



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Review of Rates Liability for the Landlord
Sector: Landlords' Association for Northern
Ireland Briefing

5 June 2013

NORTHERN IRELAND ASSEMBLY

Committee for Finance and Personnel

Review of Rates Liability for the Landlord Sector: Landlords' Association for Northern Ireland Briefing

5 June 2013

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Mr Declan Boyle	Landlords' Association for Northern Ireland
Mr Raymond Crooks	Landlords' Association for Northern Ireland
Mr Robert Greer	Landlords' Association for Northern Ireland

The Chairperson: I welcome Mr Declan Boyle, Mr Robert Greer and Mr Raymond Crooks, who are all from the Landlords' Association. Do you wish to make quick opening submissions before we go to questions?

Mr Declan Boyle (Landlords' Association for Northern Ireland): Yes. Thank you for the opportunity to make our submissions. We agree with quite a lot, but, as you might imagine, not everything that has been said and suggested by the Housing Rights Service. To be able to agree with everything would make it too simple. I will pass over to my colleague Robert Greer, a retired member of the Royal Institution of Chartered Surveyor (RICS).

Mr Robert Greer (Landlords' Association for Northern Ireland): Good morning, gentlemen. I reiterate what my colleague said: we agree with much of what we have heard this morning.

And ladies — sorry.

Mrs Cochrane: Get that one right, please.

Mr Greer: Rates is extremely complicated. I am not surprised that tenants, landlords and professionals do not understand what is in the rating legislation. Rates, as we know, is hundreds of years old. Dozens of Acts of Parliament and hundreds of pieces of case law define the rateable

occupier. The tenant is in rateable occupation and is liable for the rate. That is what is in the 1977 order. It goes to some length to emphasise that in schedule 8. That does not bode well for the statement that "rates shall be levied on and payable by the owner" in certain instances. It is very easy to see how confusion can come in at that point. The facts of the matter are that the tenant, as it stands, is in rateable occupation, and he should pay the landlord the rates. The landlord, as is pointed out in the paper by the Department, is simply the agent who conveys the rate to the taxing authority, which is Land and Property Services (LPS). The Rates Order has article 20, which is landlord liability. As far as we are concerned, this is a sort of tidying up exercise that tinkers at the edges. We broadly agree with what the Department is doing, save for the proposed reduction from 12.5% to 10%.

The previous witnesses mentioned the fact that tenants can receive a rates bill even though they have paid the landlord the rates. We agree that that is a very poor provision. It should not be the case. Equally, however, in article 22, the landlord can get charged with the rates by LPS and taken to court even if the tenant has not paid him. We support the abolition of article 23 and article 22.

Strictly in the context of article 20, we support the provisions that are proposed in the paper, save for the reduction from 12.5% to 10%. We look further. We agree with the concept of the over-bureaucratic approach, as Mr McLaughlin said. You need a clear pathway, and there needs to be transparency. We agree with all that. The rateable occupier ought to pay the tax to the rating authority directly. That is for three reasons. First, it is in the context of what is not termed in the UK as welfare reform and personal responsibility. There should be alignment with the rest of the United Kingdom. Secondly, it would stop the commission of 10% or 12.5% that you pay landlords. Thirdly, as a political item, if tenants are writing cheques, their councillors might be more responsive to their requirements. At the moment, a lot of people in the private rented sector do not realise that they are paying rates. We look forward to the fact that, if tenants are paying, their councillors might be more responsive to their requests.

Mr Weir: Sorry to interrupt. With the greatest of respect, that seems to be quite a strange point to those of us who have been involved as councillors or to anybody in local government in that regard. It is a little bit insulting towards councillors, with the best will in the world. Sorry to interrupt.

Mr Greer: No, I am making the suggestion, Mr Weir, that tenants are often not aware when their landlords pay the rates. I am making the suggestion that tenants would be better able to represent their interests to these councillors. They are aware that they are paying rates; most of them do not —

Mr Weir: I think people who are raising the local issue do not seem to be particularly tied in by what they pay and what they do not pay. They want to raise the issue no matter what. Sorry, I should not be interrupting.

Mr Greer: I have more or less given the Committee what we think at the moment.

Mr Raymond Crooks (Landlords' Association for Northern Ireland): I would like to address the Committee about legalities and realities. I have two hats; I am here as a landlord, and I am a solicitor. I have worked in north Belfast for 15 years and have dealt with a poacher/gamekeeper approach, lots of tenants and lots of landlords from both aspects.

Mr Mitchel McLaughlin: Are you a poacher? *[Laughter.]*

Mr Crooks: Both. I do not agree with my friend earlier who said that only solicitors were interested in going to court, but that is another story. *[Laughter.]* From the perspective of dealing with tenants and landlords, there are issues with rent books. Paul Girvan addressed the issue earlier. Rent books are a non-event. I have tenants and landlords who do not want a rent book. Nobody wants someone to arrive at their house on a Friday at teatime to sign the book and move it on. Bank transfers and the abolition of cheques over the next couple of years will take care of that part of the legislation.

We think that there are a lot of issues with landlords potentially being charged with paying most of the rates. The threshold is £150,000 of capital value, unfortunately. There are not too many houses left in Northern Ireland that are rented, apart from some houses in multiple occupation or some of the houses in parts of south Belfast, where people probably would not be very concerned about paying rates, and from that perspective, the liability lies on the landlord. Now, everybody assumes that the landlord is all singing, all dancing with plenty of money, and, unfortunately, that is not the case. The Chartered Institute of Housing gave a seminar to the Law Society two weeks ago in relation to the amount of properties it estimates to be in negative equity: it is at least 46%. There are landlords who

are stuck and there are individuals who are forced landlords because their mother and father have died, and the house is sitting somewhere and they cannot sell it. They could be stuck for three or four years until a rates officer comes at them to get them to pay the rates, which is fine, but there are many points that need to be considered. The landlord who owns 50 houses, even though he may have only bought them 10 years ago, potentially, most of them are in negative equity and he is stuck with them. You might not disagree with that. It depends on what part of the country you are in.

As I said, my experience is in Belfast, and there are so many people who would love to sell on or move on and get rid of the house. If the rates office then comes on board and says, "By the way, you are tied with all the rates, no matter who is in the house or what you are being paid", it will create a real issue. Landlords will pay the rent; they do not want their houses to be repossessed, but it is a real, live, thorny issue. When negative equity comes up, which it potentially will not do for a long time, you will have the rates on top of that. If the interest rate was to change in any way at all, there would be plenty of social housing because there will be more repossessions. I have been in front of a Chancery Master quite often, and 10 years ago, you would have been in the Chancery Court and been home for your 11 o'clock tea break. Now you would be lucky to get back for 4-30 in the afternoon, and that is just because so many people are involved. There used to be five people on a list; now it is 55 if you are lucky. There are more judges dealing with it. That is the sort of issue that is live.

My personal experience with LPS has been quite stressful. I recently received bills dating back to 2005. I think that they are statute barred, but that shows you. Perhaps they are doing now what they should have done in that they are chasing old debt. However, going back to people like Jan in a house, I have no experience personally of a tenant being taken through the courts, prosecuted and more importantly the debt being enforced, although I am not saying it has not happened. They try to take the money off whoever they think they can get it from and it is normally the landlord who will be left with it. That will probably be the landlord's situation if it is compulsory on landlords to pay the rates. A lot of tenants consider the price: if it is £400 a month, they are not interested to know whether it is rates, whether it is going to the landlord, they are not interested in anything. They just consider that it is a figure. It is difficult for them to enforce that or to increase the rent, especially when there are so many other landlords in the same position. The reality is completely different, given the legalities. Given that we are speaking after the Housing Rights Service, I am probably cheating a bit in the sense that it has mentioned a lot of issues.

Mitchel McLaughlin mentioned the energy performance certificates, and those are not policed. Legally, you should have an energy performance certificate before you even advertise a house for sale with an estate agent. If you go on PropertyPal or Propertynews tonight and click on a nice house somewhere that you fancy, the link will say that the energy performance certificate is to be provided. Personally, when I am selling a property, I say to the guys or gals, "Where is the energy performance certificate?". They sometimes reply, "I have not got one. What is that?" They do not know.

There are real issues with the tenancy deposit scheme. As an organisation, we wrote to Nelson McCausland about the advertising. The Landlords' Association ran quite a few seminars in conjunction with the delegated bodies. Apart from us, I am not aware of anybody else. We got a letter back from Mr McCausland's secretary to say that they had done this and done that, but, in reality, a lot of landlords do not know about it, especially the landlords in the scenario where mum and dad have died and they are left a house. A lot of people are stuck like that. Land and Property Services, the councils and the enforcers seem to struggle to deal with a lot of the legislation. I do not know whether that issue is for this Committee or other Committees. As a landlord association, we are dealing with all those problems and, potentially, all the other issues such as negative equity and everything else. A lot of points automatically jump out to us and give us real concern.

Mr D Boyle: I want to raise one or two points. The Housing Rights Service talked about so many cases of complaints, but we do not seem to get numbers on that, and it would be very useful to get a quantum of numbers. Sometimes, "many many" is not as many as one might anticipate "many many" being. Mitchel, you asked how many cases there are in the courts, and so on, and there is no quantum on that either. It would be helpful if we could get numbers because we could then see how big the problem is. The numbers may well be very big. There is nothing to say that they are or are not, but if you had numbers, you could at least analyse them and see where we are in the totality. Jan's case was very specific, and it is no consolation to Jan that her case was the only case. That does not matter because it is still Jan's case. If we had a quantum in the totality, we would know the size of the problems and how to address them. That would be very useful.

I was taken aback somewhat when Nicola could not answer the question that Paul put a couple of times. If a landlord were saddled with a charge on his property by virtue of the tenant not paying their

rates, it is seen not to matter. Even though it is the Housing Rights Service, it seems to be for housing rights on one side but not on the other. A bit of equilibrium might be more useful because those cases arise.

Some tenants do not know what they are getting into. Before they sign the agreement, they should read it. I appreciate that some people are not able to read as freely as others and struggle with that, and I appreciate that it is not easy for them. An education point ought to come into that, and I suggest that it should be taught to boys and girls at A-level stage before they get to university, because a lot of it involves university students. I appreciate that not everybody will go to university. It should at least be mentioned at GCSE or A-level stage that in two to three years' time, you will go out into the big bad world and will have to start to fend for yourself. Those things are very important. That point should be made at school level, because a large amount of people go from A levels into university and are not au fait with things that they ought to be au fait with. That educational issue ought to be looked at. My last point is that more legislation is not necessarily the answer to everything; it can impede future development, expansion or regeneration — call it what you like — and put people off wanting to do something.

The Chairperson: OK. Thanks very much. Robert, you made a point earlier about the reduction from 12.5% to 10%, which is what you take issue with in the Department's proposals. Will you elaborate on your justification for wanting to keep it at 12.5% for landlords?

Mr Greer: As the Department's report makes out, landlords have been getting that allowance for, I think, 80 years. Originally, that was 15%, but it has been reduced to 12.5%, and there is now a proposal to reduce it to 10%. What we are saying is that you are asking us to work for less, and that that is not justified. We collect and convey the rate on behalf of the Department, and we take the risk of non-payment and of being prosecuted even though we do not get payment under article 22. We do not know of any other form of taxation where that happens. Take, for example, VAT: individuals collect VAT on behalf of the state, and if you get a bad payer, you can get relief. However, we cannot get relief under article 22 of the Rates order. The Department will get a judgement, and a landlord will have to pay the rates regardless of whether they were paid by the tenant. I suppose what I am saying is that the 12.5% reflects the losses and the difficulties that landlords have.

The Chairperson: Can you outline any examples so that Committee members can get their head round the kinds of figures that we are talking about? For a particular property, what would be the difference between 12.5% and 10% in real figures?

Mr Greer: It would depend on the rates that are payable. You could do the arithmetic on rates of £1,000 to see what it would be.

Mr Crooks: Most of this refers to a schedule of properties. So, if you had 10 properties, you would normally get the discount. It is very rare that one landlord with one property would get a discount. My understanding is that it is for landlords with a larger number of properties, which covers everyone. Of course, that then covers the vacancies in every other aspect. It is more for landlords with five, 10 or 15 properties. It is a net figure based on how much the rates are, and, of course, where your property is, because that dictates the rateable figure.

Mr Mitchel McLaughlin: The VAT issue is, I think, interesting, but, of course, there are many problems with that as well.

Robert made a point that I could not disagree with about tenants occupying rateable property. The issue, then, is which option you settle on. Either they assume the responsibility for paying the rates or the responsibility does not transfer and the owner remains liable, with the rates built into the rental, which cuts out bureaucracy. In my view, the responsibility should stay with the owner of the property. If they rent it out, partly or fully, they are still liable. That it is simple for administration and collection. Transferring the responsibility, I think, simply muddies the waters.

Mr Greer: Could I come back on that?

Mr Mitchel McLaughlin: Absolutely; as a former RICS member.

Mr Greer: In fact, the Department comments on that in its report. In paragraph 22, it states:

"A move to default landlord (owner) liability in most cases would represent a significant shift in rating policy (essentially turning the domestic rating system into an owner based property tax)".

If the Assembly decides to tax property owners, it will, as I said, fundamentally change the rating law that has been in place for hundreds of years. If the Assembly thinks that that is the way forward, it would require, I suspect, primary legislation and an army of valuers; in this climate, you would be most welcome. A huge number of properties that are not currently liable for rates would be drawn in. I will give you an example. If you have a roofless house sitting on the Malone Road, for example, it will not pay rates because —

Mr Mitchel McLaughlin: The landscape there is littered with such properties. *[Laughter.]*

Mr Greer: In that case, the owner will not pay any rates, but under a property ownership tax, he will, because it will have a value. At present, it would not be capable of what is termed "beneficial occupation". So, if you introduced the ownership tax, every piece of land, every asset and every real estate piece of property that is not specifically exempt and has a value would be taxable.

Mr Mitchel McLaughlin: If we did not call it a tax but rates, would it be easier for people to understand what we are getting at?

Mr Greer: I think that it would be more confusing if you started calling it rates again. I think that you have to call it a property owners' tax. It will have to be differentiated so that people do not confuse it, and there would need to be primary legislation. I suspect that there would be a huge increase in the tax base. It would certainly be very difficult — anything is possible, given resources — and it would need substantial resources to track down that land ownership and value it.

Mr D Boyle: The other thing is that it would impact on charity shops, university accommodation and all sorts of things that are exempt from rates. Your high street, which is becoming your charity street in many towns and cities — we are getting overpopulated with them — would not be able to survive because some of them would have a massive rate bill passed on to them.

Mr Mitchel McLaughlin: We have developed systems for rates exemptions, and we have described and prescribed how that is applied. We have also taken some tentative steps in the direction that I am alluding to, which is to develop legislation around the rating of empty properties. We can take an approach. When I buy a bar of chocolate, I am looking after my VAT responsibility. Nobody sends me a bill and nobody has transferred the responsibility. I do not have an option. In some states, if I demand a receipt, it will be broken down into the various local, regional and national taxes that are paid as well as the cost of the item because they are more transparent than we are. There is a cultural issue here that we could just challenge ourselves. I do not want to get off this particular topic, but I think that we are adding a regulation on top of regulations. Ultimately, we have not solved the problem and we have not made it easier for people to understand their responsibilities. So, I take Robert's example — your opening comment — at face value. People are occupying a rateable space for which they have to make their contribution. It is built into their rent statement; it is not broken down and it is not a complicated transaction. It is an acceptance. We have an ignorance of responsibilities here, perhaps because it suits the way in which people do business in this place at the present time. To the extent that it works, we can project rateable income and make plans about how we are going to spend it.

We have also catered for rates delinquency — an irrecoverable debt. You talked about the statute of limitation, and we had Land and Property Services in here in recent weeks to discuss that very issue. I think that we just manage the problems rather than develop solutions. I challenge those who have very, very legitimate business interest to work with the Assembly in finding solutions, even if they are home-grown solutions. I do not think we are reinventing the wheel, but I think that they are doing it simpler in other places. Even welfare reform, with all its problems and challenges, is going to simplify some of the unnecessary administrative cost to achieve the same aims, and the Government will save money out of it. Even that is a motivation for getting involved in it. This is on a much smaller scale, but I think we should be able to do business with you. That would be in the interests of everyone, including tenants, which, in my view, is critical.

Mr Crooks: Earlier, I failed to raise an issue that crossed my mind. In the previous evidence session, I think Jan alluded to tenants being scared to stand up to their landlords. My experience is anything other than that. Obviously, not everyone is tarred with the same brush, but tenants, especially

nowadays, with the likes of the Housing Rights Service, Citizens Advice and solicitors, are well educated.

Mr Mitchel McLaughlin: Councillors.

Mr Crooks: Yes. If you have a tenant who is not paying rent and, obviously, is not paying rates, it is a very, very hard and expensive process to get them out of the property. I refer to another seminar that I attended recently, which related to the changes to the legislation for tenants, and everything else. The speaker basically stood up and suggested that, if you have a tenant who is not paying money, not paying rates, or not doing anything and, potentially, damaging your house, you should offer them money to leave. That is how hard it is. You could be talking about having to wait between 18 months and two years to get a court order. You get a notice to quit, and, after 28 days, you are duty-bound to leave the property. If you do not leave that property, it is a county court action, an ejection civil bill of £2,000 or £3,000 and, 18 months —

Mr Mitchel McLaughlin: Yes, but nothing in this addresses that problem. That is a peril of the business. It is a fair enough example, but, with respect, it does not deal with the issue that is before us.

Mr Crooks: If the tenant was more liable for the rates element of it —

Mr Mitchel McLaughlin: Would that help, or make it worse? If they do not pay their rent, they are not going to pay their rates.

Mr Crooks: Exactly. The rest of the UK deals with the council tax issue. If you live in England and pack your suitcase, you have a bill by the time you are out the door. I do not know how the administrative system is different from our own, but it is a very efficient and effective system. If you are out the door, the bill arrives through the door, literally, within days.

Mr Mitchel McLaughlin: I am not a champion of that, but I totally accept that they have a more efficient administration system than we seem capable of, so far, anyway.

Mr Greer: If they are able to collect council tax in multilingual, multi-ethnic inner urban areas in the cities of England, surely we could collect rates directly in our relatively homogenous society.

Mr Mitchel McLaughlin: Yes, you have convinced me of that point. *[Laughter.]*

Mr D Boyle: Going back to your bar of chocolate scenario and talking about paying VAT duty, I got fuel the other day, and I do not know who the VAT went to, if anybody.

Mr Mitchel McLaughlin: That might be too much information. Where were you? *[Laughter.]*

Mr D Boyle: I thought that was an interesting one.

Mr Girvan: Thank you for your presentation. I have some difficulty with going down the route of the owners' tax approach. You referred to the 1977 order and the clause within that which refers to the occupier. Personal responsibility comes in there. It is about getting the balance about who is going to be responsible. I appreciate that it becomes cleaner if you say, "The owner of the property is the person who is always liable, because they are not going to change." It is unlikely that they will change over a period, so it is relatively consistent, and we should be able to do that. To get the balance right, we need to ensure that there is a very clear agreement between the landlord and the tenant, irrespective of what is going on now. I have had the same difficulties that you mentioned. We need to be very careful about ensuring that what we put forward is totally transparent and that people know what they are paying for. Unfortunately, they do not know what they are paying for on a lot of occasions. That is the point.

I said earlier that rates bills always change. The only person who might know that they have changed is the owner of the property, because he starts off getting £450 per month in rent. If he decides to pay the rates of the property, the rent minus the rates means he gets roughly £350. I am just being very pedantic in my figures. By the end of four years, he is only getting £330, because he has had to

increase the amount of rates that he contributes to the rates department without letting the tenant know. I think that the tenant needs to be kept in the loop the whole time.

The point made by Jan in the previous evidence session was that the tenant should get some indication of where the rates are on the property, so that they are aware. A lot of them, when the rates bill arrives, do not even bother opening it. They think it is not for them but for the landlord. However, it could be addressed to them as well. There is a necessity for them to be kept in the loop. I still think that there is an element of responsibility on the tenant to ensure that the rates are being paid on the property. They should be aware that there is a balloon waiting down the road for them if they have not done it. So, that aspect should be included so that there is an indication of where we are. That is something that needs to be dealt with through LPS and by DFP.

Mr Crooks: With council tax, councils are fantastic at letting everybody know. You are not left in any doubt at any time. I do not mean that we should have council tax, but whatever system —

Mr Girvan: It is the same principle.

Mr Crooks: Everybody knows, within days, if the bill is not paid.

Mr Girvan: That is the problem. Jan was not aware. She was of the opinion that her rates should have been paid by her landlord. Obviously, that must have been the agreement, as the landlord ultimately paid the bill. That is the point. It needs to be made clear from the outset. I agree with the concept of what you are bringing forward. I also have concerns about some areas.

Mr Greer: Could I add slightly to that? A tenant, an occupier, is entitled to deduct from his rent any outstanding rates and pay the Department directly. That is in article 23(3) of the 1977 order. I wonder why the lady who sat here did not put prayer to it or avail herself of it. She could simply have said to the landlord, "I am sorry, but I am using article 23(3) to pay the rates and you will not get any rent until they are discharged."

Mr Crooks: It is an educational issue for everybody.

The Chairperson: OK, members and gentlemen, thank you very much.