

Society of Chartered Surveyors Ireland

**Submission to the Department of Justice,
Defence and Law Reform**

**On issues of importance to the Irish Property
Market**



The Society of Chartered Surveyors Ireland

Dating back to 1895, the Society of Chartered Surveyors Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.

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1. Introduction of a National Property Database

The annual Society of Chartered Surveyors Ireland residential property survey, compiled in January 2011 suggests that in certain areas, property prices in Ireland have declined by around 50-55% from the peak of the market. Other surveys, undertaken by commercial agencies and the Permanent TSB/ESRI show a similar pattern. As each body use their own methodology to analyse their own data on the property market, this gives rise to disparities in house price indices, and the lack of transparent information on pricing leads to unnecessary confusion for consumer. It is clear that there is an urgent need to provide consumers with a register of transactional values for residential and commercial property which is currently prohibited due to data protection legislation.

The Commission on Taxation Report 2009 recommended that “The provision of an up-to-date valuation base for all property and land in Ireland should be addressed as a priority issue”.

In August 2010, the Minister for Justice Dermot Ahern announced that the Property Services (Regulation) Bill 2009 would be amended to facilitate the establishment of a national property database to be managed by the Property Services Regulatory Authority (PSRA).

However, as the Property Services (Regulation) Bill 2009 did not become legislation and thus the Property Services Regulatory Authority was not established on a statutory basis, the proposed introduction of the property price register has been undermined.

A national property price database is crucial to the residential and commercial property markets by providing a level of transparency for consumers which is readily available in the UK and internationally.

1.2 Recommendations

The Society of Chartered Surveyors Ireland recommends that the data protection legislation preventing the publication of commercial and residential property transaction prices is amended immediately and that an existing state body such as the Property Registration Authority be given the task of collating and publishing the information to create the Property Price Database.

2. Service Charges

Service charges have increased steadily over the last number of years. At the same time, rents (which had increased significantly since 2006) have now fallen back to levels last seen over ten years ago. There has been very limited or in many cases no corresponding reduction in service charges to reflect this.

There is an increasing problem with non-payment of residential service charges in respect of apartments and mixed-use developments. This is creating situations in many developments where services such as cleaning and security are being suspended as there are insufficient funds available. An ongoing survey of service charge payment was commenced in 2009 by the Irish Property and Facilities Management Association (IPFMA) in association with the Society of Chartered Surveyors Ireland which examines the reality of service charge payments being experienced across Ireland.

2.1 Service Charge Survey

In 2009, the Society of Chartered Surveyors Ireland and the Irish Property & Facility Management Association (IPFMA) launched an annual survey to investigate the payment of service charges for residential property across Ireland. The survey at that time showed that 90% of property managers had experienced a worsening in the non-payment of service charges over

the previous year. Unsurprisingly to those involved in the sector, investors were noted as the largest proportion of those responsible for withholding payment.

The 2010 survey conducted at the end of the year indicated that approximately 30% of property owners were not paying the service charges arising.

By way of background, a service charge is a fee paid by property owners for the services provided by the development's management company in multi-unit developments of houses, apartments or duplexes which share common areas like entrances, lifts, lobbies, or gardens. Typical services covered by the charge include management of common areas such as repairs and maintenance, electricity and lighting, cleaning, refuse collection, insurance, and contributions to the sinking fund to cover future expenditure on capital items. Service charges are mandatory if they are part of the terms and conditions of the contract to purchase the housing or apartment unit.

In the 2010 Society of Chartered Surveyors Ireland /IPFMA survey, around 90% of respondents reported that the non-payment of service charges was more likely in newer built developments rather than established properties. Investors were once again highlighted as the largest group of owners who are more likely not to pay the charges due.

Non payment by investors seems to be largely due to the fact that they are not residing in the premises personally and so are distant from the problems. Reduced cashflow as the market deteriorates and bank funding reductions are also to blame. Developers were the second most likely group responsible for non-payment. The effect of NAMA on cashflow and lack of funds were cited as issues for developers, along with non-payment of charges for unsold units.

This lack of funds is causing real problems in many developments. A direct result of non-payment was that 65% of respondents reported that services, such as cleaning, maintenance and security, had been withdrawn or decreased in those developments. Continuing employment redundancies, pay cuts, declining property values and overall uncertainty in the market means that this problem is likely to continue and indeed worsen.

As repairs, maintenance and cleaning decline, the quality of the properties in the development reduce so depreciating the value of the properties and impacting on the quality of life of the residents.

Health and safety concerns will increase as common areas and equipment deteriorate without the necessary funds to maintain the systems in place. As the housing stock deteriorates from lack of maintenance, it will require greater levels of repair and improvement in the future. The analogy of the 'stitch in time' comes into play - if repairs are suspended or delayed, it results in higher costs in the future. It is clear that the necessity for a system of enforcing these payments of is a critical issue both economically and socially.

2.2 Recommendations

The Society of Chartered Surveyors Ireland recommends:

- As part of the annual Form 12 Tax Return, an investor claiming tax relief such as Section 23 would have to attach a receipt to show proof of payment of the service charge before the income relief was provided. As investors are the largest proportion of owners who do not pay service charges, this would assist in ensuring that charges are paid before year end. In the medium term, this proposal would depend on how long tax relief is available to investors following the Budget announcements.
- Proof of service charge payment would be mandatory each year in order to qualify for mortgage interest tax relief for owner occupiers. For the relief to continue to be deducted at source, each owner would submit a receipt proving payment of the applicable service charge. If no such receipt was received, relief would be stopped until such proof was provided and back-dated as necessary.
- As proposed by the LRC, the Small Claims Court should have jurisdiction to at least a limit of €3,000 (currently €2,000) to deal with cases involving non-payment of service charges and building investment fund contributions in a multi-unit development. This is outlined in more detail within the recommendations to the MUD Bill in Section 3.1.

Although these recommendations will not solve all of the problems, they would significantly assist in increasing the payment of service charges required to maintain the existing building stock.

3.0 Multi-Unit Development Act 2011

The Multi-Unit Development Act 2011 (MUD Act 2011) has attempted to provide remedial measures for completed and partially completed developments and reform the processes of multi-unit developments in the future.

Developers have historically retained common areas of a development and not legally handed them over to the management company (or Owners' Management Company) which has exacerbated the underlying problems. The MUD Act establishes procedures such as the mandatory establishment of an Owners' Management Company (OMC) and requirement to transfer ownership of the common areas to the OMC in advance of sales being completed, although it fails to provide a timeframe for this transfer.

Completing common areas is an issue that many developments face. The MUD Act contains a provision for the developer to transfer the relevant parts of the common areas to the OMC in the case of existing developments within six months but does not provide a process or requirement in terms of the standard required. It also gives the management company the right to carry out necessary repairs to common areas in order to ensure the safe occupation of the units, any such cost is intended to be reimbursed by the developer or entity responsible for the development. However in reality there will undoubtedly be difficulty in securing compensation for the expenditure incurred, particularly in this economic environment.

The MUD Act does not address the fundamental issue that local authorities have abdicated their responsibility for building control and planning enforcement and many of the issues that management companies face are a direct result of this. The current system of self certification by developers/ architects has not worked. It should be a statutory function of the local authorities to monitor and review certification of developments during construction. This would

prevent many of the problems arising in the first instance and therefore this should be where attention and resources are focused. Building control recommendations are outlined in Section 4.1.

In terms of recouping service charges due, the Law Reform Commission's (LRC) Draft Bill recommended that the Small Claims Court should have jurisdiction to a limit of €3,000 to deal with cases involving non-payment of service charges and building investment fund contributions in a multi-unit development. This was not included in the Bill, as introduced to the Oireachtas, but would assist the process in recouping outstanding service charges. Overall, the MUD Act is a welcome piece of legislation, but in practical terms, it fails to provide a lot of the detail and procedures required.

3.1 Recommendations

The Society of Chartered Surveyors Ireland recommends:

- As outlined previously, the limit for claims should be at least €3,000. Ideally this should be indexed to an appropriate metric in order to keep pace with future inflation or increases in waste or water charges. Otherwise management companies will be quickly forced back in to the Circuit Court to pursue arrears when this limit is breached. The issue here is to provide management companies with a quick and cost effective way of pursuing service charge arrears, because recovery through the Circuit Court is prohibitively expensive. Furthermore where they are successful in a claim a management company should be guaranteed that they will be awarded the costs and compound interest associated with the recovery to disincentivise non-payment for cashflow reasons by owners. This is not the situation currently.
- The Multi-Unit Development Act should be amended to allow for the establishment of a special division of the Small Claims Court to deal specifically with the recovery of Service Charge arrears. Such a court would simplify arrears recovery, speed up the process and save Management Companies the considerable costs associated with pursuing arrears.

The Law Reform Commission was requested to produce a consultancy paper on multi-unit developments which they published in December 2006. This included many sensible and practical suggestions as to legal changes which are required to try and ensure that these developments can operate more efficiently for the benefit of the owners / occupiers. However by time the Multi-unit Development Bill was published in 2009; many of the most important recommendations of the LRC consultancy paper had not been included in the draft Bill. The Society questions why an eminent body like the LRC is tasked with preparing such a paper if their conclusions are not then going to be included in the draft bill for general debate.

4. Building Control

While the current legislation (The Building Control Acts of 1990 & 2007) provide the right framework, the system for self-regulation of compliance with the Building Regulations currently in operation under the Acts is flawed for the following reasons:

- Insufficient qualified building control personnel/ independent assessors / approved inspectors
- Inadequate levels of enforcement
- Lack of effective sanctions for non-compliant/incompetent designers and certifiers.
- The system is not customer focused and does not provide the appropriate level of consumer protection
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Section 6, Part 2 (a)(i) of the Building Control Act 1990 states that the building control regulations may make provision for all or any of the following matters:

“the submission to building control authorities of certificates (in this Act referred to as “certificates of compliance”) being certificates relating to compliance with the building regulations prior to the commencement of, during and after the completion of the construction of any buildings... to which such building regulations apply.”ⁱ

This part of the 1990 Act needs be brought into effect as an amendment to the current Building Control Regulations.

In the UK, Building Control is currently going through a regeneration process with the balance appearing to shift from a full approval system to a controlled system of self-certification. This proposed shift in procedure is outlined in a document prepared by the Department of Communities and Local Government entitled “The Future of Building Control” and demonstrates that the thinking behind the system proposed above is in line with a more developed system in the UK.

4.1 Recommendations

With regard to certificates of compliance, the Society of Chartered Surveyors Ireland recommends:

- A ‘Design Certificate’ to be prepared and submitted to the Building Control Authority (BCA) and accompanied by drawings, specifications, calculations etc. A standard template would be used, similar to the current Certificate of Compliance. This is essential to confirm what is being certified and this information should be stored electronically. It is then available if future non-compliances are being investigated. This requirement would cover all works from a small domestic extension to the construction of larger more complex building types. The Design Certificate will certify that the design of development is substantially compliant with building regulations.
- A Certificate of Compliance (as an Opinion on Compliance)² is to be provided to the BCA by the same assessor/approved inspector on a mandatory basis:
 - before a newly constructed building is to be occupied
 - before a refurbished (materially altered) building is to be occupied
 - before the final stage payment is released by a lending institution for the construction of a residential dwelling or substantial extension.
- As with the Design Certificate a copy of the Certificate of Compliance is to be lodged with the BCA along with As-built/construction drawings (taking any statutory conditions into account) these documents would require validation, but not approval and be for record purposes, should problems arise with the building. CAD and PDF formats would need to be submitted. This would provide a clear trail from the grant of planning permission, fire

safety certificate and disability access certificate through to who has been responsible for monitoring the construction works.

- Only registered professionals or appropriately qualified civil/structural engineers would be able to act as assessors/approved inspectors and certify and issue the Certificates of Compliance.
- Building Control certification post construction (where no monitoring of the construction phase takes place) should be accepted only in very exceptional circumstances.
- Milestone inspections to be completed by the assessors/approved inspectors as a minimum.
- Sanctions to be enforced by the relevant professional body for misconduct by assessors/approved inspectors
- Society of Chartered Surveyors Ireland members have always provided a “certificate” of compliance as agreed with the Law Society of Ireland as opposed to an “opinion” on compliance, which is generally provided by architects. The certificates would become a statutory document as opposed to merely a document for title/conveyancing purposes. For continuity purposes we would therefore propose that a “Certificate of Compliance” become the document to be provided by all registered professionals or appropriately qualified civil/structural engineers.
- The format of certificates, for both design and compliance stages should be formulated and set down by the Building Standards section of the DOE/H& LG. This is to ensure that all approved inspectors / registered certifiers or other appropriately qualified professionals are certifying works on the same basis and in the same format. This is vital to give the public confidence in this revised system. Further consultation will be required with the other professional bodies on this matter.
- The connection of developments to utilities (water, gas and electricity) could be withheld until the certificate of compliance is in place. This would be a further control measure to ensure developers/ home owners are compliant.

With regard to building control, a summary of the Society of Chartered Surveyors Ireland recommendations are as follows:

- The set up of a Central or Regional Building Control Authority to ensure uniformity across the entire Country is achieved. This would remove the Building Control Function from within the Local Authorities.
- On completion of the works and following the works being monitored by an experienced construction professional (at standard milestone stages) a Certificate of Compliance to be lodged with the Building Control Authority. The Certificate of Compliance will certify that the construction of the development is substantially compliant with building regulations.
- The fees paid at commencement notice stage need to reflect the true cost of the Building Control Authority (BCA) providing its service to the public. The Society of Chartered Surveyors Ireland recommend that initially 25% of all development should be inspected at least once by the BCA and this should be increased overtime to ensure that each development site is inspected at least once during the construction phase.

5. Optimum Collection & Use of Property Data

The implementation of a GIS means that *“valuers need to spend less time collating information and inspecting properties on site and can, therefore, carry out more efficient, cost effective valuations.”*ⁱⁱⁱ Government decision makers can also derive the following benefits from the application of this technology:

- Optimisation of resource allocation both efficiently and cost effectively.
- Facilitating the sharing of key data sets across Government Departments to support policy creation and implementation.
- Offering transparency to the citizen in how investment and taxation decisions are based strictly on objective criteria - which can be represented in an easily accessible digital and visual format.
- Monitoring of projects to prevent fraud, misappropriation and overspend.
- Ensuring that services and infrastructure are delivered to areas of greatest need and also ensuring that these services are interoperable.

5.1 Recommendations

The Society of Chartered Surveyors Ireland recommends:

- The government should consider streamlining the process for the collection, retrieval and use of property data such as property valuations and rates, register of legal title and land deeds etc. through the application of computer assisted mass appraisal (CAMA) within a geographic information system (GIS). These systems are used worldwide (including Northern Ireland) – particularly for property taxation – and they have been proven to “increase efficiency, enhance currency and transparency, and ultimately facilitate a more frequent revision of the tax base.”ⁱⁱⁱ

We trust this submission is of interest and would welcome the opportunity to discuss any of the matters outlined above in more detail.

ⁱ A Certificate of Compliance is currently provided by Society of Chartered Surveyors Ireland members, however an Opinion on Compliance is currently provided by RIAI members.

² A Certificate of Compliance is currently provided by Society of Chartered Surveyors Ireland members, however an Opinion on Compliance is currently provided by RIAI members.

ⁱⁱ Tretton, D. (2007) Where is the world of property valuation for taxation purposes going? *Journal of Property Investment & Finance*, Vol. 25, No. 5, 2007, pp 482-514.

ⁱⁱⁱ McCluskey, W., Deddis, W., Mannis, A., McBurney, D., Borst, R. (1997) Interactive Application of Computer Assisted Mass Appraisal and Geographic Information Systems, *Journal of Property Valuation & Investment*, Vol. 15, No. 5, 1997, pp 448-465.