

2018

Service Charge Collection in Multi-Unit Developments

Adele McKeown

MacFar Property Development, Ireland

Lorcan Sirr

Technological University Dublin, lorcan.sirr@tudublin.ie

Follow this and additional works at: <https://arrow.tudublin.ie/beschrecart>



Part of the [Real Estate Commons](#)

Recommended Citation

McKeown, A. & Sirr, L. (2018). Service charge collection in multi-unit developments. *Administration*, vol. 66, no. 2, pg. 135-152. doi: 10.2478/admin-2018-0021

This Article is brought to you for free and open access by the School of Surveying and Construction Management (Former DIT) at ARROW@TU Dublin. It has been accepted for inclusion in Articles by an authorized administrator of ARROW@TU Dublin. For more information, please contact arrow.admin@tudublin.ie, aisling.coyne@tudublin.ie, vera.kilshaw@tudublin.ie.



DE GRUYTER
OPEN

Administration, vol. 66, no. 2 (2018), pp. 135–152
doi: 10.2478/admin-2018-0021

Service charge collection in multi-unit developments

Adele McKeown¹

Macfar Property Management, Ireland

Lorcan Sirr

Dublin Institute of Technology, Ireland

Introduction

Multi-unit developments (MUDs) – typically developments of apartments, or apartments and houses, but also sometimes including a commercial component – differ from traditional housing as they have three distinct characteristics: individual ownership of a unit, shared ownership of common property, and collective membership of a corporate body that assumes responsibility for the management of the development (Christudason, 2004). In the Irish case, this corporate body is known as the owners' management company (OMC). The legal framework for ownership in MUDs is based on leasehold, which means that the purchaser owns the property but not the land on which it is built. Leaseholds in a MUD tend to have long leases, which can be sold on to a new owner (National Consumer Agency, 2008). In order to fund maintenance of upkeep of the common areas, the OMC levies an annual service charge on owners of properties within the development.

¹ Adele McKeown holds a Masters in Real Estate from DIT, and in her current position specialises in management companies, commercial and residential management, and lettings.

Currently, service charges are collected annually and if a property owner refuses to pay, the debt collection process can be lengthy and expensive. Naturally, debt collection for developments that are already struggling can be particularly difficult. Service charges are subject to the statute of limitations, meaning if the debt is not collected within six years, it is statute-barred and effectively uncollectible, even upon sale of the property. A vicious circle often then ensues: as non-payment of service charges impacts on the maintenance and standard of the development, some services will inevitably be reduced or withdrawn. In turn, this can cause other property owners to stop paying their service charges, leading to a further reduction in services, and so on. This is a critical weakness in the Irish system.

The legislation – Companies Act and Multi-Unit Developments Act

Most OMCs in Ireland are companies limited by guarantee not having a share capital. These companies are governed by the Companies Act, 2014, which consolidates previous legislation on companies. The Multi-Unit Developments Act (MUD Act), 2011, applies to MUDs, defined as land on which buildings have been erected, comprising no fewer than five residential units, in which it is intended amenities, facilities and services are to be shared. In addition to applying to the concept of traditional apartment developments, Section 2 of the Act expands the application of the Act to residential housing developments where there is a management company structure and also to mixed-use developments comprising commercial and residential units to the extent that amenities, facilities and services are shared by the commercial and residential units. Issues arising since the implementation of this Act in 2012 are the lack of awareness and understanding among members and the lack of sanctions against developers, directors and members who do not comply with the Act. The ownership structure of MUDs means that corporate governance within these structures can be difficult to manage and there is a lack of transparency in the context of managing apartment buildings (Paulsson, 2007).

The MUD Act was primarily aimed at apartment schemes and the apartment content in mixed-use developments, but also included conventional housing where a service charge scheme is being operated in relation to estate common areas. As all owners share, use and own the common areas – for example, halls, gardens and parking – with

other units, MUDs are owned and maintained by the unit owners on a communal basis. They pay an annual fee known as a service charge for the maintenance of these common areas. These common areas are then owned by an OMC, which is a not-for-profit company limited by guarantee and established to be the registered owners of the common areas within a development. OMCs are owned and controlled by the individual apartment owners. They frequently employ an agent to manage the development on their behalf and appoint a board of directors from among them to instruct the agent (Gogan, 2008). As an OMC member, each owner is required to pay a service charge which funds the running of the OMC (e.g. to pay the managing agent); however, if the service charges are not paid, the OMC typically gets into difficulty as it has limited funds to carry out repairs and maintenance or even to pay the managing agent (Bailey & Robertson, 1997). The theory behind the operation of an OMC makes sense when and where all owners work together to ensure the development is maintained to a high standard. Flaws appear when cooperation fails and legal obligations are ignored, made worse by limited scope to recover unpaid charges.

Collection of service charges

All individual owners of properties within the development are shareholders of their OMC, effectively owning the management company, which in turn owns all of the common areas. At the OMC's annual general meeting (AGM) the members appoint directors by vote and, in accordance with the provisions of the MUD Act, each property owner has one vote. At the AGM, a property manager (or 'managing agent') may be appointed to manage the day-to-day maintenance and upkeep of the development on behalf of the OMC. Although it is up to the OMC to set the level of service charges to be levied annually on each property in the development, the MUD Act recommends a minimum annual charge of €200. This is quite low given that the service charge should be based on estimates of running costs, both short- and long-term. The obligation on unit owners to pay service charges and the entitlement of management companies to collect them arise from the covenants and obligations which both OMCs and multi-unit property owners enter into in the conveyancing documents by which they purchase their properties (Office of the Director of Corporate Enforcement, 2008). This is in addition to the general obligations that apply to all OMCs as set out in the MUD Act. Service charges generate the cash flow that an OMC needs to provide

services and maintain a development (Competition and Consumer Protection Commission, 2017). Depending on the development, service charges pay for:

- repair and maintenance of common areas, car parks, footpaths, roads;
- cleaning common areas, windows, carpets/mats, gutters and drains;
- lift repairs and inspections;
- electricity and lighting for common areas;
- landscaping and gardening, pest control;
- security – internal locks and doors, intercoms, external doors and gates;
- safety – smoke alarms, fire extinguishers, health and safety inspections;
- refuse collection and recycling;
- professional charges (for example, block/building insurance, public liability insurance, the OMC's legal/auditor fees).

It is important that members understand the fundamentals of what they agreed to when buying their property. Gogan (2008) has pointed out the importance of having a clear service charge collection policy to ensure that the members of the OMC are aware of the process and the implications of non-payment, but it is unclear to what extent clear policies exist. The OMC is solely reliant on service charges to function, but there are also major concerns surrounding the lack of transparency of the composition of service charges. Service charges in Ireland are calculated in line with the head lease, which is the original lease document that the developer's solicitor draws up for each property and is the lease signed by the first purchaser. The head lease outlines how service charges should be calculated, what interest should apply and when they should be paid. These calculations vary from development to development, with some calculated on a 'per square footage' basis, others having an equal amount for all units, and others calculated on a percentage basis. However, it is evident that there is no standard means by which service charges are levied.

Service charge administration, collection and increasing levels of debt (where owners have not paid their service charges) are a major challenge for OMCs. Members of the OMC often need a physical manifestation of what they are getting for their service charge through visual improvements to the development. This means they do not always acknowledge the cost of accounts, insurance and agents' fees as

valuable, although these are necessary expenditure items (Fakhrudin et al., 2011). To make matters even more challenging, a service charge may be low for the first year of a resident's occupation as little maintenance is required but then may escalate rapidly much to the surprise of the new owner (Sirr, 2010). Research by the Society of Chartered Surveyors Ireland (2014) indicates that the majority of OMCs increase their service charge budget annually. However, rapid increases are more likely depending on the age of the buildings and the likely amount of strategic maintenance and repair they may need (e.g. lifts that may need substantial repair or replacing every twenty years). This can lead to a belief that service charges are sometimes 'unfair' or 'disproportionate', and can lead to non-payment by unit owners. As a result, property management companies often lack the funds required to enable them to run the development effectively (Lujanen, 2010).

Predictably enough, non-payment of service charges will inevitably lead to the deterioration and dilapidation of a development. Our analysis of fifty OMC company accounts and a series of stakeholder interviews shows there appears to be a significant problem with individual members refusing to pay their service charges. A lack of funds in the OMC in turn often means these debtors are not pursued. The net effect of not pursuing those who owe service charge money is, for those unit owners who are paying, an increase in service charges to pursue the non-payers through legal mechanisms. This is not only costly but it can take up to five years to recover the debt; threats of suing and forfeiture of leases for non-payment are expensive for the OMC to enforce and usually result in payment of the service charges owed the day before a case appears before a court, resulting in expensive and non-recoverable legal fees.

Stopping the payment of service charges is a breach of contractual obligations under the terms of the lease under which the property was bought. As such, if an owner does not pay their management fees, they may be liable to legal action and any outstanding debts can be tied to the unit. If the management company does not collect charges, it will run short of money and in time it may not be able to provide even the most basic services. This leads to residents withholding their service charge payment in protest as they are unhappy with the service provided (Sirr, 2010). Property managing agents often threaten to remove non-payers from the block insurance, deny parking permits or bin store access, or add interest to their accounts. The lease generally provides for the addition of interest to a service charge account and it

can be an effective way of encouraging payment. Non-paying members may lose their right to vote at the AGM, therefore having no control over the future expenditure of the management companies. Therefore, although members may withhold payment in protest, the net effect is that it dilutes their ability to effect change within their OMC (Sirr, 2010). Whether they understand or appreciate this is another matter.

The sinking fund

The MUD Act introduced a requirement for all OMCs to establish and maintain a sinking fund. The sinking fund is a savings pot for capital expenditure within the development such as major structural repairs, refurbishment and redecoration, replacement of expensive equipment (e.g. a lift), or advice from a qualified person in relation to these types of work. In effect, it is like a pension fund for a development (Gogan, 2008). Crucially, the sinking fund is part of the service charge. The sinking fund contribution should really be a separate line item on the service charge invoice but generally it is not treated as such. It is paid with the service charges by the members of the OMC and then transferred into a separate bank account at a later date. It is usually intended that a sinking fund will be set up and collected over the whole life of the wasting asset (RICS, 2014).

There are two main ways to capitalise a sinking fund: the first is a cash contribution from the owners, usually via the annual service charge. This can occasionally be supplemented by the raising of a large, one-off contribution from unit owners (OMC members) at the time the common property capital expenditure is to be made; this is widely referred to as a 'special levy' (Arkcoll et al., 2013). Although a once-off levy may seem like a simple solution to any once-off funding requirement, there is always uncertainty over whether owners have the ability or willingness to pay such a levy. At the Beacon South Quarter development in Dublin in 2017 the OMC passed a motion to call on a once-off levy to members for €10,000 each to cover the cost of an expected €10 million bill for safety works and repairs to a water-ingress situation.

The second option for financing sinking funds is through loan finance from financial markets or from public authorities. This 'debt financing' refers to the OMC taking up a loan to cover the costs of repairs or other one-off expenditure. The problem with loan financing is that common property does not lend itself to use as loan collateral,

as it is not normally possible to separate it from privately owned units (Arkcoll et al., 2013). It may be possible for individual unit owners to pledge their property as collateral, but as Lujanen (2010, p180) points out, 'It is understandable that not all owners are willing to pledge their dwellings for loans as collateral for certain types of major repair activity.' In the Irish context, all unit owners would be required to pledge their property as collateral, and many of those units would have existing borrowings already secured, so this would make it difficult to secure funding from the usual banking sources (Malone, 2017). It is interesting to note that the Finnish housing model is set up as a limited company and each member has a share certificate that corresponds to right of possession of a unit. A simple majority is all that is required by the OMC to make the decision to borrow funds by the limited company that is the OMC. If a member fails to pay their share of the loan or other charges, the OMC can take possession of the unit in question for up to three years and use the rent received to clear outstanding debts. In Austria a privileged lien exists, meaning that a loan taken by the OMC bypasses the priority ranking of loans taken by individual unit owners (Lujanen, 2010).

The MUD Act determined that the sinking fund contribution from the service charge should be €200 per member per annum *or an amount otherwise agreed at an AGM*, meaning that OMC members may vote to increase *or reduce* that sum as they see fit. Ideally, contributions to the sinking fund should be ring-fenced and immediately paid into the sinking fund when payment is made. In the context of most MUDs, €200 is a very small sum per housing unit given the capital-intensive nature of elements such as replacing a lift or repairing a roof. The fact that this sum can be further reduced by a vote at the OMC's AGM weakens the effectiveness of the legislative requirement even more. Research by Malone (2017) has shown that sinking funds are regularly used for ongoing, day-to-day, rather than strategic, expenditure, which is not their aim. This rate of expenditure varies from 5 to 30 per cent of the sinking fund per annum.

The existence and financial health of a sinking fund is something frequently overlooked when purchasing multi-unit property, yet so many years after the introduction of the MUD Act, our analysis shows that less than 60 per cent of OMCs have sinking funds in place, with up to 48 per cent of sinking funds having no monies with which to carry out maintenance. The absence, or inadequate funding, of a sinking fund has many implications for current developments (upkeep, structural integrity, value of individual properties) but also for future

initiatives. For example, sprinkler systems are not generally used in residential developments in Ireland. However, in 2017 several local authorities permitted sprinkler systems to be fitted in new build-to-rent residential developments. These systems require considerable maintenance, and should these units ever be sold to private individuals, there are obvious issues around the ability of OMCs to carry out such important upkeep given the typical underfunded state of many sinking funds. At that stage, people's lives may be at risk.

Options for collection of outstanding service charges

Typically, those who do not pay the required service charges (debtors) generally fall into three categories: i) those who dispute that the amount is due at all; ii) those who admit they owe the money but just will not pay; and iii) those who admit they owe the money but simply do not have the means to pay (Bowe O'Brien Solicitors, 2009). For the collection of outstanding service charge debt, the OMC can choose to wait until the property is sold; at this point the service charges are easily collected as the vendor needs the agent to complete 'the MUD Act pre-contract enquiries' along with supporting documentation. In effect, a sale cannot be completed without this and therefore the OMC directors will instruct the agent not to release the documentation until service charges have been paid in full or an undertaking is received. If the property is not sold and the debt is accumulating year-on-year, the directors together with the managing agent will often have to make the decision to pursue legal action against non-paying members. Where a sum of less than €6,348 is due, it can go before the District Court as an ordinary contract debt. The solicitor will issue and serve a civil summons claiming the debt on the member. If the District Court is satisfied to enter judgment then the OMC will get a signed decree from the District Court (Courts Service, 2014). Once the court proceedings have been issued, the next stage of the process is enforcing the judgment against the debtor by sending the judgment to the Sheriff's Office for collection of money or goods to the value of the debt. The judgment can be registered as a charge over the debtor's property without the consent of the debtor. If there are other charges already registered such as a mortgage or other judgments registered before the service charges, the service charges judgment lines up behind them (Mason, Hayes & Curran, 2016).

Other jurisdictions have adopted different options to recover unpaid service charges. According to Malone (2017), in Canada and in

some states of the US, OMCs can take a lien against a property should an owner default on sinking fund or service charge payments. In Sweden, where individual owners have not paid their share of the capital costs or in cases where they have not fulfilled other obligations (such as paying management fees), the managing board of the owners' association has a duty to engage in recovery proceedings and has the legal power to initiate a foreclosure procedure against individual unit owners without a court decision. In Germany and Hungary, OMCs have the right of compulsory sale without consent of individual owners when the owners have not fulfilled their obligations (Lujanen, 2010).

Statute of limitations

Claims for service charges are subject to a statutory limitation period of six years from the date the sums are properly due under the terms of the lease. The exception to this is if the leaseholder has acknowledged the debt within the limitation period; for example, where a demand for payment is sent out to which the leaseholder confirms there is an outstanding amount or balance due. The limitation period will then run from the date of the last acknowledgement. Within eighteen months of incurring a cost that is intended to be recovered through the service charge, the OMC must either demand the payment in the prescribed method or the member must be informed that these costs have been incurred and reimbursement will be sought at some time in the future (Statute of Limitations, 1957).

Several issues are becoming increasingly evident concerning the service charge under the MUD Act. The most obvious of these are:

- Is the service charge collection process working?
- To what extent are OMCs at risk of insolvency?
- What are the governance and legal issues connected with service charges?

Our analysis provided the following results to those questions.

Is the service charge collection process working?

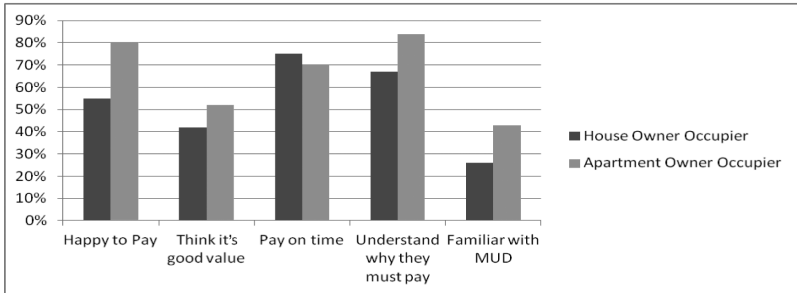
It would appear that the service charge collection process is failing. Reasons cited by owners for not paying their service charges included personal economic factors, a general unwillingness to pay and the 'free rider' theory – people feel that they can get away with not paying if

everyone else is subsidising them. In addition, non-payers seem well aware that services in a MUD are not easily withdrawn. The information deficit and lack of understanding of the need for, and role of, service charges are also an issue. This is a very interesting point as when we surveyed OMC members, some 68 per cent of house owners surveyed were aware when they purchased their property that they would have to pay service charges annually, while 85 per cent of apartment owners were aware (see Figure 1). This would indicate that there is an information deficit among house-owning 'OMC members', if not among all owners. This point was further enforced when the survey results were filtered to ascertain why members were not happy to pay service charges: 85 per cent of them were not familiar with the MUD Act and 50 per cent of them did not know why they must pay service charges at all.

There is 'a vicious circle' with the non-payment of service charges in some developments: when owners do not see visual manifestations of value for money, they stop paying, and when they stop paying, services are reduced, leading more owners to stop paying, and so on. When this happens, there is obviously a risk that the management company will not be able to operate and may become insolvent. In our analysis, owners of houses in OMCs rated grass-cutting and cleanliness as being the most important expense items (well above the requirement to have a sinking fund); apartment owners rated insurance the most important.

Our findings also showed that investors are less likely than owner-occupiers to pay service charges. Interestingly, house owners were also identified as a specific problem group, with findings showing that house owners, as opposed to apartment owners, are less likely to pay: a lack of understanding of the function of a service charge was identified as the reason for non-payment. This has been confirmed by our survey of OMC members. Only 55 per cent of house owner-occupiers were happy to pay service charges compared to 80 per cent of the apartment owners surveyed who were owner-occupiers and were happy to pay their service charges. Of the investors surveyed, 83 per cent owned apartments or duplexes, and 80 per cent of these understood that they would have to pay service charges annually when they purchased their property; however, 43 per cent of investors did not think their service charges were good value.

Our analysis also showed that the majority of property agents and OMC directors are erroneously of the view that the statute of limitations does not apply to service charge arrears and that, as the

Figure 1: Apartment owners versus house owners

debt is collectable when the property is sold, there is no need to provide for that bad debt. Interestingly, accountants we spoke to stated that the developments with which they work have a provision for bad debts, with some indicating that any interest added should be provided for in a bad debts provision as it is not necessarily as collectable as service charge income. Bad debts are not written off in the OMC accounts, although it was also indicated that the interest on bad debts can be written off occasionally. Some agents were of the erroneous opinion that to write off bad debts would actually be a breach of title. If bad debts are not provided for, the debtors' figure will naturally increase year on year.

OMC directors interviewed suggested that communication and flexibility of payment might be the key to getting members to pay. There were mixed views around using discounting as an incentive to encourage payment; however, all interviewees agreed that adding interest to service charges, withdrawal of services and legal action were proven methods of encouraging payment. Prompt action against non-payers was also stressed as being key to ensuring timely payment. Among those surveyed, 75 per cent of house owners and 70 per cent of apartment owners claimed that they paid their service charges on time annually. One respondent commented that they 'wish that they chased up the debtors in a more productive way. There always seems to be a shortfall in the sinking fund and they mention the amount of debtors each year. I think they should be prosecuted!'

Our analysis yielded an interesting finding relating to the level at which service charges are set and the impact that this could have on property owners' willingness to pay: when paying an annual service charge of more than €1,500 per annum, 70 per cent of apartment owners indicated that they did not think it was good value, with 50 per cent not paying the charge on time. However, when paying between

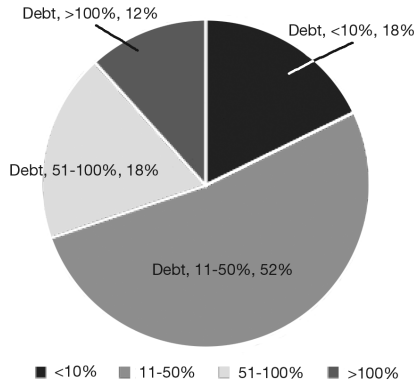
€500 and €1,000, 82 per cent of apartment owners thought it was good value and 90 per cent claimed to pay on time.

To what extent are OMCs at risk of insolvency?

From an analysis of the accounts of fifty OMCs, it can be seen that most companies have a high debtors' figure, which is representative of outstanding service charges. When measured as a percentage of the budgeted income for a development in a given year, it allows a comparison between OMCs in terms of service charge arrears. This comparison highlights that the problem is common to most management companies, albeit to varying degrees (see Figure 2). Less than one in five of the management companies examined had a debtors' level representing less than 10 per cent of their annual budget; a further 52 per cent had a debtors' level between 11 per cent and 50 per cent of their budget. In itself this might not be of concern, but when combined with the fact that 54 per cent of the companies profiled had increased their debtors' level from the previous financial period, the concern would be that the levels would continue to increase, pushing those companies to have a higher debtors' level every year. Nearly 20 per cent of the accounts analysed showed a debtors' level between 51 per cent and 100 per cent. Finally, 12 per cent of accounts recorded a debtors' level in excess of the total income needed to run a development for one financial year. Interviews with OMC directors revealed that the debtors frequently comprise a concentrated group of individuals who have not paid for years. Accountants highlighted the risks of their services being withdrawn, with one accountant explaining that if the accounts are not paid for, they will not be filed, and if they are not filed, the company will be struck off and no one in the development will be able to sell their property.

Our analysis of company accounts indicated that between 60 per cent and 90 per cent of debtors are paying in full each year, which is in line with the OMC members' survey, where 70 per cent of overall respondents claimed to pay on time annually. There was a mixed response when asked if the amounts owed by debtors were greater than the budget. One agent pointed out that 20 per cent of the members owed 80 per cent of the debt and therefore debtors' levels being greater than the budget will not necessarily impact the development.

From the accounting analysis, it can be deduced that some OMCs have not complied with the MUD Act and do not have a separate

Figure 2: Debtors' level as a percentage of budget

sinking fund established as of yet, some seven years after the Act was introduced. An alternative explanation may be that the accountant preparing their books and records has not included any reference to the sinking fund, perhaps because they are not familiar with the MUD Act.

What are the governance and legal issues connected with service charges?

A range of governance and legal issues affect OMCs in Ireland. The statute of limitations is easily identified as negatively affecting OMCs, with agents citing cases where their OMCs lost tens of thousands of euro in service charges due to the statute of limitations. Although most agents and directors took the view that the debt stays with the property, it is evident from court cases that if it goes to court, the judge will not necessarily agree. Service charges are unique as they are the only non-government charge that is excludable from insolvency arrangements so they remain payable even in insolvency. The logic is that a purchaser would not buy a property without service charges being cleared and so will insist on clear unencumbered title. Therefore, an OMC's only bargaining power is when a member is selling their property and needs the agent to complete the MUD Act pre-contract enquiries in order to close the sale; however, that does not help if an owner is not paying their service charges and intends to live in a property indefinitely.

On the issue of legal action, it was observed that 'a judgment won't turn into cash,' which is a relevant point: it can be very difficult to

obtain a judgment, let alone enforce it, particularly for a small OMC run on a not-for-profit basis.

Conclusions

It is clear from our analysis and interviews that debtors' levels are a growing problem within OMCs. There is poor financial planning and deficient sinking fund reserves within MUDs in Ireland. This ineffective financial planning arises through poor training and education of OMC members and directors, and the difficult position of managing agents who are not permitted to increase service charges despite advising the OMC otherwise (Malone, 2017), thereby leading to further financial deterioration within the development. Analysis of the accounts clearly highlights the urgency of this issue: 30 per cent of the accounts analysed recorded debtors' levels that are greater than 50 per cent of their annual budget. When interviewed, the agents, OMC directors and accountants verified that this problem stems from a small percentage of debtors not paying over a long period of time, which means that the other owners effectively must subsidise the non-payers. Although this may clarify the source of non-payers, it does not dilute the effect of the debtors' level increasing year on year – the company will eventually become insolvent. It is also worrying that seven years after the introduction of the MUD Act so few OMCs have sinking funds in place.

The implications of non-payment of service charges, and the absence of a sinking fund, are therefore of increasing importance for a couple of reasons:

- i. The housing policy drive towards greater numbers of households living in apartments will mean more MUDs in the country.
- ii. The ageing stock and legacy defects issues of current MUDs mean that in the next decade a considerable amount of remediation, replacement and strategic repair will become necessary. This will require significant sums of money which currently appear to be absent. Many OMCs are therefore at risk of a shortfall in funds for major capital expenditure which will be needed over the coming ten to twenty years. This shortfall will then have to be borne by the OMCs' membership in the form of a levy or grossly increased service charges. OMCs seem generally unaware that this situation is possible or likely.

There are a couple of issues to be addressed to mitigate the risk of OMC insolvency and which may act as potential solutions:

- i. There is no uniform approach to the way accounts for OMCs are prepared. It appears there are some highly diligent auditors who have prepared the accounts, including references to common area transfer and fire safety, highlighting the risks associated with bad debts and recording the sinking fund as a separate line item on the balance sheet; others do not reference any of the above – even to say that they are not in place. With the Companies Act, 2017, negating the requirement for OMCs' accounts to be audited, it is going to be more difficult to adopt a uniform approach. There is also the issue of bad debts: some agents and directors of OMCs have a provision, while others do not, but none of them write off bad debts. It would appear, therefore, that:
 - Accountants should identify and address whether there is a sinking fund in place.
 - Debtors' levels should be highlighted in the accounts, and broken down to show how many debtors owe the amount outstanding and how many years it relates to.
 - A bad debts provision should be included for any debts approaching the statute of limitations if legal action is not being pursued.
- ii. It is also evident that the legislation impacting OMCs needs to be examined, primarily:
 - The statute of limitations – should this be applicable to OMCs or does the debt stay with the property? If the debtor has acknowledged that the sum is outstanding, then it should be collectable in full as the other members have paid theirs and the non-paying member has benefited from the services; however, our analysis has shown that, in practice, the six-year rule applies and this needs to be examined further.
 - The MUD Act – it is clear from the research that there is a lack of knowledge and understanding among members of management companies. This was highlighted by all stakeholders interviewed and surveyed and was further emphasised by the low levels of familiarity with the MUD Act. Agents and directors have very little faith in the Act as it does not have any repercussions for non-compliance.

- Government intervention may be required if there is a risk that a number of OMCs could become insolvent over the next few years.

Recommendations

Given the issues with service charges – from calculation to collection – it is evident that the MUD Act needs urgent review. This is particularly pertinent and necessary given the government's drive towards the construction of more MUDs, mostly in apartment form, in the future. The construction, sale and occupation of these types of developments are taking up a lot of policy consideration but the ongoing running, maintenance and management have been sorely neglected. We make the following recommendations for further consideration:

- i. A statutory body (e.g. the Residential Tenancies Board (RTB)) could be charged with taking responsibility for OMCs in Ireland. They should keep a database of all OMCs and provide dispute resolution services between OMCs and members. They should also keep a database of OMCs, which can be filtered against their existing database of rented properties in Ireland to provide the OMCs with information on which properties are investor-owned within a development.
- ii. Fast-track courts system: the statute of limitations of six years is having an impact on the collection of service charges. A fast-track court system similar to the small claims court should be established to enable OMCs to collect amounts due or obtain a judgment. The practice in Finland should be considered, whereby management companies are given powers to take possession of the unit in question for a maximum of three years and pay the unpaid amount using revenue earned from rent.
- iii. Standardised accounts preparation for OMCs: all OMCs should be required to prepare and file their annual accounts in the same format, making specific reference to the sinking fund and analysing debtors in more detail. There should also be clear guidance as to whether OMCs should provide for bad debts and/or write off bad debts.
- iv. The Data Protection Act, 1988, prohibits an OMC from disclosing the personal data of the members without their consent, unless

such disclosure is explicitly provided for in the memorandum and articles of association of the company as a condition of membership. OMCs should include this provision in their new company constitution to enable them to publish the unit number and amounts owing of all properties in the non-statutory part of their accounts. The exclusion of this information is inequitable as the common areas are owned equally by all members and there should be complete transparency for all unit owners.

- v. OMCs need increased participation from members. In order for this to happen, members must be better educated when they are purchasing their property.
- vi. Enforcement of the MUD Act regarding the obligation to pay service charges, with penalties for failing to do so and a mandate to withdraw services from non-payers.
- vii. It could be beneficial for the Office of the Revenue Commissioners to introduce a form of tax relief for those individuals paying service charges, as it appears to be unfair that those living in properties that are located in a MUD are subject to service charges while those living in estates that have been taken in charge by a local authority are not.
- viii. Passing service charges on to tenants on long-term leases. This could be facilitated by the RTB. Tenants could have the right to request proof that service charges are paid and if the landlord fails to provide this, they could elect to pay them and be approved by the RTB to have this deducted from their rent.
- ix. The RTB or Property Services Regulatory Authority could consider collecting a small percentage of the budget of all OMCs to create a national sinking fund which could be accessed by any OMC in distress, subject to approval from the governing body in question.

References

- Arkcoll, K., Guilding, C., Lamminamki, D., McManus, L., & Warnken, J. (2013). Funding common property expenditure in multi-owned housing schemes. *Property Management*, 31 (4), 282–96.
- Bailey, N., & Robertson, D. (1997) *Management of flats in multiple ownership: Learning from other countries*. Bristol: Policy Press.
- Bowe O'Brien Solicitors. (2009). *Show me the money – Collecting debts in difficult financial times*. Retrieved from www.accountingnet.ie [13 March 2018].

- Christudason, A. (2004). Common property in strata titled development in Singapore. *Journal of Property Management*, 22 (1), 14–28.
- Competition and Consumer Protection Commission. (2017). *Owners' management companies*. Retrieved from <https://www.ccpic.ie/consumers/housing/apartments-and-duplexes/owners-management-companies/> [13 March 2018].
- Courts Service. (2014). *Schedule: C – Forms in civil proceedings with effect from 3 February 2014*. Retrieved from <http://www.courts.ie/rules> [13 March 2018].
- Fakhrudin, I., Zailan, S., & Roslan, T. (2011). The need to implement Malaysia's Building and Common Property Act 2007 (Act 663) in building maintenance management. *Journal of Facilities Management*, 9 (3) 170–80.
- Gogan, R. (2008) *The essential guide to apartment living in Ireland*. Dublin: M1 Publications.
- Lujanen, M. (2010) Legal challenges in ensuring regular maintenance and repairs of owner-occupied apartment blocks. *International Journal of Law in the Built Environment*, 2 (2), 178–97.
- Malone, F. (2017). *Financial planning in multi-unit developments*. MSc Real Estate thesis, Dublin Institute of Technology
- Mason, Hayes and Curran. (2016). *A guide to legal procedures in Ireland 2016*. Dublin: Mason, Hayes and Curran.
- National Consumer Agency. (2008) *Buying and living in a multi-unit development property in Ireland*. Dublin: National Consumer Agency.
- Office of the Director of Corporate Enforcement. (2008). *Company law handbook on residential property owners' management companies*. Dublin: Office of the Director of Corporate Enforcement.
- Paulsson, J. (2007). *3D property rights – An analysis of key factors based on international experience*. Sweden: Royal Institute of Technology.
- RICS. (2014). *Sinking funds, reserve funds and depreciation charges* [RICS Information Paper, 2nd ed.]. Retrieved from: http://www.rics.org/Global/Sinking_funds_reserve_funds_depreciation_charges_2nd_edition_PGguidance_2013.pdf [13 March 2018].
- Sirr, L. (2010, June). Apartment living and the multi-unit developments bill. *Public Affairs Ireland*, p. 10.
- Society of Chartered Surveyors Ireland. (2014). *70 per cent of property managers report year on year increase in service charge arrears*. Retrieved from <https://www.scsi.ie/news/view?id=17> [13 March 2018].