THE HIGH COURT

[2026] IEHC 621

Record Number 2022/56 CA

IN THE MATTER OF

PART 3, CHAPTER 4 OF THE PERSONAL INSOLVENCY ACTS 2012 TO 2015

AND IN THE MATTER OF

JOHN O'DRISCOLL OF KILCREA, OVENS, COUNTY CORK

("THE DEBTOR")

AND IN THE MATTER OF

AN APPLICATION PURSUANT TO SECTION 112

OF THE PERSONAL INSOLVENCY ACTS 2012 TO 2021

JUDGMENT of Ms Justice Nessa Cahill delivered on 11 September 2026

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A. INTRODUCTION

1. The Personal Insolvency Act 2012 ("*the 2012 Act*" or "*the Act*") was introduced in the wake of the financial crisis. It has the stated objective of ameliorating the difficulties experienced by insolvent debtors by enabling them to resolve their indebtedness in an orderly and rational manner without recourse to bankruptcy, so as to ensure their active participation in economic activity in the State. This is said to be in the interests of the common good including the common interest in the stability of the financial system in the State.

2. To advance these objectives, the personal insolvency regime facilitates debtors and creditors entering into arrangements, which may make significant changes to, or even forgive, the repayment obligations of the debtor. The Act was amended by the Personal Insolvency (Amendment) Act 2015 to allow for such arrangements to be imposed compulsorily on unwilling creditors by court order in certain circumstances. The Act and the regime which it established demand and require full transparency, disclosure and cooperation in the engagement between debtors, creditors and personal insolvency practitioners. Given the severity of its potential impact, it is important that the rules of the personal insolvency regime are properly respected and complied with; that its objectives are adhered to; and that it is not abused.

3. These proceedings date back to early 2022. They have resulted in two reserved judgments of the Supreme Court and multiple orders of the Circuit Court and the High Court. This is, however, the first time the merits of the case have come to be assessed. There are several dimensions to the dispute, but the fundamental question is a relatively net one: was Mr O'Driscoll insolvent when he

obtained the benefit of a protective certificate and when his personal insolvency arrangement was proposed?

4. In advancing the objection that Mr O'Driscoll was not insolvent at the material times, Mr O'Flynn relies on various factors. These include allegations that, based on the assets and liabilities as disclosed in the prescribed financial statement ("*PFS*") prepared at the start of the insolvency process, Mr O'Driscoll was in fact solvent on both a balance sheet and on a cash flow basis. It is also alleged that his income and assets were not correctly stated; that the arrears were deliberately orchestrated; that monies were fraudulently taken from a company of which they are both shareholders; and that the application was an abuse of process.

B. BACKGROUND

Ezeon Entertainment Limited

5. In 2007, Mr. John O'Driscoll ("*the Debtor*"), Mr. Michael O'Flynn ("*the Objecting Creditor*") and Mr Ronan O'Gara, set up Ezeon Entertainment Limited ("*Ezeon*" or "*the Company*"), with each of them owning one third of the shares in the Company. Using borrowings from Anglo Irish Bank ("*the Loan*"), the Company purchased "The Silly Goose" pub located at No. 3 Hanover Place, Washington Street in Cork City and the associated liquor licence, renovated the premises and operated the pub. The pub traded successfully for a number of years, with Mr O'Driscoll appearing to have taken primary responsibility for its operation and management. He was also the sole director of the Company at the material times and his sister was the Company secretary.

6. Following the nationalisation of Anglo Irish Bank, the Loan was transferred to NAMA and then to Carbon Finance Limited. On or about 30 October 2014 Mr O'Flynn personally refinanced the Loan and took it over and a new loan agreement was put in place ("*the Loan Agreement*"). Both Mr O'Driscoll and Mr O'Flynn signed the Loan Agreement on behalf of the Company and Mr O'Driscoll and Mr O'Gara provided a guarantee in respect of the Loan ("*the Guarantee*"). It is said on affidavit by Mr Ted Foley that the debt owed to Mr O'Flynn as of 9 July 2018 was acknowledged by Mr O'Driscoll on that date to amount to €2.554 million.

7. After the onset of the Covid pandemic in March 2020, Mr O'Driscoll decided that the pub should cease trading and it closed down.

8. On 26 August 2021, Mr O'Flynn wrote *via* his solicitors to Mr O'Driscoll, complaining that Mr O'Driscoll was failing to engage with the Company's accountant, Mr Gerry Sheehan, to facilitate the processing of the pub's insurance claim for Covid-related business interruption, and requesting that he so engage.

9. On 22 August 2022, a new director, Mr Ted Foley, was appointed to the board of Ezeon (although there is some uncertainty as to the date of appointment, Mr Foley's affidavit referring to appointment on both 22 August 2022 and 28 October 2022). Mr O'Driscoll resigned as director on 28 November 2022.

The Personal Insolvency Process

10. On 21 September 2021, Mr O'Driscoll contacted a personal insolvency practitioner , Mr Alan McGee ("*the Practitioner*"). The evidence of Mr McGee in his replying affidavit sworn on 9 March 2022, is that it was "*clear*" to him that Mr O'Driscoll was unable to pay his debts as they fell due and, as such, that he was insolvent.

11. A prescribed financial statement ("*the PFS*") was completed on 8 November 2021. Following an application by the Practitioner, a protective certificate ("*PC*") was issued by the High Court on 11 November 2021 under the Personal Insolvency Act 2012 (as amended in 2015 and 2021).

12. The assets recorded in the PFS are:

    a. Investment property totalling €522,181, which comprises

        - 100% ownership of 77 Leslie's Arch, Old Quarter, Ballincollig, Cork, valued at € 395,000 ("*Leslie's Arch*") and yielding a monthly income of €1,400;

        - a one-seventh share of two other properties (1 Waltham Abbey, Old Quarter, Ballincollig, Cork and 72 Yewlands, Douglas, Cork);

    b. Pension/antique valued at €23,433.54;

    c. Bank account balance of €1,577.56.

    d. One-third shareholding in Ezeon valued at €1.

    e. 0.01% shareholding in One to Three Nightlife Investments Limited, valued at €1 (stated to operate the Brick Lane Bar, which was described as having made a loss in the previous 2 years).

13. The liabilities listed in the PFS are:

    a. Mortgage secured on Leslie's Arch owed to Bank of Ireland Mortgage Bank u.c. ("Bank of Ireland") with outstanding balance of €207,810.38. Stated to be €32,237.40 in arrears, with gross rental income "*insufficient to service the mortgage*". It is said that "*repayments are made only sporadically*" and "*the loan is unsustainable*". Current monthly repayments due are stated to be €1,611.87.

    b. Overdraft owed to Bank of Ireland of €196.76.

c. A debt to the Revenue Commissioners of €68,182.87 is stated to relate to liabilities "*going back to 2002*" and it is said "*debt is called in full*" and liabilities "*are being demanded*".

d. Local property tax of €1,925.84 is said to be owing to the Revenue Commissioners related to Leslie's Arch.

e. A personal guarantee owed to Mr O'Flynn is listed as a guarantee in respect of the liabilities of Ezeon for €2,214,137. The PFS states "*at the date of the application his Personal Guarantee has not yet been called in. Debt has not been proven*." It is valued at €1.

14. The only income recorded in the PFS is "*Salary/wages – gross €2,525.25*". This is said to be based on the "*last filed Income Tax Returns*" and to include directors' income from Ezeon, rental income and PAYE income. It is said that "*going forward the directors and rental income will cease, thus reducing income substantially*". The PFS does not indicate how that figure is broken down as between those different asserted income streams.

15. The total monthly expenditure before payment of debts/arrears is listed in the PFS as €1,271.88.

16. A copy of the PFS and of the PC were served on Mr O'Flynn on 12 November 2021. In the accompanying correspondence, the Practitioner called on Mr O'Flynn to file a proof of debt within 14 days and informed him that, if he should fail to prove his debt, he would not be entitled to vote at the creditors' meeting or to any share or distribution to be made under the 2012 Act.

17. Mr O'Flynn (*via* his solicitor) then engaged in correspondence with the Practitioner. The first substantive letter was dated 23 November 2021 and included the following assertions:

a) that it was clear from the assets and liabilities set out on the PFS that Mr O'Driscoll was not insolvent,

b) that Mr O'Flynn considered that the proposal by Mr O'Driscoll to enter into the personal insolvency process was an abuse of process and he reserved the right to raise this with the Court,

c) that Mr O'Driscoll had additional assets which had not been disclosed in the PFS, in particular a vehicle,

d) that Mr O'Driscoll, as the sole director of the Company, made a decision not to reopen the pub and/or generate income to make repayments of his debts, and did not make an effort to run a commercially profitable enterprise to contribute to the discharge of his debts, which was said to be further evidence of abuse of process,

e) that Mr O'Driscoll had withdrawn monies from the Company for his personal use in the amount of €15,725, which he had acknowledged were wrongly taken, which he had not repaid (despite committing to do so) and which were not included in the PFS ("*the Ezeon Debt*"),

f) that Mr O'Driscoll entered this process to avoid his obligations to creditors and potential future creditors on foot of the Guarantee,

g) that the sale of a property at 77 Leslie's Arch would facilitate the discharge of all outstanding current liabilities, leaving a surplus,

h) that it was "*not possible to quantify the overall amount that may be due to our client pursuant to the guarantee as executed as that will largely be dependent on the disposal proceeds from the sale of the public house (if sold) and/or any profits that may be made from the public house whilst trading*".

18. Mr O'Flynn requested a copy of the valuations and evidence of the market values of the assets and of the salary and other income referenced in the PFS. An extension of time to lodge a proof of debt of 14 days beyond the date of any response from the Practitioner was requested.

19. On 24 November 2021, Bank of Ireland wrote to the Practitioner setting out Mr O'Driscoll's accounts and the balance owing in each. The letter states "*we currently have a range of restructuring options available for secured debt which may be suitable for the customer*". It then lists available options, including interest only repayments, term extensions, capitalisation of arrears and "*any other measures that may be appropriate to the Debtor's individual circumstances*". Mr O'Flynn states in his second affidavit that this letter indicates that there was no prior communication with Bank of Ireland and, specifically, no communication with that creditor before the opinion was formed that Mr O'Driscoll was insolvent. This is not denied.

20. By letter dated 24 November 2021, the Practitioner responded in quite terse terms with a list of short responses including a statement that "*it is denied that Mr O'Driscoll is not insolvent and that his entry into a personal insolvency process is an abuse of process as claimed*" and "*I do not accept your concern in respect of the bona fide nature of this particular process*". The Practitioner also requested any information regarding other assets be furnished to him "*as the independent* [personal insolvency practitioner]" and stated that he has now written to the Company seeking a proof of debt which will be included in the PFS. It is significant to note that the Practitioner refused the extension of time and again called on Mr O'Flynn to prove his debt in the following terms:

> "*Please furnish a proof of debt within the prescribed timeline. Please note that a personal guarantee which has not been called at the date of the granting of the protective certificate will be treated as a contingent liability of €1.*"

21. On 26 November 2021, Mr O'Flynn responded to the Practitioner restating his belief "*in the strongest possible terms*" that Mr O'Driscoll was abusing the insolvency process and that the information in the PFS was not a "*complete and accurate statement of the debtor's assets, liabilities, income and expenditure*". It was described as a "*pre-packaged application*" designed to permit Mr O'Driscoll to escape his obligations to Mr O'Flynn.

22. The valuations of 71 Yewlands, Douglas, Co Cork and of 1 Waltham Abbey, Ballincollig, Co Cork were disputed and it was pointed out that it was presumed he had a motor vehicle, but same was not disclosed in the PFS and that no information was given regarding the property at 77 Leslie's Arch. It was said that the sale of that property could of itself clear the current debts.

23. A further point emphasised in the letter of 26 November 2021 was that the information in the PFS disclosed a monthly surplus of income over expenditure of €1,253.37, as well as monthly rental income of €1,400, and that the assertions of inadequate income were not supported by the information provided. It was said that there is no justification for the arrears on the Loan and that the assertions that the loan was "*unsustainable*" were not credible.

24. The other points made in the letter of 23 November 2021 were repeated. Mr O'Flynn indicated an intention to apply for leave to make an application under section 96(3) of the 2012 Act for the sums due to him to be excluded from the process.

25. On 29 November 2021, the Practitioner responded and once again denied that this was an abuse of process and again refused an extension of time for the filing of a proof of debt. It was said that no motor vehicle was owned by Mr O'Driscoll; that the property valuations were adequate evidence of their value; and that the analysis of Mr O'Driscoll's income "*was not accepted*" and that the income was calculated based on 2020 tax returns. The Practitioner stated that no proof of debt was furnished within the prescribed timeline; that the Guarantee had not been called in and that it "*will be treated as a contingent liability of €1*". The Practitioner indicated that he would not refrain from further action in this matter.

26. On 14 December 2021, a second PFS was completed by Mr O'Driscoll, which had been amended to include the Ezeon Debt ("*the Second PFS*"). The Second PFS also includes a calculation of assets less liabilities, which shows a surplus of €208,169.13. It also includes a calculation that the net monthly disposable income was €1,253.37, with the monthly payment due to Bank of Ireland being €1,611.87.

27. On the same day, the Practitioner furnished notice to Mr O'Flynn (and other creditors) of the creditors' meeting scheduled for 5 January 2022. With that notice were enclosed the proposed personal insolvency arrangement ("*the PIA*"), and other documents required by section 107 of the 2012 Act. This included the Second PFS.

28. There appears to have been a letter sent on behalf of Mr O'Flynn on 15 December 2021, requesting the cancellation of the creditors' meeting. This letter was not exhibited to Mr O'Flynn's grounding affidavit or included elsewhere in the papers (possibly owing to the fact that it seems to have included some references to informal negotiations).

29. By letter dated 16 December 2021, the Practitioner responded rejecting "*in the strongest possible terms*" the suggestion that there was an abuse of process; repeating the belief that Mr O'Driscoll meets the test for insolvency; and denying the allegation of inaccuracies in the PFS or lack of transparency by Mr O'Driscoll. The Practitioner noted that "*it is standard practice in personal insolvency to value contingent liabilities at €1*". He confirmed that the creditors' meeting would proceed on 5 January 2022.

30. On 17 December 2021, Mr O'Flynn again wrote to the Practitioner, repeating his view that Mr O'Driscoll was not insolvent. He noted the creditors' meeting was proceeding and concluded that he would "*not be dignifying this process with either an attendance at said meeting or a vote in respect of same*".

31. The creditors' meeting was held on 5 January 2022 and the PIA was approved by those creditors whose debts had been proven in the process and which debts were to be 100% discharged under the PIA, namely Bank of Ireland and the Revenue Commissioners. The Practitioner then wrote to the creditors, including Mr O'Flynn, informing them that the PIA had been approved at the creditors' meeting and that any notice of objection could be lodged within 14 days under section 112(3) of the 2012 Act .

32. The sale of the property at 77 Leslie's Arch was agreed on 31 January 2022.

Legal Proceedings

33. On 20 December 2021, the applicant issued a motion seeking two primary reliefs: leave to execute against Mr O'Driscoll pursuant to section 96(3) of the 2012 Act and an order resisting the coming into effect of the PIA pursuant to section 115(2)(b) of the 2012 Act ("*the Motion*"). This Motion was formally listed for hearing, but was not addressed or advanced at the hearing.

34. Following receipt of the notice that the PIA had been approved, Mr O'Flynn lodged a notice of objection on 13 January 2022 ("*the Objection*") grounded on an affidavit sworn by him on 20 December 2021. A replying affidavit was sworn by the Practitioner on 9 March 2022.

35. In that affidavit, the Practitioner makes several factual averments, including that Mr O'Driscoll resides with his parents, works on the family farm and earns the sum of €741 as net monthly income. He states that the Guarantee was given a nominal value of €1, "*in accordance with the normal practice in personal insolvency*".

36. On 15 March 2022, another personal insolvency practitioner (Barry Donoghue) swore an affidavit in apparent reply to that of the Practitioner. This affidavit was not opened or relied upon at the hearing of this matter. A supplemental affidavit was sworn by Mr O'Flynn (the date of swearing is not apparent from the affidavit).

37. Both the Motion and the Objection were listed before the Circuit Court (Judge Meghen) on 16 March 2022. As recounted in later affidavits, a preliminary application was made at that hearing challenging the standing of Mr O'Flynn to make an objection on the ground that he had not sought to prove his debt in the personal insolvency process. Judge Meghen granted that preliminary application and ruled that Mr O'Flynn lacked standing. There was no hearing as to the merit of the Objection. The order of the Circuit Court perfected on that date approved the coming into effect of the PIA, refused the Objection and refused the relief sought by the Motion. Costs were awarded against Mr O'Flynn, in favour of Mr O'Driscoll ("*the Circuit Court Order*").

38. On 25 March 2022, Mr O'Flynn filed a notice of appeal against the Circuit Court Order and, on 19 May 2022, he applied for a stay on the Circuit Court Order pending that appeal. That application for a stay was withdrawn, as recorded in an order of the Circuit Court of 20 May 2022.

39. On Monday, 25 July 2022, the High Court (Owens J.) heard the appeal and made an order dismissing it and upholding the decision of the Circuit Court Judge that Mr O'Flynn lacked locus standi to object to the coming into the effect of the PIA ("*the High Court Order*").

40. Mr O'Flynn then made an application in the Circuit Court on 29 July 2022 for an extension of time to prove his debt. That application was refused by Judge Meghen. An appeal was lodged against that decision on 9 August 2022, adjourned and ultimately heard by the High Court (Owens J.) on 15 January 2024. In the meantime, a number of events occurred.

41. First, a forensic accounting report was commissioned by Ezeon and prepared by Neil Hughes of Baker Tilly regarding the affairs of Ezeon and specifically directed to alleged misappropriation of the Company's assets. The report was produced on 24 October 2022 ("*the Baker Tilly Report*").

42. Second, Ezeon applied to set aside the High Court Order on the basis of non-disclosure, misrepresentation, misappropriation, fraud and breach of fair procedures ("*the Ezeon Application*"). I have seen written submissions delivered by Ezeon in that Application, but not the notice of motion itself, any affidavits filed or any resulting Court order. I was informed that the Application was refused by the High Court on the basis it was out of time.

43. Third, on 16 August 2022 Mr O'Flynn applied for leave to appeal the High Court Order and leave was granted by the Supreme Court on 7 February 2023. That appeal was allowed and, by judgment delivered on 30 November 2023 (*Re O'Driscoll (No 1)* [2023] IESC 32, [2024] 1 IR 493), the High Court Order was overturned. The Supreme Court (Dunne J., with O'Donnell C.J., O'Malley, Hogan

and Donnelly JJ in agreement) concluded that there was nothing in the 2012 Act which precluded a creditor who has not proved his debt from lodging a notice of objection to a PIA. It was held that regardless of whether debts were proved, any creditor was bound by the outcome of the personal insolvency process and had *locus standi* to lodge an objection to a PIA. The Court found that there is no basis in the 2012 Act to treat non-proving creditors differently (save for section 98(2)(b) which is not engaged here).

44. The following paragraph was included at the end of the Supreme Court judgment:

> *"it would seem, therefore, that it would be appropriate for this matter to be remitted for a further consideration of the issues as to the entitlement of the appellant herein to prove his debt, and, secondly, to lodge a notice of objection to the PIA*."

45. On 15 January 2024, Mr O'Flynn's appeal against the Circuit Court order of 29 July 2022 refusing to extend time to prove the debt came on for hearing in the High Court. Mr O'Flynn sought liberty to prove his debt in the sum of €1. Having heard from the parties, Owens J. granted the appeal and made an order that Mr O'Flynn's debt be deemed proven in the sum of €1 pursuant to section 2(b) of the First Schedule of the Bankruptcy Acts. It appears from the relief sought and the transcript of that hearing that Mr O'Flynn very specifically sought an order proving his debt of €1. This is a point on which the Practitioner places some emphasis in these proceedings. The Practitioner also asserts in his affidavit of 29 October 2025 that the sum of €1 was paid and the debt discharged.

46. A second judgment was delivered by the Supreme Court on 15 May 2024 (*Re O'Driscoll (No 2)* [2024] IESC 19). Two outstanding issues were addressed by the Supreme Court in that judgment, namely, the question of remittal for the purpose of hearing the notice of objection to the PIA, and secondly, the question of costs. Mr O'Flynn argued that the matter should be remitted to the Circuit Court, as the matter had never been considered substantively by that court. The Supreme Court rejected that argument, emphasising that the appeal to the High Court was a full rehearing at which the High Court could have afforded Mr O'Flynn standing and then dealt with the substance of the Objection. As the order made by the High Court was being set aside, Dunne J. ruled that the correct approach was that "*the matter should now return to the point where the jurisdiction of the High Court was invoked*" (at § 31). Each party was directed to bear their own costs.

Remitted High Court Proceedings

47. Following the remittal of the proceedings, the matter was listed in the High Court and correspondence was exchanged between the sides.

48. Mr O'Flynn made an application to admit new evidence and to amend the Notice of Objection for the purpose of those remitted proceedings. This application was grounded on an affidavit sworn by him on 13 September 2024. The evidence sought to be admitted comprised an affidavit sworn by

Mr O'Flynn himself, one sworn by the Company's accountant, Mr Sheehan, and another affidavit by the then-director of Ezeon, Mr Ted Foley. Leave was also sought to adduce the affidavits and exhibits filed in the Ezeon Application (including the Baker Tilly Report). In advancing the application, Mr O'Flynn relied on factors such as the passage of time, the need to update the facts and figures, public policy considerations and the fact that there was no prior hearing of the merits of the application. The Practitioner declined to consent to the application.

49. On 16 December 2024, the High Court (Owens J.) granted the relief sought by Mr O'Flynn, permitting the addition of two new grounds of objection and granting leave for the filing of the additional affidavits. The matter was assigned a hearing date of 20 May 2025. A further affidavit was then sworn by the Practitioner on 27 October 2025 and the matter was ultimately listed for hearing before me on 10 February 2026. Among the exhibits to the Practitioner's affidavit was a version of the PFS which appears to have been updated to reflect the transactions that have taken place since the Second PFS ("*the draft PFS*"). The purpose of this document or what reliance may be placed on it is not at all clear. I do not attach any weight to it, but I would note that it lists the debt owed to Mr O'Flynn as continuing to be valued at €1 and, like the original PFS, shows balance sheet solvency. It also lists no debts as being currently due or in arrears (there is a CGT figure of €17,330.97 which appears to be owing on the sale of one of the investment properties and a balance owed to an accountant). Extracts from Mr O'Driscoll's bank account statements from January to July 2025 are also exhibited (without explanation). I do not see any basis to attach probative weight to these bank statements, although it is surprising that they are the only bank statements provided throughout the papers in this matter. I would also note that these bank statements do not support the narrative of the expenses in the draft PFS as being "*as per ISI guidelines for a single adult*". Most of the expenses that are reflected in the bank statements are not within the scope or scale of the expenses estimated by the Insolvency Service of Ireland ("*ISI*") to represent reasonable living expenses.

C. GENERAL COMMENTS

50. There are some general points that may be noted at the outset to contextualise the issues raised here.

51. It is part of the architecture and foundation of the regime for dealing with personal insolvency that there must be cooperation and engagement in good faith between the debtor, creditors, and the personal insolvency practitioner at all stages of the process. The system only functions if there is transparency and full disclosure of assets and liabilities. The debtor's specific obligation of good faith is at the core of the Act. This can be seen most clearly in section 118:

> "*(1) A debtor who participates in any process under this Chapter is under an obligation to act in good faith, and in his or her dealings with the personal insolvency practitioner concerned*

to make full disclosure to that practitioner of all of his or her assets, income and liabilities and of all other circumstances that are reasonably likely to have a bearing on the ability of the debtor to make payments to his or her creditors.

(2) A debtor who participates in any part of the process of applying for or operating a Personal Insolvency Arrangement shall co-operate fully in the process, and in particular comply with any reasonable request from the personal insolvency practitioner to provide assistance, documents and information necessary for the application of the process to the debtor's case or the carrying out of the personal insolvency practitioner's functions, including any debt, tax, employment, business, social welfare or other financial records.

(3) A debtor in respect of whom a Personal Insolvency Arrangement is in effect is under an obligation to inform the personal insolvency practitioner as soon as reasonably practicable of any material change in the debtor's circumstances, particularly an increase or decrease in the level of the debtor's assets, liabilities or income, which would affect the debtor's ability to make repayments under the Personal Insolvency Arrangement.

…

(6) A debtor shall inform the personal insolvency practitioner as soon as reasonably practicable after becoming aware of any inaccuracy or omission in the debtor's statement of affairs based on the Prescribed Financial Statement."

52. These obligations were emphasised by McDonald J. in *Re Taffe* [2018] IEHC 468 at §58:

"*it is also necessary, in my view, to bear in mind that under s. 118(1) of the 2012 Act, a specific obligation is imposed on a debtor who participates in any process under Chapter 4 (which deals with PIA) to (a) act in good faith and (b) to make full disclosure to the personal insolvency practitioner of (inter alia) all of his or her assets, income and liabilities. It seems to me that this obligation to act in good faith extends to all steps involving the debtor under Chapter 4 of the 2012 Act. This obligation would accordingly extend to the requirement under s. 99(1) and s. 106(1) to agree the terms of the PIA and to consent to the proposal for the PIA being put before the meeting of creditors*."

53. In terms of the role of the personal insolvency practitioner, section 52 imposes very specific – and onerous – obligations to advise the debtor of various matters, following the completion of the PFS, including advice as to:

- options for addressing the financial difficulties faced, including the appropriateness of proposing a PIA, having regard to the debtor's financial and other circumstances (among other matters);

- eligibility to make a proposal for a PIA;
- other options (if any) available to the debtor, including advice relating to...

  "*negotiation with a creditor or creditors with a view to adjusting the terms of a debt owed to that creditor or creditors, whether as part of any arrears process or otherwise*"

54. After that advice is given and considered, the debtor may instruct the practitioner to make a proposal for a PIA. The next step is that the practitioner is required to prepare a statement under section 54:

    "*On receipt of an instruction under section 53, the personal insolvency practitioner shall complete a statement confirming that he or she is of the opinion that*

    (a) the information contained in the debtor's Prescribed Financial Statement is complete and accurate;

    (b) the debtor is eligible under section 57 or 91, as the case may be, to make a proposal for a Debt Settlement Arrangement or Personal Insolvency Arrangement, as the case may be;

    (c) having considered the Prescribed Financial Statement completed by the debtor, there is no likelihood of the debtor becoming solvent within the period of 5 years commencing on the date on which the statement is made;

    (d) having regard to the debtor's circumstances as set out in the Prescribed Financial Statement, it is appropriate for the debtor to make a proposal for … a Personal Insolvency Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than 6 years."

55. Under section 91(2A), a practitioner may confirm that, having regard to the financial circumstances as disclosed in the PFS, and the terms of the alternative payment arrangement referenced in section 91(1)(g), "*it is the belief of that practitioner that the debtor, if he or she were not to enter into a Personal Insolvency Arrangement, would be unlikely to become solvent within the period of 5 years..*".

56. In addition to the express statutory obligations imposed on personal insolvency practitioners,

    "*the personal insolvency legislation imposes a heavy burden on a PIP coming before the court seeking a protective certificate, an extension of that certificate, or approval of a personal insolvency arrangement, to act with the utmost good faith and frankness… a PIP charged with the role of engaging with the court, the creditors and the Personal Insolvency Service of Ireland* *must do so with the greatest of solemnity and candour, and he is not in my view to see his role as being one of an advocate presenting in an adversarial system an argument in support of his client, but rather as a person who has responsibility and obligations to all elements of the system*." (*Re Nugent* [2016] IEHC 127, §59, *per* Baker J.)

57. It warrants emphasis given some of the arguments advanced in this case that a personal insolvency process is not a forum for persons to challenge the conduct of directors of companies or seek to resolve private contractual or personal disputes. It is intended to operate in the spirit and on the basis of transparency and cooperation so as to ensure that persons who are insolvent and entitled to avail of the regime established by the 2012 Act have the opportunity, and are given protection, to endeavour to do so. Complaints about how a company was managed or run are not matters that can properly form part of a court's assessment of an application for approval of, or objections to, a PIA under the 2012 Act.

58. Turning to the specific circumstances of these proceedings, as is usual in personal insolvency proceedings, this matter was heard on affidavit. This does not lessen the evidential burden on the parties. The starting point is that, when an objection is made to a PIA (as here), the burden rests on Mr O'Flynn to demonstrate the existence of a valid ground of objection. This was confirmed by the Supreme Court in *Re O'Connor* [2023] IESC 31 (§130). However, there is a burden on the Practitioner and Mr O'Driscoll also. It is not sufficient to make bare assertions or rely on general statements. This was emphasised strongly in *Re O'Connor*. It is somewhat surprising that, despite several allegations of grave wrong-doing and lack of candour on his part, Mr O'Driscoll elected not to swear any affidavit in this matter and the Practitioner swore only two relatively short affidavits (the second being just 5 pages in length). There was no application to cross-examine Mr O'Flynn or any other deponents on the affidavits sworn by them in support of the Objection. Given the absence of contradictory evidence from Mr O'Driscoll or challenge by means of cross-examination, the facts that are alleged in the affidavits sworn by those with relevant means of knowledge are not in dispute.

59. Another matter that is not and cannot be in dispute is that the standing of Mr O'Flynn to advance the Objection has been definitively determined. While the Practitioner refers to the failure by Mr O'Flynn to prove his debt during the process and relies heavily on his decision to belatedly seek to prove the debt at the level of €1, these points cannot detract from the established right of Mr O'Flynn to make this application under section 112 of the 2012 Act.

60. This does not mean that these proceedings now fit neatly within the mould of the 2012 Act. On the contrary, the evolution of this matter is far from what was envisaged by that Act. To begin with, the application made by Mr O'Flynn is by way of "*an objection to the coming into effect*" of the PIA (section 112(2)). A separate motion was also issued in December 2021, which is formally

before me, but which was not advanced or addressed. The only application determined here is the notice of objection filed on 13 January 2022. Section 114(3) provides that the effect of upholding such an objection is that "*the Personal Insolvency Arrangement procedure shall be deemed to have come to an end*".

61. The same terminology is used in three other provisions dealing with PIAs. Section 106(3) provides that, if a creditors' meeting does not take place before the PC expires, the PIA procedure "*shall be deemed to have come to an end*". Section 111A applies when there is only one creditor. It similarly provides that, if that creditor does not approve the PIA proposal, the PIA procedure "*shall be deemed to have come to an end*" (section 111A(8)). If the requisite notice is not given to that single creditor under section 111A, the PIA procedure shall also be "*deemed to have come to an end*" (section 111A(9)). Each of these provisions signifies that the procedure ends and the PIA never comes into effect. That is clearly the intended chronology for an objection also: the objection should be determined before the PIA is approved and takes effect.

62. Section 115(1) makes this plain:

> "*Where—*
>
> *(a) no objection is lodged by a creditor with the appropriate court within 14 days of the giving of the notice referred to in section 112, or*
>
> *(b) an objection is lodged with the appropriate court and the matter is determined by the court on the basis that the objection should not be allowed,*
>
> *the appropriate court shall proceed to consider, in accordance with this section, whether to approve the coming into effect of the Personal Insolvency Arrangement.*"

63. However, this case did not follow that sequence. What happened here is that the PIA was approved (and the standing to make the objection rejected) by the Circuit Court, a decision which was upheld by the High Court on appeal. While Mr O'Flynn issued a motion for a stay on the Circuit Court Order, he did not proceed with that application and it seems no stay was sought in the High Court.

64. The upshot is that the Practitioner appears to have treated the PIA as coming into effect on the date of the Circuit Court Order (16 March 2022). However, by that date, the principal step provided for in the PIA, the sale of the property at 77 Leslie's Arch, had already taken place. The Practitioner communicated through his solicitors on 10 August 2022 that the PIA concluded early on 29 July 2022 and that a completion certificate was lodged with the ISI to that effect. According to that correspondence, the Practitioner was then of the view that the PIA was concluded within the meaning of section 125 of the Act. This position was maintained by the Practitioner throughout these proceedings, including in his affidavit of 29 October 2025.

65. However, since then, Mr O'Flynn filed an application for leave to appeal to the Supreme Court on 16 August 2022; the Supreme Court granted leave to appeal on 7 February 2023; and then overturned the High Court decision on 30 November 2023, remitting the Objection to this Court for substantive determination (*Re O'Driscoll (No 1)* [2023] IESC 32, [2024] 1 IR 493). Further, as set out already, Mr O'Flynn ultimately obtained leave of the High Court on 15 January 2024 to prove his debt at the value of €1 in the PIA. The 2012 Act does not contemplate such a sequence of events and does not expressly address the consequences of a PIA having been acted on before it was approved, and while an objection under section 112 is pending.

66. Two questions arise now: First, what is the status of the PIA? Second, what is the correct treatment of the steps that have been taken pursuant to the PIA? These questions should be assessed in light of Mr O'Flynn's position that he is not seeking to disturb or unwind the steps taken in implementation of the PIA to date, such as the discharge of the debts included in the PIA or the fees paid to the Practitioner.

67. Taking the first question, it is plain from the Supreme Court judgment in *Re O'Driscoll (No 1)* that the Objection is live and must be substantively determined. I am satisfied that any statutory certificate that was issued (and which I have not seen) ostensibly concluding the PIA process cannot displace the jurisdiction of this court to hear the Objection to the PIA as filed under section 112 and as remitted by the Supreme Court to this Court for determination. Consequently, the PIA process must be treated as an ongoing one, and it falls to me to decide whether to uphold the Objection. Indeed, it seems that, despite the steps taken by the Practitioner to conclude the PIA, it has since been treated as an open, ongoing process. Most notably, the High Court on 15 January 2024 granted leave for the proof of Mr O'Flynn's debt in the sum of €1. While the Practitioner maintains in the affidavit sworn on 29 October 2025 that the PIA concluded on 29 July 2022, that does not marry with that court order of 15 January 2024, and I am satisfied that the PIA must be treated as still in being for the purpose of this application.

68. The second question is the effect of a decision to uphold an objection, after a PIA has been in effect. According to section 114(3), if the objection is upheld, the PIA procedure "*shall be deemed to have come to an end*". The meaning of these words and their impact here require some thought. As already noted, the other provisions that include this formula (sections 106 and 111A) clearly envisage the PIA procedure coming to an end before the PIA comes into effect.

69. There are other circumstances in which a PIA may conclude early, particularly in circumstances of failure or early termination. According to section 122(1)

> "[w]*ithout prejudice to section 120, a creditor or a personal insolvency practitioner may, as respects a Personal Insolvency Arrangement, at any time during which the arrangement*

concerned is in effect, apply to the appropriate court to have that Personal Insolvency Arrangement terminated".

70. It sets out the grounds of such an application. There is a firm contrast between an objection under section 120 to a PIA coming into effect, which should be decided pre-approval, and an application under section 122 to terminate a PIA when it is already in effect, although there is some overlap between the grounds that may be relied upon under both. Section 123 then deals with situations of default by a debtor leading to the failure and termination of the PIA on that basis.

71. The effect of such a termination or failure of a PIA is covered by section 124(1), which provides that, where a PIA "*has been deemed to have failed or has terminated under this Chapter, the debtor shall thereupon be liable in full for all debts covered by the* [PIA].. *unless (a) the terms of the* [PIA] *provide otherwise; or (b) the appropriate court has made an order otherwise*". This provision is based on PIAs having failed or been terminated, and not PIA procedures which were deemed to have "*come to an end*" under section 114. Section 124(2) is notable: "*subsection (1) has effect without prejudice to the validity of any act done or property disposed of in accordance with the Personal Insolvency Arrangement*."

72. So, if a PIA comes into effect but then terminates or fails, any steps that have been taken are saved by section 124(2) and the court has a broad discretion as to the outstanding liabilities of the debtor. This is expressly provided for in the Act. This provision is not strictly applicable here as section 114 does not provide for a PIA to be treated as failed or terminated. There is no equivalent to section 124 for situations in which the PIA procedure "*is deemed to have come to an end*", owing to an objection, as opposed to either failing under section 123 or terminating early under section 122.

73. However, I am satisfied that if an objection is upheld in the unusual circumstances of this case, it must have real consequences. The aim of the 2012 Act must be that Mr O'Flynn should (at a minimum) not be subject to the PIA and Mr O'Driscoll should "*thereupon be liable in full for all debts covered by the* [PIA]", applying the same approach that is evidenced in section 124(1). I also consider that, while section 124(2) is not directly applicable to a decision under section 114, it does indicate a legislative intention that the termination or conclusion of a PIA process should not interfere with vested rights or concluded contracts. I am satisfied that this is also the correct approach to adopt when an objection is upheld, after a PIA has already been acted upon.

74. These consequences of an order upholding an objection after a PIA has come into effect should be subject to the possibility that the appropriate court may "*order otherwise*" (as also enshrined in section 124(1)).

75. In summary, I am of the view that the correct approach to this matter is that, if the Objection by Mr O'Flynn is upheld, the PIA should then be treated as having "*come to an end*" as of the date of the

order giving effect to this judgment. This should not affect the validity of any steps that were already taken or payments made on the basis of the PIA prior to the date of that order.

D. Legislation

76. The 2012 Act permits a creditor (such as Mr O'Flynn) to object to a PIA which has been approved by a meeting of creditors. This is provided for in section 112 (3): "[a]*creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in subsection (2)…*"

77. According to section 114,

> "*(1) The grounds on which objection may be made to the coming into effect of the Personal Insolvency Arrangement are those specified in section 120.*
> *(2) The hearing of an objection lodged under section 112(3) shall be heard with all due expedition.*
> *(3) Where the appropriate court upholds the objection to the Personal Insolvency Arrangement, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end, and the protective certificate issued under section 95 shall cease to have effect*."

78. It is a unique feature of this case that, while the Objection was filed in January 2022 within the strict time limit imposed by the Act and the matter did come on for hearing before the Circuit Court promptly, it was 4 years before the merits of the Objection were listed for hearing. This is a consequence of the complex history of the matter, and I am satisfied that the concept of "*due expedition*" in section 114(2) must be interpreted in light of, and in order to accommodate, the unusual circumstances of this case.

79. This application is made under section 120 of the 2012 Act, which provides:

> "*The grounds on which a Personal Insolvency Arrangement may be challenged by a creditor under section 114 are, without prejudice to section 122, limited to the following matters:*
>
> *(a) that the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under section 95 arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement;*
>
> *(b) the procedural requirements specified in this Act were not complied with;*
>
> *(c) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor;*

(d) the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in section 91;

(e) the Personal Insolvency Arrangement unfairly prejudices the interests of a creditor;

(f) the debtor has committed an offence under this Act, which causes a material detriment to the creditor;

(g) the debtor had entered into a transaction with a person at an undervalue within the preceding 3 years that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue);

(h) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference)."

80. Section 91 contains the mandatory criteria which a debtor must satisfy in order to be eligible to make a proposal for a PIA. These include that the secured debts must not exceed €3 million; the debtor must have the requisite connection with the State (domicile, ordinary residence or place of business); there must be at least one secured creditor with an interest in a property situate in the State.

81. The most important criterion for the purpose of this matter is in section 91(1)(d), which requires "*that the debtor is insolvent*". Section 91(1)(e) requires the debtor to complete a PFS and a statutory declaration that it is "*a complete and accurate statement of the debtor's assets, liabilities, income and expenditure*." The personal insolvency practitioner must also prepare a statement setting out their opinion as to the accuracy and completeness of the PFS and confirming the eligibility of the debtor to avail of a PIA. The personal insolvency practitioner must state their opinion that "*there is a likelihood of the debtor becoming solvent within the period of 5 years*" from the date of the PFS. This is provided for in section 54 and incorporated as an eligibility criterion via section 91(1)(f).

E. ISSUES TO BE DETERMINED

82. The only grounds on which the Objection to the PIA may be upheld are those listed in section 120. Mr O'Flynn here relies on each of sections 120(a) to (e). Taking these in turn, the test under section 120(a) is whether Mr O'Driscoll arranged his affairs with a view to being able to apply for a PIA. Mr O'Flynn alleges that the apparent default in debt repayments was avoidable and it was unclear how it arose, given Mr O'Driscoll's assets and income. It is contended that he arranged his affairs to come within the 2012 Act.

83. The test under section 120(b) is whether the procedural requirements of the Act were complied with. Mr O'Flynn points under this heading to issues with the PFS, such as the Ezeon debt and incorrectly stated income. Section 120(c) concerns whether there was a material inaccuracy or omission in the statement of affairs (based on the PFS) which causes a material detriment to the creditor. Mr O'Flynn again relies on debts owed to Ezeon and deflated income figures. The question under section 120(d) is whether the criteria of section 91 were met at the time the PIA was proposed. In this regard, Mr O'Flynn points to the assertion that Mr O'Driscoll was solvent (on a cashflow and balance sheet basis) at that time. Finally, section 120(e) concerns whether the PIA unfairly prejudices the interests of Mr O'Flynn. Mr O'Flynn points to the writing off of his debt and relies on *Re Cremin* [2021] IEHC 80.

84. From this very high-level summary of the grounds relied upon, it is apparent that the central questions are whether Mr O'Driscoll was insolvent at the date of the PIA proposal; whether the Ezeon Debt was an excluded debt; and whether Mr O'Driscoll arranged his affairs to become eligible to apply for a PIA. There are other issues raised by Mr O'Flynn, such as the treatment of income and other errors in the PFS. There is also a more fundamental question as to the conduct of the personal insolvency process in this case. I will address some of these matters later in the judgment.

(a) Whether Mr O'Driscoll is "insolvent"

85. The fundamental question that must be asked at the outset, and which Mr O'Flynn's counsel describes as the main plank of the case, is whether Mr O'Driscoll satisfied the threshold criterion of insolvency when he formulated the PFS and proposed the PIA.

Meaning of the term "insolvency"

86. According to section 2(1) of the 2012 Act, "*'insolvent', in relation to a debtor, shall be construed as meaning that the debtor is unable to pay his or her debts in full as they fall due*". The meaning of this term was considered and determined authoritatively by McDonald J. in *Re Nuzum* [2020] IEHC 164. According to that judgment, the form of insolvency intended by the 2012 Act is "*cash flow*" not "*balance sheet*" insolvency. The question therefore is whether the debtor is able to pay his debts as they fall due, not whether the value of his assets outweigh the total amount of his indebtedness. Any assets that are "*readily realisable*" may be taken into account in deciding the debtor's available cash.

87. McDonald J. noted that balance sheet insolvency was developed in a company law context because the legislation (section 570(d) of the Companies Act 2014) includes a reference to the need to consider "*contingent and prospective liabilities*" when determining whether a company is unable

to pay its debts as they fall due. By contrast, the definition of "*insolvent*" in section 2(1) of the 2012 Act contains no requirement to have regard to prospective or contingent liabilities and, accordingly, "*the balance sheet test is not applicable for the purposes of determining whether a debtor is insolvent for the purposes of the 2012-2015 Acts*" (§51). McDonald J. also examined the assets that may be relevant in assessing cashflow insolvency, finding that the court will have regard to readily realisable assets held by the debtor or company concerned, even if it could take "*a number of days or even a few weeks*" to convert the assets into cash. The availability of cash to discharge debts is not determinative of solvency. With regard to a family home (the asset that was at issue in *Re Nuzum*), the court found that a family home is unlikely to constitute a readily realisable asset, but that, if there is substantial equity in the family home, this may render it "*absurd*" to regard the debtor as insolvent. The example given is that "*if a family home is worth €1 million and the only debts of the owner amount to €40,000, it is unlikely that it would be appropriate to invoke the application of the 2012 Act*" (§51).

88. In the specific circumstances of *Re Nuzum*, McDonald J. found that the substantial equity owned by the debtors in the principal private residence ("*PPR*") was not such as to make it "*absurd*" for it to be disregarded when determining solvency; that the debtors were not able to discharge their debts as they fell due; and were in fact insolvent. The Court however refused to approve the PIA on several grounds, including that the costs of the debtors remaining in the PPR were disproportionately large and unrealistic within the meaning of section 115A(9)(d) and the court was not satisfied that the PIA would resolve their indebtedness for the purpose of section 115A(9)(b)(i).

89. That judgment was cited and approved by the Supreme Court in *Re O'Connor* [2023] IESC 31 (Baker J., Dunne, O'Malley, Woulfe and Murray JJ. in agreement). In *Re O'Connor* itself, the primary issue was whether or not the debtor was insolvent given the assets he owned. The debtor in question was a farmer who was solvent on a balance sheet basis, with assets far exceeding his liabilities, but the High Court determined that his assets – such as his farmland and livestock – were not readily realisable and he was therefore insolvent for the purposes of the 2012 Act and eligible for a PIA. The PIA was then approved. On appeal, the Supreme Court upheld the finding of insolvency but remitted the section 115A application to the High Court on the basis of the inadequacy of the evidence and of the assessment of the PIA.

90. The debtor's ownership of his PPR and farmland and livestock was an important part of the legal and factual context of *Re O'Connor*. The facts here are quite different, as Mr O'Driscoll does not own a PPR or any assets which are asserted to be for use in business or a trade. The treatment of those questions in the judgment in *Re O'Connor* is not therefore directly relevant here. There are however a number of broader points which are made in the Supreme Court judgment which have a direct impact for this case (and for personal insolvency cases more generally).

91. First, as previously confirmed in *Re Nuzum*, the test of solvency is a cashflow test. It is not however based on available cash assets or liquidity. The Court confirmed, "[t]*he test for insolvency is not so narrow as to mean that a debtor is insolvent if he or she cannot pay liabilities as they fall due from immediately accessible or available cash assets*" (§88). Such an approach was said to be too restrictive for the personal insolvency regime (§67).

92. Second, the same test of insolvency applies when an initial application is made for a PC and when an application is made in objection to a PIA under section 112 (as in this case). In both circumstances, the court must determine whether the eligibility criterion of insolvency (contained in section 91(1)(d)) has been met. The application of the test may however differ, as there should be more extensive evidence available at the latter stage regarding the assets held by the debtor. This was explained as follows in the judgment of the Supreme Court:

> "*No reading of the provisions of s.114 can yield a different interpretation of the eligibility test in s.91 than that applicable at the stage of entry into the process, but the application of the test will be different as the scrutiny the relevant court may engage at that point in time, where a creditor raises what is in essence a jurisdictional objection to the coming into force of the PIA by reason of failure by the debtor to establish insolvency, involves a consideration of the nature of the assets, whether they or some of them are readily realisable, and taking all circumstances into account, whether the debtor should not be permitted to enter into a PIA because insolvency has not been established*" (§124).

93. Third, contingent, prospective or future liabilities are not relevant to assessing insolvency under the 2012 Act (*Re Nuzum* was endorsed on this point):

> "*It is in my view relevant that the Oireachtas deliberately chose to define insolvency by reference to an inability to pay debts as they fall due, and thus to introduce a temporal element to the analysis, rather than testing solvency by the mathematical calculation of whether assets exceed liabilities. Because the definition imports an immediacy, and a present ability to pay debts as they fall due, it does not require an assessment of prospective and contingent liabilities or a contingent ability to pay*" (at §88).

94. Fourth, the key criteria for deciding whether an asset is "*readily realisable*" for the purpose of assessing cashflow solvency are the nature of the asset and whether, how and – significantly – when it can be sold. Any impediments to the sale of the assets may be relevant. The importance of the timeframe for sale of an asset was revisited repeatedly throughout the judgment of Baker J:

- "*The test is one of timing and of the nature of the assets*" (§88).

- "*Liquidity is not the focus of an assessment of solvency, but timing is. On a test of cash flow insolvency where what is to be ascertained is whether a debtor can meet debts as they fall due, the assessment must have regard to the immediacy of the timeframe within which the debts are due and whether the debtor is in a position to meet the debts within that time*" (at §79).
- Referring to judgments from courts in Australia, New Zealand and Canada, Baker J. observed, "[t]*hese dicta offer useful guidance and show the importance of timing, and the fact-specific nature of the inquiry as to insolvency, the importance of evidence to ascertaining the nature of the assets, the feasibility of sale and when illiquid assets can be realised to provide funds to discharge debts which have fallen due. The prospect that a sale or mortgage of otherwise illiquid assets could achieve funds to pay off a debt when it is due or can reasonably be expected to be paid, must be real and tangible*" (at §87).
- "*Whether an asset is "readily realisable" incorporates all of these elements of a reasonable prospect of a realisation within a time that is acceptable or reasonably acceptable to a creditor or, as the case may be, to a court. It involves an assessment of value, the nature of the market, the prospect of a purchaser becoming available and whether there exists any impediment to realisation which is likely to be difficult to overcome or which makes a timeframe for realisation difficult to assess or unascertainable*" (at §89).
- whether assets are "*readily realisable*" requires an assessment "*of the assets, their nature, and the circumstances including any practical, legal, or temporal limitations to immediate sale or mortgage, and an assessment of the market value and the likelihood of a prospective purchaser acquiring the assets in a relatively short time*" (§87).
- "*The appropriate test requires a court to have regard to the speed and ease with which an asset may be realised for the purposes of ascertaining whether the asset is "readily realisable" for the purposes of ascertaining insolvency*" (§132).

What these statements signify is the key role of timing: it is necessary to weigh the time when the debts are actually due, as against the timeframe in which cash could be obtained from the sale, pledge or mortgage of available assets.

95. Fifth, given the tests set out above, Baker J. indicated that sufficient evidence must be placed before the court when an application is made under the 2012 Act to show the nature of the assets held, the market for their sale, and any other factors related to the assets in question. The Court held that there is "…*a requirement on the part of the debtor, or as the case may be, the creditor, to explain and offer evidence as to the market forces and other relevant factors so as to enable a court to form*

a considered view as to whether assets are capable of being realised and in what timeframe" (at §77).

96. Sixth, real property assets are squarely within the category of potentially realisable assets. As Baker J. observed, "*a debtor ought not to be considered to be insolvent, even where his cashflow does not allow him to meet his current liabilities, provided that he has assets which could be sold without legal impediment in relatively short order. This is particularly so in respect of assets for which there is an established, liquid market, such as that which exists in real property*" (§131).

97. Seventh, there is no rule for the exclusion of any particular asset – not even a PPR - from the insolvency assessment, whether at the PC stage or when the PIA (or objections to the PIA) are presented to the court. Even if there was an asset such as a PPR or business asset, which does have some protection under the 2012 Act, the decision of the Supreme Court in *Re O'Connor* was that "*at the initiation of the process in the assessment of solvency for the purposes of deciding whether a debtor meets the eligibility criteria, no a priori rule exists that precludes the court from taking into account the value of a principal private residence or the value of the business or employment assets of the debtor*" (§120). Accordingly, regardless of the nature of the asset and the possibility that it may be entitled to some special consideration in the context of the PIA, the decision on solvency may take such assets into account.

98. Eighth, sufficient reliable evidence must be placed before the court to show the debts that are alleged to be due (including the demands for repayment). In that case, the Court was critical of the lack of clarity regarding asserted demands for repayment of debts, and the absence of evidence (such as exhibited correspondence) of such demands. Baker J. found that

> "*These are essential elements in understanding the fact of insolvency, the extent of that insolvency, and whether that insolvency is a true insolvency or one that was as a result of exceptional circumstances, or stemmed from an unwillingness, rather than an inability, to pay, whether there is a solution to the payment of the debt that could otherwise have been achieved, and whether in all the circumstances the proposed PIA is reasonable, brings the means of the debtor to account and is fair to the creditors*" (at §147).

99. In the appeal to the Supreme Court in *Re O'Connor*, it was argued by the secured creditor that, as the debtor's assets exceeded his liabilities by a factor of 2:1, his indebtedness could be resolved by a sale of some of his assets, and that the legislation was not intended to facilitate arrangements for a person in such a position. There was no dispute that the debtor's monthly repayments were not being met and the shortfall between repayment capacity and liabilities was very large, but the allegation made was that the debtor had the means to discharge his debts but chose not to do so

(although it was not framed as a formal objection under section 120(1)(a), unlike here). On the basis of the inadequacy of the evidence presented (a topic returned to below), the Supreme Court did not approve the PIA but remitted it to the High Court for assessment.

Parties' positions

100. The primary objection made by Mr O'Flynn is that Mr O'Driscoll was not eligible to make a proposal for a PIA within the meaning of section 91 as he was not insolvent. As the moving party, Mr O'Flynn bears the onus to prove this objection. Since the initial correspondence sent in November 2021, Mr O'Flynn has repeatedly asserted that Mr O'Driscoll was not insolvent on a cashflow or a balance sheet basis at the date of the issue of the PFS. In his first affidavit sworn on 20 December 2021 to ground the first motion (and then also relied upon to ground the Objection), Mr O'Flynn makes the point that Leslie's Arch is not a business asset or a family home and "*can easily be disposed of in a market desperate for residential property and at a time when residential properties are increasing in value of all of the time*".

101. In his second affidavit, he points to the estimate valuation of Leslie's Arch at €395,000 and states that the sale of that property at that estimated value, even after the payment of taxes, would suffice to discharge the only debts identified in the PFS, with a surplus of € 39,429.90. The calculation was based on the debt owed by Bank of Ireland being €207,412.35, the unsecured debt to the Revenue Commissioners being €129,184.50 (this was the amount recorded in the PIA, although the amount actually proved was €113,251.26), local property tax of €2,427.86 and capital gains tax. These calculations are set out in the second affidavit sworn by Mr O'Flynn.

102. In fact, Leslie's Arch sold for considerably more than the estimated valuation. Mr McGee confirms in his affidavit of 9 March 2022 that Leslie's Arch was placed on the market after the creditors' meeting (before the approval of the PIA by the court or a determination of the Objection) and went sale agreed at €430,000. Mr O'Flynn also addresses this in his second affidavit, exhibiting the summary from the website daft.ie which shows the entry date of the property of 21 January 2022, a bid being received that day and a series of 9 further bids before the sale was agreed on Monday 21 January 2022. He states that "*this clearly demonstrates just how easily the property at 77 Leslie's Arch could be realised/liquidated*".

103. He further avers that "*based on the well-known market conditions in September 2021 and now given the continuing short supply of residential property, the property at 77 Leslie's Arch is an asset easily disposed of (sold in 1 week for well over asking price in this case). Any contact made with an agent would have confirmed that*." The quick sale of the property "*demonstrates just how readily*

realisable 77 Leslie's Arch was and is", according to Mr O'Flynn. He criticises the absence of any documentary or other evidence as to how the opinion was formed that Mr O'Driscoll was insolvent.

104. He sets out a table that shows the deduction of debts and taxes from the proceeds of sale, leaving a surplus from the realised sale price for Leslie's Arch of €62,879.92. Mr O'Flynn further points to the value of Mr O'Driscoll's interests in the other investment properties, which amount to €127,181 (one seventh of the estimated values of those assets). He asserts that Mr O'Driscoll therefore obtained a windfall of €190,060.92, leaving Mr O'Flynn as the only creditor prejudiced by the PIA.

105. At the hearing of this application, these points were made forcefully and presented as the main plank of the Objection. The realisability of Leslie's Arch was described on affidavit and in submissions as "*the elephant in the room*".

106. Another ground on which Mr O'Flynn challenges the assertion of insolvency is addressed in the affidavit sworn by him on 16 September 2024:

> "*57. On a cash flow test, on page 4 of 22, the PFS shows that the Debtor had a surplus income above his living expenses of €1,253.37 to use to pay his debts ("debt servicing capacity"). Allegedly, his debt repayment obligations are in the sum of €1,611.87.*
>
> *58. €2,525.25 is given as salary (page 4 of 22). For clarity, this is given as salary/wages and does not include rental income as rental income has a separate input.*
>
> *59. On page 5 of 22 the PFS shows that 77 Leslie's Arch valued at €395,000 is generating an income as an investment property of €1,400 per month. This would leave the Debtor with €2,653.37 as a debt servicing capacity per month to pay his obligations of €1,611.87. It would also mean his income was €3,925.25 per month.*"

107. He also contends in the affidavit of 16 September 2024 that "*100. The significant solvent exit from the PIA would appear to leave the Debtor with circa €228,731 of both cash and non-cash assets. The Debtor exited personal insolvency with no debts/creditors and a very solvent position. If the Debtor exited personal insolvency within a period of six months with a surplus of nearly one quarter of a million euro in cash/assets then clearly he was not insolvent and did not need a PIA to return him to solvency*." He then explains the calculation of that figure, which was based on surplus from the sale of assets, property assets, shares, income and cash at hand.

108. In short, Mr O'Flynn has maintained consistently since November 2021 that Mr O'Driscoll was not insolvent and not eligible to propose a PIA.

109. The sworn position of the Practitioner in his first affidavit (sworn on 9 March 2022) is that he was approached by Mr O'Driscoll and "*having examined his financial means, it was clear to me that he was unable to pay his debts as they fell due and, as such, was insolvent within the meaning of section 2(1) of the Act*." He then refers to the correspondence exchanged with Mr O'Flynn's solicitors and states "*I comprehensively replied to each of the issues raised*" and that "*I stand over the contents of my replying letters*". He rejects as "*baseless*" the allegation that the PIA was "*pre-packaged*" and designed to enable Mr O'Driscoll to escape his obligations. He states that the PIA reflected his "*professional assessment of the most appropriate path to solvency for Mr O'Driscoll*".

110. The Practitioner states that, at the date of the PC, "*the guarantee had not been called in*". He also states that the primary recourse in respect of the Loan was against Ezeon and that, in the absence of a proof of debt, "*it was not at all clear to me what value he attributed to the guarantee*". He relies in this respect on the Standard PIA Protocol, clause 24.1 which provides:

> "*Where a Debtor has a contingent liability other than Hire Purchase Debt (such as where he or she has given a personal guarantee in respect of another person's debt) which is a specified debt in the Arrangement, the Personal Insolvency Practitioner will place a value on the liability. In the absence of any clear evidence of the contrary, the Personal Insolvency Practitioner is entitled to assume for the purposes of the Arrangement that the value of a contingent liability where the contingent event has not occurred is a nominal value of €1*."

111. He also cites clause 24.2:

> "*In the case of a personal guarantee where payment of the underlying guaranteed debt has not been demanded by the Creditor, and where there is no entitlement to call the guarantee at the time when the Debtor enters into the Arrangement, the liability should ordinarily be included at a nominal value of €1 for the purpose of the proposal*."

112. The Practitioner states that, given Mr O'Flynn did not seek to prove the debt, it was valued at €1 in accordance with the Standard PIA Protocol.

113. The position of the Practitioner in that affidavit is that Mr O'Driscoll had arrears of €33,849.27 in respect of his loan from Bank of Ireland, liabilities to the Revenue Commissioners and a contingent liability to Mr O'Flynn and "*no liquid assets available to repay those debts, which left personal insolvency as one of his only options*". There are then three reasons given by the Practitioner for the view that Mr O'Driscoll was insolvent:

- First, it is said that "*there is no question but that the Debtor lacks the liquid assets to clear the liabilities which are currently due*".

- Second, the sworn position of the Practitioner is that "*Leslie's Arch represents the Debtor's sole residential asset, other than the properties in which he has a 1/7th ownership. While he is prepared to forfeit this asset in the context of the holistic resolution of his debts which the PIA provides, this does not mean that the asset would be readily realisable outside the context of the PIA*" (my emphasis).

- Third, he states that "*it is difficult to see how Mr O'Flynn can claim that the Debtor is not insolvent while simultaneously stating in the Notice of Objection that he is owed a contingent debt in the sum of €750,000 plus interest*".

114. In his second affidavit, sworn on 29 October 2025, the Practitioner's position is that he does "*not accept the charge that the Debtor was not insolvent at the time of applying for his Protective Certificate*." He continues, "*Michael O'Flynn in his sworn affidavit of the 1st December 2022 clearly stated at paragraphs 27 to 33 that there was a sizable debt owing by the debtor to Mr O'Flynn and so he was insolvent*". He also repeats and maintains the position that his understanding was that the Guarantee had not been called in at the date of the PC.

115. At the hearing of this application, counsel for the Practitioner then relied heavily on the Guarantee. It was argued that, because Mr O'Flynn had previously said on affidavit (in the context of the failed Ezeon Application) that the Guarantee was acknowledged, demanded and fully due and owing in the amount of €950,000 since 2018, he cannot now say Mr O'Driscoll is not insolvent. As regards the fact that the PFS records the Guarantee as a contingent debt valued at €1, counsel for the Practitioner states that this is the correct approach under the Protocol and that Mr O'Flynn was not entitled to a distribution, because he did not seek to prove his debt. It is also argued that, on the date when the insolvency must be tested by this Court, the debts of Mr O'Driscoll must include the additional debt which Mr O'Flynn said was demanded, accepted and owing.

116. It was submitted at the hearing that the statement in the PFS that the contingent debt was not called in was in fact incorrect in light of Mr O'Flynn's earlier averments to the contrary. It was argued that this Court, in weighing the Objection now, may decide that Mr O'Driscoll was in fact insolvent at the date of the PFS in light of information now known (particularly the evidence that the Guarantee had been called in), even though that information was not in the PFS, relying on the fact that this is a *de novo* hearing. The argument on which the Practitioner's case in this respect hinges is that because of sworn evidence given by Mr O'Flynn on 1 December 2022 regarding Mr O'Driscoll's liability under the Guarantee, it should now be decided that Mr O'Driscoll was in fact insolvent at the date of the PFS. It was submitted that the content of the PFS and the various arguments about cash flow insolvency do not really matter in light of the debt under the Guarantee having fallen due on Mr O'Flynn's own evidence. The position advanced is that the debt was valued

at €1 in the PFS, because that is what the Protocol requires, and it was accepted that the Practitioner did base his opinion of insolvency on the figures in the PFS.

117. On the question of the realisability of Leslie's Arch, counsel for the Practitioner noted the time that had lapsed since the PFS but did accept that the property could be sold. He then argued that, even if it was readily realisable, that would not have addressed the actual insolvency of Mr O'Driscoll, as it would not have covered the Guarantee.

118. In reply to the Practitioner's submissions on the topic of insolvency, three points were made by counsel for Mr O'Flynn. First, it was said that the relevant evidence to weigh when assessing insolvency must be the evidence that was in the PFS and put before the Court in applying for the PC and voted on by the creditors at the creditors' meeting. Second, it is said that the Practitioner must either defend the PFS and PIA and the premise of both, which was that the Guarantee was valued at €1, or accept a debt owing to Mr O'Flynn of €950,000 (in which case it is accepted he could have voted down the PIA). It is said that the Practitioner cannot have it both ways. Counsel for Mr O'Flynn points out that the Practitioner swears in his affidavit in these proceedings that the Guarantee had not been called in as of the date of the PC. He notes that this must have been based on instructions from Mr O'Driscoll himself and that Mr O'Driscoll must be honest in the disclosures made. He also notes that it was never asserted on affidavit by the Practitioner or by Mr O'Driscoll that the Guarantee was not a contingent debt.

119. Third, counsel for Mr O'Flynn points out his affidavit evidence of the personal relationship that existed between Mr O'Flynn and Mr O'Driscoll's family, the absence of any demand for payment, and his forbearance in that respect. The sworn evidence of Mr O'Flynn was that he was attempting to work things out with Mr O'Driscoll and Mr O'Gara and the point was made that the monies were owing, there was a liability, but that it remained a contingent liability for the debts of Ezeon.

Assessment

120. Given the arguments advanced, I will address the topic of insolvency under the following headings:

- Whether Mr O'Driscoll was insolvent based on the PFS
- Whether regard can be had to evidence which post-dates the PFS
- Whether it is appropriate to consider evidence that post-dates the PFS here.

Whether debtor was insolvent based on the PFS

121. The first matter to decide is whether Mr O'Driscoll was insolvent based on the PFS as prepared, amended and presented to creditors, the ISI and the Court. To make this decision, the critical

question is whether there were readily realisable assets available to meet the debts listed in the PFS as they fell due.

122. Mr O'Flynn has pointed out consistently and repeatedly since receipt of the PFS in November 2021 that the sale of the investment property at 77 Leslie's Arch based on its valuation in the PFS (€395,000) was more than enough to discharge the debts owed to Bank of Ireland and the Revenue Commissioners, leaving a substantial surplus. This is what happened – and quickly. There was never any suggestion of an impediment to the sale of that investment property and the evidence clearly demonstrates that it was at all times freely available to be sold, and was agreed for sale remarkably speedily, within one week of being marketed for sale. This was the evidence given by Mr O'Flynn, which was not contradicted or challenged by Mr O'Driscoll or the Practitioner.

123. In fact, neither the Practitioner nor Mr O'Driscoll made any attempt at any time in the correspondence, affidavits or in oral submissions to address this very obvious question, which Mr O'Flynn quite aptly called "*the elephant in the room*". The Practitioner asserts on affidavit that "*it was clear*" to him that Mr O'Driscoll was insolvent and, referring to the issues raised by Mr O'Flynn, he avers that "*I comprehensively replied to each of the issues raised*". Having read the correspondence carefully, it is plain to me that the Practitioner never did address the most obvious and fundamental question about the solvency of Mr O'Driscoll, which was whether he had sufficient readily realisable assets to meet his debts as they fell due.

124. The only points made on affidavit by the Practitioner were that Mr O'Driscoll lacked sufficient "*liquid assets*", clearly excluding Leslie's Arch from that category. He then suggests that the apparent choice of Mr O'Driscoll to "*forfeit*" Leslie's Arch under the PIA "*does not mean*" that it can be counted among his readily realisable assets unless there is a PIA.

125. Put another way, the Practitioner's position is that Mr O'Driscoll has no readily realisable assets and is therefore insolvent, but that, to resolve his insolvency, he is willing to sell a readily realisable asset. If this approach was condoned, a debtor could effectively choose whether an asset is readily realisable and hence whether they are insolvent or not in the first place, and would then be free to choose whether to "*forfeit*" the asset when it comes to the PIA.

126. There is no provision of the 2012 Act and no principle of the law of insolvency more generally that supports this approach. It is blatantly not correct that a debtor should decide whether and when he will treat an asset as "*readily realisable*". On the contrary, whether an asset is "*readily realisable*" must be determined based on the nature of the asset and the timeframe within which it may be realised, as made clear in *Re Nuzum* and *Re O'Connor*. Those judgments also establish that real property can be readily realisable, although there may be relevant factors to consider, such

as the specific needs of a family and ease of finding replacement accommodation in the case of a family home and any legal impediments to the sale of the property. There is however no authority for the concept that it is within the gift of a debtor to decide whether he is "*prepared to forfeit*" the asset (the language used by the Practitioner).

127. In this case, there is no evidence whatsoever from Mr O'Driscoll and the Practitioner makes no averments regarding any impediment to the sale of Leslie's Arch. This is a fundamental *lacuna* in the Practitioner's case. His response was a consistent bare denial that Mr O'Driscoll was not insolvent. This was and is not sufficient. In fact, the exhibits to the Practitioner's second affidavit show that Mr O'Driscoll was engaging with estate agents in relation to the proposed sale of Leslie's Arch in late 2021, so there manifestly was no impediment to its sale and the decision to sell does not appear to have been even predicated on the PIA.

128. Further, while it is not appropriate to attach substantial weight to this factor (as it post-dates the PFS), the very fact that the sale of Leslie's Arch was agreed within a week of the property being placed on the market does confirm how readily realisable that property was at that time. This is consistent with the argument and evidence which has been advanced by Mr O'Flynn since late 2021.

129. Applying the legal principles set out in *Re Nuzum* and *Re O'Connor*, the only available conclusion here is that Mr O'Driscoll did have a readily realisable asset (77 Leslie's Arch) which was more than sufficient to meet the debts specified in the PFS. There were other assets which could also be applied readily towards his debts. No information was furnished by the Practitioner or Mr O'Driscoll as to any impediments to the realisation of those assets (the pension/antique valued at €23,433.54, the one seventh share in two additional investment properties, and the shareholding in One to Three Nightlife Investments Limited). I am satisfied that, on the basis of the information disclosed in the PFS, Mr O'Driscoll was unequivocally not insolvent at that time and I fail to understand how the Practitioner could have formed an opinion that he was. I will return to the topic of the role of the Practitioner later in the judgment.

Whether regard can be had to evidence which post-dates the PFS

130. There has been some discussion in this matter regarding timing, specifically concerning when and on what evidential basis this court should assess the eligibility criterion of insolvency. The parties broadly agreed that the date of the issue of the PFS is the relevant date for the purpose of assessing solvency, although the Practitioner argued at the hearing that the court must have regard to additional evidence that has become available since then.

131. I am satisfied that the question properly presented by section 91 is whether Mr O'Driscoll was insolvent at the date of the PFS and that PFS itself must contain disclosures which show the debtor's eligibility to avail of the Act. This is confirmed by a consideration of various provisions of the Act. The starting point is that the Act mandates that the PFS that is relied upon in obtaining a PC and in proposing and getting approval for a PIA must be accurate, complete, transparent and prepared in good faith. Section 50 provides:

> "*(1) As soon as practicable after the personal insolvency practitioner has been appointed under section 49(3), the debtor shall provide information that fully discloses his or her financial affairs to the personal insolvency practitioner.*
>
> *(2) The personal insolvency practitioner, on receipt of the information referred to in subsection (1), shall examine that information and, having regard to the obligation of the debtor under subsection (3), assist the debtor in completing a Prescribed Financial Statement.*
>
> *(3) The debtor, when completing the Prescribed Financial Statement referred to in subsection (2), is under an obligation to make a full and honest disclosure of his or her financial affairs and to ensure that, to the best of his or her knowledge, the Prescribed Financial Statement is true, accurate and complete*."

132. Section 81(6) ties in with the debtor's obligation in that respect: "[a] *debtor shall inform the personal insolvency practitioner as soon as reasonably practicable after becoming aware of any inaccuracy or omission in the debtor's statement of affairs based on the Prescribed Financial Statement*."

133. Upon receipt of instructions, the personal insolvency practitioner must form and state the opinion that the PFS is complete and accurate and that the debtor is eligible to avail of the Act (section 54); then the PFS and the practitioner's statement must be sent to the ISI and the court to obtain a PC (sections 93 and 95); after the appointment of the personal insolvency practitioner, the PFS must be sent to the creditors (section 98(1)(a)); the PFS must then be sent to the creditors together with another eligibility statement by the personal insolvency practitioner before the creditors meeting (section 107(1)(a)); if the PIA is approved, another personal insolvency practitioner eligibility statement must be furnished to the creditors and the ISI (section 108(1)(c)) and ultimately to the Court (section 113(1)). The PFS is therefore the key source of information regarding the means of the debtor and is the basis on which the PIA is formulated and (if applicable) approved.

134. The 2012 Act envisages one circumstance only in which a PFS may be amended. Section 107(2) provides that

"*Where a debtor's financial position has materially changed in the period between the completion by him or her of a Prescribed Financial Statement under section 50 and the giving of a notice under section 106(2) or, as the case may be, section 111A(2) (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015)—*

(a) the debtor shall inform the personal insolvency practitioner of that fact and of the nature of such change, and
(b) the personal insolvency practitioner shall, if he or she considers that the change necessitates the completion of a new Prescribed Financial Statement, assist the debtor in completing such a new statement, and where those circumstances arise a reference in this section to the Prescribed Financial Statement shall be construed as a reference to the new Prescribed Financial Statement."

135. If there is a new PFS, that must be furnished to the ISI (section 107(3)). This can only happen between the date of the PFS and the calling of the creditors' meeting and – significantly - only if the Debtor's financial situation materially changed during that specific period of time. There is no other facility for a PFS to be revisited.

136. If there is such a material change in the debtor's circumstances after the PIA was approved, the course of action provided for in the Act is that the personal insolvency practitioner may propose a variation of the PIA (section 119). It is important to note that, if there is a material change post-approval of the PIA, the personal insolvency practitioner is required by section 117(6) to provide information to the debtor regarding his or her right or obligation to initiate an application to vary the PIA and, if a variation is appropriate, the personal insolvency practitioner is obliged to take the necessary steps to vary the PIA (section 119(7)).

137. This demonstrates that if it becomes apparent after the PIA came into effect that the financial circumstances of the debtor are sufficiently materially different to those set out in the PFS, the personal insolvency practitioner is obliged to seek to vary the PIA accordingly. This is directly relevant to the arguments that were latterly advanced on behalf of the Practitioner at the hearing of this application.

138. The situation is different when there is no new event or change in circumstances, but, instead, it transpires that the PFS was materially inaccurate in a manner which caused material detriment to a creditor. In these circumstances, the Act provides two options: first, this may be a ground for a creditor to object to the PIA (section 120(c)) or, second, it may be a ground for a creditor to apply for the termination of the PIA (section 112(1)(a)). These are the only avenues for dealing with a materially inaccurate PFS.

139. The Act therefore has different mechanisms for dealing with changes in circumstances and an erroneous PFS. None of these mechanisms envisage any possibility of a debtor or personal insolvency practitioner being permitted to introduce a critical correction to the PFS years later, while leaving the PIA as approved in effect. That would run directly contrary to the regime and structure just outlined and the objectives of the 2012 Act as a whole.

140. On the basis of these provisions of the Act read in light of its objectives of the statutory regime, it is clear that material evidence or information that was not included in the PFS at the time of the creditors' meeting may not be relied upon retrospectively to show that Mr O'Driscoll met the criterion of insolvency at that time. A debtor's eligibility to avail of the privilege and benefit of the personal insolvency regime must be based on the matters disclosed in the PFS and furnished to the creditors, the ISI and the court.

Whether it is appropriate to have regard to evidence that post-dates the PFS here

141. Even if it was theoretically possible to allow later evidence or averments to be relied upon in the manner proposed by the Practitioner here, I would not consider this to be appropriate in this case. The evidence before me shows the consistent position of the Practitioner (which must be presumed to be based on instructions from Mr O'Driscoll) was that the Guarantee was a contingent debt which was not called in before the date of the PFS and that it was correctly recorded in the PFS and in the PIA at the value of €1. The position of Mr O'Flynn in this application is similarly that the debt was a contingent debt as of the date of the PFS. Indeed, the Supreme Court judgment in *Re O'Driscoll (No 1)* confirms "*[t]he fact that the personal guarantee had not yet been called in explains why it was a contingent liability*" (§27).

142. In his first affidavit, the Practitioner swears repeatedly and without qualification that "*at the date of the protective certificate, the guarantee had not been called in"* and *"Mr O'Flynn had not called in the guarantee*" *at the date of the PFS*". His sworn evidence was that "*I say and believe that it was correct and appropriate for the contingent debt to be valued at €1 in the Debtor's PFS*".

143. In the second affidavit sworn by the Practitioner on 29 October 2025 he avers that,

- "*at the time of the protective certificate issuing, it is my understanding that the guarantee had not been called in….*";

- "*the financial circumstances of the Debtor were, at the time of the PIA and as verified by me, those set out in the Debtor's PFS accompanying the proposed arrangement. I do not accept the charge that the Debtor was not insolvent at the time of applying for his Protective Certificate*."

- "*The PFS reflected this by identifying the guarantee as comprising a contingent debt of €1.00. This accords with the usual practice provided for in the Standard PIA Protocol…*".

144. The Practitioner's sworn position – including up to a matter of months before the hearing of this application - is that it is his understanding that the debt had not been called when the PC was issued in November 2021. His evidence to this Court is that the PFS correctly records the Guarantee as a contingent liability and accurately sets out the financial circumstances of Mr O'Driscoll at that time and demonstrates his insolvency.

145. He then refers to and exhibits an affidavit that was sworn by Mr O'Flynn in the context of the Ezeon Application on 1 December 2022 in which Mr O'Flynn swears that the debt was demanded and due in full by 2018. The Practitioner placed considerable emphasis on these averments at the hearing of the application, although his sworn position remained that the financial circumstances of Mr O'Driscoll were "*those set out in the PFS*" and he was insolvent on that basis.

146. Reading the averments of Mr O'Flynn in context, what he said was that the debt was due and owing, but he then stated in the same paragraph that he told Mr O'Gara and Mr O'Driscoll that "*we would work things out*". A memo of 5 July 2018 exhibited as evidence in support of his position similarly includes statements about the debt being due, but then states Mr O'Flynn's view that "*trade debts get priority*".

147. Counsel for Mr O'Flynn relies on these indications of forbearance in the affidavit of 1 December 2022 as showing the debt remained contingent. I am not satisfied the evidence in question can be read that way. It may be that Mr O'Flynn was showing forbearance in pursuing the debt owed pursuant to the Guarantee, but it is not clear to me that this is material to deciding whether the debt had fallen due or remained contingent. A debt may have fallen presently and fully due, so as not to be a contingent debt, without necessarily being actively pursued.

148. However, the more decisive factor is the evidence of the independent professional who is vested with important powers and responsibilities to verify and confirm the content of the PFS. That individual in this case has consistently presented the position to this Court that that debt was not called in and the PFS and PIA proceeded on that basis.

149. There is – I emphasise once more – no evidence from Mr O'Driscoll. This has consequences. It may be assumed that Mr O'Driscoll furnished instructions and information to the Practitioner to the effect that the debt had not been called in and remained contingent, but it is wholly unsatisfactory to be asked to proceed on the basis of that assumption.

150. What is even more starkly worrying is that the Practitioner in his submissions is now asking the Court to find that Mr O'Driscoll was insolvent in November 2021 - not on the basis of the information in the PFS or the evidence sworn for the purpose of this application - but, instead, on the assumption that the PFS was incorrect and should have included the full debt owed to Mr O'Flynn.

151. To break down the Practitioner's argument, it amounts to a submission that the Court should prefer and adopt averments made by Mr O'Flynn in an affidavit sworn in a separate application on a highly material factual question as to the status of the Guarantee and thereby find that the instructions and information Mr O'Driscoll gave throughout these proceedings on this material matter was incorrect; that all of the averments made by Mr O'Flynn and the Practitioner in this application on this material question are inaccurate; that the PFS was inaccurate; and that, contrary to all of that evidence, the Guarantee was in fact called in before November 2021 and owing at that time. I am then asked to decide, on that basis, that Mr O'Driscoll was insolvent and was and is entitled to the extensive benefits and privileges afforded by the 2012 Act. The Practitioner's argument would require the Court to reject the credibility of all of the evidence presented for the purpose of this application on the critical question that is now relied upon to show insolvency and effectively re-write the PFS but not the PIA on that basis. I reject this proposition.

152. It is also unsatisfactory that it was not until the hearing of this application that the Practitioner indicated that decisive weight was to be attached to the averments by Mr O'Flynn in a separate application (there having been no written submissions furnished by the Practitioner). This is so despite the fact that the affidavit in question was sworn by Mr O'Flynn on 1 December 2022 and the Practitioner nonetheless continued to maintain that the debt was contingent only (presumably on instructions from Mr O'Driscoll). It is difficult to accept an argument that is contradicted and undermined by the Practitioner's own evidence.

153. Indeed, Mr O'Flynn's counsel makes the valid point that, if the Guarantee was included as a debt, the PIA could not have been approved by the creditors (it is agreed that Mr O'Flynn would have been able to defeat the vote at the creditors' meeting). The argument that the full debt under the Guarantee could be used retrospectively to show insolvency, but then recorded at €1 (as it was) in order for the PIA to be upheld, would be highly invidious and prejudicial to Mr O'Flynn and is not an interpretation of the insolvency process that I can countenance.

154. I am satisfied that the apparent reliance on the Guarantee at this late stage to demonstrate insolvency is a misconceived and impermissible response to the Objection. The test of insolvency must be met when the PFS is prepared, the PC is obtained and when the PIA is proposed. The sworn position of the Practitioner – and the opinion stated by him in the statutory statements

furnished to the creditors and the ISI - is that the Guarantee was correctly attributed a value of €1 in both the PFS and the PIA and Mr O'Driscoll was insolvent owing to the inability to discharge other debts as they fell due. The Guarantee was simply not relied on in assessing Mr O'Driscoll's solvency or his eligibility to avail of the 2012 Act. It cannot be included at a different value over four years later to demonstrate that Mr O'Driscoll was insolvent in 2021.

155. Another obstacle to the Practitioner's argument is that, as the Act requires, the PFS was furnished to the creditors and the ISI together with the Practitioner's statutory statement (of which I have not seen a copy) that there were no known reasonable grounds to believe the information in the PFS was not accurate or complete, and that he was of the opinion that Mr O'Driscoll was then insolvent and otherwise eligible to propose the PIA (section 107). This was the premise of the creditors' vote. It would engender a risk of real injustice if the disclosure of Mr O'Driscoll's liabilities and the basis of his insolvency could be fundamentally changed now, while leaving the same PIA in situ.

156. There is not and could not be any possibility of the Practitioner deciding more than four years after the PIA was approved that he has a materially different understanding of Mr O'Driscoll's financial circumstances, such that the PFS is and was at all times incorrect, while contending that the same PIA should nonetheless be upheld. This would simply run counter to the entire architecture and objectives of the Act. It would pave the way for debtors to fabricate a statement of their liabilities and retain the benefit of the personal insolvency regime regardless. This attempt is rejected outright.

157. Insofar as the Practitioner appears to be seeking to advance an estoppel-type argument, that Mr O'Flynn cannot "*approbate and reprobate*" by contending the debt was contingent while also asserting it was due, that is a form of argument that may have a place in private *inter partes* litigation. It has no role whatsoever in a statutory process overseen by independent professionals, in which it is the duty of those practitioners to verify and opine that the information relied upon is accurate and complete. For a practitioner to seek to defend the PIA by pointing to a possibility the information relied on is materially incomplete and inaccurate is utterly at odds with the Act and impermissible.

158. This argument by the Practitioner also falters on the fundamental hurdle that Mr O'Driscoll is bound by what he states in the PFS. The Court of Appeal in *Re McLaughlin* (a bankrupt) [2021] IECA 292 was emphatic in this respect: "*...if the decision is to pursue a PIA route, all ensuing actions and events are predicated on the debtor making full and honest disclosure, and the benefit of the Act of 2012 can only apply to debtors who satisfy, inter alia, that criterion. The debtor is now bound by the disclosure made in the PFS, recorded in due course in the PC*" (§54).

Conclusions on Insolvency

159. It is a fundamental threshold requirement for availing of any aspect of the personal insolvency regime that the debtor must be insolvent. This is the premise of the 2012 Act. As a matter of law, the definition of "*insolvent*" in section 2(1) of the 2012 Act, as analysed in *Re Nuzum* and *Re O'Connor*, does not accommodate any consideration of contingent debts. It is for this reason that contingent and prospective debts are typically valued at €1 in a debtor's PFS, as occurred here.

160. The reliance now belatedly placed by the Practitioner on the Guarantee and Mr O'Flynn's affidavit of 1 December appears to be a belated attempt to source the insolvency of Mr O'Driscoll in evidence that was not part of the assessment of solvency which the Practitioner undertook following receipt of instructions on 21 September 2021. The very fact that the Guarantee is being relied upon in this manner points to the absence of an appropriate basis to find that Mr O'Driscoll was in fact insolvent on the evidence contained in the PFS (even taken on its terms).

161. Indeed, the most striking feature of this application is that the Practitioner never made a meaningful attempt to substantiate the opinion that Mr O'Driscoll was insolvent based on the information in the PFS itself. He relied primarily on bald assertions and denials.

162. To conclude on this contentious issue, Mr O'Driscoll was not insolvent in November 2021. He had ample readily realisable assets that were available to meet his debts as they fell due, leaving a sizeable surplus, as disclosed in the PFS. The Practitioner has never explained how or on what basis he formed the opinion that Mr O'Driscoll was insolvent. In the five years since he was instructed in this matter, he has simply never addressed the "*elephant in the room*", that Mr O'Driscoll had more than sufficient assets to meet the liabilities specified in the PFS.

163. This is sufficient to dispose of this matter. However, in deference to the arguments which were made and the novelty of some of the issues, I will briefly consider certain additional objections made by Mr O'Flynn.

(b) "Excluded debt"

Background

164. Following receipt of the PFS, Mr O'Flynn's solicitors wrote to the Practitioner on 23 November 2021 informing him that Ezeon's accountant had detected withdrawals from the Company's bank account in the amount of €15,725 and, when these were queried, Mr O'Driscoll advised that he has withdrawn the sum of money for personal use and acknowledged that he was wrong to have done so and would repay the money. Mr O'Flynn confirmed that this had not occurred.

165. The Practitioner then responded stating that he had written to Ezeon seeking proof of the debt. Mr O'Flynn in turn responded that writing to Ezeon was pointless as Mr O'Driscoll was the sole director and his sister was the company secretary. On 14 December 2021, the Practitioner circulated an amended PFS, which included the monies owed to Ezeon as a "*loan*", and notice of the creditors' meeting. He then wrote to Mr O'Flynn on 16 December 2021, stating "*I do not accept your assertion that Mr O'Driscoll has acknowledged any wrongdoing by accepting his liability for the debt claimed by Ezeon Entertainment Limited. The debt of €15,725 is included in the updated PFS, a Proof of Debt has been received and the debt is included in the PIA to be paid in full, while Mr O'Driscoll is waiving a claim he may have against the company*."

166. There were affidavits sworn in the Ezeon Application by Mr Sheehan, Mr Foley and Mr O'Flynn dealing with different issues concerning Ezeon, including the Ezeon Debt. The Baker Tilly Report is also among those papers. This raises different and additional issues regarding Mr O'Drisocoll's conduct and the operation of Ezeon's business, including an indication that further monies and stock were appropriated by Mr O'Driscoll from Ezeon in addition to the Ezeon Debt. However, as counsel for Mr O'Flynn stated in submissions, these are not questions that need to be decided here. I make no comment on them. The only real question of relevance here is whether the admitted Ezeon Debt is a "*excluded debt*" or not.

167. There is silence from Mr O'Driscoll with regard to the serious allegation that he fraudulently took the sum of €15,725 from Ezeon. In his affidavit, Mr McGee states "*the Debtor acknowledged a further sum of €15,725 as due and owing by him to Ezeon*". This is the only reply on the factual question of whether the monies were misappropriated.

168. Mr O'Flynn's affidavit sworn on 16 September 2024 sets out his evidence on this point:

> "*74. At the meeting to sign off on the Financial Statements for 2019, the accountant Mr Sheehan identified a deficit in the Ezeon figures and thus identified money missing from the Company. This meeting was held on the 24 September 2020, I attended physically at the meeting along with Mr O'Driscoll, and Ronan O'Gara joined remotely.*
>
> *75. John O'Driscoll acknowledged to me and all of the others at the meeting, namely Gerry Sheehan and Ronan O'Gara, and thus the other shareholders and the accountant, that the sum of €15,725 was taken without approval in breach of trust and misappropriated from the Company. Mr O'Driscoll undertook to return the funds to the Company but never did. Mr O'Driscoll was therefore aware of and had admitted to the taking, theft or misappropriation of monies from the Company as and from that date. From my review, this debt was not disclosed in the PFS.*"

169. Mr O'Flynn then explains on affidavit that he was not notified or aware of Ezeon's involvement in the proof of debt process; that he would not have agreed to the submission of a proof of debt without further investigation; that the sum of money said to be owing was incorrect and false; and he repeats that the monies were "*misappropriated and taken in breach of trust*". Again, Mr O'Driscoll made no reply. The Practitioner's reply to this evidence in his affidavit of 29 October 2025 was that the proof of debt received from Ezeon matched the figure given by Mr O'Flynn and was therefore accepted and included in the Second PFS and was discharged pursuant to the PIA before 29 July 2022.

170. Mr O'Flynn makes the objection that the debt is an "*excluded debt*" and should not have been included in the PIA, as the loan was fraudulently obtained. The argument by counsel for Mr O'Driscoll is that Ezeon is not before the court and Mr O'Flynn does not have the right to advance the Ezeon position. It is said that Ezeon did file a proof of debt and the debt was discharged. As regards the legal test for an excludable debt, it is said that there must be a criminal prosecution, or at a minimum the criminal standard of proof must be reached, for a debt to be excludable on the basis of fraud or misappropriation.

171. Counsel for Mr O'Flynn disagrees, arguing instead that the correct interpretation of the definition in section 2(1) is that the Legislature deliberately chose not to require a court order for a debt to be excluded on the ground of fraud. He references the possibility of fraud in a civil sense, such as in a shareholder dispute and fraudulent breaches of trust. It is argued that it cannot be necessary to have a criminal adjudication before a creditor could resist a fraudulently incurred debt being crammed down in a PIA.

172. On the question of the entitlement to speak for Ezeon, it is said that Ezeon is on notice of the proceedings and that, given Mr O'Driscoll and his sister were the director and secretary of Ezeon at the material times, there is a question as to whether the proof of debt was submitted by the Company or by Mr O'Driscoll. Mr O'Flynn's unanswered evidence is that it was Mr O'Driscoll alone and that Mr O'Flynn is entitled to raise questions about the Ezeon Debt.

Applicable statutory provisions

173. According to section 89(6)(*a*), "*a Personal Insolvency Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt*."

174. Section 2(1) then defines an "*excluded debt*", in relation to a debtor, as,

> "*(a) liability of the debtor arising out of a domestic support order;*

(b) liability of the debtor arising out of damages awarded by a court (or another competent authority) in respect of personal injuries or wrongful death arising from the tort of the debtor;

(c) debt or liability of the debtor arising from a loan (or forbearance of a loan) obtained through fraud, misappropriation, embezzlement or fraudulent breach of trust;

(d) debt or liability of the debtor arising by virtue of a court order made under the Proceeds of Crime Acts 1996 and 2005 or by virtue of a fine ordered to be paid by a court in respect of a criminal offence."

175. Section 92(1) provides that "[a]*n excludable debt shall be included in a proposal for a Personal Insolvency Arrangement only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the inclusion of that debt in such a proposal*." This applies plainly to "*excludable debts*", which covers taxes and liabilities owed to the State and specific statutory charges. There is no equivalent mechanism in the 2012 Act which allows "*excluded debts*" to be brought within a PIA.

176. According to section 107, a statement must be furnished to the creditors with notice of the creditors' meeting that they are of the opinion that *"(III) the proposed Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt*;" (section 107(1)(c)(iv)).

177. The legislative intention is clear: if the debt is "*excluded*" the PIA cannot release Mr O'Driscoll from that liability or otherwise affect it.

178. The only case that was opened to me on this question was *Re Chambers* [2022] IEHC 180, but the context of that case was entirely different, it concerns "*excludable*" and not "*excluded*" debts and it bears no resemblance to the issues I have to decide. The question there was whether a debt owed to a local authority, arising from an unpaid development levy, should have been excluded from the PIA as a "*liability of the debtor arising out of any tax, duty, levy or other charge of a similar nature owed or payable to the State*". The Court found that the development levy was not an excludable debt. The following paragraph highlights the importance of respecting the exclusions in the 2012 Act:

"*38. The accommodation afforded by the Act whereby a debtor can bring about a compromise with his creditors which will return him or her to solvency is a privilege which must be exercised in accordance with the criteria deemed permissible by the Act. The Oireachtas has decided that certain categories of debt – excludable debt – can be included in the PIA only* *with the consent of the creditor, and that certain other categories – excluded debt – cannot be included at all. This effectively means that such creditors must either be discharged, or an accommodation reached with them, if the possibility of independent enforcement action by such creditors is to be forestalled. This may be achieved in a number of ways. However, it cannot be achieved by including payments to those creditors as an integral part of the PIA; this is clearly prohibited by the Act*."

Assessment

179. To begin, I reject the Practitioner's challenge to the right of Mr O'Flynn to raise this point. If an excluded debt is impacted by a PIA, that is a matter to which a court should be alerted before the PIA can be approved or an objection to it decided. Here, what is said is that the monies which Mr O'Driscoll took from Ezeon without authorisation and which are recorded in the Second PFS as a "*loan*" constitute a liability on a loan which was obtained through fraud within the meaning of section 2(1)(c) of the Act.

180. The evidence on this is entirely one-sided. There is considerable evidence as to the misappropriation and meetings attended by the deponents, including Mr O'Flynn himself, at which the misappropriation of the monies was discussed. There is silence from Mr O'Driscoll. The objection that he took cash from the Company through fraud and misappropriation is not answered. There is no conflict on the evidence before me and the only available conclusion is that Mr O'Driscoll did misappropriate monies from the Company within the meaning of section 2(1) of the 2012 Act.

181. The only legal argument that was raised by the Practitioner was that there needs to be a finding to a criminal standard before such a finding can be made and it was said that there needs to be a court order to that effect. Mr O'Flynn disagrees.

182. Section 2(1) includes in the definition of "*excluded debt*" a list of different forms of debt. Each of the liabilities in sub-sections (a), (b), and (d) require orders or awards to have been made. The only exception is the category that arises here under sub-section (c), "*debt or liability of the debtor arising from a loan (or forbearance of a loan) obtained through fraud, misappropriation, embezzlement or fraudulent breach of trust*."

183. If the Oireachtas intended this category to be predicated on a court order, it could have so provided. The fact that it did so in each of the other sub-sections and not in (c) is something that must be weighed when interpreting that provision. I am satisfied that the language of the section read as a whole in the context of the Act does not favour the interpretation advanced by the Practitioner, that a court determination of fraud or misappropriation is first required. In another case, the question of

the standard of proof may be one which would require assessment, but I do not determine this point here for the very simple reason that there is no conflict of fact in this case. The evidence unequivocally and without contradiction is that Mr O'Driscoll did misappropriate the monies in question from the Company and admitted this wrongdoing.

184. The monies owed to Ezeon are described as a loan in the PFS and I am satisfied that the evidence discloses that the "loan" was obtained through misappropriation.

185. The next question is the impact of this. In this regard, it is important to have regard to the specific language of section 86(6)(a) which is that a PIA "*shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt*". The question is whether the PIA here would release Mr O'Driscoll from, or otherwise affect, the Ezeon Debt. What the PIA provides is that the specific figure of the debt that was communicated by Mr O'Flynn in November 2021 is included in, and to be fully discharged under, the PIA. The evidence of the Practitioner is that the sum of €15,725 was paid to Ezeon pursuant to the PIA. It is hard to see how this could be regarded as a "*release*" or as otherwise affecting the specific Ezeon Debt. This point is emphasised by counsel for the Practitioner, who points out that no contest was raised about the amount of the Ezeon Debt. To counter this, it was said in submissions on behalf of Mr O'Flynn that Ezeon's position is that there are more monies owing by Mr O'Driscoll and investigations are ongoing.

186. In my view, the specific identified Ezeon Debt was an "*excluded debt*" within the meaning of the Act, but it was not impaired or affected by the PIA. There is therefore no embargo on its inclusion in the PIA or the discharge of that indebtedness. However, if there are other additional sums which Mr O'Driscoll also misappropriated from Ezeon those debts are not included in, and not subject to, the PIA process. They could not have been crammed down under the Act and remain recoverable regardless of any PIA. I do not see this question as a valid ground of objection to the PIA on the basis of the evidence before me.

(c) Orchestrated insolvency

187. One of the grounds of objection advanced by Mr O'Flynn is that Mr O'Driscoll deliberately allowed arrears to mount and attempted to orchestrate a situation of insolvency so as to avail of the personal insolvency regime. This ground of objection is contained in section 120(a):

> " *the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under section 95 arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement*."

188. There is no decided case interpreting this ground of objection. It was deployed as a ground in *Re JD* [2017] IEHC 119, but Baker J. refrained from interpreting the provision, as the evidence in that case was found not to suffice for that purpose. The argument made by EBS in that case was that the debtor had contracted a hire purchase agreement for the purchase of a second-hand car, thereby, arranging her financial affairs with a view to becoming eligible to apply for a PIA. Baker J. held, "*I will leave over to another case where it is directly in issue the question of the correct interpretation of that statutory provision, but in the present case, I consider that the evidence does not point to any financially reckless behaviour on the part of the debtor to which I might have regard*." The Court was of the view that she had "*approached her finances in the circumstances as she understood them, albeit she had been led astray by her engagement with an unregulated entity*" (at §79).

189. Mr O'Flynn's argument is that the monthly payments due on the Bank of Ireland mortgage were €1,611.87 and that they were well within the stated means of Mr O'Driscoll. Mr O'Flynn points out in his supplemental affidavit (the date of swearing of which is not clear) that the arrears amount to 20 monthly payments and that Mr O'Driscoll, who was said by the Practitioner to be living with his parents while earning rental and salaried income, could have sought to engage with Bank of Ireland and even make interest-only payments rather than seeking a PIA. He asserts on affidavit that there is "*no logical explanation*" for the failure to make payments. In particular, Mr O'Flynn notes that the PFS discloses that the Debtor had a monthly surplus of €1,253.37, but provides no explanation as to where that went. He points out that the monies taken from Ezeon are also not accounted for in the Second PFS as monies that were available to, or spent by, Mr O'Driscoll.

190. Another factor highlighted by Mr O'Flynn is the absence of any evidence of threats or demands from, or attempts by Mr O'Driscoll to engage with, Bank of Ireland or the Revenue Commissioners before seeking to obtain a PC. He notes that the Revenue Commissioners had a lenient approach to indebtedness during the Covid pandemic and could have agreed some arrangement or moratorium if requested. He also states that Bank of Ireland would have been willing to consider reasonable proposals, and points to the letter of 24 November 2021 from the Bank which indicates a range of possible options and further indicates that there was no prior attempt by Mr O'Driscoll or the Practitioner to engage or negotiate with the Bank. There is no factual contest on these points.

191. The Practitioner in his first affidavit rejects the allegation that there was a "*contrivance*" or that the PIA was "*pre-packaged*" and points to the impact of Covid on the operation of the pub. He asserts that "*the majority of shareholders chose to cease trading and there is certainly no basis for him to now allege that this was a contrivance on the part of the Debtor to somehow make himself eligible to apply for a PIA*." This only addresses whether the closing of the pub was a contrivance and the reasoning – that it was voted by the "*majority of shareholders*"- is firmly rejected by Mr

O'Flynn in his next affidavit. He states that the Debtor took the decision as the sole director. The assertion that it was a majority decision was not repeated or stood over by the Practitioner in his reply. The factual basis for the Practitioner's alleged knowledge of the shareholder interactions is not apparent. I do not accept on the evidence before me that the closing of the pub was based on a majority shareholder vote.

192. In any event, and far more weightily, the Practitioner did not address the real grounds of the contrivance allegation: that during the time leading up to the PC, Mr O'Driscoll had sufficient income to discharge at least a portion of the monthly payments owed to Bank of Ireland; that he failed to do so for five months before the PC; and that there was no attempt by Mr O'Driscoll to seek to engage with his creditors to reach some accommodation in respect of the debts owed without seeking to resort to a PIA.

193. There is simply no response on affidavit to these points. Mr O'Driscoll presents no response. The only conclusion I can reach is that Mr O'Driscoll did have the means to reach a resolution or accommodation of some sort with the creditors whose debts are relied on to demonstrate his insolvency (the Revenue Commissioners and Bank of Ireland) but made no attempt to do so. There is no evidence of where the monthly income - which could have been but was not applied towards his debts - went or why it was not applied in the discharge of his loans. There is a lack of evidence as to his outgoings at that time. No bank statements from the period during which the deficit was accrued have been furnished. The clear conclusion that may be drawn is that this situation was, put most benignly, avoidable.

194. However, the statutory formulation of this ground of objection in section 120(a) is quite specific. It requires the Objecting Creditor to show "*conduct within the 2 years prior to the issue of the protective certificate*" and that this conduct demonstrates the debtor "*arranged his or her financial affairs primarily with a view to being or becoming eligible*" to avail of the Act.

195. I have upheld the fundamental objection that the Debtor was not insolvent at the date of the PFS and not eligible to apply for the PIA. It would be somewhat incongruous (although not inconceivable) to find that he conducted himself for 2 years so as to become so eligible. It is also perhaps relevant that the requirement is premised on "*conduct within the 2 years prior to*" the PC. The only evidence of non-servicing of debts here is stated to be within the 5 months before the PC.

196. On the evidence before me, I do see merit in the criticisms made by Mr O'Flynn of the failure of Mr O'Driscoll to seek to meet his liabilities or to engage with his creditors without recourse to a PIA. I also believe that he did have surplus income to enable him to do so. However, as I have already upheld the Objection on another ground, it is not strictly necessary to decide whether the

criteria of section 120(a) are met. The crux of this case is that Mr O'Driscoll was not insolvent. That is a fundamental impediment to his attempt to benefit from a PIA and is amply covered as a ground of objection under section 120(d). I believe the intended primary focus of section 120(a) is on a different scenario, one in which a debtor is insolvent, but deliberately so. That is not this case. I do not therefore decide this objection under section 120(a). This is not in any way an exoneration of Mr O'Driscoll: I do find his failure to discharge any repayments on his loans in the five-month period before the PC to be irresponsible and unexplained. If I was not upholding the objection on the ground of ineligibility, I believe this case would meet the criteria of section 120(a) and an objection under that ground would instead be upheld.

(d) Income Figures

197. There is an objection in Mr O'Flynn's affidavit of 16 September 2024 that the Practitioner failed to properly interrogate the income figures and relied on only one payslip in his replying affidavit, contrary to the requirement for income verification in the Standard Debt Solutions Protocol Principles (March 2015, since replaced in June 2024) ("*the Protocol*"). It is also pointed out that the income disclosed in the exhibited payslip does not tally with the averments made regarding Mr O'Driscoll's income.

The Protocol

198. The Protocol was developed by the Debt Solutions Protocol Steering Group, a group which includes representatives of debtors, creditors, personal insolvency practitioners, representative bodies and the ISI, for use by insolvency practitioners. Annex 2 to the Protocol contains a standard, template PIA, commonly referred to as "the Standard PIA Protocol". The PIA here was stated to have been prepared in accordance with the Standard PIA Protocol.

199. Clause 2.1 of the Protocol provides that "[b]*y accepting the content of the Protocol, Personal Insolvency Practitioners and Creditors agree to follow the processes and use the agreed documentation that forms part of the Protocol.*" Clause 11.1 of the Protocol requires that "*income for a PAYE or a self-employed Debtor should be verified by the Personal Insolvency Practitioner having regard to Appendix 3*". Appendix 3 then sets out a "*List of documents which, where applicable, a Personal Insolvency Practitioner requires from a Debtor when seeking to understand and verify the financial circumstances of the Debtor*".

200. There is a list of generally required documentation and then, for an employee, what is required is the most recent P60 along with last 3 pay slips or, where a person is paid weekly it is sufficient to check a selection of pay slips to cover the 3 month period. For a self-employed debtor, the practitioner must obtain the most recent audited/certified accounts and management accounts for

year to date; financial / management accounts for at least one year, or more if appropriate; copies of Revenue income tax returns for last two years; a cash flow projection of at least one year, or more if appropriate.

201. The Appendix states that "[i]*t is not intended that the Personal Insolvency Practitioner will furnish these documents to the Creditors. Where Creditors are in possession of information which contradicts that in the proposal, they will share this information with the Personal Insolvency Practitioner and may request the Personal Insolvency Practitioner to provide them with copies of some or all of the documents listed below in order to verify the information*".

Legal principles

202. The Protocol must be read in light of the statutory requirements contained in section 50 of the Act:

> "*(1) As soon as practicable after the personal insolvency practitioner has been appointed under section 49 (3), the debtor shall provide information that fully discloses his or her financial affairs to the personal insolvency practitioner.*
>
> *(2) The personal insolvency practitioner, on receipt of the information referred to in subsection (1), shall examine that information and, having regard to the obligation of the debtor under subsection (3), assist the debtor in completing a Prescribed Financial Statement.*
>
> *(3) The debtor, when completing the Prescribed Financial Statement referred to in subsection (2), is under an obligation to make a full and honest disclosure of his or her financial affairs and to ensure that, to the best of his or her knowledge, the Prescribed Financial Statement is true, accurate and complete.*"

203. The duty of a personal insolvency practitioner to verify information obtained from a debtor was considered by McDonald J. in *Re Varvari* [2020] IEHC 23. The objecting creditor in that case, Tanager DAC, applied for an award of costs against a personal insolvency practitioner arising from the practitioner's unsuccessful appeal of a refusal to grant an application under section 115A. The objecting creditor sought this order on the basis that the practitioner did not carry out adequate due diligence to establish the income position of the debtor and did not exercise his own independent function of satisfying himself as to the debtor's income, with the result that the section 115A application was made on a false premise. It was also argued that the appeal was pursued despite it being apparent that the actual earnings of the debtor and his wife were considerably less than the income represented in the PIA. McDonald J. granted the order sought, measuring the costs at the low level of €6,000 as it was the first time such an order was made. The Court described the (limited) investigations undertaken by the practitioner in that case as regards the debtor's income,

which consisted of a brief letter from the debtor's accountant estimating income and a telephone call between an assistant to the practitioner and the accountant. It was then stated in a note to Appendix 2 to the PIA that the stated income figure was "*... based on information provided by the Debtor's accountant*." The income figure of €18,000 – provided by the accountant - was then used in the PFS. In the course of the proceedings (first in the Circuit Court and then the High Court), it appears that the debtor himself swore two affidavits exhibiting two years' tax returns. These showed a discrepancy with the figures in the PFS and contradicted the averments by the practitioner himself standing over the disclosed earning figures in the PFS and the PIA.

204. The Court's view was that it was "*crucial that the court should be in a position to rely on averments made by a practitioner*". The practitioner was required to swear a further affidavit explaining how he had suggested that he had carried out a process of assessing, verifying and substantiating the income and stood over the statement of the household income in the PIA which was at a level significantly lower than the figures in the tax return for the relevant year (at §17). The practitioner then set out on affidavit that he had prepared the PIA on the basis of the PFS and information from the debtor. The Court firmly rejected the sufficiency of this evidence:

> "*the averment ignores the vital role and responsibility which the practitioner has under the 2012-2015 Acts in relation to the PFS to be completed by a debtor. In the first place, while s. 50 (1) requires the debtor to provide to the practitioner "information that fully discloses his or her financial affairs", the practitioner is required under s. 50 (2) to examine the information provided by the debtor and, having regard to the obligation of the debtor to make full and honest disclosure of his or her financial affairs, to assist the debtor in completing the PFS. This clearly envisages that the practitioner will scrutinise the information provided by the debtor and assist in ensuring that the debtor makes a complete and honest disclosure of his or her financial affairs. This is strongly reinforced by the provisions of s. 54 (a) under which a practitioner is required to make a statement confirming that he or she is of the opinion that the information contained in the PFS is complete and accurate. As counsel for Tanager submitted, in the course of the costs hearing, this obligation would be entirely otiose if all the practitioner was required to do was to take at face value the information contained in a debtor's PFS*" (at §21).

205. Having addressed the Protocol, McDonald J. rejected the practitioner's explanations for the inaccuracies in the PFS, emphasising that there was no evidence from the practitioner that he undertook any measure of verification of the figures presented by the debtor and that "[n]*o underlying documentation (such as accounts or tax returns) were sought or obtained by him prior to formulating the proposed arrangement or placing it before creditors for their consideration*" (§27). The practitioner could point only to the accountant's letter and a telephone call. This

response and the attempt to delegate responsibility to the accountant were found to constitute a "*manifest failure of the practitioner here to undertake those basic inquiries*" as required under the Act (§33). The Court continued,

> "*Regrettably, what is disclosed in the affidavit demonstrates very plainly that the practitioner in this case did not follow the very simple and straightforward steps envisaged under the Protocol to ascertain and verify the income of Mr. Varvari. Given the role which a practitioner has under the 2012-2015 Acts, the failure of the practitioner in this case to call for the underlying accounts of Mr. Varvari or to call for the records held by Mr. Varvari's accountant is manifestly unacceptable. There is no evidence at all in this case to support the contention of the practitioner that he has "very strict" or "considerable" procedures in place to ensure income is correctly verified. There was a complete failure in this case to take any steps to verify Mr. Varvari's income. It is deeply unimpressive that a practitioner would support an application for a protective certificate and, subsequently, put forward proposals for an arrangement on the basis of the threadbare and unverified material described in the practitioner's affidavits sworn on 10th September and 10th October 2019.*"

206. McDonald J. was then severely critical of the decision to pursue the appeal to the High Court despite the emergence of evidence regarding the income of the debtor being less than stated in the PFS and insufficient to support the proposed arrangement. This was said to compound an already unsatisfactory situation, despite the practitioner having had "*ample opportunity… to take stock*" and decide whether to discontinue the appeal (§37).

207. Three points may be noted about *Re Varvari* which resonate here:

    1. First, "[i]*n proceedings under the 2012-2015 Acts, it is crucial that accurate information is provided in relation to the means of a debtor*" (§5).
    2. Second, an insolvency practitioner has a "*vital role and responsibility*" with regard to the preparation of the PFS and must scrutinise and verify the information provided by the debtor to ensure it is honest, accurate and complete before applying for a PC (§21).
    3. Third, practitioners are expected to take the steps required by the Protocol to verify the income of the debtor.

208. *Re Gallagher* [2021] IEHC 686 is also emphasised quite heavily by Mr O'Flynn. In that case, the PIA of a debtor, who was self-employed as a panel-beater, was opposed by the largest creditor, a bank with security over the debtor's principal private residence. The Circuit Court refused the order sought under section 115A (having adjourned the matter to obtain better evidence of income).

209. During the hearing of the appeal in the High Court, the bank made severe criticism of the figures set out in the PIA, particularly those relating to the debtor's income. It was contended that there were discrepancies in the documentation advanced on behalf of the debtor; there could be no confidence that the income figures were correct or that the PIA could be sustained; and that the practitioner had not properly verified those figures. The practitioner pointed out that the bank had not raised these issues or sought documentation at any stage previously and then contended that she had obtained and assessed the debtor's accounts and satisfied herself in relation to the debtor's income.

210. The debtor was independently represented and swore at least three affidavits in the matter (the practitioner swore two). The debtor exhibited and placed emphasis on a tax return, which was found to clash with the figures in the PIA. The High Court also cited "*calamitous errors*" in the balance sheet and trading profit and loss accounts exhibited by the debtor (§54).

211. Questioning the heavy reliance placed on the debtor's affidavits, Sanfey J noted, "[i]*t is the responsibility of the PIP to verify all of the information contained in a proposal for arrangement. This information is the basis upon which the creditors will decide whether or not to vote for or against a proposed arrangement, and the PIP bears a heavy onus to ensure that the information presented to the creditors is accurate*" (§37). Sanfey J. emphasised the statutory obligations contained in section 50 and 89, which underscore this responsibility of the practitioner to ensure that the figures in the PIA are accurate and reliable (§59).

212. The Court concluded that, given the debtor was self-employed with a variable income, "*there is a particular onus on the PIP to assess the debtor's books and records and verify the figures so that the income figure in the PFS and PIA, on which the creditors will rely when deciding whether to vote for or against the proposal, is a fair representation of the trend of the debtor's earnings which may be expected over the course of the PIA*" (§57). Sanfey J. explained that, if a debtor does not have the documents required by the Protocol, "*in my view there is a greater onus on the PIP to be able to explain why… she is satisfied that the figures which she puts forward in the PIA for income are reliable*" (§58). This finding is important in the context of this case.

213. Weighing the material presented in *Re Gallagher*, the Court concluded that there was no evidence the income figure had been "*assessed and verified by the PIP in such a manner as would give confidence as to its accuracy*" and the documentation furnished did not give "*any comfort as to the accuracy of the figure in the PIA*" (§64). Like *Re Varvari*, income and affordability of the PIA was a key question in *Gallagher*.

214. One feature of *Re Gallagher* that has a bearing here is the Court's criticism of the failure of the bank to properly raise and challenge the issue of income verification before the hearing of the appeal, on the basis that such concerns might have been assuaged at an early stage if that had occurred. This is a sharp contrast with this case, in which Mr O'Flynn has been flagging and pursuing the same objections since the very outset, met with a regrettable degree of obstruction and a failure to engage with material questions by the Practitioner.

Assessment

215. The PFS here records Mr O'Driscoll as earning salary/wages gross of €2,525.25. It records no income from self-employment, no rental income, no income from investments and no other source of income. The "*comment*" on page 19 of the PFS is that "*income is based on last filed income tax returns, which include income from Directors income from Ezeon Limited (sic), rental income and PAYE income*." This aggregation of all sources of income into one unitary figure, ignoring the various headings of income in the Standard PIA Protocol, is not appropriate. It fails to provide a properly transparent picture of Mr O'Driscoll's income streams and hinders the ability of an interested reader (such as an affected creditor) to understand or test the figures. It also makes it considerably more difficult to confirm whether and what sources the insolvency practitioner has used to verify individual income figures. Regrettably, this case is a good illustration of insufficient evidence of verification of the figures in the PFS.

216. On 23 November 2021, following receipt of the PFS, Mr O'Flynn requested evidence of Mr O'Driscoll's income as set out in the PFS (ie the figure of €2,525.25) – which he is entitled to do according to the Protocol. The Practitioner's reply on 24 November 2021 enclosed the following as evidence of the income:

i. Tax return and self-assessment for the year 2020, which shows rental income of €14,323; gross director remuneration from Ezeon €6,948; gross PAYE income from Michael O'Driscoll of €9,032.
ii. A single payslip dated 31 October 2021 which shows gross monthly pay of €814.07 (net income of €810.00) for the period ending 31 October 2021.
iii. An "*employment detail summary*" dated 21 July 2021, with a start date of 1 October 2020, showing gross pay of €9,032.71.

217. This does not comply with the Protocol, which requires bank statements for 6 months for every debtor; the last three monthly payslips and the most recent P60 for an employee, and copies of revenue income tax returns for the last two years, as well as management accounts (if self-employed).

218. More alarmingly, as Mr O'Flynn pointed out in a replying letter of 26 November 2021, the income figures in the payslip do not match the figures in the PFS. This was refuted by the Practitioner in a letter of 29 November 2021 in which he rejects the analysis of the income of Mr O'Driscoll and states baldly without any explanation "*Mr O'Driscoll's income is calculated on his tax returns for 2020 as furnished*". It seems that the calculation in the PFS is based solely on the tax return for 2020. This is a failure by the Practitioner to comply with the requirements of the Act and the Protocol and is exacerbated by the failure to even attempt to explain the figures relied upon.

219. The PIA which was circulated by the Practitioner on 14 December 2021 with notice of the creditors' meeting then records the net monthly income of the Debtor as €741.00. The pay slip of 31 October 2021 records the net income of €810.00 so this income figure in the PIA does not match the single payslip furnished by the Practitioner before proposing the PIA.

220. In his first affidavit in this matter on 6 March 2022, the Practitioner swears that Mr O'Driscoll has a net monthly income of €741 (also referred to as €741.67) earned from working on the family farm. It is not explained whether or how this can be reconciled with the figures in the PFS. How it was calculated or what it is based on are not explained. More worryingly, the only exhibit to that affidavit purporting to evidence the income figures is a payslip dated 30 September 2021 which records the very different figure for net monthly pay of €2,325, with no reference to the income figure of €741 sworn to by the Practitioner. There is also no explanation for the sharp decrease in net monthly income from September 2021 (€2,325) to October 2021 (€810). Income fluctuations of that scale illustrate a good reason for the Protocol's requirement to furnish the 3 most recent monthly pay slips and a P60 to evidence PAYE income and two Revenue income tax returns if self-assessed. This requirement was not satisfied. It is also important that common sense and professional judgment be brought to bear here: the practitioner's duty is to verify the income and expenditure figures. If there is a sizeable fluctuation in PAYE income from one month to the next, a sample of more than three months' pay slips is clearly required to be able to arrive at, substantiate and present a reliable monthly income figure. There is no evidence of any such verification or examination here.

221. In his affidavit of 16 September 2024, Mr O'Flynn points out the discrepancy between the Practitioner's affidavit and its exhibit. He describes the Practitioner's averment as to the Debtor's income as "*questionable and incorrect*". He also makes detailed averments about the income figures and the difference between the figures in the PFS and the PIA, noting that the proofs do not tally with the figures provided and that "*the income sum provided to the Court as of the date of the PFS, the Second PFS and the PIA appears incorrect*".

222. In his second and final affidavit of 29 October 2025, the Practitioner fails to engage with these serious issues. His sole response is that "*the financial circumstances of the Debtor were, at the time of the PIA and as verified by me, those set out in the Debtor's PFS accompanying the proposed arrangement*."

223. In these circumstances, I am of the view that the Practitioner has not produced evidence to show that he did interrogate or verify the figures in the PFS and has furnished no explanation of them. Instead, he only refers in correspondence to the 2020 income tax return, without explaining how it supports the income figure of €2,525.25 in the PFS or the income figure of €741 in the PIA. In any event, one annual return is not sufficient under the Protocol to evidence the income of an employee such as Mr O'Driscoll. Furthermore, the obvious discrepancy between the income figures as represented by the Practitioner's sworn evidence and the pay slip exhibited to that affidavit is not even addressed by the Practitioner, despite being clearly – and quite correctly – flagged by Mr O'Flynn.

224. It is relevant to observe that sufficiency of income to sustain the PIA is not specifically in issue here, as the PIA does not require any of Mr O'Driscoll's income be brought to bear (unlike in *Re Varvari* and *Re Gallagher*). It is nonetheless a matter of the deepest concern that a practitioner would present unreliable and unverified income figures in a PIA and, when questioned and repeatedly challenged, fail to explain them. The solvency of an individual can only be gauged and independently assessed, investigated and opined upon (as it must be under the Act), on the basis of correct and complete financial information. The debtor must make honest and complete disclosure and it is then the job of a personal insolvency practitioner to ensure and to confirm that the information is complete and accurate. Each is a critical step in ensuring the proper functioning of the personal insolvency regime. In this case, I have already found that Mr O'Driscoll was not insolvent even if the figures in the PFS are accepted. This is now compounded by the unreliability of the income figures; the unexplained inconsistency between the figures in the PFS and the PIA; the irreconcilability of the figures with the very limited and inadequate allegedly supporting material; and the contradiction between the Practitioner's own averments as to income and the single exhibit relied upon. That this was the state of the evidence presented by the Practitioner to the creditors, to the Circuit Court and now twice to this Court is worrying. It was found in *Re Varvari* to be "*crucial that the court should be in a position to rely on averments made by a practitioner*". This was not possible here. There is simply no apparent evidential basis from the material before me on which a court (or indeed the Practitioner) could be satisfied regarding Mr O'Driscoll's income or indeed his expenditure or could form a view that he was not able to meet his liabilities on a monthly basis, even without the disposal of an asset.

225. So, while it may be said that the question of income is not material to the specific PIA in this case (as the sale of Leslie's Arch will meet every debt specified in the PFS), it cannot be said that when the income figures in the PFS are unsubstantiated and unreliable this is not a material matter within the meaning of the Act or that disclosure that the figures were unreliable may not have altered the vote at the creditors' meeting. Indeed, if the figures were accurately stated, it could be highly material to the assertion of insolvency, given the income deficit identified by the PFS for meeting the monthly outgoings as they fell due was a figure of approximately €350. At a more basic level, if the financial information in the PFS and on which the PIA is premised has not been substantiated and is afflicted by inconsistencies, the debtor and the Practitioner have failed to meet their most basic obligations under the Act. The foundation of the PIA must fall entirely away. I consider that this could potentially span several of the grounds of objection identified in section 120:

- "*the procedural requirements specified in this Act were not complied with*" (section 120(b));
- "*a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor"*(section 120(c));
- "*the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in section 91*" (section 120(d));
- "*the Personal Insolvency Arrangement unfairly prejudices the interests of a creditor*" (section 120(e)).

226. The material detriment and prejudice to Mr O'Flynn are disputed by the Practitioner, on the ground that he elected not to prove his debt in the process and the debt of €1 has been discharged. However, given the depth of the issues with the PFS and the PIA, and the refusal by the Practitioner to properly consider the "*real issues*" Mr O'Flynn raised (as so characterised by the Supreme Court) at any stage since obtaining the protective certificate, it is apparent to me that Mr O'Flynn cannot be criticised for not engaging in the process. If the PIA does not come to an end, the prejudice to Mr O'Flynn would be plainly very material and directly prejudicial to his interests. As the Supreme Court recorded in *Re O'Driscoll (No 1)*, Mr O'Flynn who was "*by far and away, the largest creditor of the debtor*" was "*excluded from the process and, as things stand, faces the prospect that he will not recover any portion of the substantial indebtedness due to him*" (§28 to §31).

(e) Misstatement of assets

227. Mr O'Flynn points to a misstatement in the PFS in relation to Mr O'Driscoll's shareholding in One to Three Nightlife Investments Limited ("*One to Three Nightlife*"). This is a company which operates a pub – Brick Lane - in the vicinity of the Silly Goose. Mr O'Flynn states in his affidavit of 16 September 2024 that,

"*33. In the PFS the Debtor listed a shareholding of 0.01% in One to Three Nightlife Investments Limited with a value of €1. As at December 2020, this information was incorrect, and the shareholding held by the Debtor was actually circa 12% and had a value of at least €20,000 - €30,000. It appears that at that time the company had funds and cash on account (net assets of €227,394 and cash of €196,951 as of year-end 31 December 2020).*

34. Based on its filed accounts with the Companies Registration Office, One to Three Nightlife Investments Limited has a net asset position of €227,394 and cash of €196,951 for year-end 31 December 2020. 12% of the net assets is €27,240 as held by the Debtor.

35. For year end 31 December 2022 it appears that the Company holds cash of €433,144, and current assets of €554,750. The Debtor is listed as having an 11% shareholding."

228. This is also addressed by Mr Foley in his affidavit (sworn in the Ezeon Application). The replying affidavit sworn by the Practitioner on 29 October 2025 makes no reference to this question. There is an exhibit containing a report dated 27 June 2025 which appears to address the valuation of Mr O'Driscoll's 11% shareholding in One to Three Nightlife, but there is no reference to this document in the affidavit or explanation as to why it is included. It was not referenced in submissions and I am satisfied that no evidential weight can be attached to it. In oral submissions, counsel for the Practitioner accepted that there was an error in the number of shares in One to Three Nightlife recorded in the PFS.

229. Mr O'Flynn relies on the decision in *Re Colton* [2022] IEHC 495 on this question of non-disclosure. There, the High Court (Owens J.) found that there had been a significant failure to disclose a relevant asset (a villa in Lanzarote) and related expenses in the PFS. The PIA was approved under section 115A and the High Court later granted an application by a creditor to terminate it under sections 122(1)(a) and 122(1)(c).

230. The Court found that there were significant omissions from the PFS which led the creditor to agree to the PIA, causing material detriment to that creditor. The omissions amounted to failures by the debtors to comply with their duties of good faith and honesty in making full and accurate disclosure in the PFS. Owens J. underlined that, "[t]*he statutory system which gives debt relief is conditioned on honesty of debtors. Debtors must fully disclose their affairs and put their best foot forward to meet their commitments in accordance with their means. If courts do not uphold these standards, statutory provisions designed to safeguard creditors and public interest in a rigorous process which is subject to meaningful judicial oversight are set at nought*" (§16).

231. The Court then proceeded to note the importance of "*promoting public confidence in the operation of statutory schemes which may lead to a measure of debt forgiveness*" and the key role of full and

honest disclosure in the prescribed forms plays in ensuring that confidence (at §21). In particular, Owens J. noted that the PFS is "*a core document in the statutory scheme*" and that the practitioner's statement confirming the opinion that the PFS is complete and accurate "*can only be formed if the personal insolvency practitioner has made all appropriate inquiries to ensure the completeness and accuracy of its contents*" (at §50).

232. The Court of Appeal in *Re McLaughlin* [2021] IECA 292 also underlined the importance of full and honest disclosure (Haughton J., Noonan and Murray JJ. in agreement):

> "*…if the decision is to pursue a PIA route, all ensuing actions and events are predicated on the debtor making full and honest disclosure, and the benefit of the Act of 2012 can only apply to debtors who satisfy, inter alia, that criterion. The debtor is now bound by the disclosure made in the PFS, recorded in due course in the PC*" (§54).

233. Haughton J. continued,

> "*In my view sections 93 and 94 are very important to the scheme of the Act of 2012 in relation to PIA. They emphasise that a pre-requisite to a debtor obtaining a PC is a full and honest disclosure of assets and liabilities, verified by statutory declaration, and subject to all necessary verifying enquiries by the ISI" (§56).*

234. Haughton J. further emphasised that the Act "*sets forth strict criteria requiring full and honest disclosure by a debtor as a pre-condition to entry into the PIA process*" (§57). He pointed to the offence under section 126 of "*knowingly or recklessly provides information which is false or misleading in a material respect*" as further evidence of "*the seriousness of the debtor's obligations to make a full and honest disclosure under the 2012 Act"* (§62).

Assessment

235. The inclusion of a reference to 0.01% shares in One to Three Nightlife is plainly and significantly wrong. It is an error which is difficult to understand. Mr O'Driscoll must be taken to be aware of his own financial assets and interests and bore responsibility for the information in the PFS. The Practitioner was responsible for its verification. There has been no attempt to explain or even address this error on affidavit. Counsel for the Practitioner did seek to advance an explanation as to how the error came to occur, but the Practitioner failed to address this in his correspondence or evidence and submissions cannot fill that lacuna. It is a serious unexplained understatement of Mr O'Driscoll's assets. This does point to a lack of candour by Mr O'Driscoll and a failure by the Practitioner to verify information received from him.

236. The question is whether it is of itself a ground of objection to the PIA. The primary sub-section of section 120 to consider is section 120(c), which applies where "*a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor*". This provision mirrors section 122(1)(a) which concerns the termination of PIAs. That sub-section was interpreted in Re Colton as follows:

> "*Failure by a debtor to adhere to statutory obligations of good faith and full and honest disclosure will often result in material inaccuracies or omissions in a Prescribed Financial Statement. These may materially adversely affect creditors. However, it is not necessary for a creditor who relies on s.122(1)(a) to establish that a material inaccuracy or omission in a Prescribed Financial Statement resulted from breaches of debtor duties of good faith and honesty*" (§6).

237. Owens J. continued, "[i]*t must be demonstrated by the creditor that inaccuracies in or omissions from the Prescribed Financial Statement have caused material detriment to that creditor because of the manner in which the resulting Arrangement affects that creditor*" (§7). He then addressed the "*materiality*" question further: "*The test for materiality is whether the inaccuracy or omission is likely to have made a difference to the way the creditor or the court, where relevant, considered and assessed the terms of the proposal*" (§8).

238. The question I therefore have to ask under section 120(c) is whether, if the correct percentage of shares in One to Three Nightlife was recorded in the PIA, this would have been likely to have made a difference to how Mr O'Flynn or the court would have considered and assessed the PIA, such as to have a material impact on how the PIA affects him.

239. Viewed this way, I am not persuaded that the incorrect shareholding figure is obviously material in terms of the PIA or its effect on Mr Flynn. He was wholly and (as I have found) legitimately opposed to the PIA on a more fundamental ground, which overshadows the materiality of this ground. It is possible that an argument could be made that Mr O'Driscoll was not eligible under section 91 as the PFS was incomplete and inaccurate based on this error, in conjunction with the other serious failings already identified. This may then ground an objection under section 120(d), which embraces a failure to meet the eligibility criteria when the PIA was proposed. However, the argument was not presented in those terms and, given I have made other ineligibility findings, I do not base my decision here on section 120(d).

240. While I do not find that a standalone ground of objection arises from the misstatement of the shareholding in One to Three Nightlife, it is part of the overall picture of failures by Mr O'Driscoll and the Practitioner to properly comply with the disclosure and verification requirements of the Act

or to address the issues raised by Mr O'Flynn during the process or in the course of these protracted proceedings. It is an additional realisable asset of relevant value which was not considered by the Practitioner and this further undermines the opinion formed by the Practitioner as to the insolvency of Mr O'Driscoll and the basis of that opinion.

(f) Conduct of the personal insolvency practitioner

241. The unique position of a personal insolvency practitioner was emphasised by Mr O'Flynn. This role is described by the Supreme Court in *Re O'Connor* as follows:

> "*162. The PIP has an obligation in regard to the threshold requirement that the debtor be insolvent. The burden of proving insolvency lies on the debtor and the PIP in turn must certify to the ISI and to the relevant court that the debtor is indeed insolvent. This is no empty formula, and the PIP is a guardian of the process and has an obligation in taking on the role of independent intermediary to engage with the facts of the case, an obligation that is owed to the ISI, the relevant court, to the debtor and the creditors*."

242. Mr O'Flynn contends that the Practitioner here failed to properly discharge the functions conferred on him by the Act. It is alleged that the Practitioner failed to investigate issues which were raised by Mr O'Flynn from November 2021 onwards and failed to act with impartiality throughout this process, among other criticisms.

243. The Practitioner's sworn position is that he takes his obligations as an independent personal insolvency practitioner "*very seriously*" and he rejects "*the baseless suggestion*" that the application for a PIA was pre-packaged. His evidence is that "*the PIA which I formulated reflects my professional assessment of the most appropriate path to solvency for the Debtor, having regard to the requirements of the Act and the legitimate interests of those creditors whose debts were proved*".

Supreme Court Findings

244. The conduct of the Practitioner in this case has already been the subject of strong criticism by the Supreme Court. Dunne J. in *Re O'Driscoll (No 1)* found that,

> "*the respective positions of the PIP and the applicant became more entrenched as the correspondence ensued. It is difficult to understand why the PIP would not have agreed to an extension of time for the proof of debt as sought by the applicant. In circumstances where the applicant had real issues about the correctness of the PFS submitted by the debtor, and where a revised PFS was furnished (presumably as a result of the issues raised by the applicant), with the letter notifying creditors of the proposed creditors' meeting, the position of the PIP seems even more difficult to understand…I referred previously to the objectives set out in the*

long title of the 2012 Act, and bearing those objectives in mind, I simply do not understand why, all things considered, the PIP was not prepared to extend the time within which the applicant could submit a proof of debt. I appreciate the fact that a protective certificate has a limited life span, and that it is important to have all matters dealt with in a timely fashion, but given the circumstances of this case, it is difficult to see that any prejudice could have been caused to the conduct of the process by the PIP by a reasonable extension of time. Whether the issues raised by the applicant ultimately proved to be well founded or not, it seems to me that the approach of the PIP was not reflective of the objectives of the 2012 Act. As he himself said in his affidavit, his obligations include fairly balancing the competing rights of creditors and debtors" (at §42).

245. In *Re O'Driscoll (No 2),* Dunne J. expressed similar concerns, noting the "*degree of rancour*", "*high level of conflict*" and "*confrontational*" approach of both sides to the litigation, which was said to be hard to understand in the context of the personal insolvency regime. The Court was particularly critical of the approach taken by the personal insolvency practitioner in this matter:

> "*there is no doubt in my mind that all of the litigation that has ensued in these proceedings could have been avoided by a reasonable approach being taken by both parties in the course of the litigation as to the position of the appellant, the question of locus standi, his entitlement to submit a late proof of debt, the extension of time in relation to that issue, and so on. It is extremely unfortunate that the parties found themselves dug in to such an extent on an issue of this kind, and from the point of view of a PIP, it is difficult to see how the approach taken by him could be said to have been one which conformed with the spirit of the legislation. It is hard to see on any objective basis why it was necessary for the respondent to take such a vigorous role in opposing the appellant herein in pursuing his objection*" (§37).

246. Having now assessed the substance of the Objection, I have identified further serious grounds of concern regarding the conduct of the Practitioner in this matter.

Engagement before the proceedings

247. I have noted my mystification at how the Practitioner formed the view that Mr O'Driscoll was cashflow insolvent on the basis of the disclosures in the PFS, without giving any apparent consideration to the realisability of the property at Leslie's Arch. There was simply no evidential support for – or even explanation of - the view that Mr O'Driscoll was insolvent, but the Practitioner has nonetheless resolutely repeated this view in bald terms since November 2021, blanketly denying the objections raised by Mr O'Flynn.

248. In the letter of 24 November 2021, for instance, the Practitioner responds to the very specific assertion that Mr O'Driscoll was not insolvent as the sale of his investment property at Leslie's Arch would discharge all outstanding current liabilities as follows: "*I do believe that Mr O'Driscoll meets the test for insolvency and I do not accept your concern in respect of the bona fide nature of this particular process. Mr O'Driscoll is insolvent and it is intended to realise his assets to discharge his specified debts… so as to return Mr O'Driscoll to solvency*". What this sentence conveys is that Mr O'Driscoll has assets which he is going to realise and which will fully discharge his debts. Far from substantiating or explaining the professional opinion that Mr O'Driscoll is insolvent, this answer by the Practitioner confirms his solvency.

249. The closest he came to explaining his insolvency opinion was a reference in the letter of 16 December 2021 to *Re Nuzum*:

> "*Again, it is my belief that Mr O'Driscoll clearly meets the test for insolvency, and I do not accept your assertion that Mr O'Driscoll does not meet the criteria necessary for a Protective Certificate under Section 91(1). In this regard, I would direct your attention to the judgment of the High Court in Re Nuzum [2020] IEHC 164.*"

250. The Practitioner simply references *Re Nuzum* while adopting a course of action at odds with it. It provides no succour for his opinion or approach.

251. As the Supreme Court identified in *Re O'Driscoll (No 1)*, "*the applicant had real issues about the correctness of the PFS*", but since the issue of the protective certificate, the Practitioner has consistently failed to engage with any of the issues raised. This is not in compliance with the requirements or the overriding objectives of the Act. Mr O'Flynn also emphasises the failure by the Practitioner to investigate the facts surrounding the Ezeon Debt, despite being put on notice of serious issues in that regard.

252. The Supreme Court was particularly critical of the Practitioner's unreasonable refusal to extend time to prove the debt. There was also an unreasonable and unexplained rush by the Practitioner to conclude the PIA on 29 July 2022. This was the very day of the hearing in the Circuit Court at which Mr O'Flynn's application to extend time to prove his debt was refused. During that hearing, it was indicated that the decision was likely to be appealed (as it subsequently successfully was). These circumstances were addressed on affidavit by Mr Foley and not contradicted. Mr Foley also states that Ezeon wrote to the Practitioner on the evening of that hearing and requested that the PIA not be concluded, owing to outstanding issues. He exhibits the email sent by Mr Sheehan to the Practitioner on 29 July 2022 regarding the misappropriation of the Ezeon Debt in which he states "*I trust you will not conclude this PIA until such time as a detailed explanation has been given to*

all stakeholders of this matter (and note that the PIA is not scheduled to complete for some time based on the ISI website". It is possible that the Practitioner had already finalised and concluded the PIA by the time of receipt of that email, but the very fact that the Practitioner took steps to conclude the PIA on Friday 29 July 2022 while being aware of issues being raised by Mr O'Flynn; the likelihood of an appeal to the High Court; and there being a further period of 51 days left to go under the PIA, does raise questions as regards his objectivity. The Practitioner then distributed the surplus to Mr O'Driscoll. Mr Foley calculates that the exit from the PIA (a matter of months after its approval in the Circuit Court) left Mr O'Driscoll with €228,731 in cash and non-cash assets. This sequence of events is not consistent with how a personal insolvency process should operate and signifies a real want of objectivity and a failure to advance the objectives of the Act.

Engagement after the Supreme Court judgments

253. In the months after the delivery of the two Supreme Court judgments, the Practitioner continued to engage in an uncooperative manner with Mr O'Flynn. There are six letters exhibited to the affidavit of Mr O'Flynn sworn on 13 September 2024 which demonstrate this (letters from Mr O'Flynn's solicitors dated 21 June 2024, 11 July 2024 and 22 July 2024; and replies from the Practitioner's solicitors on 4 July 2024, 5 July 2024 and 12 July 2024). I do not recite all of this correspondence here but can only describe the approach taken by the Practitioner as uncooperative and obstructive. That this was the approach that should be taken by the Practitioner within a period of approximately two months of the Supreme Court judgment of 15 May 2024 – in which criticisms were again voiced by the Supreme Court of the intransigent, combative and unhelpful approach to the conduct of these proceedings - beggars belief. The unhelpful approach by the Practitioner is particularly apparent in three features of those letters:

254. First, on 21 June 2024, Mr O'Flynn's solicitors wrote on his behalf to the Practitioner's solicitors, noting the Supreme Court judgments and calling on the Practitioner to reconsider the issue of insolvency. He reiterated the view that Mr O'Driscoll was not insolvent and suggested that it would be "*prudent for all parties to re-consider the matter afresh, prior to any further time or cost being expended*". Mr O'Flynn's solicitors requested confirmation as to whether the Practitioner still intended to oppose the application. The letter repeatedly called on the Practitioner, as a "*neutral intermediary*" to re-consider the question of Mr O'Driscoll's eligibility under the Act. The letter states that there would be no attempt to unwind the transactions that had occurred or the fees that had been paid to the Practitioner.

255. A specific proposal was made for a consent order allowing the appeal, an order setting aside the Circuit Court order and it was proposed that there be no order as to costs. It was said that, if these matters could be ordered on consent, it would avoid significant court time and costs and cause no

prejudice to other creditors. This was presented as a "*pragmatic approach*" to save time and costs. The response sent by the Practitioner's solicitors on 4 July 2024 confirmed that, as previously indicated via counsel, "*it was our intention to simply seek a hearing date and have the matter determined by the court in the ordinary way*". The letter does not consider or even mention the proposal made for resolution of the appeal on consent or any possibility of further examination of the solvency issue.

256. In the final of the three letters, dated 25 July 2024, Mr O'Flynn reiterated the open offer, noting that the Practitioner had failed to address this request to reconsider the objection in the letters of 4 and 12 July 2024. The Practitioner again failed to engage with these proposals. He did not even consider the possibility of re-examining the eligibility of the Debtor as of the date of the PFS. His response in the final letter dated 25 July 2024 exemplifies the attitude adopted:

> "*the Practitioner is acutely conscious of his role and function as an independent intermediary. However, that does not require him to accede to a request to vacate a valid and twice-approved arrangement. In the context of this arrangement all of the creditors have been paid 100 cents in the euro in no small part due to your client electing to have his entire debt discharged in full for the sum of €1.00. That being so there is no prejudice that has befallen any creditor and it would seem wholly unnecessary for the Practitioner to interfere where all parties have been made whole and the Debtor has been able to return to solvency. In light of this we would ask you to carefully reconsider this expensive course of action given that there is no potential benefit to your client or, indeed, to anyone else through his continued prosecution of this matter…*"

257. Even after the two Supreme Court judgments criticising intransigence and identifying that "*real issues*" were raised by Mr O'Flynn, the Practitioner continued to resolutely refuse to engage with, or even consider, the merit of the objections. The reliance on the PIA as "*valid and twice-approved*" is astonishing. The Practitioner does not seem to acknowledge or understand that the Supreme Court overturned the decisions of the lower courts. For the Practitioner – who was described to me as a solicitor – to maintain the position that the PIA was valid and "*twice-approved*" is indicative of a confrontational, adversarial attitude and a serious failure to accept or understand the impact of the Supreme Court judgments.

258. The assertion of a want of prejudice to Mr O'Flynn similarly appears to be premised on the PIA being approved and unassailable, which is not a tenable view of the *status quo* at that time in the wake of the Supreme Court judgment. In short, the combative attitude and failure to even consider re-examining the eligibility of Mr O'Driscoll to benefit from the Act, is not consistent with the objectivity demanded of a personal insolvency practitioner and indicates an ongoing failure by the

Practitioner to act in a professionally detached manner, something for which the Supreme Court had previously been sharply critical in this matter.

259. Second, in the letter of 21 June 2024, Mr O'Flynn requested that, in the event that the proposal was rejected and the Objection was to proceed to hearing, that the Practitioner would provide - "*for the purpose of assisting the Court and potentially narrowing the grounds of objection (should the objection require a hearing)*" - a number of confirmations and "*a copy of the s.52, 54 and 91 statements used by the PIP for the PIA*.

260. The Practitioner's reply on 4 July 2024 made no reference to this request. In the letter of 11 July 2024, Mr O'Flynn's solicitors repeated:

> "*We refer to our request for a copy of the s.53, 54 and 91 statements used by the PIP for the PIA in our previous letter to you. You have indicated that your client is keen to take a pragmatic approach to these proceedings to save on Court time and costs. Our client requires a copy of these statements in order to assist the Court with a view to narrowing down the grounds of objection and in turn saving the Court's time. Please provide copies of the statements by return*."

261. The Practitioner's letter in reply again made no reference to this request. In the letter of 22 July 2024, Mr O'Flynn for a third time asked "*please provide the s.52, 54 and 91 statements used by the PIP for the PIA which were requested in our letter dated 21 June 2024. Our client is entitled to receive copies of this information as a creditor. Please provide this information as soon as possible or confirm if it is not available.*" Again, the Practitioner ignored this request. This is entirely unsatisfactory. What is also unsatisfactory is that, like Mr O'Flynn, I have not been furnished with a copy of any of the important statutory statements which the Practitioner was required by the Act to prepare.

262. Third, in the correspondence, Mr O'Flynn's solicitors made proposals for two amendments to the Notice of Objection and for the introduction of certain additional evidence for the purpose of the remitted hearing. In the third letter, the request for consent to these steps was repeated:

> "*In circumstances, where the PIP is a neutral intermediary, acting both for creditors and the debtor, and holds a central role in maintaining the integrity of the system, we expect the PIP will be open to receiving any information relevant to the Debtor and his eligibility to utilise the PIA process. On this basis, we would be surprised if the PIP does not consent to (a) and (b). We note your statement that the PIP has limited resources and wishes to avoid unnecessary costs, therefore we hope these items can be dealt with practically without further dispute*."

263. The Practitioner refused to agree to the amendments or the new evidence, in somewhat argumentative terms, including complaints of "*unnecessary disruption of the practitioner's personal time*" and insisting the only relevant evidence was the evidence that pre-dated the issue of the protective certificate. This necessitated the issue of a motion, which was heard and the orders sought granted by the High Court (Owens J.).

264. In all of the circumstances, I am of the view that the conduct of the Practitioner continued to be obstructive and unhelpful even after the very explicit admonishment by the Supreme Court in two reserved judgments of the inappropriately confrontational, combative approach to this litigation. He failed to even engage with open compromise proposals advanced by Mr O'Flynn, electing to proceed with an adversarial hearing, rather than assessing the possible merit of the "*real issues*" raised by Mr O'Flynn. This did not meet the standard of objectivity that is critical to the proper functioning of the personal insolvency regime and is at odds with the spirit and intention of the Act.

Conduct of the proceedings

265. There was no evidence provided by Mr O'Driscoll in these proceedings. He has obtained the benefit of a statutory regime that was put in place to create breathing space and relief for distressed insolvent debtors, with a particular focus on seeking to protect family homes and participation in economic life. Some serious and (as I have found) entirely valid questions have been raised by Mr O'Flynn and the need for a properly evidenced response to this application is quite clear, but the only evidence provided was two affidavits of the Practitioner, both of which were relatively short (the second being little over five pages in length). Many material questions were not addressed, including any consideration of the realisability of the assets held by Mr O'Driscoll. That is not a sufficient response.

266. There are some comparable findings by the Supreme Court in *Re O'Connor* on this point. In that judgment, the Supreme Court was sharply critical of the evidence presented, which was found to fall considerably short of what is expected and required for a successful PIA approval application. The fact that stands out from my perspective is that each of the personal insolvency practitioner and the debtor swore three affidavits in that case. The Supreme Court described some of the shortcomings of the personal insolvency practitioner's replying affidavit as follows:

> "*..the evidence and the manner in which it was treated… in my view fell short of what I consider to be the proper approach to an application for approval of a PIA, and more crucially the manner by which a PIP or debtor is to adduce evidence that would enable a court to fully scrutinise the figures, and to deal in a robust way with the objection that a debtor did not meet the threshold requirement of being insolvent. It was also, as I will further explain, insufficient*

to enable a court to engage the necessary assessment of the fairness of the PIA for the purposes of s. 115A" (§137).

267. The Court also made the criticism of the personal insolvency practitioner's evidence that,

"*nowhere does it deal with the fact that it is suggested that the arrears were either deliberately or voluntarily ignored or were not a genuine consequence of an inability to pay. The amounts are not identified, the demands are not identified, the judgments on foot of which judgment mortgages were registered are not identified or explained*" (at §149).

268. The failure to exhibit correspondence and letters of demand and the generalised, broad nature of the averments made are underlined repeatedly by Baker J. The following appraisal of the evidence is notable:

"*What is remarkable about the affidavit evidence given by or on behalf of the debtor is the lack of detail and scrutiny regarding the liabilities, when debts fell due, and when they were demanded if demand was required, and when the arrears accrued and what interest if any accrued thereafter. A similar comment can be made with regard to the affidavits of the PIP, who, whilst he is not an agent of the debtor, must in the context of his statutory role respond to the critique and objections made by Objecting Creditor as regards the solvency of the debtor*" (at §161).

269. I note and emphasise the Supreme Court's confirmation that a personal insolvency practitioner must respond to the critique and comments of an objecting creditor on the question of insolvency. This is a clearly stated obligation and one which was not complied with in this case at any stage in the process since November 2021.

270. The Supreme Court allowed the appeal against the approval of the PIA in *Re O'Connor*, finding that:

"*The effect of the statutory scheme means that both the PIP and, depending on the facts in issue, the debtor must adduce evidence to support an applicant to approve a PIA and must respond to the substance of an objection by adducing evidence to satisfy the court. The affidavits in the present case did not contain evidence of sufficient detail nor did they support with evidence the general assertions made and repeated in the affidavits*" (at §165).

271. These findings are applicable here, but with even greater force. One of the most striking features of the case as presented to me is the complete absence of evidence asserting, much less proving, any objective reason to suggest the investment property at 77 Leslie's Arch was not readily realisable. There was also no evidence that Mr O'Driscoll's unspecified "*pension/antique*" or his

share of the other investment properties could not have yielded any access to cash. There was simply no evidence as to any impediments to the sale of any of the assets or interests mentioned in the PFS or any reason to apprehend that they could not be easily and quickly realised. There is also a failure to properly address the question of demands for repayment of the debts relied upon to show insolvency (the secured debt of Bank of Ireland and the debts owed to the Revenue Commissioners). There are no exhibits showing any engagement with either creditor before the protective certificate was obtained and the proof of debt from Bank of Ireland does indicate that there had been no such engagement. Another area in which evidence was required but is wholly lacking concerns the reasons for the arrears and for the non-payment of debts in the five-month period prior to the protective certificate. No bank statements or other evidence from that period have been provided (contrary to the Protocol). The expenditure figures cannot be understood or tested. There is also wholly inadequate (and at times, conflicting) evidence of the different income figures for Mr O'Driscoll as included in the PFS and the PIA. It is also concerning that the statutory statements which the Practitioner is required by the Act to prepare and circulate were not provided to Mr O'Flynn (despite his repeated requests for copies) or to the Court.

272. While the onus is on Mr O'Flynn when advancing a specific objection under section 120, the overriding duty is on the Practitioner under the Act to verify and substantiate the opinion of insolvency and each component of it. The Practitioner is required to engage meaningfully with objections and concerns raised, to respond to requests for documentation, and, when before the court, to furnish all relevant evidence and documentation so as to ensure the personal insolvency regime is properly administered and operated in accordance with the provisions and objectives of the Act. These obligations have not been complied with here.

F. Conclusions

273. It is vitally important that the regime which the Oireachtas put in place to provide valuable protection and assistance for distressed insolvent debtors without recourse to bankruptcy operates in accordance with the provisions, and in furtherance of the objectives, of the Act. It involves a collaborative, non-adversarial process, overseen by an objective, professional third party (the personal insolvency practitioner), premised on transparency and full and honest disclosure by the debtor and independent verification by the practitioner at every stage, including in proceedings before the court. This is not what happened here. The result has been unnecessarily protracted, adversarial litigation since December 2021, which is very far from what the Act intended. As the Supreme Court already remarked on 15 May 2024:

> "*it is difficult to see how the approach taken by [the Practitioner] could be said to have been one which conformed with the spirit of the legislation. It is hard to see on any objective basis*

why it was necessary for the respondent to take such a vigorous role in opposing the appellant herein in pursuing his objection."

274. These comments now apply with even greater force, given the findings I have made in this judgment. I now uphold the Objection to the personal insolvency arrangement that was proposed by the Practitioner and put before a meeting of the creditors on 5 January 2022. This has the consequence that the "*the Personal Insolvency Arrangement procedure shall be deemed to have come to an end*" (section 114(3)) and Mr O'Driscoll is now liable in full for debts which would otherwise have been covered by the arrangement. In light of the position adopted by Mr O'Flynn in open correspondence and in submissions, and based on my interpretation of the Act (see §68 to §75 above), this does not prejudice or affect payments previously made under the arrangement, such as the discharge of the debts owed to Bank of Ireland and to the Revenue Commissioners.

275. I will list the matter before me for mention only at 2pm on 12 October 2026. The parties can then propose directions for any further hearing as to costs or final orders that may be required.