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From Loan-Sharks to Vulture Funds: Abuse, Vulnerability, and Judicial Control in Irish Credit Markets

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ABSTRACT

This article examines the persistent problem of abusive lending practices in Ireland through a social-justice lens, arguing that structural power imbalances continue to shape borrower–lender relationships across both regulated and unregulated segments of the credit market. Despite an extensive statutory and regulatory architecture - comprising the Consumer Credit Act 1995, Central Bank oversight, and the Unfair Terms in Consumer Contracts Regulations - many consumers remain vulnerable to punitive default charges, opaque contract terms, aggressive enforcement by vulture funds, and illegal moneylending in deprived communities. Drawing on recent Irish case law, including O'Boyle, Sheehan, Breccia, Mars Capital, Pepper, Cronin, and Counihan, the article demonstrates how courts are increasingly willing to scrutinise default-interest clauses, examine unfair terms ex officio, and regulate the conduct of credit purchasers and servicers. Persuasive UK jurisprudence - principally O'Brien, Etridge, First National Bank, Plevin, and Canada Square - is shown to play a crucial role in enhancing borrower protection, especially regarding undue influence, transparency failures, and unfair lending relationships. The article also explores the socio-economic dynamics of illegal moneylending, highlighting how poverty, financial exclusion, and seasonal pressures - particularly around Christmas - drive many households to rely on unlicensed lenders despite criminal prohibitions. A critical evaluation of existing regulatory tools identifies significant gaps, most notably Ireland's lack of a comprehensive "unfair relationship" test comparable to that in the UK Consumer Credit Act 1974. The article concludes that while judicial trends are increasingly protective, substantial legislative reform is required. Incorporating elements of UK and EU

consumer-credit frameworks, particularly the 2023 Consumer Credit Directive, would provide a more coherent and substantive model for safeguarding vulnerable borrowers in Ireland's evolving credit landscape.

KEYWORDS

UK, Ireland, Debt, Finance, EU

1. INTRODUCTION

Moneylending and credit services constitute one of the most heavily regulated yet persistently problematic sectors of Irish private law. Despite an elaborate network of statutory controls, Central Bank oversight, and long-standing European consumer-protection norms, abusive lending practices continue to harm vulnerable borrowers. These harms manifest across the spectrum: from informal, illegal "loan-sharking" in deprived communities, to high-cost licensed credit agreements with opaque default-interest clauses, to aggressive enforcement by international vulture funds. As the Social Finance Foundation has cautioned, tightening licensed-lender rules does not necessarily curb the rise of unlicensed (illegal) moneylenders, especially amid inflationary cost-of-living pressures. The common denominator is structural power imbalance, where lenders - armed with capital, expertise, and standard-form contracts - engage with borrowers who often have little bargaining strength, limited financial literacy, and a desperate need for liquidity around moments of crisis or seasonal pressure such as Christmas.[1] [2] [3] [4] [5] Practitioner commentary highlights that courts recognise the debtor-creditor relationship as typically uneven in terms of the economic circumstances and financial literacy of the parties involved.[6]

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[1] *Mary Faherty, Olive McCarthy & Noreen Byrne, 'Interest Rate Restrictions on Credit for Low Income Borrowers' (UCC Centre for Co-operative Studies, 2018).*

[2] *Brendan Whelan, Government Is Tackling Licensed Money Lenders … but What About Illegal Moneylenders? Social Finance Foundation (19 August 2022).*

[3] *Conor Pope, Irish consumers to spend less but borrow more over Christmas, says CCPC (Irish Times, 5 December 2023) https://www.irishtimes.com/business/2023/12/05/irish-consumers-spend-to-spend-less-but-borrow-more-over-christmas-says-ccpc/*

[4] *Ann Murphy, Christmas spend to rise to €1,177 as a quarter of us plan to splurge more than last year (Irish Examiner, 9 December 2024) https://www.irishexaminer.com/news/arid-41532047.html*

[5] *Waterford Live Reporter, Struggling Waterford people targeted by moneylenders at Christmas (Waterford Live, 6 December 2018) https://www.waterfordlive.ie/news/home/351749/struggling-waterford-people-targeted-by-moneylenders-at-christmas.html*

[6] *Amanda Wootton, Consumer Credit Law Update: It s Not Fair! (2017) CILEx Journal.*

This article argues that Irish courts have become increasingly willing to intervene, particularly in relation to penalty clauses, unfair terms, and the conduct of credit-servicing firms, yet significant legal and regulatory gaps remain. Crucially, Ireland has not adopted the UK's "unfair relationship" test under the Consumer Credit Act 1974, which has provided English courts with a powerful mechanism to review the substantive fairness of lending relationships. As a result, abusive forms of credit - both licit and illicit - continue to thrive in regulatory grey zones, while borrowers remain structurally disadvantaged. Methodologically, this article combines:

(i) doctrinal analysis of Irish case law on penalty clauses, unfair terms, undue influence, illegal moneylending, and credit servicing;

(ii) comparative engagement with persuasive UK jurisprudence, especially *O'Brien*, *Etridge*, *First National Bank*, and *Plevin*; and

(iii) social-policy evaluation of the institutional and economic factors shaping Irish credit markets.

The structure follows the template appropriate for postgraduate legal writing. Section 2 sets out the conceptual and regulatory background. Section 3 examines the key doctrinal tools through which Irish courts police abusive lending. Section 4 analyses the socio-legal problem of unlawful and informal moneylending. Section 5 assesses regulatory gaps and comparative models for reform. Section 6 concludes by evaluating whether current Irish law adequately protects borrowers and what future direction is warranted.

2. BACKGROUND AND CONCEPTUAL FRAMEWORK

2.1 Defining "abusive lending"

"Abusive lending" is not a term of art in Irish law but functions as an umbrella concept capturing practices that exploit informational asymmetry, desperation, or economic vulnerability. It encompasses:

1. Illegal moneylending, criminalised by s.98 of the Consumer Credit Act 1995,[7] where lenders operate without a licence, often charging extortionate interest enforced by intimidation, especially in economically deprived communities.

[7] *Consumer Credit Act 1995, s 98.*

2. High-cost licensed lending, where APRs may be formally legal but economically punitive, with complex fee structures or harsh default charges.

3. Vulture funds and credit purchasers, whose business models emphasise rapid enforcement and asset realisation rather than long-term borrower relationships.

4. Credit-servicing firms, which may be authorised or unauthorised intermediaries engaging in arrears management and collection on behalf of loan owners.

Across these categories, the core problem is power imbalance: lenders possess overwhelming bargaining power, while many borrowers enter credit agreements under conditions of crisis borrowing, low financial literacy, or accumulated arrears.

2.2 Statutory and regulatory architecture

The principal statutory regimes include:

- Consumer Credit Act 1995, which regulates moneylending, credit advertising, agreements, interest disclosure, and prohibits unlicensed lending.

- Central Bank of Ireland regulation, particularly the Code of Conduct on Mortgage Arrears and the Consumer Protection Code, which impose disclosure and conduct-of-business requirements.

- Unfair Terms in Consumer Contracts Regulations 1995 (S.I. 27/1995), implementing Directive 93/13/EEC, which allow courts to strike down terms creating a "significant imbalance" contrary to good faith.

- Emerging EU Consumer Credit reforms, especially the 2023 Directive adopting a risk-sensitive framework with enhanced affordability checks and transparency obligations.

Despite this framework, enforcement gaps persist, especially regarding informal lenders and unregulated credit-servicing activities. The Irish courts therefore occupy a central role in remedying abusive practices, often in the absence of robust ex ante regulation.

3. DOCTRINAL ANALYSIS: HOW IRISH COURTS POLICE ABUSIVE LENDING

This section provides the doctrinal core of the article, examining how Irish courts have developed a set of tools - penalty doctrine, unfair terms analysis, scrutiny of credit-servicing practices, and protection against undue influence - to mitigate lender overreach.

3.1 Excessive Default Interest and the Penalty Doctrine

Default interest rates and surcharge fees are common mechanisms through which lenders amplify the cost of borrowing, particularly when dealing with vulnerable or financially stressed borrowers. Irish courts have increasingly scrutinised such practices, often labelling them penalties rather than legitimate estimates of loss.

The seminal recent case is *Governor & Co of the Bank of Ireland v O Boyle (2025)*,[8] where a 9% surcharge interest rate imposed by the bank was held to constitute an unenforceable penalty. The High Court emphasised that the surcharge bore no genuine relationship to any pre-estimate of loss and was instead punitive in nature. This ruling significantly limits lenders 'capacity to use default interest as a revenue-generating mechanism, especially when dealing with borrowers already in financial difficulty. It also mirrors the economic dynamics of illegal moneylending, where default often triggers spiralling penalty charges.

Earlier appellate jurisprudence supports this trajectory. In *Sheehan v Breccia (2018)*,[9] the Court of Appeal clarified that surcharge interest clauses could indeed be penal, a point underscored in the companion decision *Flynn v Breccia (2018)*.[10] Together, these cases established that seemingly technical clauses in commercial or semi-commercial credit agreements may constitute punitive sanctions and therefore fall foul of classical contract doctrine. Although the Breccia cases involved sophisticated parties, the principles have since been applied in consumer contexts, reinforcing judicial scepticism towards lenders 'attempts to disguise punishments as cost-recovery mechanisms.

This body of case law has a powerful social justice dimension. Default-interest provisions disproportionately affect low-income borrowers, who are more likely to fall into arrears due to income volatility, health costs, or seasonal pressures. By recognising these charges as penalties, Irish courts implicitly acknowledge the

[8] *Governor & Co of the Bank of Ireland v O Boyle & Anor [2025] IEHC 219.*
[9] *Sheehan v Breccia [2018] IECA 286.*
[10] *Flynn v Breccia [2018] IECA 273.*

unequal bargaining power embedded in credit arrangements - a doctrinal method of counteracting lender dominance.

3.2 Unfair Contract Terms and the Duty of Ex Officio Review

While penalty doctrine limits punitive charges, the Unfair Terms Regulations (S.I. 27/1995) provide a broader mechanism to challenge structurally imbalanced contractual terms in standard-form credit agreements. Irish courts have developed a robust jurisprudence emphasising their ex officio duty to examine unfairness even when borrowers do not articulate the argument.

In *Cronin v Dublin City Sheriff (2017)*,[11] the High Court affirmed that courts must independently assess whether contractual terms fall foul of the "significant imbalance" test. Similarly, in *AIB v Counihan*, Barrett J stressed the proactive judicial role in scrutinising lender-drafted terms, recognising that consumers may lack the resources or expertise to identify unfair provisions themselves.[12] The effect is to rebalance the procedural inequality inherent in credit markets. Unfair terms may include:

- unilateral variation clauses;
- excessive arrears-management fees;
- opaque interest-calculation methods;
- power-of-sale provisions granting disproportionate rights to lenders.

Comparatively, UK authority bolsters Irish reasoning. The House of Lords in *Director General of Fair Trading v First National Bank (2001)* confirmed that even apparently "core" banking clauses may be unfair when they override consumer rights or undermine good faith.[13] Similarly, *Office of Fair Trading v Abbey National (2009)* affirmed the courts 'willingness to interrogate standard banking practices through the lens of consumer protection.[14]

Irish courts leaning on this persuasive authority benefit from decades of sophisticated UK analysis on unfairness, transparency, and imbalance. Although Ireland lacks the "unfair relationship" doctrine, the ex officio approach helps compensate

[11] *Cronin v Dublin City Sheriff [2017] IEHC 685.*
[12] *Allied Irish Bank PLC v Peter Counihan & Anor [2016] IEHC 752.*
[13] *Director General of Fair Trading v First National Bank [2001] UKHL 52.*
[14] *Office of Fair Trading v Abbey National [2009] UKSC 6.*

for this by ensuring that lenders cannot rely on procedural silence to enforce exploitative terms.

3.3 Credit Purchasers, Servicers, and Vulture Funds

The rise of vulture funds following the financial crisis has transformed the Irish mortgage landscape. While loan sales enable banks to rebalance their balance sheets, they often transfer vulnerable borrowers to entities whose profit model depends on strict enforcement rather than relationship-based management. Courts have thus faced increasing litigation from vulture funds seeking possession orders or summary judgment against distressed borrowers.

The Supreme Court's 2025 decision in *Mars Capital DAC v Walsh* is pivotal.[15] The Court refused the fund's appeal, confirming that debt purchasers are fully subject to the same legal scrutiny as original lenders. This decision dispels the notion that funds may rely on the transfer of contractual rights to pursue aggressive enforcement without meeting procedural fairness obligations.

The High Court in *Mars Capital Finance v Gallagher (2025)* similarly demonstrated rigorous oversight when evaluating enforcement actions by funds, emphasising that procedural history, borrower engagement, and compliance with regulatory codes remain relevant.[16]

The courts have also been prepared to impose financial consequences on overreaching funds. In *Tanager DAC v Ryan (2019)*, the High Court ordered the fund to pay the borrower's legal costs after the borrower successfully resisted possession proceedings.[17] This marked a departure from the traditional reluctance to penalise lenders for unsuccessful litigation and signalled a judicial willingness to deter aggressive or poorly grounded enforcement.

Credit-servicing firms have also come under scrutiny. In *Pepper Finance v O Reilly (2025)*, the Court of Appeal considered the conduct of a major servicing company and demonstrated the appellate court's readiness to examine compliance with both contractual duties and regulatory expectations.[18] Earlier, *Hurley v Pepper Finance (2024)* likewise acknowledged the potential for

[15] *Mars Capital DAC v Walsh [2025] IESC 45.*
[16] *Mars Capital Finance Ireland DAC v Gallagher [2025] IEHC 210.*
[17] *Tanager DAC v Ryan [2019] IEHC 694.*
[18] *Pepper Finance Corp (Ireland) DAC v O Reilly [2025] IECA 140.*

unfair or exploitative conduct within high-cost lending arrangements.[19]

The issue of unauthorised credit servicing reached the Supreme Court in *Cave Projects Ltd v Gilhooley (2025)*, where the defendants attempted to resist enforcement by alleging the credit servicer lacked regulatory authorisation.[20] The Court clarified the limits of this defence, emphasising that while regulatory compliance is essential, borrowers cannot easily escape contractual responsibilities solely on the basis of technical regulatory breaches. Nonetheless, the case underscores the legal ambiguities created by Ireland's multi-layered credit-servicing ecosystem.

3.4 Undue Influence, Borrower Consent, and the UK Persuasive Tradition

Another doctrinal pathway for protecting borrowers lies in the law of undue influence, particularly in guarantee and co-borrower situations where family dynamics, inequality of information, or emotional pressure undermine free consent. Irish courts traditionally draw heavily on the UK jurisprudence established in *O Brien v Barclays Bank (1994)* and *RBS v Etridge (No 2) (2001)*.[21]

Under *O Brien*, lenders are "put on inquiry" whenever a non-commercial surety - commonly a spouse - is asked to provide security for another's debts. This triggers a duty to ensure the guarantor receives independent legal advice. *Etridge* refined this framework, setting out clear procedural steps that lenders must follow to protect vulnerable signatories and prevent future litigation.

Although Irish courts have not reproduced the full Etridge code, they frequently rely on its principles. This is particularly relevant for small family businesses, inter-spousal guarantees, and elderly borrowers who sign refinancing agreements under financial pressure. Persuasive UK authority ensures that Irish courts can invalidate obligations tainted by relational domination or informational asymmetry.

UK doctrine on transparency also informs Irish jurisprudence. The landmark *Plevin v Paragon (2014)* decision held that non-disclosure of large commissions rendered a credit relationship unfair.[22] This analytical approach has potential application in

[19] *Hurley v Pepper Finance Co DAC [2024] IECA 80.*
[20] *Cave Projects Ltd v Gilhooley [2025] IESC 3.*
[21] *O Brien v Barclays Bank plc [1994] 1 AC 180; RBS v Etridge (No 2) [2001] UKHL 44.*
[22] *Plevin v Paragon Personal Finance Ltd [2014] UKSC 61.*

Ireland, especially where hidden fees, bundled commissions, or opaque interest mechanisms obscure the borrower's true costs. Similarly, *Canada Square v Potter (2021)*, with its focus on deliberate concealment extending limitation periods,[23] could support borrower claims involving long-hidden charges or misconduct.

Together, these authorities provide Irish courts with a rich comparative framework for addressing power imbalance in credit relationships. They also offer a powerful conceptual bridge between undue influence and broader unfairness doctrines.

4. UNREGULATED AND ILLEGAL MONEYLENDING

While much judicial attention focuses on licensed lenders, the most socially damaging credit activity occurs in the illegal moneylending sector. These lenders operate in economically deprived areas, often targeting households excluded from mainstream banking due to poor credit histories, unemployment, or reliance on social welfare. The Consumer Credit Act 1995 makes unlicensed moneylending a criminal offence under s.98, yet enforcement remains weak.[24]

4.1 Social and economic drivers

Illegal lending persists because it fills a structural void: a lack of accessible, flexible, short-term credit for financially insecure households. Christmas and back-to-school periods intensify demand, leading many to borrow under duress. The stigma surrounding illegal borrowing impedes reporting, while fear of retaliation suppresses cooperation with authorities.

4.2 Evidential and enforcement difficulties

Prosecutions are rare due to evidential challenges: borrowers are reluctant to testify; loans are undocumented; repayment often occurs in cash; and intimidation may deter engagement with the Gardaí. Civil law offers limited recourse because courts cannot enforce illegal contracts, yet borrowers may hesitate to seek restitution for fear of exposure or reprisal.

4.3 Doctrinal limitations

Irish courts lack robust civil doctrines to unwind exploitative illegal loan agreements. While quasi-contractual restitution may theoretically be available, the Supreme Court in *Quinn v IBRC (2015)* clarified that not all illegal contracts are void, but the

[23] *Canada Square Operations Ltd v Potter [2021] EWCA Civ 339.*
[24] *Consumer Credit Act 1995, s 98.*

principle offers limited protection when the borrower's own illegality is implicated.[25]

The penalty and unfair terms doctrines offer little help against illegal lenders because their activities fall outside the regulatory perimeter in the first place. Consequently, the most vulnerable borrowers remain those least protected by the doctrinal mechanisms described earlier. This underscores the importance of policy-based, preventive reform.

5. REGULATORY AND POLICY EVALUATION

The final analytical section evaluates the strengths and weaknesses of the existing Irish regulatory environment and considers how comparative lessons from the UK and EU could inform future reform.

5.1 Strengths: Judicial assertiveness and Central Bank oversight

Irish courts have shown increasing willingness to interrogate lender behaviour. The *O Boyle* penalty decision, the *Cronin* and *Counihan* unfair-terms line, the *Mars Capital* rulings, and cost sanctions such as *Tanager v Ryan* show a trajectory toward recognising borrower vulnerability. Courts also scrutinise credit servicers, as in *Pepper v O Reilly*, acknowledging the potential for secondary actors to exploit borrowers.

Central Bank regulation has also evolved, with enhanced supervisory powers and conduct-of-business norms. Mortgage arrears frameworks seek to impose procedural fairness, documentation duties, and engagement obligations, providing some measure of protection against aggressive enforcement.[26]

5.2 Weaknesses: Absence of a general "unfair relationship" test

Ireland's most significant lacuna is the absence of a statutory test akin to the UK's ss.140A–C Consumer Credit Act 1974, which empowers courts to examine the overall fairness of a credit relationship.[27] [28] This doctrine enabled *Plevin* and subsequent

[25] *Quinn v Irish Bank Resolution Corporation Ltd [2015] IESC 29.*
[26] *Central Bank of Ireland, 'Regulatory & Supervisory Outlook Report 2025' (2025)*
[27] *Sarah Brown, Consumer Credit Relationships – Protection, Self-Interest/Reliance and Dilemmas in the Fight against Unfairness: the Unfair Credit Relationship Test and the Underlying Rationale of Consumer Credit Law (2016) 36 Legal Studies 230.*
[28] *Jonathan Butters and Kevin Durkin, Unfair Relationships (2015) New Law Journal.*

hidden-commission cases and allows English courts to consider the substantive reasonableness of interest rates, fees, and lender conduct.

Irish law, by contrast, relies on:

- penalty doctrine (narrow and technical),
- unfair terms regulation (limited to non-negotiated contractual terms),
- undue influence (case-specific), and
- regulatory compliance (often procedural rather than substantive).

Without an unfair-relationship test, courts cannot directly interrogate whether a lending relationship is exploitative in substance, even if nominally compliant with disclosure rules.

5.3 Regulatory gaps for vulture funds and servicers

Loan purchasers frequently operate across borders through complex ownership structures, complicating regulatory oversight. Credit-servicing firms may be authorised, partially authorised, or in some cases unlicensed, as highlighted in *Cave Projects*. Borrowers cannot easily challenge servicing irregularities, and the regulatory regime can lag behind evolving industry structures. Ireland has implemented the EU Directive on credit servicers/credit purchasers, meaning that the regulatory landscape is already shifting. This supports the view that legal reform is not merely theoretical, but ongoing.[29]

5.4 Limited tools against illegal lending

As Section 4 explained, illegal lending remains largely immune to civil challenge. Victims lack meaningful remedies, and criminal enforcement is sporadic. Policy interventions - such as community lenders, Credit Union development, and expanded MABS capacity - are essential but fall outside the courts 'remit. However, primarily by means of the Consumer Credit Directive, there has been political recognition at EU level acknowledging that

[29] *Minister for Finance, 'Press Release: European Union (Credit Servicers and Credit Purchasers) Regulations 2023' (27 December 2023)*

credit markets carry risk and that tighter protections, including for vulnerable borrowers, are needed.[30] [31]

5.5 Comparative lessons from UK and EU law

Ireland could benefit from adopting several comparative mechanisms:

1. The UK unfair relationship test, allowing holistic scrutiny.
2. *Plevin*-style disclosure rules, requiring lenders to reveal large commissions or third-party payments.
3. *Canada Square*-style limitation extensions, enabling borrowers to pursue concealed misconduct.
4. The 2023 EU Consumer Credit Directive, mandating affordability assessments, capping interest and fees in some contexts, and strengthening transparency requirements.

Together, these reforms could materially shift bargaining power toward borrowers, particularly those in crisis situations.

6. CONCLUSION

Irish law has made meaningful progress toward addressing abusive lending practices through judicial interpretation of penalty clauses, unfair terms, and the regulation of credit purchasers and servicers. Courts have increasingly recognised the structural inequalities at the heart of consumer lending, deploying both domestic doctrine and persuasive UK authority to mitigate lender overreach.

However, the system remains fragmented. Without a general unfair-relationship test and with limited tools to combat illegal moneylending, borrowers remain exposed to exploitation. Vulture funds and servicers operate within regulatory gaps, while social and economic factors continue to drive demand for high-cost and illegal credit.

A coherent reform agenda - drawing from UK jurisprudence and EU legislative developments - is necessary to ensure that borrower vulnerability is meaningfully addressed across all forms of credit. Only through such structural change can the Irish legal system

[30] *Council of the EU, Asking for a Loan Will Be Safer in the EU after the Council s Final Approval of the Consumer Credit Directive (9 October 2023).*
[31] *Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC*

fully realise its commitment to fairness and social justice in consumer lending.

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