"LEGISLATING FOR PERSONAL INSOLVENCY IN IRELAND"

INCLUDING MORTGAGE DEBT IN PERSONAL INSOLVENCY
- **The Norwegian experience of maintaining the family home in debt settlement**

INTRODUCTION

It is a very important issue addressed here today. Financial problems and overindebtedness among private households is a serious problem, not only to affected families and their creditors, but also to the society in general. And it gets particularly serious when the situation threatens the family home. This brings me to my topic to day, how legislation can help overindebted families to keep their home, without setting a side legitimate interest of the creditors involved.

OVERWIEV – REQUESTED INFORMATION

I've been asked to give a presentation of the Norwegian debt settlement legislation, especially the part that concerns the dwelling, and the treatment of mortgages. I will start with a short description of the housing bubble in Norway in the late 1980s, and the measures that were taken to combat the following debt problems. I will then give a short overview of the history behind and the functioning of the Debt Settlement Act, focusing on the treatment of "over borrowed" dwellings and mortgage loans. To conclude I will say some words about the effects of the legislation and the way ahead.

THE HOUSING BUBBLE AND THE DEBT CRISES IN THE 1990s IN NORWAY

As some of you presumably would know, Norway faced a debt crisis among private households in the early nineteen nineties, mainly caused by raising unemployment and a fall in housing prices. And Norway was and is a land of house owners, with more than 80 % owner-occupied dwellings. In the most exposed areas, houses and apartments lost 50 - 80 % of their value. This happened very quickly, particularly in the larger cities. At the beginning of the nineties, roughly estimated up to a 100 000 households were having problems with fulfilling their obligations and many of them feared to loose their homes. Selling was not an option or a way out, because the price that was attainable would be far below the money once lent to buy the house, and there were off course very few buyers. A lot of individuals and families – almost overnight – lost their life long savings, and many found themselves severely indebted as well.

I will try to give you a brief summary of the history behind this. In the late 1970's, the government had strict regulations on credit and interest rates. But the credit regulations became less effective due to credit and loans from foreign sources and a growing "grey" market. In 1984, the government deregulated the credit markets, which caused a significant increase in the amount of bank lending. There were certain restrictions for financing, but credit was requested by continuously more consumers. The government also eased the regulations on owners of cooperative dwellings. The price of these dwellings increased - and so did the cooperative owners buying power. This also led to a higher demand for owner-occupied dwellings. The government then lowered capital reserve requirement and decreased bank supervision. This was the beginning of the Norwegian housing bubble. The low interest rates and the rapid increase in the price of housing caused speculation to drive the market to unbearable levels. The price peak was in 1987/88, the bottom in 1993. But surprisingly, by 1997 the prices had caught up again. I will get back to that later on.

MEASURES FROM THE GOVERNMENT

As I mentioned at the beginning, a debt crisis among private households is not only a problem to the parties directly involved, but also to the society, and consequently to the authorities. The prevailing understanding was that there were three parties that had to take responsibility, the debtor, the creditors and the government. This was an important aspect for us when we started to implement measures to combat the problem.

It was obvious that it would be necessary to set up a formal system for counselling and negotiation between the creditors and debtors, but it soon also became clear that this would be far from sufficient. A lot of creditors were collecting their money aggressively, and the number of forced sales and evictions increased rapidly. So there was no doubt that it would be necessary to implement compulsive legislation, as an alternative to voluntary negotiations. Accordingly, we started to work on a new Act in September 1990.

However, one major problem was that the different law areas were the responsibility of different ministries. Solving the debt problems among private households therefore would not be possible without co-operation between numbers of different ministries. This was then the first step that had to be taken – to recognise indebtedness as a national problem, and to put in place a national plan involving various ministries and state agencies. One of the main aspects with such an Act was to establish an effective protection of the debtor's right to a reasonable dwelling, so that unnecessary forced sales could be avoided. And to obtain this, we needed to work out legislation whereupon mortgage debt, unsecured because of the fall in prices, could be written off also when the debtor continued to own the house. The challenge off course was to do this without

violating the rights of the mortgagee, which also would have been unconstitutional.

THE DEBT SETTLEMENT ACT – SHORT OVERVIEW

The result of these considerations was the debt settlement Act that came into force in 1993. I will give you a brief summary of how it functions.

The purpose of the Act is to give persons with serious debt problems an opportunity to regain control of their financial affairs and in the same time ensure that the debtor fulfils his obligations as far as possible. It shall also ensure that the possible left-over of money that the debtor might have is being distributed in a fair and just manner during the debt settlement period.

The most important conditions for a debt settlement is that he must be permanently (but not necessarily life-long) incapable of meeting his obligations and that a settlement must not be offensive (in the meaning unfair, unreasonable) to other debtors or the society in general. The debtor must also have - to the best of his ability - sought on his own to reach a voluntary debt settlement with his creditors.

The first step for the debtor is to make an application to the enforcement officer, which will check the application and ensure that the necessary facts in the case are brought out. The enforcement officer can appoint an assistant which will be paid by the state. After the necessary checking and fact-finding has been made, the enforcement officer decides whether to open proceedings himself or to submit it to the court of enforcement for decision. A refusal can be appealed.

If debt settlement proceedings are to be instituted, the debtor shall – with the assistance of the enforcement officer – within four months try to reach a voluntary settlement with his creditors. The debtor's assets and wages will then be secured for the creditors and the debtor will only be allowed to keep necessities. Payment of debts will temporarily be stopped in this period. A voluntary debt settlement is reached if no creditor actively protests. Consequently creditors who don't respond are deemed to have accepted the proposal.

If the debtor is not able to reach a voluntary settlement with his creditors, he or she can petition for a compulsory one. A compulsory settlement is normally very much alike a voluntary one, but must be confirmed by the court of enforcement. It can be confirmed against the will of all creditors.

Normally, a debt settlement will lead to a payment-program that will last for 5 years. In these five years, the debtor shall live very economical, and pay as much as possible to his creditors. When the program is fulfilled, the debtor

normally will be free from all debts not effectively secured. I was agreed that this type of legislation would not violate the constitutional prohibition against Acts having retrospective effect. The main reason for this, is that the losses already have come into existence.

DEBT SETTLEMENT AND MORTGAGES

I mentioned earlier, that a system for protecting the dwelling against unnecessary forced sales was built into the Act. This system gives the debtor right to keep a reasonable dwelling, if he or she is able – normally for a period of five years – to pay the interest on the part of the mortgage that is effectively secured. The effectively secured part of the mortgage is found by a valuation procedure executed by a government agency, which stipulated the current market value of the dwelling. A 10 % extra should be added to the stipulated value.

The idea is to give the mortgagees more or less the same financial result as a forced sale, which would be the alternative. A forced sale would also write off the mortgage not effectively secured. It was agreed that this would not be a violation of the mortgagee's constitutional rights, because the debt relief only would affect the - in reality - unsecured part of the mortgage. Besides, by paying only interest on the mortgage debt in the five year period, the debtor also would be able to pay more to the unsecured creditors.

There are two sections in the Act that's explains the system. The most important is section 4-4, which contains the criteria on which the dwelling can be kept under a debt settlement. According to § 4-4 the debtor is only obliged to sell his dwelling if doing so will give the creditors the best financial result ("best satisfaction"), and the value of the dwelling exceeds the debtor's and his household's reasonable needs. This is formulated as an obligation to sell, but in reality it is more like a "right to keep". The practice of this section shows that a waste majority of the house holders can continue to live in their houses during the debt settlement – and after of course (!). It is very rare that a sale will give "best satisfaction" to the creditors, because renting a house normally will cost more.

Section 4-4 must be read in connection with another also very important section that regulates the situation for the house owners, section 4-8. This is the regulation of the *payment obligation* for the house owner that keeps his house during the debt settlement. According to § 4-8 letter (a), claims secured by mortgage on the dwelling within the dwelling's market value (+ 10 %) shall only carry interest during the debt reorganisation period. Installments shall not be paid, but the principal shall subsist. Claims secured by mortgage on the dwelling (outside the market value + 10 %) shall be satisfied on a par with other unsecured claims. *These* claims become void once the debtor has fulfilled his

debt reorganisation arrangement. This means that after finishing the debt settlement (normally after 5 years) the debtor has a house and a mortgage at the same level of value. Unsecured mortgage is gone. If the debtor now should prefer to sell the house, he would start at zero again, with no house, but also with no debts.

As an example, if a property bought for €300 000 and fully financed by loan now is worth €100,000, the system would see agreed interest being paid on €110,000 for five years (which is 100% of the market value plus 10%), and the remaining €190,000 being treated as an unsecured debt.

SIMILAR SYSTEMS IN OTHER SCANDINAVIAN COUNTRIES

A system not very different from this, was instituted in Denmark almost ten years earlier. The Danes had then faced similar problems as Norway, and introduced their Debt Settlement Act as early as in 1984. Later, the system has been adopted by Finland in 1993, Sweden in 1994 and very recently, by Iceland. Thus, a system for relief of - in reality - unsecured debt, while the house owner continues to live in the house, is broadly accepted in Scandinavia. It is undoubtedly a large benefit to the house owner, and brings about no real loss to the mortgagees. For those particularly interested; se section 199 paragraph 2 in the Danish Act and section 7 paragraph 2 in the Swedish Act.

SOME PRACTICAL EFFECTS OF THE ACT

As a consequence of the housing price roller coaster during the 80s and 90s that I described earlier, the problems particularly affected those who bought dwellings, fully financed at the highest prices in the middle eighties, and who could not service their loans in the next 7 to 10 years period because of unemployment, divorce, illness and so on. So unfortunately, many families had already lost their homes when the Debt Settlement Act came into force in January 1993.

I have been asked about the volume of mortgage debts written down within this system, but I have not been able to find accurate figures about this. None of the studies we have are sufficiently specific. They do not deal with only this type of debt settlements. Yet, I have made an estimate based on my own case studies from this period, and on research made by The National Institute of Consumer Research. This is however, based on the assumption that settlements which involve mortgage debts not are significantly different from other settlements.

Due to the fluctuations on the housing market, it is obvious that the writing down of mortgages only went on for a limited period, most probably from the introduction of the Act and up to 1997, when the prices caught up the previous peak. We know that 7 643 debt settlements were established in that period. We also know that about 50 % of the debtors applying for debt settlement at that

time owned their dwelling. Further, approximately 70 % of debtors with owned dwellings were allowed to keep them in the debt settlement. We can easily presume that in this period practically all of these dwellings were "over-mortgaged". So very roughly, probably between 2 500 and 3 000 mortgages were written down in the 90s as a consequence of the debt settlement, while the family home was kept. In this period, approximately 45 % of all settlements were voluntary, which means that no creditor had objection to the debtor's first proposal.

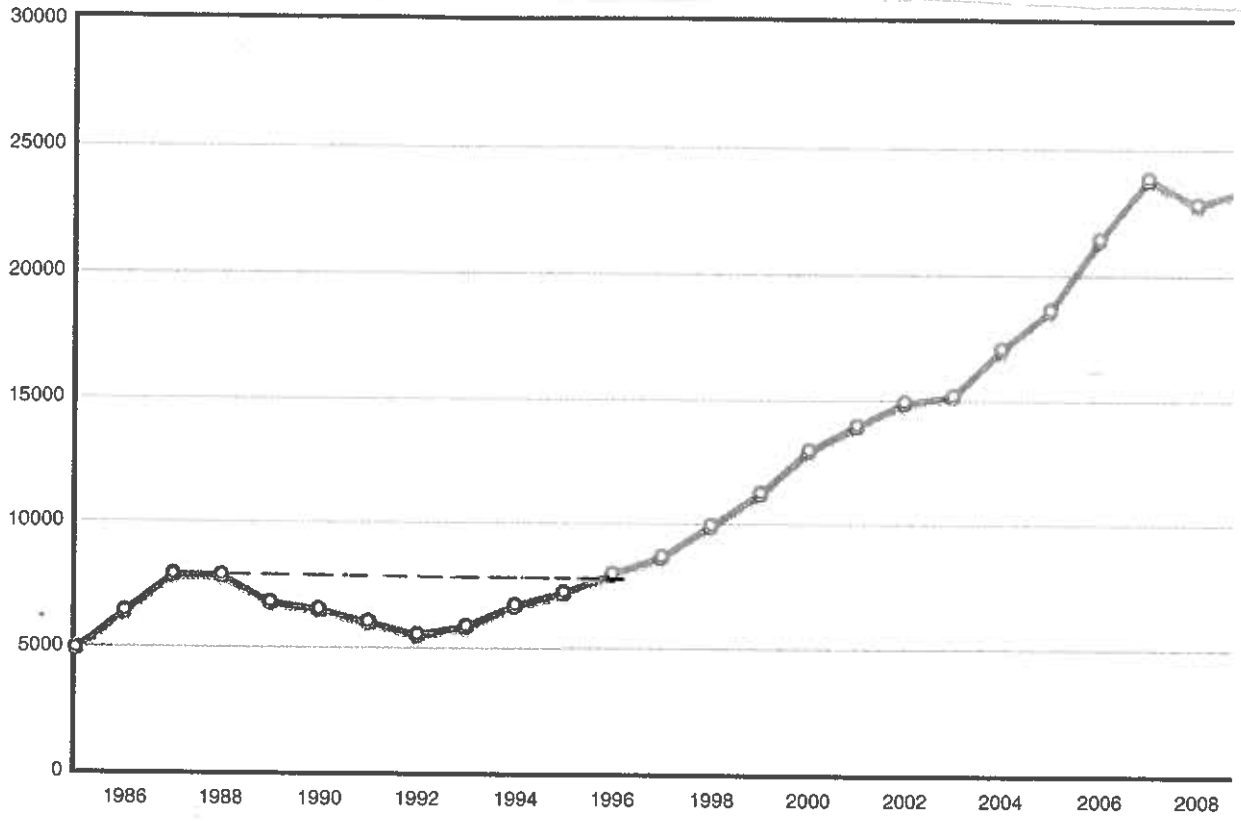
We cannot know exactly how many of these settlements that were completed successfully, but we also know, indeed from later studies, that close to 85 % of all settlements are completed. The share of "mortgage write-off settlements" should not be far from this. I personally would presume that a debtor depending on a debt settlement to keep his home would have en extra strong incentive to carry out the settlement.

I would also like to add that there has been no noticeable or perceptible effect on the economy of the debt settlement legislation. It has definitely not led to a higher interest rate, and not made it more difficult to borrow money. This has in my opinion obvious reasons. Most important is the fact that the losses the debt settlement creditors must bear, are not caused by the debt settlement, but by the debtor's insolvency. The losses are manifest, often years before the debt settlement, and the creditors know it. If a lender looses his capability of serving his loans, a debt settlement will obviously not worsen the situation in any way for any of the parties. The situation for the debtors is illustrated by the fact that only some 20 % have anything to pay to the creditors, and those who pay, can normally not pay more than 20 %. But off course, it is also a fact that the debt settlement legislation has affected a small part of the population. Since 1993, approximately 50 000 persons have carried out a debt settlement. This is approximately 1 % of our population.

THE CURRENT SITUATION AND THE WAY AHEAD

Finally, as many of you would know, the present financial situation in Norway is very good. The unemployment rate is very low, less than 3 %. There is in fact a lack of personnel in some areas for instance construction and healthcare. The mortgage rate is low and the salaries are among the highest in the world. The housing prices are at historically high levels and increases rapidly. In spite of this, the debt settlement legislation is more used now than ever before. In 2011 there were far more debt settlements than in the nineteen nineties, and this tendency has continued in 2012. However, the problem now is not mortgages, but mainly consumer debts; unsecured loans for different purposes and above all - credit cards. But should we face new housing debt crises, we know that we have a very effective instrument to combat also this.

HOUSING PRICES IN NORWAY - STATISTICS 1986 – 2008 (NOK PR SQUARE METER)



English summary

In May 1993 SIFO was assigned by the Ministry of Family and Children Affairs to study the consequences the introduction of The Act Of Voluntary And Compulsory Dept Settlement has had for enforcement officers, creditors and debtors. Thus, this assignment is composed of three parts. Firstly, certain aspects of the enforcement officers' legal proceedings are evaluated. Secondly, there is a demand for more understanding of how the act affects the creditors' choice of strategies in cases where contracts are broken. Finally, the assignment assesses how the new act affects the debtors' possibilities of solving their own financial difficulties. These approaches are discussed in Chapter 1.

The data used in the project stem for a large part from structured telephone interviews with enforcement officers, directors of the creditors' financial commitment departments and private persons with debt problems. Moreover, we have conducted a systematic registration of applications for participation under debt settlement act in Oslo. Hence, the evaluation is mainly based on four data samples. Moreover, we are using qualitative data which in part became available as a result of the structured interviews and in part derived from conversations with people with debt problems, bank officials, consulting firms, and public offices. The

selection of methods are described in Chapter 2. The main data sampling is done in October and September 1993.

The empirical analyses are reported in Chapters 3 through 7. Chapter 8 presents a comprised evaluation of the act's concequences on the basis of the findings. In the following, we are giving an overall presentation of the most important conclusions.

Chapter 3: The enforcement officers' enforcement of the act.

In this chapter we are concerned with how the number of legal cases are distributed among the various offices, as well as the enforcement officers' knowledge, attitudes and priorities in debt settlement cases. The empirical findings are summed up in the following points:

- *The number of lawsuits has increased throughout the whole year.*
- *The number of cases are rather skewly distributed among the offices. It is likely that many of the smaller districts will only modestly deal with the act also in the future.*
- *The enforcement officers see their knowledge about the content of the act and private economy on the whole as good.*
- *There is little knowledge about the SIFO-model.*
- *The enforcement officers need further education, about the SIFO-model in particular, but also with regard to the content of the act.*
- *1/5 of the enforcement officers argue that there is no need for The Act Of Voluntary And Compulsory Debt Settlement For Private Individuals. Moreover, 1/4 believe that other people than themselves should be handling the debt settlement cases.*

- *Whether the enforcement officers believe there is a general need for the debt settlement act or not, depends first of all on the number of inquiries and applications.*
- *A positive attitude towards debt settlement cases as a new field of work depends, however, on knowledge in particular, especially about private economy, but also about the content of the act.*
- *The debt settlement cases are on the whole tasks of high priority among each of the offices.*
- *The degree of priority vary with the number of applications in particular, the level of knowledge in the area of private economy, and attitudes towards debt settlement cases as a new field of engagement.*

The most common denominator for the topics assessed in this chapter is development of proficiency and maintenance. On the one hand, we have seen that the level of knowledge, as experienced by the enforcement officers themselves, varies from office to office and from one range of cases to another. On the other hand, however, the knowledge variables are of central importance when explaining variations in the enforcement officers' attitudes and priorities. This implies that the need for proficiency development indicated, should be followed up with action.

Firstly, the desire for raising the level of knowledge should be met on a general basis. This should also be the case with regard to the content of the act in particular and the SIFO-model. All the enforcement officers should be well qualified within these areas. Later on, it will probably be reasonable to put more effort in to selectively maintain the proficiency where the amount of cases have reached a certain number. Here we have the SIFO-model in mind in particular. It is probably very difficult to maintain the proficiency in this field in districts where there are few or no cases to handle. Moreover, our analysis supports the as-

sumption that this type of knowledge depends upon the number of cases at the various offices.

On the basis of this, one should discuss whether parts of the practical handling of cases under the act may be centralized and moved away from the smaller offices in the future. This may become necessary due to two circumstances in particular. One is if the number of cases continues to be as skewly distributed as we have observed this far. If so, it will be very difficult and costly to maintain proficiency everywhere in the system in the future. The other is if the number of applicants will establish itself on a relatively low level or simply decrease. This may happen, for instance, due to a general improvement in the financial conditional framework for the private economy or if the group of problem households simply are "emptied" in that the cases of those who are worst off are handled and settled. Moreover, a general maintenance of proficiency will be inefficient with regard to a situation like this.

Finally, it becomes interesting to note that in districts where the public demand is great, there is a need to upgrade the knowledge about private economy. Without anticipating the empirical findings in the following chapters, the creditors, in particular, are concerned with whether the enforcement officers master this area of proficiency. We believe it is a good idea that the need is met by making private economy an explicit topic of the SIFO-model courses. The education will in this manner be directly tied to practical debt consultation. This will strengthen both the practical application of the SIFO-model and the formulation of sincere propositions for voluntary debt settlements.

Chapter 4: The enforcement officers' practical experiences

In this chapter data concerning the enforcement officers' practice in debt settlement cases are analyzed. We are concerned with, in

particular, the degree to which applications are rejected, what areas of cases are regarded as problematic, the degree to which the capacity state corresponds to the actual number of cases, and the enforcement officers' experiences with cooperating with creditors. The empirical findings may be summed up in the following points:

- *With regard to rejection and advice against application for debt settlement, there seems to be a gray area of qualitative decisions and decisions difficult to test. Moreover, unregistered inquiries and applications may lead to that the debtor either is advised not to apply or that the case is not handled seriously.*
- *The four areas of cases that are mentioned most frequently as difficult to handle, are endorser responsibility, a large number of creditors, evaluation of home sales and unemployment.*
- *It is in connection with offices where the case load is particularly large, that the individual case area may seem very difficult. The spread of such insecurity, however, is obvious in districts with a public demand around the average.*
- *24% of offices dealing with a certain level of public demand, report a lack of capacity with regard to handling legal cases. 14% report available capacity.*
- *It is especially offices with a great case load that believe the capacity is too low.*
- *It is widely known that the assistance arrangement limits the number of hours to be used too rigidly. This point of view is most apparent where the amount of applications is the greatest.*
- *Public creditors are thoroughly evaluated to be the most problematic to deal with in debt settlement cases. These difficulties are first of all related to laws and legal regulations.*

- *Savings- and commercial banks are thoroughly evaluated to be the most cooperative creditors attempting to establish voluntary debt settlements.*

The analyses presented in this chapter give reason to emphasize three aspects in particular. One is the gray area of decision making concerned with advising against or rejecting applications. Seen from the perspective of the debtor, it is of crucial importance that such decisions are made on an objective and correct basis which eventually may be tested by others. Hence, this should, where possible, be handled by the attachment court, so that the debtor's chance of having the substance of his/her case considered not solely is dependent upon the individual enforcement officer. Our data indicate that this is a point that should be emphasized further towards the case settlement apparatus. Moreover, our empirical findings emphasize that it should be easier for the debtor to hand in and register a formal application. This will in part assure that more decisions with regard to rejection are made by the attachment court, and in part assure that the debtor at least receives a written justification from the enforcement officer in the cases where he/she makes such a decision.

The enforcement officers' evaluation of the assistant settlement system is the second important indication of a field that may be improved. Based on SIFO's project on economic consultation (Poppe & Borgeraas, 1992) we know that it is very time consuming to go through the debtor's finances and sample necessary information and documentation. As we will learn in Chapter 6, those who apply for debt settlement are often in a complicated debt situation with several creditors. The assistant settlement system should be sufficiently encompassing to ensure that the debtor has his/her finances investigated and documented in a professional manner, in order for the proposition for a voluntary debt settlement to be realistic. The system should also aim at supplementing the case settlements with proficiency in long term

planning of the debtors' economy. This is as important as an assurance of that the proposition on voluntary debt settlement - if it will be practiced - will be implemented in real life in a manner that satisfies all parties involved. Hence, we believe that the signals we have received about the assistant settlement system should elicit a treatment and evaluation aiming at strengthening this way of operating.

Finally, we want to stress the enforcement officers' evaluation of the public creditors. This is an important signal about that these institutions should have a conditional framework to operate within, making them more flexible with regard to debt settlement cases. But, it is not thereby implied that increased flexibility on the part of the state banks is to aim for the private creditors to reduce their losses at the cost of the government. However, we believe that the public creditors increasingly will be able to act as economic participants and make strategic choices of action on the basis of economic criteria.

Chapter 5: The legal consequences for the creditors

In this chapter we are analyzing data concerning the creditors' action in cases where contract is broken after the act came. We are particularly concerned with the consequences the act has for the flexibility and goodwill of the creditors to do their best in negotiations outside the legal apparatus. We are here studying, among other things, the use of specific means towards the problem customers' economy, question of livelihood, and cooperation with other institutions in the society in the problem solving process. We are also discussing questions concerning the creditors' attitudes towards the act of debt settlement and the enforcement officer system. The empirical findings may be summed up in the following way:

- *There is an extensive case handling outside the enforcement officer system with more or less direct references to the act of debt settlement resolutions. The creditors are in general interested in avoiding legal pursuit.*
- *The Act Of Voluntary And Compulsory Dept Settlement has resulted in greater flexibility than earlier among the creditors when it comes to finding solutions when contracts are broken. Other additional aspects, such as the fall in interest rates, have been important here.*
- *The creditors' willingness to implement specific types of solutions increases with the reduction of surety.*
- *The Act Of Voluntary and Compulsory Debt Settlement has had a special effect on the willingness to make use of particular types of solutions that do not result in losses on the part of the creditors. While commercial banks seem to choose interest rate adjustments as a main strategy, the act has elicited an interest in a value assessment among the insurance companies and credit institutions.*
- *Selling homes as a solution to broken contract problems has generally gained increased actuality among the creditors. This is probably to a larger degree a consequence of the development on the real estate market than it is due to the act of debt settlement.*
- *The Act Of Voluntary And Compulsory Debt Settlement has had great consequences for the Husbanken's choice of strategy in cases where the contract is broken.*
- *The Act Of Voluntary And Compulsory Dept Settlement has in many cases resulted in increased cooperation both among the creditors themselves and between creditors and public institutions.*
- *The creditors warrant increased goodwill with regard to debt negotiations on the part of public creditors. This is the case in particular with regard to Statens lånekasse for utdanning, the city treasurer, and the social security authorities. Whether the criticism towards Husbanken is valid after the changes that have taken place remains to be seen.*
- *There is a great variation in the livelihood support rates provided in agreements outside the act. This is particularly the case of child support.*
- *It takes a long time to prepare cases for the court of attachment. As long as the case is not formally opened, the debtors stand the risk of being exposed to disbursement companies.*
- *Legal handling of cases are often seen as advantageous by the creditors if they have low surety or if the customer has many claimants. The question about how favorable this is depends generally on the enforcement officer's ability to individualize the applications and adjust the propositions on debt settlement to the aspects of the debtor's economy.*
- *The creditors' experiences with the enforcement officers' knowledge about personal economy is very varied. However, they share a common belief in the integrity of the enforcement officer.*
- *The creditors are basically favorable towards the content of the act of debt settlement.*

With regard to these analyses there is a reason to emphasize two conditions. One is what we have characterized as the effect of the consumer act. Many of the indicators point clearly in the direction of the consequences the debt settlement act has had for how violation of contract cases are being solved without legal pursuit. One may rightfully argue that the principles of the act are not that different from those valid in the time before it was put into force. Moreover, it is not always equally easy for the respondents to isolate an unambiguous effect of the act. Anyway, we have been able to register that the voluntary handling of cases outside the legal system has become more flexible as a direct result of the new legal regulation. Likewise, our data material indicates

that the interest in specific types of solutions has increased. We have also been able to demonstrate that the act has had positive consequences for the cooperation between the parties on the creditor side.

The most important effect of the act of debt settlement seen from the point of view of the creditors, however, is that it defines permanent routines for how violation of contract cases are to be solved, something which all parties involved have to respect. Moreover, it is of great importance that it sets certain common standards with regard to documentation, rights and duties, amount of livelihood support, and the length of the agreement period. In sum, this means that most of the settlements taking place directly between creditor and debtor are more or less explicitly based on the directives for such activity given by the act of debt settlement.

The second aspect we want to emphasize, is that the debt settlement act leaves room for various interpretations in important areas. This makes the questions regarding livelihood support rates and period of agreement very important areas of evaluation, both with regard to settlements within and outside the legal framework. Here the creditors are putting a lot of effort into making their legal interpretations commonly accepted principles in the handling of violated contract cases. This means that many questions with, to some degree, great consequences both for creditors and debtors still are not settled, and that the procedures being used most likely will set precedents for specific legal interpretations. In a perspective like this it does not seem particularly reasonable if the creditors to a too large degree have the opportunity to instruct enforcement officers about how the act should be implemented. Quite the contrary, there is a reason to believe that trust between creditor and debtor is best preserved by maintaining the level of proficiency in the settlement apparatus, independent of the parties in a debt relationship, in order to avoid creating doubt about the integrity of the system.

Chapter 6: Households applying for debt settlement

In this chapter we are identifying social and economical characteristics of those applying for debt settlement in Oslo. The data material is a representative selection of registered applications. Moreover, by using SIFO's fast statistics we are studying how applicants distinguish themselves from borrowers in general and households violating loan contracts around Oslo. The empirical findings may be summed up in the following manner:

- *The majority of applicants for debt settlement in Oslo are between 30 and 45 years old. The distribution of age among applicants do not differ neither from borrowers nor from problem households reporting in surveys that they are breaking of one or more loan contracts.*
- *Unlike both borrowers and the more general group of problem households, a much larger number of applicants are either unmarried or have previously been married. A majority are also providers for children under the age of 18. Many applicants are apparently single providers.*
- *Compared to both borrowers and problem households in general, a far greater number of applicants have only basic education (37%). At the same time, many of them, surprisingly enough, have college or university degrees (40%).*
- *26% of the applicants for debt settlement in Oslo are from a foreign culture.*
- *Seen as a group, the applicants are characterized by, on the whole, having low income. More than half of them have social security as main source of income. This is largely due to rehabilitation or unemployment.*
- *Seen as a group, the applicants are also characterized by, on the whole, having large debts. Compared to both borrowers and problem households in general, the relative indebtedness among applicants is rather large.*

- *The applicants indebtedness is characterized by a great number of small and large claims. Many of the loans fell due because of long term violation of contract. For the same reason, the sum of current interest rates constitute a considerable share of the total debt. In 40% of the cases the situation is made more complex due to that one form of surety responsibility or other is tied to at least one of the entries.*
- *87% of the applicants have loans that may be traced to current or earlier home. These belong to, not surprisingly, the largest single entries in the debt portfolio. However, only about half of the applicants own their present home.*
- *Many of the applicants have large debt entries registered under "other debt" in the application form. Many of these are obviously connected to converted housing loans and debt from earlier business activity. Some smaller claims under this entry concern purchases of goods and probably also loans to cover other liabilities.*
- *98% of the applicants are insolvent in the sense that the total debt is larger than the assets. Applicants do also here distinguish themselves noticeably from both the borrowers and the general group of problem households. Very few, if any at all, may get out of their economic crisis by selling the home. 36% of them just do not have any assets at all. 12% informs that expected sales value on home is zero NK.*

An overall evaluation of these analyses points in the direction of that those applying for debt settlement in Oslo are a particularly heavily burdened group of households. However, they do not distinguish themselves significantly when age is considered. But along all the other dimensions we have studied in this chapter, they score high on the problem indicator scale. A large share of applicants belong to social groups which also in other connections are known to be exposed to economic and social problems. For instance, many of the applicants are divorced or separated, have the responsibility for children under the age of 18, and/or are single providers. Moreover, many of them have little education. Refugees and immigrants are not particularly resourceful groups in society.

Even so, the economic variables are the strongest indicators of that those applying for debt settlement belong to the group "the worst off among the worst off". Income is in general fairly low and the average indebtedness is 5-7 times larger than the average of borrowers and problem households in general.

Even if we may say that the act has a social impact according to its intentions, it is not necessarily the case that it is available for all who are in need of it. Our data material does not, for instance, indicate that the requirements for having a case handled by the enforcement officer apparatus are too high, so that the category "the worst off" systematic are kept outside the system. On the other hand, our data material provides basis for judging whether all of those who should be informed about the act really are, and whether the content of the act is correctly understood among potential users of the settlement system. The following chapter is addressing these questions.

Finally, we want to add that we believe it is of great importance to follow the development of the composition of applicants over time along the dimensions we have studied here, for instance. However, available background variables for such analyses are somewhat limited as of today. Hence, one should discuss whether the registration of background information about applicants should be expanded or not, for instance, by using a separate questionnaire which applicant and assistant may answer together.

Chapter 7: Reasons for not applying for debt settlement

In this chapter we are primarily interested in reasons why households, who believe that they have serious liability problems, do not apply for debt settlement. The analyses are based on telephone interviews with persons encouraged by the media to make use of a green number (a call free of charge/1-800 number). The callers were allowed to give two reasons for not applying. The empirical findings may be summed up in the following way:

- *29% of the callers did not wish to expose themselves to the financial burden implied by a debt settlement. They wanted to avoid the loss of economic freedom and assets, such as home and car.*
- *27% of the callers have not applied for debt settlement because of lacking or misunderstood information about the settlement arrangement. About $^1/_3$ of these do not know where they have to address neither their inquiries nor their applications.*
- *26% of all of those who called us refer to aspects of the act as reasons for not applying. It is the complex questionnaire and the way endorsement responsibility is handled, in particular, that is emphasized as obstacles.*
- *22% have not applied because, among other things, of the personal burdens this would lead to. The respondents point here in particular towards the possibility of having their identity publicized in the newspaper, and that they quite simply have given up.*
- *19% of the callers do not believe they are qualified for a debt settlement.*
- *9% of the callers have not applied because they want to look into alternative options first. Very few of these, however, are in direct negotiations with their creditors.*
- *9% of the callers refer to the enforcement officer's handling of their case as a reason not to apply. While about half of them have been rejected according to a legal clause, the other half report that they have been received badly by the settlement institution.*
- *3% have not applied because they have no confidence in the enforcement officer as a person, his/her proficiency, the administration, the politicians, and the legal content. Distrust in the environment is a general underlying factor in many of the interviews, even though this has not had a direct effect on people to not apply.*

In a comment on why more people have not applied for debt settlement, Graver (1993) emphasize the following:

> *"On the basis of what we know about people's use of the legal apparatus, it would be a great surprise if just this act should reach those who are in greatest need of help.. Research on legal aid and studies of communication of legislation show that it takes time before knowledge about legal arrangements is spread, and that even those who are aware of their rights do not claim these".*

The result of the empirical studies presented in this chapter may be regarded as a concretization of Graver's point referred to above. Our data identifies eight different causal dimensions which presumptively shed a light on processes that lead to that the act's target group neither immediately nor simultaneously supports the new arrangement. Lacking or misunderstood information, combined with doubt about exposing oneself to even heavier personal burdens, is one set of catchwords here. Another important factor here is that the content of the act is rationally evaluated by those it is intended for. We have, for instance, seen that the callers do not necessarily want to live under the conditions the debt settlement provides, even though they over a longer period of time have struggled with great economical difficul-

ties. Some of the most remarkable in this connection is that many of the callers have very different reasons for not applying.

On the basis of this, it becomes reasonable to emphasize the need for public information as the central common denouncer. The private economic consequences of a debt settlement should be quantified in a simple and visible way, and be made as accessible as possible to the target group. At the same time, the regulations concerning home, car, endorsement responsibility, and administration of the arrangement should also be accounted for.

One should first of all here consider how the act should be outlined. Up to now it has been presented as a very strong remedy which only the worst off may achieve under the condition that they fulfill a moral standard. In the introductory stage of the act it was seen as important to indicate to the public that this is not an easy way of getting rid of the debt. There is a lot indicating that this has had the wanted effect. Both applicants and callers have, for instance, clearly a bad economy, something which means that those better off largely do not define themselves as a target group in connection with debt settlement. Moreover, we may, as we have seen, trace attitudes among the callers that coincide well with the strict understanding of the act. Information to the public in the future should of course not under communicate the requirements that have to be met in order to be included in the debt settlement. Even so, it should emphasize the positive side to the act, the fact that it actually represents a solution from the worse to the better, given that the debt problems are hopeless. It is also fair to emphasize that the act is not a moral gift of grace, but a privilege one under certain conditions may claim.

Chapter 8: The functioning of the act - An overall assessment

In this chapter we evaluate the debt settlement act's functioning with regard to three end results, namely the amount of cases in the attachment court apparatus, the case handling in public and private institutions where economic advice is provided, and the non legal problem solving process directly between debtor and creditor. On the basis of this, we make the general conclusion that the act has had a wide impact within many public institutions. Exactly how great the number of households that have their debt problems assessed according to the principles and standards of the act is, however, is difficult to tell. But, success may at least not be measured solely by the number of affirmed arrangements, and not according to the number of applications handed in. On the contrary, there are good reasons for emphasizing the effect the act has had outside the formal existing proceeding's institutions. Our data material indicate that the regulation to a large degree functions as an incentive for problem solving directly between debtor and creditor, eventually with assistance from a public or private consultant.

When we in this manner assert that the act functions according to it's general intentions, it is not said that it functions well enough. Our analyses have also uncovered important weaknesses. the most important of these are related to that the act leaves important questions for the parties themselves to solve, and that one, up to date, witnesses an argument about the interpretation to be applied in these areas. These situations provide the act with unintended and problematic effects. For example, both juridical agreements and settlements outside the legal system are being made, with longer periods of agreement and perhaps also livelihood support rates than the act prescribes. A possible consequence of this, in turn, is that the debtors who in reality should apply for debt settlement, choose not to do so. Moreover, there are obvious indicators of that the act's clauses are implemented differently, depending on, for instance, local variations in

the enforcement officers' and the attachment court's attitudes in various cases, and the kind of creditors that are the claimants. There are also signs indicating that cases are pursued all the way to court settlements, in spite of the fact that they could have been settled at an earlier stage in the process.

This points out the need for pursuit of three areas in particular. First, it is in our opinion very important to map differences in the juridical practice on the verge of establishing itself. This work should focus especially on a systematization of the causes behind the rulings, and the interpretations of the act's more general parts which in this way are made legally binding. Moreover, the consequences for the out of court settlements should be assessed. Secondly, it is important to gain knowledge about whether the special agreements made - both with and without legal persuit - represent lasting solutions for the households. The interest here should in particular be centered around the consequences of living under the various economic boundaries agreed upon, both those obtained formally and the out of court settlements.

Thirdly, the need for concretization of some of the act's principles should of course be assessed successively. Livelihood support of children seems, for instance, to be an actual topic for such assessments. Another important area is how long dept settlement periods should last and evaluation of livelihood support rates and the durability of agreements. Such concretizations of the content of the act may in turn help to simplify and shorten the problem solving processes, also those taking place outside the courts. Moreover, it is not unthinkable that more precise rules will contribute to that more cases may be solved directly between debtor and creditor since fewer aspects of the act will be left for individual interpretation.

Also with regard to the existing case proceeding apparatus we have been able to identify important weaknesses. The most serious ones are tied to that the enforcement officers' proficiency vary. We suggest here efforts are made to build up and maintain the knowledge, and partly that one in the future evaluates whether much of the practical work with debt settlement cases may be centralized away from the smaller offices and moved to regional centers. We have especially those tasks tied to the SIFO-model in mind, however, also the gathering of documentation regarding income and debt should be assessed in this connection. In addition to being cost saving, a centralization like this will have other advantages as well. The possibility of receiving equal treatment under the law will, for instance, increase as a result of concentration of expertise and be made available for all of those who are applying for debt settlement. Moreover, this will also have a general positive effect on what we may call the act's most important part, since large parts of the administrative legal apparatus in this case will function as a service institution in debt settlement cases, and not be responsible for complicated calculations and time consuming creditor contact.

We also find it reasonable to emphasize the durability of the proceedings in debt settlements. As we have mentioned earlier in the discussion, debt settlements cases are time consuming. Even so, it is worth noticing that it in some cases takes up to seven to eight months before debt settlements begins in the attachment court. In addition to the economic and personal burdens this causes, we have also registered that creditors may be unequally distributed in the sense that some of them may demand disbursements or other forms of foreclosures of the debtor's assets. This undermines, in our opinion, the act's intentions of ensuring equal treatment of claimants and reasonable living conditions for the debtor. The authorities should therefore take a closer look at the possibilities of shortening the necessary time needed in order to prepare the cases for the attachment courts. Moreover, one should consider whether there is a need for taking action to prevent an just distribution of the debtor's assets during this period, and eventually how this may be done.

The last critical aspect we want to emphasize in this connection is that the analyses provide reasons to assume that many of those who should have applied for debt settlement, either regard the act as too strict or they lack information. Hence, we urge the authorities to make new efforts to provide people with information. Here, we believe, the profilation of the act should be changed. It is hardly not necessary any longer to emphasize that this is a strict arrangement - a "not-act" - actually not to be used. The debt settlement act has already shown itself to be a possible alternative for those worst off. Instead, one should rather promote the positive aspects of the act, emphasizing in particular that it under certain conditions establishes a right for all to solve their debt problems within a given period of time.

Summary

Introduction and approach to the problem

The Debt Settlement Act entered into force on 1 January 1993. As of 1 January 2000, a total of 14 924 debt settlement proceedings and 11 164 debt settlements had been instituted. During the first year the Act was in force, enforcement officers registered nearly 22 000 enquiries about the Act.

The Act received mixed reactions. Creditors in particular, but also consumer organisations and debtors themselves, expressed objections to the scheme. In addition to questioning whether such an act was necessary at all, many were critical to the ways in which the Act dealt with key problem areas such as the length of the debt settlement proceedings period, the amount guaranteed, and the debtor's assets and financial situation, including child maintenance. Further, some people were sceptical to enforcement officers' ability to deal with large groups of creditors, and to enforcement of the principle that applicants must be permanently incapable of meeting their obligations to qualify debt settlements pursuant to the present Act. Based on data collected just eight to ten months after the Act entered into force, an early evaluation of the scheme showed nonetheless that the Act was generally working as intended, and that the attitude of creditors had also become predominantly positive (Poppe 1994).

The current survey is not intended to be a full evaluation of the Debt Settlement Act. Its primary objective is to learn more about the financial regimes of applicants for debt settlements both before and after a settlement, if any, has been instituted. In other words, the main goal is to generate systematic insight into the main benefits of the Act as enforced from 1993 to 1998. The survey is chiefly based on quantitative data excerpted from applications for debt settlements. The unit of measure used in these analyses is the individual application, that is, each application submitted by an applicant alone or together with

a spouse or cohabitant. Some of these the data were collected electronically using the SIFO model, and some were collected using questionnaires. The empirical data were excerpted from 1573 debt settlement applications, as well as from cases heard by 52 enforcement officers and courts of enforcement.

Case load

The study examines the main approach to the problem from three different perspectives. First, the study looks at the case load and the case processing procedure. The case load, as measured by the number of applications, is heaviest in Norway's major cities. Of the applications processed, slightly more than half have been granted voluntary or compulsory debt settlement proceedings. The data indicate that the most comprehensive screening of applications is handled by the enforcement officers, who turn down about two of every five applications. Once an enforcement officer passes a case on to a court of enforcement, the probability of not reaching a debt settlement is relatively small. Approximately one of eight applications is rejected by the court of enforcement. The two most common reasons for rejections on the part of enforcement officers are the lack of applicant co-operation as regards information, and finding that applicants are not permanently incapable of meeting their debt obligations. Insofar as the court of enforcement is concerned, the criterion regarding permanent incapacity and the objectionable criterion were the most common grounds for rejection.

The average time used to process debt settlements cases is nearly 9 months for cases turned down by an enforcement officer, 6 months for cased rejected by a court of enforcement and 10 months for cases that end in debt settlements. It is worthy of note that the processing of cases turned down by enforcement officers takes longer that those turned down by courts of enforcement.

In a relatively large percentage of the debt settlements, 17 per cent, either the debtors themselves or the creditors petition to have the debt settlement scheme changed. When debtors petition for change, the petitions are as a rule related to changes in their personal situation or financial situation (civil status, illness, unemployment, decrease in current income, tax arrears, increase in current expenses). When creditors petition for change, in no less than seven of ten cases, it is due to default on the debt settlement agreement.

Approximately seven per cent of the applications are withdrawn by the applicants before being passed on to a court of enforcement. By far the most common reason for this is that the debtors have managed to reach out-of-court settlements with their creditors.

Characteristics of applicants

The second perspective refers to the characteristics of the households that apply for debt settlement. The study has examined traditional social background variables such as gender, age, family situation and cultural background, along with financial variables such as income, loans and financial position at the time of application.

Insofar as the traditional background variables are concerned, it was found there was a clear preponderance of men among the applicants. This may be because men are the main financial players, but must probably be attributed to women being less susceptible than men to serious debt problems. The average age of applicants is about 42. Female applicants tend to be slightly younger than male applicants.

Households with a sole provider, with or without children, are more strongly represented among the applicants than among the population in general. More than three of five applicants (63 per cent) apply alone and not with a spouse or cohabitant.

Six per cent of the applicants come from foreign cultural backgrounds. This is approximately equal to the percentage of immigrants among the population (5.3 per cent). Oslo and Larvik have the highest percentages of applicants with foreign cultural backgrounds.

When it comes to the financial variables investigated in this chapter, it is important to bear in mind that the information refers to the date of the application and not the dates on which the debts were incurred. The financial situations of most applicants change dramatically from the time they take out a loan until they feel compelled to apply for debt settlement. Almost six of ten applicants list ordinary wages or sickness allowance as their source of income. The rest of them generally live on welfare benefits, pensions or social security benefits. Thirty-five per cent have other income, probably mainly social security benefits. Those who apply for debt settlement usually have a lower income at the time of application than the average income of the population at large. This is also true of applicants who earn earned income.

Applicants' average debt exceeds NOK 1 million. However, half the applicants have debts of about NOK 770 000 or less. 'Other debt', probably mainly outstanding debt after selling a dwelling at a loss or student loans, comprises the largest item by far. More than half the applicants owe back taxes. The same is true of consumer debt. Another characteristic is that, at the time of

application, applicants often have a very large number of different debts. Half the applicants had 10 different debts or more. One of four applicants had 16 or more different debt items.

The loan factor is indicative of the weight of a household's burden of debt. Most applicants have an extremely high loan factor. Half have a debt in excess of five times their income. Male applicants have a higher loan factor than female applicants, even when type of family is factored in. People from foreign cultural backgrounds generally have a lower loan factor than applicants of Norwegian origin. The income needed for debtors to cover reasonable maintenance expenses for themselves and their families, that is, their income after taxes, housing and loan expenses are deducted, is another indicator of the severity of a household's financial situation. This variable also shows that those who apply for debt settlements have severely strained finances.

The financial substance of debt settlement

The third perspective is related to the characteristics of the debt settlements that are instituted. While there was a preponderance of compulsory debt settlement schemes when the Act first came into force (seven of ten in 1993), the focal point has gradually shifted towards more voluntary schemes. The older the applicant, the more likely it is that creditors will agree to voluntary debt settlement.

For most cases, the length of the debt settlement period is equal to or less than the five-year period specified in the Act and the legislative guidelines. Three of four schemes extend for a period of five years or less. Nonetheless, it is worth noting that 10 per cent of the debt settlements extended for seven years or more. The study has not observed any difference between voluntary and compulsory schemes in this respect. The older the applicant, the shorter the debt settlement period. On average, women have shorter debt settlement periods than men.

Approximately four of ten debt settlements result in no dividend for the creditors. In the schemes in which the creditors do receive a dividend, on average, they recover some 20 per cent of their claims. It is not possible to demonstrate any difference in the creditor dividend between voluntary and compulsory debt settlements. The dividend is highest for male debtors and applicants with a spouse or cohabitant. The higher the debt to income ratio, the lower the dividend.

As regards the rates that apply to living expense allowances for adults, the present data indicate that men get a higher living expense allowance than women. The same is true of applicants from families with children and those with foreign cultural backgrounds. However, these results must be interpreted with caution as there are reliability problems attached to the dependent variable. All other factors being equal, the results indicate that applicants on the west coast of Norway get a lower living expense allowance than applicants from other geographical areas.

As for the amount earmarked to cover housing expenses, the study has found that the amount increases proportionate to the age of the debtor. On average, families with children, especially those with sole providers, are allowed to retain a larger amount than families without children. Debtors from foreign cultural backgrounds are allowed to retain less than debtors from Norwegian backgrounds. Those who apply at smaller offices and applicants who are granted voluntary schemes also get to retain less, on average, than others. The higher the debtor's income, the more he/she is allowed to retain for housing expenses.

Most (two of three) debtors do not have a car once a debt settlement has been instituted. Unfortunately, it not possible for the present study to compare that with the debtors' situations prior to debt settlement. The probability of having a car is somewhat higher for those who apply at smaller offices, that is, in places where people may not be able to manage with public transportation. Once again, the probability of having a car after debt settlement is instituted increases proportionate to the applicant's income.

As to the question of whether the debtor will be allowed to keep all or part of unencumbered wages during the debt settlement period, the study finds that most of the more populated areas (in eastern, southern and central Norway) have a greater propensity not to regulate this. Applicants from smaller places (in southern, western, central and northern Norway) have a greater propensity to retain all or part of the tax-free wage payments.

As to the question of whether the debtor is allowed to retain all or part of extraordinary income, the authorities in the more populated areas (in eastern, southern, central and northern Norway) tend not to regulate this factor. It also appears that applicants in western Norway (especially in main hubs as well as smaller places) are less likely than others be allowed to retain extraordinary income.

Conclusions

The main impression gained through this survey is that, in many respects, once debt settlements are instituted, they remain within the parameters of the guidelines legislators laid down for the Act. The problems that arise may be due not so much to the practice of the Act as to the financial terms stipulated in the Act per se. Having said that, questions may also be posed about certain aspects of the way the Act is practised.

First, there is the high percentage of applications rejected by enforcement officers. This may mean that a very large number of applicants obviously do not fulfil the criteria, do not co-operate, etc., and that enforcement officers perform a general screening function. On the other hand, it may also mean that the enforcement officers are overly restrictive compared with the court of enforcement which is, in fact, supposed to be the stricter judge.

Second, there is the question of the high percentage of applications for change in debt settlement schemes, and that it is frequently the debtors themselves who petition for changes. This may be interpreted to indicate that the financial regimes debt settlements impose on households are too strict for many applicants, and that little allowance has been made to buffer against significant changes in applicants' living situations or financial circumstances.

Finally, the present survey and other data indicate that the Debt Settlement Act is practised differently in different parts of the country. This is true of issues such as the housing allowance, possibility of retaining a car and the question of how debt settlement schemes regulate extra income and unencumbered wages. The results also indicate that applicants on the west coast of Norway generally receive a lower living expense allowance than applicants in other geographical areas. As regards the criteria for rejecting applications and the length of debt settlement periods, there is no indication of differences in the practice of the Act, although the Debt Victim Campaign's comparison of court of enforcement practices indicates that in these two particular areas, the Act is practised more strictly in Bergen than in Oslo.