Business Rates Avoidance and Evasion Consultation

District Councils' Network consultation response

September 2023

About the District Councils' Network

The District Councils' Network (DCN) is a cross-party network of 163 district councils and 5 unitary councils. We are a special interest group of the Local Government Association, providing a single voice for all district services.

DCN member councils deliver a wide range of local government services to over 21 million people – 38% of England's population. They cover 60% of the country by area. DCN councils are home to 38% of England's businesses and produce 33% of national Gross Domestic Product.

Executive Summary

All DCN member councils administer business rates locally. We believe it would be more efficient for councils to set business rates exemptions and reliefs locally. We are concerned that more exemptions and reliefs can create an incentive for unscrupulous landlords to seek to avoid their business rates liability.

DCN believes this is an opportunity to remove centrally prescribed mandatory provisions and instead empower councils to decide whether or not to support certain ratepayers. However, this would be possible only with a transfer of resources equivalent to the existing value of those exemptions and reliefs to local government. Such an approach would support our view that, as a matter of general principle, exemptions and reliefs should be set locally.

Response to Consultation Questions

Q1. Would increasing the required duration of occupation during the 'reset period' from 6 weeks to 3 or 6 months, in your view, be effective in reducing avoidance through empty property rates?

An increase for the 'reset period' should be a deterrent for companies with long term empty properties from trying to avoid paying their liabilities to the public purse.

We support the reset being increased to 6 months as a minimum. As an incentive to secure 'meaningful occupation' the assumption would be that a business entering into a commercial contract, such as a lease, would be operating as a going concern and such a commitment could be viewed as demonstrating the intent of the business operations for the foreseeable future.

Ideally, the period for occupation before a reset should be extended to 9 months for non-industrial and to 12 months for industrial.

Any guidance or secondary legislation would need to be developed with clarity - clearly defining the responsibility and consequences where it can be reasonably concluded by the billing authority that a main purpose of the ratepayer's occupation or arrangement for occupation is contrived or artificial. Legislation should ensure that the billing authority has a right to refuse to reset the empty period where occupation is not genuine.

An alternative to increasing the occupied period would be to abolish the empty rate relief completely. This would remove the incentive to avoid business rates liability by confecting an occupation. Allowing business rates to apply would give landlords a stronger incentive to sell or find a genuine occupant, rather than seeking to avoid the liability.

Q2. What potential issues may arise from requiring occupation for 3 or 6 months during the 'reset period'?

This may increase the annual liability for the owners/landlords who are currently abusing the empty rates exemptions. However, where landlords have financially benefited from these legal loopholes, billing authorities currently have no real powers to address and deter this avoidance.

There are few properties that have a high turnover of tenants where occupation of less than 6 weeks is genuine. Therefore, there do not appear to be any potential impacts for genuine tenants.

If empty reset periods were abolished completely, owners or the person/organisation with the right to occupy would therefore pay the full rates whether the property was occupied or not. There could be some impacts such as:

- increasing demand on hardship reliefs covering temporary financial difficulties, at the discretion of the local authority;
- removing the ability for pop-ups (e.g. seasonal trade in fireworks or Christmas goods) and reducing the ability of new enterprises to 'test the market' when launching a new business.
- Reducing footfall, even in the short term due to empty premises, will impact on neighbouring businesses trade.

Q3. Would introducing a limit on the number of times EPR could be claimed in a given time period, in your view, be effective in reducing avoidance?

Yes, this would be helpful if EPR is retained.

Consideration could be given to minimising the EPR claim frequency allowing the exemption to apply once to a hereditament in a financial year and increasing the reset period. We would support no more than one 3-month empty period in a 12-month period for non-industrial properties, and no more than one 6-month empty period in an 18-month period for industrial properties.

The ratepayer should also need to demonstrate that the main purpose or one of the main purposes of the ratepayer's occupation is not contrived or artificial. It is important that the legislation should clearly leave decision-making in the hands of the billing authority. For example, billing authorities would assess whether the occupation or agreement has constituted genuine occupation to qualify for empty property relief.

Q4. What potential issues may arise from limiting the number of times properties can benefit from EPR within a given period?

As outlined in our answer to Q2, our view is that there are very few properties where there is a high turnover of tenants in the year that would result in multiple genuine empty periods in a year. Any cases where issues might be caused by such a limit could be dealt with where appropriate under Section 49 of the Local Government Act 1988 on the grounds of hardship.

More widely, there may be issues around:

- Reduced appeal of real estate as an investment for pension funds and large portfolio holders.
- Increased financial pressure on landlords and property owners over periods the premises are unoccupied.
- Increased demand for improvement relief. However, this should incentivise occupiers to invest in properties to avoid them falling into disrepair and in the longer term to make the property more marketable to prospective tenants.

Q5. What are your views on adding additional conditions to the meaning of occupation for the purposes of determining whether a property should benefit from a further rate free period?

Professional occupiers such as Principled Offsite Logistics Limited have made a business of abusing loopholes in the legislation: see POL Limited v Trafford Council (2018) The main business of POL is to occupy a property for a financial reward on behalf of landlords of commercial properties. This is to the exclusion of the landlord and for the purpose of minimising the landlord's liability for non-domestic rates.

John Laing and Sons Ltd v Kingswood Area Assessment Committee (1948) established the four main ingredients of occupation. It is now an appropriate time for these to be further clarified, in particular, beneficial occupation which is the main argument in a number of cases.

The billing authority has no right of entry to check what is happening inside properties where occupation is disputed. We must rely on information or voluntary inspections. Legislation must be amended to allow the billing authority the right of access where a discount or exemption is requested.

Applying a requirement that 50% of the floor space in a premises must be occupied is still too subjective. This could encourage items to be strategically placed in buildings and create scope for arguments between ratepayers and the Local Authority regarding what constitutes 50% occupancy.

Full, normal use of the building may not necessarily 'occupy' 50% of the floor space, and it could be an unintended consequence that some properties currently 'occupied' by a business could be classed as 'unoccupied' as they did not occupy 50% of the floor space.

Q6. How could the additional occupation conditions be effectively defined to reduce avoidance?

Beneficial occupation is the main issue that requires a new definition.

Occupation of a property for the purposes of rates avoidance is occupation for its own sake and, other than rates avoidance, there is no reason for occupation. Legislation could make clear that "occupation" wholly or mainly for such a purpose will not be treated as beneficial occupation.

In our answer to Question 1, we have stated that legislation would need to be developed to allow the billing authority to refuse empty relief if a main purpose of the ratepayers' occupation can be reasonably concluded to be artificial or contrived to avoid the payment of empty rates either by the owner or occupant. Beneficial occupation would therefore need to define artificial or contrived occupation.

Further clarity would be required pertaining to a premises that is capable of being occupied to reduce some of the adverse current occupation practices outlined. For example, where the liable party:

- legally possesses or holds rights of occupation to the premises; ot
- intends to make a profit from occupying the premises or the goods stored at the premises are in pursuit of or support the trading activities of an active business in which the liable party holds an interest.

Further tests could also include:

- Is the business usage consistent with the rights held under the terms of the lease / licence to occupy?

- Is the hereditament description held by the VOA (class of property) consistent with the purpose / trading activities for which the premises is predominantly used?

Q7. What are your views on reforming the current arrangements for empty property rates relief and replacing them with a local, discretionary scheme?

As a matter of general principle, we support local discretion but the prior question is whether empty property rates relief should be abolished altogether.

If EPR is retained, councils should have greater control over the money they raise and the Government should avoid a "one size fits all" scheme.

If the Government implements powers for councils to have local schemes, there will need to be a financial transfer from central to local government to reflect the value of EPR currently awarded – this suppresses the value of total income from business rates but, in a localised scheme, councils would need to be funded to allow them to choose where to apply reliefs.

Q8. Are there any other additional criteria which, in your view, should be met for a property to qualify for EPR?

Fundamentally, for a property to qualify for EPR there should be no occupation of the property.

In respect to charitable purpose, instead of anticipating a future event, consideration should be given to providing a rebate at such time that the council has been notified of the incoming tenant, verified they are a Charity/CASC and received a copy of the lease agreement to identify whether the terms of the lease are consistent with the 'market rate' and for a period of at least 6 months (3 months discretionary). In taking such action, this should encourage the liable party to make efforts to secure occupancy and expeditiously communicate the details to the Local Authority, ensuring our records are reflective of the current occupation and composition of the hereditament.

Q9. Would removing the 'next in use' exemption, in your view, be effective in tackling avoidance of EPR?

We would strongly support this proposal as it is extremely time consuming for billing authorities and the courts.

The current situation is deeply unsatisfactory where a customer can claim to be a charity with charitable objectives to benefit the public, whilst also attempting to claim

the exemption for lengthy periods with little occupation. The loss to the public purse from this has a significant impact on service provision and outweighs any benefit to the public of the potential future occupation.

We would also support a review to ensure that all charities must register with the Charity Commission in order to qualify for the exemption. The current position is that you must register your charity if:

- Income is at least £5,000 per year or it is a charitable incorporated organisation; and
- Is based in England or Wales.

Q10. What issues may be caused by the removing the 'next in use' exemption?

We would not expect charities normally to purchase or take on leases for properties and leave them empty for long periods of time. Prior to the introduction of the 'next in use' in April 2008, contact from charities who were not going immediately or imminently to occupy the property was extremely rare.

The issue arising from removing the exemption would be cashflow pressure pending occupancy of incoming charity / CASC.

Q11. What are your views on how the 'next in use' exemption may be improved to minimise the opportunities for rates avoidance, including (but not limited to) introducing additional criteria or devolving the award of the exemption to local authorities?

As set out in the response above, we would not expect charities to require the 'next in use' exemption and would support its removal. The introduction of this exemption has created the loophole that is abused by owners and landlords and companies set up 'for the public benefit' that do not benefit the public and misrepresent why they are in occupation.

However, if the exemption is to remain in place, the following are viewed as additional measures that should be put in place to limit potentially fraudulent activity:

- Data sharing with Charity Commission & Companies House to enable verification that the exemption is being sought by a legitimate trading entity.
- VOA data sharing to verify class of property is consistent with the activities / function of the business in occupation, lease and rent details.
- Potential data sharing with liability insurance register (FSA rules require a register of Employers' Liability Insurance) and the potential public liability insurance policy register being considered by the Ministry of Justice.

Q12. What methods of avoidance have you encountered in the business rates system, in addition to those outlined in Chapter 1? Please include any information you have relating to the potential scale of any such activity in your answer.

- Avoidance by insolvency of one company to be quickly replaced by a new (phoenix) company leaving outstanding debt that is unrecoverable.
- Avoidance of business rates through properties not appearing in the ratings list.
- Avoidance of empty property rates through the use of insolvency exemptions- where a tenancy agreement is put in place for the tenant to enter immediately into insolvency.
- Avoidance through failure to report a change in use – for example agricultural properties that diversify and fail to inform the Billing Authority of their new 'commercial' use.
- Business partners who claim to have split up in order to take advantage of small business rates relief.
- Directors setting up multiple business names in order to claim small business rates on multiple properties.

For the majority of rates avoidance schemes, it is difficult for the Billing Authority to prove that this is rates avoidance or what is being reported is incorrect.

In respect of the limitation on businesses operating at more than one location, and therefore not being eligible for Small Business Rates Relief, it is not always obvious that a business is part of a chain and there is no single database of ratepayers as each council's records are separate from others' records. This will remain a vulnerability until the DBR (Digitalising Business Rates) single business overview is operational, as it should assist in instances of trading entities obtaining SBRR where it is evident that the trading entities occupy multiple hereditaments.

As with other examples, it is the "one size fits all" prescription of exemptions and reliefs that creates incentives for potential avoidance. In the case of SBRR, perhaps it would be simpler to remove the limitation on businesses that operate at more than one location, although we recognise that would increase the cost of the relief for Government.

Q13. Do you have any suggestions for what action could be taken to effectively mitigate against, discourage or prevent this behaviour?

Requirement for rating agents with whom Billing Authorities engage to hold membership of the Rating Surveyors Association (RSA), Royal Institute of Chartered Surveyors (RICS), or Institute of Revenues, Rating, Valuation (IRRV) to enable

councils to report any 'rogue' agent activity to the appropriate governing body and ensure this is remedied through a complaints process / disciplinary procedure.

Legislative changes are required to enable the Insolvency Service to deal with referrals from the Billing Authority (regarding phoenix companies for example) and to make sure that they are properly resourced to carry out the necessary investigations and to take these through the courts.

There should be a statutory duty on owners to provide the information regarding tenants to the Billing Authority without the Billing Authority having to request this. Where the owner fails to do so or provides false information, there should be no limit to the backdated charge payable by the owner.

The Billing Authority should be given greater powers to force owners/letting agents etc. to provide relevant information that it has in its possession which is required for the billing, collection and enforcement of business rates.

Q14. Are you aware of any of the forms of evasion listed above? Please include any information you have relating to the potential scale of any such activity in your answer.

We refer to responses from our member authorities as they may have details to assist.

15. Are you aware of any other examples of evasion which are not listed here? Again, please include any information you have relating to the potential scale of any such activity in your answer.

- Splits of hereditaments into multiple units falling beneath the SBRR thresholds and creation of separate trading entities carrying out the same business activities in order to optimise Rates Relief.
- False applications for reliefs and discounts: for example, a business applies for SBRR and fails to declare they have other business properties that would affect their entitlement.
- False tenancy or lease agreements / fictitious companies / bogus occupiers
- Charitable exemptions where the premises is actually being used for something not related to a charity.
- Failure to report changes in circumstances / notifying of incorrect information.
- Identity fraud to attempt to avoid paying for business rates.
- Creation of 'offshore' companies to obstruct / prevent the recovery of liabilities.
- Granting a lease to a company which then enters liquidation and thus benefits from the rates exemption.

- Repeated and concurrent liquidations with companies having officers in common to dispose of business liabilities (including business rates) with assets being purchased through a pre-pack arrangement by a subsequent company.
- Fish farms, agricultural buildings exemption exploitation / misuse of agricultural exemptions (Snails)
- Deliberate vandalism leaving property incapable of beneficial occupation and it is then removed from the ratings list
- Nominal occupation (e.g. Bluetooth transmitters / small volumes of records) appearing inconsistent with the composition and size of the hereditament.
- Prolonged redevelopment periods to optimise zero rate.
- Property Guardians
- Pop up companies selling low value goods – false company and contact details resulting in inability to pursue recoveries.

Q16. Do you have any suggestions on what further action could be taken to prevent evasion?

- Improved data sharing between relevant Government departments (HMRC; VOA) and local authorities. This will hopefully be addressed under the Non-Domestic Rating Bill.
- Improved awareness of reporting mechanisms for misconduct and the relevant authorities governing those areas.
- Hereditaments being linked to UPRNs and Title Numbers to enable clearer identification of the properties they relate for easier identification of changes and amendments by other departments.
- NNDR accounts all to have a tax identification reference for the occupier (UTR/ NINO/VRN)
- Land Registry updates when proprietors change.

Q17. Do you think billing authorities have sufficient powers to effectively combat evasion in the business rates system? If not, how do you think they should be strengthened or expanded?

As an involuntary creditor, the Local Authority, as a collector of Business Rates, places a substantial reliance on the correct information being provided by liable parties in a timely manner (this will hopefully be addressed under the Non-Domestic Rating Bill) and has limited powers.

To enable investigation and enforcement of NNDR liabilities / offences it would greatly assist if the Local Authority held powers and recourse consistent with those available under The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

Consideration should be given to empowering councils to apply civil penalties for failure to notify relevant changes to councils, to act as a deterrent. This would be in line with HMRC's and VOA's ability to impose penalties under the Non-Domestic Rating Bill.

Q18. Will the new information that will be made available to billing authorities allow them to better combat business rates avoidance and evasion? What kind of compliance activity will it allow billing authorities to carry out?

The duty to notify and penalties under the Non-Domestic Rating Bill should facilitate the prompt communication of changes and amendments including rent and lease information, which should enable the expeditious issue of accurate bills.

However, councils will still be dependent on the ratepayer/agent to input accurate and correct information in a timely manner, resulting in the potential for providing information that may be inadequate / incomplete / false, which effectively could result in increased administrative costs and inaccurate data held to determine valuations.

The quality and accuracy of the data at the 'point of entry' if not subject to adequate verification / validation may result in incorrect information being cascaded to multiple agencies.

Q19. Do you think there is any other information held by HMRC or the VOA which would be useful for billing authorities to have to help them to combat avoidance and evasion?

- UTR; NINO; CRN; Charity Number; VRN to validate consistent with LA liable party who is an active trading entity.
- Nature of business (SIC) / Business Activities – to verify whether this is reflective of the composition and Property Description listed with VOA.
- Trading entities present at multiple locations.

Q20. Do you have specific views on how we can best ensure effective information sharing between billing authorities and the VOA/HMRC, once DBR and the VOA duty are in place?

Possible re-purpose of 'Spotlight' (DWP system used by Cabinet Office for Covid Grants) or similar, with data extract facility to enable bulk uploads.

Q21. Are you aware of any of the "rogue" rating agent activity listed above? Please include any information you have relating to the potential scale of any such activity in your answer.

We refer to responses from our member authorities as they may have details to assist.

Q22. Are you aware of any other examples of poor rating agent behaviour which are not listed here?

We refer to responses from our member authorities as they may have details to assist.

Q23. Do you have any suggestions for what action could be taken to mitigate effectively against, discourage or prevent this behaviour?

See our previous suggestion for a requirement for Rating Agents with whom Local Authorities will engage to hold membership of an accredited professional body e.g. Rating Surveyors' Association (RSA), Royal Institute of Chartered Surveyors (RICS), or Institute of Revenues, Rating, Valuation (IRRV).