1 Problem

Resolving the mortgage arrears crisis in Ireland: Ireland has a higher than expected level of mortgage default, amongst the highest in the developed world. Much of this is explained by macro-economic factors, but both the level and duration are unique and in part a result of a very low repossession rate. Wholesale repossession is politically unviable but also structurally difficult and for this reason some other solution may be better.

2 Complications

Quantifying the issue: The Central Bank regularly publish the arrears statistics as do the Department of Finance, they also (DoF) publish the restructures. Currently arrears numbers are close to 100,000 loan accounts. This can have some double accounting as there can be more than one loan on a home, equally, some may be in homeloan arrears where the loan was used for other non-PDH purposes, these numbers are not available in the statistics.

Result if we make no change to current policy: Levels remain stubbornly high and the slow pace of resolutions remain, there will be an economic drag in particular on consumption. Better outcomes over time can be expected and with rising prices there is likely going to be a reduction in negative equity which will hopefully allow movement and or recommitment to debt servicing. The often deeply negative coverage of deep arrears overlooks the fact that people in these situations have not been made homeless, something which would have occurred long ago in other jurisdictions.

Counterfactual assumptions: Had we had a strong repossession culture the need for social housing would have been more apparent earlier and we could have used the depths of the crash to buy cheap housing or construct it. Rather, by keeping people in homes it partially masked this issue. It made social housing clients appear as a mortgage debt problem. This aspect of how we dealt with the crash has been largely overlooked.

3 Solution

Alternative A: One alternative worth considering is that put forward by the professional practitioners group ISIP (Irish Society of Insolvency Practitioners). Long before this topic became known they were operating in the insolvency space, albeit primarily with companies.

One of their suggestions is to reduce the time a person can spend in bankruptcy. In Ireland there is an automatic discharge after three years, but that merely means you lose the moniker 'bankrupt', you may still have payment orders attached to your income. This can be for a further 2-5 years meaning our 'new bankruptcy' can be as long as 8 years.

ISIP suggest that one year is sufficient and will help to deliver balance between creditor and debtor. This may hold merit as several insolvency experts specialise in helping people go to the UK to go bankrupt meaning the route there has upsides to the Irish version.

This is within the realm of policy and politics as it could be bolted on to the insolvency act via a Miscellaneous Provision.

This is a less active solution than other interventionist policies which will ultimately impact on contract and property right both functionally and in terms of precedence.

Alternative B: This can be alternative A with some additions.

A policy which gives banks and borrowers 6 months to take one of the following choices

1. A mass 'Standard Financial Statement' (SFS) campaign is launched. The ability to have existing regulated firms fill them in with a debtor is facilitated through either a 'tax-break per form completed' policy or a small stipend provided to the regulated firm similar to that which Joan Burton tried (badly) to allow for accountants. Then upon receipt the banks re-underwrite the loan using their current lending criteria. By imposing their own criteria it means they sanction a loan that is in line with their own affordability criteria. Short term or unsecured debts are not considered, the precedent will be that these lenders can fall back upon their security.
2. They will ensure that every loan this occurs to will have a term extension to the maximum allowable age or to the borrowers retirement age, and the rate will be a Standard Variable Rate. Using a Discounted Standard Variable (whatever the best available variable is) will also help differentiate between loans that are ultimately unsustainable because many on trackers don't have the ability to absorb a rate hike which will occur at some point.
3. By taking part you get a 3 month halt on any repossession process, and if you do get repossessed you get the 'shortfall resolution' and if needed the better bankruptcy. For people who don't co-operate with creditors in trying to find a resolution they get the more penal brands of bankruptcy, this should help motivate all parties to take part.
4. An important point is that by using the cheapest available variable it will mean that some banks who have not been actively participating will also lock themselves out of the market for new lending because they won't drop their rates while other banks do and it is a form of market participation punishment, it's a judgement of Solomon clause.
5. They accept this payment and any shortfall is dealt with as per the shortfalls section (later) or accept interest only at the variable rate for 5 years (if borrower agrees, this buys them time but not any equity [Swiss model]) or
6. They demonstrate that the person cannot afford any loan (in cases where they are below reasonable living expenses (RLE's) even before debt payment) and issue a letter explaining as much, this letter is acceptable by the ISI for the purpose of an insolvency solution such as bankruptcy. And accepted as an urgent need for housing by state and local housing assistance bodies.
7. As per IAS39 losses will then be imposed and the home can enter a 'home guarantee scheme', or be repossessed voluntarily, or be considered for transition onto a housing body.

Explanation: The 'Home Guarantee Scheme' is a rental agreement whereby the lender will receive a Housing Assistance Payment (HAP) along with the acceptance of full loss of the home by the borrower as already provisioned for. It's the same thing people getting housing assistance use to pay private landlords. In the 'Home Guarantee' it ensures that the HAP will be made for three years if the debtor wishes to stay in the home under a new scheme of surrender and re-lease (give up the property to the bank and then lease it back). The bank take their loss, but the borrower also loses minus being made homeless and the lender has a guaranteed three year cashflow. This also gives the state time to provide more social housing to meet the future need of these borrowers who may require social housing.

Alternative C: Do nothing, allow the Central Bank and ISI to oversee the problem and accept a slow resolution.

Dealing with Shortfalls: This could be dealt with in one of several ways.

1. Use the ISI service via a Debt Settlement Arrangement for the unsecured debt.
2. Use a protocol based solution which could be to hive off the shortfall for a number of years at 0% with a view to revisiting it at that point, effectively this is a split mortgage oriented solution, pass legislation whereby any interest not received by the bank can be used as a credit against future income (which happens to an extent anyway).
3. Allow a person to use wage deduction to deal with it but in this case to treat that wage deduction like a pension contribution and offer tax allowance – this would only be if they have the supporting documentation that demonstrates they are in the scheme. Another option would be to surrender your personal tax credit and have the creditor become the beneficiary of the money paid due to that.
4. Bankruptcy, a fast-tracked version with no payment order beyond year 1.