

House Hold: Life in Mortgage Distress

A preliminary report on the experiences of people in mortgage distress and at risk of losing their homes.

Presented by **Community Action Network**

As part of the international
Abusive Lending Practices Project

November 2018

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Community Action Network (CAN)

CAN is a social justice NGO working within civil society to tackle issues of inequality and social exclusion, and to support marginalised groups and communities.

CAN is dedicated to working with communities to create a more equal, just society that has the well-being of citizens at its heart.

We work with people to assert their rights to participate fully as subjects of their own lives, to have their voices heard and to have their choices respected. We work within a human rights framework, and we seek to build leadership for positive social change and participative democracy.

We strive to create vibrant communities that have the capacity to participate powerfully in society, and to challenge the inequitable structures, policies and practices that prevent them from doing so. We actively seek opportunities to do this work in local, regional, all-island and international contexts.

CAN is a not-for-profit, independent organisation limited by guarantee with charitable status.

The Abusive Lending Practices Project (ALPP)

ALPP is a joint project of the Open Society Justice Initiative, Open Society Foundation for Europe, CAN, and the NUI Galway Centre for Housing Rights, Law, and Policy.

ALPP seeks to ensure that fundamental rights under the EU Charter of Fundamental Rights are taken into consideration at both the EU and domestic levels whenever institutions are drafting or enforcing laws related to abusive lending practices. ALPP uses a variety of tools to accomplish goal, including empirical research, legal empowerment, education of lawyers, advocacy, and strategic litigation.

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1. Part 1: The Findings

1. Introduction

Shame, Silence, Stress and Social Divide

Ten years on from the crash, the survey and public meetings, undertaken for this research, reveal that thousands of people continue to face multiple challenges and obstacles as they interact with banks, private equity funds as well as government programmes and a legal system that are meant to protect their rights, but which, for the most part are failing them.

The information gathered through the data collection process, and our contact with people at the information and support sessions so far has given us a great insight into how this issue is manifested in the lives of those who are affected.

It reveals the shame, the silence, the stress, the social class divides and biased attitudes, the lack of legal representation, the rejection in court, the failure of state support systems and the abandonment of thousands of families as the country embraces the move “out” of economic crisis.

For the most part, people are overwhelmed by the reality they find themselves in. They have been told that legal aid will not help them, and for the many this has been enough to stop them applying. Most of the people who we have met have told us that they cannot afford to engage or retain a private solicitor. The statistics also indicate the high numbers of people who do not trust the MABS service or the Abhaile scheme, which is the limited State support available to people in very vulnerable positions.

This project will continue with further meetings and a continuation of the survey.

Real Voices

“I studied the law as best I could but I find the treatment of lay litigants in Ireland by judges in some cases to be abusive, condescending and inhuman.”

2. Survey Findings at a Glance

- 69% of respondents say they have not consulted a solicitor for help.
- 83% say they have not retained a solicitor to represent them in court.
- 59% have not participated in the MABS scheme.
- 92% have not requested a consultation with a solicitor through the Abhaile scheme.
- 91% have not applied directly to legal aid for a solicitor.
- 72% have attended court hearings in their case. 11% have not. 17% have not had court hearings.
- 66% of people say they will not be able to afford to rent in the private rental market if they lose their house.
- 49% of homes have one or more children.
- 23% of homes have one or more persons with a disability.
- 56% of people have lived in their homes for over 10 years. 36% have lived in their homes for over 20 years.
- 23% of people have a possession order. 5% have an eviction notice. 59% of people are waiting; for a court hearing date (11%), for a possession order to be entered (38%), or are not sure what the status of their case is (10%)

(Statistics have been rounded up or down to the closest whole number).

Real Voices

"Sorry, but I think it's (MABS) the government pretending they are resolving the problem but they are not."

3. Key Themes

Here are some of the key themes and issues emerging from the research work.

Homes for Years

Perhaps what's particularly revealing within our survey is that the vast majority people responding were about to lose their homes – family homes where they have lived for years. An overwhelming 91% of those who responded to our survey have lived in their homes for over 10 years. Nearly 36% have lived in their homes for over 20 years.

Shame and Stigma

All of the people in the Information sessions and in the survey speak of shame and explain that this is perhaps the biggest limiting factor in people attending information and support sessions or seeking help. Shame is compounded by the fact that cases are heard in a court which is usually associated with crime. Added to this, the dominant narrative in the media is that lenders are doing their best to help people in arrears, further compounding the sense of shame at finding oneself in this situation.

Silence and Isolation

People report that they experience a silence and isolation in terms of their individual circumstances, and talk of frustration, anger and powerlessness in the face of such a major happening in their lives. They tell very few – often keeping their consuming secret from family and friends. One particularly interesting finding is that a significant number of people (17.5%) purchased the home that is in possession with a spouse or partner who is no longer in the home, giving an indication of the multi-layered difficulties that people are living with through mortgage distress.

Legal Let Down

Contrary to popular myth, over 70% of people in mortgage distress have attended court hearings in their case at some stage. Our survey also tells us that over 80% of people have not retained a solicitor to represent them in court, primarily because they can't afford to and do not trust solicitors. They tell a common story of intolerance shown in Irish courts for unrepresented plaintiffs and lay litigants.

Systems Failure

The survey and information sessions also tell us that the statutory systems put in place to support people in mortgage distress are not working for them. While government officials and politicians refer to them regularly as the State's response to the home possession crisis, they are in reality not being used, are not trusted and not, for the most part, delivering the supports needed for those who do engage with them.

4. The Survey Results in Detail

Nearly 60% of those who responded to the survey said that they had not participated in Money Advice and Budgeting Service (MABS). MABS is the State's money advice service to guide people through dealing with problem debt.

Over 90% said that they had not requested a consultation with a solicitor through the Abhaile scheme, which is the service set up to help homeowners find a resolution to their home mortgage arrears. It is available through MABS.

In addition, over 90% said that they had not applied directly to legal aid for a solicitor. A significant 40% of people said that they did not think that legal aid represented people in possession courts. For many, the State supports felt more like a tick-boxing exercise than a meaningful infrastructure to help people.

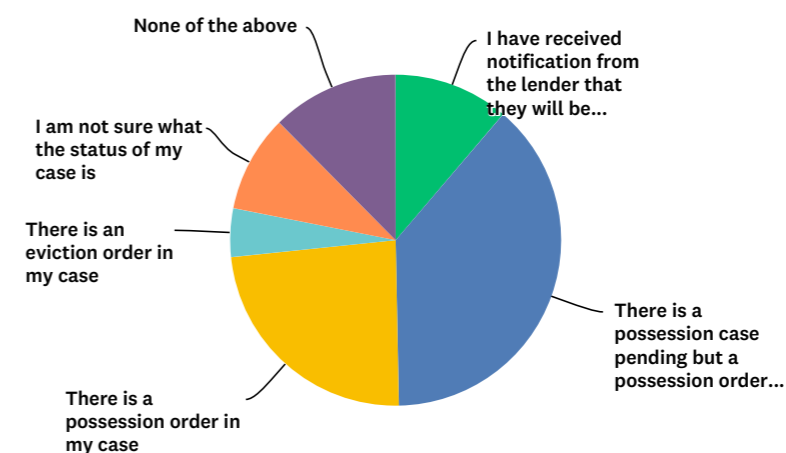
Adding to the Homeless Figures

Finally, perhaps what's also revealing within our survey and from our meetings is the risk of these people, who are currently in homes, adding to the national homeless figure. Over 66% of people said that if they lose their homes, they will not be able to afford to rent in the private rental market. Significantly, nearly 50% of respondents have children in their homes. If they lose their homes to possession by banks or vulture funds, many may have nowhere to go but to rely on State supports and emergency accommodation.

EU and Human Rights Law

Over 50% of those who responded to the survey were aware that they may be able to raise EU law and human rights arguments in their case. A significant number said that they would look to include them in their case. However, those who had raised them in court, often found that they were largely dismissed by judges.

Q1 Please select ONE item below that best describes the status of your case



ANSWER CHOICES	RESPONSES
I have received notification from the lender that they will be seeking possession but there has been no court hearing yet	11.24% 19
There is a possession case pending but a possession order has not been entered	38.46% 65
There is a possession order in my case	23.67% 40
There is an eviction order in my case	4.73% 8
I am not sure what the status of my case is	9.47% 16
None of the above	12.43% 21
TOTAL	169

Lives on Hold

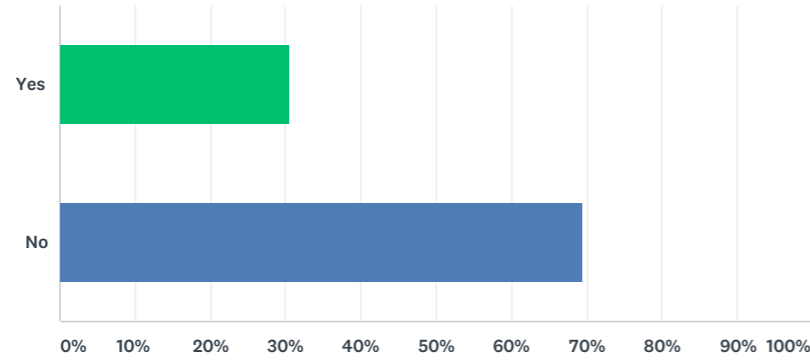
Nearly 50% of the respondents are waiting. There is a possession case pending but a possession order has not been entered, or they have received notification from the lender that they will be seeking possession but there has been no court hearing yet.

For approximately 28% of respondents there is a possession order or an eviction order in their case.

Real Voices

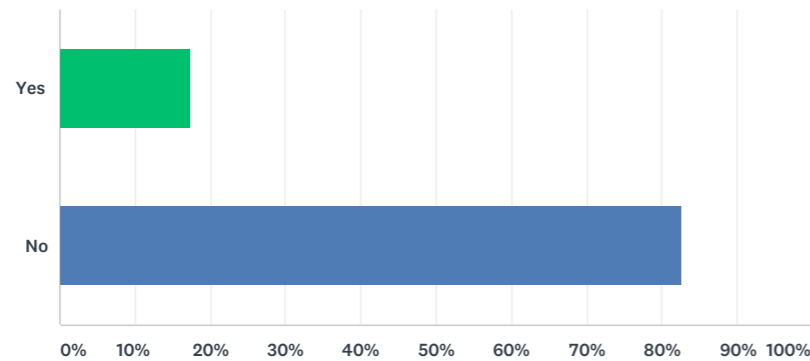
"I found the registrar to be quite sympathetic however I found the court intimidating and hard to understand the language."

Q2 Have you consulted a solicitor for help with your possession case?



ANSWER CHOICES	RESPONSES	
Yes	30.54%	51
No	69.46%	116
TOTAL		167

Q3 Have you retained a solicitor to represent you in your case?

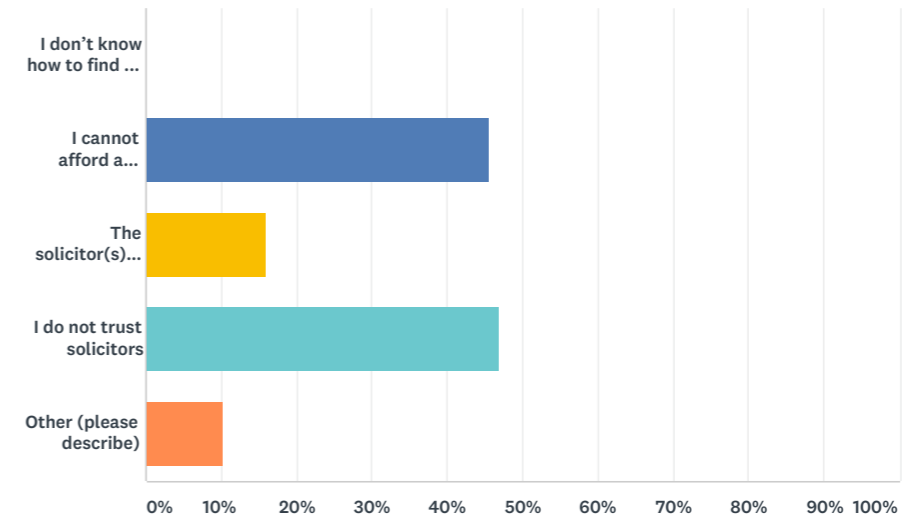


ANSWER CHOICES	RESPONSES	
Yes	17.37%	29
No	82.63%	138
TOTAL		167

A Resounding No

For both questions, the answer is a resounding no. People are not contacting nor retaining solicitors to represent them.

Q4 If you answered “no” to question three, why not? (Please select the ONE item that best describes your situation)



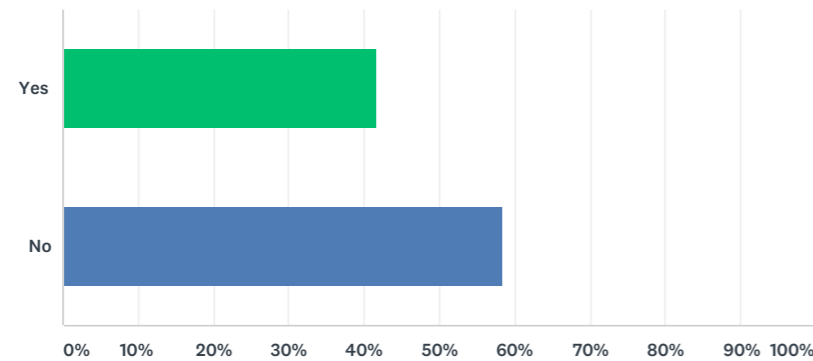
ANSWER CHOICES	RESPONSES	
I don't know how to find a solicitor	0.00%	0
I cannot afford a solicitor	45.52%	66
The solicitor(s) I consulted told me there was nothing they could do	15.86%	23
I do not trust solicitors	46.90%	68
Other (please describe)	10.34%	15
Total Respondents: 145		

A Question of Cost and Trust

Over 45% of respondents say that they can't afford a solicitor. Nearly 47% say that they don't trust solicitors. Many respondents refer to the fact that their local solicitor is working for a bank or for banks. Some respondents say that when they approached a solicitor they were told that they had little chance of success. Some spoke about solicitors taking on the case and then withdrawing services down the line.

A number of respondents said that they had applied for legal aid but had been refused.

Q5 Have you participated in the MABS scheme?



ANSWER CHOICES	RESPONSES	
Yes	41.67%	70
No	58.33%	98
TOTAL		168

Hand back the keys

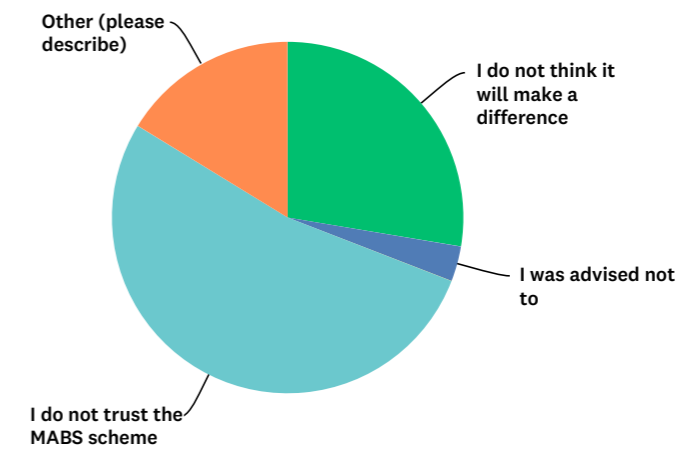
The survey tells us that 41.32% of respondents have engaged with the MABS scheme. A small number of people indicate that they are happy to engage with MABS. Some have said that they are continuing to engage with a view to organising a mortgage to rent arrangement or another possible resolution or agreement to stay in their homes. Some people said that MABS had helped them to pay vital utility bills or were welcome intermediaries with creditors.

However, most said that their interaction with MABS was disappointing. Many were advised to go to MABS by their banks.

A number of respondents said that they felt that the MABS representatives did not have the necessary expertise and knowledge to match the professionals supporting banks and vulture funds.

A number of respondents said that MABS had advised them to hand back their keys – that there was nothing else they could do to help them. Others were advised to go bankrupt.

Q7 If no, why not? (Please choose the MAIN reason)



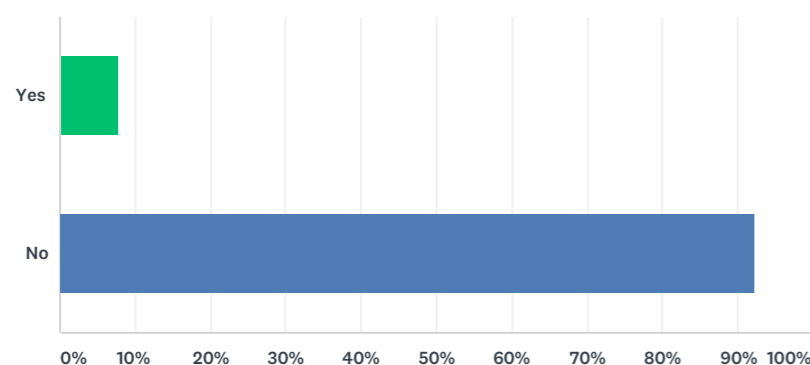
ANSWER CHOICES	RESPONSES	
I do not think it will make a difference	27.64%	34
I was advised not to	3.25%	4
I don't know how to access the MABS scheme	0.00%	0
I do not trust the MABS scheme	52.85%	65
Other (please describe)	16.26%	20
TOTAL		123

Lack of Trust

Nearly 53% of respondents said that they didn't engage with MABS because they didn't have trust that it could help them. It is important to understand that this is a group of people who have been largely let down and so would have little trust in establishment systems.

A further 27.64% said that they didn't think MABS would make a difference to their situation. A number were doubtful that MABS would help them to keep their home, fearful that MABS may advise voluntary sale.

Q8 Have you requested a consultation with a solicitor through the Abhaile scheme?



ANSWER CHOICES	RESPONSES	
Yes	7.69%	13
No	92.31%	156
TOTAL		169

An Overwhelming No

On its website, Abhaile is described as a service to help homeowners find a resolution to their home mortgage arrears. It provides vouchers for free financial and legal advice and help from experts, which are available through MABS.

The aim of Abhaile is to help mortgage holders in arrears to find the best solutions and keep them wherever possible, in their own homes. A dedicated adviser will work with you and your lender to find the best solution for your situation.

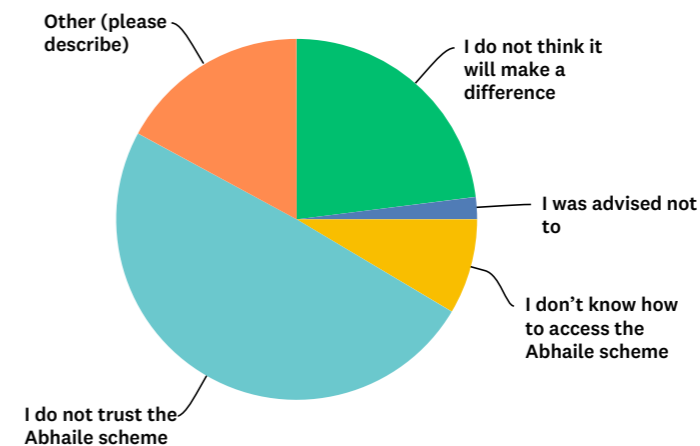
Our survey tells us, however, that over 92% of people in mortgage arrears and at risk of losing their homes are not requesting a consultation with a solicitor through the State supported and promoted scheme.

This tells us that there is something not right about the State response to the enormous problem of home possession.

Real Voices

"When I raised EU and human rights law arguments in my case I was completely ignored by the judge as she decided that I wasn't a consumer therefore I have in her view no rights."

Q9 If no, why not? (Please choose the MAIN reason)



ANSWER CHOICES	RESPONSES	
I do not think it will make a difference	23.03%	35
I was advised not to	1.97%	3
I don't know how to access the Abhaile scheme	8.55%	13
I do not trust the Abhaile scheme	49.34%	75
Other (please describe)	17.11%	26
TOTAL		152

Trust the Issue Again

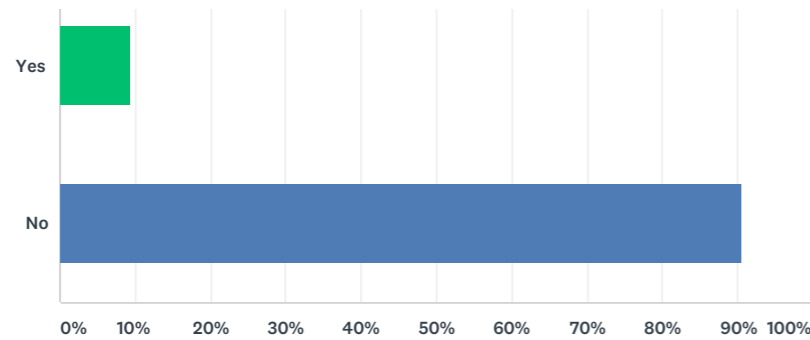
Nearly half of the respondents who answered no said that they did not trust the Abhaile scheme. In comments, it emerged that at the root of this was a distrust of solicitors, as expressed in an earlier question.

Again, there was a strong sense amongst nearly a quarter of the respondents that it would make no difference to their situation – that they would be forced into a voluntary sale or to give back their house. A significant number of people (1 in 12) said that they didn't know about the scheme or didn't know how to access it.

For the minority (less than 8%) who did request a consultation with a solicitor with the Abhaile scheme, the response was that the engagement was unsatisfactory. The consultations were short. There was a sense that the solicitors were going through the motions – doing what MABS instructed them to do. Others were told by the Abhaile solicitor to give back the keys.

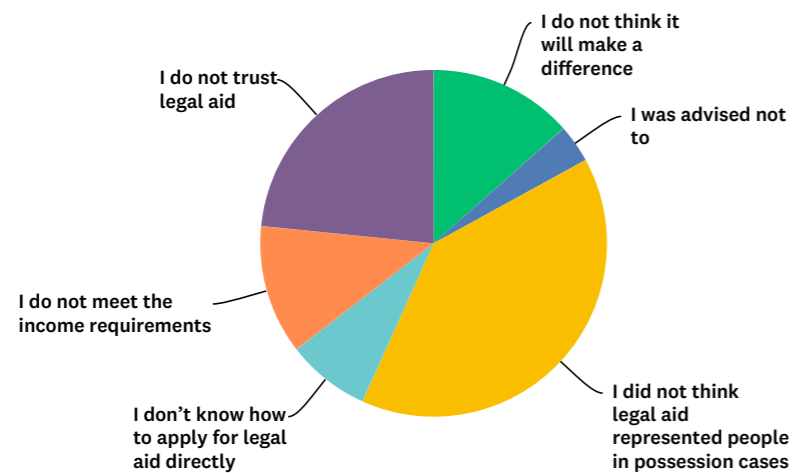
Some respondents, however, were hopeful. One said that things were good, although it was early days yet. Others said that the solicitor was still working on their case.

Q11 Have you applied directly to legal aid for a solicitor?



ANSWER CHOICES	RESPONSES	
Yes	9.32%	15
No	90.68%	146
TOTAL		161

Q12 If no, why not? (Please choose the ONE MAIN reason)

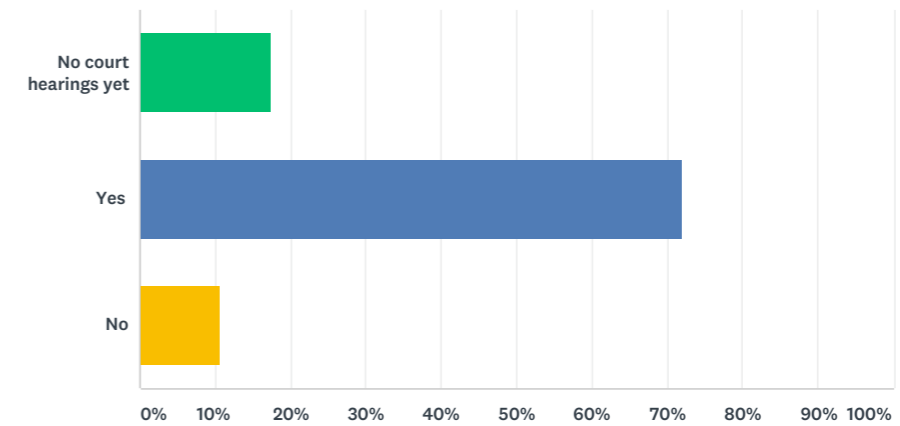


ANSWER CHOICES	RESPONSES	
I do not think it will make a difference	13.48%	19
I was advised not to	3.55%	5
I did not think legal aid represented people in possession cases	39.72%	56
I don't know how to apply for legal aid directly	7.80%	11
I do not meet the income requirements	12.06%	17
I do not trust legal aid	23.40%	33
TOTAL		141

Legal Aid Not an Option

Four out of 10 respondents said that they did not think that legal aid represented people in possession cases. There is no right to legal aid in 'property' related disputes. There is also a means test and a merits test – it's the second one which is the problem – as there seems to be no defence and therefore no merit to the case. Issues around trust also emerged here, as did the belief that legal aid would make no difference to the situation.

Q14 Have you attended court hearings in your case?



ANSWER CHOICES	RESPONSES	
No court hearings yet	17.26%	29
Yes	72.02%	121
No	10.71%	18
TOTAL		168

Q15 If no, why not? (please describe)

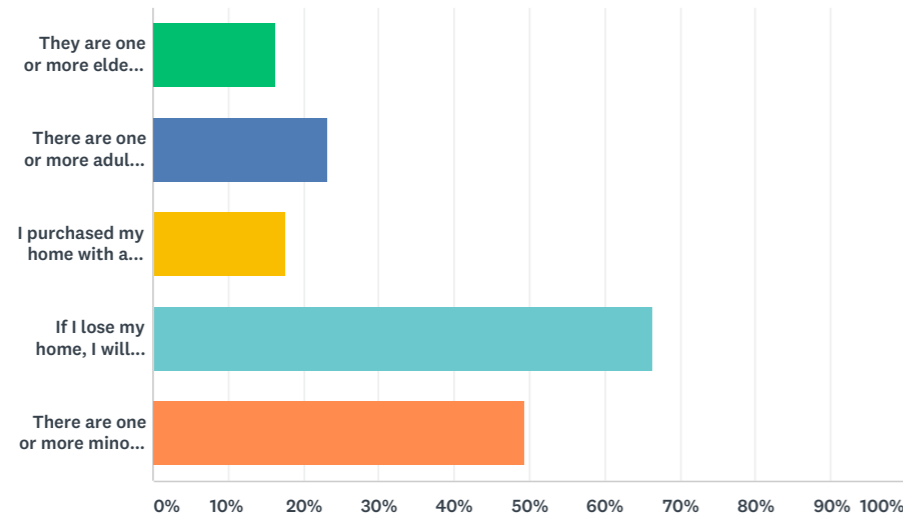
Q16 If yes, what is your experience of the court system? (please describe)

Courts are intimidating, difficult to understand and daunting

72% of respondents have attended court hearings. It is regularly reported that people in mortgage distress don't turn up in court.

For a number of those who did not attend, they said that they had been advised not to by their solicitor. Others said that they had not been informed about the dates by the bank or were waiting on a hearing date. One respondent said that he/she was afraid to attend. Nobody answered that they were just not attending. For the majority who have attended the court, they described the experience as intimidating, difficult to understand, condescending, distracting and daunting. While there was some praise for sympathetic court registrars, many said that the court systems and judges showed little or no patience, understanding or support for lay litigants. A significant number also said that the odds were stacked in the banks' favour; they were more likely to be treated as the honourable party.

Q17 Please select ALL of the following that apply in your case:



ANSWER CHOICES	RESPONSES
They are one or more elderly adults (over 65) in my home	16.25% 26
There are one or more adults with disabilities in my home	23.13% 37
I purchased my home with a spouse/partner who is no longer in the home	17.50% 28
If I lose my home, I will not be able to afford to rent in the private rental market	66.25% 106
There are one or more minor children (under 18) in my home. If so, please give total number below:	49.38% 79
Total Respondents: 160	

Homeless Risk

Over 66% of people say that they will not be able to afford to rent in the private rental market if they lose their home. Nearly half have children under 18 and nearly a quarter have one or more adults with disabilities in the home.

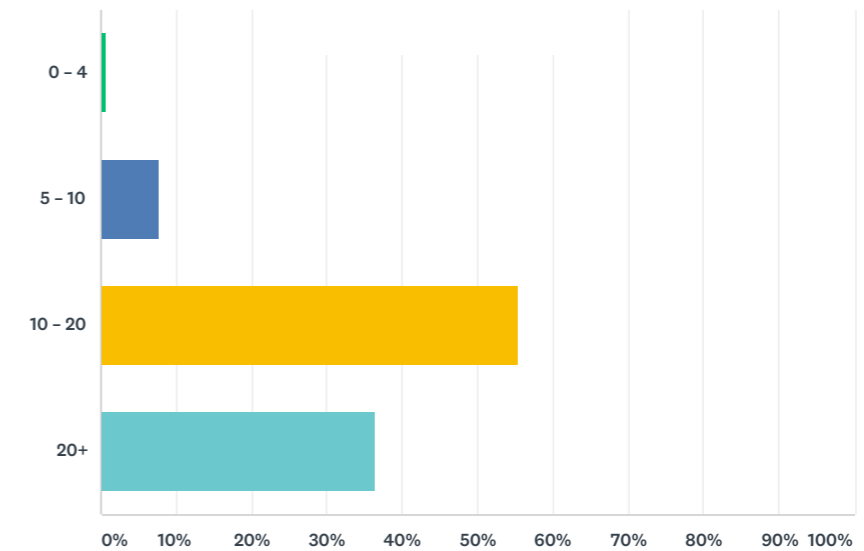
These people are currently living in a home, but are at risk of losing it to a bank or private equity fund (vulture fund).

A significant number of people (17.5%) purchased the home that is in possession with a spouse or partner who is no longer in the home, giving an indication of the multi-layered difficulties that people are living with through mortgage distress.

Homes

These properties are homes where, for the most part, families have grown up, or are growing up. Over one in three respondents have lived in their homes for over 10 years and well over half have been living in their homes for over 20 years.

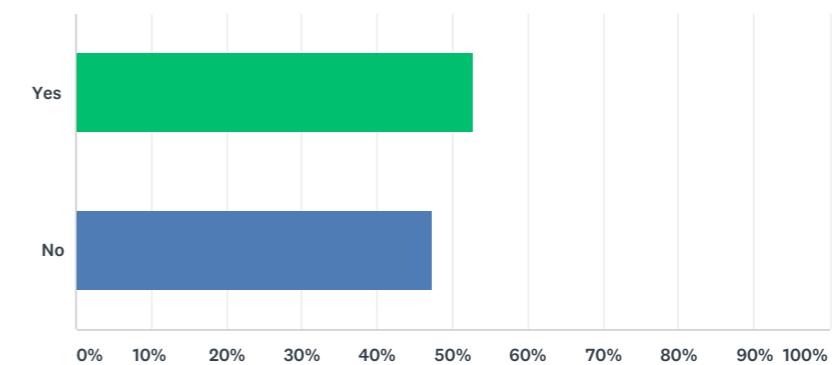
Q18 Please indicate how many years you have lived in your home



ANSWER CHOICES	RESPONSES
0 - 4	0.60% 1
5 - 10	7.74% 13
10 - 20	55.36% 93
20+	36.31% 61
TOTAL	168

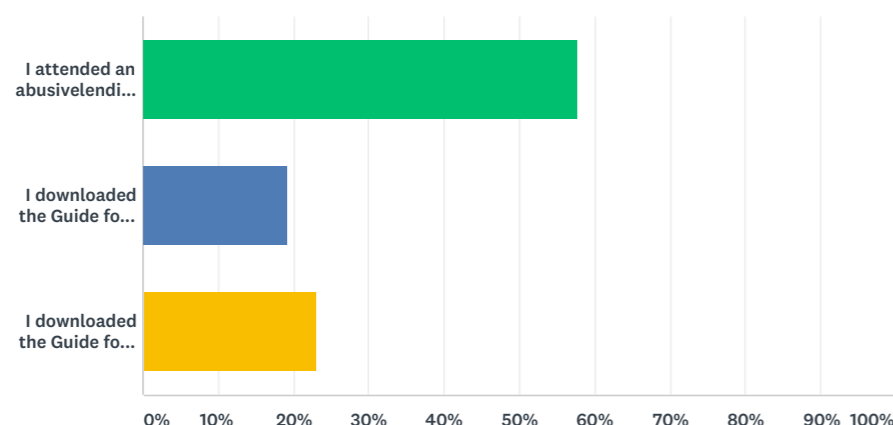
Q19 Are you aware that you may be able to raise EU and human rights law arguments (unfair terms and proportionality) in your possession case?

Answered: 125 Skipped: 46



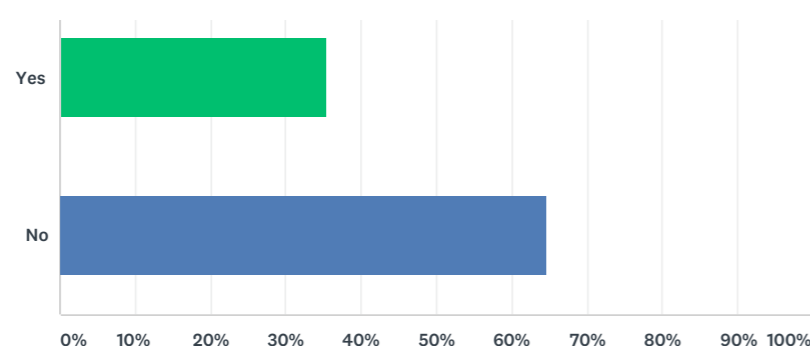
ANSWER CHOICES	RESPONSES
Yes	52.80% 66
No	47.20% 59
TOTAL	125

Q20 If yes, how did you learn about EU and human rights law arguments (unfair terms and proportionality)?



ANSWER CHOICES	RESPONSES
I attended an abusivelending.org seminar	57.69% 15
I downloaded the Guide for People in Mortgage Distress from abusivelending.org	19.23% 5

Q21 Have you raised EU and human rights law arguments (unfair terms and proportionality) in your case?



ANSWER CHOICES	RESPONSES
Yes	35.29% 42
No	64.71% 77
Total Respondents: 119	

EU Law May be Applicable

Nearly 52.5% of respondents said that they were aware that they may be able to raise EU and human rights law arguments (unfair terms and proportionality) in their possession cases. The majority (nearly 60%) had heard about EU and human rights law arguments by attending an abusive lending information session. Some people had already raised EU and human rights law arguments in their case. However, for the most part, the arguments seem to have been ignored or dismissed by judges.

1. Part II: The Background Context

1. Introduction

1. A Mortgage Possession Emergency – The Stark Statistics

There are some 66,000 mortgages in arrears in Ireland, of which 28,000 are in arrears for more than two years. There are currently an estimated 20,000 possession cases before the courts. Based on a minimum of four people per mortgage, we can estimate that mortgage possession is affecting the lives of approximately 250,000 men, women and children on a daily basis.

This context is described in great detail in a previously published (March 2018) study carried out by the Centre for Housing Law, Rights and Policy NUIG (a partner in the Abusive Lending Practices Project) called Access to Justice and the ECB: A Study of ECB Supervised and other Mortgage Possession Cases in Ireland.

It gives an overview of mortgage arrears and repossession and outlines the relevant financial and legal infrastructure and process that relates to this area. Critically, it shows that that some 70% of home loan debtors have no recorded legal representation in mortgage possession cases, in complete contrast to financial institutions which are almost always represented. This mirrors findings in this new House Hold qualitative survey.

2. Methodology – Survey and Public Information and Support Meetings

Over the past year, CAN has organized eight information meetings around the country for people in mortgage distress to listen to them, to raise awareness of the application of EU law to possession cases and to gather data on their lived experience of being in mortgage distress.

Public information and support sessions took place in Tullamore, Mullingar, Ardee, Portlaoise, Galway, Dublin, Limerick, and Dundalk, with more planned into the future. Alongside these meetings, we have distributed a questionnaire designed to illicit the lived experience of people in mortgage distress.

This study draws on information gathered through both the survey and the meetings.

Real Voices

"I was informed that free legal aid doesn't apply."

A Hard to Reach Group of People

Caution, stigma and a lack of trust has made reaching out to people in mortgage distress a challenging process.

Our approach to the information and support sessions has been characterized by a determination to reach out to the thousands of people who are in mortgage distress and to do this with whatever resources we can muster. We have welcomed the incredible leadership and contribution of the people who are themselves in mortgage distress, who have come forward to offer leadership in making the meetings happen locally.

As people have gathered for the information and support sessions they have invariably done so with an air of caution. We very quickly learned about the importance of beginning every information meeting by speaking to the reality of the lived experience of people in mortgage distress, naming the shame, anger, frustration, injustice and powerlessness that we know lies at the heart of this experience.

We believe this has helped build relationships and facilitated more honest conversations. We explain what our overall aim is, highlighting the importance of using the laws, the complaints processes, the system itself and gathering data to support individual cases as well as build a collective picture of what is really happening.

In all this we have held out a vision for an alternative approach, that people can engage with and begin to trust. At the information sessions, we distribute Your EU Consumer and Human Rights Guide: A Guide for People in Mortgage distress in Ireland developed by the Abusive Lending Practices Project to help distressed borrowers claim their EU consumer and human rights in Irish courts. People particularly like the fact that the abusive lending project is a European project and are keen to know what happens in other countries. They also like the fact that it is a collaboration between legal, NGOs and human rights groups with the potential to build in a communications strategy into a multi strategic approach. When we talk of system change and collective action, people understand the potential of working in this way. People have welcomed the opportunity to contribute to data collection, to rethink applying for legal aid and to using the EU laws and complaints processes.

Real Voices

"I've been in over 10 times since 2013 and they just keep giving the bank adjournments. It's like they are being given every opportunity to get their paperwork in, in order to win, instead of striking them out for not having their paperwork in order."

3. EU Legislation and Possession Cases – A Brief Explanation

Courts are obliged, if requested, to assess terms of a contract under the **Unfair Contract Terms Directive (UCTD)**.

This applies to all types of contracts – including mortgages - where the contract is between a consumer – a mortgage holder – and a business - a bank or a financial institution.

The UCTD allows a Court to explore the terms of a mortgage contract to see if they are *fair for both parties*. The Directive is particularly relevant to contracts that contain “standard terms” - that is terms that people may not have had the opportunity or legal knowledge to negotiate at the time a home loan contract was taken out. Irish mortgage contracts are full of standard terms. For example, mortgages often have “acceleration clauses” where a lender may demand that a mortgage holder repay all monies remaining if there is a default. This is a term that has already left thousands in massive and mounting financial trouble, and could be considered unfair if it was not made crystal clear to people when they agreed their mortgage.

The second obligation comes from the **EU Charter of Fundamental Rights**.

Once requested, under this Charter, in cases where the issues are within the scope of EU law, Courts and lawyers are obliged to assess the human rights impact of a home possession, including the “proportionality of the order.”

Details on these laws and how they can be used are available in Your EU Consumer and Human Rights Guide: A Guide for People in Mortgage distress in Ireland which is available for download on abusivelending.org

Real Voices

"I have been trying to get legal aid for years through the courts as a basic human right but judges on occasion have thrown their heads and raised their eyes to the heavens at the mention of it."

