An Examination of the performance of the Multi-Unit Development Act 2011

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DECLARATION

I declare that the material which is submitted in this thesis towards the award of the Master (MSc) in Real Estate is entirely my own work, except as acknowledged, and has not been submitted for any academic assessment other than part-fulfilment of the award named above.

Signed _____ Date 23/10/2018

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Appendices

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List of Abbreviations

MUD Multi-Unit Development

MUD Act Multi- Unit Development Act 2011

OMC Owners' management company

BOD Board of Directors

AGM Annual General Meeting

LPT Local property tax

AON Apartment Owners' Network

PMA Property managing agent

GHME Grain House Management Exchange (*Appendix B*)

Abstract

The aim of this thesis is to disclose anomalies that exist under the Multi-Unit Development Act 2011. In doing so, this thesis explores the legislation surrounding multi-unit developments, contained under the Multi-Unit Development Act 2011. The initial bill was first introduced in 2009, a time of economic turmoil and uncertainty. Little caution was taken to ensure the effective integration of the statute, due to other economic priorities at that time.

The Act is still a relatively new piece of legislation and we have seen few cases come through the courts that deal with its' inconsistencies. Seven years later as Ireland deals with the aftermath of the property market crash, contentious cases of MUDs are coming to light. It has been previously acknowledged that the financial position of Irish OMCs are particularly fragile, this thesis looks to explore the future of MUDs and where they are headed in light of the Irish economic recovery.

The examination of available literature looks to explain firstly, the individual components and stakeholders that make up a multi-unit development. It goes on to look at the legislation itself, and other accompanying pieces of statute that help to explain the rationale behind the enactment, and subsequent constraints to it's effectiveness. Finally, it explores other jurisdictions and how they approach the management of multi-units developments.

The purpose of this thesis is to evaluate the performance of the Act thus far, and looks to recommend elements for reform. The performance is measured by looking to the effective running of management companies, from the opinion of multiple stakeholders within a MUD. This is done by way of both interviews and surveying. The interviews were conducted with two OMC directors, four property experts and two legal experts. The survey was issued to members of MUDs, particularly directors and consisted of 103 responses. Furthermore, this thesis looks to a case that deals with a dispute that falls under the MUD Act 2011.

The ongoing court case identifies the prominent and early onset of issues arising from an Act that needs both redrafting and increased provisions. Precisely what the basis of this thesis is founded on. The thesis concludes by proposing recommendations for reform which are based on the anomalies found.

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Chapter One: Introduction

1.0 Context

The intention of this thesis was evaluate the performance of the MUD Act 2011 to date, and assess the future prospects for multi-unit developments. The Celtic Tiger era gave rise to a surge in construction, prompted by tax incentives that were distinguished by very high take up rates and consequently successful in driving the physical development. Incentives like Section 23 became one of the main drivers of residential property development. There is no denying that the trend of multi-unit developments came with this tax break, and others alike. The onset of multi-unit developments came quickly, and had developers under pressure to build in order to enjoy the subsequent reliefs. As a result, this research has highlighted a failure around the regulation of multi-unit developments in such a way that inhibits the effective day-to-day management of estates.

The initial consultation paper issued published two main difficulties that arose surrounding the management and regulation of multi-unit developments. Firstly, poor governance stemming from excessive developer control, and secondly, an understanding deficit among property owners who were unaware of the consequences of purchasing within a MUD. Furthermore, relating to the legislation itself, one of the pivotal concerns elicited by The Bill, was a lack of reference made to accounting for *mixed*-multi unit developments under The Act's legislation. It is only now, as Ireland makes an economic comeback, the effects of the 2008 turmoil has made itself known in the world of MUDs.

1.1 Aim

The aim of this dissertation is to disclose a set of anomalies that exist under the Multi-Unit Development Act 2011.

1.2 Research Objectives

(i) Assess the understanding of the obligations of the various stakeholders in a MUD

(ii) Evaluate the MUD Act (2011) and other relevant legislation.

(iii) To outline the contractual obligations within multi-unit developments.

(iv) To investigate the interpretation of statute and how that applies to *mixed*-multi-unit developments.

(v) To carry out a case study into a mixed use multi-unit development, where there is an ongoing service charge apportionment disagreement.

(vi) A proposal for the reformation of the MUD Act (2011).

1.3 Thesis Structure

Chapter One introduces the context and outlines the thesis aims and objectives.

Chapter Two reviews relevant literature and explains the initial intentions behind the introduction of the MUD Act 2011 and subsequently, the legislation that both inhibits and facilitates the successful management of MUDs.

Chapter Three examines the methods of research and explains the research methods chosen, including both the qualitative and quantitative methods used.

Chapter Four presents the findings and analysis of interviews, surveys and a case study.

Chapter Five looks to first, conclude the research findings and secondly, propose recommendations for new provisions to be included under the Act. Lastly recommendations for further research.

1.4 Targeting Objectives

- Objective *'i'*, will be met by firstly, examining the literature available, and secondly, both by interviewing and surveying the various stakeholders
- Objective *'ii'* and 'iii' and 'iv' will be met in chapter two of this research.
- Objective *'v'* will be elucidated in *Chapter 4* of this research.
- Objective '*vi'* will be detailed in *Chapter 5*.
- Furthermore, objectives *'i-iv'* will be expanded on by applying the findings of *Chapter 2* to the interviewees, surveys and case study.
- The anomalies will be listed as conclusions in *Chapter 5*

Chapter Two: Literature Review

2.0 Introduction

This literature review looks to critique the performance of The Multi-Unit Development Act 2011. By exploring both the foundations and intentions behind The Act, it looks to relevant Irish Statue to highlight key inconsistencies. This review will seek to identify the purpose and performance of The MUD Act 2011, before and after its enactment. It looks to both Irish and other relevant legislation, as well as the individual roles of stakeholders, to seek out anomalies that exist. It has a particular focus on the context of mixed-multi unit developments and the protection of such commercial units within an estate. It concludes by identifying the prevalent anomalies raised by the literature, which will later form the subject enquiry of a case study, survey and expert interviews.

2.1 Definition of key terminology.

2.1.1 Mixed Multi Unit Developments.

The initial literature elicited some confusion over the terminology of MUDs, claiming the terms to be 'widely used, but seldom defined' (Coupland, 1997). A 'multi-unit development' is characterised by building(s) standing on land in which the residing units intend to share amenities and facilities, the development must contain no less than five units intended for residential use (Department of Justice and Law Reform, 2011). By extension, a 'residential unit' must either be designed for use or occupation as a dwelling, *and* have self-contained facilities; *or*, designed and used as a childcare facility which has no intention to share amenities and facilities with the commercial units within a development (The Multi Unit Development

Act 2011, *c.1).* The so-called 'confusion', previously referred to by Coupland (1997), still retains much of its ambiguity. Deputy Catherine Murphy (2015) argued that if the interpretations of MUDs are not redefined in a way that was originally intended, it *will* cause problems. The exact nature of the change in interpretation, has not yet been rectified, which is where many anomalies of the MUD Act originate from.

The initial idea of mixed use developments was to increase density, and put a greater number of people in the cities (Coupland, 1997). This concept was later challenged by Coupland (2005), who detracts from his prior statement and concedes to the idea that by increasing the density of existing centres may make the areas less attractive and therefore may increase commuting. However, the idea as illustrated by the SCSI (2012), interpreted a mixed use multi-unit development as residential by nature, but also has some commercial element such as shops or offices attached. Such commercial elements under Irish Statute, defines a 'commercial unit' simply as a unit within a mixed use multi-unit development which is intended for commercial use *only*, and not residential purposes (The Multi Unit Development Act 2011, *c.1*).

Christudason (2004) further iterates that the understanding of key terms in legislation is vital in the prevalence of such developments. MUDs differ from traditional housing, so where there is a lack of coherence, complexities arise states Christudason (2004). 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. The Law Reform Commission (2006) claimed that when the initial consultations began surrounding MUDs, it concentrated on those comprising of residential accommodation. Claiming commercial units were already familiar with operating from a MUD type environment, involving multiple tenancies (*ibid*.). The purpose of MUDs was to cater for a residential tenancies, whereby some occupants were renting, and others were owner occupiers (Ahern, 2006). It was never the intention to have management companies used in large estates, and Ahern (2006) further questions how local authorities allowed this to happen. The observations deduced by Ploeger (2014) notes that mixed-use developments, historically have more problems, and problems of a different nature to homogeneous complexes.

2.1.2 Anomaly in legislation.

An anomaly in legislation is absence of completeness, consistency and other desirable properties, which impact on the implementation and enforcement of law writes Strahonja (2006). Van Der Burg (2016) concedes to the notion that legislation contains inconsistencies, and suggests that by accepting law as an "essentially ambiguous concept" it helps to better understand apparent anomalies of modern law. The problem arises where the law gives rise to *unintended* anomalies (ATO, 2018). Previously scrutinised by Van Engers and Glassée

(2001) for impacting law enforcement and enforcement organisations. It has been suggested that the only way to overcome the inconsistencies in legislation is to improve legislation quality, streamline legislative report drafting, and improve law enforcement (*ibid*.).

2.2 The legislation.

Upon introduction of The MUD Act 2011, apartment living was a somewhat recent phenomenon. In 2011, it was estimated that approximately 177,587 apartments were occupied in Ireland at The Acts' introduction (CSO, 2011). There is no doubt from The Law Reform Commission (2006), that this 'newness' presented a myriad of difficulties, and as such, the relevant law presented some uncertainties. This compares to 2018, when is estimated that nearly 500,000 people live in units contained within MUDs in Ireland, which accounts for more than 7,000 OMCs (SCSI, 2018). The initial consultation paper issued published two main difficulties that arose surrounding the management and regulation of MUDs. Firstly, poor governance stemming from excessive developer control, and secondly, an 'understanding deficit' among property owners who were unaware of the consequences of purchasing within a MUD (Law Reform Commission, 2008).

The idea behind the Act's enactment was to reform the statutory model. The literature surrounding the intentions of the Act, discussed matters regarding transfer of ownership from the developer to the property owners, and surrendering control of the development. As a common law country, Ireland was considered 'unique' by The Conveyancing Committee (2007), for not having legislation that established a statutory system for multi-unit developments. A shift in the nation's economic status bought about a need for reform, writes De Londras (2011). Deputy Phil Hogan (2008) had proposed to make it easier for owners to control the management companies by creating a transparent environment in which bills relating to service charges, and sinking funds were properly accounted for. Literature described cases of exploitative service charges paid to maintenance companies that came about during the 'Celtic Tiger' even though the properties were often left neglected (De Londras, 2011: *pp. 16*). To protect the property owners within MUDs, the MUD Act 2011 was established to rectify the aforementioned *uniqueness* of Irish common law, relating to the ownership, management, and equity of the common areas of both existing and new MUDs (Department of Justice and Law Reform, 2011).

Once legislation had been implemented, many major controversies arose. Byrne (2012) recognises the state of the property market and construction industry at the Act's introductory date, acknowledging that few of the measures had actually been tested or utilised due to other economic priorities. Butler (2015) emphasises that the focus of the Act is on residential rather than commercial units. This is one of the most prevalent anomalies across the literature, a misunderstanding of key legislative concepts. This is concurrent with Cannon (2012) who identifies that commercial units, by their very nature should be considered differently to residential units, as they are more extensive and more expensive. Thus, the apportionment of contributions to service charges and sinking funds in mixed-use developments must vary. The remainder of this review studies the MUD Act 2011, and its respective parties, to reveal the prevalent anomalies in legislation. In short, the MUD Act is not fit for purpose, as it fails to accomplish what it was set out to do (Clare Daly, 2015)

2.3 Stakeholders within a mixed multi-unit development

2.3.1 Developers Obligations

The original report published by the Law Reform Commission (2006) iterated concerns regarding the failure of developers to comply with regulations. Including; not completing developments properly or punctually, and a reluctance to waive control of management companies to apartment owners. The literature reviewed would seem to suggest that the developer's obligations within MUDs is somewhat unregulated, and frequently cited as needing radical reform. Concurred with by the Conveyancing Committee (2007), who claim there is obviously a case for restricting the ability of a developer, or a developer controlled management company. Even in the 2008 commissioned report, one year before the Acts' first bill, it petitioned for the role of the developer to be delineated to bring clarity into the MUD setting (Law Reform Commission, 2008). Whilst the entire notion of brining regulation into a MUD setting is a welcomed prospect writes *Anon. b* (2011), the real issue resides where no enforceable incentive exists to ensure such regulation is adhered to.

The Law Reform Commission (2006) recommended that statutory provisions should be set down for developers to meet at a future date, and make the developers accountable to the proposed Regulatory Body. Developers retaining control over developments long after the completion of the development became a recurring issue revealed Butler (2015). Developers

were designing the management structure to suit their interests, rather than those of unit owners (*ibid*.). Thus, upon introduction of the MUD Act, *Section 4* and *5* of the Act required the developer to transfer the ownership of relevant common areas in a MUD to the OMC, within six months of 1 April 2011. Where compliance is not adhered to, no sanctions are contained within the Act to deal with such matters, writes LSI (2011). Furthermore, The Law Society of Ireland (2014) reminds us that non-compliance with such provision did not necessarily make a property unsaleable. Anon. *a* (2015) contends that this is extremely problematic as many developments did not comply with the Acts' stipulation.

In cases where no units within a MUD have been sold, Section 3 of the Act places the onus on the developer to; establish a management company, transfer all common areas of the development to the management company, and draw up a contract between the developer and the OMC outlining the rights and obligations. Cannon (2012) believes the contract between the developer and the OMC to be the most innovative of them all as it binds the developer to complete the project to an agreed standard. Conversely, Hogan (2015) labels it as the "most radical provision" of the MUD Act 2011. This distinction between the role of the developer and the role of the management company, yet another anomaly, seems to be a common misunderstood concept across the literature. It often relates back to the distrust that lies in the developer.

The Law Conveyancing Committee had previously argued in their 2007 paper, that completion should not be defined by the physical state of the building(s), nor should it be defined by reference to sales. However, Senator Ivana Bacik rejected such recommendation and assigned the nature of 'completed' to be a development where the sales of eighty percent or more of the units have been closed (2011). This was amended from Ivana Bacik's prior suggestion in 2010 that completion constituted an agreed satisfaction of the developer, the OMC and the planning authority. The concept of 'developer abuse' was deplored by Gibbons (2013*a*) who recalls the developer's ability to cause property owners to enter into long-term contracts at the inception of the development in order to gain financial benefit for itself upon development completion. The developer has a fiduciary responsibility, and as such, the legislative anomaly should be amended so that *developers* are regulated rather than their associated contracts entered into (Gibbons, 2013*a*).

2.3.2 Management Companies

Traditional developments, such as, the typical housing estate have a lesser degree of interdependence, therefore, problems that arise are typically less serious. In such instance, the Law Reform Commission (2006) denotes that need for management of the development is less acute. Alternatively, where interdependence *does* exist, like in cases of MUDs, Gray and Gray

(2009) defines co-ownership as 'the form of ownership in which two or more persons are simultaneously entitled in possession to an interest or interest in the same asset'. Simply put by Apaydin, (2011), there must be four components in co-ownership: ownership itself, property of interest, a minimum of two persons, and a common interest.

Under the MUD Act 2011, an OMC, is to be registered under the Companies Act, founded for the purpose of becoming the owner of the common areas of a MUD and the management, maintenance, and repair of such areas (The Multi Unit Development Act 2011, *c.1*). Blandy's (2011) works describes the transfer, and powers associated with such process as critical detriments to the way in which powers are executed. Not only Blandy (2011), but across the literature reviewed, the developer's obligation to transfer ownership of common areas of completed developments to the OMC, often brought about controversial discussion. The notion of local authority maintaining common areas of an estate has been concisely unveiled by Deputy Niall Collins. He concurs with the Law Society (2014), pointing out that people currently living in MUDs pay service charges and are obliged to pay local property tax as well, such that they are paying on the double for services. He himself describes this as 'an anomaly' of the Multi-Unit Development Act 2011, and petitions for another bill to be published in order to amend the issue (Niall Collins, 2015).

Like many elements of the MUD Act, the OMC is too a source of convolution among members of the OMC. It stems from the idea that some property owners are unaware of the existence of a management company within their development, while others have an inadequate understanding for the reason behind it's engagement nor the part which they themselves can contribute (Appleby, 2006). Although there is an array of obligations set out under The Act, the directors of management companies are frequently ill-informed of the tasks which must be discharged by an effective management company (Appleby, 2006). The Conveyancing Committee too question the necessity of OMCs under certain circumstances.

In cases of the typical housing estate, like previously mentioned, co-ownership arrangements are made without the need for an OMC to act as a medium. Such estates contain common areas like roads footpaths, grass verges and open spaces, of which the maintenance is intended to be upheld by the local authority (Law Society of Ireland, 2014). In short, the Law Society (2014) argue, there are no common areas to manage, maintain or repair, there is no need for an OMC in such estate, there is no intention to have an OMC, nor is there a desire for one.

2.3.2 Members of OMC

Initial literature objected the idea of having a management company established. The Labour Party (2005) addressed Dail Eireann and challenged the motion, appealing *why* management companies would impose a charge on property owners for services which are usually provided for by a local authority. Further scolded by Rabbitte (2006) who denounced that often when homes were purchased, owners were unaware that they would end up contractually wedded to a management company, paying substantial fees to deliver often 'illusory services'. This allowed a management scheme to be implemented where the local authority would not be in charge of the common areas. Even in recent literature, the argument is still maintained. One of the common controversies lies in the question mark raised over the necessity of an OMC. Deputy Catherine Murphy (2015) argues that some developments should not have management companies, nor do they need them. She recalls instances whereby housing estates were maintained by residents in an informal manner, they collected a residents' fee and equally participated in the maintenance of the estate. It is also commended as a good practice for community building, something that management companies generally have the opposite effect upon.

A common trend across the literature reviewed sees many members within MUDs uncertain with the terms involved by living in such a development, often exasperated where MUDS contain a mixture of occupiers (Law Reform Commission, 2006). Property owners of the units should also be members of the associated management company (ODCE, 2010), and by the same right, shareholders of the management company, with co-ownership of common areas. By virtue of owning property within a MUD, members owe services charges to the management company to look after the estate. This is important as it is an area that retains much scope for disagreement and difficulties asserts *Anon. b* (2011). In a similar way, Murphy (2015) criticises cases in which people buying into MUDs were not aware of this recurring

cost. Further observed by Deputy Dessie Ellis (2015), who criticises the MUD Act 2011 for not allowing tenants to have a representative on the board of these OMCs. It seems there is an unjust power imbalance considering the vital role tenants play in the development, and the powers held by OMCs of the same development.

In most instances, common areas of a subject property are enclosed in requisitions, the purpose is to ensure that the purchaser receives the title in accordance with the Contract for Sale (Brennan 2015). However, in managed developments to which the MUD Act 2011 applies, the requisition should be raised pre-contract (*ibid*.). The Law Society (2015) had hoped the use of these pre-contract enquiries will allow vendors' and purchasers' solicitors to identify any problems that may exist at an early stage. The requisition seeks evidence that the OMC is registered as the owner of the common areas and reversionary interests, as the rights and obligations are created through leasehold contracts (Dupuis, 2016).

2.3.2 Role of Directors

The members of the management company may be elected as directors at the annual general meeting, by a majority vote. The directors run the management company on behalf of the estate, deciding what services are needed to keep the MUD in effective operation. Directors also decide the amount of the annual service charge required to pay for this operation and they make the arrangements for collection of this charge (ODCE, 2008). Later concluded by The ODCE (2012) that it is important to point out that such company will operate on a not-for-profit basis. Divilly (2013) instructs that if the developer has failed to transfer the common areas to the OMC, this may affect the right to charge management fees. In furtherance of these common areas, Deputy Catherine Murphy (2015) presents another anomaly. She details that where roads and services (common areas) in an estate were taken charge of by an OMC, it is arguable whether or not the estate is thereafter a MUD, and not simply a development.

Possibly one of the most crucial responsibilities of the directors is to ensure that their annual returns to the Companies Registration Office (CRO) are submitted as appropriate. Failure to do so could result in the OMC being struck off the Register of Companies for failure to comply with the Companies Acts. The Law Reform Commission (2008) reported that the failures often relay back to cases where the developer has not completed the development and has allowed the OMC to 'wither away'. Of course, in a MUD setting having the OMC struck off

is less than desirable. However, the real issue comes about when the individual property owner wishes to sell their apartment. The penalty falls upon the individual owner who may be personally required to deal with the sanction issued by the CRO in order to transact the sale of their apartment (ODCE, 2008)

2.3.3 Property Managing Agent (PMA)

Some of the latest literature acknowledges that some property owners do not know the difference between the PMA and the OMC (The Apartment Owners Network, 2017). Further remarked by The Apartment Owners Network (2017) that the role of the PMA and OMC are somewhat 'conflated' and owners perceive the PMA to be the OMC. Previously, the roles had been defined by Gogan (2008), who simply put that the role of directors is to decide if they should:

- Retain the existing managing agent
- Appoint an alternative managing agent
- Dismiss the managing agent and manage the development without one.

The NCA (2006) define the role of the PMA as a servant of the management company who is hired by the OMC to ensure that the company honours its obligations to the property owners, and members of the OMC. Although their role is to safeguard property owners, often the real issues lies in the fact that PMAs have an ulterior incentive to that of members of the OMCs. Many cases arise where too much power and decision making is left to the managing agent, whose role should be to *implement* decisions, not devise them (Hanlon, 2006). The ODCE (2012) appreciates that directors will generally opt out of onerous tasks that are time consuming and engage the services of a managing agent, however, PMA's have different interests to that of the OMC. Therefore, it seems unfair that the tenants who in some cases, is not directly represented on the board, is being controlled by a third-party manging agent (Dessie Ellis, 2015). The process is seen as an unfair practice to the extent that in the UK, the Department for Communities and Local Government (2017), made a proposal to ban landlords and their agent's in the private rental sector from charging fees, on top of rent. It is seen as an attempt to mitigate the risk of tenants being double charged, from both the landlord and PMA.

2.4 Theoretical Component: Principles of Contract Law

Issues of property law and contract are at the heart of apartment developments (Appleby, 2006). This is consistent with the concerns issued by The Law Reform Commission (2006), with regards to mismanagement and abuse; the law has not kept pace with the sudden prominence of residential MUDs. It must be noted that the earlier literature makes little reference to MUDs containing commercial units, and even in the first bill issued under the Act, no reference was made to mixed-multi unit developments. However, the core issue resides with the purchaser of a residential unit, regardless of whether they are located in a multi-unit or mixed-use development. They enter into binding contractual commitments with respect to management of their estate as a matter of private law, which is always difficult to legislate, warns Brian Lenihan (2008). Such residential unit holders within MUDs are frequently referred to as being in a state of 'information deficit', many people feel they were ill-advised by their solicitor about management companies and agents when they signed their contract for their new apartment contests Terence Flanagan (2008).

In MUDs, the OMC and unit holders are the two stakeholders of interest when it comes to contract law. The unit holder enters into a legal contract with the OMC upon purchase. Problems initially arise because often the contracts entered into are not in the interest of the unit holder and puts them in an unfavourable and powerless position reveals Olivia Mitchell (2008). Generally, in a MUD setting, the principles of intention, will and agreement to contract are adhered to. If the contract is deemed to be fundamentally flawed in that, it is neither fair or equitable, it is a matter for the courts. Literature often iterated unit holders experiencing perceived unfairness with regards apportionment of service charges. For example, common areas only existing to perpetuate the management company, without unit holders receiving any actual services, was labelled as 'ludicrous' by Clare Daly (2015).

The initial consultation papers issued by the LRC(2006), recommended the facilitation of an appropriate non-court medium for dispute resolution. Establishing a state agency responsible for monitoring and supervision of management companies. Despite such recommendation, no appropriate facility, or designated state agency exists. Dermot Aherne (2010) stresses that court procedures can be both lengthy and expensive. Concurred with by Butler (2015) who outlined the initial recommendation was set out in an attempt to reduce the involvement of the Courts. While the stipulation is to reduce the court involvement, if a casual mediation has

been attempted and failed, the court will proceed to deal with the matter (English, 2015). The OMC represents the owners as a collective body in the Circuit Court, giving frustrated unit holders the chance to protect their investment in an apartment (*Anon. c*, 2015).

2.5 Other legislation

2.5.1 Section 23

The rise in growth of MUDs can be partially attributed to Section 23 of The Urban Renewal Act 1998. The Urban Renewal Act's aims were twofold: to invigorate a flagging construction industry and to promote economic development in urban areas that had previously been deemed unattractive by investors. Emerging macro-economic data from Trutz Haas Social and Economic Consultants, found that between 1989 and 1996, 7,700 new private sector residential units were built in 135 developments (Dublin Inner City Partnership, 2009). More recently, academic discussion has centred on the role played by section 23 in the economic crash of 2008. Construction output increased, land and house prices mushroomed. It seemed as if there was a never-ending bandwagon on which developers were exploiting Section 23 purely for the build costs to be written off across their portfolio of rental income.

The effect of Section 23 on MUDs stems from the surge in their construction. Projects were completed purely to take advantage of the incentives rather than to meet actual demand, contributing to an oversupply of property in the housing market. Major developments were built in light of receiving the taxation benefit, with little regard to their management or maintenance. As Ireland makes an economic comeback, cases of MUDs are being bought to light, whereby developers have encountered financial trouble, and their estates have been taken over by receivers and liquidators. As the MUD Act was introduced both directly after the abolition of Section 23 and at the peak of a recession, contentious cases have arisen. Failure to transfer common areas, non-payment of service charges, and a general lack of compliance within estates has now, ten years later, highlighted that the MUD Act did not prepare for such eventuality.

2.5.2 Interpretation Act 2005

When interpreting statute, a more purposive construction can be taken in certain cases rather than the literal meaning. This applies where the provision concerned is 'ambiguous or obscure which, on a literal interpretation, would fail to reflect the plain intention' (Byrne, 2006) of the Oireachtas. The Interpretation Act 2005 assists in understanding the 'literal rule', giving the words of the statute their literal, plain, or ordinary meaning writes Barker (2007). There are a number of additional aids available to the court which act as material aids. Included, are what The Law Reform Commission (2000) described as 'any material which sheds light on the background of the enactment of a particular statute', and further alluded to by Donlan (2006) who describes them as external aids that 'go beyond the four corners of the statute'.

The Law Reform Commission (2006) reported that when the initial consultations began surrounding MUDs, it concerned residential property owners only. Further implied by Butler (2015), who emphasises the focus of the Act is on residential rather than commercial units. The interpretation Act is to be considered with regards to the Multi-Unit Development Act 2011, considering why the legislation was enacted, and in accordance to what purpose the parliament was trying to achieve (Corbin, 2007). The question posed, is that if the Act was set out to protect residential unit holders, should the Act apply to commercial unit holders too? The MUD Act, if not redefined to the way it was intended, will cause problems protests Catherine Murphy (2015). In 2015, Deputy Murphy issued A Bill that ordered to 'remove mixed developments from the scope of the legislation' (Damien English, 2015). This anomaly cannot be easily dealt with, such Bill has not yet been acted upon due to concerns of discarding residential unit holder protection (*ibid*.).

The issue of intention has sparked many debates across the literature reviewed. The Conveyancing Committee (2007) were early to acknowledge the complexities involved in MUDs, in so far as where there are both mixed residential and non-residential users. The Commission believe the reform of multi-unit residential developments needs urgent addressing. However, Card (2011) previously advised that 'if there is a gap in the legislation the remedy is new legislation'. This is somewhat opposed by Bohan And McCarthy (2013) who propose that alterations can be made, instead of such drastic measures, adding that 'statutory words are not frozen in time and can, within reason, be updated if necessary'.

2.5.3 Statute of limitations

The Statute of Limitations sets out specific time constraints in which a person has to initiate a civil claim against another person (Law Reform Commission, 2011). In terms of applying this to the MUD Act 2011, claims for service charges from the property owner are subject to a statutory limitation period of six years. In other words, *Anon. d* (2015) explains that if the OMC does not start the court action within six years of the debt being due, the action is *statute-barred*. Effectively, it means that the property owner cannot be forced to pay the debt, when the six years has elapsed. As service charges are treated as contract debt under Irish law, the SCSI (2018) have proposed to exclude service charges from the Statue of Limitations.

Often the literature iterated a frustration among property owners surrounding the poor governance of estates by the management companies (House of Oireachtas, 2006). Conversely opposed by Hanlon (2007), who raises the frustration held by management companies with tenants not co-operating with the effective administration of the development. Non-payment of service charges, often arises for two reasons. Firstly, since some apartment owners believe that if they are not satisfied with the 'service', they should not have to pay the 'service charge' (Law Society of Ireland, 2006). In reality, if they are not satisfied, they still have to pay - but they should become involved in the OMC and ensure that their money is being wisely spent. Secondly, Daly (2016) reports of the 'exorbitant' nature of service charges perceived by unit holders.

Such nature of substantial service charges has arisen in some developments where OMCs have had to issue legal proceedings on payments in arrears, to avoid potential insolvency. The OMC obtains a judgement without realising any financial benefit, simply protecting the debt. The exercise is a costly one, where the outcome is known at the outset. The process simply increases the cost of all owners' service charges. SCSI (2018) acknowledged the considerable difficulties faced by OMCs in recovering service charges, claiming many OMCs are faced with current fee recovery rates of less than seventy percent, concluding that insolvency is a real prospect faced by OMCs.

When the 'Seven Day Demand Letter' has been issued to the creditor (ie. The property owner), it sets out the amount owed, and asks the debtor to discharge the debt in full. The demand

letter will normally threaten the issuing of Court proceedings if the debt is not paid in full within seven days. Sirr (2010) explains that threats of suing and forfeiture of leases for non-payment are expensive and timely. After the aforementioned method is exhausted and failed, judgement is ordered by the court which states that the debtor owes the creditor a debt. The following jurisdictions are detailed:

- District Court: Up to €15,000
- Circuit Court: €15,001 – €75,000
- High Court: Above €75,000 *(Source: Scannell, 2016)*

The problem with the statute of limitations is that it restricts the OMC to a six-year time constraint. Although this is a considerable length of time, often cases arise where the OMC simply does not have the funds to carry out legal proceedings. The SCSI (2018) have made a recommendation that dispute resolution for the multi-unit/apartment sector be moved away from the Courts to an online platform, albeit with a right of appeal lying to the Courts.

2.5.4 The Data Protection Act 1988

Section 9.1 of the Data Protection Act outlines that an OMC cannot disclose 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. In light of the previous discussion, regarding remedies available to OMCs, even the smaller sanction of publishing the names of residents who haven't paid their service charges is prohibited under the Data Protection Act (Clúid Housing, 2017).

2.6 Other Jurisdictions

Crucially pointed out by Sandberg (2003) that the notion of MUDs suffering from a 'diseconomy of concepts' is a plausible case. Further explained by Everton-Moore (2006), who points out that the application of common principles is a difficult exercise, as different jurisdictions have different terms for similar legal forms. What is a common trend across the jurisdictions however, is the power imbalance between the developer and the management of such developments, evident across the globe, writes Sherry (2010). The theory of developer abuse as mentioned earlier, has been repeatedly seen in multi-unit housing, multiple times, in multiple jurisdictions (Gibbons, 2013*a*).

The Conveyancing Committee (2007) in their submission to the Law Society of Ireland regarding the MUD consultation paper, looked to different methods pertained in other jurisdictions. The idea was to look at the statutory models employed by other common law jurisdictions, such as New South Wales and the civil law system as practiced by the German federal system. The United Kingdom is also another jurisdiction worth considering, as they have legislation governing commonhold, with similar difficulties to Ireland, arising over leasehold reversions not owned by the apartment owners but by commercial landlords. Clarke (2002) observed that in an English context, 'commonhold is a distinct name, but the concept is derivative'. The commonhold assumes a registered proprietor of the common parts, but the holder of each unit is registered as the proprietor for the freehold title of that unit (Burn, 2011). The purpose is to regulate relations between owners of the individual property units that lie in close proximity, and are therefore, interdependent. It is important to note that under commonhold in the UK, The CLRA Act 2002, draws a clear distinction of rules between residential and non-residential unit holder's power to grant leases. In case of residential, the lease must not be granted for a period of more than seven years, nor at a premium. Whereas, there is no general restriction for non-residential leasing. Yet again, this reiterates the constraints that exist in mixed multi-unit developments.

Looking to the method of strata titling used in New South Wales, each property owner has individual ownership of the unit itself, a share ownership of the common parts and membership of the managing body which is responsible for managing the development (Walters, 2000). The role of the developer is unique in strata schemes as not only are they responsible for the design and build execution, but also for the initial finances and management structure (Easthope, 2016). This is because at the early stages of a strata scheme, the equivalent of an owners' management company *is* the developer. There is clear issue here as the incentive of the developer differs to that of the property owners.

Some of the restrictive covenants in residential areas, do not include collectively owned common areas, and as such, are typically owned by public authorities (Sherry, 2014). This stemmed from the idea that if you cannot entice people to pay for common facilities, there is no point in building them in the first instance (*ibid*.). By way of contrast, the common law system only assigns rights over the shares in the land and building (Walters, 2000). It does not guarantee any active participation in the management of the development. Although, commonhold can only work in cases where freehold land is registered with absolute title

warns Burn (2011). In the UK, problems have arisen where schemes dating as far back as 1930s are leasehold covenants, running on 99 year leases, proving unattractive security for a mortgage, and in such case, freehold titles prevail (*ibid.*).

The German law is of particular interest for comparative purposes because of its provisions in relation to the common areas. All assets held in the MUD (condominium) belong to the owners in person, carrying a legal capacity. This was only amended in 2007, when prior to this the management company was considered as a mere association of owners without such legal capacity states Van Der Merwe (2015). It is also worth noting that under the German model, for both residential and commercial units, it is possible to register a property right over a unit before the construction has even begun (*ibid*). Much of the literature has conflicting opinions on this as it is often believed that a property right over a unit could only be established upon construction. This compares to the Irish model, where the developer holds the rights over all property units until transferred to the OMC upon completion.

2.7 Conclusion

Having reviewed a myriad of literature, it can be reasonably concluded, that anomalies do exist under the Multi-Unit Development Act 2011. The initial intention of The Act was to reform the statutory model. It had become increasingly evident that there was underlying issue with excess developer control and transparency within all aspects of MUDs performance. The reformation of Irish common law was warranted, and related to the ownership, management, and equity of the common areas of both existing and new MUDs. Thus, a Bill for the MUD Act was issued in 2009, which petitioned for the role of the developer to be delineated to bring clarity into the MUD setting. One of the pivotal concerns elicited by The Bill, was a lack of reference made to accounting for mixed-multi unit developments under The Act's legislation. This prompted an investigation into other legislation, such as The Interpretation Act 2005, to consider why the legislation was enacted, and in accordance to what purpose the parliament was trying to achieve.

It has been repeatedly cautioned that the MUD Act is complex, and the literature has revealed a number of issues that have arisen both before, and after its enactment. Despite the attempts to minimise complications, The MUD Act 2011 has for the most part, failed to accomplish what it was set out to do. There is a lack of coherence about key terms in the legislation which

has contributed to its complexities. The common issues recalled by the literature relate back to transfer of ownership, service charges, and ultimately a general aggravation from property owners who were unaware of the implications of buying into the contractual arrangement of a MUD. Whilst the notion of brining regulation into a MUD setting is a welcomed prospect, the real issue resides where there is a lack of incentive to ensure such regulation is adhered to.

Having reviewed the literature, the following questions have arisen:

- Should the OMC be given additional powers to enforce owner obligations?

- Should there be more remedies available to the OMC, including a more efficient arbitration process?

- Should there be government intervention in situations where management companies cannot fund their day-to -day expenditure?

- As Ireland makes an economic recovery, are OMCs at risk of becoming insolvent when liquidators and receivers are appointed?

- Should commercial users be protected by the MUD Act, considering it was intended to protect residential unit holders?

- Is it a prevalent issue that developers and/or management agents are involved in the maintenance companies attached to service contracts?

- Is it fair that people currently living MUDs pay management fees and local property tax as well, such that they are paying on the double for services?

- Is the OMC necessary, or could it be substituted with a co-management regime formed by local authorities and residents

- Should tenants within MUDs be given more consideration?

- Should mixed used MUDs apportion service charges differently?

- Should commercial units be allowed to use the MUD Act to alter service charge arrangement?

Chapter Three: Methodology

3.1 Introduction

The topic of research for this thesis is to disclose anomalies that exist under the Multi-Unit Development Act 2011. The issues raised in the literature review prompted an investigation into the application of the MUD Act 2011, where controversy and gaps are evident. The latter indicates that additional research is required in order to resolve or simply, discover some disparities in the current legislation. In order to conduct a research study that considers a wide range of issues, a case study as well as both qualitative and quantitative methods will be used. The combination of methods utilised are necessary to collect information from a variety of sources that relays back to a central issue.

3.2 Research Methodology Strategy

3.2.1 Case Study

Cavaye (1996) reminds us that the case study research design is multi-faceted and can use both qualitative and quantitative methods. Case studies cater for a 'contemporary real-life phenomenon' (Zainal, 2007). One of the most common criticisms regarding the case study claims that such method lacks the ability to be generalised on the basis of an individual case. However, this particular case study revolves around case law, which follows the theory of the doctrine of precedent. This essentially means that common law abides to the following logic: The decisions made in earlier cases are generalised to constrain the decision of later courts (Horty, 2011). In fact, the notion of a case study not being generalisable is labelled 'ridiculous' by Tracy (2013), as case studies are aimed towards the idea of transferability and naturalistic generalisation.

The case study is best described by Gerring (2004) as an intensive study of a single unit with an aim to generalise across a larger set of units. Unlike quantitative analysis which observes patterns, a case study examines data that is often conducted within the context of its use (Zainal, 2007). This particular case study provides for a real-life scenario, and also helps to explain the complexities of real-life situations which may not be captured through other methods. An analytical theme is referred to by Fitzgerald (1999) as a significant aspect in formulating theories and ideas for future research. In this instance, the case study is the subject of the inquiry which will highlight and elucidate some analytical theme going forward (Thomas, 2016).

3.2.2 Qualitative Research

It is important to recognise that there are a number of approaches to the qualitative method, it is not definitive to one particular technique. However, it is a generally accepted theory that all good forms of qualitative research should be 'rigorous, interesting, practical, aesthetic, and ethical' (Tracy, 2013). As Marshall (2006) alludes to, 'qualitative research is pragmatic, interpretive, and grounded in the lived experiences of people'. The qualitative approach requires aims to investigate how the respondents interpret their own reality (Bryman, 2011). This presents the challenge of creating a methodology that is framed by the respondent rather than by the researcher.

Interviews are a staple method used in qualitative research. Accurately put by Jamshed (2014), most of the qualitative research interviews are either semi-structured, lightly structured or in-depth, as no research interview should lack structure. The semi-structured approach leaves room for the respondent's more spontaneous descriptions and narratives. During which, accounting for an "interested silence" (Gillham, 2008) is a powerful approach to be adopted, allowing the interviewee to reflect on their responses. Therefore, working flexibly with the interview guide caters for the desired structure with optimum results.

To ensure the research is not subjective, it can be aided by taking place in the respondents 'natural setting'; the findings from this research must be both rigorous and dependable (Hogan, 2009). For the purpose of this research interviewees were selected based on their familiarity and knowledge of the MUD Act 2011. This demonstrates purposive sampling, which means respondents are selected because they can purposely inform an understanding of the research problem and central phenomenon in the study (Goulding, 2005). The use of words as opposed to facts and figures is the essence of this approach (Fraenkel & Wallen, 1990), focusing on their *experience* of dealing with MUDs.

3.2.3 Quantitative Research

Creswell (1994) provides a concise definition of quantitative research, stating it explains phenomena by collecting numerical data which is analysed using mathematically based methods (particularly statistics). It is considered to be both acceptable and possible to make use of qualitative and quantitative techniques and apply them to a case study (Tight, 2017). Mixing qualitative and quantitative approaches can be very useful in providing more complete

explanations of social phenomena (Hogan, 2009). By way of integrating the results from three research methods it will lead to a more impartial outcome.

By way of surveying, the quantitative method will also be utilised. Quantifying data allows for generalisation of results from a sample of the population of interest to measure the incidence of various views (Park, 2016). The survey will be issued to members of OMCs, to ascertain their awareness and understanding of *their* role, the role of a MUD and the role of the OMC itself. Both reliability and validity are essential barometers in measuring quantitative research. Firstly, reliability explained by Golafshani (2003) as the extent to which results are consistent over time and accurately represent the population under study. Where the results of as study can be reproduced using a similar methodology, the research is then thought to be reliable. Secondly, validity, is essentially how accurate the research results are.

The sample will include the entire population of multi-unit developments, and use stratified sampling to survey members of OMCs. A stratum is a subset of a population that share at least one common characteristic. For this research, the stratum, refers largely to owner-occupiers of MUDs. The population available for this research is representative of owner-occupiers, landlords, and tenants. Whereas this research focuses in on one distinct stratum, owner-occupiers. As a quantitative researcher, aggregating survey answers to measure respondent's engagement, familiarity and awareness of MUDs will help to highlight some discrepancies.

3.3 Research Design

3.3.1 Case Study Design

When using the term mixing research methods, Hennink (2010) refers to the fieldwork approach, whereby researchers combine several research methods, (eg. qualitative and quantitative). Mixing research methods is broader and can encompass a combination of qualitative and quantitative research methods (Hennink, 2010). Each methodology supports the case study by searching for answers to the overarching research question initially set out.

Using more than one case may dilute the importance and meaning of the single case (Zucker, 2009). Case studies can focus on one instance, but are not restricted to one observation (Given, 2008). This can be interpreted that although the author focuses on one particular case,

there are multiple findings to be concluded. However, even in situations where more than one case study is considered, irrespective of such purpose, unit of analysis, or design, rigour is a central concern (Feigin, 1991)

Yin (2003) categorises cases studies under the following types:

- Explanatory
- Descriptive
- Exploratory

In short, the explanatory case study is used when seeking to explain the casual relationship found between data in a phenomena. Descriptive case studies look to describe the phenomenon within the data in question, or real-life context to which it occurred. Finally, the exploratory case study, discovers theory by observing the phenomenon in its natural form, whereby there is no clear, single set of outcomes.

The fundamental research for this thesis will be based on a case study, *Grain House Management Exchange* (*Appendix B*) which involves an investigation into a legal dispute that falls under the MUD Act 2011. It is an exploratory case study, as although it deals with just one particular case, the objective is to use this case to understand more about a wider problem (Nelson and Martin, 2013).That being, the application and anomalies of the MUD Act 2011. The outcome of the court case is a pivotal crux of the analytical theme, when it comes to formulating theories and disclosing anomalies.

3.3.2 Interview Design

Interviews provide an in-depth understanding of the participants' experiences and viewpoints pertaining to a particular topic (Turner, 2010). Interviews can take a number of different forms, including, unstructured, structured, or semi structured. This has been respectively summarised by Gall (2007) as:

(a) Informal conversational interview,

(b) General interview guide approach, and

(c) Standardised open-ended interview

Firstly, the unstructured interview takes form by means of the immediate context (Brayda, 2014). Meaning, there are no predetermined set of questions to take cue from (*ibid*.). The data gathered from each interview will vary. Secondly, the structured interview approach often refers to surveying methods. Researchers typically prefer this method because it promotes the

standardisation of both the asking of questions and the recording of answers (Brynman, 2016). This reduces the margin of error in the asking of questions and eases the process of recording respondents answers. Lastly, the semi-structured approach, poses open-ended questions and is formulated to elicit unstructured responses and generate discussion (McIntosh, 2015). Although, typically questions are asked of each interviewee in the same systematic order, interviewers are allowed freedom to diverge slightly from the script (*ibid*.).

By interviewing legal and property experts, as well as directors of the OMC, it provides a rounded response to the management of multi-unit developments. The aim is to build on the interviewees existing knowledge base, and pose questions that have arisen from the literature review. Such questions asked by the researcher are to be open ended. As the researcher has formulated a list of findings from the literature review, the open ended questions allow for both engagement and flexibility within each interview, yet controlled by the semi-structured guidelines. The foundations of the literature review provide the context for exploring the participants' understanding of the phenomenon under study.

The interview approach allows the participants to offer new dimensions to the research topic, through narratives and discussion. It is facilitated through a systematic line of questioning, keeping the interview focused on the desired line of action. The questionnaires held under the quantitative method explore core issues that have arisen in both the literature review and case study, gaining an insight into the responses of those affected most by the running of MUDs.

Therefore, in designing interview questions, the following structure was abided:

- Part A: Relate to the prevalent anomalies that exist under The MUD Act 2011
- Part B: Designed to incorporate opinions surrounding the case study, and are therefore, more technically legal based.
- Part C: Constructed to gather opinions on suggestions for the reformation of the Act.

Some other qualities of a semi structured interview pointed out by Galletta (2013) include:

- Unique flexibility
- Sufficiently structured
- Address multiple dimensions of a research question
- Allows participants to offer new meanings to the topic
- Allows narrative and discussion

One objective of looking at the qualitative method is to compare the answers elicited by interviewees, with the court case judgement. By taking account of the responses from interviewees, it allows the author to formulate an assessment of how informed the interviewees are, with respect to current MUD legislation. It will create a holistic response, enabling a range of perspectives to be formulated and considered, in an endeavour to reveal anomalies under the Act. Anomalies are thought to exist not only in the written statute, but how these *all* interviewees are interpreting and acting upon the law.

3.3.3 Survey Design

When undertaking the survey approach, writing questions that are not misunderstood, ambiguous or inadequate for the topic is crucial. This is the crux of ensuring the results are both reliable and valid. Unlike in an interview, misunderstandings in questionnaires cannot be easily detected or corrected Gillham (2008). The misconception of ideas on the participant's behalf can be mitigated by running a pilot stage. The pilot survey should be carried out in conditions as similar as possible to the main survey. The questions should be continuously piloted until the researcher is happy with the design, such rigour is required to ensure reliable findings.

The survey is to be implemented as an online questionnaire. Respondents are able to complete the questionnaire electronically, and results are downloaded by the researcher. The benefit of such is that it allows the researcher to gather information from a geographically dispersed sample group. The combination of open and closed ended responses means the respondent has the opportunity to respond in an alternative manner if none of the predetermined choices are appropriate, or alternatively, to elaborate on one particular matter (Gratton, 2010).

According to Gillham (2008), the following characteristics of questionnaires can be concluded:

- Low cost in time and money
- Easy to get information from a lot of people very quickly
- Respondents can complete the questionnaire when it suits them
- Analysis of answers to closed questions is straightforward
- Less pressure on respondent for an immediate response
- Retains respondents' anonymity

- Lack of interviewer bias

Gratton (2010) accepts that there are of course, potential errors that can arise in designing questionnaires, including:

- Ambiguity: Questions may seem clear to the researcher but not to the respondent.
- Incorrectly pre-coding questions: Excluding possible choices from the predetermined set of responses
- Double barrelled questions: Ensure each question is measuring a single concept
- Leading questions: Influencing the respondent to agree with a particular statement due to the wording of the question.

Questionnaires were used for this research on OMC members, particularly targeting directors who actively engage in the day-to-day management of MUDs. The intention is to then compare the results to the industry professional interviewees. The questionnaire consists of 23 questions applicable to members of MUDs, results of which are available in *Chapter 4.*

The survey followed the following structure:

- Part A: Prominent and frequent challenges that arise in MUDs.
- Part B: Constructed to gather opinions on suggestions for the reformation of the Act.

3.4 Settings and Participants

The author has studied a captive population of participants, as they are the only ones who can provide the relevant, in-depth information about the context itself. Interviews fall under the category of 'participatory action research' (Berg, 2004). This is thought to be a highly rigorous approach that engages individuals and integrates the real time lives of participants with practical outcomes.

The initial findings revealed in the literature review will direct the investigator towards conducting interviews with relevant parties. The findings are ultimately 'the problem', in which the researcher intends to divulge. Firstly, in this instance, at least one interviewee was sought to be involved with 'the problem', the ongoing court case (case study). Secondly, interviewees were sought on the basis of being familiar with 'the problem', the MUD Act. In fact, for the purpose of this thesis, *all* participants for interviews are to be familiar with both multi-unit developments and The Multi-Unit Development Act 2011. Interviews are to be

held with two OMC directors, two legal experts, and four industry experts. Surveys to be returned by owner-occupiers, landlords and directors of MUDs. The survey respondents have no requirement to be familiar with the Act, however, required to be associated with a MUD in some capacity.

Tong (2007) highlights that researchers should describe the context in which the data was collected as it could affect the participants responses'. With consideration to the latter, all interviewees are to elicit their preferred method of interview to which the researcher shall oblige. The researcher explained the context of the study, and advised each participant that the information provided would be confidential. Permission was sought to record each interview so that a full transcript could be made available, retaining anonymity in the listings made available in *Appendix C.*

The concept of anonymity applies to both the qualitative and quantitative methods. In the first instance, anonymity is thought to be an 'unachievable goal' (Saunders, 2015) as the primary researcher will know who the participants are, therefore, breaching anonymity. So when the author refers to anonymity in a qualitative context, what is really meant is that *only* the primary researcher is in the know. With respect to quantitative research, names nor any personal information was required to complete the survey, and therefore cannot be traced back to a specific person.

3.5 Conclusion

By employing a multiple of research methods, it has elicited a solid foundation for findings to be later analysed. The first method, a questionnaire, involved publishing an online survey which received one-hundred and three responses. Secondly, the semi-structured interviews involving eight interviewees, held over a period of two months. Finally, the case study which has been under examination since it was first heard in the circuit court in November 2017. The research methods employed were sequential, with information from the case study feeding into both the interview and survey questions.

Chapter Four: Findings and Analysis

4.1 Introduction

The literature review elucidated a number of critical points which lay the foundations for both the interview and survey questions. The review of the literature highlighted the requirement for research into the various members within a MUD, as well as insights from both property and legal experts. This would cater for issues that have arisen thus far, and by incorporating a case study looks to critique where MUDs are headed. By using three methods of research it integrates an array of perspectives to come up with the best conclusions. This eradicates any question of ambiguity, and is testament to the validity, reliability, and rigor applied to this research, in examining the performance of the MUD Act 2011.

The methodology for this research was laid out in *Chapter Three* and the best method decided upon was a combination of the semi-structured interview, survey and case study. Semi-structured interviews were carried out with both legal and property experts as well as an input from directors of OMCs', forming the following structure:

- Part A: Prominent and frequent challenges that arise in MUDs.
- Part B: Designed to incorporate opinions surrounding the case study, and are therefore, more technically legal based.
- Part C: Constructed to gather opinions on suggestions for the reformation of the Act.

Similarly, surveys were targeted at particular stratum within the population; owner-occupiers of a MUD. They were considered to be the stakeholders most familiar with the management of the estate and the MUD Act itself, as per their role within the development. With this in mind, it was intended that such survey results would provide data to highlight some anomalies that exist under The MUD Act 2011. One-hundred and eleven respondents completed the survey which was published online. The survey followed the following structure:

- Part A: Prominent and frequent challenges that arise in MUDs.
- Part B: Constructed to gather opinions on suggestions for the reformation of the Act.

4.2 Findings

4.2.1 Interview Findings

Question 1: Are you familiar with The Multi-Unit Development Act 2011?

All respondents answered that they were familiar with The MUD Act in some capacity.

Question 2: When members of MUDs don't pay their service charges, it is often attributed to an unsatisfactory service, or the service charges are considered to be too expensive. Are you aware of any other reasons why members may fail to pay their service charges?

Reasons listed by directors:

- Delinquent buyer
- Those who pay late, or need prompting to pay
- Information and communication deficit as to why service charges need to be paid

Reasons listed by agents

- Lack of knowledge
- Do not possess the actual monies
- Not contributing to the service charges and *thus* an unsatisfactory service
- Unaware of the cost of service charges and therefore, do not budget for it

Reasons listed by legal agents

- Not a priority on a list of payments due (ie. Mortgage is the priority)

Question 3: Members of OMCs should be aware of what service charges are spent on as accounts are made available to them. Do you believe that they are aware of what their service charges are spent on, considering they are the ones actually incurring the cost?

All interviewees cited that most members are not aware. Reasons listed by directors included that the attendance to AGMs where the accounts are presented is always pitifully low. Further explained by *Property Expert 4*, who said that they should be aware but very often they are not as there is an apathy that exists when it comes to the information being explained. Typically finding that less than 10% of owners attend *owners* meetings.

Legal agent 2 explained that when it comes to owner and tenant knowledge the owner should be aware. The legal obligation is on the apartment owner, not on the tenant, and therefore the tenants can never be sued for it or can never be obliged for it. The tenant therefore is not entitled to any knowledge behind it, only the owners are.

Question 4: Have you any knowledge or experience of developers or managing agents being involved in the maintenance companies attached to service contracts?

All interviews were aware of managing agents being involved in the contracts attached to OMCs, not so much with developers. Bar *Property Expert 2* who was aware of developers still maintaining control of an estate, in line with the MUD Act.

Question 5: "Commercial units, by the very nature of their daily affairs should be considered differently to residential units".

If a residential and commercial unit within a MUD occupy an equal amount of floor space, how do you think the service charges should be divided?

Director 1 believed that by taking into account both the measured floor area, and usage by the particular unit owner is taken into account when the apportionment is set.

Both the property and legal experts agreed that service charges should be apportioned using either schedules or a weighted system. *Property expert 4* summarised that "*the fairest way is measurement and weighting but it's a question of how far you go on the weighting; availability of services & usage have to be borne in mind*"

Part B

Question 6: Does the OMC have sufficient powers, or should their power be strengthened to exercise recovery of unpaid service charges?

Six interviewees responded that the powers of the OMC should be strengthened. *Director 2* warned that if the government doesn't strengthen the hand of the OMCs they will fold, it could take 10-15 years but it will happen and the council will have to clean up the mess. *Legal Agent 1* quoted that the powers were sufficient, that "*if a property is being sold, it cannot be sold until OMC get their money*". *Property expert 3* ordered that "*an OMC should not be able to stop providing services, like water or electricity*".

Question 7: Should commercial unit holders within mixed MUDs, be allowed to use The MUD Act to alter service charges arrangements - considering they entered into a legally binding contract?

Director 1 understood answered no, stating that The MUD Act was "*not designed to give further protection to commercial holders. Were the residents not part of the state and it consisted entirely of commercial unit owners, there would be no other remedy other than to look to the terms of their lease if there was any unfairness. The commercial unit holder should not be allowed to take advantage of cracking open a commercial contract purely on a technicality that there's a residence also within the development*"

Property Expert 1 commented that where the apportionment between the units is unfair, then in such cases they should be allowed to use the act. *Property Expert 4* said precisely the opposite - "*If contract law has been abided by, this should not be their recourse*"

Both legal agents agreed that the idea of a commercial unit using the MUD Act should not be legislated for. One explained that "*The purpose of the Act was to protect homeowners, not to give an advantage to commercial users*"

Question 8: Within a mixed used MUD, a commercial unit contends that they do not need insurance or refuse collection. In your opinion, should each unit be individually allowed to contest what they wish and do not wish to pay for?

All respondents answered no. *Director 1* voiced that such arrangement "*would make the management of the estate chaotic and unmanageable*". *Property Expert 3* said "*No, it's governed by leases which they have contracted to*". Followed by *Legal Expert 2* stating *"No, when users sign up to MUDs, they agree to the apportionments, they contract to that*".

<u>Part C</u>

Question 9. When the local authority do not own any common parts of a MUD. Do you think it is fair that one should pay both service charges and local property tax?

All respondents answered 'yes'. *Property Expert 2* simply put that "*LPT is associated with the fact that you have a roof over your head*". Whilst *Property Expert 3* expanded by saying "*any person who owns a property within MUD or not has to pay property tax, so I don't see why it would be different where service charges are payable*". *Property Expert 4* followed with the idea that service charges pay for the current and long term expenditure for your indigenous

development, whereas the LPT considers your immediate environment & the facilities therein (ie. Public facilities)

Question 10: Tenants who do not own the property in which they reside are therefore not members of the OMC. Do you think tenants are fairly represented by the OMC?

The general consensus from all respondents stated that tenants are not considered at all, however, nor should they be.

Director 1 thought that "*good landlords would champion the cause of their tenants and ensure that their concerns are brought to the attention of the management company*". Whilst *Director 2* voiced that "*there should be a conference or an annual day where all the directors can get together and share information. I would definitely pay to go along to that. This would give a representative view of tenant issues, and wider issues of the entire MUD community that could be considered, whilst control is still maintained and managed by directors of OMCs*"

Property Expert 1 acknowledged that people are looking to renting as a way of life, with tenancies lasting from three to five years. In such instance something will have to be done, this does not include direct OMC representation. Similarly, *Property Expert 2* agreed that there should be some sort of workshop provided to those with no voting rights held in advance of the AGM, and therefore their views are then brought forward to the AGM. Concurrent with *Property Expert 4* who suggested that "*as tenures change to longer term tenancies, it is likely tenants will seek better representation*".

Legal agent 2 stressed that "*The tenant's only interest is a right to live there, they have the protection from the PRTB which doesn't acknowledge owners".*

Question 11. Should the dispute resolution between members of the OMC be moved away from the courts to an online platform? (Albeit with a right of appealing to the courts)

All interviewees agreed that there was a need for a better arbitration system. *Property Expert 2* supported the idea suggesting that "*the arbitrator provides their guidance on this resolution online and aligns the respective fees*". Further appraised by property expert 3 that "*ADR is becoming increasingly popular and is a faster way to deal with issues. I believe this would be a positive step*".

Question 12: Some estates are less complex and require very little maintenance. One idea is an informal, co-ownership arrangement between the Local Authority and Residents who equally participate in the management common areas, without the need for an OMC to act as a medium. Do you think there is always a need for an OMC or would such arrangement suffice?

The answered to this question varied. Both directors agreed that if management companies can be avoided in any way, they should be. *Director 1* thought that "*cost wise, it would be a whole lot more beneficial to make those arrangements themselves without the formalities of a corporate management company*". *Director 2* expressed that in developments confined to houses, there is no requirement. Adding that the responsibility charged on BOD is onerous.

Property Expert 2 one agreed with the idea under particular circumstances, stating that "*I would be in favour of that if there was an authority going around inspecting compliancy*". *Property Expert 3* reported that there was always a need for an OMC in order to deal with legislative recourse.

Legal Agent 2 claimed that "*in certain developments, the common areas are purely a green area, that is nonsense, the local authority should be taking that, an OMC should not be necessary*".

Question 13: With regards to service charges in arrears, if the OMC does not issue court action within six years of the debt being due, the action is statute-barred. Effectively, it means that the property owner cannot be forced to pay the debt, when the six years has elapsed. Would you agree that service charges should be excluded from the Statute of Limitations?

Director 1 was not in favour of the extension, claiming to be more concerned the agent trusted with the collection of the services not acting within a reasonable amount of time to get a court order against a non-paying tenant. *Director 2* was neither concerned about lifting the extension because the necessary documentation would not be provided for sale of a unit unless the outstanding fees are paid.

All property experts thought the 6 year limitation should be lifted. Property expert 1 added however that any "*management company should be issuing proceedings against somebody on an ongoing basis to stop them being statute barred*".

Legal agent 2 was of a similar disposition to the directors stating that the OMC will refuse to produce a service charge receipt to a non-complaint payer. As such this will prevent the sale of the property.

Question 14: In considering the service charge collection process, would you be in favour of tenants having the right to pay their services charges directly to the OMC, which in turn is offset against their rent due to the landlord?

Only three were in favour of the idea. Concerns arose about the involvement of a third party as ultimately, the liability is between the owner and the management company

Question 15: Do you think that the MUD Act 2011 has accomplished what it was set out to do?

Director 1 reckoned that the intention of the act is both evident and laudable, whilst no real cases have come through the courts, but when this happens flaws will be "*brought to surface*". *Director 2* thought that there needs to be a better governing process as OMCs are not conducive to what they are supposed to be doing. Plus, it asks too much of residents, "*normal people*", to be au fait with the dos and dont's of cash flow management.

Property Expert 1 stated that "*in time, it will. I am amazed there hasn't been some kind of reform of it by now*". *Property Expert 2* was "*eighty percent in agreement that it has*". *Property Expert 3* added that the Act is "*toothless*". *Property Expert 4* said yes, in some respects.

Legal Agent 2 stated "*no, it needs to be developed*".

4.2.2 Survey Findings

Part A -

Question 1. Are you an Owner-Occupier, Landlord, or Tenant of the unit(s) within a Multi-Unit Development (MUD)?

	Owner-Occupier	Landlord	Tenants
Responses	81	16	5

Question 2. Do you have a residential or commercial interest in the Owners Management Company ('OMC')?

	Residential	Commercial
Responses	99	3

Question 3. Have you any experience in being actively involved as a director of an OMC?

	Yes	No	I am a member only
Responses	60	30	12

Question 4. Are you familiar with the Multi-Unit Development Act 2011?

	Yes	No
Responses	79	23

Question 5. Are you compliant in paying service charges annually?

	Yes, always	Most of the time
Responses	86	16

Question 6. If you are not always complaint, why not?

	Not satisfied with the service	Service charges are too expensive	Other
Responses	9	0	6

'*Other'* responses included:

- *Ongoing dispute over the apportionment of the charges between different unit types*
- *Lack of necessity to pay*
- *Charges should be higher but other owners refuse to pay more. As a result, our sinking fund is insufficient*
- *Have queried service charge this year*
- *Non-compliance with the lease with assignment of the service charge. I pay what calculation based on lease every year.*

Question 7. How much are the annual service charges?

	More than €3000	€2500 - €2999	€2000 - €2499	€1500 - €1999	€1000 - €1499	Less than €1000
Responses	3	3	14	29	34	13

Question 8. Are you satisfied with the maintenance of the common areas within the development?

	Yes, very satisfied	Satisfied for the most part	Not very satisfied	Very unsatisfied
Responses	21	49	26	6

Question 9. Are you aware of what the service charges within your development are spent on?

	Yes	Mostly	No
Responses	73	21	8

Question 10. How should service charges be apportioned in mixed-multi-unit developments?

	Square foot basis	Based on whether you own a residential or commercial premises	Weighted, dependent on a variety of factors	Other
Responses	21	10	60	6

Some 'Other' responses included:

- *Apportioned equally for each unit*
- *Each unit should pay the same amount as the services to the common areas are not based on the square foot basis or whether you are a penthouse or not. The computation of service charges in leases is developer and landlord favoured.*
- *Number of bedrooms*
- *Owner occupiers of apartments within apartment blocks should have to pay for maintenance of their blocks and not expect owners of apartments beneath duplexes or house owners to subsidise their fees.*
- *Fees should not be based on how many bedrooms are in each unit; it is totally unfair that a 2 bed unit occupied by a single person or couple, have to pay the same fee as a 2 bed unit that could accommodate up to 4 or 5 people.*
- *Square foot is logical but complicated: One-bed/ two-bed/ three-bed is kind of the same thing but simpler.*

Question 11. Has any part(s) of your estate been taken charge of by a local authority?

	Yes	No	I am unsure
Responses	21	81	-

Question 12. If answered 'No' the previous question - do you think it is fair that by living in a MUD, you pay both service charges and local property tax?

	Yes, it is fair	No, it is not fair
Responses	26	55

Question 13. With consideration to your Multi-Unit Development, would you agree with the following statement - "An OMC is a not for profit organisation"

	I agree	I somewhat agree	I do not agree	I am unsure
Responses	75	12	11	4

Question 14. 'Commercial units, by the very nature of their daily affairs, should be considered differently to residential units'. If a residential and commercial unit within a mixed MUD occupy an equal amount of floor space, how should the service charges be divided?

	The commercial unit should pay a higher percentage service charge than the residential unit	The residential unit should pay a higher percentage service charge than the commercial unit	Service charges should be equally and fairly apportioned between the commercial and residential unit	I am unsure
Responses	59	1	24	18

Question 15. Tenants who do not own the property in which they reside are therefore not members of the OMC. Do you think that tenants are fairly represented by the OMC?

	Yes, tenants are considered in all decisions made by the OMC	Tenants are considered most of the time when the OMC are making decisions	No, tenants are rarely considered in decisions made by the OMC
Responses	22	31	49

Question 16. Should the dispute resolution between members of the OMC be moved away from the Courts to an online platform? (Albeit with a right of appealing to the Courts)

	Yes, an online dispute/resolution process would be more efficient	Maybe	No, the process does not need altering	Other
Responses	45	47	5	5

Some 'Other' responses included:

- *There should be a regulator for OMCs and their affairs*
- *A faster and less expensive process than the court is needed. Perhaps involving credit rating bureaus is the way to go.*
- *Independent mediator should be assigned by the courts to review the case prior to proceeding to the courts and taking up valuable time and money.*

Question 17. Is an OMC pivotal in all Multi-Unit Developments?

	Yes, it is necessary in all MUDs	Yes, it is necessary in *most* MUDs	No, it could be substituted	No, it is not necessary at all
Responses	54	31	16	1

Question 18. Some estates are less complex and require very little maintenance. Would you be interested in the idea of the Local Authority and Residents forming an association to look after the common areas of your estate (eg. roadways, and bin collection), instead of a Management Company?

	Very interested	Somewhat interested	Such arrangement would only work in specific cases	No, that would not work
Responses	36	15	33	18

Question 19. Does the OMC have sufficient powers, or should their power be strengthened to exercise recovery of unpaid service charges?

	The current debt collection process is sufficient	The power's of the OMC should be enhanced	Other
Responses	18	79	4

Question 20. In circumstances where a residential landlord has failed to pay the management agent for property service charges on a rented property and this resulted in services been withdrawn by management agents - Do you think it would be helpful to allow the tenant pay the landlords service charges arrears directly to managing agents and set off rents due to landlord?

	Yes, it would improve compliance	No, it would complicate the debt collection process	I am unsure	Other
Responses	42	38	16	6

Some 'Other' responses included:

- *Service charge should be paid directly to the OMC, not the managing agent*
- *No, a tenant should not be liable to a rogue landlord*
- *Unfair to occupier. Service charges are extortion*
- *Yes, but a system needs to be set in place so that the landlord cannot punish the tenant for paying service charge and therefore receiving less rent money.*

Question 21. Do you believe that The MUD Act 2011 has accomplished what it was set out to do?

	Yes	Mostly	No	I am unsure
Responses	1	33	37	31

Survey Comments

There were 35 comments submitted by the survey respondents. A detailed list can be seen in *Appendix D*.

4.3 Analysis of findings

4.3.1 Survey and Interviews

Reasons for owners failing to pay service charges

It can be reasonably concluded from the research that the main reason in which owners fail to pay service charges is a lack of knowledge. The lack of knowledge relays back to not only an understanding deficit about the running of MUDs, but a lack of understanding as to the effect non-payment of service charges has on an estate. The reasons cited by interviewees detailed the 'delinquent buyer', 'delaying tactics' or 'long finger'. One interviewee stressed that where people are not contributing to the service charges, the services cannot be delivered due to such lack of funding, and thus, an unsatisfactory service. This is quite a pivotal point to note as 100% of people who were not compliant in paying service charges, denounced that it was due to the unsatisfactory service being provided.

The notion expressed by interviewees is that if owners knew what they were paying for then they may be more willing to pay for the service. This is concurrent with the survey results, as 89% of respondents who knew what their service charges were spent on subsequently were complaint in paying service charges. Furthermore, no persons failed to pay their service charges had they been 'very satisfied' with the service being provided. The total amount of respondents who answered 'very satisfied' amounted to 20%. It is interesting to note that there was no correlation found between the amount of service charges paid to the OMC and the quality of service received.

The powers' of the OMC

Where directors of the OMC are unsatisfied with the management of their estate, it ultimately comes down to the resources available. According to survey respondents, 86% of directors agreed that the OMC needs more power to strengthen the exercise of recovery of charges. In an estate where there is a persistent lack of compliance regarding payment of service charges – there are little powers outside of going and seeking a judgment in the district court. Even so, it was frequently reported by interviewees as very difficult to actually enforce said judgment. OMCs can have arrears building for years by individual unit holders, and are left waiting for extensive time periods before the owner decides to dispose, or the arrears reach such a level where high court action can be engaged.

Unpaid debts are treated as a contract debt, and so taking legal action in such instance is both timely and expensive. *Legal agent 2* had recalled one instance whereby the management company changed the locks on the apartment of a non-compliant apartment owner. An injunction was sought and the doors were subsequently unlocked. *Property expert 2* had suggested that the management company should be able to cut off electricity and gas to non-compliant apartment owners, on a unit-by-unit basis. It was deemed unfair on the obliging tenants who do pay, because of one delinquent debtor. The survey revealed that approximately 52% of respondents would be open to the idea of allowing the tenant to pay the landlord's service charges directly to OMC and offset it against rent due to landlord. This idea was posed in order to mitigate tenants experiencing withdrawn services, in situations where unit owners are in arrears for non-payment of service charges.

The responsibilities of the directors

It is generally believed that the responsibility charged on OMCs requires an onerous amount of action from the Board of Directors. One such member recalled that there are various pressures and abuses received by directors which can create a poor community environment. Another reporting that the responsibility of Directors who are caught up in compliance issues is unfair, petitioning that training should be provided, as the skillset of a BOD is too arbitrary.

In order to mitigate pressures on directors, the idea of integrating local councils to help with management was put forward to both survey and interview respondents. The survey findings revealed that in cases where a Local Authority had not taken charge of any common parts – only 23% were very satisfied with maintenance of common areas of their estate. Furthermore, despite being satisfied with the maintenance of their common areas - 82% of respondents were open to the idea of the local authorities and residents forming an association to manage the estate.

The idea of residents willing to form an association with the local authority, is thought to stem from the idea of getting value for money. As per the initial literature review of this research, it was argued by Deputy Niall Collins (2015) that people currently living in MUDs pay service charges and are obliged to pay local property tax as well. As such they are paying double for services, which he himself describes as "an anomaly" of the MUD Act. It was found that residents within MUDs believe it to be very unfair they should pay both charges. Of those who were very familiar with what the service charges within the estate are spent on, only 39%

thought it to be fair they should pay LPT too. Furthermore, where no part of their estate had been taken over by a local authority, 70% of respondents thought the notion of paying LPT to be unfair. If owners are both unhappy about paying LPT, and willing to oblige the presence of a LA within their estate, it would seem they are seeking better value for money.

Interviewees thought that in particular circumstances (such as 'typical' housing estates) the cost of providing an OMC and managing agent is probably not warranted. One agent acknowledged that whilst there is certainly not always a need for an OMC, developers generally don't want the local authority involved because then they can't sell on those common areas. The overall consensus is that if a management company can be avoided in any way, they should be.

Implementation of the Act

Of the survey respondents who were not service charge compliant, 36% of them believed their OMC to be a profit seeking organisation. *Director 1* cited that there is no personal monetary gain for a director of an OMC, they merely distribute the cost of running the state amongst the unit owners. Approximately 12% of directors disagreed to the notion of their OMC being a non-profit organisation. Meaning that at least 1 in 5 directors thought their own OMC to be profit-seeking.

Aside from service charges being too expensive, receiving an unsatisfactory maintenance service, or not possessing the actual monies, failure to pay service charges is treated as an information deficit. Explained by *Property Expert 2* who unveils that in respect of service charges being too expensive, people buying into MUDs are not made aware of the cost of service charges. Therefore, they do not budget for it and as a result, physically cannot afford it. It feeds back into regulatory standards, legislation both European and Irish, which obligates minimum standards within a development to be met and maintained. Ultimately, the costs of meeting health and safety standards within MUDs costs money, and if the government doesn't strengthen the hand of OMC, they will fold. The areas that they are managing, and the liabilities attached will fall to the county council. It could take five or fifteen years to fold, but it will happen, and the council will have to clean up the mess.

All interviewees had responded that the MUD Act has not entirely filled its purpose. Of the survey respondents, all affiliated with a MUD, 23% were not familiar with the MUD Act.

Furthermore, 0.9% of survey respondents who were familiar with the Act answered that the Act had not accomplished what it was set out to do.

The issue of statute barred

With regards to service charges in arrears, if the OMC does not issue court action within six years of the debt being due, the action is *statute-barred*. Effectively, it means that the property owner cannot be forced to pay the debt, when the six years has elapsed. The responses from interviewees varied on whether service charges should be excluded from the Statute of Limitations. Two interviewees understood that there was little necessity to lift the six year ban as any reliable management company should be issuing proceedings against somebody on an ongoing basis to stop them being statute barred. Although another scorned the idea that after six years the debts would effectively be discarded.

Legal agent 2 thought there was no need to lift the statute of limitations. Illustrating that if a unit holder within a MUD is in arrears to the OMC, and subsequently goes to sell their property, they must raise a MUD requisition to produce a service charge receipt for a valid sale. The OMC should in the first instance, refuse to issue the replies to the vending solicitor regarding requisitions. The receipt should be withheld by the OMC until provided with an undertaking from the unit holder to pay off the arrears arising from sale proceeds. *Legal agent 2* concludes that the managing agent should issue proceedings, even if they are not served or followed up. At the very least they are in situ, and it will only cost a couple of hundred euros to issue them.

Protection for commercial unit holders in Mixed MUDs.

In relation to the different classes with mixed MUDs, results of the survey recorded that 63% of directors believe that the commercial unit holder should pay a higher percentage service charge than the residential components. This is based on the notion that commercial units, by the very nature of their daily affairs should be considered differently to residential units Cannon (2012). The survey results revealed that only 24% thought service charges should be based *solely* on a square foot measure, all of whom where familiar with the Act. This is contrasting to all eight interviewees, where no person thought it should be based on floor measurements *only*.

Those interviewed on the subject matter, thought that if the apportionment was not deemed to be fair and equitable, commercial users should be allowed to use the MUD Act to alter their service charge arrangements. *Property expert 2* cited that if a commercial unit protests that the principle of fairness and equity has not been applied, they should be allowed to use The Act. According to the author's findings this is not the case.

All interviewees agreed that service charges are not intended as an 'A la Carte' list, where unit holders can pick and choose as to how they would like to participate and by how much. This would make the management of the estate chaotic. However, most interviewees were unaware that individual units would not be protected under The Act in terms of proportion of service charges paid.

Both legal persons interviewed had expressed concerns in allowing commercial users to use the MUD Act as it currently stands– it would 'open a can of worms'. Further acknowledging that the purpose of the Act was to protect homeowners, not to give an advantage to commercial users. It was generally accepted by such legal persons that if a unit is involved in a mixed-use scheme they *should* be allowed to rely on the MUD Act, and such provision should be incorporated for such cases.

4.4 Findings and Analysis of Case Study

4.4.1 Court Case

Refer to Appendix B for further case context.

Interpretation of Act

This research has presented a number of difficulties that exists between the relationship of residential and commercial unit holders within mixed MUDs. The Multi-Unit Development Act 2011 was initially established to protect residential unit holders only. This passage can be referred back to the initial literature review of this research which looks to the Interpretation Act 2005. Applied in cases where the provision concerned is 'ambiguous or obscure which, on a literal interpretation, would fail to reflect the plain intention' (Byrne, 2006) of the Oireachtas. The Interpretation Act 2005 assists in understanding the 'literal rule'.

The MUD Act stipulates that in circumstances of mixed MUDs, the Act is considered to be complied with where costs and expenses attributable to the 'different classes' (The MUD Act 2011 *s.2 (4a*)) are of a fair and equitable apportionment. Since the enactment of The MUD Act, little has been done to integrate these two independent 'classes', as referred to in *s.2(4a). A*s revealed in the case of *GHME*, it is not within the scope of the MUD Act to deal with the individual units within each of the classes contesting their service charge contribution. The commercial unit holder cannot take advantage of opening a commercial contract based purely on a technicality that there's an apartment block also within the development.

With regards to mixed MUDs, the *GHME* case revealed that on a correct reading of the Act, the concern lies in a fair balance between the residential and commercial class of a unit. The Act does not stipulate one commercial unit against another, to the extent of their distinct and individual nature or *type* of business trade. It is concluded that if the legislator intended to distinguish between various sub-classes of commercial units, such instance would have been expressly implied. This is somewhat contrasting to the interview findings in '*section 4.2.1'* of this research. *Property Expert 1* claimed that "*if it is not fair and equitable, well then they should be allowed to use The Act*". Card (2011) previously advised that 'if there is a gap in the legislation the remedy is new legislation'. As pointed out by *Legal Agent 2*, the MUD Act needs to be drafted with a provision to cover individual commercial units within a mixed estate. Further acknowledged by *Property Expert 2* who believes that the calculation of service charges should

not be contained within the Act, but based on professional guidance, as requirements are constantly evolving.

Role of receiver and liquidator

As explained in the literature review, the state of the property market and construction industry at the Act's introductory date, meant that few of the measures had actually been tested or utilised due to other economic priorities (Byrne, 2012). In the case of *GHME,* the owner of one commercial unit within a mixed-MUD contended that their service charge apportionment was too high and refused to pay their allocated interest. In 2016, when a receiver was appointed on the unit, there was a significant amount of arrears owed to the owners' management company. The argument lies in whether the receiver should be responsible for the debts accruing at the date of the receiver's appointment.

To take guidance from a secondary case *Lee Towers MC v. Lance Investment Ltd.* (2018), it was ordered that the OMC is an unsecured creditor. When the court issues a remedial order to the applicant it means the court is satisfied that *some* contractual obligation has not been met. However, the Act does not present the bearer of a remedial order with priority status against other creditors. It was denounced by the judge in this case, that as the Act does not expressly imply that a person with a remedial order is therefore granted priority status. The intention of the Oireachtas is that the management company should rank *pari passu* with other unsecured creditors. The judge in this case is satisfied that an obligation of contractual order was not met, and orders proceedings to be treated as priority, as must a portion of the costs of the application for leave to bring the proceedings.

As exhibited in this case, there is little consideration of the OMC, and the debts owed to them. It is often the case that the mortgage holder, or mortgagee in possession would have first charge on the sale of an asset. Applying such logic to the case of *GHME,* the OMC have little chance of receiving monies owed to them if they are considered *pari passu* with other unsecured debtors.

However, as the case of a liquidator and receiver differs, the OMC in the case of *GHME* could refuse to issue MUD requisition on sale of the asset until the receiver agrees to undertake the arrears due on sale of the asset. As advised by both *Legal Agent 1 and 2*, when a MUD

requisition is raised, a service charge receipt must be produced for the sale to complete. The OMC can ensure their debts are reimbursed by restricting the sale of the property, and withholding the receipt until an agreement has been made. The problem with such enforcement mechanism is that it is not written in statute, and therefore, not a reliable fall-back.

Contract Law Vs MUD Act 2011

The commercial unit holder cannot take advantage of opening a commercial contract based purely on a technicality that there's an apartment block also within the development. It would therefore fall under contract law. The Act is considered not to be complied with in instances where the apportionment of the commercial class as against the residential class is not fair and equitable. The Act does *not* deal with individual units contesting their service charge apportionment, this is a matter for contract law.

MUD Act: Prospective or Retrospective

Interpreting statute with regards a retrospective effect would generally be regarded as '*unjust'* (*Hamilton v. Hamilton,* 1982). Further explained in the case of *Lee Towers MC v. Lance Investment Ltd.* (2018), whereby any ambiguity surrounding the matter of prospective or retrospective, it ought to be construed as prospective *only*, a new burden should not be unfairly imposed in respect of past actions.

If the notion of prospectivity is applied to the MUD Act, it would imply that only multi-unit developments established after 2011 would be bound by the legislative grounding. Looking at both case of GHME and *Lee Towers MC v. Lance Investment Ltd.* (2018), we can apply the prospective principle to gauge a reasonable assumption.

Lee Towers MC v. Lance Investment Ltd*:* The original developer of the MUD had agreed to complete the development to a standard set out under a development agreement in 2001. *Section 7* of The Act states that the transfer of common areas and reversions does not relieve a person from any existing obligations, nor does it create new ones. The obligation to transfer the common areas existed before the liquidator took charge of the assets, such obligation is fixed under The Act, and required to be carried out at some point. The liquidator was ordered to complete the development, under specific performance, enforceable in damages only and complete the transfer of common areas and reversions. Therefore, the Act is retrospective to some extent.

Grain House Management Exchange: The owner of the commercial unit who was in considerable arrears to the management company was taken over by a receiver in October, 2016. Applying the logic used in *Lee Towers MC v. Lance Investment Ltd.* (2018), the commercial unit had failed to meet it's contractual obligation but even when the receiver took over, they were *not* bound by the arrears that had built since their appointment. Despite Judge Fennelly *(Lee Towers MC v. Lance Investment Ltd.* 2018), warning that new burdens should not be imposed in respect of past actions, the obligation is still owed to the OMC. It seems unfair that in cases involving receivers, such obligations is not required to be carried out. Even if such point means on sale of asset, the OMC *should* be considered as a priority creditor.

As discussed in *Chapter 3* the case law follows the doctrine of precedent. This essentially means that common law abides to the following logic; The decisions made in earlier cases are generalised to constrain the decision of later courts. Therefore, when the case of *GHME* is heard in the High Court, the judge should consider the judgement issued in *Lee Towers MC v. Lance (2018).*

Members of the OMC

Section 24 of the MUD Act 2011 details that those who are eligible, may make an application to the court for dispute resolution in a series of specified cases. Such persons who may apply under Section 24, are listed in Section 25. Neither a receiver of liquidator is detailed under Section 25. In the case of *GHME*, it has since been appealed to the high court that the receiver, had not in the first instance sought 'permission of the court' to take action under MUD Act 2011. They must seek permission as they are not considered to be a member of the OMC under S.25, therefore, not entitled to take action in the first instance,

Chapter Five: Conclusion and Recommendations

5.1 Conclusions

The intention of this thesis was evaluate the performance of the MUD Act 2011 to date, and assess the future prospects for multi-unit developments. In doing so this research has examined the legislation surrounding the enactment of the Multi-Unit Development Act 2011. By evaluating and interpreting the relevant statute, it has highlighted deficiencies that exist surrounding the regulation and maintenance of MUDs. As such these deficiencies equate to the anomalies of the Act, which can be more easily accepted by conceding to the notion that legislation contains inconsistencies as law is an essentially ambiguous concept. The anomalies found have been illustrated in the following conclusions:

i. The prevalence of information deficit amongst members of MUDs is substantial. 100% of survey respondents who were not compliant in paying service charges, denounced that it was due to the unsatisfactory service being provided. This is quite a pivotal point to note as where people are not contributing to the service charges, the services therefore cannot be delivered, and thus, an unsatisfactory service. This epitomises the notion of the understanding deficit amongst unit holders. If members knew what they were paying for, they would subsequently be more willing to pay for the service. As 89% of survey respondents who knew what their service charges were spent on subsequently were complaint in paying service charges. Moreover, no persons failed to pay their service charges had they been *'very satisfied'* with the service being provided. This relays back to the concept that being a complaint service charge payer equates to a satisfactory service

ii. Members of MUDs are seeking change when it comes to dealing with management companies and agents. It was revealed that where possible, management companies should be avoided in any way possible. Particularly cases described as '*typical housing estates*' containing a number of houses and some common green area. Even the survey respondents who, despite being satisfied with the maintenance of their common areas - 82% were open to the idea of the local authorities and residents forming an association to manage the estate. Furthermore, in pursuit of this co-management scheme, it is believed to be a welcomed suggestion as in cases where a Local Authority had not taken charge of any common parts – only 23% were very satisfied with maintenance of common areas of their estate. From this, it can be concluded that management companies are not maintaining a sufficient level of control.

iii. The lack of *clear* regulatory standards to which management companies are to abide by has raised doubts over the ethics contained within management companies. The uncertainty raised refers back to findings within this research revealing that at least 1 in 5 directors surveyed thought their own OMC to be profit-seeking. This research deals with varying stakeholders of MUDs, all with conflicting and contrasting opinions. The variance of opinions is an anomaly in itself. The legislation should be written in a way that is transparent. Although all law is a grey matter, the disparity between responses highlights a lack of understanding. In MUDs where the ordinary lay person may be a director on an official company board, this legislation needs or be either white or black.

iv. With regards to mixed-MUDs, the Act does not protect each individual unit holder, despite some interviewees demonstrating otherwise. The concern lies in a fair balance between the residential and commercial class of a unit. The Act does not stipulate one commercial unit against another, to the extent of their distinct and individual nature or *type* of business trade. It is concluded that if the legislator intended to distinguish between various sub-classes of commercial units, such instance would have been expressly implied.

v. Unlike other legislation, the MUD Act is considered retrospective to some extent. The case study revealed in *Chapter 4* found that although it is generally considered unfair that a new burden should not be unfairly imposed in respect of past actions. If the notion of prospectivity is applied to the MUD Act, it would imply that *only* MUDs established after 2011 would be bound by the legislative grounding. This is untrue, as firstly, all developers of MUDs built prior to 2011 were required to transfer common areas to the OMC by April 1st 2011. Secondly, obligations such as transfer of common parts, or payment of service charges are fixed in that under The Act, and required to be carried out at some point.

vi. The findings of the case study also concluded that it is the intention of the Oireachtas that the management company should rank *pari passu* with other unsecured creditors. OMCs have little chance of receiving monies owed to them if they are considered *pari passu* with other unsecured creditors.

vii. Tenures in rental accommodation are changing, with tenants staying for as long as 3-5 years. Tenants should be given the opportunity to voice their opinion at biannual meetings, where members and tenants can liaise about ongoing issues. A short newsletter should also be circulated every quarter, outlining who the OMC are, what they do, and housekeeping issues; top level information to allow residents gain some familiarity about their MUD. Within it, significant expenses should be exhibited to all residents and owners within the development. It

will help to encourage payment of service charges if people understand what they are paying for. However, tenants should not ever be represented by the OMC. because that is for *owners*.

viii. In cases where a receiver has been appointed and at the date of appointment, the previous owner was in considerable arrears to the management company, the receiver is *not* required to amend such arrears. This will leave OMCs in very vulnerable positions.

ix. It can be concluded that from the perspective of those who deal with MUDs on a day-to-day basis, the Act has not accomplished what is was set out to do. All interviewees and similarly, 0.9% of survey respondents had answered that the MUD Act has not entirely filled its purpose.

5.2 Recommendations

i. It was previously suggested that governments should intervene in situations where OMCs are struggling financially. This research suggests that the tenants within MUDs should be permitted to pay the landlord's service charges directly to the OMC and offset it against rent due to landlord. This idea attempts to mitigate tenants experiencing withdrawn services, in situations where unit owners are in arrears for non-payment of service charges.

ii. In certain estates, there should be no requirement for an OMC, where possible the local authority should manage common parts. Otherwise, a co-management between residents and local authorities should manage the estate. Where possible, a management company should be avoided.

iii. Training should be provided to directors of OMCs, as the skillset of a BOD is too arbitrary.

iv. Despite previous recommendations, there is little necessity to lift the six-year ban contained under the statute of limitations, as any reliable management company should be issuing proceedings against somebody on an ongoing basis to stop them being statute barred.

v. A provision should be legislated for that in instances where a unit holder within a MUD is in arrears to the OMC, and subsequently goes to sell their property, they must raise a MUD requisition to produce a service charge receipt for a valid sale. The OMC should be allowed withhold such receipt until it is agreed that proceeds from the sale of the unit will pay off arrears due to the management company. This will strengthen the hand of the OMC.

vi. OMCs should not be considered *pari passu* with other unsecured creditors, they should be considered a priority creditor.

vii. Every unit purchaser should sign a separate document accepting their understanding of their service charge responsibilities. Possibly as part of the legal conveyancing pack.

viii. The ageing stock and legacy defects issues of current MUDs means it is imperative that OMCs make an adequate annual provision for the sinking fund in their budget. A failure to do so will leave many estates with inadequate monies to tackle forthcoming major capital expenditure.

ix. The requisition should be raised *pre*-contract to allow vendors' and purchasers' solicitors to identify any problems at an early stage that may exist with ownerships titles. The requisition seeks evidence that the OMC is registered as the owner of the common areas and reversionary interests, as the rights and obligations are created through leasehold contracts.

x. Where possible, receivers should be forced to honour the arrears standing to the OMC. Where they are not, it leaves the OMC in a very vulnerable financial position.

5.3 Further Research

It would be useful to carry out further investigation to the cases of MUDs that involve receivers and liquidators. With cases only now coming forward from the 2007-2009 economic crash, provisions need to be enacted to deal with such take-overs. It would be useful to monitor the financial position of OMCs in such scenario. What will happen to OMCs who were once owed money by significant unit occupiers, which subsequently are taken over by receivers.

Bibliography

Ahern, B. (2006) *Know your Rights: Labour Party Guide to Management Companies and Taking in Charge.* Ireland: Labour Party. Available at: https://www.labour.ie/download/pdf/estate_managment_charges_july06.pdf. Accessed on May 22nd.

Anon. *a* (2015) *Multi-Unit Development Act: New rules for management companies.* Ireland: Sinnott Solicitors. Available at: https://sinnott.ie/201-multi-unit-development-mud-act-newrules-for-management-companies/. Last Accessed 14th May 2018.

Anon. *b* (2011) *Multi-Unit Development Act 2011*. Ireland: Carley & Connellan Solicitors. Available at: http://www.carleyandconnellan.ie/wp-content/uploads/2017/06/MUD-Act2011.pdf. Accessed 22nd May 2018.

Anon. *c* (2015) The Zen Guide to the Multi-Unit Development Act, 2011. Ireland: Terry Gorry & Solicitors. Available at: https://businessandlegal.ie/tag/multi-unit-developments-act-2011 Accessed: 2nd May 2018.

Anon. *d* (2015) Glossary of debt terms. Ireland: Citizen Information. Available at: http://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/glossary_of_deb t_terms.html. Accessed: May 11th 2018.

Apaydin, E. (2011) *The problematic structure of Management of CO-Owned Properties in Turkish Law and Pursuance of Solutions*. UK: Cambridge Scholars Publishing.

Appleby, P. (2006) *ODCE Paper on the Governance of Property Management Companies. Ireland: ODCE*

Australian Taxation Office (2018) *How we interpret and apply the law*. Australia: Australian Government. Available at https://www.ato.gov.au/Business/Privately-owned-and-wealthygroups/What-you-should-know/The-right-services/How-we-interpret-and-apply-the-law/ Last Accessed 2nd May 2018.

Bacik, I. *Seanad Debates* 203: 48-49. 1 June 2010. Available at: https://www.oireachtas.ie/en/debates/debate/seanad/2010-06-01/5/. Last Accessed 22nd May 2018.

Barker, D. (2007) *Law Made Simple*. (11th ed) UK: Routledge

Berg, B (2004) Qualitative Research Methods for The Social Sciences. US: Pearson

Blandy, S. (2011) A Review of Multi-Owned Housing. Law, Power and Practice. *Journal of International Housing Policy*. 11(3): 327-329.

Bohan and McCarthy (2013) Interpretation Act 2005. (4th ed) In *Capital Acquisitions Tax.* Ireland: Bloomsberry Professional

Brayda, W (2014) So you Really Want to Interview Me?: Navigating "Sensitive" Qualitative Research Interviewing. *International Journal of Qualitative Methods.* 13(1): 318-334.

Brennan, G. (2015) Requisition on Title. In G Brennan & N Casey (7th ed) in *Conveyancing.* Ireland: Oxford University Press, 556-563.

Brian Lenihan, Seanad Debates. *Management Companies Housing Developments: Motion*. 8th May 2008. Available at: https://www.oireachtas.ie/en/debates/debate/dail/2008-05-08/8/?highlight%5B0%5D=practitioners&highlight%5B1%5D=bill&highlight%5B2%5D=bi ll&highlight%5B3%5D=legal&highlight%5B4%5D=bill&highlight%5B5%5D=bill Accessed 20th May 2018.

Bryman, A (2016) *Social Research Methods*. UK: Oxford University Press.

Burn, E. (2011) *Modern Law of Real Property*. (18th edn) UK: Oxford University Press.

Butler, N. (2015) *Apartment Law: Apartment Owners Rights*. Ireland: Neil Butler & Co

Solicitors.

Byrne, R. (2006) *Annual Review of Irish Law 2005.* 25th Volume. Ireland: Thomson Round Hall.

Byrne, R. (2012) *Annual Review of Irish Law 2011*. 25th Volume. Ireland: Thomson Reuters.

Cannon, R. (2012) *Property Legislation Annotated 2009-2011*. Ireland: Round Hall

Card, R. (2003) *Real Estate Management Law*. Sixth Edn. UK: Lexis Nexis

Card, R. (2011) *Real Estate Management Law*. UK: Oxford University Press

Catherine Murphy. *Seanad Debates* 896; 3. 13 November 2015.

Cavaye, A.L.M. (1996) Case study research: a multi-faceted research approach for IS. *Information systems journal. 6*(3): 227-242

Christudason, A. (2004) Common property in strata titled developments in Singapore. Property Management, 22(1), pp. 14-28.

Clare Daly. *Seanad Debates* 896; 3. 13 November 2015.

Clarke, D. (2002) The Enactment of Commonhold - Problems, Principles and Perspectives. *Journal of property and conveyancing law*. Jul –Aug: 349-386.

Clúid Housing (2017) *Request for Tenders for the Provision of A research report on Owners' Management Companies for Clúid Housing in collaboration with The Housing Agency*. Ireland: Clúid Housing

Commonhold and Leasehold Reform Act 2002 (s. 37). The National Archives (legislation.gov.uk).

Conveyancing Committee (2007) *Submission of the Conveyancing Committee of the Law Society of Ireland to the Law Reform Commission on the Consultation Paper on Multi-Unit Developments.* Ireland: Law Society of Ireland.

Corbin, L. (2007) The Role of Statutory Interpretation in Law-Making Through the Courts. *Journal of Legal Date.* 19(2):1-3.

Coupland, A. (1997) *Reclaiming the City: Mixed Use Development.* UK : E&FN SPON

Creswell, J.W (1994) *Research Design: Qualitative & Quantitative Approaches*. London: SAGE Publications.

De Londras, F. (2011) *Principles of Irish Property Law*. 2nd Edition. Ireland: Clarus Press.

Department for Communities and Local Government (2017) *Banning Letting Fees paid by Tenants*. UK: Department for Communities and Local Government. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data
/file/656211/Govt_response_to_consultation_on_banning_letting_fees.pdf. Accessed 24th May 2018.

Department of Justice and Law reform (2011) *Multi-unit Development Act 2011: An Explanatory Memorandum*. Ireland: CPA Ireland.

Divilly, C. (2013) Audit of Owners' Management Companies. *Journal of Accountancy*. (4): 34-35.

Dermot Aheren. Seanad Debates. *Multi- Unit Developmens Bill 2009: Second Stage.* 10th May 2010. Available at: https://www.oireachtas.ie/ga/debates/debate/dail/2010-06-10/8/. Accessed:
15th May 2018.

Dessie Ellis. Seanad Debates 896; 3. 13 November 2015.

Dodd, D (2008) *Statutory Interpretation in Ireland*. Ireland: Tottel Publishing.

Donlan, S. (2006) A Flood of Light?: Comments on the Interpretation Act 2005. *Journal of Judicial Studies Institute Journa*l. 6 (1): 92- 139.

Dublin Inner City Partnership (2009) *The Changing Face of Dublin's Inner City.* Ireland: Trutz Haas Social and Economic Consultants.

Dupuis, A. (2016) *Multi-Owned Housing: Law, Power and Practice*. New York: Routeledge.

Easthope, H. (2016) Principal agent problems in multi-unit developments: The impact of developer actions on the on-ongoing management of strata titled properties. *Journal of Environment and Planning.* 48(9): 1829-1847

English, D. (2015*) Private Members' Business, Multi-Unit Developments (Amendment) Bill 2015, Second Stage*. Ireland: Department of Justice and Equality. Available at: http://www.justice.ie/en/JELR/Pages/SP15000585 Accessed: 18th May 2018.

Everton-Moore, K. (2006) "The law of strata title in Australia: a jurisdictional stocktake". *Australian Property Law Journal*. Vol. 13, pp. 1-35.

Feigin, J. (1991) *A case for case study*. Chapel Hill: The University of North Carolina Press.

Fitzgerald, L (1999) Case studies as a research tool. *Journal of Quality in Health Care*. 8:75.

Flanagan, T Seanad Debates. *Management Companies Housing Developments: Motion*. 8th May 2008. Available at: https://www.oireachtas.ie/en/debates/debate/dail/200805-

08/8/?highlight%5B0%5D=practitioners&highlight%5B1%5D=bill&highlight%5B2%5D=bi ll&highlight%5B3%5D=legal&highlight%5B4%5D=bill&highlight%5B5%5D=bill Accessed 20th May 2018

Fraenkel, J.R. & Wallen, N.E. (1990) How to Design & Evaluate Research in Education. New York, NY: McGraw-Hill.

Gall, J. (2007) Educational Research: An introduction. *8th Edition*. US: Pearson/Allyn & Bacon.

Galletta, A (2013) *Mastering the Semi-Structured Interview and Beyond: From research design to analysis and publication*. US: NYU Press.

Gibbons, N. (2013 b) Management agreements in multi-unit housing developments. *International Journal of Law in the Built Environment*. 5(1): 40-52.

Gibbons, N. (2013*a*) Management agreements in multi-unit housing developments. *International Journal of Law in the Built Environment. 5*(3): 217-221.
Available at:
https://ucd.idm.oclc.org/login?url=https://search.proquest.com/docview/1430566669?account id=14507. Last Accessed 18th May 2018.

Gillham, B (2008) *Developing a Questionnaire: Real world research*. UK: A&C Black
Given, L (2008). The SAGE Encyclopedia of Qualitative Research Methods. Australia: SAGE Publications.

Gogan, R. (2008) *The essential guide to apartment living in Ireland*. Ireland: M1 Publications.

Golafshani, N. (2003) Understanding reliability and validity in qualitative research. *Journal of qualitative report*. 8(4); 597-606.

Goulding, C. (2005) Grounded Theory, Ethnography and Phenomenology: A Comparative Analysis of Three Qualitative Strategies For Marketing Research, *European Journal of Marketing.* 39(3/4): 294-308.

Gray, K. and Gray, S. (2009) *Elements of Land Law.* 5th edn. New York: Oxford University Press. Available at: http://www.cpaireland.ie/docs/default-source/Technical-Resources/LawRegulation/mud-act-2011-explanatory-memo.pdf?sfvrsn=2. Last Accessed: 30th April 2018.

Gratton, C (2010) *Research Methods for Sports Studies*. UK: Taylor & Francis

Hamilton v. Hamilton (1982) IR 466.

Hanlon, E. (2006) *Successful Apartment Living*. Ireland: Dublin City Council.

Hennink, M (2010) Qualitative Research Methods. Emory University, USA: Sage Publications

Hogan, J., Dolan, P., Donnelly, P. (2009) 'Introduction', in J. Hogan, P. Dolan and P. Donnelly (eds) Approaches to Qualitative Research: Theory and Its Practical Application. pp. 1-18. Cork: Oak Tree Press.

Horty, J (2011) Rules and Reasons in the Theory of Precedent. *Journal of Legal Theory*. 17(1): 1-33. UK: Cambridge University Press.

Jamshed, S (2014) Qualitative research method-interviewing and observation. Journal of Medicine, Institute of Health. 5(4): 87–88. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4194943/. Accessed 6th July 2018.

Keane C (2015) Irish public finances through the financial crisis. *Fiscal Studies*. 36 (4):475–497.

Kitchin R (2014) The new ruins of Ireland? Unfinished estates in the post-Celtic Tiger era. *Journal of Urban and Regional Research*. 38(3): 1069 – 1080

Labour Party (2005) Labour Party Motion on Housing Developments. Ireland: Labour Party. Available at: https://www.labour.ie/download/pdf/estate_managment_charges_july06.pdf. Accessed: 3rd May 2018.

Law Reform Commission, (2000) *Statutory Drafting and Interpretation: Plain Language and the Law* :61 – 2000. pp. 70-75. Ireland: Law Reform Commission

Law Reform Commission (2006) *Consultation Paper: Multi-Unit Developments*. Ireland: Law Reform Commission.

Law Reform Commission (2008) *Report for Multi- Unit Developments*. Ireland: Law Reform Commission

Law Reform Commission (2011) Report on limitation if actions: Statute of Limitations. Ireland: Law Reform Commission. Available at: http://www.lawreform.ie/news/report-onlimitation-of-actions-statute-of-limitations.746.html. Accessed May 20th 2018.

Law Society of Ireland (2014) *Application of Multi- Unit Developments Act 2011 to conventional housing, both existing and new start-ups.* Ireland: Law Society of Ireland. Available at: https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Application-ofMulti-Unit-Developments-Act-2011-to-conventional-housing-both-existing-and-new-startups/#.WwUvitMvxok. Accessed: 22nd May 2018.

Law Society of Ireland (2015) *Precedent pre-contract enquiries for multi-unit developments.* Ireland: Law Society of Ireland

Lee Towers Management Company Limited v Lance Investments Limited (2018) IEHC 444

LSI (2011) *Effect of the Multi-Unit Developments Act 2011 on existing developments*. Ireland: Irish Law Society

Lynch D (2010) *When The Luck Of The Irish Ran Out.* New York: Macmillan

Marshall, C (2006). *Designing Qualitative Research.* 4th Edn. Thousand Islands, CA: Sage Publications.

McIntosh, M (2015) Situating and Constructing Diversity in Semi-Structured Interviews. *Journal of Global Qualitative Nursing Research*. 2(1): 1-12.

Multi-Unit Development Act 2011 (*c.1*). Ireland: Irish Statute Book.

National Consumer Agency (2006) *Management Fees and Services levied on owners of Property in Multi- Unit Dwellings.* Pp. 22. Ireland: National Consumer Agency.

Niall Collins. *Seanad Debates* 896; 3. 13 November 2015.

Norris M (2014) Property-led urban, town and rural regeneration in Ireland: Positive and perverse outcomes in different spatial and socio-economic contexts. *Journal of European Planning Studies.* 22(9): 1841-1861.

ODCE (2008) *Management Companies: A Property Owner's Guide to Company Law.* Ireland: ODCE. Available at http://www.odce.ie/Portals/0/EasyDNNNewsDocuments/18/Summary__Booklet_Final-1712-08.pdf. Accessed 11th May 2018.

ODCE (2010) *Membership of a Management Company*. Ireland: ODCE. Available at: http://www.odce.ie/Portals/0/Documents/Media%20and%20Publications/Publications/Other %20Guidance/Chap%2010.pdf. Accessed 23rd May 2018.

ODCE (2012) *Company Law Handbook on Residential Property Owners; Management Companies*. Ireland: ODCE. Available at: http://www.odce.ie/Portals/0/Handbook_Management_Companies_2012.pdf. Accessed 20th May 2018.

Olivia Mitchell, Seanad Debates. *Management Companies Housing Developments: Motion*.
8th May 2008. Available at: https://www.oireachtas.ie/en/debates/debate/dail/2008-05-08/8/?highlight%5B0%5D=practitioners&highlight%5B1%5D=bill&highlight%5B2%5D=bi ll&highlight%5B3%5D=legal&highlight%5B4%5D=bill&highlight%5B5%5D=bill. Accessed 20th May 2018

Phil Hogan, Seanad Debates. *Management Companies Housing Developments: Motion*. 8th May 2008. Available at: https://www.oireachtas.ie/en/debates/debate/dail/2008-05-08/8/?highlight%5B0%5D=practitioners&highlight%5B1%5D=bill&highlight%5B2%5D=bi ll&highlight%5B3%5D=legal&highlight%5B4%5D=bill&highlight%5B5%5D=bill. Accessed 20th May 2018

Ploeger, H. and Groetelaers, D. (2014) Managing Multi-Owned, Mixed-Use Developments in the Netherlands: The Opinion of Professional Managing Agents. *International Journal of Law in the Built Environment*. 6(3); 271-285.

Rabbitte, P (2006) *Know your Rights: Labour Party Guide to Management Companies and Taking in Charge*. Ireland: Labour Party. Available at: https://www.labour.ie/download/pdf/estate_managment_charges_july06.pdf. Accessed on May 22nd.

Saunders, B (2015) Anonymising interview data: challenges and compromise in practice. *Journal of Qualitative Research*. 15(5); 616-632.

Sandberg, H. (2003) "Three-dimensional partition and registration of subsurface space". *Journal of Israel Law Review*. Vol. 37, pp. 119-167.

Scannell, B. (2016) *Credit Management: Judgment Process for Collection of Debts*. Ireland: Institute of Directors in Ireland.

SCSI (2012) *A Consumer Guide to Apartment Ownership Under the Multi-Unit Developments (MUD) Act 2011*. Ireland: RICS. Available at: https://www.scsi.ie/documents/get_lob?id=386&field=file. Accessed: 30th April 2018.

SCSI (2018) *Submission to Review Group on the Administration of Civil Justice*. Ireland: SCSI. Available at: https://www.scsi.ie/documents/get_lob?id=1397&field=file. Accessed 25th May 2018.

Sherry, C. (2010) "Long-term management contracts and developer abuse in New South Wales", in Blandy, S., Dupuis, A. and Dixon, J. (Eds), Multi-owned Housing: Law, Power and Practice. UK: Ashgate.

Sherry, C. (2014) Land of the free and home of the brave? The implications of United States homeowner association law for Australian strata and community title. *Journal of Australian Property Law*. 23(2): 94.

Sirr, L. (2010) *Apartment Living and the Multi-Unit Developments Bill 2009*. Ireland: Dublin Institute of Technology.

Strahonja, V. (2006) Model-based validation and verification of anomalies in legislation. *Journal of information and organizational science*s. 30(2):295-303.

Tight, M (2017) *Understanding Case Study Research: Small scale research with meaning*. UK: Sage.

Tong, A (2007) Consolidated Criteria for Reporting Qualitative Research: a 32-item checklist for interviews and focus groups. International Journal for Quality in Health Care. 19(6):349-357.

Tracy, S (2013) *Qualitative Research Methods: Collecting evidence, crafting analysis, communicating impact*. UK: Blackwell Publishing.

Turner, D. W. (2010) Qualitative Interview Design: A Practical Guide for Novice Investigators. *Journal of The Qualitative Report*. 15(3); 754-760. Available at: https://nsuworks.nova.edu/tqr/vol15/iss3/19. Accessed: 6th July 2018.

Van Der Burg, W. (2016) The Dynamics of Law and Morality: A Pluralist Account of Legal Interactionism. Rotterdam: Routledge.

Van Der Merwe, C. (2015) *European Condominium Law*. UK: Cambridge University Press

Van Engers and Glassée (2001) *Facilitating the Legislation Process Using a Shared Conceptual Model*. Netherlands: Netherland Tax Authorities.

Walters, M. (2000) Institutional Economics and Property Strata Title: A survey and case study. *Journal of Property Research*. 17(3); 221-240.

Williams B (2007) *SCS housing study: Urban sprawl and market fragmentation in the greater Dublin area*. Ireland: The Society of Chartered Surveyors.

Williams B (2013) The Role of Property Tax Incentives in Urban Regeneration and Property Market Failure in Dublin. *Journal of Property Tax Assessment and Administration*. 9 (2)

Yin, R. K. (2003) Case study research: Design and methods (3rd ed.). Thousand Oaks, CA: Sage.

Zucker, D (2009) How to do Case Study Research. University of Massachusetts: Scholarworks. Available at: https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1001&context=nursing_faculty_pubs;How Accessed: 26th June 2018