

Consultation on licensing and regulation of personal insolvency practitioners under the Personal Insolvency Bill

**SUBMISSION OF THE
REGULATION OF PRACTICE
COMMITTEE
OF THE LAW SOCIETY OF IRELAND**

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1. Introduction

Confidence in an efficient, fair and functional insolvency regulatory regime is central to encouraging markets to operate fairly and efficiently, by ensuring that in the event of insolvency as much is returned to those extending credit as is reasonably possible within the boundaries of fairness and all practical possibility.¹ It may be argued that equitable and effective reprocessing of economic value through insolvency procedures is an important driver of economic growth.² From an economic viewpoint, and especially in the current financial situation, confidence in the personal insolvency practitioner and the regulation, authorisation and licensing of personal insolvency practitioners is essential. However, it is also imperative that any possibility of exploitation of debtors be avoided and adequate repayment plans must be sustainable, functional, and equitable. Such considerations, and other obvious complexities involved such as intricate financial arrangements, property rights, accounting and legal issues make it of the utmost importance that only the most qualified persons are licensed to operate as personal insolvency practitioners and that regulation and licensing of such persons is carried out by a professional and competent organisation.

This report argues that solicitors should be entitled to be personal insolvency practitioners and should be equally preferred to other professions and that the Law Society should be the licensing and regulatory authority for solicitor personal insolvency practitioners.

2. Solicitors should be entitled to be personal insolvency practitioners and should be equally preferred to other professions

A. Qualification:

Personal insolvency practitioners must first be capable of carrying out the work required applying qualities such as professionalism, competence and integrity. All parties involved in insolvency procedures require proper advice and guidance and need to be confident that the personal insolvency practitioner can carry out the work in a fair and competent manner. It is essential that, through a qualification or degree or through experience, a personal insolvency practitioner is able to demonstrate competence in the legal, accounting, and business issues likely to be involved in insolvency. Qualifying as a solicitor requires the attainment of such qualifications and working as a solicitor presents such experience. Solicitors already possess a high level of competence in legal and often in accounting and business matters. In addition, turn-around times for any required updating of knowledge for solicitors would be minimal and therefore cost effective. There must be confidence by the creditor and debtor that the personal insolvency practitioner will be able to exercise properly the powers conferred on him or her to discharge his or her statutory and common law functions, responsibilities, duties and accountabilities. The personal insolvency practitioner must be capable of foreseeing and monitoring any problems that may arise during the insolvency, maintain regular and professional contact with the debtor and creditors and obtaining and producing related reports as necessitated. The personal insolvency practitioner must be capable of dealing with any changes in the term of the agreement or changes in the debtor's circumstances and be capable of explaining, in a clear and transparent manner, any changed circumstances to creditors. It is argued that a solicitor acting as a personal insolvency practitioner will instil the required level of confidence and trust in both the creditor and debtor as solicitors

¹ Edward Davey, [UK] Minister for Employment Relations, Consumer and Postal Affairs, Department for Business Innovation & Skills, *Reforms to the Regulation of Insolvency Practitioners*, 3 April 2012.

² Edward Davey, [UK] Minister for Employment Relations, Consumer and Postal Affairs, Department for Business Innovation & Skills, *Reforms to the Regulation of Insolvency Practitioners*, 3 April 2012.

have attained, through rigorous examination and working experience, a high level of qualification and professionalism.

B. Independence:

As personal insolvency practitioners will have access to client funds and other classified or privative information, they must operate with a high level of independence and integrity. In addition, the proposed scheme imposes some very specific duties on personal insolvency practitioners and necessitates a number of important and objective assessments be made that must take into consideration not just the position of the debtor applicant but also the views of the creditors in selection of the most appropriate option.³ Therefore, it is imperative that the personal insolvency practitioner is capable of acting with independence, with an objective approach and with the goal of reaching the best solution benefiting all parties in an equitable manner. Acting in such situations in an objective manner requires a level of professional independence that solicitors already display in their daily practice as legal professionals. However, it is important to note that a solicitor representing the client in the initial insolvency must not be the personal insolvency practitioner solicitor due to conflict of interest.

C. Accountability:

Accountability and transparency must be at the heart of an equitable system dealing with the resolution of insolvency and therefore personal insolvency practitioners must be fully accountable. Solicitors are already regulated, licensed, supervised and hold professional indemnity insurance. Furthermore, a personal insolvency practitioner may have to receive and hold client funds. Solicitors receive extensive training in this regard and must maintain the highest standards as set out by the Law Society of Ireland. Failure to maintain such standards will result in sanctions for mishandling client funds therefore ensuring accountability and promoting honesty.

D. Integrity:

Personal insolvency practitioners must be conscientious and professional in their approach to, and the carrying out of, their work. It is of absolute importance that the exploitation of vulnerable debtors be avoided. The personal insolvency practitioner must be conscientious and professionally trained. Adequate repayment plans must be sustainable and equitable. Therefore, adequate resources must be allocated to any insolvency service to ensure that personal insolvency practitioners carry out their work fairly and propose plans that are financially practicable.⁴ Solicitors, as already noted, receive high levels of professional training and in addition solicitors acting as personal insolvency practitioners are subject to oversight and monitoring by the regulating body - the Law Society (both generally and in relation to individual cases to assure continuing competence and the propriety of actions and decisions). As noted above, it is proposed that licensing or authorisation should follow from the attainment of a professional qualification. However, it is also proposed that the continuance of such authorisation should depend on the maintenance of probity and professional standards. The maintenance of probity and professional standards would be achieved by having solicitors acting as personal insolvency practitioners

³ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) – Submission to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Free Legal Advice Centres, February 15th, 2012 at 2.

⁴ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) – Submission to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Free Legal Advice Centres, February 15th, 2012 at 2

regulated by the Law Society as the overseeing body for solicitor personal insolvency practitioners.

E. Skills/ Professionalism/ Capacity:

(i) Negotiation skills

Solicitors have a high level of negotiation, diplomatic and advocacy skills, which are important attributes for a personal insolvency practitioner to possess. Personal insolvency practitioners must be capable of effecting a high quality of engagement between him or her and the debtor in addition to him or her and the creditor. The role of the personal insolvency practitioner is a critical one and will require a very specific skill set and a high level of experience with negotiation between parties in high stress environments or conditions. The personal insolvency practitioner must be able to deal with intricate complexities and the individual realities of each specific case, which may vary greatly in complexity and encompass many different scenarios. It is submitted that solicitors embody the high level of qualification and expertise necessitated by the role.

(ii) People skills

It is submitted that solicitors as personal insolvency practitioners will have the capacity and experience to deal with people who are experiencing high levels of stress. Solicitors are already experienced in working with people who are often in the most stressful periods in their lives. Such experience shows that dealing with people who are over-indebted requires a practical, yet empathic and equitable, approach to the debtor if one is to ensure a positive and successful outcome.⁵ It is important that the personal insolvency practitioner is aware that the process involves high levels of worry, stress, uncertainty and intrusiveness for the debtor including loss of control of the debtor's standard of living, social status, a high degree of public embarrassment, fear of stigmatisation, and, finally, a loss of control by the debtor over his or her future to the personal insolvency practitioner. Although the personal insolvency practitioner's objectives may not always be aligned to the debtor's, he or she must act with integrity towards all of the parties. Many solicitors deal with people on a daily basis as part of their work, often under highly stressful or unfavourable circumstances and therefore have the necessary people skills to cope with the human aspect of the process.

(ii) Corporate experience and negotiation skills

Personal insolvency practitioners must have the capacity and experience to deal with large corporate entities, have the professional experience for negotiation with such entities and understand their *modus operandi*. Many solicitors already have had significant interaction with banks, financial providers and other large corporate entities and therefore understand their requirements, needs and how they operate. Part of a personal insolvency practitioner's challenge will be satisfying a requirement to influence creditors to act reasonably and pragmatically when they are asked to accept proposals from trustees. This aspect of the work is appropriate for solicitors as it will involve high level diplomatic and bargaining skills, skills already embodied within the legal profession.

⁵ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) –to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Money Advice and Budgeting Service, 2012 at 3.

(iv) Work skills and professional attributes

It is submitted that solicitors, as personal insolvency practitioners, will be diligent, thorough, meticulous and scrupulous in their work and possessed of a sense of urgency in the performance of their duties. Solicitors are capable of assessing risk and conducting their work in a cost effective manner. Solicitors are hard working, competent and result driven. All of these attributes are central to the concept of a successful personal insolvency practitioner. The 2010 Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, noted that private sector operators (such as solicitors), “may already possess the skills and expertise required to carry out the functions” of personal insolvency practitioners, and that “it would be wasteful for such knowledge to be under-used and/or duplicated by a public system.”⁶ It further noted that such operators, subject to meeting the requisite fitness standards through appropriate regulatory supervision, “may also be well placed to provide the services in an efficient manner, as they would be subject to commercial and competitive pressures.”⁷

It must be noted that the professional skills required for a competent personal insolvency practitioner are broad and varied. The role of a personal insolvency practitioner must, *inter alia*, involve holding meetings with debtors and creditors and providing information to the debtor about his or her options for addressing his or her financial situation.⁸ Furthermore, the personal insolvency practitioner must be capable of assisting in the completion by the debtor of financial statements and be capable of analysing the debtor’s financial affairs and assessing whether the debtor’s statement of affairs is complete and accurate.⁹ The personal insolvency practitioner must be able to prepare proposals that are viable and fair to all parties involved and assess whether any proposal is an acceptable alternative to other possible legal routes.¹⁰ Furthermore, he or she must be capable of assessing whether the proposal has a reasonable prospect of being accepted by creditors and completed in a sustainable and equitable manner by the debtor.¹¹ He or she must be capable of ensuring the arrangement proceeds in accordance with its accepted terms, maintain regular contact with the debtor and monitor any problems that may arise and take appropriate action in the event of such.¹² The personal insolvency practitioner must act professionally at all times, deal with any property in a manner specified in the agreement, respond in a timely manner to reasonable progress requests from creditors, respond in a timely manner to requests for information by debtors, answer any other related and reasonable enquiries, handle all monies and property professionally, and be capable of giving a full account of the administration of the agreement.¹³ It is submitted that solicitors are best placed professionally to undertake the stated responsibilities and uniquely possess all of the above attributes and qualifications.

⁶ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 26.

⁷ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 26.

⁸ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

⁹ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

¹⁰ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

¹¹ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

¹² Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

¹³ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 29–30.

Furthermore, lenders and creditors also have rights and their interests need protection. Although the integrity and honesty of debtors must be respected at all times, there is a certain possibility or suspicion that many debtors who are not bankrupt may already seek to write off some of their debts and at the same time hold on to their property. Solicitors, through an in-depth knowledge of law, will be able to detect any possible methods of legal deception and are therefore the best placed of all professions to ensure equity for both debtors and creditors.

F. Knowledge of related law and legal matters

Solicitors possess an in-depth knowledge of the Irish Constitution and related, often complex, property, family home, individual rights, and other related legal matters. Many solicitors also have an in-depth working knowledge of current personal debt and property legislation. Furthermore, many solicitors have an extensive knowledge of employment and revenue law. As all of these aspects of law and related legal matters may often be entangled within insolvency situations, this advantage places solicitors as one of the preferred professions competent to undertake insolvency work and deal competently with insolvency situations. Solicitors are already knowledgeable about the nature and scope of the duties to be performed and it will often be the case that the solicitor is specialised or has significant experience in the business of the debtor or, if this is not the case, can be easily trained or updated. Some solicitors are members of the Irish Society of Insolvency Practitioners, ISIP, which was set up approximately seven years ago to provide a forum for the consideration and discussion of insolvency law and practice. A large number of solicitors already practice in insolvency law and therefore have the necessary experience, or the capacity to garner the necessary experience in a short time period, to act as a personal insolvency practitioner. The Law Reform Commission noted in 2010 in the *Personal Debt Management and Debt Enforcement* report that, particularly due to current economic conditions, insolvency encompasses “a wide range of debtors, with varying levels of indebtedness and assets.”¹⁴ It noted that insolvency involves “individuals in financial difficulty with indebtedness standing at very high levels and who are in possession of considerable assets” but takes the view that a debt settlement arrangement procedure “should be available to individuals whose debts have arisen from business transactions as well as consumer debtors.”¹⁵ The Law Reform Commission noted:

Complicated issues of property ownership, revenue law and employment law may arise in such cases, and these issues may not fall within the core skills of money advisors. Therefore, it may be appropriate in such cases for an individual other than a money advisor, such as a solicitor or accountant, to take responsibility for preparing and administering a Debt Settlement Arrangement.¹⁶

The Law Reform Commission advised that the role of personal insolvency practitioner should be open to a category of provider that included “insolvency practitioners from the accountancy and legal professions, as well as others deemed to meet the requisite standards of fitness... subject to the requirement that all applicants should be licensed to act in these roles.”¹⁷

¹⁴ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 21.

¹⁵ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 21.

¹⁶ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 21.

¹⁷ Law Reform Commission Report, *Personal Debt Management and Debt Enforcement*, (LRC 100 - 2010), December 2010 at 21.

G. Other jurisdictions

Solicitors have for many years successfully acted and continue to act as personal insolvency practitioners in England and Wales, Scotland, and Northern Ireland.

3. The Law Society should be the licensing and regulatory authority for solicitor personal insolvency practitioners

As noted above, authorisation or licensing should follow from attainment of a professional qualification and the maintenance of probity and professional standards. This in turn suggests monitoring or supervision by a regulating body. It is submitted here that the Law Society is perfectly positioned as the historical regulator of the solicitors' profession to act in this capacity for solicitor personal insolvency practitioners. The Law Society provides the advantage of being best placed to set standards as it is a specialist professional body comprised of its members. This provides an advantage over a more generalist approach; foreseeable if provided by a Government or other non-specialist agency. An effective regulatory regime must be equitable though transparency, consistent in its approach and performance, accessible to both debtors and creditors, independent in its application of regulation and independent from any external interference or persuasion, and accountable. The personal insolvency process must be administered, and practitioners must be regulated and licensed by, an organised, structured, and professionally regulated entity. Such an entity must have the requisite codes, standards, resources, and disciplinary structures. The Law Society is such an entity and possesses a vast and unique experience in the successful regulation of the solicitors' legal profession. It should be noted that:

- a) Regulation and licensing must be based on clear criteria and should ensure that integrity, proficiency and reliability be at the heart of the service provided. Therefore, standards and guidelines, central to successful regulation, would need to be prepared and circulated. This would necessitate an agency/entity professional in its approach, experienced in the creation and implementation of standards/codes and guidelines, and resourceful in its operation.
- b) Personal insolvency practitioners must be subject to the strictest vetting and held to the highest standards as they will hold a high level of responsibility including, at times, the very futures of both debtors and creditors.
- c) The consistency of quality between personal insolvency practitioners is paramount as it is obvious that persons must receive equal treatment and such treatment should not differ due to any factors such as a variance in the skills or conscience of the personal insolvency practitioner. In addition, any insolvency service regulator must have strong powers to intervene in situations where creditors refuse to accept reasonable proposals (depending on the model of regulation embraced by the government). Therefore, the agency/entity must be active and committed in its approach to regulation and be absolutely independent.
- d) As the integrity and quality of the service provided by the personal insolvency practitioners is central to the success of the insolvency process, there must be in place an agency/entity capable of providing high quality training and with the experience of doing so.

- e) The independence of the agency/entity is paramount; the role for the personal insolvency practitioner must ensure that there is no conflict with, or duplication of, Government supported services that may be involved in other aspects of the insolvency.

The Law Society is well equipped to act as regulator for solicitor personal insolvency practitioners in that the Law Society:

- (a) has been entrusted by the Oireachtas with the prime responsibility for the education and regulation of the solicitors' profession;
- (b) has extensive experience in regulation;
- (c) has historically regulated the solicitors' legal profession with integrity, proficiency, and reliability as its core values;
- (d) ensures that its rule-making and regulatory enforcement functions are defined by public interest;
- (e) fully recognises that its responsibilities to the users of legal services and to the public at large transcend those to its members;
- (f) has a responsible, transparent and responsive approach to regulation;
- (g) sets and monitors standards of entry to the profession, standards of continuing training and development and standards of practice;
- (h) has the proven capability and experience in the production and circulation of high quality standards and guidelines;
- (i) has, by tradition, been professional in its approach to regulation, is experienced in such matters, and is resourceful in its operation;
- (j) has regulatory processes in place that fully meet human rights and fair procedure requirements;
- (k) undertakes regular assessments of the effectiveness of its regulation functions;
- (l) is keenly aware of the importance of keeping its rules and regulations under continual review to ensure that they remain in tune with the needs of users and consistent with the overriding needs of the public interest;
- (m) always regulated solicitors through the application of the highest standards and would continue to be active and committed in its approach to regulation with regard to solicitor personal insolvency practitioners;
- (n) has the capability and experience of providing suitable high quality training; and
- (o) is an independent entity therefore ensuring that there is no conflict of interest with, or duplication of, Government supported or other entities that may be involved in the insolvency.

The following points must also be taken into consideration:

- a) Appointing the Law Society as the licensing and regulatory authority for solicitor personal insolvency practitioners would significantly reduce the time period required to get the regulation and licensing process up and running. This is significant for initial lower running costs and effectiveness of the project. It is important that licensing is strictly applied and that past mistakes are avoided such as the situation where mortgage brokers were, during more affluent times, subject to light authorisation schemes under consumer credit legislation and the situation wherein debt management companies have never been subject to licensing.¹⁸ The Law Society has been effective in the regulation of solicitors through the strict application of such regulation and would continue to apply such an approach to the regulation and licensing of solicitor personal insolvency practitioners.
- b) The proposed legislation enables the appointment of a personal insolvency practitioner in a particular case. However, it will be the production and implementation of standards such as codes of ethics and guidelines, including safeguards and training by the professional regulator, that will ensure that personal insolvency practitioners only accept appointments when it is appropriate to do so and act with the highest level of integrity. The effectiveness of the application of these codes of ethics and guidelines will therefore determine whether the highest ethical standards are maintained within the profession. Consequently, the experience of the professional regulator in ensuring the application of such codes of ethics and guidelines is central to achieving this standard. The Law Society, as has been already noted, has such experience.
- c) Consideration must be given to any extra rules and regulations for personal insolvency practitioner solicitors. The Law Society has extensive experience in the formation of rules and regulations for its members. However, it is important to recognise the specialised nature of insolvency and this must be reflected in the production of additional regulations for solicitors who wish to act as personal insolvency practitioners.
- d) The Law Society is in a unique position to deal with the introduction and implementation of professional regulatory objectives. It has first hand experience, through its regulatory functions, of what can be achieved via standard setting, through consideration, maintenance, improvement, development and promotion of standards and guidance of a regulatory, ethical and “best practice” nature, and how to use previous and current regulatory objectives as a benchmark against which new standards may be judged.
- e) The Law Society has integrated a disciplinary process for an extensive period, has amassed vast experience in the regulation of the profession and has developed competent and effective complaint handling procedures and mechanisms which could be put to immediate use should failure by a personal insolvency practitioner to act within or comply with the guidelines, standards or codes of ethics result in disciplinary action by the relevant regulatory body.
- f) Standard setting should remain independent of government and it is vital for the new insolvency profession to itself play a role in standard setting. The Law Society is an

¹⁸ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) – Submission to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Free Legal Advice Centres, February 15th, 2012 at 2.

independent entity and is well placed to assess whether a standard will work when applied to a real life insolvency process.

- g) How the service is paid for is central to its effectiveness. The allocation of resources to an insolvency service is important to ensure that personal insolvency practitioners act in a fair manner and propose repayment plans that are financially viable.¹⁹ It is important that the method of payments does not incentivise an imbalance toward either creditor or debtor.²⁰ In addition, additional resources would be needed for the Law Society to deal with regulating solicitor personal insolvency practitioners. It is submitted that these should be paid for by additional regulatory fees for solicitors applying to be a solicitor personal insolvency practitioner. This will significantly reduce the need for external resource funding.

- g) The Law Society's vast regulatory experience is demonstrated through its monitoring of compliance by solicitors with the Solicitors Accounts Regulations and in its carrying out of investigations in relation to potential breaches occurring in relation to debit balances on client accounts, the designation of bank accounts, the location of client funds, the recording of deposit interest on general client deposit bank accounts, outstanding cheques, timely reconciliations, suspense accounts and office ledger balances, and so on.²¹

- h) The Law Society's Education Department provides proven, professional education and training courses to its members. It has the capacity to design and deliver high-quality specialised courses within a short time-frame with the involvement of recognized experts. This facility to respond to training needs in a focused and responsive manner further enhances the Law Society's suitability to act as the licensing and regulatory authority for solicitors acting as personal insolvency practitioners.

4. Summary of recommendations

1: Solicitors should be entitled to be personal insolvency practitioners and should be equally preferred to other professions

Personal insolvency practitioners must be capable of carrying out the work required in an independent, accountable and qualified manner and must encompass qualities such as professionalism, competence and integrity. All parties involved in insolvency procedures require proper advice and guidance and need to be confident that the personal insolvency practitioner can carry out the work in a fair and competent manner. It is essential that, through a qualification or degree or through experience, a personal insolvency practitioner is able to demonstrate competence in the legal, accounting, and business issues likely to be involved in insolvency. It is submitted that a solicitor acting as a personal insolvency practitioner will instil the required level of confidence and trust in both the creditor and debtor as solicitors have attained, through rigorous examination and working experience, a high level of qualification and professionalism.

¹⁹ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) – Submission to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Free Legal Advice Centres, February 15th, 2012 at 2.

²⁰ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) –to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Money Advice and Budgeting Service, 2012 at 3.

²¹ Eugene Smith, "Holding to account," (2009) 103(6) *Gazette of the Law Society Ireland* 22.

Solicitors are already regulated, licensed, supervised and hold professional indemnity insurance. Solicitors receive extensive training in relation to, *inter alia*, the holding of client funds and must maintain the highest standards as set out by the Law Society of Ireland.

It is submitted that solicitors have the necessary negotiation, diplomatic, and advocacy skills to successfully act as personal insolvency practitioners and will have the capacity and experience to deal with people who are experiencing high levels of stress. Furthermore, solicitors have the capacity and experience to deal with large corporate entities, have the professional experience for negotiation with such entities, and understand their *modus operandi*. Many solicitors have had significant interaction with banks, financial providers and other large corporate entities and therefore understand their requirements, needs, and how they operate. It is submitted that solicitors, as personal insolvency practitioners, will be diligent, thorough, meticulous and scrupulous in their work and possessed of a sense of urgency in the performance of their duties. Solicitors are capable of assessing risk and conducting their work in a cost effective manner. Solicitors are hard working, competent and result driven. Solicitors possess an in-depth knowledge of the Irish Constitution and related, often complex, property, family home, individual rights, and other related legal matters. Many solicitors also have an in-depth working knowledge of current personal debt and property legislation. Furthermore, many solicitors have an extensive knowledge of employment and revenue law. As all of these aspects of law and related legal matters may often be entangled within insolvency situations, this advantage places solicitors as one of the preferred professions competent to undertake insolvency work and deal competently with insolvency situations.

Recommendation: It is submitted that solicitors should be entitled to be personal insolvency practitioners and should be equally preferred to other professions.

2: The Law Society should be the licensing and regulatory authority for solicitor personal insolvency practitioners

Authorisation or licensing should follow from attainment of a professional qualification and the maintenance of probity and professional standards. This suggests monitoring or supervision by a regulating body. It is submitted that the Law Society is perfectly positioned as the historical regulator of the solicitors' profession to act in this capacity for solicitor personal insolvency practitioners. The Law Society provides the advantage of being best placed to set standards as it is a specialist professional body comprised of its members. This provides an advantage over a more generalist approach; foreseeable if provided by a Government or other non-specialist agency. An effective regulatory regime must be equitable though transparency, consistent in its approach and performance, accessible to both debtors and creditors, independent in its application of regulation and independent from any external interference or persuasion, and accountable. The personal insolvency process must be administered, and practitioners must be regulated and licensed by an organised, structured, and professionally regulated entity. Such an entity must have the requisite codes, standards, resources, and disciplinary structures.

It is submitted that the Law Society is such an entity and possesses a vast and absolute experience in the successful regulation of the solicitors' legal profession. The Law Society has historically regulated the solicitors' legal profession with integrity, proficiency, and reliability as its core values. It has the proven capability and experience in the production and circulation of high quality standards and guidelines. The Law Society has by tradition been professional in its approach to regulation, is experienced in such matters, and is resourceful in its operation. The Law Society is an independent entity therefore ensuring that there is no conflict of interest with,

or duplication of, Government supported or other entities that may be involved in the insolvency.

Recommendation: It is submitted that the Law Society should be the licensing and regulatory authority for solicitor personal insolvency practitioners

3: Professional personal insolvency practitioners should fund their regulation by paying a registration fee to their professional body

How the service is paid for will be central to its effectiveness. The allocation of resources to an insolvency service is important to ensure that personal insolvency practitioners act in a fair manner and propose repayment plans that are financially viable.²² It is important that the method of payments does not incentivise an imbalance toward either creditor or debtor.²³ In addition, additional resources would be needed for the Law Society to deal with regulating solicitor personal insolvency practitioners. It is submitted that these should be paid for by additional regulatory fees for solicitors applying to be a solicitor personal insolvency practitioner. This will significantly reduce the need for external resource funding. It is submitted that the implementation of a system whereby professional personal insolvency practitioners fund their regulation by paying a registration fee to their professional body is a very positive consideration in the current economic environment and will help save the Irish Government a considerable amount of money. The Law Society of Ireland is perfectly structurally positioned to embrace such a relationship with solicitor personal insolvency practitioners.

Recommendation: It is submitted that embracing a system wherein professional personal insolvency practitioners fund their regulation by paying a registration fee to their professional body will provide considerable savings for the Irish Government.

4: Provision of education and training through professional bodies

As already noted, Ireland needs to introduce a personal insolvency practitioner regime very quickly. It is submitted that the initial personal insolvency practitioners be selected from the legal and other professions and be individuals with proven insolvency experience and competency. Through courses designed and provided by their professional bodies, these individuals could provide training to newer members of the professions who wish to be personal insolvency practitioners. Establishing a new body to design a syllabus, set up an exam board, set out professional training, the study period, passing exams and licensing would take a considerable amount of time, possibly years. Ireland currently does not have the luxury of time and a personal insolvency practitioner regime is required as soon as possible. Many experienced solicitors already possess considerable insolvency experience and therefore the solicitors' legal profession is already perfectly positioned to provide and receive such services and training, organised through the Education Department of the Law Society.

²² Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) – Submission to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Free Legal Advice Centres, February 15th, 2012 at 2.

²³ Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, Report on hearings in relation to the Scheme of the Personal Insolvency Bill, February 2012, (Prn. A12/0355) 31/JDAE/004) –to Justice, Defence and Equality Joint Oireachtas Committee on Behalf of Money Advice and Budgeting Service, 2012 at 3.

Recommendation: It is submitted that the requisite education and training should be provided through the professional bodies, with the Law Society of Ireland providing same for solicitor personal insolvency practitioners through its Education Department.