



Northern Ireland  
Assembly

Committee for Communities

# OFFICIAL REPORT (Hansard)

Support for Mortgage Interest etc  
(Security for Loans) Bill:  
Law Society of Northern Ireland

27 January 2022

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Support for Mortgage Interest etc (Security for Loans) Bill:  
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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:**

Mr Brian Carson	Law Society of Northern Ireland
Mr Stuart Harper	Law Society of Northern Ireland
Ms Catherine Heyes	Law Society of Northern Ireland

**The Chairperson (Ms P Bradley):** Without further ado, I welcome Brian Carson, Stuart Harper and Catherine Heyes to the meeting. You are all very welcome. Brian, will you start by briefing the Committee?

**Mr Brian Carson (Law Society of Northern Ireland):** I will, Chair. Thank you for that welcome.

Good morning, Chair and Committee members. I am a committee secretary to the Law Society's conveyancing and property committee. I am joined by two of my fellow committee members, Catherine Heyes and Stuart Harper. Catherine is a practising lawyer, director and head of property law in a local law firm. Stuart is also a qualified solicitor. He worked in private practice, but he is now a lecturer at the Institute of Professional Legal Studies at Queen's, which trainee solicitors and barristers attend.

Thank you for the opportunity to brief the Committee. The Committee will have seen the society's briefing paper. Essentially, the society's response to the Bill is limited to technical matters arising from it and its potential impact on conveyancing practice.

The Bill provides for a change in the security for loans made by the Department to support the payment of mortgage interest. That change is to move from the registration of a charge against a property in the Registry of Deeds in the Land Registry to the registration of a statutory charge in the Statutory Charges Register. Arising from that, there will be a few potential changes for conveyancing practice.

While there is precedent for a charge being registered on the Statutory Charges Register to secure or loan moneys, that is not typically the case. Most notices in the Statutory Charges Register are for other matters, such as registering restrictions on the property on the use of tree preservation orders or agriculture occupancy conditions, for example. As I said, it is not common for the Statutory Charges Register to be used for charges for the security of money owed.

It was noted that the policy intention of having funds in order to recover a support for mortgage interest (SMI) loan being recoverable from any equity would be maintained. It is just an observation that the paperwork on new regulations and loan agreements should reflect that that policy position will be maintained. If the statutory charges come into place, the Department would need to have processes in place to provide for the prompt redemption or repayment figures for the loans and to promptly apply for the cancellation of the charge in the Statutory Charges Register. For example, if a property was being sold and the entry was on the Statutory Charges Register, that entry or notice would need to be clear before the sale could be completed to the new purchaser.

Issues of registration and priority should also be considered. When a support for a mortgage interest loan is made, it would be in everybody's interest if the corresponding entry in the Statutory Charges Register were made as soon as possible. Consideration of priority notices is also raised in the society's response.

My next point is on communication. With the move to registering the charge on the Statutory Charges Register and the resultant potential change in conveyancing practice, it would be important for all stakeholders to be notified of the change. The society welcomes the communication from the Department informing it of the presentation of the Bill before the Assembly.

Finally, it is noted in the society's response that there are a couple of reasons why the Department wants to make the change, one of which is that it is burdensome to register mortgages in the Registry of Deeds for affected properties. The society would like to understand that a bit more. The Department has also said that, at the moment, it is not possible to register the charge or mortgage in a scenario where not all the legal owners of the property are part of the benefit unit; in other words, that would be possible in the Statutory Charges Register. Having read the briefing papers, I am not sure what sort of numbers or proportion that applies to. However, the potential implication of it is this: two property owners — person A and person B — could own a property, and person A could be in the benefit unit and claim for the support for mortgage interest loan. The Statutory Charges Register entry regarding that loan could be put in the statutory charges, that could affect the nature of the ownership of the property between person A and person B. If they held it as joint owners, that joint ownership would be severed, and it would affect person B's position regarding the property. The society wanted to raise that and to ask this: what provision might be made in such a situation if notice was being served on person B?

**The Chairperson (Ms P Bradley):** Thank you very much. I have two questions, the first of which is on conveyancing. At the beginning of your briefing, you mentioned the potential unintended consequences. Every time we look at a new Bill, I repeat the fact that we have to be wary of unintended consequences. On that point first, is there any amendment that we could table that would help with that?

The second question that I want to ask you is on your last point about legal owners and the joint ownership of a home. It starts to flag up to me that there could be some issues with financial abuse, and there are lots of other things to consider when a couple has recently separated, for example. We all know that a settlement in a separation and on to a divorce can take years, so I am interested in knowing how that could have a detrimental effect on the person who is absent from the home at that time but still has a stake in that home.

There is also the financial abuse that, we know, happens when one person or partner in a relationship may not be aware of issues that are happening because they are being financially abused in some way. Do you feel that the Committee could look at possible amendments or ways around dealing with those points?

**Mr Carson:** To take those questions in order, you asked about an amendment to the Bill on conveyancing practice. I am not sure whether that will be addressed under secondary regulations and the loan agreement paperwork, but the society would be willing to work with the Department on that.

As I said, there is precedent for statutory charges to be registered in order to secure money owed. It is fair to say that the society is mindful that the Department would not move to that kind of approach in all

cases because the primary focus would be that, where moneys are owed, they would be secured by a charge or mortgage on the property because that is the place where most people will go to look for those mortgages and charges. If the case is made that it is just not possible for the Department to register or it is proving impractical for the Department to register mortgages on registered property, that would be fair enough, but it would be important to address in secondary regulations the impact on the joint owner.

The matters that were raised about financial abuse would be more matters of policy or of outworking of the loan application process and the loan paperwork. The issue around joint tenancy that we are primarily focusing on covers both. If all owners of the property are on notice of what is happening and in circumstances where the parties are not communicating with each other, you will find in the various registers that you are on notice of what is happening. That is why it will be important for the corresponding entry on statutory charges to be lodged promptly and for all owners to be on notice of the loan application having been made and of the corresponding statutory charges entered.

Really, what that means is that, if I am person B, and I hold the property as a joint tenant with person A, on the death of person A, their interest in the property automatically transfers to me. If that joint tenancy is severed on person A's death, their interest in the property does not automatically transfer to me; it would be distributed in accordance with the terms of person A's will or be an intestacy. I suppose that what we are saying is that person B needs to know about that so that they can make corresponding provision and maybe take legal advice on making their own arrangements for their will and things like that.

**The Chairperson (Ms P Bradley):** Kellie, is your supplementary question on this issue?

**Ms Armstrong:** Brian, bear with me —

**Mr Carson:** Sure.

**Ms Armstrong:** — because this is quite technical, and I may be asking a stupid question. Imagine that owner A has the house and an SMI and, for instance, gets married or has a partner, and there is then joint ownership with owner B. The SMI is with owner A, and that has all been signed up to. Owner B comes into the equation. Owner B has identified housing rights. They are on benefits but are working, as many people who are on universal credit are. SMI is not available to owner B. If owner A — bear with me — passes away, what happens in that situation? Owner B cannot have the SMI because they are working. How do the Government recoup the money?

**Mr Carson:** I understand that, under the current process, in the scenario that you have succinctly set out, person A is the property owner and has the SMI. Under what is proposed in the Bill, the statutory charge would be registered on the property. Owner B, just by virtue of marriage or moving in, would not necessarily automatically acquire ownership rights to the property. There would have to be some form of transfer of ownership from person A to person B in order to invite person B on to the title of the property. If that did not happen, I believe that, under the current provisions, the passing away of person A would be a trigger event for the repayment of the SMI if there were sufficient equity or money in person A's estate or in their interest in the property to repay the loan at that moment. That would be the point of recoupment. I guess that that is why the Department is looking to secure those loans by the charge, whether that be the statutory charge or on the title to the property.

**Ms Armstrong:** Just so that I am clear about this, if owner A has the property and an SMI and later gets married, they do not transfer ownership to person B. What would normally happen is the automatic transfer across to B as a result of marriage, but, because that is outstanding, B would either have to pay the amount out of A's estate or sell the house in order to pay it.

**Mr Carson:** Potentially, yes, to clear it off the title.

**Ms Armstrong:** OK. I am also then thinking that, if, in later years, owner A still has the SMI in play and has to go into residential accommodation or nursing care and any assets are required to help pay for their care, that would be a similar situation because the SMI would have to be paid out of the estate and any remaining contacts would have to meet that. OK. It is so complicated, Brian. I am glad that you are here. Thank you. *[Laughter.]*

**Mr Carson:** No problem.

**The Chairperson (Ms P Bradley):** Members, I will open it up for any further questions. Kellie, do you have further questions that you want to ask at this stage?

**Ms Armstrong:** No, it is OK, thanks.

**Mr Frew:** We have been painting scenarios, such as somebody dying or going into a care home. Following on from that, what if somebody loses mental capacity and power of attorney is involved? There seems to be a case where, at a point of crisis, there could well be a secondary crisis, which is a loss of home. That is a scary outlook for some people, and it can happen through no fault of their own. If you lose capacity and have a support for mortgage interest loan, where does that all sit?

**Mr Carson:** It is fair to say that the scenarios that are being described will, to a certain extent, be governed by policy or by the approach of the Department. I refer you to the accompanying explanatory and financial memorandum (EFM), where the Department talks about the loan being recoverable only if there is sufficient equity. If members have questions about that, a suggestion might be to explore with the Department what its approach is.

The technical legal position is that the ownership of the property and how it is held could be important, as could the existence of the principle loan in respect of which the SMI will be granted, the security of the position of the SMI and whether that is a Land Registry charge over the title of the property or is in the statutory charges and, when it comes to capacity, what provision might be within any power of attorney. There are very many variables in all those. It would be impossible to cover every scenario in one answer. I imagine that each case would be dependent on its circumstances.

There are two issues there. One is about what the Department envisages when it comes to calling in or seeking recoupment of the SMI loan as a matter of policy, and the other is what the society is focusing on, which is the operational or the commencing technical outworking of changing the SMI in order to make it secured in the statutory charges.

**Mr Frew:** Forgive me, because, like Kellie, I am putting down a disclaimer about stupid questions. My thinking on this is primitive; I am not across the detail at all. Imagining that someone needs a support for mortgage interest loan, you can understand the way that the housing market would go: a loan is always diminishing, but the price of a property is always rising. My first question is this: how long does an average SMI last? Is it a thing that you can stop and start?

**Mr Carson:** I —.

**Ms Armstrong:** I think that it says that you are allowed two years under the jobseeker's allowance (JSA), but others seem to be longer.

**The Chairperson (Ms P Bradley):** Go ahead, Brian.

**Mr Carson:** I was just going to say that, unfortunately, I do not know the answer to the question about the length of an SMI. The Department could provide that information, or I can find it out and come back to you, but I do not know that at the moment.

**Mr Frew:** Is my thinking correct that, if you have a support for mortgage interest loan, that amount of money will always diminish and that, given the housing market, the asset will usually increase in value such that, at the end of anybody's life or at the end of a maturing or calling-in, if you like, of a loan, the property could be worth hundreds of thousands but the value of the loan would be thousands? Is that right? I suppose that there may be more ways than one to pay it back. You could pay it back in cash because it would be so small an amount.

**Mr Carson:** That is right. In fairness, that is what the Department envisaged, as is stated in the explanatory and financial memorandum. The scenarios that you describe trigger repayment of the SMI loan: a change of ownership, the death of the claimant or the sale of the property. In all those scenarios, the Department's loan agreements will, I imagine, provide for repayment of the SMI loan, and, because the Department has the security of the loan being in the Statutory Charges Register or being registered against the title to the property, those events will trigger repayment being looked at. A subsequent owner, after any of those events, will not want the entry to remain on the Statutory Charges Register, because otherwise the transfer of ownership cannot be effected. I hope that that helps.

**Mr Frew:** Yes, it does. You have been very helpful. Some of the questions should be directed to the Department, but it is also good to get your take on them. That is why I ask.

Is the benefit of putting a loan on the register — I think that that is the terminology used — simply that repayment is triggered once there is such a scenario? Is that what the register is about?

**Mr Carson:** Yes. The Statutory Charges Register is a register of notice of matters that affect a property. When ownership of a property changes, a Statutory Charges Register search is done that will show things that potentially affect the property. The other exercise that happens when ownership of a property changes is a search on the title. You check whether there are any mortgages or charges registered against the property, typically to a bank. Let us say that I borrow £100,000 from A N Bank Ltd to buy my house. The loan is secured by a mortgage or charge on the property title. That is a separate register. The Bill proposes that, instead of being secured in that second scenario, the SMI will be put on the Statutory Charges Register as a notice that the charge is there.

My understanding is that the Department primarily wants to make the change because it has not proved practical for it to do it in the Registry of Deeds. It therefore wants to put it on the Statutory Charges Register to effect greater security for all its loans.

**Mr Frew:** All those searches are therefore done at your level: by solicitors. They are not done by the individuals concerned. That is a function that you perform for them.

**Mr Carson:** Yes. That is part of the added value that solicitors bring to conveyancing. We check those things. To come full circle, the Law Society is flagging the fact that, normally, the Statutory Charges Register search does not find money-owed types of charges. Those are normally found in the Land Registry or in the Registry of Deeds. It is just a change of approach, which the Department, according to its paper, says is needed in this instance because of practical reasons for a Registry of Deeds title. The Department may make its case, but we are flagging the fact that adopting that approach in all scenarios might change the emphasis of the Statutory Charges Register, and that would have the knock-on effect of changing conveyancing practice in that regard.

**Mr Frew:** OK. Thank you. You have been very helpful. Does the change make your job easier or harder?

**Mr Carson:** I may defer to my colleagues here, who are in practice. At the society, I have not done much in that area. Catherine, do you have any thoughts on that?

**Ms Catherine Heyes (Law Society of Northern Ireland):** Yes. My answer will be a typical one: it could make it easier or harder, depending on how it all works out in practice. In practical terms, time delays could make the job much more difficult. There could be time delays in getting the charge registered so that we know that it is there and needs to be repaid and/or in being able to make the repayment and have the corresponding entry removed. If the process could be streamlined as much as possible, I do not know whether it would make the job easier, but it would not make it any harder.

**Mr Frew:** OK. Thank you very much.

**Ms Armstrong:** I have a supplementary question on what we were talking about. I was thinking about this. The Bill does not state anything — I cannot find anything — about how quickly the Statutory Charges Register has to be updated after a loan has been repaid. Do you have any recommendations on that? Should there be a set time limit for the Department to update the register? Should that be in the Bill or in regulations? Once we get into the machinery, we know that it may take a little longer for those things to come out in the wash. At the stage at which people are bidding on a house and looking to buy a house, everything gets rushed. In order that there are no delays, do you have any thoughts on how long that update should take and whether it should be done through primary legislation or regulations?

**Mr Carson:** It would be better covered in regulations than in the Bill. Even a general understanding of the process for regulation and, as Catherine said, making it happen as quickly as possible would aid us greatly. We accept that different scenarios can arise to which there can be workarounds. I imagine that we would like to see that picked up in the regulations in some form or through consultation with the Department. Similar arrangements would be worked out with other Statutory Charges Register

entrants. The party that lodges an entry on the Statutory Charges Register has to be the party that removes it. We would therefore need the Department to do that as quickly as processes allow.

**Ms Armstrong:** Say that owner A has a house and passes away. Owner A has a family, who have no idea that a support for mortgage interest loan was taken out by owner A. People may not know to look at the Statutory Charges Register. Would it be for solicitors to identify that charge for the family as part of the estate, or is there another way for that to be recorded against, say, the mortgage on the house? How will families get to know about that?

**Mr Carson:** In practical terms, family members are likely to know from the paperwork of the deceased. Generally, as part of the administrative process for the estate, relatives or executors will gather together all the paperwork, available bank statements etc. In the immediate term, there is therefore likely to be some indication that a loan agreement was signed etc.

Ultimately, when it comes to the disposal of the property by sale or transfer, the requisite searches will be done, and that is when you will see the entry in the Statutory Charges Register. As a member said earlier, at that point, there will be proceeds from the sale of the property to deal with the SMI loan. If there were insufficient equity in the house at that point, it would depend on the Department's policy approach.

**Ms Armstrong:** OK. Thank you.

**The Chairperson (Ms P Bradley):** That is a good point. Thank you, Kellie. I was thinking that, because, any time that I have bought a house, the solicitor does the Land Registry checks, so it would be the same idea, whereby you would have that check and it would then come up.

**Mr Carson:** Yes.

**The Chairperson (Ms P Bradley):** That is fair enough. Thank you. No other members have indicated that they wish to ask anything further of you at this stage. Thank you so much for your briefing. It has been worthwhile. The officials from the Department were listening in, so we hope that they will be able to respond to some of the queries and concerns that you have raised.

**Mr Carson:** Thank you, Chair and Committee members, for your time.