

Department of Justice's Consultation to examine the role of Sheriffs and the work they carry out on behalf of the State

Submission of the Money Advice and Budgeting Service (MABS)

24 March 2023

The Money Advice and Budgeting Service (MABS)¹ welcomes the invitation to contribute to the Department of Justice's Consultation to examine the role of Sheriffs and the work they carry out on behalf of the State. We recognise the establishment of the Review Group last year, tasked with reviewing all aspects of the role of Sheriff and related services around the country. In this brief, we outline our perspective into the Sheriff system as it currently operates and offer feedback on the Terms of Reference (TOR) for the Review Group.² This topic strongly intersects with the work of MABS, in terms of secured lending for instance with the MABS Court Mentor Programme, the administration of Abhaile and the targeted support provided by MABS Dedicated Mortgage Advisers (DMAs).³ In terms of unsecured lending, this intersection occurs in the area of civil debt enforcement and fines collection. We therefore request an opportunity to present and further share our experience and expertise to the Review Group, and to have continued engagement throughout the Sheriff's Review process.

In an effort to influence policy, MABS regularly makes submissions on issues associated with the legal process and consumer debt. As far back as 1999, out of concern for our clients, MABS made a submission to the then Department of Justice, Equality and Law Reform pursuing an overhaul of the way non-contested consumer debt was processed in the legal system and seeking an out-of-court procedure which would recognise a borrower's overall situation and their ability to pay. Over a number of years, MABS has continually supported and led efforts to put in place 'out-of-court' or voluntary debt settlement and debt management mechanisms in order to holistically address consumers' financial difficulties. This is evidenced, for example, by the agreed

¹ Established in 1992, the Money Advice and Budgeting Service (MABS) helps persons to cope with personal debt and take control of their own financial wellbeing. It is a free, confidential and independent service that operates from over 60 offices nationwide. MABS is funded and supported by the Citizens Information Board. There are currently 10 Companies in the MABS network – 8 Regional Companies (North Dublin MABS, Dublin South MABS, North Connacht & Ulster MABS, North Leinster MABS, North Munster MABS, South Connacht MABS, South Leinster MABS and South Munster MABS), National Traveller MABS and MABS Support CLG. MABS Support CLG is dedicated to the provision of supports to the regional staff in the MABS network and providing specialist expertise on a range of areas including: learning and professional development, training, case management and technical support, social policy and research, community education and financial inclusion.

² [gov.ie](http://www.gov.ie) - [Sheriffs Review Group \(www.gov.ie\)](http://www.gov.ie)

³ For more these initiatives: [Abhaile - MABS](#) and [What is... The DMA and Accountants Service - MABS](#)

operational protocol between MABS and the Banking Payments Federation of Ireland (BPF⁴),⁴ where lenders have committed to working with MABS to help clients address debt issues and put suitable payment plans in place.

MABS is therefore in a unique position to offer a ground-up perspective on the operation of Sheriffs and their functions across the country, in particular in relation to tax enforcement and debt collection. Front line MABS services, due in large part to the nature of the one-on-one casework and client-focused advocacy model practiced by MABS Money Advisers and Dedicated Mortgage Advisers (DMAs), come into regular contact with local Sheriffs and County Registrars, Court Messengers as well as Revenue Sheriffs. This submission is based on the extensive experience of MABS front line staff and their on-going engagement with these officials.

In preparation for this submission, MABS Support CLG (the network's technical support and development company), held virtual workshops with representatives of MABS Regional companies⁵ to garner their experience with local Sheriffs and the wider debt enforcement system as it currently operates. Some insights from this engagement include the following:

- MABS staff, in particular those operating in rural counties, report a positive working relationship with County Registrars. These Advisers highlight that their local Registrar regularly and repeatedly recommends MABS to persons presenting in the Courts and consults openly and directly with MABS staff as needed. Some Advisers cited incidences where certain Registrars would hold off executing an Order for Possession until a client has consulted with a MABS Adviser, thus helping to ensure that persons are 'given every chance possible' to pursue an alternative route/ voluntary arrangement.
- MABS staff also report that Revenue Sheriffs are, for the most part, fair and balanced in their pursuit of revenue debts and related fees. The most important aspect is client engagement in this process; if clients engage with Revenue, an arrangement is usually considered. If a MABS staff member engages with Revenue Sheriffs on a client's behalf, the Sheriffs will, in most cases, work with the MABS representative and their client to put a sustainable and affordable repayment plan in place.
- In recent years, MABS are not aware of incidences where debt collectors/ agents commissioned by Sheriffs have used excessive intimidation or aggressive tactics in the pursuit of a debt. We are aware that this is a concern in other European contexts, and there are calls for a harmonised legal approach

⁴ https://mabs.ie/wp-content/uploads/2021/04/BPFI_MABS_Operational_Protocol_2015.pdf

⁵ Due to the quick timeframe for this submission, we were not able to meet with representatives of all regional companies, but met with front line staff based in: North Connacht and Ulster, South Munster, North Leinster and South Leinster. However, this document was also reviewed by MABS Regional Managers across the country prior to submission. If given the opportunity to provide further evidence to this Review Group, we would do a wider scoping exercise to ensure participation across all eight Regional MABS companies.

at EU-level to address harmful personal debt collection practices in EU countries.⁶ We would note that there are occasionally patterns of excessive contact by creditors with borrowers, and some clients who fall into arrears have been subjected to intimidating practices such as threats to contact employers directly.

From the MABS perspective, the current system of dealing with enforcement orders for personal debts is fair and reasonable, as it gives persons ample opportunity to engage and have their needs assessed and considered as part of this process. In particular, we would argue that the more open the individual Sheriffs and Registrars are to working directly with local MABS staff, the better the outcome for all parties.

Therefore, in reference to the Sheriff Review Group and the group's Terms of Reference (TOR), we would like to take this opportunity to highlight the following four points.

1. Importance of MABS engagement in the Sheriff's Review Process

As highlighted previously, MABS has years of experience of securing voluntary arrangements for debt collection – with creditors of all kinds, including private lenders (banks and credit unions) as well as public agencies (Local Authorities and Revenue). Ideally, consultation with MABS is vital if steps are being taken to revise the current legislative and formal basis for the collection of debt, as this is central to our work. MABS is a unique borrower-support organisation, helping to ensure that the debt management and debt collection process is holistic, fair and takes into account the full financial situation of the borrower and their ability (or, at times, inability) to repay/ service a debt.

While we have been informed that it is too late for a representative of an organisation like ourselves with this specific expertise to take part in the Review Group, we hope that MABS will be kept informed as the Group progresses its work over the next number of months. We would also welcome any opportunity to present or expand upon our views further.

2. Reservations in terms of the possibility of further privatisation of personal debt enforcement

We observe in the Sheriff Review Group's TOR that the group is exploring the Sheriff system's 'value for money' for the State, and as such is considering the 'future viability of the role of Sheriff in relation to services provided for and on behalf of the State'. We recognise the role that private agencies and persons play in the current personal debt and insolvency system, such as the private nature of Personal Insolvency Practitioners (PIPs) and the use of the private tender process to hire Revenue Sheriffs and bailiffs. As the system operates,

⁶ For more on this, see: [A Critical Assessment of the Need for Harmonization of the Legal Framework Concerning Abusive Informal Debt Collection Practices in the European Union | SpringerLink](#)

private sector actors are responsible for performing the actual work of collecting the debt owed, and are remunerated on a fee/commission-basis. We also recognise that some would argue that there is a case to be made for the ‘costs’ of the remedying issues of over-indebtedness to be borne by credit industry/ private actors, rather than by the State.⁷

However, we at MABS would have strong reservations against any further increase/relegation of the debt enforcement and personal debt collection process to the private sector. We maintain that this system, in particular the current powers and authorities conferred on County Registrars, in terms of their role in debt collection, should remain publically funded and State-supported. This is due in part to the boarder societal outlook and nuanced approach to personal debt support that MABS embodies in our work. Based on MABS experience, providing solutions and resolutions to personal debt difficulties, and ensuring there are opportunities for rehabilitation as needed, yields significant and immeasurable public returns for society.⁸

3. Importance of understanding the complex nature of service delivery and modernisation

In the Review Group’s TOR, there is mention of the group examining ‘the nature of services to be delivered, and how they are delivered’ as well as ‘the extent to which debt collection can be modernised.’ We support efforts to modernise and make more efficient this process, as long as these efforts take a humane and realistic approach, keeping the well-being and dignity of the borrower at the centre. This is achieved through ensuring that arrangements entered into for the collection of debt are affordable for the borrower and therefore sustainable. As mentioned previously, MABS, the State’s money advice and budgeting service, and has over 30 years’ experience in this area.

Recently, the State’s delivery of public services and information about public services has been moving towards more digital, online platforms and automated processing systems. Due to the multifaceted nature of personal debt, and the complexity of the cases that MABS supports, we would caution against efforts to modernise the current debt collection system through online delivery and/or automation. Research published in June 2022 by Citizen’s Information Board⁹ highlights how the movement of Irish public services and public information online, while arguably more ‘efficient’ and ‘flexible’ in terms of service delivery, can further exacerbate incidences of digital exclusion. It is also important to note, in relation to debt collection and international practice, recently published academic research from Australia outlines the specific drawbacks to

⁷ Personal Debt Management and Debt Enforcement (Law Reform Commission Report, 2010): [r100debt.pdf \(lawreform.ie\)](https://www.lawreform.ie/r100debt.pdf)

⁸ For more on the impact of debt support services and , see this work in the UK on the broader economic impact of public debt advice: [economic-impact-of-debt-advice-main-report.pdf \(moneyandpensionservice.org.uk\)](https://www.moneyandpensionservice.org.uk/economic-impact-of-debt-advice-main-report.pdf)

⁹ [CIB Digital Exclusion \(citizensinformationboard.ie\)](https://www.citizeninformationboard.ie/CIB-Digital-Exclusion)

‘automatic debt recovery’ processes, in particular the use of ‘algorithmic decision-making’ and how this can ‘[cause] harm to citizens and reputational and financial damage to a government’.¹⁰

4. Supporting a debt enforcement system that addresses power imbalance

MABS emphasises that the debt management and debt enforcement processes should seek to support borrower engagement at all levels, and work towards levelling the fundamental power imbalance that occurs when a person faces financial difficulty and falls behind on servicing a debt. MABS has observed that this power imbalance can take many forms, and is present when the creditor or entity owed is a private entity or a State-run institution.¹¹ This is the general ethos that MABS applies in its work for, and on behalf of, over-indebted clients, and it is reflected in the initiatives we have undertaken and supported to influence a better balance between creditors and borrower collectively.

Again, we greatly appreciate the opportunity to contribute to this consultation and we hope to have further engagement with the Department of Justice and the Sheriff Review Group on these issues over the coming months.

Contact:

Amie Lajoie, Social Policy and Research Executive, MABS Support CLG

amie_lajoie@mabs.ie

¹⁰ [Full article: Algorithmic decision-making and system destructiveness: A case of automatic debt recovery \(tandfonline.com\)](#)

¹¹ For example, we are currently engaging with Limerick HAP Shared Services Centre (SSC) in terms of the limited options for repayment arrangements when handling cases of rental arrears for MABS clients in receipt of HAP (Housing Assistance Payment).