



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Support for Mortgage Interest etc (Security
for Loans) Bill: Department for Communities

27 January 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 Stephen Dunne
Mr Mark Durkan
Ms Ciara Ferguson
Mr Paul Frew
Ms Aine Murphy
Miss Aisling Reilly

Witnesses:

Ms Anne McCleary	Department for Communities
Ms Una McConnell	Department for Communities
Ms Hayley Ward	Department for Communities

The Chairperson (Ms P Bradley): I welcome from the Department for Communities Anne McCleary, Una McConnell and Hayley Ward. You are all very welcome to the Committee. Good to see you again. Is it you, Anne, who will kick off?

Ms Anne McCleary (Department for Communities): Thank you very much, Chair, for the opportunity to meet the Committee about the Support for Mortgage Interest etc (Security for Loans) Bill.

It was interesting to hear what Mr Carson and his colleagues said. In my opening speech, for want of a better word, I may be able to deal with some of the points that he made, but we are here to answer any questions that remain. I will summarise what the Bill intends to do, and then we can deal with questions.

I will start with an overview of the Bill. The Support for Mortgage Interest etc (Security for Loans) Bill will give the Department powers to make regulations to enable a statutory charge to be registrable against a support for mortgage interest (SMI) loan, thereby ensuring that the Department can meet its original policy intention to consider recovery of loans that it has provided.

The primary purpose of support for mortgage interest is to protect owner-occupiers who receive an income-related benefit from the threat of repossession. In April 2018, SMI changed from being a benefit to being an interest-bearing loan. The loan is recoverable only from any equity on the sale or transfer of ownership of the property or when the claimant dies. I think that Mr Frew and Ms Armstrong raised that point. If there is insufficient equity at that point, by which I mean if the amount of the loan exceeds the value of the property, the Department will write off any amount that cannot be repaid.

The differences in land law between here and Britain mean that obtaining a similar level of security to consider recovery of the loan is difficult. At present, the legislation allows for a legal charge to be placed on properties where a loan under article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 has been paid. It is, however, practicable to secure loans only when the property is registered and appears on the title register in the Land Registry. Moreover, in order for a legal charge to be placed on a property, all legal owners must be included in the person's benefit claim.

As it stands, 541 of the 1,409 outstanding loans do not have the security of a legal charge. At the current average of £5,000 a loan, approximately £2.7 million worth of loans are unsecured, with no secure method to consider whether recovery is possible. The remaining 868 loan recipients with the legal charge are not being treated equally to the 541 unsecured loan recipients, and that could result in a legal challenge. Introducing a statutory charge to be registered for SMI loans will provide a method of security to allow the Department to consider recovery of all loans, provided that there are available funds from the sale or transfer of the property, as they can be placed against both registered and unregistered properties, irrespective of the make-up of the benefit unit.

If there is insufficient equity to repay the total of the loan, the Department will, as I said, write off any amount that cannot be repaid. The SMI loan is not registered on the person's credit history and does not affect it. Using a statutory charge will also allow the Department to offer a more flexible product to people with a loan, by enabling a process for people to transfer the loan from one property to another as their circumstances change.

I will now look at the individual clauses. The Bill has only two clauses: it is very short. The changes in clause 1 mean that the power of the Department for Communities to make regulations about SMI loans will now include power to charge a loan, and the interest on it, on the property for which the Department makes the loan. The changes also mean that a charge created by the regulations for a loan provided by the Department will be registrable on the Statutory Charges Register.

The Department's enforcement powers, as the holder of a charge created by those regulations, will be capable of being exercised if an SMI loan is not repaid after having become repayable under the regulations and the terms of the agreement under which the loan recipients accepted the loan.

Clause 2 provides for the Bill to come into operation once it receives Royal Assent. No charges will be created over any properties until the Department has made the necessary regulations and they have come into operation. Once the regulations have been made and come into operation, any charge created by them will be registrable on the Statutory Charges Register. It is not intended that the regulations will impose a statutory charge for past or future loan payments under an existing loan agreement for so long as the loan payments continue to be secured by an existing legal charge.

Once the change to primary legislation is commenced and subordinate legislation is amended, all new loans will be registered on the Statutory Charges Register. The unsecured loans will be registered in tranches so as to ensure that resources in the Department and for the Land Registry can be managed. Officials have been in contact with Land Registry officials and will maintain that contact as the Bill progresses.

The Department will also bring forward subordinate legislation to enable loan recipients to defer the recovery of the loan and allow the loan to transfer to another property, meaning that loan recipients can use all the equity in their property to help with purchasing their next home. That provides a greater opportunity for people, as their circumstances change, to move to a property that better suits their needs.

The amendment proposed in the Bill to enable the statutory charge to be used as a method of security on SMI will ensure equal treatment of all loan recipients, provide the Department with a more effective form of recovery of all loans and, through beneficial changes, allow loan recipients to transfer their loan from one property to another.

Our view is that the provisions in the Bill fully reflect the original policy aims for SMI loans. The amendments ensure that the Department can secure all loans in order to consider whether repayment can be made from any available equity, which will ensure that all loan recipients are treated equally and help progress a beneficial change to allow loan recipients to transfer the loan to another property.

We were listening, as you mentioned, to the Law Society's presentation. I very much welcome Brian Carson's comment that the Law Society is happy to engage with us on the Bill. We are happy to do

that, and we plan to do so. Other than that, thank you very much, Chair, and now we look forward to your questions.

The Chairperson (Ms P Bradley): Thank you, Anne. As always, it is good to have you here explaining all this to us.

I want to ask a question about removing the SMI. How quickly does that happen, and what do you have to do to remove it? We know that, when you are in debt, it can take a long time to get out of that hole. Say you have someone who has managed that: it has taken them a few years, and they have got to the stage where they are now able to pay off their SMI. That is another point: it is really good news that this does not affect your credit score. We know that that can prohibit people from going for a new mortgage or trying to remortgage or whatever. How easy is it to pay it off and get this removed from the registry in order for you to move on with life, sell your home or whatever else? What is the process around that?

Ms McCleary: Una may be able to answer that. I know what I think the answer is, but Una is the expert.

Ms Una McConnell (Department for Communities): I do not know about that, but I think you can repay your loan any time you want. The minimum you can pay is £100. You can pay it off in tranches, or you can pay the whole thing. The process for taking off a statutory charge or a legal charge is very efficient in the Department. It will be taken off as soon as possible, so it will not hold up any sale. The Law Society raised that as an issue. If we were going to remove a charge, it would be removed as quickly as possible.

The Chairperson (Ms P Bradley): Una, just a follow-up on that. Can the person do that themselves? Does it require any legal intervention, a solicitor or any more financial penalty on their side? They can do that themselves?

Ms McConnell: Yes, they can just repay it. They can repay the loan to the Department themselves, and the Department will take the statutory charge off the property — or a legal charge; we do not have statutory charges at the minute.

The Chairperson (Ms P Bradley): That is good to know. I will open up the meeting to members. I have a few more questions, but I will ask whether members have anything further. Go ahead, Kellie.

Ms Armstrong: On something slightly different, Housing Rights highlighted to us, in a paper that you might have seen, that there is an issue about —.

Ms McConnell: No.

Ms Armstrong: Oh, sorry, have you not seen it?

Ms McConnell: No, we have not seen it. Sorry.

Ms Armstrong: Basically, there is an issue with universal credit and people working 16 hours. Let me get to it so that I can be clear with you. There seems to be an issue that people on universal credit who are working fall outside the qualification for support for mortgage interest. We have a move to UC probably coming up in Northern Ireland in 2023. How will we deal with existing people who have SMI, if they are on a legacy benefit and are moved to universal credit and are working 16 hours or so? Are they excluded from SMI?

Ms McConnell: Yes. If you earn anything, you will not get your SMI loan. Is that not right, Hayley?

Ms Hayley Ward (Department for Communities): Yes. It is *[Inaudible]* for universal credit, so they are not entitled to an SMI loan when there are any earnings.

Ms Armstrong: Can you think of any instances where people on the current list of benefits, who could be working a certain number of hours and have an SMI, once they move to UC — not now, obviously, but when it comes in — will have to repay early?

Ms McConnell: No. The loan payments will stop, but they will only have to repay if they transfer, die or sell their property.

Ms Armstrong: So if you are in the scheme —.

Ms McConnell: You can stop paying SMI any time you want, but you do not have to —.

Ms McCleary: They are already in the scheme.

Ms McConnell: Yes. Their SMI loan payments will stop, but they will not have to repay it.

Ms Armstrong: OK, so, if they are in the scheme already, they are not thrown out of it, but the rules will still apply when it has to be repaid. However, people who are on universal credit when this comes through and are working 16 hours cannot access the support.

Ms McConnell: No, they will not be able to access the support, but they will not be made to repay the loan. It will just stop.

Ms Armstrong: Another thing that Housing Rights asked is this: instead of it being a loan, has there been any consideration that it should be a non-repayable grant?

Ms McConnell: It was changed from being a benefit to being a loan in 2018, and there is no indication that it will be changed from a loan.

Ms Armstrong: Housing Rights had concerns about the extension of the waiting period from 13 weeks to 39 weeks. Do you guys want to say anything about that?

Ms McConnell: The waiting period is 39 weeks, and we will continue to keep that under review. We can review that as part of our SMI policy. The reasoning for the period of 39 weeks is, I suppose, to give the opportunity for the homeowner to seek other resolutions. Hopefully, they will have gone to their mortgage provider and maybe come to an agreement with it or maybe paused their mortgage payments for a while. That was the rationale behind the 39 weeks or nine months on universal credit.

Ms Armstrong: I want to check about the 16 hours. We are trying to encourage as many people as possible to work, and, in effect, they are supplementing their income with universal credit to make it up to a standard of living. Is there any way that we can review that? I think that Housing Rights said that, prior to 2016, claimants for support for mortgage interest were permitted to work for up to 16 hours a week and continue to claim. In this system, that definitely cannot happen. Is there any wiggle room on that one?

Ms McConnell: There is no wiggle room on it at the minute, but, as part of our policy review of SMI, we can look at that. It depends on, I suppose, funding and computer systems and all the problems that we have when we try to make changes.

The Chairperson (Ms P Bradley): It would nearly be seen as a mitigation measure, then.

Ms Armstrong: I know, I know.

As you heard, we asked Brian Carson from the Law Society about the issue of owner A and owner B and what if owner A passes away and all that stuff. How does that work? If person B was not an official owner but, because of the death of owner A, they were the beneficiary of the house, they might be asset-rich but cash-poor. The SMI from owner A would still have to be paid back, so the person who has become owner B would be liable at that stage. There would not be a write-off.

Ms McCleary: It depends.

Ms McConnell: If the property was transferred to owner B, I suppose we would seek recovery of the SMI loan because it had been transferred. The Department could make a decision to write off the loan if it wished.

Ms Ward: In the first instance, we would be looking at the estate of the person who had died to see whether we could recoup funds from it. Again, we would take each case and decide whether we could recoup the funds. If not, they would be written off.

Ms Armstrong: Would there be a possibility that the person who had inherited the house could apply to continue paying the SMI?

Ms McConnell: They would have to make another application for the SMI.

Ms Armstrong: As long as they met the criteria. OK.

Ms McConnell: Yes.

Mr Frew: I will keep on that train of thought before I go back to my more primitive questions. Would it not be better if the new owner, person B, was able to take on that debt in the same way as you allow them to transfer to a new property and have all the equity in order to buy a new property, which is a good thing and gives flexibility? Whilst there is a transfer happening, it could be the case that, when person A dies, person B might be in a worse place but might not qualify for an SMI. Could that debt transfer? You guys would not lose anything, because the debt would still be there. Is that an option?

Ms Ward: It is something we could consider.

Ms McConnell: It is not currently an option, but, yes, we could look at that. I presume we can look at that.

Ms Ward: Making the regulations.

Ms McConnell: Yes.

Ms Armstrong: I will pick at that a bit more. Currently, there are people on pension credit, but, because of government initiatives, more and more people will have workplace payments going forward. I imagine that the number of people who need pension credit will gradually go down, and it will be largely people who do not have a workplace pension, so in the future there will be more pensioners who will not qualify because they do not have pension credit. Is there something there that can be looked at? We are all being told now that you are automatically put into workplace pensions, so pension credits may not be as evident or as frequently used in the future. Is there something that we need to do to future-proof this, or can it be amended? The qualifying benefits are named in the Bill; if the benefit changes, does that mean regulations?

Ms McConnell: Hayley, is it regulations that change the benefit?

Ms Ward: Yes.

Ms McConnell: We could look at that after the Bill as part of our SMI policy review. Obviously, anything we do will take into account the principle of parity, additional funding, Executive approval and the computer systems. We regularly engage with the Department for Work and Pensions (DWP), and we intend to review SMI policy to see if there is anything we can do to improve it for people.

Mr Frew: I asked the question because there could be a position that affects a small amount of money and a small number of people: the death of a loved one for person B, who could be the new owner of a transferred property through a will or testament or anything like that, or even a dependent, and, while they need to stay and live in their home, they may not have the cash or assets to pay off a debt. Those people could be put into difficulties, even though the amount of money could be small. I ask the question for that reason because, if you flip that over, you allow person A to transfer to a new property. It strikes me that, if you allow that, you should then allow the transfer of the debt to a third person.

Ms Ward: We could have a conversation with our operational colleagues and solicitors about that and come back to you. Maybe it is something we could change in the future. Would that be OK?

Mr Frew: That is fine. I am with you: if there is a debt to be paid, it has to be paid, end of. However, there are ways and means. The Department does not lose anything from a transfer because the debt is still there; you just choose not to recoup it at that point.

Ms McConnell: I understand that it might be a difficult time for that person, and they might not want to think about the debt. We will come back to you with any further thoughts on that.

Mr Frew: That will be great. You guys are bound to have heard all my primitive questions to Mr Carson. I will not go over them again. However, did any question that I asked or answer that you heard jump out as being either inaccurate, wrong or alarmist?

Ms McConnell: The only thing was the power of attorney. A power of attorney should not make any difference to an SMI loan. It is only if that person dies, transfers or sells their property that they have to pay back the loan. Incapacity does not impact on that. That is my only thought on that.

Mr Frew: That is brilliant. Thank you. I will not do you the disservice of going through all those questions again.

This is not a trick question or for me to hold you. What do you see as an acceptable time frame to bring forward the regulations and that secondary legislation? I think you said that that would be for all new loans but that you would move existing loans — I believe that there are 541 on the books — and you would transfer them over in tranches. That strikes me as an issue. If a solicitor was tasked with commencing a search on a Monday and found nothing but you guys were about to upload a further tranche that Friday, there could be a gap. Is there a danger of that?

Ms McCleary: As an ex-solicitor, I know that the likelihood is that the solicitors would make darn sure that they caught anything. There are things called "pre-contract enquiries", in which they would ask whether there was a loan. They would ask that as well. That would be a reassurance.

Mr Frew: OK, so it is not as primitive as hitting a button, going on to a register and checking down it.

Ms McCleary: It is the kind of thing that you would ask about in the pre-contract enquiries as well. That is when they ask whether your house has ever flooded, whether there is a mains water supply and that kind of thing. They would ask then.

Ms McConnell: People are made aware in the loan agreement that there could be a statutory charge on their property. The people who have an SMI loan are aware that there could be a charge on their property, and I hope that they would disclose that to their solicitor if they were moving.

Mr Frew: That is fair enough.

What about the timescales for secondary legislation and your new regulations? You will get this in on the day after Royal Assent. How long does the Department envisage taking to lay the secondary legislation?

Ms McConnell: Hayley, what do you think? A couple of months?

Ms Ward: Yes. It will be done as soon as possible afterwards. We imagine that it will be about three months, hopefully. It certainly will not be any longer than six months.

Ms McCleary: Obviously, the Committee will be closely involved in this. It will follow the process, so whoever the Committee is at that point will be closely involved in all of that.

Mr Frew: Of course.

I had another question in my head there. Yes — a very important one. Who in the Department decides whether you write off a loan? Who has that power?

Ms Ward: It depends on the value. Officials have that power, depending on the value. As far as I am aware, it goes up the line for write-off.

Mr Frew: Is it one person, or is it a group of people?

Ms Ward: It is based on the evidence. A decision is made to write off only when there is adequate evidence to show that there is insufficient equity. It also depends on the value of the loan. If the loan is £30, an official will write that off at low level, but, if it is into the thousands, it goes up the line for a write-off decision. Again, it is based on the evidence.

Mr Frew: Hayley, do you have that power?

Ms Ward: No, I do not have that power. I do not work there.

Mr Frew: Does your line manager have that power?

Ms Ward: No, it is operations.

Ms McCleary: It will not be us.

Ms Ward: We can certainly find out for you.

Mr Frew: You know what I am like with the big, bad Civil Service.

Ms McCleary: In other words, you trust us to do it. *[Laughter.]*

Ms Armstrong: Can I come in with a supplementary on that? This was one of my questions. The legislation refers to sufficient equity. If someone has passed away, who decides whether sufficient equity is there? I am thinking of where — I had it recently — you have a funeral to pay for. If someone is on benefits, for instance, they are allowed to have savings if the cost of a funeral is a known liability for them. Would "sufficient equity" discount moneys that are for the cost of their funeral, or does it go on the total amount that is available at time of death? I know that that is quite picky, but I just want to understand how that works.

Ms McConnell: Do you mean the way some people put money into a funeral plan?

Ms McCleary: Equity usually refers to the value of the property as compared to the loan. If the house is worth x thousand pounds and the loan is for significantly less, there is obviously equity. In other words, there is enough money in the value of the house to repay the loan. That is normally what equity means. I think that you are asking whether, when we look at it or our Department looks at it, we say, "Well, it is not just about the value of the house. It is about the value of the estate". That would include whatever savings the deceased had or whether, as you say, money is put aside for a funeral or whatever. Una may have an answer for that. I am not 100% sure, but I would have thought that it was just the value of the house.

Ms McConnell: *[Inaudible]* estate, and the funeral costs would come out first. *[Inaudible.]* It is debt management who decide on writing off the loan; it is not us.

Ms McCleary: We knew that it was not us.

Mr Frew: When you say "debt management", is that in the Department?

Ms McConnell: Yes, it is.

Mr Frew: Is it more of a mathematical formula: the equity is there, we take it?

Ms McConnell: It is linked to insufficient equity, generally.

Ms Armstrong: Does it also take into account the market for houses? This happens around me all the time: a house has a telephone-number cost and is not sold for 10 years. There may well be equity in the property, but the chance of getting the thing sold is way down because the house is unaffordable for a lot of people. Across Northern Ireland, it will be different. I live out in the Ards peninsula, where it is beautiful and houses seem to cost a clean fortune. I am not moving.

Mr Frew: Everybody is rich.

Ms Armstrong: That is it.

Ms McConnell: You have a nice house, then. *[Laughter.]*

Ms Armstrong: Unfortunately, mine was built too long ago to be fantastic, but everybody else's around me is wonderful. You could be asset-rich but not able to get the thing sold for love or money, so the debt is still there.

Ms McConnell: It is when you sell the property.

Ms McCleary: But you would not be paying it back unless the property was being sold.

Mr Frew: Or transferred.

Ms Armstrong: Or transferred.

Ms McCleary: Or transferred.

The Chairperson (Ms P Bradley): Is there a right of appeal, then? You said "debt management". As MLAs, many of us will know what it is like to go to an appeal against debt management, certainly in the Department for Communities, when it comes to maybe an overpayment of benefit or something like that. Will there be a right to an appeal if someone argues that they believe that there is insufficient money to pay this off, especially when it comes to death and inheritances? As we know, a funeral can cost six grand. There are lots of expenses around that. Is there a right of appeal?

Ms McConnell: I am not sure. If it is coming from the equity of the property, there is obviously a priority in what is paid off, and we will have a charge on the property. They will pay off the mortgage, and then they will pay off whatever. There is an order. I think that it depends on when we have registered our charge, but I am not sure about the right of appeal. We will have a charge on the property, and I suppose that they will have to pay the money to us first to clear that charge. However, I think that, if they have proof that they do not have enough equity, we can reconsider whether we take the payment back. Does that make sense?

The Chairperson (Ms P Bradley): It does. These things are not black and white, and there will be the odd circumstance when something throws a curveball and you think, "OK, we did not think about that". That is grand.

Does anybody have anything further? I know that I butted in there. Paul, did you want to ask anything further?

Mr Frew: No. Thank you for taking away those couple of queries for me. That is helpful. I am with you on the point that, if there is a loan to be paid back, it has to be paid back. We are all in the same boat, and nobody should be different. It is about making sure that there is agility and flexibility there so that you do not push people into further hardship, especially when it is, if you like, a government loan.

Ms McCleary: Essentially, you are saying that you are concerned about the people who are already in the house and want to stay in it but are not necessarily the owners.

Mr Frew: Yes, I think so. There could be an anomaly there that puts people into further hardship. They are going through a traumatic time, usually, with the transfer of ownership.

The Chairperson (Ms P Bradley): That is where you would have an appeal. The person could say, "Look, I need to appeal this because this is the home that I have lived in all my life. I do not have the money to pay this off".

Mr Frew: And I am not saying that that should be —.

Ms McCleary: The saving grace is that it is unlikely to be a huge amount of money. I suppose that what you think is a huge amount of money is all relative, but we are not talking about the full value of the house or anything.

Mr Frew: No. You are not talking about a lot of money, and you are not talking about a lot of people. I am not saying for one moment that, in that scenario, the loan should be written off; I am just saying that there should be flexibility to transfer the debt to a third person in the same way as you transfer the debt to a third property.

Ms McConnell: We will consider that, because, if it makes the system better and more flexible for people, it is worth considering.

Ms Armstrong: Chair, would it help if the paper that we got from Housing Rights was shared?

The Committee Clerk: That has already been sent.

The Chairperson (Ms P Bradley): That is good. That has been shared already. You may not have seen it yet, but it has been sent.

I do not think that anybody else has indicated that they want to ask anything further, so thank you very much, Anne, Una and Hayley. That was a good briefing. We will no doubt speak to you again as we progress through this.

Ms McCleary: No doubt you will.

The Chairperson (Ms P Bradley): I am being told Tuesday.

Ms McCleary: I think that I am up again next week.

The Chairperson (Ms P Bradley): See you on Tuesday, then. Thank you. Bye-bye.