



Submission

to

Property Services Regulatory Authority

Submitter Details

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Date of Submission: 12 October 2016

CONTENTS

1.0 Introduction

2.0 Submission

3.0 Conclusion

1.0 Introduction

1.1 Executive Summary

This submission responds to the invitation of 15 September 2016 by the Property Services Regulatory Authority (“PSRA”) for observations on proposals to make Regulations under S.95 (1) (c) of the Property Services (Regulation) Act 2011 (“the Act”).

The Apartment Owners’ Network (“AON” or “the Network”) notes its appreciation of the opportunity to make a submission to the PSRA.

1.2 Apartment numbers

It has been estimated that 500,000 people approximately live in homes in multi-unit developments¹.

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. According to Census 2011 there were 177,587 occupied apartments in 2011, an increase of 27% on 2006. The CSO advises that figures from Census 2016 remain to be released, and are expected to be made available in 2017.

Apartments comprised 10.9% of all occupied households in 2011 and accounted for almost one third of all household types in Dublin City². From 2011 to early 2015 an estimated 6,000 further apartments have been constructed in Ireland³.

1.3 About the Submitter

The AON is an independent, non-political group representing the interests and views of owners, both owner occupiers and investors, of dwellings in managed estates throughout Ireland. Membership of the Network is diverse and includes owners who are directors of OMC, residents living in estates where the OMC remains controlled by the estate developer, and residents of houses in managed estates.

As of the date of this submission, residents of 300 estates approximately are recorded as being engaged with the AON- see details on www.apartmentownersnetwork.org. Many more estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies, including the ODCE, the Law Reform Commission, the Department of Justice and Equality, Society of Chartered Surveyors Ireland (Residential Committee), the PSRA, and Dublin City Council (“DCC”). The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”).

¹ Presentation to AON by Paul Mooney, Benchmark Property, 14 January 2016

² Census 2011 Profile 4 The Roof over our Heads - Housing in Ireland
<http://www.cso.ie/en/media/csoie/census/documents/census2011profile4/Profile,4,The,Roof,over,our,Heads,Full,doc,sig,amended.pdf>

³ “An Analysis of the Impact of the Multi-Unit Developments Act 2011 on New Multi-Unit Developments”, speech Paul Mooney, Director Benchmark Property delivered to the SCSJ on 03/07/2015 <http://www.benchmarkproperty.ie/blog/an-analysis-of-the-of-the-impact-of-the-multi-unit-developments-act-2011-on-new-multi-unit-developments/>

The AON meets in open forum once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the involvement of volunteer members. Further information about the Network's activities is available at www.apartmentownersnetwork.org.

1.4 Context to submission

Brief overview of apartment management

An OMC comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the membership of the company, i.e. the wider body of unit owners. The unpaid directors are charged with the primary responsibility of managing the estate, in particular the common areas and shared services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the upkeep of the estate and that the estate is a good community in which to live.

A property management agent ("PMA") is appointed by the OMC to attend to the operational running of the estate- common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc. The OMC levies an annual service charge on each unit owner. This annual management charge pays for the aforementioned services, and is also required by law to include a contribution to a long-term sinking fund for non-recurring/capital expenditure (e.g. lift replacement).

Service charge recovery

Service charge debt recovery is widely accepted as the most significant financial challenge confronting OMCs. Many OMCs are faced with current service charge recovery rates of under 70%. Aged debtors can run to five or more years, and cumulatively can represent in excess of 100% of the OMC annual budget. As OMCs must allocate cash to the running of core estate services, sinking fund provision is in many cases tied up in service charge debtors.

PMA, i.e. "licensees" under the Act, play a key role in the management of OMC service charge budgeting and collection. PMA pursue service charge recovery to ensure that arrears do not adversely impact cashflow for the funding of day-to-day estate management. This PMA work also plays a key role in prudent financial planning, ensuring that sufficient sinking fund balances are put in place for long-term maintenance projects. OMC boards and members rely heavily upon the professional expertise of PMA to signal the risks arising from service charge arrears.

It is worth noting that despite the key role of PMA in the effective running of multi-unit estates, the MUD Act makes no explicit reference to PMA.

2.0 Details of Submission

We comment briefly on the standards to be observed by reference to each heading in S.95(1)(c). S.95 is included as Appendix I. Our comments are borne out of our practical experience of issues arising in the management of multi-unit developments.

(i) Public interest

- While not wishing to advocate measures that would restrict competition in the property management industry, the AON submits that membership of a professional body by licensees, i.e. PMA for multi-unit developments, would be in the public interest.
- The Network submits that the PSRA should consider whether membership of a professional body should be a requirement of the proposed Regulations.

(ii) Duty owed to clients and users and potential users of property services

- Adherence to the principles of the Principal-Agent relationship in law requires a licensee to act in the interests of its clients.

The duties of an agent in law are generally taken to include-

- Perform the tasks required of him
 - Act with due care and skill
 - If an expert apply the appropriate standard that a reasonable person with that skill would apply
 - Act within authority
 - Avoid conflicts of interests and make full disclosure of all material information
 - Duty of confidentiality
 - Duty to account
 - Duty not to disclose/misuse information
 - No delegation
 - No secret profits
- The AON submits that the proposed Regulations should reflect or have regard to the duties arising under the Law of Agency.

(iii) Professional and ethical conduct of licensees

- PMA, by virtue of their membership of professional bodies such as Society of Chartered Surveyors Ireland, Institute of Professional Auctioneers and Valuers, etc. should already be subject to minimum standards of professional and ethical conduct.
- As already noted, while not wishing to restrict competition in the industry, membership of a professional body would provide a level of comfort as to adherence to such standards, and the Network submits that the PSRA should consider this in the formulation of the proposed Regulations.

(iv) Confidentiality of client information

- To the extent not already provided for in legislation, the Network submits that compliance by PMA with the provisions of data protection legislation should be a matter for inclusion in the proposed Regulations.
- We note also the comment above in this regard in relation to the principles of the Law of Agency.

(v) Conflicts of interest

- Our experience is that conflicts of interest can arise where the developer appointed the PMA before the estate common areas were transferred, or are in the process of being conveyed to the OMC. There can be a perceived or actual closeness (commercial, legal, etc. relationships) between the developer and the PMA. PMA should be required to disclose all conflicts of interest- perceived, potential or actual. As noted above, this is a requirement of the principal-agent relationship in law.
- Self-managed estates can give rise to conflicts of interest, as between the property owner/OMC member acting as in the role of PMA, and the interests of the rest of the owners/OMC membership. The Network submits that a failure by a licensee to disclose in such circumstances should be a contravention of the proposed Regulations.

3.0 Conclusion

The Network wishes to thank the PSRA for the opportunity to make a submission. We trust that the views expressed will be given due consideration in the Authority's deliberations.

Appendix I

S.95 of the Property Services (Regulation) Act 2011

(1) The Authority, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with any other person or body as the Authority thinks fit or as the Minister directs, by regulations provide for any matter referred to in this Act as prescribed under this section and for all or any of the following:

(a) the classes of licences which may be issued by the Authority and the conditions (if any) attaching to such classes of licences;

(b) the procedures governing-

- (i) the issue and renewal of licences; and
- (ii) the surrender of licences;

(c) the standards to be observed in the provision of property services by licensees or particular classes of licensees with particular reference to-

- (i) the public interest;
- (ii) the duty owed to clients and users and potential users of property services;
- (iii) the professional and ethical conduct of licensees;
- (iv) the confidentiality of client information; and
- (v) conflicts of interest;

(d) the qualifications (including levels of training, education and experience) or any other requirements (including required minimum levels of professional indemnity insurance) for the issue and renewal of licences, or particular classes of licences;

(e) the terms on which indemnity against losses is to be available to licensees under any policy of indemnity insurance (including, in the case of licensees who are property services employers, the extent to which such indemnity covers principal officers and employees of property service employers who provide property services in their capacity as such principal officers or employees, as the case may be) and the circumstances in which the right to such indemnity is to be excluded or modified;

(f) the records to be maintained and the information and returns to be provided to the Authority by licensees or particular classes of licensees;

(g) the amount of the contributions to be made to the Fund in respect of applications for a licence or for the renewal of a licence, or exemptions from the payment of such amounts, or waiving, remitting or refunding such amounts (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases; and

(h) the procedures for applications for grants.

(2) The Authority shall not prescribe a longer period for the purposes of subsection (6) of section 31 unless it is satisfied that—

(a) the longer period will not prejudice the financial stability of the Fund by virtue of depriving the Fund of contributions payable into it upon the renewal of licences, and

(b) the longer period will reduce the expenses incurred by the Authority in the administration of this Act in so far as it relates to the renewal of licences but without thereby prejudicing the Authority's responsibility to control and supervise licensees.

(3) The Authority shall not prescribe an offence for the purposes of paragraph (b) of the definition of "material matter" in section 41 (4) unless it is satisfied that the offence is of a kind that is so remote or insignificant in relation to the matters that would normally be taken into account to determine whether a person is a fit and proper person to provide a property service that the offence could not reasonably be regarded as being a matter of which the Authority ought to be aware.