



Institute of Revenues
Rating and Valuation

Belfast City Council

Report on the
Penny Rate Product

Pat Doherty IRRV CPFA

David Magor OBE IRRV

Contents

Introduction	4
Recommendations	5
Section One Terms of Reference	8
1.0 Introduction	8
1.1 Objectives of the study.....	8
1.2 Timescale.....	8
1.3 The Consultants	8
Section Two Calculation of the Penny Rate Product	10
2.1 Introduction	10
2.3 Impact of the incorrect calculation.....	11
2.4 LPSA responsibility for the Penny Rate Product.....	11
2.5 Developing the calculation of the Estimated PRP	12
2.6 The forecasting model.....	12
2.7 Conclusions.....	14
Section Three The Rates Regulations (Northern Ireland) 2007	15
3.1 The Rates Regulations (Northern Ireland) 2007	15
3.2 Changes to the regulations	15
Section Four Liaison Arrangements between BCC and LPSA	17
4.1 Maximisation of Income	17
4.2 Improving the arrangements	17
4.3 Costs.....	18
4.4 Conclusions.....	18
Section Five The Unoccupied Property Rate	19
5.1 Unoccupied Properties - A source of income.....	19
5.2 The Number of Unoccupied Properties.....	19
5.3 Estimate of potential income	20
5.4 Minister’s announcement	21
Section Six Cost of Collection	22
6.1 Introduction	22

6.2	Calculation of the Cost of Collection	22
6.3	Cost of Collection apportioned to BCC	23
6.4	Cost of Collection based on Apportionment of Properties	23
6.5	Comparison of Apportionments.....	25
Section Seven Data Protection		27
7.1	The issue.....	27
7.2	Responsibility to provide information	27
7.3	The basis for processing of data	27
7.4	The fair processing of data.....	28
7.5	Lawful processing	28
7.6	Transparency of processing.....	29
7.7	The Information Commissioner	29
7.8	Conclusion	29
Section Eight Conclusions.....		30

Introduction

1. This report was commissioned because of the need for the Belfast City Council to forecast the impact of the movement in the tax base and ensure its income is maximised in order to ensure proper financial management and to meet the growing ambitions of the City Council to meet the growing demands of the local electorate.
2. As a result of the growing awareness of the importance of the rate income to the City Council there is a concern at the inaccuracy of the estimated Penny Rate Product (PRP) as notified in advance of the financial year. This inaccuracy can result in a higher than necessary rate poundage being set or alternatively reducing the amount of money available to finance spending plans; and
3. This report undertakes a review of matters that impact on the rate income of the City Council as set out in the Terms of Reference in Section One.
4. The report is structured in to the following sections and is based on the Terms of Reference provided by the Belfast City Council

Recommendations - Summarises the recommendation contained in sections two to seven.

Section One – Sets out the Terms of Reference

Section Two – Sets out the issues relating to the calculation of the estimated penny rate product and recommends a way forward.

Section Three – Reviews the current regulations and makes recommendations for changes.

Section Four – Looks at the liaison arrangements between the Land and Property Services Agency and Belfast City Council and makes recommendations for improving the liaison.

Section Five – Looks at the potential income that may accrue to Belfast City Council if the rating of empty property were to be introduced.

Section Six – Looks at the cost of collection borne by Belfast City Council and makes recommendations for change that could benefit the City Council

Section Seven – Looks at the issues surrounding data protection and the exchange of data between Belfast City Council and the Land and Property Services Agency.

Recommendations

The following conclusions and recommendations are contained in sections two to seven of the report but are summarised here for ease of access and in the order in which they appear in the report. The rationale for the recommendations is provided in the relevant sections: -

Section 2 - Calculation of the Penny Rate product

The liaison between the City Council and the LPSA is improving and has been driven, largely, by the City Council's desire to have a greater understanding of the implications of changes to its rate base and how this impacts on the City Council's financial position.

The senior officers in the LPSA have indicated their willingness to be involved in a more constructive relationship with the City Council and it is our recommendation that this relationship should be developed on a more formal basis and incorporated in to a service level agreement so that both parties have a clear understanding of each other's responsibilities, needs, and expectations.

It is recommended that the following be included in the SLA and that a programme of work be developed to systematically address the key issues raised in this report:

1. The City Council and the LPSA agree a programme of work to undertake the detailed analysis outlined in paragraph 2.6 of the report;
2. BCC work closely with the LPSA to agree a programme of work to ensure that the estimating model provides them with confidence in the estimated PRP;
3. A detailed analysis of the communication process between BCC and LPSA be undertaken to ensure the timeliness of communications for providing and updating information to the valuation list;
4. Agreed timetables for providing BCC with the estimated and the actual PRP (see section 3);
5. BCC and LPSA agree a detailed analysis and a review of the losses on collection (see section 3).
6. BCC and LPSA agree a detailed analysis and a review of the cost of collection (see section 6);

Section 3 - The Rates Regulations (Northern Ireland) 2007

It is recommended that BCC lobby for the following changes to the regulations:

1. The regulations should be amended to include a specific requirement on the LPSA to provide local authorities with an estimated penny rate product as the present regulations do not provide for an estimate to be made only for the District Councils to provide the Department with the amounts to be raised by way of rates.
2. The regulations should be amended to ensure that the LPSA has a duty to undertake revised calculations during the financial year and to notify local authorities of any major variations to the estimated penny

- rate product, whether greater or lesser than the estimate, that are likely to occur.
3. The regulations should provide for a more timely notification of the final out-turn figure for the actual penny rate product than is currently the case. We would recommend a similar period to that in which local authorities are required to finalise their accounts i.e. by the 30th June following the end of the financial year.
 4. The basis for the distribution of the cost of collection we believe is flawed for the following reasons -
 - a. Schedule 1, paragraph 4 (1) (a) states that the “total cost of collection for any district shall be the proper proportion of the total cost of collection for that year for the whole of Northern Ireland” but no definition is given as to what constitutes “total cost of collection.” The City Council is expected to bear costs over which it has no control nor does it have any control over the efficiency and effectiveness of the collection process.
 - b. The “proper proportion” is defined in relation to NAV / Capital Value, which we believe is unreasonable as the total NAV / Capital Value has little to do with the cost of collection, which we believe is more closely aligned to the number of hereditaments in the valuation list.
 5. The wording defining “loss on collection” we believe is inadequate and gives carte blanche to the LPSA to write off balances for any reason. The items that can be treated as losses should be clearly defined together with the criteria for write off so that the City Council be assured that amounts are being written off correctly. As part of the notification process, local authorities should be provided with a detailed breakdown of losses.
 6. The treatment of irrecoverable debts should be transparent particularly as arrears have risen considerably over the past three years and this will invariably impact on the amount of debt to be written off in the future, which will, in turn, ultimately impact on the penny rate product. There may be a case for local authorities being regularly informed of the likely level of irrecoverable amounts, particularly if it is likely to be excessive.

Section 4 - Liaison arrangements between BCC and LPSA

In relation to the transfer of data the minimum change at the present time should be to supply LPSA with the names of owners and occupiers.

The other issues concerning additional building information should continue to be discussed by the parties and BCC should lobby for a change in the planning law to require developers to supply developer information in electronic format, where available.

BCC should lobby for statutory provisions for the exchange of data to be included in the legislation following the review of public administration.

Section 5 - The Unoccupied Property Rate

It is recommended that BCC support the implementation of unoccupied property rating in respect of domestic properties for the reasons set out in the report.

Section 6 - Cost of Collection

It is recommended that the City Council

1. Approaches the LPSA with a request for a detailed breakdown of the total cost of collection, and
2. Makes representations to the Minister to have the Rates Regulations (Northern Ireland) 2007 amended so that the apportionment of the gross cost of collection is based on the number of rateable hereditaments as reflected in the valuation lists at the 31st March of each financial year, which will result in reduced costs of some £231,000 to the City Council.

Section 7 - Data Protection

The Information Commissioner has stated that he will be placing less emphasis on narrow administrative law issues that **have** negligible data protection benefit for individuals and if that opinion is put in the context of BCC providing information about names to the LPSA to expedite rating assessments being issued - a service in which the BCC has a legitimate interest - then it appears to us that taken together with the powers contained in regulation 57 of the Rates Order 1977 and also by providing transparency to the data subject - there is no barrier to the processing of name data.

We would recommend that BCC take independent legal advice in relation to this issue.

Section One Terms of Reference

1.0 Introduction

Belfast City Council (BCC) appointed the Institute of Revenues Rating and Valuation (IRRV) to undertake a scoping study in relation to the maximisation of rate income following dissatisfaction with the way in which the calculation of the Penny Rate Product (PRP) was being undertaken by the Land and Property Services Agency (LPSA) and which has resulted in large subsequent year adjustments to the rate income received by the City Council. This disrupts the financial planning process, which is a critical element of local government finance.

This report follows on from the earlier work undertaken by the IRRV

1.1 Objectives of the study

The objective is to produce a report that has considered the following areas –

1. The calculation of the Penny Rate Product

Review the existing methodology and develop recommendations for an improved methodology.

2. The Regulations

Undertake a review of the regulations.

3. Inclusion of Properties in the Valuation List

Review Liaison arrangements between BCC and LPSA.

4. The Unoccupied Property Rate

Undertake a feasibility study to determine the potential income from the levy of an unoccupied rate on domestic hereditaments

5. The Cost of Collection

Undertake a review of the cost of collection and comment on the proportion borne by BCC

6. Data Protection

Undertake an investigation in to the perceived barriers of sharing information to ensure improved accuracy of the outcomes.

1.2 Timescale

The scoping report is to be completed by 30th November 2007 (subsequently delayed in agreement with the City Council)

1.3 The Consultants

The scoping study was undertaken on behalf of the IRRV by: -

David Magor, OBE, IRRV,

David is the Chief Executive of the Institute of Revenues Rating and Valuation, prior to which he was Director of Housing and Revenues at Oxford City Council.

David has represented the Institute over the years on a great many joint working parties and has acted as technical advisor to the government, to the DSS, the DWP and the DETR. He is also a standing LGA advisor. Recently, David worked with the Montenegrin government on taxation matters to add to his long track record in working internationally in this field.

He has been involved in the reform agenda in Northern Ireland for some five years working with the NI Assembly, the Department for Finance and Personnel in Northern Ireland and the former Rate Collection Agency.

A regular public speaker and respected trainer, David has the unusual ability to communicate complex legal points in plain English and establishes a quick rapport with all audiences. David has been instrumental in implementing plans to secure the Institute's commercial health, and has led the identification of new products and services that deliver real value to institute members and to Council customers.

Pat Doherty, IPFA, IRRV

Pat is a former Senior Local Government Officer now providing consultancy services in financial management, revenues, benefits and training to the public sector. He is a member of the Council of the Institute of Revenues Rating and Valuation and was the President of the Institute in 1996/97.

He has extensive experience of local government finance, financial management and resource management and has undertaken both advisory and consultancy work, in relation to local taxation and benefits, for local authorities in the UK and internationally including for the City of Shanghai, the City of Toronto, The Government of Montenegro and the Government of Syria. For the past five years he has been involved in the NI reform agenda working with the Northern Ireland Assembly, the Department for Finance and Personnel in Northern Ireland and the former Rate Collection Agency.

Pat is a recognised expert on property taxation and benefits. He is a regular speaker on local government finance, local taxation, human rights and benefits issues at conferences both nationally and internationally and is a regular contributor to local government journals including *Insight* and is author of a number of books and publications on local taxation including the two electronic legislative databases published by the IRRV on Council Tax and on Housing Benefit. He is the editor/author of *Council Tax Law and Practice* published by the IRRV.

Section Two Calculation of the Penny Rate Product

2.1 Introduction

The calculation of the Penny Rate Product (PRP) is undertaken by the Land and Property Services Agency (LPSA), which notifies the Northern Ireland local authorities of the calculation. There are two calculations, the estimated PRP, which enables local authorities to set the rate poundage in line with their budgetary requirements and the actual PRP, which reflects the annual outturn and determines the final distribution of the income.

This calculation of the estimated PRP is undertaken by the LPSA although they maintain that it is not their responsibility and local authorities are free to undertake their own calculation. The LPSA has a statutory duty to calculate the actual PRP.

The estimated PRP is calculated in October of each, the latest calculation being in October 2006 in respect of the financial year 2007/08. Two calculations are prepared – one for the District Councils and one for General Grant purposes for use by the Local Government Division (LGD).

The Land and Property Services Agency state that it takes them some weeks to calculate the estimated PRP depending on the availability of IT data. Notwithstanding this statement the LPSA does have a Service Level Agreement with the LGD to provide the estimate by 1st November of each year.

The LPSA maintain that it is a matter for the Councils to determine when the estimated PRP will be required and that they will provide an estimate based on the wishes of the Councils. The timing of the calculation has been discussed with representatives of the local authorities and it has been agreed that the calculation will be based on figures at the end of November in respect of the financial year 2008/09.

It is our view that whilst the estimate continues to be undertaken using the present methodology the later it is notified to the City Council the more, all things being equal, it is likely to be accurate. No doubt, though, the City Council would appreciate an earlier indication of what the PRP might be for the purpose of the initial stages of budget preparation.

The actual PRP is calculated and notified to the Northern Ireland Councils some six months after the close of the financial year.

2.2 *Basis of the Estimated PRP*

We were informed by the LPSA that the data for estimates is based on: -

1. The rateable valuations report produced by the LPSA at 30th September (30th November for 2008/09) The report is a summary of the Net Annual Values (NAV's) of the individual properties, and
2. The Domestic Capital Value as shown in the list at 30th September;
3. Losses on collection are based on the actuals for previous years.

In our view the “estimated” PRP is not truly an estimate – it is simply a figure based on the valuation list at a point in time and takes no account of potential changes to the tax base in the year for which the “estimate” is provided. We

believe this is a major shortfalling and is a significant barrier in the financial planning process.

Economically, Northern Ireland is a rapidly expanding area and there is a considerable growth in both domestic and non-domestic development, which is not taken in to account in the “estimate”. In addition, the calculation takes no account of possible reductions in rateable value that will result from the appeals process. This is evidenced by a number of large reductions that have occurred in the current financial year and which are retrospective. Such reductions will have a negative impact on the final outcome of the PRP and this is exacerbated by the fact that there is no procedure in place to ensure that local authorities have prior warning of such changes.

2.3 Impact of the incorrect calculation

The way in which the “estimate” is undertaken has resulted in large variances from the actual Penny Rate Product calculation. The level of inaccuracy of the calculation is evidenced by the following table –

	Domestic EPP	BCC District Rate £	Non- Domestic EPP	Non- Domestic Rate £	Final Payment £
2001/02	1,061,390	131.57	2,090,820	19.94	2,179,193
2002/03	1,074,710	138.71	2,117,740	21.03	2,193,547
2003/04	1,402,020	146.16	2,844,350	17.15	1,121,183
2004/05	1,418,990	154.85	2,868,020	18.17	5,287,440
2005/06	1,447,370	166.15	2,980,950	19.49	3,937,347
2006/07	1,460,330	175.43	3,241,430	20.58	-633,595

It is clear that had the estimated PRP prior to 2006 / 07 been higher and more in line with the final payment then the rate poundage could have been lower or the City Council could have determined a higher level of expenditure on the basis of the same rate poundage. As a result of the way in which the estimated PRP is formulated the elected members were denied this political choice.

2.4 LPSA responsibility for the Penny Rate Product

There appears to be no specific responsibility on the Department (through the LPSA) to provide local authorities with an estimated penny rate product. The regulations (Regulation 3 (5)) only specify that the actual Penny Rate Product has to be calculated and District Councils notified of under or overpayments.

The variances from the estimated to the actual penny rate product over the last few years, including a significant negative variance being notified to BCC for 2006 / 07 - some six months after the end of the financial year, clearly makes a nonsense of financial planning so far as the City Council is

concerned and it is our view that the LPSA should have a statutory responsibility for:

- Undertaking the calculation of the estimated penny rate product, and
- Notifying the City Council of any significant changes that will impact on the penny rate product during the course of the financial year.

Had the LPSA had a statutory responsibility for reviewing the estimate and keeping the District Councils informed of possible changes during the financial year the potential for such high variances would have been recognised and the City Council would have had an early indication - certainly long before six months after the beginning of the following financial year - that was likely to be shortfall. A timely notification would have enabled the City Council to adjust spending in line with adjusted revenue forecasts. (See Section 3 of the report)

2.5 Developing the calculation of the Estimated PRP

It is clear from the table in paragraph 2.3 that a better methodology for calculation of the estimated PRP should be agreed if the estimate is to more closely match the final out-turn.

An estimate should be precisely that and should take as its starting point the actual values shown in the valuation list and should then take account of potential increases in rateable value, particularly new build, during the year of estimate and should also identify potential reductions by way of demolitions, hereditaments taken out of rating and reductions in value. In addition account has to be taken of estimated losses on collection including allowances and voids.

Following a meeting between the City Council's Chief Executive and the Chief Executive of the LPSA it has been agreed that the LPSA will undertake some forecasting so that major developments like IKEA and Victoria Square would be incorporated in to the estimate.

This is a step in the right direction but does not go far enough and it is our view that the LPSA's electronic estimating model (see paragraph 2.6) should be developed so that all factors can be taken in to account. The model could then be used for the final out-turn calculation and for undertaking "what if" calculations.

With the excellent liaison arrangements that are in place between the City Council's Building Control and the LPSA there is no reason why this cannot be expanded to include the City Council providing the LPSA with details of major developments / demolitions that they consider will take place in the year that is subject to an estimate. (We are aware that demolitions do not have to be notified to the City Council but there is a considerable awareness of what is happening within the City area. Clearly we are not planning experts but this does appear to us to be a significant anomaly in the planning regulations)

To make full use of an estimating model closer cooperation with LPSA will be required so as to obtain a full understanding of the make up of the rateable / capital value base.

2.6 The forecasting model

Following discussions with the LPSA it is clear that the problems the present method of calculating the estimated PRP creates for Belfast City Council (and

other District Councils) are recognised and senior LPSA staff are prepared to work closely with the Council to improve the present situation.

During the course of our discussions with LPSA we were informed that LPSA did indeed employ an electronic estimating model for the PRP and that the model *“can cater for any situation that can arise in the estimating process. Furthermore councils are free to use or amend the estimate in any way they wish and the letter issued by the LPs advises them of this. If they want the estimate remodelled to meet a given situation we will happily do and on a same day basis. In fact we can turnaround in less than 30 minutes”* We were not given the opportunity to assess the effectiveness of the model.

In order to ensure that any model created for the accurate forecasting of the Penny Rate Product (PRP) is rigorous and fit for purpose it would be desirable to carry out a detailed analysis of the elements that make up the calculation of the actual PRP calculation, and

The most effective approach would be to concentrate on the actual outturn of the financial year 2006/07 and to apply the results to the financial year 2007/08. For the analysis to be effective there must be a root and branch study of each element of the calculation. This would be based upon the actual figures in the calculation and the origination of those figures.

The significant elements are:-

- The effective value of the tax base
- The initial debit drawn from the tax base
- The losses on collection
- The cost of collection
- The value of rate rebates awarded

The verification of these elements must include reconciliation to the original source of the data. For example the rateable value provided from the source valuation records must be the value used for the initial debit and any changes to that value must be in accord with the movement in the valuation list. These values must include those in respect of properties owned by the Housing Executive.

The losses on collection should be provable to the accounting records and the original source of the loss. The cost of collection must be verifiable to properly audited sources. The value of the rebates should reconcile to the returns used for subsidy purposes and the prime accounting records. This value should then be used to calculate the appropriate percentage.

Alongside this, an analysis of those elements that can have an impact on the validity of an estimated PRP should be carried out:

1. The quality and timeliness of the notifications from Belfast CC to the LPSA including developing a system of notifications in respect of demolished properties;
2. The timeliness with which the valuation list is updated;

2.7 Conclusions

The liaison between the City Council and the LPSA is improving and has been driven, largely, by the City Council's desire to have a greater understanding of the implications of changes to its rate base and how this impacts on the City Council's financial position.

1. The senior officers in the LPSA have indicated their willingness to be involved in a more constructive relationship with the City Council and it is our recommendation that this relationship should be developed on a more formal basis and incorporated in to a service level agreement so that both parties have a clear understanding of each other's responsibilities, needs, and expectations.
2. It is recommended that the following be included in the SLA and that a programme of work be developed to systematically address the key issues raised in this report:
3. The City Council and the LPSA agree a programme of work to undertake the detailed analysis outlined in paragraph 2.6 above;
4. BCC work closely with the LPSA to agree a programme of work to ensure that the estimating model provides them with confidence in the estimated PRP;
5. A detailed analysis of the communication process between BCC and LPSA be undertaken to ensure the timeliness of communications for providing and updating information to the valuation list;
6. Agreed timetables for providing BCC with the estimated and the actual PRP (see section 3);
7. BCC and LPSA agree a detailed analysis and a review of the losses on collection (see section 3).
8. BCC and LPSA agree a detailed analysis and a review of the cost of collection (see section 6);

Section Three The Rates Regulations (Northern Ireland) 2007

3.1 The Rates Regulations (Northern Ireland) 2007

From 1st April 2007 the basis of valuation in respect of dwelling houses, private garages and private storage premises (“domestic properties”) changed from rental to capital value. The capital value of all domestic properties is included in the capital value list. Non-domestic properties however remain subject to rental values and are included in the NAV list. As a result of these changes the rules in relation to the calculation of the penny rate product are set out in the Rates Regulations (Northern Ireland) 2007.

The purpose of these Regulations in the context of the new capital values is to provide for—

- (a) The periods within which district rates must be made and notified to the Department of Finance and Personnel in any financial year;
- (b) The payments which are to be made to district councils by that Department on account of district rates; and
- (c) The manner in which the products of the new capital value rates and the product of NAV rates are to be ascertained.

These are, in effect, a re-write of earlier regulations and it appears that during the review of the rating legislation there was no review of elements of these regulations other than those that required changing as a result of the move from rental values to capital values for domestic properties.

3.2 Changes to the regulations

It is our recommendation that the Belfast City Council should lobby the Minister to undertake a fundamental review of the regulations, and particularly in relation to the following areas -

1. The regulations should be amended to include a specific requirement on the LPSA to provide local authorities with an estimated penny rate product as the present regulations do not provide for an estimate to be made only for the District Councils to provide the Department with the amounts to be raised by way of rates.
2. The regulations should be amended to ensure that the LPSA has a duty to undertake revised calculations during the financial year and to notify local authorities of any major variations to the estimated penny rate product, whether greater or lesser than the estimate, that are likely to occur.
3. The regulations should provide for a more timely notification of the final out-turn figure for the actual penny rate product than is currently the case. We would recommend a similar period to that in which local authorities are required to finalise their accounts i.e. by the 30th June following the end of the financial year.

4. The basis for the distribution of the cost of collection we believe is flawed for the following reasons -
 - (a) Schedule 1, paragraph 4 (1) (a) states that the “total cost of collection for any district shall be the proper proportion of the total cost of collection for that year for the whole of Northern Ireland” but no definition is given as to what constitutes “total cost of collection.” In addition, the City Council is expected to bear costs over which it has no control nor does it have any control over the efficiency and effectiveness of the collection process.
 - (b) The “proper proportion” is defined in relation to NAV / Capital Value, which we believe is unreasonable as the total NAV / Capital Value has little to do with the cost of collection, which we believe is more closely aligned to the number of hereditaments in the valuation list.
5. The wording defining “loss on collection” we believe is inadequate and gives carte blanche to the LPSA to write off balances for any reason. The items that can be treated as losses should be clearly defined together with the criteria for write off so that the City Council can be assured that amounts are being written off correctly. As part of the notification process, local authorities should be provided with a detailed breakdown of losses.

Whilst the wording allows freedom to write off debts we were informed by the LPSA that there is Departmental Policy that effectively dictates what can be written off and when. This policy is not shared with the District Councils although they have (or should have) a direct interest in it.

The treatment of irrecoverable debts should be transparent particularly as the level of write off has been relatively low in recent years compared to the gross debit and the level of arrears, which has risen considerably over the past three years.

The level of arrears will impact, ultimately, on the amount of debt to be written off in the future, which will, in turn, impact on the penny rate product. There may be a case for local authorities being informed regularly of the likely level of irrecoverable amounts, particularly if they are likely to increase in future years.

Section Four Liaison Arrangements between BCC and LPSA

4.1 Maximisation of Income

In order to maximise rate income it is essential that all properties be brought in to the rating list in a timely and efficient manner. This depends to a great extent on the liaison arrangements between BCC's Building Control Department and the LPSA.

Because of the major changes undertaken by the LPSA over the past eighteen months they have not always been in a position to bring properties in to rating in a timely manner, however, steps were taken late in 2006 / 07 to rectify the situation but it is worth noting that the number of outstanding properties to be valued was lower in the Belfast City Council area than in other local authority areas. It is recognised by both parties that this is due in part to the liaison arrangements in place between BCC Building Control and LPSA.

Following discussion with LPSA and the Head of Building Control and members of his staff it is clear that the arrangements in place for notifying the LPSA of new and altered buildings are excellent.

The present arrangements are the subject of an agreement between BCC and LPSA for which the City Council receives payment and are not described in this report as the arrangements are well known to both parties and have been the subject of recent discussion.

We are aware that the LPSA is currently considering the business case for introducing similar liaison arrangements throughout Northern Ireland within the timeframe of the proposed LPA.

4.2 Improving the arrangements

The fact is that the Building Control Department has an extensive database and holds records of all properties built since 1860 and the level of information provided by BCC to LPSA could be improved by -

- (a) An improved system for the electronic transfer of information - this has been considered but there is a cost to the development that would have to be borne by LPSA.
- (b) Providing LPSA with the names of the owners / occupiers, however, there are perceived problems with this because of issues surrounding data protection. It is our view that this can be easily resolved (see section seven).
- (c) BCC staff could undertake more work on behalf of LPSA in terms of measurement and quality of building information to enable the LPSA surveyors to undertake a "desk top valuation." This would also provide the advantage of the owner / occupier receiving fewer visits from officials collecting the same or similar information.
- (d) BCC currently provide LPSA with sketches of new buildings and the provision of information could be improved if developers were required to provide drawings. The present legislation requires developers to provide "all relevant" information but is not explicit in the provision of additional drawings. If the regulations were changed to allow for the

provision of all information in an electronic format, where available, this again would obviate the need for rating surveyors to inspect and measure the building. A requirement for provision in electronic format could be achieved by an amendment to sections 57 and 59 of the Rates Order.

- (e) In terms of providing information for the purposes of estimating the penny rate product it is our view from discussions with the BCC that they are capable of providing a forecast of -
 - (i) New buildings, and
 - (ii) The types of build for the year ahead.
- (f) Consideration should be given to amending the legislative framework to ensure correlation between the Rates Order and the Building Control Order in the area of data collection in order to facilitate the rates process. Given the timing of the new Building Control Order currently going through the Assembly this would require political intervention.

4.3 Costs

Clearly, further development of the existing arrangements will incur increased costs for BCC, which not unreasonably they would expect to be reimbursed by LPSA. However, LPSA is already incurring an annual cost of some £200,000 in supporting the present arrangements.

So far as LPSA is concerned the further development of the liaison arrangements would incur additional costs which would have to be agreed with BCC. In addition, LPSA would have to consider its financial position were similar arrangements to be rolled out across Northern Ireland as the costs would be high and it is unlikely, in any event, that all local authorities would agree to participate.

When the review of public administration is completed and the number of local authorities is reduced then serious consideration should be given to putting liaison arrangements in place for all the new local authorities. In fact, the arrangements should be incorporated in the legislation by providing a statutory authority for the disclosure of data - which would then remove any doubts about the unlawful processing of data - together with the financial arrangements defined.

4.4 Conclusions

If cost is an issue for LPSA then the minimum change at the present time should be to supply LPSA with the names of owners and occupiers but the other issues should continue to be discussed by the parties and BCC should lobby for a change in the law to require developers to supply drawings and other developer information in an electronic format, where available.

In addition, the question of statutory liaison should be included in the legislation following the review of public administration.

Section Five The Unoccupied Property Rate

5.1 Unoccupied Properties - A source of income

The rating of empty non-domestic hereditaments was introduced in April 2004, which has increased the rate income available to local authorities; however, no similar power exists in relation to domestic hereditaments even though from the local authority perspective the owners of such properties still receive the benefits of the infrastructure services provided by Belfast City Council.

In responding to the Executive Review of the Domestic Rating Reform the City Council supported the introduction of an unoccupied property rate -

“It is the view of the City Council, in order to maximise rate income to local authorities in Northern Ireland, that the rating of vacant homes should be implemented. The City Council does not have up to date figures on the level of voids written off but in 2005/06 it was some £25m and believes in relation to the domestic sector it could be in excess of £14m across Northern Ireland.

Whilst it accepts, subject to the type of scheme introduced, that this would not be the amount collectable it does believe that the amount would be reasonably substantial and worthwhile.

It is the view of the City Council that not only would the implementation of rating of vacant homes increase income to local authorities but the increased taxation would encourage owners to find ways to make better use of the empty properties by, either using it themselves, attracting new tenants (perhaps by reducing rents) or redeveloping the site for a new use.”

5.2 The Number of Unoccupied Properties

We have been informed by the LPSA that there are currently some 42,413 properties shown as vacant in their records across Northern Ireland of which some 9,000 are in Belfast i.e. some 21% of all vacant properties.

This figure is supported by a study undertaken by Ulster University based on 2005/06 statistics, which shows that 20.3% of all vacant properties are in Belfast. The UU study showed that there were some 48,362 vacant properties of which 9,795 were attributed to Belfast.

In 2006 / 07 some £18m was written off as void of which £3.7m is attributable to Belfast. Even allowing for the regional rate this clearly represents a significant loss of potential income to the City Council.

We believe these figures should be used with some caution since -

- Whilst these are what are shown as vacant in the LPSA records there may be instances where the property is in fact occupied. In addition such data can only ever represent the position at a specific point in time particularly in a situation where there is a dynamic property market.
- Some owners of properties take advantage of the Discount available under Article 21, which prevents them from claiming relief when a vacancy occurs, this may result in the overall vacancy level being under represented - perhaps to a significant degree. However, as they

are not considered to be vacant for rating purposes and indeed are currently subject to rating, they would not represent a potential addition to the tax base given the introduction of vacant rating.

- The figure provided by the LPSA does not reflect the state of repair of vacant properties - it is simply a statement of the number of properties vacant at a point in time. Due to the lack of information on the condition of dwellings, it would be reasonable to assume that a number of vacant properties may be considered as incapable of occupation or derelict.

This is important because if a system similar to the GB system were introduced then an exemption allowance would be included in the regulations for these properties.

In addition, it should be noted that if an unoccupied property rate were in place then all of this potential income would not be receivable because, if any system introduced followed the GB model, there would be a “free period” of six months, or three months if the NI non-domestic model were followed, before liability arose.

Also a number of properties would be subject to an exemption, for example, those properties where occupation is prohibited by law from being occupied.

Under the GB legislation the amount payable under council tax for what in effect is the equivalent of an unoccupied property rate is 50%. There is no reason why Northern Ireland should follow this percentage. There could be, for example, different percentages for different types of property. These percentages could range from 0 up to 100%. (It should be noted that the GB non domestic legislation is changing to encourage owners to bring vacant properties back in to occupation)

5.3 Estimate of potential income

In reality unless a full analysis of vacant properties is undertaken including visiting a sample of properties in order to determine the accuracy of the data and the number of properties that might be subject to an exemption it is impossible to provide an accurate estimate of the potential income. In addition the LPSA were unable to provide us with any estimates of average periods of vacancy.

However, taking a broad brush approach and based on our experience the minimum income that we believe could be achieved to the advantage of Belfast City Council is -

	£m
(i) Gross potential income	3.7
(ii) Less 25% - free period (3 months)	<u>0.925</u>
	2.775
(iii) Less Exemptions (25%)	<u>0.925</u>
(iv) Income assuming a 100% charge	<u>£1.85m</u>
(v) Income assuming a 50% charge	<u>£0.925m</u>

We would see the above net income as the minimum amount that could become available through the Regional Rate and the District Rate as a result

of the introduction of an unoccupied property rate and we would recommend that BCC support the implementation of unoccupied property rating in respect of domestic properties.

5.4 Minister's announcement

Since commencing the drafting of this report the Minister announced, on 27th November 2007, the results of the consultation process on the Review of Domestic Rating and in relation to the rating of vacant properties he has announced that -

“A popular measure during the consultation exercise, and with the Committee for Finance and Personnel, was the rating of vacant domestic property — not least because of the potential net revenue gain it could yield. Taking account of exemptions, and assuming that the DFP agency responsible for rate collection — Land and Property Services — is fully equipped and resourced to implement the policy, the revenue gain could be in the region of £15 million to £20 million per annum. However, the policy is more than a device for raising revenue; it could assist with wider policy objectives, such as housing affordability. That was the subject of the recent Semple Report, which is being taken forward by the Department for Social Development. Given its clear benefits, I propose to introduce the rating of vacant domestic property at a rate of 100% at the earliest possible opportunity, which will most likely be April 2009.”

This announcement reflects directly the evidence submitted by BCC to the Review Process.

Section Six Cost of Collection

6.1 Introduction

The cost of collecting rates incurred by the LPSA is apportioned between the local authorities in Northern Ireland on the basis set out in paragraph 6.2 below. Clearly it is not unreasonable that as a result of the apportionment a proportion of the total cost is borne by BCC.

It is important, however, that BCC is confident it is bearing a reasonable proportion of the total costs as compared to other local authorities in Northern Ireland, particularly as the City Council has no control over the total cost incurred by LPSA or the efficiency and effectiveness of the billing, collection and enforcement process – which has a direct impact on the level of cost.

The LPSA calculates the cost of collection for each local authority in Northern Ireland in accordance with the Rates Regulations (Northern Ireland). This is determined by assessing the net cost of levying rates during the year including such proportion as the Department considers appropriate in relation to costs incurred including expenses incurred by way of superannuation and of compensation for loss of office or loss of diminution of emoluments, but not including any allowances made to owners under Articles 20 or 21;

6.2 Calculation of the Cost of Collection

The cost of collection determined by the Department is then apportioned in accordance with the Rates Regulations (Northern Ireland) 2007, which state that: -

4. *-(1) When in accordance with paragraph 4(1) of Schedule 1, the cost of collection for any district has been ascertained, the cost of collection of NAV rates for the district shall be determined in accordance with subparagraphs (2) and (3).*
- (2) The cost of collection of NAV rates for a district for any year shall be the proper proportion of the total cost of collection for that year of rates for the district.*
- (3) The proper proportion of the total cost of collection for any year is the proportion which the aggregate rateable NAV of hereditaments or any parts of any hereditaments in the NAV list in the district bears to the rateable NAV of hereditaments or any parts of any hereditaments in the NAV list and the total rateable] capital value of hereditaments or any parts of any hereditaments in the capital value list of the district.*

6.3 Cost of Collection apportioned to BCC

The following three tables show the cost of collection that has been apportioned, through the Regional Rate and the District Rate, to ratepayers in the Belfast City Council area over the past three years.

Table 1 - Overall				
	Total cost of collection	Belfast Apportionment	%age	Increase
2004/05	£10,234,272 ¹	£2,495,617 ²	24.38%	
2005/06	£10,413,797 ¹	£2,512,236 ²	24.12%	£16,619
2006/07	£11,251,000 ¹	£2,685,313 ²	23.87%	£173,077

Table 2 - Domestic				
	Total cost of collection	Belfast Apportionment	%age	Increase
2004/05	£5,221,719 ¹	£774,413 ²	14.83%	
2005/06	£5,262,432 ¹	£775,079 ²	14.84%	£666.00
2006/07	£5,680,976	£834,318 ²	14.69%	£59,239

Table 3 - Non Domestic				
	Total cost of collection	Belfast Apportionment	%age	Increase
2004/05	£5,012,523 ¹	£1,721,204 ²	34.33%	
2005/06	£5,151,365 ¹	£1,737,157 ²	33.72%	£15,953
2006/07	£5,570,024 ¹	£1,850,995 ²	33.23%	£113,838

Note 1: The figures for “Total Cost of Collection” were provided by the LPSA.

Note 2: The figures for the “Belfast Apportionment” were taken from actual PRP calculations for the three years shown above.

As can be seen, based on an apportionment using NAV, ratepayers in the area of Belfast City bear a considerable proportion of the total cost of collection (through the Regional and the District Rate) particularly in relation to non-domestic properties.

6.4 Cost of Collection based on Apportionment of Properties

It is our view that an apportionment of costs between local authorities based on NAV / capital value is not a good basis for the distribution as such values do not have a bearing on, and do not reflect, the costs of collection.

Costs of collection are aligned to the administrative processes of billing, collection and enforcement, which in turn are effectively related to the number of rateable properties not the NAV / Capital Values of properties.

The following tables show the impact if the apportionment were to be based on the number of rateable properties. The number of properties is as shown in the valuation list at 1st April 2007 and was supplied by the LPSA

Table 4 - Cost per hereditament (based on 2006/07 costs)			
2006/07	Gross Cost of Collection	No. of Properties	Cost per Hereditament
	£		£
Domestic	5,680,976	735,485 ³	7.72
Non-Domestic	5,570,024	70,691	78.79
Total / average	11,251,000	806,176	13.95

Note 3: Includes approximately 100,000 NIHE properties

The following table apportions the cost to Belfast Ratepayers based on the number of properties in the Belfast City Council area.

Table 5 - Apportionment based on number of properties (using 2006/07 costs)			
2006/07	No. of Properties	Cost per Hereditament	Estimated Cost to Belfast Ratepayers
		£	£
Domestic	128,058	7.72	988,607
Non-Domestic	15,824	78.79	1,204,226
Total/average	143,882	13.95	2,192,833

6.5 Comparison of Apportionments

The following table compares the two apportionment models.

2006/07	Present Apportionment	%age of Total	Apportionment based on Hereditaments	%age of Total	Difference
	£	%	£	%	£
Domestic	834,318	14.69%	988,607	17.40%	+154,289
Non-Domestic	1,850,995	33.23%	1,204,226	21.62%	- 646,769
Total	2,685,313	23.87%	2,192,833	19.49%	492,480

2006/07	Current Apportionment	%age of Total	Proposed ⁴ Apportionment	%age of Total	Difference
	£	%	£	%	£
Regional CoC	1,424,558	53.05%	1,163,297	53.05%	261,261
District CoC	1,260,755	46.95%	1,029,536	46.95%	231,219
Total	2,685,313	100.00%	2,192,833	100%	492,480

Note 4: The basis of the apportionment for Belfast City Council is the proportion that the District rate bears to the total rate in the Belfast area.

BCC has no control over the total cost of collection incurred by the LPSA and, more importantly, it does not have an understanding as to how the total cost is assessed as no detailed information is provided by the LPSA. As a result it is impossible for the City Council to form a view as to the effectiveness and efficiency of the collection process towards which they are contributing a significant amount.

On the issue of the method of apportionment it is clear that if this were changed to one that, in our view, was more representative of how costs are incurred in the billing, collection and enforcement process there would be a significant annual saving in the region of some £500,000 to Belfast Ratepayers with a reduction in the cost of collection to the City Council of £231,219.

We should point out, however, given that the gross cost of collection would not change - this simply means that if the apportionment basis were changed then the savings to Belfast Ratepayers would be effectively allocated to the other local authorities in Northern Ireland.

We have not undertaken an analysis of the likely impact on the other local authorities as our concern is with the impact of the cost of collection on the Belfast City Council budget.

The fact that a re-allocation would take place and other local authorities may contribute more than at present is not a reason for not reviewing the present method of allocation.

It is recommended that the City Council -

1. Works with the LPSA to obtain a detailed analysis of the total cost of collection in order to be satisfied as to the efficiency and effectiveness of the collection process, and
2. Makes representations to the Minister to have the Rates Regulations (Northern Ireland) 2007 amended so that the apportionment of the gross cost of collection is based on the number of rateable hereditaments as reflected in the valuation lists at the 31st March of each financial year.

Section Seven Data Protection

7.1 The issue

The data protection issue that has been identified relates to the fact that BCC has been advised that it cannot supply the names of owners / occupiers obtained during the planning process to the LPSA. This means that LPSA has to independently obtain the names and, on occasions, they and BCC are criticised by individuals who feel that they have already supplied the information to one agency.

Any exchange of data must be in accordance with the provisions of the data protection legislation. Care must be taken to ensure that any personal data is handled within the scope of the data protection principles. Each of the principles and the relationship with the exchange of data between local authorities and the LPSA is considered in the following paragraph.

7.2 Responsibility to provide information

The Belfast City Council has a responsibility, in accordance with Regulation 57 of the Rates Order 1977 to supply relevant information to the LPSA -

“Duties of public bodies with respect to alterations in valuation list

(1) If in the course of the exercise of its functions any relevant information comes to the notice of a public body it shall be the duty of that body to inform the district valuer.

(2) In this Article,

“public body“ means -

(a) a body established by or under a statutory provision, or

(b) a department of the Government of the United Kingdom.

“relevant information” means information which is relevant to a decision whether to alter a valuation list;

“valuation list” includes a valuation list which has been issued but which has not yet come in to force.”

7.3 The basis for processing of data

The first Data Protection Principle states

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

a) at least one of the conditions in Schedule 2 is met, and

b) in the case of sensitive data, at least one of the conditions in Schedule 3 is also met.”

Thus this Principle has two elements; firstly that there is a legitimate basis for the processing and, secondly, that the information is processed fairly and lawfully.

In order to process data legitimately, data users must be able to satisfy at least one of the conditions set out in Schedule 2 and, in the case of sensitive personal data, at least one of the conditions set out in Schedule 3 of the Act.

In this case ‘Sensitive’ data are those relating to ethnic origin, political or religious beliefs, trade union membership, physical or mental health, sexual life and criminal offences. And clearly does not apply to the data in question.

So far as Belfast City Council is concerned Schedule 2.5(d) is relevant in that the processing of the data, in this case the name of the occupier, could be said to be carried out and is necessary “for the exercise of any other functions of a public nature exercised in the public interest by any person.”

7.4 The fair processing of data

The interpretation of the First Principle in the Data Protection Act 1998 states that in order for the data to be processed fairly, when individuals (data subjects) provide information about themselves they must be told the identity of the data controller and the purposes for which their data are to be processed.

They should also be provided with “any further information, which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair”.

In simple terms this means that individuals should be made aware of any ‘non-obvious’ purposes for which the information about them may be used or disclosed. This can normally be achieved by the inclusion of a notification on forms and other documents explaining any non-obvious uses and disclosures of personal data.

7.5 Lawful processing

No statutory interpretation is contained in the Data Protection Act as to the meaning of the requirement to process personal data ‘lawfully’. In the absence of this the advice given by the Information Commissioner is that a data user who obtains information by unlawful means or processes information without any justification in law will breach the requirements of the Principle.

For public bodies such as BCC this means that that if personal data are processed for purposes that are prohibited by statute or which are ultra vires then that processing will automatically breach the First Data Protection Principle.

Similarly, if personal data were processed in breach of an obligation of confidence (which would be unlawful) then that processing would also breach the First Data Protection Principle. These circumstances clearly do not apply in relation to the data obtained by BCC.

The issue for a local authority is, therefore, whether it has the powers to process personal data obtained for one statutory purpose for another purpose, or whether it is prevented from doing so by virtue of an obligation of confidence or any statutory prohibition on processing (including disclosure).

It is our view that BCC does have the power to provide information relating to the names of owners and occupiers obtained under the requirements of the planning and building control process under section 57 of the Rates Order and we can find no barrier to that disclosure as it is in the public interest and

in the interests of the data subject. There is no detriment to the individual in the disclosure and by ‘detriment’ we mean harm, damage or distress.

It can be argued that the names of owners and occupiers as supplied to the City Council is not “relevant information” for the purposes of Section 57 but we would take the view that until this is subject to a legal challenge then it is relevant information as it assists the LPSA in the valuation process, which includes site visits.

We would add that BCC has a legitimate interest in ensuring that the LPSA has adequate information to ensure the timely assessment of properties and the billing of ratepayers and the processing of the name data is relevant to this.

7.6 Transparency of processing

An important issue in relation to the processing of data is the question of transparency. Transparency is a key protection for individuals where greater use is being made of information about them. It allows data subjects to understand how their information is being used, and to complain if they object to this.

It is important that BCC explains their uses and disclosures of information and this is relatively simple to do by ensuring that all documents that are required from the data subject include a statement to the effect that information will be provided to the LPSA for the purposes of rates assessment and billing.

7.7 The Information Commissioner

The Information Commissioner has stated -

“We are keen to move on from a state of affairs where data protection is seen as necessarily antithetical to the sharing of personal information. We want protection of the public and better services *with* data protection, not *versus* data protection.

We will be placing less emphasis on narrow administrative law issues that have negligible data protection benefit for individuals. This will allow us to devote our regulatory resources to addressing cases where the sharing of personal information results in genuine unfairness or unwarranted detriment to individuals. We’ll also be emphasising the importance of transparency when personal information is being shared – this allows members of the public to understand what’s happening to information about them, and to complain where they feel information is being used or shared inappropriately.’

7.8 Conclusion

If the Information Commissioners statement is put in the context of BCC providing information about names to the LPSA to expedite rating assessments being issued - a service in which the BCC has a legitimate interest - then it is clear to us that taken together with the powers contained in regulation 57 of the Rates Order 1977 and also by providing transparency to the data subject - there is no barrier to the processing of name data.

We would recommend that BCC develop a data sharing protocol and takes independent legal advice in relation to this issue

Section Eight Conclusions

During the course of this study the dialogue between LPSA and BCC has improved and BCC has obtained a growing awareness of the issues

contained in this report. This together with the exchange of views that the authors have had with the client means that there should not be many surprises in the report but we do believe that it provides a number of recommendations that can be taken forward through further discussion with the LPSA and with the Government.

We would like to express our thanks to the staff at BCC and LPSA who have been helpful and cooperative and who have provided us with information that has been instrumental in forming the opinions expressed in this report.