



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Rates Liability for the Landlord Sector (DFP
Briefing)

11 September 2013

NORTHERN IRELAND ASSEMBLY

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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 Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Andrew McAvoy	Department of Finance and Personnel
Mr Brian McClure	Department of Finance and Personnel

The Chairperson: We will move on to the next item on the agenda.

Mr Brian McClure (Department of Finance and Personnel): As I mentioned in the previous evidence session, rates liability for the rental sector tends to draw out divergent opinions from landlords and tenants. I believe that you have been supplied with a report on the outcome of the consultation. It is in tabled papers. I am sorry that it was late. We have a new Minister, who is reading himself into the subject. Otherwise, you would have had it a bit sooner. I am sure that you understand.

A total of 16 responses to the consultation exercise were received, including two from businesses; three from organisations; two from district councils; one from a political party; and three from ratepayers. Overall, I think that people told us that they do not disagree with what we want to do, but most said that we were not going far enough. There was really no disagreement on some of the proposals, but people thought that we should undertake much more fundamental reform. I mentioned some of the issues around that during our previous evidence session, but I am happy to explore them further if necessary.

Eight respondents were in favour of proposal 1 in the report; namely, that all rented property with an assessed capital value of £150,000 or under will be subject to compulsory landlord liability. Seven respondents were in favour of proposal 2 in the report, which was that the criteria for rent to be payable or collected at intervals that are shorter than quarterly be removed. That reduces the burden on landlords to have to provide tenancy agreements and reduces the burden on Land and Property

Services (LPS) to have to examine each and every tenancy agreement before awarding relief, or, I should say, before awarding the allowance.

There was opposition to the proposal to standardise the allowance across the board from eight of the 16 consultees, but from two different camps: one that questioned the allowance being granted to landlords altogether; and the other, which wanted the allowance to be retained. The principal advocates for each point were the Housing Rights Service and the Landlords' Association for Northern Ireland. Comments that were received on proposals about the allowance tended to concentrate on whether there should be any allowance or a more generous allowance. So, there was not a lot of consensus on that particular issue, but, certainly on the requirement for tenancy agreements, there was. Twelve respondents, which is a majority, either implied or stated that they would like us to go further than that. From a departmental perspective, there is almost an aspect of us acting as honest broker on the issue at present. We believe that it is important to maintain a balance for the time being, given everything else that is going on in the rating system and in welfare reform, particularly with regard to direct payment of housing costs to landlords. We are very wary of doing anything fundamental until there is much more clarity on that particular issue. I think that I expressed that view during our previous session.

The Department is not ruling out a more fundamental review of landlord liability provisions at a later stage. However, our initial view, in the first instance, is that the tenancy requirement in article 20 be removed, which is a stand-alone issue. It is well supported, as I said. Our view is also to standardise the allowance that is given to landlords across the board, that is, across all sectors, with regard to compulsory liability and the voluntary agreement allowance.

It is our view that any further changes to legislation in this area can be left until after RPA in 2015, until we have the non-domestic revaluation and, as I said, until welfare reform has been allowed to bed in. It is an issue of timing, uncertainty and capacity, but we are not ruling out more fundamental change in the longer term. We have gone out with relatively modest measures, and that has stirred up ambition to do something more fundamental. However, we would like to make those changes for the sake of simplicity and clarity around the issue.

Some hard cases were mentioned recently. The Committee heard evidence of one or two of those cases. We are trying to deal with those administratively, and we are reasonably confident that we can avoid such cases arising in the future. So, along with making those relatively modest changes in the first instance, LPS is taking steps, through a little bit of administrative easement, to avoid situations arising in which tenants who, along with their rent, pay a contribution towards rates to their landlords are chased by LPS if their landlord defaults. We think that that has a reasonable likelihood of success. We will have to keep a very close eye on it. If legislative change is needed, we will look at that very seriously. That is a résumé of where we are.

The Chairperson: When do you foresee the Minister agreeing to what proposal to go forward with? What is the timeline?

Mr McClure: As I say, the Minister is reading himself into this subject. He has raised a number of queries with us. We do not have a final position to report to the Committee, but the Minister is actively engaging with us on the issues. Once we have a way forward, we will inform the Committee.

The Chairperson: Proposal 1 places the rates liability on the landlord where the capital is up to £150,000. The Housing Rights Service highlighted the concern that some tenants would not know the capital value of the property and that that could result in confusion and the potential for arrears to accrue. How do you propose to overcome that?

Mr McClure: It is a matter of communication, engagement and administrative easement where any hard cases have materialised. That is our way of dealing with it in the short term. LPS is making very good efforts to achieve that. If that does not succeed, we will revisit the case for making more fundamental legislative change. However, for the time being, most, if not all, of the hard cases can be avoided through a little bit of sensible administrative easement.

Mr Mitchel McLaughlin: What does that mean?

Mr McClure: It means that, instead of LPS chasing a tenant or, in the reverse situation, a landlord for a liability where the other party defaulted, it will allow the normal process of law to take place before

recouping rates. LPS will give more time and enter into payment arrangements so that a tenant or, in the reverse situation, a landlord will not suffer.

The Chairperson: How do you make the tenant and the landlord clear about liability?

Mr Andrew McAvoy (Department of Finance and Personnel): We take a range of steps on this issue under the current legislative provision. Leaflets are put out to the public as part of the billing exercise. On the LPS website, it is laid out in table form who is liable and who is not. Through some of the proposals that are being taken forward, we think that it is now explained much better in LPS publications. We are also looking to be proactive in going out and trying to enhance the understanding of third parties that are involved in the issue, such as letting agents, who we get the feeling do not always have a clear understanding of what the legislation is. We may try to run some awareness seminars to make it clear how liability for rates is determined in the rental sector. There are a couple of steps there.

Mr McClure: Removing the requirement for tenancy agreements puts the focus on the value. Those values are published on the internet; they are easily accessible. We think that, with a bit of education and a bit of awareness, people will quickly be able to establish whether they are liable or whether the tenant is liable.

Mr McQuillan: It is very complicated. I was going to ask why there is a need to change now, but the more you explained it, the more I understand why. However, how high up the list of priorities for the Department is this and why is there a need to do it now rather than leave it until after RPA?

Mr McClure: In the list of priorities for this Department, we are dealing with rate rebate, non-domestic re-evaluation, the review of public administration regarding rates convergence issues and transferring functions funding issues. I would say that those are higher up the scale of priorities. We do not want to cause any confusion during this. People's rates bills are going to change quite significantly in April 2015 because of those things, so introducing a further change could be the straw that breaks the camel's back.

Mr McQuillan: That is my thinking.

Mr McClure: There is also the more fundamental issue of direct payment of housing costs to landlords as part of welfare reform and how that will work. We need to see how that works so that we can maybe bolt-on a rates policy that aligns with that. We do not want to jump too soon on the issue. We are not saying that we should not have a more fundamental change in the future, but we are saying, "Not now, please".

Mr McQuillan: Are there any savings for the Department in introducing this or will the savings be in time rather than in cash?

Mr McClure: Yes, there will be administrative savings for landlords and for LPS because they will not then have to read the tenancy agreements and establish the regularity of rate payments.

Mr Girvan: It is an area that has never been that clear. The fact that you could be lifting the rates from three people — possibly an agent, the owner or the tenant — confuses the whole thing to a greater degree. In rolling it in along with what is proposed in welfare reform through the direct payment process, you see the mess that has happened in some areas of England where landlords have not been getting the payments. The payments have been made to the tenant through their housing benefit, which included the rates portion as well, which was never passed on because they found that people prioritised it and thought it might be better to go on holiday or that it might be better to buy some food or put some oil in the tank, so they spent the money elsewhere. Unfortunately, the landlord has ended up with the problem. I genuinely feel that this is needed, but what administrative steps are being taken to deal with the sort of difficulties that have emerged recently? You mentioned some of the administrative approaches that can be made, but what are those steps?

Mr McClure: They are fairly recent changes that LPS has agreed to. It has agreed to enter into payment arrangements where it is not demanding immediate payment of rates in order to allow a tenant to take a legal process against a landlord.

Andrew, do you want to elaborate on that?

Mr McAvoy: Essentially, what we have been discussing with the Housing Rights Service, and we will be picking this up with it again in subsequent meetings, is the possibility of a payment arrangement being put in place that would allow for a modest amount of repayment. That would mean that LPS could continue to discharge its statutory duties while also monitoring Housing Rights Service supported legal action to recover the amount of rates that the tenant has paid over to the landlord as part of their tenancy agreement that was subsequently not paid on to LPS. So, it is allowing LPS to continue to pursue the liable person, which, in these cases, is the occupier, but taking account of the need to allow private contractual issues to be resolved between the tenant and landlord.

Mr Mitchel McLaughlin: We are all on the same topic and it has been pretty well covered, so I will not go back over it. We are presiding over a confused situation that will continue to be a confused situation. This is a review exercise in which we are supposed to try to untangle these issues and simplify life all round — administratively and for tenants and landlords.

I do not see any focus on that. The issues that were out for consultation will not in any sense beneficially impact on that confusion. That confusion very often leads to write-offs of uncollected rates, which can have significant impacts. We heard about the hard cases, and you referred to them. It must be possible for us to address those anomalies around legal responsibility and accountability for tenants and landlords. Tenancy agreements that clearly state who is responsible for the rates and the rates element of any rental lets everybody, including yourselves, know who they should be talking to without administrative easements.

In some instances where it is clear that the occupier has a responsibility for rates, the rental agreements can be of the nature where there is a tenancy agreement that the landlord will collect at source and pay or that the individual tenant will be responsible. However, the responsibility and accountability can be made much more explicit so that there is no need for disputes or court cases before you can act.

Mr McClure: That is where the problem lies. The solutions are at opposite ends of a spectrum, and the views that we got through the consultation represent one or the other. We are trying to find a balance to make it work. It does work for the vast majority of cases. The hard cases are low in number but are significant for the people who are affected. Nevertheless, the numbers are very low, and we think that we can take those administrative steps to help them.

In what we are doing, there will still be some confusion but less than there currently is because of the removal of the requirement to produce tenancy agreements. That becomes another hurdle and bit of fog in the process. We propose to remove that. Standardising the allowance across all sectors also makes things a bit simpler.

I accept what you say, but I think that we are making it less confusing. It is a long road to get to the point of making the landlord liable in all cases or the tenant liable in all cases because of the two opposing camps that consultees tend to fall into.

Mr Mitchel McLaughlin: Paul illustrated the difficulty. There are different categories of tenants. Some receive benefits, which can be paid directly. We are talking about Departments being able to operate with each other in a fairly seamless way. I am exploring whether an explicitly defined responsibility for the occupier — the tenant — regarding the rates element would work with a clear statement in a tenancy agreement. That would also allow for flexibility in the contract between the owner and the tenant as to which will accept responsibility for paying the rates.

Mr McAvoy: That is present a lot of the time. There is, in the tenancy agreement —

Mr Mitchel McLaughlin: A lot of times, it is not present, and that seems to be an issue.

Mr McAvoy: That is a private contractual matter between the landlord and tenant. The issue that LPS has is that, if you allow the tenancy agreement to dictate the liability in some way — I cannot speak for LPS — I would imagine that there would be considerable difficulty in obtaining that tenancy agreement and, while you are waiting for it, the rates are still uncollected for the property. I am thinking about that from an operational point of view. LPS has difficulties when awaiting an outstanding verification of tenancy agreements, and that is part of the rationale for the removal of the tenancy criteria from article 20.

Mr McClure: To allow this to be administered effectively and for rates to be collected, we have to have legislation, because legislation will trump any contractual arrangement. As Andrew said, if you make the contractual arrangement determine rate liability, LPS will have to get every tenancy agreement and do it on that basis, and we do not know of any jurisdictions in the world that do because it is just, administratively, a muddle. We think, therefore, that we need to have the legislation in place. The legislation is at least directing towards a certainty, which is the assessment on the property. You are either above £150,000 assessed value or below it, and that information is readily available. It is a matter of making landlords, estate agents and tenants fully aware of that, and we do that through the leaflet that goes out with the rates bill to every occupier in Northern Ireland.

Mr Mitchel McLaughlin: I do not hear any Committee members querying the approach to establishing the threshold. Indeed, the consultation seemed to indicate that people think that that is a reasonable approach. People have indicated that using capital value does not always mean diddly-squat to a lot of the tenants who we are talking about. Since the reinstatement of the Assembly — I am going right back to 1998, and I presume that the history goes back much longer than that — we have heard report after report on an annual basis of write-offs and uncollected rates. That problem remains unsolved, and I do not see it being solved as a result of the measures that are being consulted upon. Maybe there will be more thinking about it. There is considerable flux over the welfare reform process and universal credit, and it could make the situation easier in some way for the administrators — maybe not for the individual citizens — but it could also add to the confusion.

Mr McClure: I think that it does make it easier for citizens. Instead of rates having to go one way and rent having to go another, we want to piggyback on whatever arrangements materialise through welfare reform, and we want to ensure that we align with the default of paying housing costs directly to landlords. That is why we are hesitating. We are reluctant to do anything more fundamental given everything else that is happening with the rating system at the moment and the complications that this will cause for rate bills. Fundamental changes to landlord liability on top of the convergence issues associated with the review of public administration, non-domestic rates and rate rebate changes would be too much in one go. I do not disagree with most of what you said.

Mr Mitchel McLaughlin: The confusion might shift. There was a focus, or maybe even locus, on welfare recipients, and that might change, but there is also an emerging trend of people moving into private rented occupation. I see that as an emerging challenge for you. One administrative burden may be addressed or eased, and I wondered whether that was the easement that you talked about. I can see at least another one emerging where you are chasing after private tenants and maybe people who are mobile and in employment.

Mr McClure: That is exactly it.

The Chairperson: Thank you.