Northern Ireland Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Support for Mortgage Interest etc (Security for Loans) Bill: Committee Deliberations

1 February 2022

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Stephen Dunne
Mr Mark Durkan
Ms Ciara Ferguson
Mr Paul Frew
Ms Aine Murphy
Miss Aisling Reilly

Witnesses:

Ms Claire McCanny	Bill Office, Northern Ireland Assembly
Ms Una McConnell	Department for Communities
Ms Hayley Ward	Department for Communities

The Deputy Chairperson (Ms Armstrong): I welcome Una McConnell and Hayley Ward to the meeting. Thank you very much for coming along, folks. We have the clauses here, but we also have the departmental response that has come through from you. Will we start with the clauses and then move to the letter, or would the other way round be better?

The Committee Clerk: The response is really about clause 1, which is the key clause, Chair, so we will maybe go through the response.

The Deputy Chairperson (Ms Armstrong): We will turn to your response — the letter that came through to the Committee on 31 January — if you do not mind, Una and Hayley.

Ms Una McConnell (Department for Communities): Yes, that is no problem.

The Deputy Chairperson (Ms Armstrong): That is brilliant. Thank you. If you take us through that response, that is probably the easiest way forward.

Ms McConnell: The first question was about the process for adding or removing charges. The Committee requested that we confirm in our response the process for repaying the support for mortgage interest (SMI) loan and describe the process for the removal of the charge on a property and the timelines involved. That is really an operational process. Unfortunately, we had some staff illness on Friday and I was at a training course, so we did not have an awful lot of time to respond to this, but I have the loan management guidance about how to take off a charge. Once full repayment of the SMI loan has been received or a decision has been taken to write off the outstanding loan, the charge is removed. Approval to release the charge requires a signature from the grade 5 and the inclusion of the departmental seal, and a complete release form is received from the customer's solicitor and forwarded to a grade 7 for approval. There are a few steps to take, but some of it is done on the system. We are very efficient, and we try to do it as quickly as possible so that we do not hold up any sales. That is the first question. I can send you the extract from the departmental guidance on how to do that, if that would be helpful.

The Deputy Chairperson (Ms Armstrong): It would be helpful for us to have that on file. As you say, it is operational, so it will not be in the Bill, but it would be useful to have, yes.

Ms McConnell: OK. I will send that to you after the meeting.

The Committee asked whether set times for adding a charge to the register or for removal of a charge would be useful. We will fully consider the subordinate legislation and the operational processes for the registration or removal of the statutory charge once the Bill has received Royal Assent. The placing of a charge and taking a charge off should not hold up any sales. We try to act as quickly as possible, but it involves third parties such as solicitors and Land Registry, so I am not sure whether we would want to put a timescale on the regulations. We will come to you again with the SL1 for the regulations, and we can consider that a bit more then.

There was a query about joint ownership. The SMI loan pays interest on existing mortgages. Any event such as transfer of legal ownership or death will have an impact on the mortgage as well as acting as a trigger point for consideration to be given to repayment of the SMI loan. For example, on separation, it is common that the house is either sold or remortgaged. The point really is that the SMI loan always comes after a mortgage. It is not that the SMI loan will cause someone to lose their home or anything, if they get into difficulties. The mortgage is the main charge on the property, and I suppose that we will always follow that.

There were a couple of questions about certain scenarios. A default event for the purposes of a loan is the sale or transfer of property or the death of the benefit claimant. For example, if person B moves in, the primary mortgage provider will need to be aware. By the time you are coming to an SMI loan, all people who own the property or have a mortgage on the property should be aware that there is an SMI loan to be taken out. Therefore, there will be a charge and there will, obviously, be repayment of the SMI loan in the future. Death is a trigger point for possible repayment of an SMI loan. Someone going into a care home and then the house being sold would trigger repayment of the SMI loan. However, if a person goes into a care home and the house is not sold or transferred, we would not seek repayment of the SMI loan. In establishing sufficient equity, each case is considered separately. Extensive evidence is required, including the market valuation, the mortgage redemption statement and evidence of any other priority loans, to be certain that equity is available to repay. The Bill does not affect any of the default trigger events.

The primary mortgage on which the Department is paying the interest will be repayable if mortgage payments stop and the primary mortgage debt will be much greater than the SMI loan. In a case of repossession, the Department would need to confirm whether the primary mortgage company will ever seek repossession.

We had some consideration on Friday about the transfer of an SMI loan. It is something that we would have to look at in more detail when we are doing the porting of the SMI loan. The benefit of porting an SMI loan to another property is that somebody who has had a change of circumstances — maybe they have had a bigger family, or there is a disability and they need to move home to accommodate that — does not have to use some of their equity to pay off the SMI loan, so they will have more to buy more of a property.

We would need to give more consideration to the transferring of the loan to another person. There is a possibility that the loan might never be repaid and it would just be transferred and transferred and transferred. We have to give a bit more consideration to that to see how we balance flexibility with protecting public money.

The Deputy Chairperson (Ms Armstrong): When the SMI loans are taken out, are they not taken out for a fixed period?

Ms McConnell: No.

Mr Frew: Just on that question, which is very interesting. I get your point about perpetually transferring a loan between different people in a family, but, obviously, payments still have to be made. Even though the loan is transferred, maybe more than once, the payments will still continue. Is that not correct?

Ms McConnell: It would depend. The person who had the SMI loan may have died, the property may have transferred to somebody else, who may not need help with an SMI loan. The property might not have a mortgage on it any more or they might have had to take out their own mortgage and be able to pay it, so the debt would just sit there. You are just transferring the debt, passing it along and not repaying it.

The SMI loan might have stopped paying out. It will not be paying the mortgage, but it is still sitting there. We would seek to recover that only on death or on the transfer or sale of the property. If the circumstances of someone who gets an SMI loan improve, they will stop getting the SMI loan, probably start making their own mortgage payments, but we would not seek to recover the SMI loan until they sell, transfer or die, and then we take it from the equity of the property.

Mr Frew: So, this is not like an ordinary loan you would get from a bank where you would pay interest payments.

Ms McConnell: You do pay interest. Interest is building up on your loan as it is sitting there not being paid.

Mr Frew: Is it not a monthly or seasonal payment?

Ms McConnell: No. We pay the interest on the person's mortgage so that they do not lose their home.

Mr Frew: Really, what you are saying is that no one has a payment plan for an SMI.

Ms McConnell: No.

Mr Frew: It is only recovered at the sale of a property or the ending of a mortgage.

Ms McConnell: Not even at the ending of a mortgage. If a mortgage ends, we do not need to pay the SMI. We will only be paying off the interest, so I do not think that our SMI loan will ever clear somebody's mortgage. *[Interruption.]* Sorry, that's my door.

We would pay the interest. If the person is not eligible for an SMI loan any more, they may have to start taking on their mortgage payments again, but the SMI loan will stay with them, and interest will keep accruing on that until we seek to recover it. I have to answer my door. Hold on; I am sorry.

The Deputy Chairperson (Ms Armstrong): No problem, you are all right.

It is an interesting one. We will maybe tease that out a bit more. What happens if somebody comes to the end of their mortgage?

Ms Hayley Ward (Department for Communities): Nothing happens.

The Deputy Chairperson (Ms Armstrong): Nothing happens.

Ms Ward: We do not seek to recover the money unless the property is sold or transferred. I will give you an example. Somebody could get an SMI loan now for two years. They may find a job or be able to pay it back. That loan could sit there for 20 years until they die or sell their house. Only at that point will we recover the loan. No payment plan at all is set up during those 20 years unless they wish to pay it back.

The Deputy Chairperson (Ms Armstrong): I may have been confused about that period of two years for which they took out the SMI loan. They take out the SMI loan to cover their interest payments for a two-year period. The cost of that is not repaid until the trigger point.

Ms Ward: Yes.

The Deputy Chairperson (Ms Armstrong): I have another question about the transfer of the loans. At the moment, even if the transfer of the loan was permitted and a way was found to do that, am I right in thinking that the person to whom the loan would be transferred would still have to qualify for an SMI loan, in that they would need to be on one of the qualifying benefits? They could not transfer it to someone who did not need it.

Ms McConnell: We do not know because we have not thought about that in much detail. I do not know whether you would have to transfer it to someone who is eligible for an SMI loan or whether it would just transfer with the house.

Ms Ward: Otherwise, it would just sit there.

Mr Frew: That is probably a missing link that we never thought about last week. This is useful. Is there the flexibility for someone with an SMI loan to pay it back before a house sale or the end of a mortgage?

Ms McConnell: Yes, they can.

Mr Frew: Can they pay a lump sum in cash to the Department?

Ms McConnell: Yes. They do not have to pay it all off in one go. The minimum amount that they can pay is £100. They can pay it off.

Mr Frew: In a sense, whilst you say that there is no payment plan, because it can just sit there as a debt until there is a transfer of the house, if the loanee wants to, they can place themselves in a payment plan: is that right?

Ms Ward: It depends on the circumstances.

Ms McConnell: Yes. Circumstances change.

Mr Frew: I get that. Somebody's income may change for the better. A will may mature or something of that nature may happen.

Mr Durkan: They may have finished their mortgage payments.

Mr Frew: They may have come into money. There could be a change in circumstances for the better. If the loan is a small amount and is just sitting there, it probably will just sit there, but, if somebody were minded to pay it back — maybe they have a conscience about debt hanging over their head — there is flexibility to pay that back in a payment plan.

Ms McConnell: Yes.

Mr Frew: If a payment plan were in place but something happened and that person died halfway through the payment plan, is there the ability to transfer that to a third person?

Ms McConnell: Not at the minute.

Mr Frew: Would there be merit in transferring that to a third person, or, given that you are probably down to a minimal couple of thousand by that stage, does it just go through the transfer? I am still worried about the scenario where a house is transferred to a loved one. The payment of that loan could mean the difference between someone enjoying that property or being forced into one option, which is to sell.

Ms McConnell: There are a couple of scenarios. You could be transferring the property and there may be mortgage debt on it, and the mortgage company will probably come for that mortgage debt. We will be following after that. The person may have to take out a mortgage of their own to take that property, and maybe that mortgage could cover the SMI loan. Maybe the SMI loan is the only debt on the property, but there might be other money in the estate, although the SMI loan would come only from the equity of the property. It is worth exploring more, and we can come to it when we do the porting regulations. It will not impact on the Bill whether we decide to do it or not. It will have to be taken forward when we do the porting regulations. We could make the commitment to speak to you about the porting regulations to make sure that, if there are any other flexibilities that you would like to build into SMI, they are included. There are so many scenarios to work through in this issue.

Mr Frew: I get that. I know that we are looking to future subordinate legislation. I get that, and that does not really impact on the Bill. I understand that. For us to understand the Bill better, it is helpful to have these discussions, even though they are designed for the future. It is just to make sure that we cover all angles and make sure that there is the flexibility there so that no person is disadvantaged because of somebody else's loan, even though they would have the advantage of gaining property through a will or through a transfer. You want to allow flexibility there and not have someone put into a position where they have only one course of action. That is what I am getting at.

This has been useful, and, every day of the Committee, we learn more about this. Thank you.

The Deputy Chairperson (Ms Armstrong): Una, it is worthwhile looking at what your response says about the timescale for regulations:

> *"Once the Bill receives Royal Assent it is intended that subordinate legislation will be made within 6 months."*

There is not that much time to think about all those scenarios, but there is time.

Ms McConnell: Once we get the Bill through, we will be working on the porting regulations and will be giving it a lot of thought. We will come to you again.

The Deputy Chairperson (Ms Armstrong): Moving on to the rest of that, you have talked through the transfer of the SMI loan. What about the debt decision? Can you give us an update on all of those?

Ms McConnell: Write-off procedures are contained in the loan management guidance. DFC can write off an SMI loan balance only if the amount of equity available is less than the amount due to be recovered after all higher priority debts have been paid. This example is given:

> *"If a customer has an SMI loan of £10,000 when the property is sold and the equity available after clearing the prior balance is £8,000, DFC will recover the £8,000 and write off the balance of £2,000. If there is no equity in the property, DFC will write off the whole amount."*

So, there is a process. Obviously, there are delegated approvals for decision managers. An EO2 can write off a debt of up to £100; an EO1 can write off a debt of £101 to £1,000; and, for debts of £1,001 and above, the decision is taken by a staff officer. There has to be sufficient evidence to make that decision. At times, you would engage with Land and Property Services to find out what the market value of the property is, and there will be issues like that. That covers the write-off process. There is an appeal process on whether you qualify for an SMI, but there is no appeal process regarding the write-off or the repayment of a loan.

It is 39 weeks, or nine months, before someone can receive an SMI loan. There is no waiting period for people who are in receipt of state pension credit, and the qualifying period is in place because it is reasonable for homeowners to make arrangements with their lenders to manage any loss of income for a short period without the need for the Department to intervene. We constantly review social security policy. We, in the Department, have begun to look at that area. We will look at whether it could be reduced. However, there are a lot of factors to consider, such as parity in the computer systems, whether, operationally, we could do it and what it would cost.

Universal credit (UC) and future pensioners is another issue that we will have to look into, because you are right about the move to UC. It will, possibly, start next year and finish by the end of 2024 or something like that.

The Deputy Chairperson (Ms Armstrong): I think that it is 2024, yes.

Ms McConnell: Potentially, people who could work and get jobseeker's allowance (JSA) will move to UC and then, because of the zero-earnings rule in universal credit, not be able to apply for SMI. However, I have read that, with the taper rates on universal credit and work allowances and whatnot, they will still be better off by moving to universal credit and working.

In our discussion about universal credit and pensioners, we thought that there would not be that many people on pension credit who would get the SMI. Most mortgage companies do not lend to people past their pension age. If they are not on pension credit and they have an occupational pension, however, I presume that they are better off than someone who is on pension credit. It is another issue that we will have to look at in further detail.

The Deputy Chairperson (Ms Armstrong): A building boom is due to come. We know that there is an intention for the construction industry to increase the number of houses and that those will become available in the future. We normally expect to see downsizing when people are heading towards retirement and changing houses. People now have to have workplace pensions, unless they opt out. On UC, with the zero hours, there will be more working pensioners than there have ever been. Some consideration of that is needed. The worry, especially with the move to UC, is about the people who have an existing SMI. Will they still have it after the move to UC, if they are working on the legacy benefits and then they are put on to UC? Will that be a trigger point? Will they have to repay it, or will they stop qualifying for SMI?

Ms McConnell: They will not have to repay it, but their SMI loan payments would stop, and they would have to contact their mortgage company to discuss making payments on their mortgage. Is that right, Hayley?

Ms Ward: Yes. They would stop.

The Deputy Chairperson (Ms Armstrong): Is the Department giving any consideration, under transitional protections, to ensuring that someone who is moving from a legacy benefit to universal credit will not be worse off as a result of being forced to move? It is a mandatory move as opposed to an optional move.

Ms McConnell: Yes. Transitional protections are put in place to ensure that you will not be worse off once you move to universal credit, although it is eroded over time. However, SMI loans are not included in that.

The Deputy Chairperson (Ms Armstrong): Is that being discussed in the context of welfare mitigations? If somebody's interest is being paid for them and we then move them on to UC and effectively take those SMI interest payments from them, they are being negatively impacted by UC. Is there any way of considering a mitigation for that? I do not know whether that has been brought up with the panel yet.

Ms McConnell: It is not being considered by the mitigations review, as far as I am aware. I do not think that the impact that the move to UC will have on people who are getting SMI loans has been considered.

Ms Ward: The universal credit work allowance is much higher than the legacy benefits. What they will receive through the universal credit taper will offset an awful lot of what they will lose in their SMI loan. We can look at that, but it is not part of the UC transitional regs at present.

The Deputy Chairperson (Ms Armstrong): If somebody who is working 12 hours is moved on to UC, although UC would say that they are working zero hours, they would still be working 12 hours.

Ms Ward: Yes.

The Deputy Chairperson (Ms Armstrong): You are saying that the work allowance is greater. I do not know whether it would be that great, but you think that that would balance out —

Ms McConnell: They get to keep more of their earnings.

Ms Ward: Yes, they get to keep more of their earnings. Without looking at the figures, it is hard to estimate how much better or worse off they would be, but the work allowance would slightly offset their moving off legacy benefits.

The Deputy Chairperson (Ms Armstrong): I am just checking whether any other members want to come in with any questions about the letter that we received.

I think that we have asked all of our questions. We have heard back from you about that response. Is anything else missing from that response? I think that that is everything that we wanted to cover under clause 1.

Ms McConnell: Yes. I think that we have answered everything there.

The Deputy Chairperson (Ms Armstrong): OK. Thanks for that.

I will move on to clause 2, which is "Commencement and short title". No issues or comments were raised about clause 2 at the meeting on 27 January. Do members have any other comments on that clause? Una and Hayley, do you have any comments on clause 2?

Ms Ward: No.

Ms McConnell: No.

The Deputy Chairperson (Ms Armstrong): OK, no problem. That is everything that we have on it at the moment. We will now go into closed session to discuss the Bill with Claire McCanny from the Bill Office, as we always do. Thank you very much for now, guys. We may not see you soon. We might be OK, because you have given us quite a lot of information, but we will get back in contact with you if we need to. Thank you very much.

Ms McConnell: Thank you.

Ms Ward: Thank you very much.

The Committee went into closed session from 9.42 am until 10.07 am.

The Chairperson (Ms P Bradley): It is good to have Una and Hayley back with us. We had a chat in closed session. There is really only one issue, though it applies throughout: negative resolution. The Committee is minded to have a look at how we could change article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to "draft affirmative resolution". That would allow a future Committee to have proper scrutiny, given some of the issues that were raised earlier. Do you wish to comment on that, Una?

Ms McConnell: The Bill is only making regulations to allow a statutory charge to be put on a property. Do you want to make those regulations draft affirmative? I do not think that that would allow you to have scrutiny of all the other changes that you are making. The changes to SMI that you require do not really impact on the Bill. They are made using other powers that we have and which are already in the Bill. Is that right, Hayley? We can already make regulations on reporting and the qualifying period.

The Chairperson (Ms P Bradley): Hold on. OK, bear with me, Una. Did you want to come in, Paul?

Mr Frew: Having gone through the 2016 Order, I realise that most, if not all, of the articles of the enacting legislation are by way of negative resolution. I get that that is the type of Bill that we are dealing with. Going back to your question, however, if we were minded to do this, we would be talking about amending article 13(9), which states:

> *"Regulations under this Article are subject to negative resolution."*

It would mean that through article 13 in its entirety and the amendments in the Bill, it would become affirmative. That is as far as I am aware, based on my primitive thinking over the past couple hours. The question for you is this: how would amending article 13(9) to "affirmative resolution" from "negative resolution" impact on the 2016 Order and the new Bill?

Ms McConnell: I will have to look at that.

Ms Ward: We would need to go to the Office of the Legislative Counsel (OLC) about that.

Ms McConnell: And the Departmental Solicitor's Office (DSO).
Ms Ward: Yes.

Mr Frew: I am mindful of the fact that we are raising this with you only now. I have no problem with you not giving us an answer today. We are tight for time in our scrutiny of the Bill, but it is a question that we have.

The Chairperson (Ms P Bradley): I will bring in Claire. She wants to ask a question.

Ms Claire McCanny (Bill Office, Northern Ireland Assembly): I take your point about the regulations under article 13 and the Bill applying to only paragraph 7(c) and the new paragraphs 8A and 8B, but would it be possible to check with DSO and OLC about changing those parts of article 13 to draft affirmative, given the limited time that the Committee has had to look at the Bill? We could follow that up in closed session, members, if you wish.

Ms Ward: We will need to speak to OLC and DSO about that.

Ms McCanny: I understand that, yes.

Ms Ward: We will come back to you as soon as possible.

The Chairperson (Ms P Bradley): That is not a problem. Does anyone want to say anything further? I think that everything has been said. We wanted to get it on the record, Una and Hayley, that the Committee might be minded to look at this. Will you go off with that information and come back to us with a response? Is that OK?

Ms McConnell: That is no problem.

The Chairperson (Ms P Bradley): Members, with your permission, we will go back into closed session. Claire will hang on, and we will say cheerio to Una and Hayley. Thanks, again, for your time.

Ms McConnell: Thank you.

Ms Ward: Thank you very much.