



THE HIGH COURT

CIRCUIT APPEAL

[2026] IEHC 639

Record Number 2025/11 CA

**IN THE MATTER OF PART 3, CHAPTER 4 OF THE PERSONAL INSOLVENCY
ACTS 2012–2021**

**AND IN MATTER OF GEMMA MCENERNEY OF GLASNEVIN, DUBLIN (‘A
DEBTOR’)**

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 115A OF
THE PERSONAL INSOLVENCY ACTS 2012–2021**

JUDGMENT of Ms Justice Nessa Cahill delivered on 22 September 2026

Introduction.....	2
Background.....	2
The Personal Insolvency Arrangement	4
Evidence in this application	4
Relevant legislation.....	5
General principles	9
Issues for Determination	10
Affordability	11
Parties’ positions	11
Findings on Affordability.....	18
Sustainability.....	21
Funds for Contingencies	21
Rental income	24
Mortgage term.....	27

Unfair Prejudice	28
Interest rates	28
Alternative of possession proceedings	32
The Ulster Bank Proposal	34
Conclusions	37

INTRODUCTION

1. This is an application under section 115A(9) of the Personal Insolvency Act 2012-2021 (*“the Act”*) for the approval of a personal insolvency arrangement which seeks to resolve the indebtedness of Ms Gemma McEnerney (*“the Debtor”*) and allow her to remain in her home.
2. Allied Irish Bank plc (*“AIB”* or *“the Bank”*), her only creditor for the purpose of this application, holds security over her home and opposes the arrangement. The objection is that the personal insolvency arrangement (*“the PIA”* or *“the arrangement”*) is not affordable or sustainable for Ms McEnerney, including because of excessive reliance on unreliable rental income. It is also argued that the PIA is unfair to AIB owing to the delayed recovery, the interest rate proposed, and the risk of the arrangement failing.
3. For the reasons given in this judgment, I am satisfied that it is appropriate to approve the arrangement. While the proposed mortgage terms will certainly leave Ms McEnerney with very limited available resources, I am of the view that this arrangement is appropriate and that it meets the requirements of the Act, while advancing the important objective of allowing Ms McEnerney to remain in her home.

BACKGROUND

4. Ms McEnerney is an unmarried 60-year-old woman (57 years old at the date of the PIA). She owns and resides at 31 Stormanstown Road, Glasnevin in Dublin. She has no children, suffers from ill health and is unemployed.
5. According to the PIA, the current market value of her home is €295,000 and the mortgage balance then stood at €133,095.58. She has equity of €161,904.42 in her home. The PIA records her assets as a car valued at €2,000, cash of €897 and her home. She owes a sum of €1,732 to Dublin City Council, as well as the mortgage held with AIB. Prior to September 2024, the mortgage was held by Ulster Bank Ireland DAC (*“Ulster Bank”*). Her assets exceed her liabilities by €142,525.47.
6. Her total monthly income is recorded as €2,076.33. In the prescribed financial statement prepared on 1 June 2023 (*“PFS”*) this is broken down as €850 derived from income from boarders/lodgers and disability benefit from the State of €1,226.33.

7. Her set costs in the PIA are listed as €1,296.02, rent/mortgage as €55.46 and additional/special circumstances expenditure items are €153.22. Her special circumstances comprise life insurance of €28.49, car insurance of €54.73 and mortgage protection of €70. Her total reasonable living expenses are estimated at €1,504.70, leaving monies available for contribution in the amount of €571.63. The PFS contained a different figure of monthly expenditure of €1,677.11 before debt repayment, leaving a net balance of €399.22 for debt service and arrears. This does not include a figure for rent/mortgage. At the hearing it was said by counsel for the Practitioner that her household set costs are €1,383.95 plus special circumstance costs of €176.97.
8. A protective certificate was issued on 19 June 2023. At that time, the mortgage arrears were €2,836.94.
9. Dublin City Council was provided with a “*proof of debt*” form on 23 June 2023 but failed to submit it within time. As only the Bank submitted the proof of debt on time, the application proceeded as a single creditor application. A notice pursuant to section 111A was sent to Ulster Bank on 9 August 2023. On 18 August 2023, Ulster Bank appointed the Practitioner as a proxy to vote against the proposal.
10. On 5 September 2023, the Practitioner issued a motion in the Circuit Court for an order under section 115A(9). Notice of that application was sent to Ulster Bank on 7 September 2023, pursuant to section 115A(3). On 21 September 2023, Ulster Bank filed a notice of objection which identifies seven grounds of objection:
- There is no reasonable prospect that the Debtor will be able to comply with the PIA or that it will return her to solvency;
 - It would require repayments until the age of 75 (as of the date of filing), contrary to the Central Bank Guidelines on Sustainable Mortgage Arrears Solutions (“the CBI Guidelines”);
 - The repayment history of the Debtor does not support the PIA (noting no repayments being made in June or July 2023);
 - The Debtor would be required to forego a reasonable standard of living, with no allowance for contingencies;
 - The PIA is unfairly prejudicial to Ulster Bank, as bankruptcy would allow for immediate recovery and the proposed interest rate is an “uncompetitive fixed rate”;
 - The Practitioner’s fees are excessive and disproportionate.
11. The objection that the Practitioner’s fee was excessive and that the repayment history did not support the PIA were not pressed at the hearing.

12. The notice of objection also records that Ulster Bank had made a proposal under sections 98 and 102 of the Act for the voluntary surrender of the Debtor's home, and Ulster Bank paying a sum of €15,000 to assist with relocation costs (*"the Ulster Bank proposal"*)
13. On 4 December 2024, an application was issued for the substitution of AIB in place of Ulster Bank in the proceedings. The global deed of transfer of 2 September 2024 was exhibited to the affidavit of Cliodna Walsh grounding that substitution application.
14. On 20 December 2024 the Circuit Court refused the order under section 115A. The Practitioner appealed to this Court.

The Personal Insolvency Arrangement

15. The proposal under the PIA is that the mortgage arrears would be capitalised, leaving a live mortgage balance of €133,095.58. The interest rate would be reduced from 4.9% (tracker) to 0.50% (Fixed) for the duration of the mortgage term, which term would be extended to 216 months (18 years). The PIA will be for 9 months and the mortgage will be paid on an interest only basis during that period, with monthly repayments of €55.46. Following the term of the PIA, in months 10 to 216, the mortgage will be paid on a capital and interest basis, with monthly repayments in the estimated amount of €671.23.
16. The proposal is that both the secured creditor (then Ulster Bank) will receive 100% dividend and the fee payable to the personal insolvency practitioner is €5,144.67. The comparison with the outcome in personal insolvency and in bankruptcy show that the Bank will receive a 100% dividend in either scenario. In truth, the real comparison is with possession proceedings, not bankruptcy, given the security held by the sole creditor over an asset in which the Debtor holds equity.

Evidence in this application

17. A total of three affidavits were sworn by the Practitioner and two were sworn by Ms McEnerney herself. Three affidavits were sworn by Mr Gerard McCabe on behalf of Ulster Bank. No affidavits were sworn by AIB.
18. In his affidavit sworn on 5 September 2023 to ground this application, the personal insolvency practitioner swears that there are reasonable grounds for the application. He states the PIA serves the interests of the common good, allows the Debtor to ameliorate the difficulties experienced in discharging her indebtedness in an orderly and rational manner and allows her to retain her family home, while allowing the creditors a better return than in bankruptcy.

19. The Practitioner confirms that he is satisfied that the criteria of the Act have been satisfied and, among other averments, states that the payments required enable the Debtor to maintain a reasonable standard of living and that the proposal is not prejudicial to the interests of any creditor.
20. An affidavit was then sworn by Gerard McCabe on behalf of Ulster Bank on 11 January 2024 grounding its objection to the PIA. It states that the arrears then stood at €6,433.74. It summarises the grounds of objection under three headings: that the PIA is unsustainable and will not return the Debtor to solvency; that the PIA is unfairly prejudicial to Ulster Bank; that the Ulster Bank proposal was unreasonably rejected. The more detailed content of that affidavit is addressed under those headings.
21. The Practitioner swore a replying affidavit on 12 February 2024. He refers to the importance of proactive engagement during the personal insolvency process and exhibits the correspondence he exchanged with the Bank. He confirms the eligibility of the Debtor to avail of the PIA process. He further confirms that income and expenditure were verified as required by the ISI Standard Debt Solutions Protocol Principles (March 2015) (*“the ISI Protocol”*) by bank statements and medical receipts and that this documentation was furnished to the Bank on 5 July 2023 and no further issue was raised in respect of income or expenditure. His position is that the PIA is in line with the intention and the aim of the legislation and that it provides a once in a lifetime chance for Ms McEnerney to resolve her indebtedness and retain her home. The payment of interest-only instalments during the PIA allows her to pay off unsecured debts over the one-year PIA.
22. There were then further affidavits by Mr McCabe on 28 March 2024 and 20 June 2024 with the Practitioner swearing his third affidavit on 1 May 2024. Ms McEnerney swore affidavits on 30 August 2024 and 16 October 2025. I will address these affidavits under the headings of the various objections below.

RELEVANT LEGISLATION

23. Section 115A was introduced by the Personal Insolvency (Amendment) Act 2015. It provides a powerful mechanism for a PIA to be introduced against the wishes of a creditor or creditors in defined circumstances. Most critically, this provision only applies if the arrangement covers a *“relevant debt”*, which is defined in section 115A(18) as *“a debt... the payment of which is secured by security in or over the debtor’s principal primary residence, and ... in respect of which the debtor .. is in arrears with his or her payments...”*
24. According to section 115A (8)(a)(ii), *“The court shall consider whether to make an order under subsection (9) only where... (a) it is satisfied that... the mandatory requirements referred to in section 99 have been complied with..”*

25. Section 99(2) sets out the mandatory requirements that must be included in a PIA. The only requirements that are in question here are those contained in section 99(2)(e) and 99(2)(h):

“(e) a Personal Insolvency Arrangement shall not contain any terms which would require the debtor to make payments of such an amount that the debtor would not have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants”;

“(h) a Personal Insolvency Arrangement shall not require that the debtor dispose of his or her interest in the debtor’s principal private residence or to cease to occupy such residence unless the provisions of section 104(3) apply.”

26. According to section 99(4), “[f]or the purposes of subsection (2)(e), and without prejudice to subsection (3), in determining whether a debtor would have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants under the Personal Insolvency Arrangement, regard shall be had to any guidelines issued under section 23.”

27. Section 23(1) of the Act then requires the ISI to prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses. Section 23(3) requires the ISI to have regard to a number of matters including

- *“differences in the size and composition of households, and the differing needs of persons, having regard to matters such as their age, health and whether they have a physical, sensory, mental health or intellectual disability”* (section 23(1)(e)) and
- *“the need to facilitate the social inclusion of debtors and their dependants, and their active participation in economic activity in the State”* (section 23(1)(f)).

28. The ISI has issued several iterations of such guidelines for the purpose of section 99(4), the most recent being the guidelines effective as of 1 November 2025.

29. The combined effect of section 115A(8)(a)(ii) and section 99(2)(e) is that a court can only consider whether to approve an arrangement under section 115A if it is satisfied that the arrangement will not leave the debtor with insufficient income for reasonable living expenses, having regard to the ISI Guidelines.

30. As the arrangement here was rejected by Ulster Bank the Practitioner made this application for its approval under section 115A(9):

“The court, following a hearing under this section, may make an order confirming the coming into effect of the proposed Personal Insolvency Arrangement only where it is satisfied that—

(a) the terms of the proposed Arrangement have been formulated in compliance with section 104,

(b) having regard to all relevant matters, including the terms on which the proposed Arrangement is formulated, there is a reasonable prospect that confirmation of the proposed Arrangement will—

(i) enable the debtor to resolve his or her indebtedness without recourse to bankruptcy,

(ii) enable the creditors to recover the debts due to them to the extent that the means of the debtor reasonably permit, and

(iii) enable the debtor—

(I) not to dispose of an interest in, or

(II) not to cease to occupy,

all or a part of his or her principal private residence,

(c) having regard to all relevant matters, including the financial circumstances of the debtor and the matters referred to in subsection (10)(a), the debtor is reasonably likely to be able to comply with the terms of the proposed Arrangement,

(d) where applicable, having regard to the matters referred to in section 104(2), the costs of enabling the debtor to continue to reside in the debtor’s principal private residence are not disproportionately large,

(e) the proposed Arrangement is fair and equitable in relation to each class of creditors that has not approved the proposal and whose interests or claims would be impaired by its coming into effect,

(f) the proposed Arrangement is not unfairly prejudicial to the interests of any interested party, and

(g) other than where the proposal is one to which section 111A applies, at least one class of creditors has accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class.”

31. These are matters in respect of which a court must be satisfied before the discretion to approve an arrangement under section 115A can be exercised. Additional matters which the court must consider are set out in section 115A(10):

“[i]n considering whether to make an order under subsection (9), the court shall have regard to: (a) the conduct, within the 2 years prior to the issue of the protective certificate under section 95, of—

- (i) the debtor in seeking to pay the debts concerned, and*
- (ii) a creditor in seeking to recover the debts due to the creditor...”*

32. The objections raised by the Bank here appear to be premised on sections 115A(9)(b), 115A(9)(c) and 115A(9)(e). In the notice of objection, the Bank also relies on section 99(2)(e). Another provision cited by the Bank in the notice of objection is section 104. That provision of the Act advances the legislative aim of seeking to ensure debtors do not lose their homes. It imposes a mandatory obligation on personal insolvency practitioners to formulate arrangements which “*insofar as reasonably practicable*” do not require debtors to lose the right of ownership or occupation of their homes:

“(1) In formulating a proposal for a Personal Insolvency Arrangement a personal insolvency practitioner shall, insofar as reasonably practicable, and having regard to the matters referred to in subsection (2), formulate the proposal on terms that will not require the debtor to—

(a) dispose of an interest in, or

(b) cease to occupy,

all or a part of his or her principal private residence and the personal insolvency practitioner shall consider any appropriate alternatives.

(2) The matters referred to in subsection (1) are—

(a) the costs likely to be incurred by the debtor by remaining in occupation of his or her principal private residence (including rent, mortgage loan repayments, insurance payments, owners’ management company service charges and contributions, taxes or other charges relating to ownership or occupation of the property imposed by or under statute, and necessary maintenance in respect of the principal private residence),

(b) the debtor’s income and other financial circumstances as disclosed in the Prescribed Financial Statement,

(c) the ability of other persons residing with the debtor in the principal private residence to contribute to the costs referred to in subsection (2), and

(d) the reasonable living accommodation needs of the debtor and his or her dependants and having regard to those needs the cost of alternative accommodation (including the costs which would necessarily be incurred in obtaining such accommodation).”

33. The structure of these provisions is somewhat confusing and there is overlap between several of the subsections. However, if the provisions are drawn together, the fundamental question a court must consider in a section 115A application is whether, if the PIA is confirmed, there is a reasonable prospect the debtor will be able to comply with it and that it will resolve their indebtedness, and leave sufficient income to maintain a reasonable standard of living, without losing ownership or occupation of their home. The legislative objective of seeking – insofar as practicable – to protect the home is fundamental to the Act and is reflected throughout the statutory scheme.

34. At the same time, the court must weigh whether the PIA is fair to creditors who oppose it and whether there is a reasonable prospect that it will enable creditors to recover their debts to the extent the debtor's means reasonably permit.

GENERAL PRINCIPLES

35. In any application under the Act, the primary consideration will always be the facts and the outcome will necessarily be heavily fact-dependent. That said, certain factual patterns do recur and generally applicable principles have been established in the judgments delivered under the Act which provide importance guidance in this case.
36. First, courts have repeatedly emphasised that the public interest in the protection of a debtor's home is at the heart of the personal insolvency regime and is the reason for the far-reaching power in section 115A to impose arrangements on unwilling creditors. (*Re J.D* [2017] IEHC 119 at §32, §72; *Re Nuzum* [2020] IEHC 164. at §51; *Re Taafe* [2018] IEHC 38 at §68 and 73). This objective must inform the court's approach to an application under section 115A. This does not mean that a debtor's right to remain in the home is absolute (*Re J.D.* §73). On the contrary, given the invasiveness of the power of the court under section 115A, it is critical that the mandatory statutory pre-conditions to the exercise of that power are met.
37. Second, it is necessary to have regard to the ISI Guidelines on a Reasonable Standard of Living and Reasonable Living Expenses ("*the ISI Guidelines*"). The reasonable living expenses as set out by the ISI in those Guidelines will be referred to in this judgment by the commonly used acronym, "*RLEs*". What the Act requires is that "*regard shall be had to*" these Guidelines (section 99(4)). It is now firmly established that the Act does not prohibit a personal insolvency arrangement which leaves a debtor with insufficient resources to afford the RLE set out in the ISI Guidelines. The ISI Guidelines are guidelines, not mandatory requirements, and may be departed from. The key considerations are the particular circumstances and needs of an individual debtor. This issue has been thoroughly analysed by McDonald J. in *Re Hurley and Re Phelan* [2019] IEHC 523 (at §15 to §24), analysis which was adopted by Sanfey J. in *Re Power* [2022] IEHC 562 (at §17) and which I also gratefully adopt here. I address this topic and the Bank's objection under this heading further later in the judgment.
38. Third, when applying the Act, the court is required to undertake assessments of reasonableness, such as the reasonableness of the prospect that the PIA will result in the resolution of the debtor's indebtedness and enable creditors to recover debts in accordance with what the debtor's means "*reasonably permit*" (section 115A(9)(b)) and whether it is "*reasonably likely*" the debtor will be able to comply with the arrangement (section 115A(9)(c)). This is not about fixed certainties or subjective findings, but objective assessments based on the available information. In *Re Hayes*, Baker J. noted that "*the debt*

solution needs to be sustainable taking into account reasonable expectations and what can now reasonably be predicted for the future” (at §29) and that the question is whether the PIA may reasonably restore the debtor to solvency, not whether the PIA gives a “*guarantee of continued solvency in all eventualities*” (§33). In *Re Hurley and Phelan*, McDonald J. noted that the test under section 115A(9)(c) (as to future compliance with an arrangement) is “*reasonable likelihood not certainty*” (§48). The court is required to make an objective determination as to whether the evidence shows that the proposal is reasonable and sustainable (*Re Hayes* at §39).

39. Fourth, when assessing a proposed arrangement, a court cannot rely on hypothetical and unknown future events (*Re J.D.* at §82) or seek to make assumptions or rely on conjecture regarding the likely financial or other circumstances of a debtor far into the future (*Re Callaghan* at §79). In *Re Hayes*, Baker J. noted that “*the court ought not to engage in conjecture and prediction*” (§31) and emphasised “*the practical difficulty of predicting events far into the future*” (§33). McDonald J. in *Re Hurley and Phelan* referred to these findings to the effect that “*a court cannot make assumptions regarding the likely financial or circumstances of a debtor far into the future*” (at §58).
40. Fifth, a margin of appreciation is to be afforded to personal insolvency practitioners in the discharge of their functions (*Re Callaghan* [2017] IEHC 332, [2018] 1 IR 335 at §59). Consequently, an alternative proposal, or an argument that a better outcome may be achieved another way, does not displace an arrangement proposed by a personal insolvency practitioner (*Re Callaghan* at §60-§63).
41. Sixth, the test of unfair prejudice to creditors is premised on the possibility that there may be an inevitable degree of prejudice caused to creditors (*Re J.D.* at §25). The question is whether the prejudice is so disproportionate as to be unfair, having regard to the circumstances of both the creditor and the debtor, the likely return in bankruptcy as well as the statutory objective of protection of the home (*Re J.D.* at §29, *Re Hayes* at §74 and §75). In particular, it is not a matter of straight mathematical calculation. It is only if the return in bankruptcy is materially better, that the prejudice caused by a PIA may be found to be disproportionate and unfair (*Re Hayes* at §71 to §77).

ISSUES FOR DETERMINATION

42. The primary topics that have arisen in this appeal are:
- (a) the affordability of the PIA when a debtor is left with insufficient resources to maintain the RLEs;
 - (b) The sustainability of the PIA, which includes the question of contingencies, reliability of rental income and the mortgage term.
 - (c) Unfair prejudice:
 - Interest rates;
 - Alternatives to the PIA;

(d) The Ulster Bank Proposal.

43. I will address the evidence and submissions of the parties under each of these headings, followed by an account of any comparable or relevant judgments and will set out my conclusions on each topic.

AFFORDABILITY

Parties' positions

44. According to the ISI Guidelines which were in effect as of 12 November 2025, €1,383.95 is the level of reasonable living expenses required for a single adult with a car and no dependents. It is not in dispute that the PIA will require Ms McEnerney to live below the RLEs. The special circumstances costs were confirmed at the hearing to be €176.97. On the question of income, the Practitioner states that Ms McEnerney receives a weekly invalidity pension, amounting to €1,278.33 per month, owing to her long term, incurable health issues. This will remain in place for the remainder of the Practitioner's life and is not reviewed or means tested. At age 66, she will transfer to the state pension (currently €1,201).

45. During the period from the end of the PIA until the Debtor switches to the state pension, her estimated expenditure (based on current RLEs, special circumstances costs and the mortgage repayments of €671.23) will exceed her income (invalidity pension plus rental income) by €103.82. When the Debtor is aged from 66 years to the end of the mortgage term, her expenditure will exceed her income (state pension and rental income) by €181.15. While different figures were suggested at different times in the evidence, these were the figures ultimately put forward by counsel for the Bank at the hearing and confirmed as correct by counsel for the Practitioner.

46. The position of the Bank (as addressed in the first affidavit of Mr McCabe) was that the shortfall between Ms McEnerney's income and the RLEs disregards the likelihood that her living and medical expenses will get higher as she ages, with inflation and higher costs of living. The submission is made that Ms McEnerney is not reasonably likely to be able to comply with the PIA.

47. The Practitioner in his second affidavit states that it is incorrect to suggest that Ms McEnerney will incur higher expenses as she ages and points out that the pension will increase with increases in costs of living. It will also be supplemented by additional benefits such as electricity and gas allowance, household benefits package from age 70 (currently €35 per month), winter fuel allowance (€28 per week over 28 weeks of the year), as well as the possibility of other grants to repair and improve her home.

48. As regards medical expenses, he points out that the Debtor holds a medical card and will for the rest of her life owing to her medical condition, which entails cover for doctor visits, treatment of ailments and

injuries, blood tests, medicines, prescriptions and equipment. The cost of her prescriptions is capped at €25 per month. It is said that there is no merit to the suggestion that her medical expenses will increase. The Practitioner also notes that the Debtor's special circumstance costs have reduced by circa €59.97 per month, owing to the cap of €25 on her medical expenses as a result of the medical card (which was not factored into the PFS). While the Debtor will be below the RLEs throughout the mortgage term, the Practitioner states that he has discussed this with her and she states that it is not a problem as she lives a modest lifestyle, does not go out or socialise owing to her medical condition and only spends €20 per month on car fuel to go to the doctor, post office and grocery store, so the RLE allowance is higher than she needs.

49. Ms McEnerney addresses this in her affidavit of 30 August 2024. She states that she lives a very modest lifestyle and does not go out or socialise. She confirms that the margin below the RLE is workable for her as evidenced by the ongoing payment of the sum of €671.23 monthly. She exhibits and relies on bank statements from June to October 2025. The Practitioner also points out on affidavit that the Debtor has been paying the sum of €671.23 towards her mortgage since July 2023.
50. Mr McCabe in reply disputes the consistency of payment and points to failures to make payments in June and July 2023. The Practitioner then explains this on affidavit as follows: the Debtor had been paying as much as she could before June 2023, including payments of €1,077.84 in March 2023, €683 in April 2023 and €683 in May 2023. The protective certificate was granted on 19 June 2023 and she missed one repayment in July 2023. In oral submissions, the Bank did not press the contention that there was a poor payment history, accepting that there were only two missed payments.
51. In oral submissions, counsel for the Practitioner emphasised that the RLEs include €257.30 per month for social inclusion, €13.97 for education, and transport costs of €342.01, noting that the first two are not expenses the Debtor necessarily incurs given her illness and he also pointed out that when she obtains the benefit of a free travel pass, the car costs may not be necessary. Her entitlement to additional social protection benefits, such as to cover heating, was reiterated. Another point argued strongly by counsel for the Practitioner is that the past engagement which showed a history of payment and limited arrears, combined with a lack of alternatives focus on this being the best and a sustainable plan. He also made the point that there is nothing to suggest hypothetical scenarios would eventuate.
52. Counsel for the Bank pointed to Ms McEnerney's bank statements and pointed out that she was already relying on her bank overdraft and did not have any surplus, available funds. He noted that there was no financial cushion for repairs to the house, but that the house did need to be kept habitable if the room was to be rented. In reply, counsel for the Practitioner referred to the fact that house insurance being paid for by the Debtor would cover any contingencies with the property that may emerge and that arguments based on contingencies and emergencies were speculative.

Relevant cases

53. The judgment opened to me which has the greatest relevance to the objections raised in opposition to Ms McEnerney's arrangement is that of McDonald J. in *Re Hurley and Phelan*. McDonald J. in that case allowed the appeal against the refusal of the Circuit Court judge to approve three section 115A applications (interlocking applications for Mr and Mrs Hurley and a separate application for Ms Phelan). In each case, the application was opposed by the creditor holding security over the debtors' homes (Bank of Ireland and AIB plc) on the primary ground that the PIAs required the debtors to live below the RLEs for some period of time. It was argued that they were required to live on less than the ISI recommended living expenses and that, if a choice arose, the debtors would prioritise living costs over mortgage repayments. For the Hurleys, a family with four children, the Court found that they would need to live off €245.56 per month less than the ISI guidelines in order to be able to afford the monthly mortgage repayments of €829 between 2020 and 2023. The Bank of Ireland argued that the requirements of section 99(2)(e) were not therefore satisfied.
54. Under each of the arrangements, portions of the debts secured on the properties were also written off. For the Hurleys, the outstanding balance of the debt secured on the family home would be written down to €242,000.00 with the remaining balance of €135,484.00 being written off (on the payment of a dividend in the sum of €5,033.00 to Bank of Ireland). In Ms Phelan's case, the relevant loan was to be reduced to the value of the property, €95,000, with the balance of €66,131 being written off (subject to payment of a dividend).
55. While he noted that it was incongruous for creditors who were opposing PIAs to make arguments based on the debtor's needs for greater income to secure reasonable living standards, McDonald J. rejected the contention that creditors cannot make such submissions. He accepted there was nothing in the Act which prevented this and held that "*a creditor is plainly entitled to raise arguments that address whether the preconditions to the grant of relief under s. 115A have or have not been satisfied*" (§18).
56. He then analysed the relevant provisions of the Act and concluded – as already mentioned – that the Act does not prohibit an arrangement which would require a debtor to live below the RLEs for a period of time:

"In all of the circumstances, I have come to the conclusion that there is nothing in the 2012 Act which goes as far as to prohibit the formulation of proposals for an arrangement under which a debtor might, for a period of time, have to live at a level below that set in the guidelines as to reasonable living expenses set by the ISI. That is not, however, the end of the inquiry. Having regard to the language of the statutory provisions discussed above, it will always be necessary to have regard to the ISI guidelines in determining, in any individual

case, whether debtors will have a sufficient income, under a proposed arrangement, to maintain a reasonable standard of living for them and their respective dependants” (§24).

57. In making this finding, McDonald J. distinguished as *obiter dictum* an observation by Baker J in *Re Hayes* (at §38) that the Act prohibited PIAs which provided for below-RLEs expenditure during the term of the arrangement.
58. The facts of *Re Hurley* are different to this case, as that case concerned a family with three school-going children and one child in third level education. Nonetheless, the approach taken by McDonald J. to the assessment of their needs is instructive in any case in which an objection is raised to an arrangement which leaves debtors with less than RLEs.
59. First, it must be recognised that “*some households are more resourceful than others and are able to have a full and rewarding family life at a more modest cost than others*” (*Re Hurley and Phelan* at §23). While the ISI guidelines provide a useful yardstick for the measurement of reasonable living expenses, McDonald J. referred to the *Reasonable Living Expenses Background Information* issued by the ISI with the Guidelines in August 2018 (“*the Background Document*”), and specifically to the advice that what is reasonable will vary from one person to another. The same statements appear in the latest draft of that document accompanying the guidelines issued in November 2025, which are applicable to this case.
60. Second, if a debtor has already lived below the RLEs for some period of time, this is an indicator that they are capable of economising and living with a lower level of expenditure than the ISI guidelines envisage. The Hurley family did satisfy the Court in this respect, having succeeded in living below the RLE threshold for three years already, proving that they were “*clearly a very resourceful family who are well capable of economising and living within their means*” (at §31).
61. Third, it is important to consider the alternatives available to the debtor in question and the incentive they would have to comply with the PIA. In the case of the Hurleys, McDonald J. found that the alternative to the PIA was possession proceedings and that there was “*real substance*” to the suggestion that they might be unable to secure alternative accommodation and become homeless (§32). The evidence in that case was that the cost of renting another similar property in the area in which they lived would be higher than the repayments required under the PIA and that they would then be left with a figure “*very significantly less than the figure measured by the ISI as reasonable living expenses for a family in their circumstances*”. McDonald J. concluded that, “[f]or them to lose their home would be far more injurious to them as a family unit than, for example, cutting back to some extent on social inclusion and participation or on other elements of the items specified in the guidelines” (§32). The Court accepted the evidence presented on behalf of the Hurleys regarding their capacity to live with

expenses below the RLEs and concluded that the criterion in section 115A(8)(a)(ii) and section 99(2)(e) was satisfied.

62. When the same considerations were applied in Ms Phelan's case, the Court concluded that the evidence was not as strong or detailed as in the case of the Hurleys, but that Ms Phelan had shown a good (though not unblemished) payment history which supported her ability to make the payments required by the PIA. Further, the period during which her available resources would be less than the RLEs was limited (and was owing to payments for a car, which the Court accepted she needed). As regards alternatives, the evidence showed that rent in the area in which she lived was unaffordable for her and McDonald J. mentioned the possibility that her adult children (who lived with her) would be in a position to assist if necessary. The Court concluded, "[o]n any view, the hardship sustained by Ms. Phelan during that relatively brief period will be significantly less than the very severe hardship that would ensue for her and her family if the application under s. 115A were to be rejected and she was to lose her family home" (§43).

63. McDonald J. also held that there can be no presumption that a debtor with limited means is likely to default:

"In every case, the individual circumstances of the debtor have to be considered and there are likely to be many cases where a debtor is prepared to live frugally for many years into the future in order to keep his or her family home. There is no presumption that a debtor with a modest income above the level of the ISI reasonable living expenses is likely to default. Everything will depend on the personal circumstances of an individual debtor" (§56).

64. In *Re Hayes* [2017] IEHC 657, the objecting creditor argued that the effect of the PIA was that the debtors would be subject to the restructured mortgage until the ages of 68 and 79 and there would be a monthly shortfall of €237 in year 18 on the retirement of Mr Hayes, when he would be dependent on the State pension. The debtors argued that pensions increase, sometimes at a level in excess of inflation. It was also argued that the deficit would be €157.23 in year 18 and that he could live below RLEs. It was pointed out that the amounts earmarked by the ISI for discretionary spending, such as social inclusion and savings, were approximately double the debtors' overall deficit it was said that they could, without too much difficulty, reduce spending to deal with that shortfall.

65. The Court in that case found that it was not safe to test affordability of the PIA against the present income of the debtors or on the basis of an argument that the pension may increase. Applying the principle that the court should not engage in conjecture, Baker J. held that the projection that the debtor may have to live below the then RLEs figure in year 18 was based on assumptions which could not be regarded as determinative. She pointed out that different scenarios may be possible by that time (such

as contributions from adult children or living below RLEs), but that “[a]ll of these scenarios are based on conjecture and may not safely determine the question.” Baker J. accepted that the proposal would “stretch” the debtors in their later years, but even without accepting speculative evidence of likely pension or income increases, was satisfied that the arrangements were “capable of preserving” the couple’s home and they were likely to remain solvent (insofar as that could be reasonably predicted) (at §81). Baker J. concluded that the PIAs proposed were reasonably likely to be sustainable during their terms and into the reasonably foreseeable future (§41).

66. Another significant judgment on the question of affordability and sustainability of a PIA is the judgment of Sanfey J. in *Re Power*. In that case, approval of the debtors’ PIA was refused in the Circuit Court under section 115A(9). On appeal to the High Court, the objecting creditor argued that the debtors would be required to forego a reasonable standard of living for themselves and their dependents under the PIA; that the PIA was unsustainable; that it would not return the debtors to solvency; and that there was a “*real risk*” that the debtors and their dependents will suffer severe hardship in attempting to comply with its terms. Sanfey J. found that there would be a shortfall of €268.27 per month below the RLEs for three years (not the shortfall of €558.79 alleged by the objecting creditor). He noted that this was within the range which McDonald J considered permissible in *Re Hurley and Phelan* and found that the Powers had established that they would be able to arrange their affairs so as to maintain a reasonable standard of living. He granted the orders sought under section 115A(9) of the Act and confirmed the coming into effect of the PIAs.
67. The context of that case was that the debtors (a married couple with five school-going children) lived in a family home valued in the PIA at €290,000. The mortgage balance, owed to the objecting creditor, was €155,062.16, leaving equity of €134,937.84 in the house. The debtors had additional liabilities of €173,845.28 to another financial institution and a judgment mortgage was registered against them in respect of a personal loan in the sum of €36,094.50. Mr. Power had a further liability of €16,297.59 to Youghal Credit Union Limited.
68. The proposal was for a 12-month PIA, with the debtors procuring a €5,000 lump sum from a family friend to pay the PIP’s fees. The arrears on the mortgage loan (€27,082.81) were to be capitalised; the full outstanding balance of the mortgage was to be restructured and repaid in full over the 324-month (27-year) term. The interest rate was to be reduced from a tracker rate operating at a margin of 1.15% above the ECB rate to a tracker rate operating at a margin of 0.95% above the ECB rate, with repayments of capital and interest on the restructured mortgage to amount to €542.78l. The debtors were to make monthly payments of approximately €100 per month over a period of fifteen years to discharge the Bank of Ireland judgment in full. The mortgage term of 27 years would conclude when Mr. Power was in his early 70s and Mrs. Power was in her late 60s.

69. Sanfey J. observed that the concern with a PIA in which the debtor is required to live below RLEs is that “*if the arrangement fails, they will have lost their only opportunity to reach an accommodation with their creditors*” (§49). He continued as follows:

“While it is clear from the judgment in Hurley and Phelan that the court's obligation is to take the ISI's RLEs into account rather than insist on them being strictly observed, the court must consider carefully any case in which the debtor's income dips below RLEs and other costs to satisfy itself that there is “sufficient income to maintain a reasonable standard of living for the debtor and his or her dependents” ... [s.99(2)(e)], and that the debtor is “reasonably likely to be able to comply with the terms of the proposed arrangement...” [s.115A(9)(c)]” (§49).

70. Other important points made by Sanfey J. in that judgment are that, “*sympathy for the debtor cannot be a factor which affects the court's consideration*” and that “*the fact that there may not be any other attractive options for the debtors cannot deflect the court from insisting on compliance with the provisions of the Act*” (§50). He also observed that, “*the greater the departure from the RLEs, the greater the onus on the debtor to satisfy the court that the departure is manageable*” (§51). One factual point of similarity with this case is that (unlike in *Re Hurley and Phelan*), there was no possibility of a write-off of a portion of the debt, as the Powers had positive equity in their home (a factor noted by Sanfey J.)

71. Commenting on the evidence in *Re Power*, Sanfey J. noted an absence of evidence to show the debtors’ ability to meet the shortfall and found the evidence of the debtors to be “*somewhat vague and aspirational*” and “*lacking in detail or calculations to support Mr. Power's contention as to the possibility of picking up extra work, or the effect of earning more income on existing income supports*” (§51).

72. Nonetheless, the Court concluded that,

“52. Having said all that, it seems to me that the debtors have a very powerful incentive indeed to ensure that the PIA succeeds. The prospect of losing their home will, I am sure, focus their minds on the necessity to ensure that monthly payments are met.”

73. The Court also attached weight to “*the excellent payment records since obtaining the protective certificate*” which showed that the debtors had “*the discipline to adhere to the arrangement*” (§52). The conclusion was nonetheless heavily predicated on the shortfall being at the level of €268.27 for three years as found by the Court (not over €500 for several years as suggested by the objecting creditor), a range which Sanfey J. observed had been found by McDonald J. in *Re Hurley and Phelan* to be permissible.

74. The final case on which the parties relied on this question of affordability and sustainability was *Re McCarthy* [2023] IEHC 346. In that case, the debtors were a married couple living in a home valued at €350,000, with a mortgage balance of €42,784 owed to Ulster Bank DAC, including over €11,000 in arrears. There are no unsecured creditors. The insolvency arose from a lack of capacity to service their home loans owing to ill health. Owens J. rejected the objections of Ulster Bank and found the PIA to be affordable, noting that, owing to the fact that Mrs McCarthy was in a wheelchair, their opportunities for social inclusion and participation were reduced, as was their need for expenditure in that respect, making a departure from the RLEs in the ISI guidelines “manageable”. He was also influenced by the fact that the debtors had demonstrated their capacity to meet monthly repayment commitments in the period since they sought protection under the Act, paying a monthly sum which was a “substantial proportion” of the monthly commitment under the PIA. Owens J. made the important observation that, “[p]ayments of amounts which are in line with or close to those contemplated by an Arrangement may help to establish both capacity of a debtor to meet commitments and a probability that the debtor will honour the terms of the Arrangement” (§31).
75. Owens J. emphasised that a debtor may at any time elect to sell a secured asset and use the proceeds to repay the loan balance, if the home is no longer affordable or suitable for their needs, without any breach of the PIA. In that case, the alternative of relocating to another house was rejected by the Court for various reasons, including that the house had been modified for the needs of Mrs McCarthy and none of the housing alternatives (trading down, social housing, mortgage to rent) was suitable and the house was not extravagant for their needs and there was “no question but that the creditor would be repaid in full and get a reasonable return on capital.”

Findings on Affordability

76. There is no doubt that the proposed personal insolvency arrangement will leave Ms McEnerney with less money to live on than the ISI Guidelines indicate is required for a reasonable standard of living for a single adult with a car.
77. The deficit will be €103.82 until she reaches the age of 66 and, following receipt of the state pension (at its current level), the deficit will become €181.15 monthly. Under the terms of the restructured mortgage, she will be in this situation until the conclusion of the mortgage term, which is proposed to be 18 years. She is now 60 years old.
78. I need to consider whether this affords Ms McEnerney, in her individual personal circumstances, a reasonable standard of living, having regard to the ISI Guidelines. Given the continuous departure from RLEs throughout the term of the mortgage, there is a higher onus on Ms McEnerney and the Practitioner to show that the deficit is manageable (*Re Power* at §51).

79. The first port of call is what the ISI Guidelines encompass. According to the Background Document issued with effect as of 12 November 2025, the set monthly costs for Ms McEnerney include clothing expenses of €59.33; communications costs of €65.15; transport costs of €342.01; social inclusion and participation costs of €257.30; and savings and contingencies of €43.33.
80. In having regard to these Guidelines, I adopt the same approach which was broadly adopted by McDonald J. in *Re Hurley and Phelan*, by Sanfey J. in *Re Power* and by Owens J. in *Re McCarthy*. According to this approach, the factors to reflect on include the strong payment history of Ms McEnerney (as referenced in section 115A(10)(a)); her proven ability to make ends meet on a tight budget well below the RLEs; and her strong incentive to ensure she does manage her outgoings in order to be in a position to pay her mortgage and remain in her home.
81. The evidence shows that Ms McEnerney has a strong track record of paying €671.23 towards her mortgage since August 2023. This is significant as it is the same payment proposed in the PIA. I have reviewed bank statements from late July 2023 to August 2024 (with the exception of March 2024). They show a mortgage payment every month of €671.23. While the account did have a low balance and was marginally overdrawn on three dates in August and September 2023, the account balance from then was consistently above €1,400 and frequently above €3,000. Her bank statements from June 2025 to October 2025 were exhibited to her second affidavit. These show the monthly mortgage payments of €671.23 being paid in September and October 2025. They also show a marginal overdraft on three dates but the bank balance was otherwise generally above €700.
82. On the important question of whether Ms McEnerney has demonstrated a resourcefulness and ability to budget and live reasonably on less than the RLEs, there are several reasons why I answer this in the affirmative. First, her own sworn evidence – which has not been disputed or challenged – is that she does not go out or socialise because of her health issues and lives a very modest lifestyle. Her bank statements support this. Second, the letter from her doctor indicates that she has different medical conditions with chronic long term pain and requires a long list of medication, which is also consistent with her evidence. Third, the Practitioner’s evidence is that she spends €20 per month on car fuel for trips to the doctor, the pharmacy and to buy groceries. This evidence, which was not challenged or disputed, is indicative of an area in which her actual costs are substantially lower than those estimated by the ISI. It also highlights the limited purposes for which Ms McEnerney leaves the house or requires transport. Fourth, she now has a medical card, which I am told she will have for her lifetime and which provides cover for doctor visits, treatment of ailments and injuries, blood tests, medicines, prescriptions and equipment, with the cost of her prescriptions capped at €25 per month. In short, the evidence suggests that several of the headings of set costs in the ISI Guidelines are not incurred by Ms McEnerney either at all or not at the level estimated by the ISI.

83. In my view, this is a case in which the Debtor has – like the debtors in *Re Hurley and Phelan*, *Re Power* and *Re McCarthy* – shown herself to be capable of budgeting and living within margins lower than those estimated by the ISI to be reasonably required.
84. Another factor which has been found to be relevant (in *Re Hurley and Phelan*, *Re Power* and *Re McCarthy*) concerns the alternatives available to the debtor and her incentive to comply with the provisions of the arrangement. I will explore the topic of alternative housing options later in the judgment (particularly at §158 to §160). My view, in summary, is that there is no viable housing alternative available to Ms McEnerney. I do see a real evidenced risk that, if the PIA fails and possession proceedings ensue, she would not have sufficient resources to pay for accommodation in the mid to long term and could end up homeless. It is also a relevant factor that the house has been adapted to allow her to rent the upstairs. I do therefore find that she has a strong incentive to ensure the success of the arrangement and to manage her finances accordingly.
85. In the particular circumstances of this case, particularly weighing the ill health and history of relatively modest expenditure by Ms McEnerney, I believe the high burden that is needed to satisfy me that she would have a reasonable standard of living under the PIA (despite the consistent RLE shortfall) has been discharged.
86. This does not in any way detract from the importance of the ISI Guidelines. They plainly serve an important statutory function, but, as already addressed, they are guidelines only and inherent in them are a number of general assumptions, which may be displaced in any individual case. On the basis of the evidence to date, I believe Ms McEnerney is in that situation and that she can continue to sustain her particular needs and make the mortgage repayments without foregoing a standard of living that is reasonable for her in her specific circumstances, even though it is consistently lower than the RLEs
87. The Bank contends that her costs will inevitably increase as Ms McEnerney ages. This was met with the reply by the Practitioner that there is no guarantee of such increases and that the pension will increase in line with inflation and other State benefits will be available.
88. I find both of these lines of argument to involve a degree of speculation and hypothesis which was not accepted in *Re Hayes* or in *Re Hurley and Phelan* as the correct approach to appraising a debtor's future financial circumstances. In assessing the likely impact of the PIA, the cases (such as *Re Power* and *Re McCarthy*) show that the most influential factor is the evidence of the debtor's conduct to date and the present circumstances, combined with any incentive to ensure payments are made under the arrangement. I have already summarised the evidence that is relevant here and I do not propose to speculate absent evidence as to what may happen with Ms McEnerney's costs or resources in the future.

89. Before concluding on this point, I should note that it is of some relevance that the size of the deficit here (€103.82 until Ms McEnerney reaches the age of 66 and thereafter €181.15) is lower than the deficit in *Re Hurley and Phelan* and in *Re Power*. However, the material fact – and a point of important distinction with those and other cases – is that the deficit below the ISI Guidelines projected here is a consistent, long term one. The shortfall in this case is projected to endure for each of the 18 years of the mortgage. This is not the type of fact pattern that was seen in the judgments I have considered. In *Re Power*, the deficit discussed was €268.27 over three years; in *Re Hurley and Phelan* the deficit was €245.56 over three years; in *Re Hayes* the shortfall was €157.23 in a single year. The consistency of the deficit here is different and I can understand how a different view could have been taken as regards the question of whether the PIA leaves the Debtor with insufficient income to maintain a reasonable standard of living within the meaning of section 99(2)(e). However, I am satisfied on the basis of the evidence presented that, while Ms McEnerney is a woman of limited means, she also has more limited needs than others. This is based to a significant extent on her ill health. There is no doubt that her finances are extremely tight, but the evidence before me is of a (near) consistent pattern of payment of her debts since the protective certificate was obtained, despite her very limited resources. I am also satisfied that she has a powerful incentive to manage her finances in order to be able to discharge the mortgage repayments and has displayed the resourcefulness to do so.

90. I am therefore satisfied that the mandatory requirement of section 99(2)(e) that the PIA must not require Ms McEnerney to make payments of such an amount that she would not be able to maintain a reasonable standard of living is satisfied in the very particular circumstances of this case.

SUSTAINABILITY

91. The next question is the sustainability of the arrangement. I note that the Bank raises concerns about the absence of any financial cover for contingencies; the reliability of the rental income; and the duration of the mortgage term. These factors appear to be most directly relevant to the question under section 115A(9)(c): whether the Debtor would be “*reasonably able to comply with the terms of the proposed Arrangement*” as well as section 115A(9)(a)(i): whether there is a reasonable prospect that the arrangement will “*enable the debtor to resolve his or her indebtedness without recourse to bankruptcy.*”

Funds for Contingencies

92. Counsel for the Bank contended at the hearing that Ms McEnerney’s bank statements show that she was already relying on her bank overdraft and did not have any surplus, available funds and no financial cushion for repairs to the house. He made the reasonable point that the house does need to be kept habitable if the room was to be rented. In reply, counsel for the Practitioner characterised these objections as speculative and referred to the fact that house insurance being paid for by the Debtor would cover any contingencies with the property that may emerge.

93. This is an important question and *Re Hurley and Phelan* is instructive in relation to it. One of the objections raised by the creditors in that case was that the debtors were not reasonably likely to be able to comply with the arrangements proposed, and they were simply not sustainable. It was argued (as it is here) that there needed to be a cushion for contingencies and that the RLEs measured by the ISI were too low for debtors to live on for any extended period of time and that it was essential that the proposed arrangements provide for contingencies.

94. McDonald J. agreed with the creditors that sustainability needs to be tested beyond the term of the arrangement itself, but rejected the “contingencies” argument. There had been previous cases in which the court had allowed a cushion for contingencies (particular emphasis was placed *Re Parkin* [2019] IEHC 56), but, as McDonald J. noted, those were cases in which the creditor was arguing that the debtor could afford to contribute more to the arrangement. He also observed that, while he did uphold the financial buffer retained by the debtor in *Re Parkin*, “*I did not intend to suggest that a buffer of that scale was either required or justified in every case. Nor did I suggest in that judgment that the scale of the buffer was to become a template for the future. Every case must be assessed by reference to its own particular facts and circumstances*” (§57).

95. The following finding on the question of financial buffers for contingencies is important:

“In essence, the complaint made by the Bank of Ireland is that there will be an insufficient margin available to them in the future over and above the level of the reasonable guidelines set by the ISI, to have any confidence that they will be able to continue to make payments in the event that, for example, significant house repairs are required or some other contingency arises which places them in a difficult position. One can never rule out the possibility that difficulties might arise in the future. That is not peculiar to personal insolvency arrangements. The same can be said for many a performing mortgage. Furthermore, Baker J., in a number of cases, has stressed that a court cannot make assumptions regarding the likely financial or other circumstances of a debtor far into the future. (See for example Paula Callaghan [2017] I.E.H.C. 332 at para. 79; see also Jacqueline Hayes [2017] I.E.H.C. 657 at paras. 22 & 29)” (at §58).

96. The Court pointed to the strong payment history of the Hurley family and continued, “[i]t would obviously be ideal if there was a greater financial cushion available to Mr. Hurley and Ms. Hurley into the future so as to minimise the impact of any financial shocks that may emerge. However, on the basis of the household income available to them, that extra financial cushion could only be achieved at the expense of Bank of Ireland” (§59).

97. Accordingly, based on the principle that the court cannot seek to predict or make assumptions about the future, and on the fact that the family had shown an ability to make the payments to date, the absence of a financial margin to deal with unforeseen events was found in *Re Hurley and Phelan* not to render the arrangement unsustainable.

98. In *Re McCarthy* Owens J. also addressed the question of contingencies and future events:

“40. What may happen in the long term and whether future events will result in non-compliance with terms of a proposed Arrangement, will often be a matter of conjecture. Changes may take place in the long term or even in the medium term which make a projection based on repayment of a creditor during the full period of the extended term of an Arrangement irrelevant. Some events are impossible to predict.”

99. He concluded on this point that,

“... this Court does not accept the submission that future events such as deterioration in health or death of one borrower before the contractual date for final repayment of loan instalments should automatically be equated with a lack of proof that a debtor is “reasonably likely to be able to comply with the terms of the proposed Arrangement” for the purposes of s.115A(9)(c) of the 2012 Act. If Edward McCarthy and Nuala McCarthy in future years find that their circumstances change, they may well decide to sell their house and repay the bank. If one of them dies the other may decide to trade down and repay the bank. These events and decisions are not breaches of their proposed Personal Insolvency Arrangements” (at §45).

Findings regarding funds for contingencies

100. The judgments in *Re Hurley and Phelan* and *Re McCarthy* contain clear cautions that speculation as to distant, unspecified future events should not generally be relied upon as a basis to refuse the approval of an arrangement.

101. In addition to these cautions, I would add some additional reservations about this line of argument. It is plain from the Guidelines (at page 4) and the Background Document issued with the Guidelines in November 2025 that the Guidelines do provide modest cover for contingencies:

“[t]he ISI model allows for food for a nutritionally balanced diet, clothing, personal care, health, household goods, household services, communications, social inclusion and participation, education, transport, household energy, childcare, insurance, and modest allowances for savings and contingencies” (Background Document at page 4).

102. The set costs identified in this most recent Background Document include a sum of €43.33 monthly for savings and contingencies.

103. I have also observed from a review of the Debtor's bank statements that she frequently had a balance that exceeded €2,000 or even €3,000. While her account was occasionally overdrawn, in the vast majority of the monthly statements I reviewed, there was an available cushion despite payment of the mortgage debt in the monthly amount of €671.23. Another factual consideration here is that there is house insurance in place and this should provide at least some security for dealing with any emergencies.

104. A final concern I have with this "*contingency/emergency*" argument is one of principle. Section 115A(9)(c) only arises if a court has already formed the view that there is not an insufficiency of income to sustain a reasonable standard of living (this is because section 115A(9) only arises if section 99 has been complied with). The gravamen of AIB's argument here is that, even though the debtor has been found to have enough income for a reasonable standard of living under the PIA, the arrangement should be rejected because it does not include an additional buffer for contingencies. I have a concern that this may undermine the role of the ISI Guidelines and effectively require a higher threshold of financial reserves when section 115A is at play. This would mean that in cases in which the family home is at risk, there is a greater financial cushion than the RLEs required and a heavier burden on the debtor to show surplus available financial resources into the future. I do not believe that is consistent with the legislative objective underlying section 115A or with the public interest it seeks to advance. Requiring such an additional unspecified buffer in order to approve a PIA could also cut across the important role which the Oireachtas attaches to the assessment of reasonable living expenses and the ISI Guideline (which do encompass modest contingencies).

105. For these reasons, I do not accept the argument that the PIA is not reasonably sustainable because of the absence of a financial surplus or cushion to deal with contingencies.

Rental income

Parties' positions

106. The position of AIB is that the arrangement is predicated on ongoing, uninterrupted rental income of €850 per month, which is said to be speculative and to fail to accommodate the volatility of the rental market and a likelihood of vacant periods.

107. The reply by the Practitioner is that the second bedroom in Ms McEnerney's home has been rented out for ten years to various tenants and she has always been in receipt of the level of payment now being received. She was renting a room to a Ukrainian national and received €800 monthly from the

Department of Social Protection, with €50 in cash from the tenant. It is said that, after that scheme, she would rent the room for €850 per month, it being in a prime location close to the city centre and Dublin City University. The Practitioner points to economic reports and rental reports from daft.ie which he says predict a strong outlook for the rental market (*“Rental Price Report: an analysis of recent trends in the Irish residential rental market 2023 Q1”*).

108. Mr McCabe in his replying affidavit raises inconsistencies in the evidence as regards how many tenants have resided at the home and whether or not the rent was €800, plus €50 contribution to household costs, or €850. He states that these inconsistencies undermine the assurances about the rental of the room and the risk of vacant periods. In reply, the Practitioner repeats that there have been different tenants but never a difficulty renting the room without any vacant periods. He confirms the rent is €850 and that there is no sharing of additional expenses.

109. Ms McEnerney addresses this in the affidavit sworn by her on 30 August 2024. She states that the same tenant resides at her home and she is still in receipt of €800 monthly from the Department of Social Protection and €50 in cash from the tenant. She states that she has rented a room in her home for 11 years and that her home is equipped to allow privacy to her and the tenant and that it is in a prime location. She states that, when she has previously advertised the property on daft.ie, she has been *“bombarded by emails of inquiry with students, working professionals and even families looking to rent the room”*.

110. After this appeal was filed, Ms McEnerney swore a further updating affidavit on 16 October 2025, in which she explained that her Ukrainian tenant had vacated the room and she had a new tenant residing there. She states that there was high demand for the room and she was no more than a week without rental income. The new tenant is described as a working professional and the rent is €850 monthly. A copy of the rental agreement signed on 1 July 2025 and evidence of the payment of a deposit for rent on 23 June 2025 and monthly payments of €850 for rent in July, August, September and October 2025, are exhibited to the second affidavit of Ms McEnerney.

111. The position advanced by the Practitioner at the hearing is that the debtor is clearly doing her best to bring all available means to bear and the Practitioner is seeking to ensure that the means of others living at the house are also brought to bear. The rent has always been a significant component of her income, since the preparation of the PFS. There is always a risk of rent interruption, but Ms McEnerney has consistently made the payments when due, has rented the house for over 10 years and has adapted the house to allow the upstairs to be rented out. If that rent stopped, the payments would not be sustainable, but counsel for the Practitioner contends that there has been a consistent balance of €2,000 to €3,000 per month in the recent bank statements. Counsel for the Practitioner cites the ISI Protocol, which states that *“financial contributions from other members of the household to the Debtor should be counted as*

income of the Debtor” (clause 11.3). It is also stated that the rent can be verified by sight of a rent agreement or relevant bank statement entries (appendix 3).

112. The submission made by counsel for the Bank in reply was that the reliance on rent was speculative, uncertain and unsustainable. The Court would have to be satisfied it is reasonably likely that she will get €850 per month until the age of 78 and, if one month was missing, the PIA would fail. It was suggested that her medical condition may hinder her ability to rent the property and that she may need care at a later stage. Questions were raised about the evidence that the Debtor had one tenant for 10 years. It was emphasised by counsel for the Bank that the Debtor was too heavily dependent on rental income, with no prospect of employment in the future. It was argued that room rental can be used to supplement income but not as the source of income.

Findings regarding rental income

113. This objection by AIB centres on whether the rental income received by Ms McEnerney is sustainable and dependable in the longer term. There is somewhat limited evidence as regards the asserted eleven-year history of renting a room, but the evidence does show that she rented out a room in her house for the rent of €850 in December 2022 and January 2023, and for €825 in February 2023 (bank statements evidence this). There was then evidence that the Department of Social Protection awarded her the accommodation claim for accommodating a Ukrainian national from September 2023 and lodgements of €800 can be seen in her bank statements which I have reviewed. The most recent evidence is that she is renting the room since June 2023 at a monthly rent of €850 on the basis of a written agreement.

114. It is not actually necessary to prove the room has been rented for eleven years, but I have no reason to doubt the sworn evidence that Ms McEnerney that she has been renting a room in her house for a substantial period of time. Certainly, the evidence shows that it has been rented since 2022 and that the current rent is €850 per month. As regards the future reliability of this income, the housing crisis and shortage of available rental accommodation in Dublin are the subject of constant public attention and concern. I find it difficult to accept the contention that a room available for rent in the area in which Ms McEnerney lives, which is in close proximity to the city and to Dublin City University, would not be readily rented. Ms McEnerney’s evidence is that she was “*bombarded*” when she advertised the room on daft.ie, evidence which I accept. I pause here to note that this second affidavit of Ms McEnerney was sworn after the Circuit Court proceedings and is important to the conclusions I have reached under this heading. That evidence demonstrates the current rental arrangement and the agreed rent of €850 and that the Debtor was “*bombarded*” in response to the advertisement on daft.ie.

115. I also have regard to the reports exhibited by the Practitioner, including the daft.ie “*Rental Price Report*” which discloses that rents have risen by 11.7% nationally in the first quarter of 2022 and that

there were ongoing shortages in available rental accommodation. The report prepared by Jim Power on the Irish Private Rental Market (June 2022), which was also exhibited by the Practitioner, also discloses downward trends in available rental accommodation, with a decline of 4.8% between 2017 and 2020.

116. In light of the available evidence, I do not see a sufficient basis for a concern that the rental income which the Debtor has obtained since at least 2022 (although on her evidence and that of the Practitioner for considerably longer) is not sustainable or reliable. Insofar as the Bank relies on speculation that Ms McEnerney's health may somehow affect the rentability of the room, I do not see this concern as being well-founded from the evidence before me.

117. Finally, it is always possible that circumstances and needs may change at some point in the future and Ms McEnerney may require a different form of accommodation. I do not seek to make any hypotheses in this respect, save to note that the option of selling the house is always open to her, as it is to any borrower. Ms McEnerney has substantial equity in her home, equity which will increase each year that the mortgage is being paid off. As was emphasised by Owens J. in *Re McCarthy*, the sale of the house and discharge of the mortgage would not be in breach of any provision of the PIA. It is therefore not relevant to the question of whether the Debtor will be reasonably able to comply with the provisions of the PIA within the meaning of section 115A(9)(c).

Mortgage term

118. The position of AIB is that the duration of the mortgage is not consistent with the CBI Guidelines and there is no evidence in the PIA to support it.

119. In his replying affidavit, the Practitioner describes the CBI Guidelines as a helpful barometer of affordability, but states that they are issued in the context of the CCMA where there is less scope for sustainable restructuring based on affordability. He also points out that the Guidelines merely require caution to be exercised when a loan is being extended beyond 70 years.

120. In submissions, counsel for the Practitioner contends that Ms McEnerney would be 71 years old (from the date of the hearing) and references the CBI Guidelines, emphasising Clause 2.4 (which states that an overall ceiling of 70 years of age will apply for the Central Bank to consider a term extension "*unless there is firm evidence that an older age limit can apply*") and clause 2.8 (which refers to the possibility that mortgage arrears solutions may extend into retirement and banks may agree to lifetime tenure if the proceeds of the estate would pay off the remaining debt). He cites examples of other cases, such as *Re Hayes*, in which the mortgage would be payable until the debtor was over 70 (79 years old in the case of *Re Hayes*).

121. The submissions by counsel for the Bank is that Ms McEnerney would be 78 years old at the expiry of the mortgage (if it is an 18 year old term from the date of the hearing of the appeal) and that there can be no guarantee that she will be able to sustain that mortgage until then.
122. I do not regard the duration of the mortgage term as a good ground to refuse to approve the PIA in this case. Arrangements have been approved which allowed mortgages to be paid until the borrower is well in their 70s (as in *Re Hayes*) or even their 90s (as in *Re Kirwan* [2021] IEHC 327).
123. When there are arrears, as in this case, there may be good reason to allow for a mortgage term which is longer than may otherwise be preferred. This is envisaged by the CBI. It is also relevant to consider the available alternatives. In particular, in this case, a shorter mortgage term would increase the monthly cost and may well render the PIA unaffordable. As will be seen, I do not believe that the equity held by Ms McEnerney in her home does allow her a sufficient margin to acquire another property or pay rent in the medium to long term in the area in which she lives.
124. That said, it is not to be assumed that she will necessarily remain in occupation of the dwelling for the 18 year term of the mortgage. Her equity in her home will increase annually and it may make the sale of the house and discharge of the mortgage at an earlier stage in its term a realistic option. Owens J. noted that in *Re McCarthy* it was possible that circumstances may change and the debtors may decide to sell the house and repay the mortgage, without breaching the PIA and that, “[t]his entitlement is a feature of mortgage lending.”
125. As regards the specific term remaining, there was some lack of clarity at the hearing regarding the figures and an apparent disagreement between the sides as to the date of expiry of the mortgage if the PIA is approved. However, whether the debtor will be aged 78 years or less, I do not regard the term of the mortgage or the age of the Debtor at its conclusion to be a good ground not to approve the arrangement.

UNFAIR PREJUDICE

126. The question I must ask here is whether I am satisfied that the arrangement is “*not unfairly prejudicial to the interests of any interested party*” (section 115A(9)(f)). Two categories of prejudice are raised by the Bank: the level of the interest rates, and the prejudice caused by not permitting the Bank to pursue possession proceedings now.

Interest rates

127. In Mr McCabe’s first affidavit it is contended that the PIA is unfairly prejudicial to the Bank, on the ground that the interest rate is unfairly prejudicial, among other complaints. His evidence that the closest comparator available on the market was a 20-year fixed rate of 3.95% offered by Avant and that,

if that was applied here, the return for the Bank would be €53,085.64 as opposed to the return of €6,106.84 under the PIA.

128. The response of the Practitioner is that there is a better outcome in the PIA than in bankruptcy and that the interest rate is profitable and allows a continuing uplift, profit and return to the Bank. He estimates that the full return to the Bank under the PIA would be €143,408.29 as opposed to €133,095.58 in bankruptcy. He also points to the length and cost of a repossession process (which would be the Bank's alternative if the PIA is not approved).

129. He explains the interest rate as being necessary to ensure the debtor's return to solvency based on her income, expenditure and circumstances, and to achieve long term affordability. He also contends that the interest rate does not constitute unfair prejudice and relies on several grounds: First, there was no evidence from the Bank of costs of funds or a need to borrow or raise funds to sustain the facility. He contends that a fixed rate mortgage is a profitable product. He also points to the EURIBOR rate and states that cost of funds is a fundamental factor and that, when a creditor borrows based on the EURIBOR rate or from the European Central Bank ("*ECB*"), the relevant comparable interest rate market is not just Ireland, but all of the EU. It is pointed out that Ulster Bank (now AIB) purchased the loan and the money spent is the cost of funds and the more relevant consideration. Second, it is said that, if the Bank needs to borrow to sustain the mortgage (which is not accepted to be likely), the Bank could do so at a lower rate than 0.5% and would therefore make a profit. He asserts that the rate is a profitable rate.

130. These points are not addressed in Mr McCabe's second or third affidavit.

131. In oral submissions, counsel for the Practitioner emphasises the absence of evidence on this point and particularly the lack of any evidence from AIB regarding interest rates. He notes that interest rates have fallen since Mr McCabe's first affidavit was sworn and relies on the judgment of Baker J. in *Re Hayes* regarding the distinction between restructuring and new lending. The position advanced is that AIB could make a more valid argument of prejudice arising from a low interest rate, if there was a counter offer based on a different rate, but no such proposal was made. The Practitioner also argued that the Bank will recover the full debt that is secured on the house, emphasising the fact that the Debtor has positive equity in the property. He emphasised that there is no proof of any issue with the cost of funds and that the interest rate is a profitable rate and margin.

132. It was then argued that the interest rate proposed under the PIA was not a market rate and that the Bank would recover a greater return such as 5% over 18 years on the market at the moment. It was argued that the interest rate of 0.5% is unprofitable and unjust and the arrangement should be refused approval on that ground.

133. The only case which addresses this topic in detail is *Re Hayes*. There, it was proposed that the interest rate would be fixed at a rate of 3.65% over the extended mortgage term of 27 years. This was argued to be unfairly prejudicial as the rate proposed was vastly different to even the most competitive rates available on the open market and the creditor – an investment fund - would not be able to borrow an equivalent sum at that rate over the same period. Several affidavits were sworn on behalf of the creditor addressing this point and it was said to be impossible to quantify the actual loss that might be caused by the rates being fixed at a level which did not reflect ECB base rates.
134. Baker J. noted that, unlike sections 102(6)(a), (b) and (d) (which allow for interest only payments, interest and part capital payments or deferral of a mortgage payment for the duration of the PIA), section 102(6)(e) “*permits that interest rates may be fixed or variable, or linked to a reference rate*” and does not limit the period of time for which this can be done (§47).
135. The court noted that the creditor was an investment fund not a lender and that the evidence did not suggest that the creditor would in fact need to go to the market to fund the investment. It is notable that the court found that “[t]he terms on which the asset was purchased or how it was financed are not identified” (at §53). Baker J. also rejected the proposition that it was always necessary to test the unfairness of a proposed interest rate against the projected future borrowing needs of a lender. It was instead necessary to weigh the actual circumstances of the creditor (§54).
136. The following finding is relevant here: “[t]he loan is an asset of the objecting creditor, secured over real property and the proposal offers a fixed, albeit long term, return on the investment, with the repayments proposed at an amount certain over the term” (at §54). Baker J concluded in this respect that “the interest rate proposed by the PIP in the present case is to be tested against the future costs of, or value to an investor not a lender” (at §55) and that there was not sufficient evidence that the proposed interest rate rendered the PIA unfairly prejudicial, given the creditor was an investment fund and not a lending bank (§57).
137. Baker J. also attached some weight to the fact that the proposed fixed interest rate provided for equal monthly instalments for the duration of the mortgage of €1,080.58, which, having regard to the modest income and ages of the couple, was the only proposal which would secure their continued occupation and ownership of their home (§80).

Findings regarding interest rate

138. Section 102(6) of the Act provides,

“Without prejudice to the generality of section 100 or subsections (1) to (3) and subject to sections 103 to 105, a Personal Insolvency Arrangement may include one or more of the following terms in relation to the secured debt:

(a) that the debtor pay interest and only part of the capital amount of the secured debt to the secured creditor for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(b) that the debtor make interest-only payments on the secured debt for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(c) that the period over which the secured debt was to be paid or the time or times at which the secured debt was to be repaid be extended by a specified period of time;

(d) that the secured debt payments due to be made by the debtor be deferred for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(e) that the basis on which the interest rate relating to the secured debt be changed to one that is fixed, variable or at a margin above or below a reference rate.”

139. As Baker J. points out in *Re Hayes*, sections 102(6)(a), 102(6)(b), 102(6)(c) and 102(6)(d) all limit the duration of the payment proposals in question to the duration of the PIA. Section 102(6)(e) contains no such limitation. The Oireachtas therefore intended that it would be possible for a PIA to change and fix interest rates for the lifetime of the mortgage without limitation.

140. When it is argued that the interest rate is unfairly prejudicial, it must be recalled that the test is not an absolute or mathematical test of prejudice, but rather, as Baker J. explained in *Re JD*, it is necessary “*to consider whether the PIA is unfair having regard to all of the circumstances*”. When weighing an assertion that the prejudice is “*unfair*” a court must consider the circumstances of both the creditor and the debtor and must do so having regard to the objectives of the Act. In a section 115A application such as this, the public interest in allowing an insolvent person to retain their home is a weighty factor. It is also relevant to consider the terms of section 115A(9)(b)(ii), which provides that the court must be satisfied that “*having regard to all relevant matters, including the terms on which the proposed Arrangement is formulated, there is a reasonable prospect that confirmation of the proposed Arrangement will... (ii) enable the creditors to recover the debts due to them to the extent that the means of the debtor reasonably permit...*” This qualification that the right of recovery is “*to the extent that the means of the debtor reasonably permit*” must be borne in mind when assessing an argument of prejudice by a secured creditor such as AIB here. The right of recovery is conditioned by considerations of the means of the debtor under section 115A.

141. Turning then to the specific question of the interest rate, I do accept that 0.5% is an unusually low interest rate and is not a rate that is available on the Irish market. However, various detailed arguments were raised by the Practitioner on affidavit to demonstrate the flaws and gaps in the Bank’s argument

of unfair prejudice owing to the interest rate (including the availability of low interest rates outside Ireland). These arguments were not answered by the Bank. There is no evidence from AIB. It has not been shown to my satisfaction that the Bank will in fact have to incur costs, go to the market, or suffer higher interest rate loans to sustain this debt. Evidence could have been led regarding the terms on which AIB acquired the loan and the costs to AIB of maintaining the loan, so as to show the allegedly unfair impact of this interest rate, but that has not been done. There is some correlation with the situation in *Re Hayes* and the observation by Baker J. in that case that “[t]he terms on which the asset was purchased or how it was financed are not identified” (at §53).

142. While the interest rate is undoubtedly a very low one, it is a fixed return for the life of the mortgage and, given the Bank’s own arguments about the repayments not being affordable for Ms McEnerney, I find it very difficult to see how she could contribute more. There is a balance to be struck when an argument of unfair prejudice is made. It is a very fine balance in this case, but I am influenced by the lack of evidence from the Bank of actual harm arising from the interest rate proposed, by the inability of Ms McEnerney to pay a higher rate – this is the most her means reasonably permit - and by the very real, severe repercussions for her if the PIA is not approved. Weighing these considerations and the objectives of the Act, I consider that the interest rate proposed in the PIA is not unfairly prejudicial to the interests of the Bank in the very specific circumstances of this case.

Alternative of possession proceedings

143. In Mr McCabe’s first affidavit it is contended that the PIA is unfairly prejudicial to the Bank, as it would receive an immediate full payout in bankruptcy. Counsel for the Practitioner contended that the Debtor would be homeless before turning 66. Another point made by the Practitioner is that the real alternative is not bankruptcy, given the sole debt is secured on a property in which the debtor has substantial equity, but rather possession proceedings. He also made the submission that the only real prejudice posited was the prejudice of having to bring possession proceedings, which is the same position the Bank is in now in the absence of a PIA. He contends that proportionality could then be weighed by any court in deciding whether to grant possession and different outcomes were possible, including a long stay. It was pointed out that the debtor is settled in her home, with her doctor, services and community in close proximity for the past 20 years (a letter from her doctor evidencing this proximity and the extensive list of medication she requires was among the exhibits). It was said that possession proceedings would not be fast, whether they commence now or later.

144. Counsel for the Bank contended in reply that there would be an immediate 100% return in bankruptcy but agreed that the real alternative is possession proceedings. It was said that the need to bring possession proceedings would be unfairly prejudicial to the Bank. It was also said that possession proceedings would be more difficult at a later date when the Debtor is older and more difficult to evict.

145. In *Re Hayes*, the Court assessed the correct approach to comparing a bankruptcy scenario with a PIA proposal when the material objection was that the interest rate under the PIA was unfairly prejudicial. Baker J. firmly rejected the argument that this should be done on a “*mathematical basis*” (§71). The PIA must be assessed in light of the objective of securing the debtor’s ownership and occupation of their home, insofar as not unreasonable or unfair to do so. On the facts of the proposal in *Re Hayes* itself, she also found that, even if a mathematical approach was taken, the differential would not justify the rejection of the arrangement. There needed to be a material, and not merely a marginal, improvement in bankruptcy before unfair prejudice could be found:

“74. What is unfair will depend on the circumstances, including the likely return on bankruptcy, but a test of fairness invokes a comparison or comparative analysis and the principles of proportionality. A proposal in a PIA which disproportionately prejudices a creditor is likely to be unfair, and disproportion could be found if the likely result in bankruptcy, would be not just marginally better than under a proposed PIA, but materially so.”

Findings regarding possession proceedings

146. The question I must ask is whether it is unfairly prejudicial to AIB to approve this PIA, by comparison with the alternative possible courses of action.

147. It was agreed that the true alternative is not bankruptcy but possession proceedings. The position of AIB appears to be that it should not be put at risk of having to later pursue possession proceedings if the PIA should fail. A specific argument advanced by the Bank at the hearing is that, if the PIA is approved and fails, the Debtor would then be older with more severe physical and mental health issues, she would become a more sympathetic debtor and it would become more difficult to evict her and recover possession of the Property. It amounts to an argument that I should refuse to approve the PIA and facilitate the early eviction of Ms McEnerney so the Bank does not have the prejudice of attempting to secure possession of her home when she is older and more ill than she is at present.

148. I reject this argument. While the Bank has an undoubted right to enforce its security in the event of default, one of the primary purposes of the personal insolvency regime is to endeavour to protect the homes of insolvent debtors from such enforcement (subject to the requirements of the Act). If the effect of the PIA in this case is that this objective is reasonably attainable here, with a reasonable prospect that it will enable Ms McEnerney to resolve her indebtedness (as I have found to be the case), I do not believe it is valid for the Bank to complain that the very inability to evict her now constitutes unfair prejudice. The argument that the arrangement is unfair to the Bank because the Debtor is ill and will become a more sympathetic defendant in repossession proceedings the older and more ill she becomes, is an unattractive argument and is firmly rejected.

149. Another argument of unfair prejudice on which AIB relies is that its recovery of the monies is not immediate and it should have to postpone enforcement in favour of a PIA which it regards as bound to fail. I am satisfied that the approval of the PIA would mean that the Bank recovers its debt plus a very modest interest rate and, if there is a default, the Bank can then consider the appropriate enforcement steps to take. Given the substantial equity which Ms McEnerney holds in the property, I do not regard the risk faced by the Bank to constitute relevant or unfair prejudice.

150. Furthermore, if the Bank enforced its security now, I am of the view (as I will address shortly), there is a real risk Ms McEnerney would face homelessness in the medium to long term. AIB's assertion of unfair prejudice must be weighed against that risk of homelessness and in light of the fact that this may be Ms McEnerney's only chance to emerge from insolvency and retain her home – an outcome which is firmly in the public interest and in furtherance of the objectives of the Act. This is not a matter of sympathy for the Debtor (something warned against in *Re Power*) but rather a finding on the facts that any prejudice apprehended by the Bank by being delayed in taking enforcement action is not unfair when all relevant circumstances are weighed.

THE ULSTER BANK PROPOSAL

151. The position of the Bank, as explained on affidavit by Mr McCabe, is that the most appropriate path to solvency for Ms McEnerney is to downsize to more affordable accommodation and that the Ulster Bank proposal would involve a voluntary sale and assistance with relocation in the amount of €15,000.

152. The Practitioner's position is that Ms McEnerney's home is laid out to allow her to occupy the downstairs only so she does not have to use the stairs and her tenant then resides upstairs. An occupational therapist has attended the home for the purpose of installing a lever for her bed and pressure cushions. The Practitioner emphasises that sustainability must be understood against the risk that, if she defaults, her home would be likely to be repossessed and she would be homeless. He points to a number of other relevant considerations, including that the loan is in serious long term default, it could not be resolved under the Central Bank Code of Conduct on Mortgage Arrears or the Mortgage Arrears Resolution Process.

153. He explains that alternatives were explored, including the possibility of mortgage-to-rent and social housing, but this was not an option owing to the fact that Ms McEnerney has equity in her home. As regards the possibility of trading down, he states that the price of one-bedroom properties in Dublin 11 would not be affordable for her. She would have a surplus of €146,904.41 when sales costs are subtracted from her equity of €161,904.42 and there is no accommodation that can be purchased for less than €150,000 in her area. The surplus would only provide eight years' rent, so renting was not an option (based on average monthly rents of €1,450 for one-bedroom accommodation). She would then

be vulnerable to homelessness at the age of 66. He states that the home is not excessive or disproportionate relative to the needs of Ms McEnerney.

154. The Practitioner states that there are no properties to purchase within the budget that would be available to Ms McEnerney and that the voluntary sale and relocation proposal was not appropriate. He states that his office did enquire as to whether there was a possibility of a proposal which allowed the Debtor to remain in her home. The Bank position was that this was “*unlikely*”.

155. Mr McCabe disputes the contention that the Debtor would be made homeless if her home is sold and points to two properties in the locality which are on the market at €185,000. He aggregates the equity in the home of €161,904.42 and the €15,000 offered by the Bank to show the affordability of those houses for the Debtor.

156. In reply, the Practitioner challenges this conclusion, pointing out that the payment of €15,000 would be absorbed by sales costs, leaving a shortfall of €23,095.58. He does not understand where the Bank suggests she would get this money. In his next affidavit, Mr McCabe states that the Bank would absorb the sales costs and that “*the Practitioner has failed to provide any evidence that the Debtor could not raise alternative funding to cover any shortfall*”.

157. In oral submissions, the Practitioner points out that the adaption of the house to suit her specific needs is relevant (as also occurred in *Re McCarthy*) and relied on the reports exhibited to the Practitioner’s affidavit to show the shortage of available housing and the high level of rent in the area. Counsel for the Practitioner emphasised the lack of available rental accommodation and the lack of any property for sale for less than €150,000, there being no low value property market in Dublin. He also noted that the properties identified by the Bank were not suitable as they were upper floor properties and Ms McEnerney has limited mobility and can only live on the ground floor. The submission of counsel for the Practitioner at the hearing was that the idea that the Debtor could find a property within her means was unstateable.

158. The Bank argued at the hearing that there was an option of down-sizing available to the Debtor and that the alternative was not homelessness. It was argued that Ms McEnerney would never be homeless and it is said that she could raise money and purchase another house. The Bank’s counsel also relied on the judgment of McDonald J. in *Re Nuzum* [2020] IEHC 164.

Findings regarding Ulster Bank’s Proposal

159. The Bank’s argument that Ms McEnerney would not be homeless if the PIA approval is refused and her home is repossessed depends on her ability to source alternative accommodation in her area using the proceeds of sale remaining after the discharge of her debt. It is not asserted that she should move

to a different area, and that is not in any event a contention I would have accepted, given her specific medical needs, the importance of continuity in her medical care and her heavy dependence on that care. While the evidence and submissions provided to me indicate that she does not require the ISI budgeted amounts for social interaction, I am mindful that she is single and has no children and I consider it would not be appropriate to require a move to a new area which may create new difficulties and challenges for someone in her vulnerable medical condition.

160. The evidence of available housing in her area is somewhat limited: the Bank provides evidence of two properties which are both more expensive than she could afford and not suitable for her needs (given her inability to climb stairs). As regards the scale of the deficit, her equity in her home is agreed to be €161,904.42. The Practitioner deducts €15,000 to account for the sales costs, while the Bank adds that same figure to reflect the €15,000 offered by the Bank. I do not believe either approach is strictly appropriate. The contribution by the Bank was described in the notice of objection as an aid with “*relocation costs*”. The Bank therefore appears to regard €15,000 as a fair estimate of the costs of relocating. Even if that is instead characterised as a contribution to sales costs (which also appear to be agreed at €15,000), it must leave relocation costs outstanding. The correct calculation in my view is that the equity is €161,904.42 and, if either the sales or relocation costs is covered by the Bank, Ms McEnerney would remain liable for the other. There would also likely be costs of adapting any property to meet her needs. Given the advertised asking price of the properties identified by the Bank is €185,000, there would – as the Practitioner points out – be a shortfall of €23,095.58. I would then add the additional costs (whether characterised as sales costs or relocation costs). Consequently, the shortfall would, on these estimated figures, be over €38,000.

161. The contention by the Bank that she could raise this shortfall was not explained or substantiated by any evidence. Moreover, I find it to be at odds with the Bank’s overall case that she has inadequate resources to afford or sustain the PIA and no financial buffer. I do not accept the vague assertion that she could obtain an additional sum of money of some €38,000 (or even the €23,095.58 posited by the Bank) from an unidentified source to fund the acquisition of a new home, particularly given the evidence of her limited financial means and her considerable health issues. I consider that the evidence demonstrates that the ability of Ms McEnerney to find alternative housing for the remainder of her life if the PIA is rejected is in significant doubt and the risk of homelessness in her late 60s is very real.

162. Insofar as the Bank contends that the Practitioner failed to consider any alternatives, this contention is not supported by the evidence before me. The Practitioner has sworn affidavits to the effect that other options were considered but rejected as unsuitable or unavailable owing to the equity held by Ms McEnerney in her home. I have no reason not to accept that evidence. There is also evidence of engagement between the Practitioner and the Bank in which the Bank rejected as unlikely the possibility of any proposal which would leave Ms McEnerney in occupation of her home.

163. Finally, the Bank's reliance in *Re Nuzum* is, in my view, misplaced. That was a case in which the debtors occupied a large detached five-bedroom house in Dublin valued at €1 million. McDonald J. ruled that the cost to the family of remaining in that house was disproportionately large and specifically pointed to the availability of smaller affordable accommodation in the north Dublin area. There is no real correlation here. This debtor is not seeking to live in luxury. She is seeking to remain in the modest house in which she lives and rents a room, in proximity to the medical care on which she is dependent, and for which no suitable alternative has been shown to be available.

CONCLUSIONS

164. This is a very finely balanced case, which is premised heavily on its particular facts, most notably Ms McEnerney's ill health and limited mobility. The arrangement does create a financial challenge for Ms McEnerney for the duration of the mortgage term, but for the reasons given in this judgment, I am satisfied that the requirements of section 115A are met and that it is appropriate to allow the appeal, approve the PIA and grant the order under section 115A (9) confirming the coming into effect of the arrangement.

165. I will list the matter before me at 2pm on Monday 12 October 2026. The parties can then address the question of costs and final orders or can propose directions for a hearing on those questions should that be necessary.