suspending access to full banking services if a customer falls behind in their payments. This issue must also be addressed as part of the strategy to prevent and remedy over-indebtedness.

- *Provisional Recommendation 7.19: Responsible Lending Test*

The SVP is supportive of the need to include a 'responsible lending' test as part of the licensing process for credit institutions. This would also be important from the point of view of preventing over-indebtedness. The Society recognises that responsible lending also requires responsible borrowing, and the full disclosure of all debts and income by the applicant for credit. However, we feel that the credit institution must ask questions of the borrower which will elicit this information, and should inform the borrower of the consequences associated with over-borrowing.

As part of a responsible lending test, the SVP would like to see the imposition of a cap on the amount a money-lender can lend to an individual to prevent over-indebtedness.

- *Provisional Recommendation 7.25: Obligatory referrals to money advice services*

SVP members often refer clients to MABS for budgeting advice and are aware of the benefits that this can bring to people experiencing debt problems. However, we are concerned that if an obligation was introduced on mortgage lenders to refer debtors in arrears to money advice services that debtors would be obliged to work with a money advisor as a condition of their engagement with the mortgage lender. This could mean that people with the ability to address their financial matters independently would be forced to do so via a third party.

- *Provisional Recommendations 7.28 & 7.30: Licensing system for debt collectors*

The SVP supports the recommendation that a licensing system be introduced for the debt collection industry. Debt collection solicitors should also be included in this

licensing system. However, we are concerned at the provision for 'specified exemptions' included in the recommendation. All debt collection agencies, without exception, should be obliged to hold a licence before operating a debt collection business.

- *Provisional Recommendation 7.33: Licensing of commercial debt management and debt advice companies*

The SVP strongly supports this recommendation and suggests that a definition of money advice should be provided by the LRC as part of the recommendation. We are concerned that commercial debt management and advice companies are working with vulnerable people experiencing financial difficulties and are not answerable to a licensing or any other authority. Debt management companies which are fee-based may become creditors in cases where fees remain outstanding. Commercial debt management and debt advice companies should therefore be required to hold both debt advice/management and debt collection licences.

- *Provisional Recommendation 7.36: Licensing regime for non-profit, non-fee-charging debt advice and debt management organisations*

The SVP is broadly supportive of this recommendation. It is necessary to ensure that all agencies providing money and debt advice are licensed to do so in order that the best possible service is provided to people struggling with debt and other financial problems. We feel that this licensing regime should apply to MABS so that it will be on an equal footing with commercial providers of debt management and advice if a licensing regime is introduced for these providers.

However as a charitable organisation providing support for debtors through our network of volunteers, we are aware of the challenge that this would pose for the SVP. We agree with the European Commission's recommendation that voluntary debt counsellors should have a minimum level of training and skills and we are aware that the MABS money advice service has been recognised as being of a very high standard. As such, SVP members regularly refer clients to MABS for assistance, and MABS advisors often work closely with SVP volunteers. However, supporting debtors is only one way the SVP tries to achieve its aims of providing support and friendship; promoting self sufficiency and working for social justice.

The SVP recommends that rather than imposing a heavy regulatory burden on voluntary organisations which do not provide support for debtors as an end in itself, voluntary and charitable organisations should be able to refer clients on to licensed money advice providers. Therefore the licensing of both commercial and not-for-profit money and debt advice providers would allow voluntary organisations such as the SVP to refer clients to these services and to be assured that the services meet certain standards.

There is currently no recognised accreditation for MABS and other money advisors. To ensure that a quality service is delivered or indeed to attain the licence as proposed, the

development of recognised 3<sup>rd</sup> level qualifications for money advisors is essential. In the UK, money advice can only be practiced by licensed quality-assured practitioners. We would like to see similar requirements introduced in Ireland, such as those which are required by the Qualified Financial Advisor (QFA) Board.

- *Provisional Recommendation 7.39: Non judicial debt settlement*

The Society agrees with the Commission that the recovery of debt by non-courts based methods is extremely important.

- *Provisional Recommendation 7.57: Assets which should be exempted from distribution to creditors under formal bankruptcy procedures*

The current legislation regarding exemptions from seizure by the Sheriff should be extended and updated to include white goods (cooker, fridge etc) and other personal items which would now be deemed essential, and the value of which should reflect the current cost or value of such items.

- *Provisional Recommendation 7.58: Protecting the home of the debtor*

The debtor should only be required to sell his/her home as an absolute last resort. The lending institutions have a role to play in working with the debtor to ensure that this is the case.

The Society is concerned at the risk of homelessness which selling a debtor's home could result in. The debtor's home should be protected from sale if the debtor would have nowhere to live after the sale. Currently if you sell your home with nowhere to live after the sale you are deemed to have rendered yourself homeless and therefore have no right to local authority housing and may not be able to access social welfare housing supports. SVP recommends that this access to housing issue is reviewed before a provision is made to allow for the sale of the debtors home under the proposed debt settlement system.

Supports to assist people experiencing mortgage difficulties are under developed in Ireland. Mortgage interest supplement was designed in a period of low debt and high subsidies, and because of the stringent means test associated with receiving the payment many people are ineligible for the support. The LRC could make a suggestion for consideration that mortgage interest supplement be reformed to reflect the reality for people in need of the payment now, and that mortgage interest supplement is seen as a support for helping people to deal with over-indebtedness.

The SVP would welcome the introduction of a scheme to help homeowners who are struggling to manage mortgage repayments, as suggested recently by Minister Eamon Ryan, and we suggest that reform of the mortgage interest supplement scheme could be part of this plan.

- *Provisional Recommendation 7.60-1: Level of income which debtors should be allowed to retain under a statutory payment plan*

The Society is particularly concerned that people on low income will be able to make ends meet while at the same time paying off their debts. For some households reliant on social welfare and the minimum wage, these payments have been demonstrated to be inadequate to meet a minimum essential standard of living ([www.budgeting.ie](http://www.budgeting.ie)). Debt repayments will make it even more difficult for these households to get by. However, it would not be desirable to designate the entire level of standard social welfare payments as protected income, as this could result in those reliant on a social welfare income alone being deemed unsuitable for access to credit, increasing the risk that these households would resort to accessing high cost or illegal credit. The SVP agrees with the recommendation that a “zero-payment” plan should be available for debtors with no income above that required for maintaining a reasonable standard of living.

Research on minimum essential budgets should be consulted when the level of income that a debtor can retain under a statutory payment plan is being calculated. Such work in the Irish context has been carried out by the Vincentian Partnership for Justice ([www.budgeting.ie](http://www.budgeting.ie)).

- *Provisional Recommendation 7.94-6: Attachment of Earnings Mechanism*

The Society is supportive of the introduction of an attachment of earnings mechanism for the enforcement of judgement debts against individuals earning a regular income, including a social welfare payment. However rather than setting the levels of payment in statute, the level should be decided by the enforcement officer in each individual case. This would allow all of the circumstances affecting a household to be taken into consideration and should allow for a reasonable standard of living for the debtor. The rationale for including social welfare payments is so that people on social welfare will not be excluded from accessing credit. The implications of the attachment of earnings mechanism for certain groups (e.g. Gardai) should be investigated.

#### *7.108 & 7.109 Categories of debtors’ assets which should be exempt from seizure & exemption from seizure of car or vehicle.*

As mentioned above, white goods such as cooker, fridge, microwave and washing machine should be exempt from seizure.

The debtor’s car should be exempted from seizure where it is demonstrated to be essential for the household. In some cases the car will be used to transport children to and from school, to get to hospital appointments etc, and seizure of the car would result in serious hardship for the household.

#### **Other issues:**

- The SVP considers that the credit union movement should be subject to the same codes of conduct/practice as the banking industry. This is particularly important

now that the credit union has moved into larger scale lending and away from the small, cost of living lending which it was established for.

- The consultation paper refers to a national register of all credit, to include information about all credit advanced to customers. The SVP is concerned that, without addressing the issue of access to affordable credit for low income groups, this may result in increasing numbers of people on a low income being refused access to credit, and may result in these individuals resorting to illegal sources of credit. While the national register of credit would have advantages, without the development of social lending opportunities, it could have the effect of reducing access to credit for some people.

### **Conclusion**

One of the major concerns of the SVP is that low income households would have access to affordable credit, in order to help prevent over-indebtedness and to discourage people from going to legal or illegal moneylenders. We are also concerned that people who are experiencing problems with managing debt are protected from an increased risk of homelessness and undue hardship by the way their case is dealt with. At the same time, we recognise the need to balance these concerns with the rights of the creditor. The Society welcomes the discussion on alternatives to the courts for dealing with personal debtors and the recommendations which are made by the LRC in relation to protecting the basic living standards of people who are experiencing problems with debt. The Consultation paper also recognises the need to regulate the changing environment with regard to the emergence of commercial money advisors which the SVP fully supports.

For our part, the SVP encourages people in debt to engage with their lender and with MABS and not to bury their heads in the sand when it comes to dealing with their debt. The development of methods of dealing with debt which are less adversarial and which take into consideration the needs of all stakeholders is to be welcomed and should result in better outcomes for both the debtor and creditor.