

A large, stylized red teardrop shape with a black outline and a subtle gradient, pointing downwards and to the right. It casts a grey shadow on the surface below it.

DSA

STEP BY STEP

EXAMPLE



TO HELP EXPLAIN SOME OF THE CONCEPTS CONTAINED IN THE PERSONAL INSOLVENCY LEGISLATION, THE INSOLVENCY SERVICE OF IRELAND HAS CREATED SOME POSSIBLE SCENARIOS TO ILLUSTRATE HOW EACH OF THE THREE SCHEMES MAY OPERATE IN RESPECT OF A DEBTOR, PERSONAL INSOLVENCY PRACTITIONER OR APPROVED INTERMEDIARY, CREDITORS, AND THE COURT.

THESE SCENARIOS MAY BE AMENDED OR DEVELOPED IN THE FUTURE WHEN ACTUAL CASES ARE PROCESSED TO A SUCCESSFUL CONCLUSION IN ORDER TO MORE ACCURATELY REFLECT SUCCESSFUL OUTCOMES APPROVED BY THE COURT.

IT IS IMPORTANT TO EMPHASISE THAT THESE POSSIBLE SCENARIOS ARE FOR ILLUSTRATIVE PURPOSES ONLY AS TO HOW A PARTICULAR ARRANGEMENT MIGHT WORK IN PRACTICE, AND ASSUMES A PRAGMATIC AND REALISTIC RESPONSE BY CREDITORS.

THE ISI DOES NOT PROVIDE FINANCIAL ADVICE.

APPROVED INTERMEDIARIES IN THE CASE OF DRNS, AND PERSONAL INSOLVENCY PRACTITIONERS, IN THE CASE OF DSAS AND PIAS, ARE AVAILABLE TO ASSIST DEBTORS.

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THIS SCENARIO IS DESIGNED TO ILLUSTRATE THE DETAILED STEPS INVOLVED IN SEEKING A DEBT SETTLEMENT ARRANGMENT (DSA).

THIS SCENARIO INCLUDES FEATURES SUCH AS THE USE OF NON ESSENTIAL ASSETS AND DISPOSABLE INCOME AS PART OF A DSA.

David is a 45 year old single parent with one child in Primary School (aged 5). He is a self-employed electrician (sole trader) earning €3,000 net income per month. His income has significantly reduced in the last few years. He is renting a 2 bedroom apartment in Dublin for €700 per month and also pays €500 per month for childcare.

At present he has an unsecured personal loan of €50,000, credit card debts of €20,000 and as a sole trader owes his suppliers €10,000. David's current monthly debt repayment obligations amount to €1,500. He is unable to pay his bills and meet his debts as they fall due. He is insolvent.

David's only assets consist of a car valued at €5,000, tools valued at €2,500 (both needed for his employment) and an antique recently valued at €2,500.

David has only unsecured debts; therefore he believes the most suitable arrangement is a DSA. David meets with a Personal Insolvency Practitioner (PIP) and provides full details of his financial circumstances so the PIP can understand his financial position.

A potential solution to David's insolvent position is set out in the DSA scenario publication. Set out below is the step-by-step guide as to what the process involves. Debtors will be assisted by a Personal Insolvency Practitioner throughout the process.

DAVID'S STEP-BY-STEP JOURNEY

REALISATION OF SITUATION

1. David recognises that he cannot pay his debts in full as they fall due and realises that he is insolvent.

SEEKS INFORMATION

2. He visits the ISI website www.isi.gov.ie and reads the ISI guide to Debt Settlement Arrangements (DSA), one of the new Personal Insolvency measures introduced under the Act. Based on the information he reads, David is hopeful that he might be eligible to seek a DSA.
3. David looks at the list of regulated Personal Insolvency Practitioners available on the ISI website and decides to contact one of them.

CONTACTS AND MEETS WITH PIP

4. David rings the PIP. The PIP instructs David that it is necessary for David to submit a written statement which details all his financial affairs setting out particulars of all his income, expenditures, creditors, debts, liabilities, assets, and any guarantees he has given. To assist David, the PIP may send David a questionnaire to complete and send back to him.
5. David completes the written statement/questionnaire and posts it to the PIP.
6. When the PIP receives the written statement he examines the details and then contacts David to arrange a meeting.
7. At the meeting they go through David's written statement and his financial affairs. The PIP considers all the information that David has provided. The PIP then advises David in writing of his options for addressing his financial difficulties and informs him that he satisfies the criteria for making a proposal for a DSA on the basis of the information provided. The PIP's advice includes, the procedures involved in, and the general effect including costs of becoming party to a DSA, the fee arrangements, and other conditions of appointing the PIP.

DEBTOR CONSIDERS WHETHER TO APPOINT PIP

8. David then goes home to consider whether he wishes to become party to a DSA and whether he wishes to formally appoint the PIP.

DEBTOR APPOINTS PIP

9. David decides to appoint the PIP and informs him of his decision in writing.
10. The PIP writes to David to confirm that he consents to act as David's PIP.
11. The PIP also notifies the Insolvency Service of Ireland (ISI) that David has appointed him to be his PIP.

PIP ADVICE

12. The PIP then contacts David to arrange a second meeting. The PIP informs David he should bring supporting documentation to the meeting to be in a position to fully disclose his financial position including income and expenditures, debts and assets. In David's case this is likely to include the following: recent utility bills, payslips, rent agreement, bank statements, credit card statements, and details of David's account with his building suppliers and a recent valuation of his antique.
13. David gathers all the supporting documentation.
14. David then meets a second time with the PIP. At the meeting the PIP examines all the documentation provided, and then helps David fill out the Prescribed Financial Statement (PFS).
15. After completion of the PFS, the PIP advises David on a number of matters in writing including the following;
 - a. his options for addressing his financial difficulties;
 - b. that he is eligible to make a proposal for a DSA;
 - c. that the PIP believes it would be more appropriate for David to enter a DSA rather than a PIA.

DECISION TO PROCEED WITH APPLICATION

16. David considers his situation and decides to proceed with the application.
17. He confirms in writing that he wishes to make a proposal for a DSA.

APPLICATION FORM

18. At the meeting the PIP assists David with completing the following forms/documents;
 - a. Prescribed Financial Statement;
 - b. a document signed by David confirming he meets the eligibility criteria for a DSA;
 - c. A schedule of Creditors

CONSENT FORMS

19. David also signs a consent form to enable;
- a. The PIP to disclose David's personal data to the ISI;
 - b. The ISI to process David's application;
 - c. The ISI to disclose David's personal information to his creditors to the extent necessary to process his application;
 - d. The ISI to make any enquiry relating to David to the extent necessary to process his application.

STATUTORY DECLARATION

20. David has to sign a statutory declaration in the presence of a person authorised by law to take and receive statutory declarations such as a practicing solicitor affirming that the PFS is a complete and accurate statement of his assets, liabilities, income and expenditures.

PIP'S STATEMENT

21. The PIP then completes a statement confirming that he is of the opinion that:
- a. the information contained in David's PFS is complete and accurate;
 - b. David is eligible to make a proposal for a DSA;
 - c. That having considered the PFS completed by David, there is no likelihood of David becoming solvent within the period of 5 years commencing on the date on which the statement is made;
 - d. Having regard to David's circumstances as set out in the PFS, it is appropriate for David to make a proposal for a DSA as there is a reasonable prospect that David entering into a DSA would facilitate his becoming solvent within a period of not more than 5 years.

PIP SUBMITS APPLICATION FOR PROTECTIVE CERTIFICATE TO ISI

22. The PIP then submits David's application for a Protective Certificate to the ISI (electronically) on his behalf. He also sends hard copies of David's Statutory Declaration (referred to in point 20 above) by post to the ISI. The PIP will also include evidence of payment of the scheduled fee¹ in the post to the ISI.
23. At this point the ISI checks the application. The ISI ensures that David's PIP is entitled to act as a Personal Insolvency Practitioner. The ISI also checks to ensure that all the necessary documents have been included with the application. The ISI could request more information regarding the application.

However, in David's case the ISI is satisfied that all the necessary documents have been lodged and the ISI has no reason to believe the information provided in support of David's application for a Protective Certificate is incomplete or inaccurate.

ISI SUBMITS DAVID'S APPLICATION FOR PROTECTIVE CERTIFICATE TO THE COURT

24. The ISI is satisfied that the application is in order and issues a certificate to that effect. The ISI furnishes that certificate together with a copy of the application and supporting documentation to the Circuit Court. The ISI also notifies the PIP that David's application has been forwarded to the Circuit Court for consideration.
25. The Circuit Court receives David's application for a Protective Certificate and considers the application.

COURT ISSUES PROTECTIVE CERTIFICATE

26. The Circuit Court is satisfied that David's application meets all the eligibility criteria and other relevant requirements and issues the Protective Certificate.
27. The registrar of the Circuit Court notifies both the ISI and David's PIP that the Protective Certificate has been issued. The PIP notifies David of the Circuit Court's decision.

¹ Methods of payments and scheduled fee levels will be confirmed in the future.

PROTECTIVE CERTIFICATE RECORDED ON PUBLIC REGISTER OF PROTECTIVE CERTIFICATES

28. The ISI enters David's name, address, year of birth, and the date of issue of the Protective Certificate on the Register of Protective Certificate.

ACTIONS TO BE TAKEN BY PIP FOLLOWING ISSUE OF PROTECTIVE CERTIFICATE

29. David's PIP notifies each of the creditors specified in David's schedule of creditors (bank for personal loan, credit card company and suppliers) of the issue of the Protective Certificate. The notification will also contain a statement informing all creditors:

- a. that David intends to make a proposal for a DSA;
- b. the effect of the Protective Certificate;
- c. that they have the right to appeal the issue of the Protective Certificate.

30. As part of the notification process in point 29 above, the PIP also informs David's creditors that he has been appointed by David for the purpose of making a proposal for a DSA, enclosing a copy of David's completed PFS. The PIP may request the creditors to file a proof of debt as of the date the Protective Certificate is issued. The PIP also invites David's creditors to:

- d. make submissions regarding the debts concerned and the manner in which the debts might be dealt with as part of the DSA;
- e. indicate and confirm whether they believe that some or all of their debt to be a preferential debt and if so furnish evidence of same.

31. None of David's creditors decide to appeal the issue of the Protective Certificate to the Circuit Court.

32. Each of the creditors supplies documentation to satisfy the PIP's request of proof of debt.

33. None of David's creditors make specific submissions as to the manner to which their debts are dealt with as part of the DSA.

PIP DRAFTS UP DSA PROPOSAL

The PIP drafts up a proposal for a DSA and presents it to David. He explains it would be advisable to sell David's antique. He also explains that it is reasonable for him to retain his car and tools as they are of a modest value and needed for his employment. The PIP calculates David's Reasonable Living Expenses and in accordance with the ISI Guide to Reasonable Living Expenses. This sets out David's monthly reasonable living expenses as follows:

Total set costs	€ 1,272
Rent	€ 700
Childcare	<u>€ 500</u>
Reasonable Living Expenses	<u>€ 2,472</u>

In accordance with the ISI Guide to Reasonable Living Expenses, the PIP also assesses whether David's rent and childcare amounts are reasonable.

34. The PIP does not believe that the running costs associated with David staying in his Principal Private Residence are disproportionately large, and so drafts up a DSA proposal which does not require David to move out of his home.

TIME TO REFLECT ON DSA PROPOSAL

35. The PIP explains to David that the DSA will be in operation for up to 5 years, so it is important that he is satisfied he will be able to meet the obligations set out in the DSA proposal.
36. David reviews the DSA proposal.
37. David approves the DSA proposal, signs it and gives his consent to the calling of his creditors to a meeting to consider the proposal.

CREDITORS' MEETING

38. The PIP arranges the Creditors' Meeting and informs all creditors in writing of the date, time and location of the Creditors' Meeting providing at least 14 days notice of the meeting.

39. The notice shall be accompanied by the following documents:

- a. a completed statement of David's financial affairs showing his position of insolvency in the form of a Prescribed Financial Statement;
- b. the terms of the proposal for the DSA;
- c. a statement from the PIP which states:
 - i. he has been instructed by David to act as a PIP in connection with the DSA;
 - ii. he has consented to act as a PIP on behalf of David;
 - iii. he is authorised by the Insolvency Service of Ireland and is entitled to act as a PIP;
 - iv. he has advised David of his options for managing his financial difficulties;
 - v. he is not aware of any reasonable grounds to believe that the information contained in David's financial statement is not other than complete and accurate;
 - vi. he is of the opinion that David satisfies the eligibility criteria to enter into a Debt Settlement Arrangement.
- d. a report of the PIP which;
 - i. Describes the outcome for the creditor, and having regard to the financial circumstances of David whether or not the proposed DSA represents a fair outcome for them and indicates, where relevant the financial outcomes for them and the other creditors (whether individually or as a member of a class of creditors) under the terms of the proposal is likely to be better than the estimated financial outcome for them and the other creditors if David were to be adjudicated a bankrupt.
 - ii. Indicates whether the PIP considers David is reasonably likely to be able to comply with the terms of the proposed DSA.

- 40. The PIP also submits a copy of the documents listed above to the ISI.
- 41. The PIP chairs the meeting.
- 42. The bank and the suppliers vote by proxy in favour of the DSA and the credit card company turn up to the meeting.
- 43. At the meeting the PIP runs through David's DSA proposal.
- 44. The PIP then asks if representatives from the credit card company have any questions on the DSA proposal. They have no questions.

VOTING AT CREDITORS' MEETING

- 45. The PIP then states he will proceed with the voting on the DSA proposal. In the vote, creditors representing 65% or more of the total amount of debt David owes must vote in favour of the DSA proposal for it to be approved.
- 46. David has a total of €80,000 in unsecured debts. For the purposes of the voting rights, the bank loan represents 62.5%, the credit card represents 25% and the suppliers represent 12.5%.
- 47. The PIP then collates the vote and records same. Both the bank and the suppliers vote in favour of the DSA proposal. The Credit Card Company reject the arrangement. Therefore creditors representing more than 65% of David's total debt have voted in favour of the proposal.
- 48. The DSA proposal has therefore been accepted by the required majority of David's creditors at the Creditors' Meeting.

STEPS TO BE TAKEN BY PIP FOLLOWING APPROVAL OF PROPOSAL FOR DSA

49. Following the meeting, the PIP writes to the ISI to notify them that the DSA was approved at the Creditors' Meeting. The PIP also encloses the following documentation along with the notification:
- a. a certificate with the result of the vote taken at the Creditors' Meeting and identifying the proportion of votes cast by those voting at the meeting;
 - b. a copy of the approved DSA.
50. The PIP also writes to each of David's creditors to notify them that the DSA was approved at the Creditors' Meeting. The PIP also encloses the following documentation along with the notification:
- a. a certificate with the result of the vote taken at the Creditors' Meeting and identifying the proportion of votes cast by those voting at the meeting;
 - b. a copy of the approved DSA;
 - c. a notice that they may make an objection to the coming into effect of the DSA by lodging a notice of objection with the Circuit Court within 14 days.

COMING INTO EFFECT OF DSA

51. The ISI notifies the Circuit Court of the approval of the DSA at the creditors meeting.
52. David's Creditors do not make objections to the Circuit Court regarding the coming into effect of the DSA.
53. The Circuit Court considers the DSA.
54. The Circuit Court is satisfied that the DSA meets all the eligibility criteria and other relevant requirements and approves the coming into effect of the DSA.
55. The registrar of the Circuit Court then notifies both the ISI and David's PIP that it has approved the coming into effect of the DSA.
56. The ISI registers the DSA in the Register of Debt Settlement Arrangements on the ISI website.
57. David's DSA comes into effect on being registered on the Register of Debt Settlement Arrangements.

OPERATION OF DSA

58. The PIP then contacts David to arrange a meeting and inform him that the ISI has registered the DSA in the Register of Debt Settlement Arrangements on the ISI Website and the DSA has come into effect.
59. The PIP helps David to implement the terms of the DSA. This includes David setting up monthly direct debits to one of the PIP's Business Accounts.
60. The PIP distributes monies received from David to David's creditors as per the terms set out in the DSA.
61. The PIP arranges a yearly meeting with David to carry-out a review of the DSA.
62. At the annual review the PIP assists David in completing an up to date PFS.
63. A copy of the Prescribed Financial Statement that is completed as part of the annual review process is also sent by the PIP to David's creditors as part of the process.
64. Should David's financial circumstances materially change during the DSA period he should let his PIP know and they can discuss a variation proposal to his DSA.
65. During the five years of the DSA David complies with all his duties and obligations.

SUCCESSFUL COMPLETION OF DSA

66. At the end of the five-year period the PIP contacts David, David's Creditors and the ISI to inform them that David has successfully completed the DSA.
67. The ISI records the successful completion of David's DSA on the Register of Debt Settlement Arrangements on the ISI Website. Within 3 months the ISI shall remove from the Register of Debt Settlement Arrangements all information recorded in it in respect of the DSA.
68. David stands discharged from his unsecured debts to the extent specified in the DSA.
69. David is now solvent.