SHARPE PRITCHARD

SHARPE FOCUS

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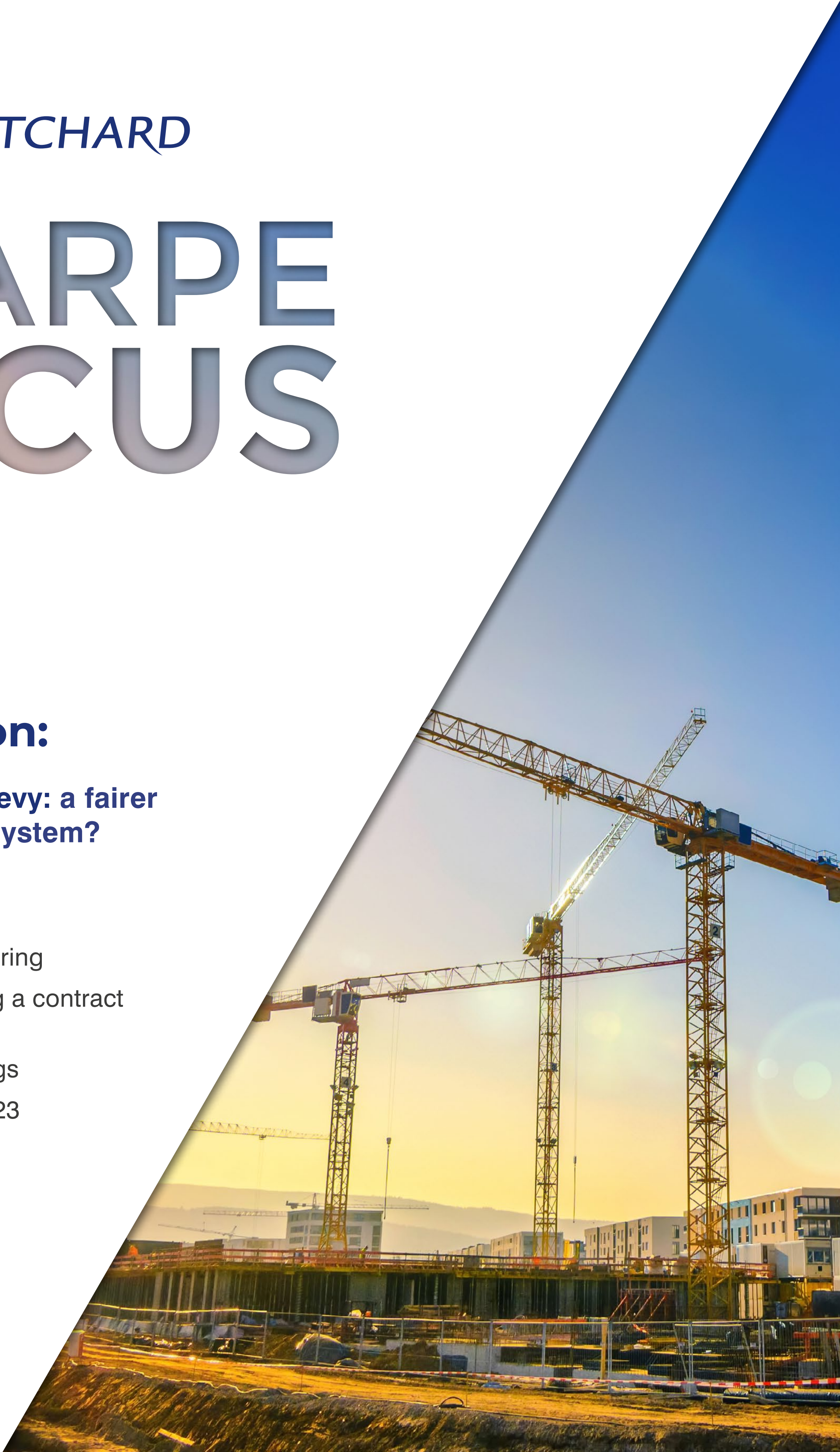

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PLUS

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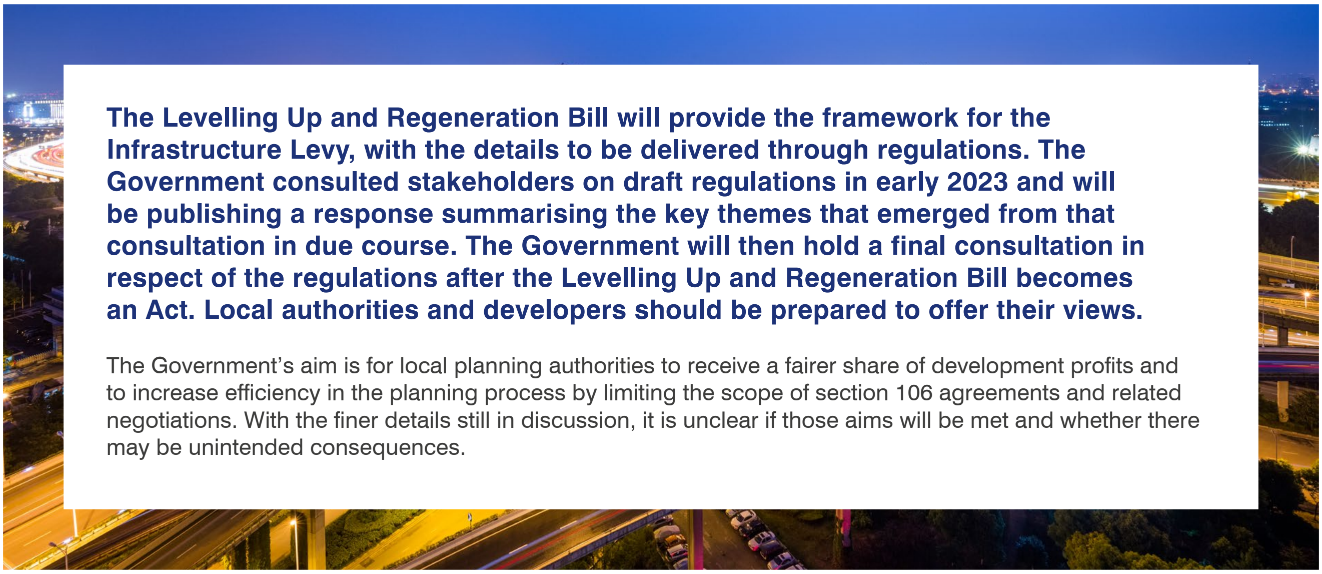
THE INFRASTRUCTURE LEVY: A FAIRER AND MORE EFFICIENT SYSTEM?

As part of the Government's Levelling Up agenda, it is seeking to improve the planning system by replacing the existing system of securing developer contributions (i.e. through the use of section 106 agreements and Community Infrastructure Levy (CIL) payments) with a mandatory Infrastructure Levy.



The Levelling Up and Regeneration Bill will provide the framework for the Infrastructure Levy, with the details to be delivered through regulations. The Government consulted stakeholders on draft regulations in early 2023 and will be publishing a response summarising the key themes that emerged from that consultation in due course. The Government will then hold a final consultation in respect of the regulations after the Levelling Up and Regeneration Bill becomes an Act. Local authorities and developers should be prepared to offer their views.

The Government's aim is for local planning authorities to receive a fairer share of development profits and to increase efficiency in the planning process by limiting the scope of section 106 agreements and related negotiations. With the finer details still in discussion, it is unclear if those aims will be met and whether there may be unintended consequences.

The trade-off for local authorities

Under current provisions, developer contributions are calculated and agreed at application stage and CIL (where relevant) is a fixed charge levied on the floorspace of a new development calculated when planning permission is granted using the rate in the authority's charging schedule (subject to indexation). Local planning authorities often find themselves being negotiated down on the quantum of contributions during negotiation of section 106 agreements on viability grounds. If a development turns a greater profit than expected, these contribution sums are typically unaffected, unless a viability review clause has been included in an agreement. This means any surplus goes (simply speaking) straight into the developer's pocket.

The Infrastructure Levy is proposed to be charged at rates set by local authorities according to the gross development value of the development at the point of completion. This means that local authorities should be able to capture more value than they do currently, taking a fairer share of profit and avoiding viability arguments that turn out to be unfounded. The approach also represents a major advantage for developers who will benefit from increased cash flow at the outset of a development, which may in turn make them less likely to need to rely on developer finance.

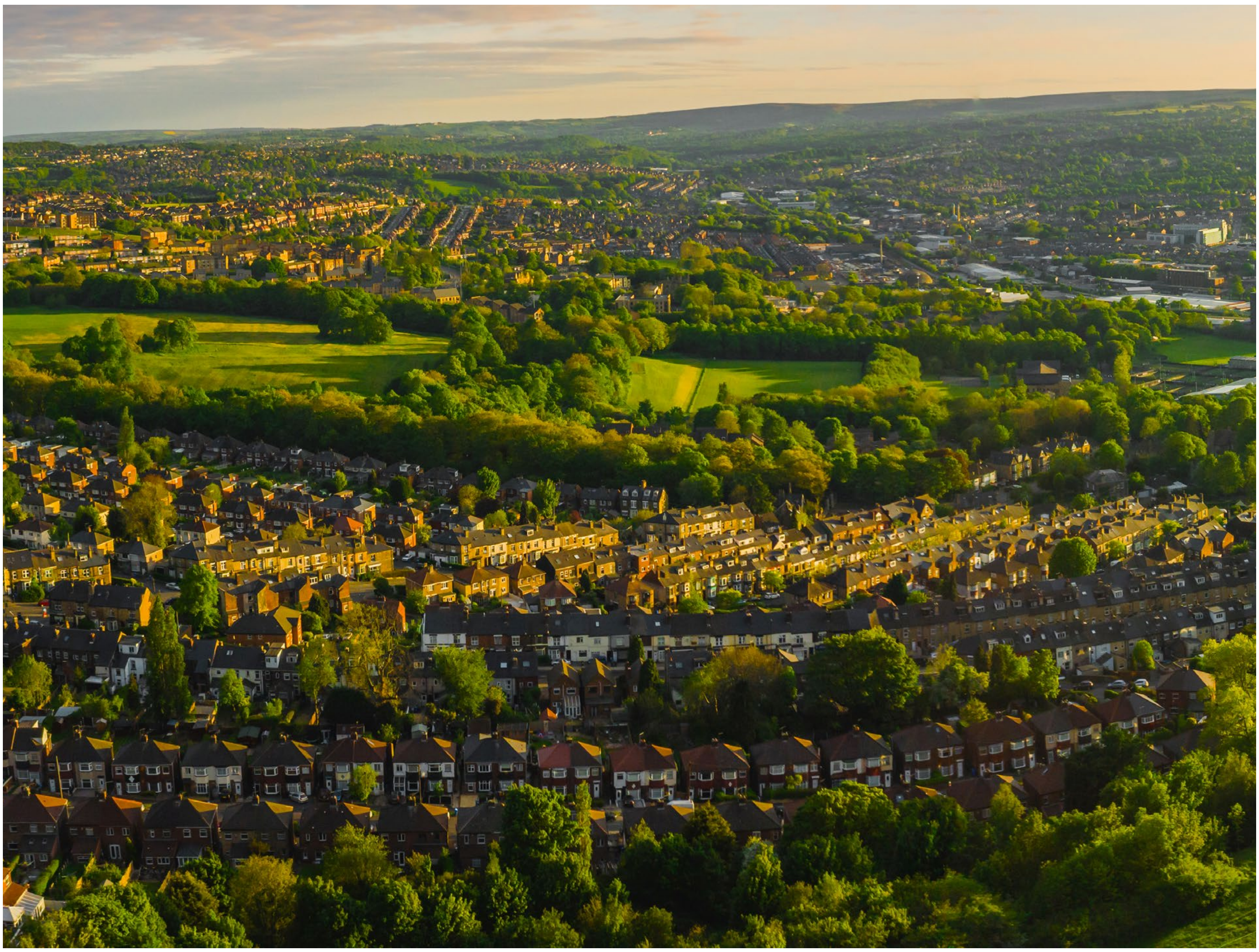
However, the proposed timing for payments has led to concerns as to how infrastructure will be funded and delivered in time for occupation of a development, when arguably the need for such infrastructure arises.

The Government's current answer is to enable local authorities to borrow against future levy receipts to ensure timely delivery, but this presents financial risks and costs for local authorities. Local authorities will find themselves having to look for vital short-term funding and will be reliant on forecast revenue streams to afford debt which may be extremely problematic if those revenues do not materialise or turn out to be less than expected. Who will be liable to pay the difference?

> The proposed approach also throws up a number of additional questions. Who will service interests cost and minimum payments in respect of the debt? What if a local authority cannot borrow due to existing levels of debt? Who will bear responsibility if a proposed development does not complete and trigger liability to pay the Infrastructure Levy, when the local authority has already borrowed on the basis that it will?

In its recent consultation on the Infrastructure Levy, the Government acknowledged these concerns and asked stakeholders to comment on how an early payment mechanism of the levy could work, to enable local authorities to have earlier access to capital. It has raised the possibility of using planning conditions to require upfront payments for certain infrastructure. In the alternative, it has suggested that so-called 'delivery agreements' could be used to secure financial contributions, with the amount provided to be offset against the total Infrastructure Levy liability owed. However, the Government has also expressed reticence about this approach, noting its impact on developer cash-flow and the responsiveness of the Infrastructure Levy to reductions in prices and so has advised that this should, if utilised, only involve a proportion of expected receipts. It is also unclear how such 'delivery agreements' will be any different to the current use of section 106 agreements and which types of infrastructure, and therefore contributions, would justify early payment. However, some form of down-payment at the point of commencement may be sensible, to enable authorities to benefit both from capital upfront and the receipt of a fair portion of profits on completion.

It remains to be seen how the Government will respond on this point. But until this issue is resolved, securing a greater proportion of profits appears to simultaneously put local authorities at significant disadvantage and could have a counter-productive effect of increasing their costs liability or slowing down delivery of infrastructure altogether.



Efficiency

By introducing the Infrastructure Levy, the Government also aims to "sweep away" the often-protracted negotiations involved in securing section 106 planning obligations.

However, under the Government's proposal, section 106 agreements will still retain a vital role (as above it is unclear how these will sit alongside 'delivery agreements').

The levy will be used to secure funding for infrastructure that is required to mitigate the cumulative impact of new development on the local area; this would include, for example, the expansion of local healthcare and education facilities, improvements to local transport routes and services, enhancement of local sports facilities and the provision of play equipment and street furniture outside of the site boundary.

However, so-called 'integral infrastructure' will be secured separately under planning conditions or (where this is not appropriate) via section 106 agreements. Integral infrastructure is currently defined as infrastructure that is integral to the successful functioning of a site, which might include things such as cycle-parking areas, on-site play areas and open space, EV charging points, drainage, site access, internal road layouts and a requirement to enter into a highway agreement. Biodiversity net gain obligations will also be covered by section 106 agreements.

Additionally, for certain (large, complex) schemes section 106 agreements will be used to deliver infrastructure as an 'in-kind' payment to the Infrastructure Levy. The idea is that the value of any such agreement must be equal to or exceed what would have been secured in cash through a calculation of levy liabilities ('levy backstop amount') with any shortfall in the value of the infrastructure provided or contributed to made up through a cash payment to the local authority. The Government is yet to decide what scale or type of development would trigger the infrastructure-in-kind payment method. On-site affordable housing will also be delivered as an in-kind payment for part of an overall affordable housing levy liability and whilst there is presently limited detail on how this would be secured it would appear that the usual triggers in respect of timings for delivery and securing different affordable tenures would still need to be dealt with in the normal way.

Given the retained role of section 106 agreements for delivery of a wide range of infrastructure it is difficult to envisage that there will be many scenarios where a section 106 agreement will not be required. Their function will certainly be more limited which should speed up negotiations.

The use of section 106 agreements will also depend on whether developers are permitted to deliver infrastructure as an in-kind payment; the Government has expressed that it would prefer to limit this, however this is yet to be determined and the Government is considering making this subject to local authority discretion. If the guidance on when such agreements should be used is flexible, this could lead to protracted negotiations over the need for one in respect of a particular development, which could delay matters, though this would presumably be something that local authorities could avoid by setting out clear policy in this regard.

Of course, a further consideration is the implication on time and resources that may be brought about by the use of delivery agreements; it is easy to imagine that detailed negotiations could ensue regarding the calculation of the proportion of levy receipts to be collected.

Concluding Remarks

The Infrastructure Levy seeks to create a fairer and more efficient system for collecting developer contributions. The proposed method for calculating and collecting levy proceeds certainly appears to achieve the aim of enabling local authorities to receive a fairer share of development proceeds, however at present this involves significant drawbacks that need to be overcome. There may be some increase in efficiency brought about by limiting the scope and use of section 106 agreements, however the full extent of this will become clearer when finer details emerge, including the breadth of applicability of the infrastructure in-kind payment method and whether delivery agreements will be used and what these will look like.

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Other key information

This article is for general awareness only and does not constitute legal or professional advice. The law may have changed since this page was first published. If you would like further advice and assistance in relation to any of the issues raised in this article, please contact us today by telephone or email **enquiries@sharpepritchard.co.uk.**

CARE CONTRACT RESTRUCTURING

Background

Local Government care commissioners are increasingly being approached by care providers (or their agents) requesting to "novate" their care contracts to a new company within their corporate group. The purpose of the novation is to enable the care provider to recover VAT to which it would not otherwise be entitled. This will obviously benefit the care provider, but the arrangement might also benefit the local authority as it may allow care providers to continue to provide what is a critical service. The care provider proposes to restructure its business to make it a parent company to a new subsidiary company, and the contractual arrangements change to being between the local authority and the new subsidiary company, with the subsidiary company sub-contracting the delivery of the services back to the regulated parent company.

The view of the CQC (and, where applicable, OFSTED) appears to be neutral, and HMRC says the restructuring can work in principle, but councils should carry out due diligence exercises and implement the changes properly.

In this article, we consider care contract restructuring in more detail and highlight some of the potential risks involved. We also set out how we, together with PSTAX, can help councils mitigate this risk.

Technical background - VAT

Group 7, Schedule 9 VAT Act 1994 provides that supplies of welfare services and connected goods by charities, state-regulated private welfare institutions or agencies, or public bodies are exempt from VAT.

Welfare services are services that are directly connected with the following:

- provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed, or disabled persons
- care or protection of children and young persons
- provision of spiritual welfare by a religious institution as part of a course of instruction or a retreat, it must not be designed primarily to provide recreation or a holiday

Welfare services, as described above, have historically been supplied to the local authority by CQC-regulated private welfare institutions and, as such, are treated as exempt for VAT purposes. Following the novation of a contract, a non-CQC entity will supply the local authority with welfare services. The VAT exemption will not apply so VAT will be charged on the supplies made to the local authority. The local authority will be able to recover the VAT (subject to the usual recovery rules) as it has incurred the VAT while performing its statutory duty of social care and welfare, which is a non-business activity for a local authority.

Novation risks

Councils are keen to help their care providers cope with the crisis in the sector, which has arisen after years of underfunding, compounded by recent developments such as staff shortages and considerable increases in "cost of living" costs such as fuel.

Contract novation would help reduce providers' costs. However, as a public body, a council can only operate within a specific legal framework. It must meet numerous regulatory, procurement, contractual, tax compliance, and other responsibilities. A local authority must have the vires to do something – this simply means having the legal power or authority. If a local authority is acting ultra vires, it is acting beyond its legal power or authority. Therefore, while councils will generally be happy to consider its request for a contract novation, they should conduct a due diligence exercise of a provider's proposals to ensure they would not create unacceptable risks to compliance with those responsibilities.

An incorrectly implemented novation could create regulatory, procurement, contractual and legal jeopardy, as well as VAT costs and penalties.

The VAT risk for the Council is that if the novation is not implemented correctly, HMRC can claw back the VAT reclaimed by the Council and levy penalties for not taking reasonable care. Carrying out due diligence would not prevent HMRC from clawing back the VAT but would protect against penalties.

At the 2 March 2023 CIPFA VAT Committee meeting HMRC could not say very much about these novations as they are engaged in some live cases. However, in principle, they do not have an issue with the new VAT treatment in contract restructuring. HMRC sees it as a commercial decision. However, HMRC would have a problem if the restructuring was not implemented correctly.

The legal risks centre around contract risk, procurement and regulatory compliance. It will be important for the local authority to understand how the contractual arrangements between the regulated parent and unregulated subsidiary will work. This is important from a service continuity perspective alone but is also crucial to demonstrate to HMRC that a bone fide restructure has taken place. This genuine restructure is also important from a procurement risk perspective. Councils appear for the most part to be relying on Regulation 72(d) of the Public Contract Regulations 2015 to permit these contract novations (succession in the identity of a contractor following a corporate restructuring), but care needs to be taken to ensure that the requirements of this regulation are met, particular that the new subsidiary company fulfils the criteria for qualitative selection initially established under the original procurement.

Further legal risk relates to the various regulatory registrations that the new company should undertake. The local authority will need to be comfortable that all necessary consents are in place given the sensitivity of the services. Lastly, due diligence should also be sought in relation to how the restructure itself has been achieved and whether, in form or substance, the restructure does not look and feel as though it has been done for bone fide reasons.

Due diligence service

Where councils do not have the resources to conduct a due diligence exercise in-house, Sharpe Prichard has teamed up with PSTAX to offer a service that can be rolled out across numerous contracts with care providers. We undertake the tax and legal due diligence and make recommendations on whether the local authority should proceed with the arrangements as they have been presented to them by the care provider. Not only will the service provide a robust defence to any claim from HMRC that the local authority did not take reasonable care, it will also be cost neutral for the local authority as our fees will be paid by the provider as a condition of the novation.

If you would like to hear more about this service and how it can de-risk contract novation for your authority, please get in touch with Peter.

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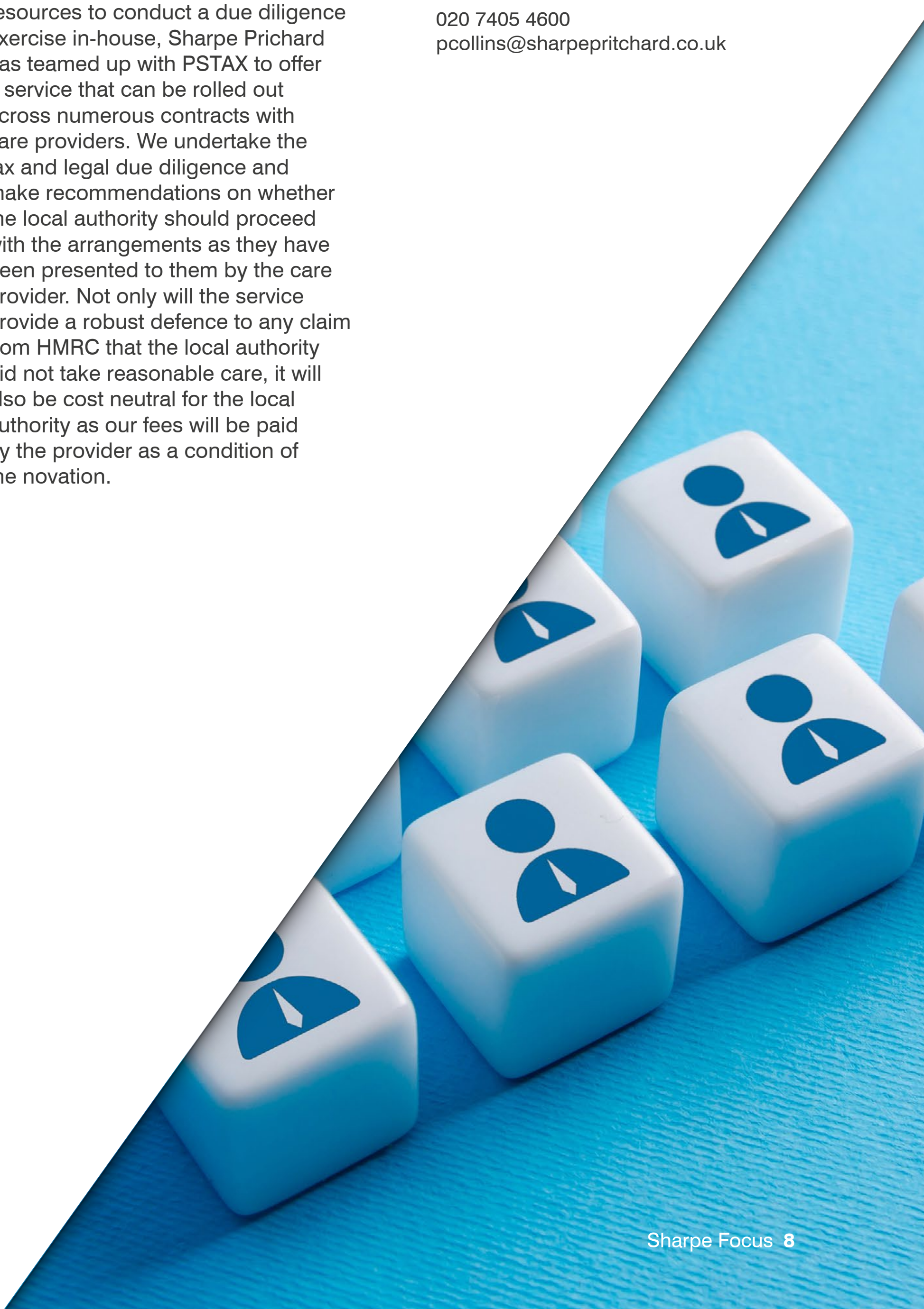
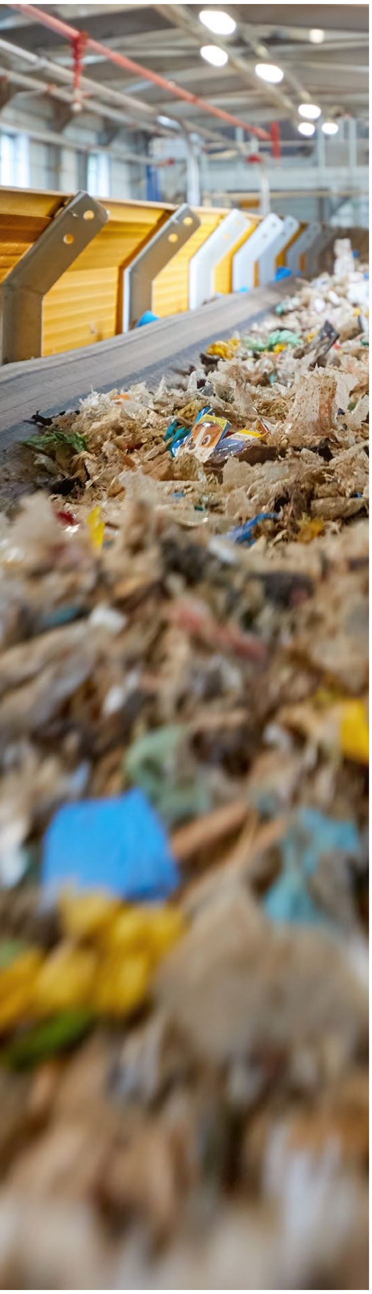


GUIDANCE ON MODIFYING A CONTRACT DURING ITS TERM

Juli Lau, Natasha Barlow and Shyann Sheehy consider the implications for contracting authorities modifying a contract during its term as a result of the judgment in James Waste Management LLP v Essex County Council [2023].

At a Glance

The High Court considered whether a variation to an Integrated Waste Handling Contract (the "IWHC") for Essex County Council (the "Council") amounted to a substantial modification under Regulation 72 of the Public Contracts Regulations 2015 (the "PCR"), triggering the need for a new procurement process. The case provides useful guidance to contracting authorities on the interpretation of the Regulation 72 "safe harbours".



The Facts

The IWHC was with Veolia ES (UK) Ltd ("**Veolia**") for the management of household waste recycling centres and five waste transfer stations ("**WTS**") and waste haulage services. A separate contract was in place between the Council and James Waste Management LLP ("**James Waste**") for services at James Waste's own WTS. The Council modified the IWHC to direct waste to a sixth WTS and incorporated haulage services to a landfill site run by another company, Enovert, which James Waste argued resulted in waste being directed away from its own WTS. The modification was a short-term solution (to operate for five months), and the value was less than 1% of the overall value of the contract.

James Waste claimed that the Council had modified the IWHC in a way that was not permitted under the PCR, under which the general rule is that any modification to a contract governed by the PCR requires a new procurement procedure to take place, unless it falls within one of the "safe harbours" under Regulation 72. The High Court rejected the claims brought by James Waste on all counts but considered obiter the correct application of Regulation 72.

Implications

As an overarching observation, the judge noted that the Regulation 72 "safe harbours" should be interpreted narrowly as they are a derogation from the general rule. However, this does not mean that the contracting authority is under a "reverse burden of proof" to demonstrate that the variation is permitted.

The court considered the applicability of Regulation 72(1)(a) which allows a modification where there are clear, precise and unequivocal review clauses allowing variations that do not alter the overall nature of the contract. In this case the IWHC did contain such provisions in a change control procedure at Schedule 21 of the contract. However, the Council had not followed the prescribed process set out in the schedule and as such could not rely on the clauses to permit the modification. This is an important lesson for authorities to ensure that it follows any variation procedure contained in the contract.

Regulation 72(1)(e) allows a modification which, irrespective of its value, is not "substantial". The judge provided guidance on various parts of the definition of "substantial" in Regulation 72(8):

- **Change in bid pool (Regulation 72(8)(b)):** the judge stated that the test to apply is whether there was a "real" as opposed to "fanciful" prospect that another tenderer would have won the procurement.

- **Change in economic balance (Regulation 72(8)(c)):** the judge stated that an increase in price does not automatically change the economic balance in favour of the contractor, provided any such increase constitutes "reasonable compensation". Contracting authorities will therefore need to ensure that any change in contract price does not change the overall commercial position.

- **Considerable extension in scope (Regulation 72(8)(d)):** when determining what will be regarded as "considerable", the court dismissed James Waste's submission that this applies to any modification with a value above the relevant procurement threshold (currently £213,477 for services) and held that courts should interpret the regulation in a "common sense way".

Key Takeaways

This judgment builds on the limited case law of *Pressetext* and *Edenred* regarding modification of a contract during its term. Contracting authorities often face circumstances which require minor modifications to their contracts. For example, waste collection and disposal authorities considering modifications to their current contracts while waiting for the full regulations under the Environment Act 2021 to come into play, will find useful guidance in this case as to whether such modifications will be permitted under the PCR.

The Procurement Bill is due to replace the PCR as it comes to the end of its progress through Parliament. Contracting authorities will need to take note of the higher transparency obligations under the new Bill, meaning that modifications will be open to greater scrutiny and contracting authorities will need to be confident of any decisions made to modify contracts and to keep a robust record of their justifications for doing so.

We advise contracting authorities on all manner of issues relating to public procurement and our experts are on hand to guide authorities through the intricacies of running a procurement and responding to procurement challenges.

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REASSESSING RE-HEARINGS

The Housing Act 2004 ("the Act") provides a wide variety of powers to Local Authorities to regulate the private rented housing sector, including taking action against landlords/property managers in relation to housing conditions (Part 1 of the Act) and housing licensing issues (Parts 2 and 3 of the Act). Appeals against such actions lie to the First-tier Tribunal (Property Chamber) ("the FTT"). The Act provides that such appeals are to be by way of a 're-hearing', but may have regard to matters of which the Authority were unaware.

Sharpe Pritchard have been involved in two recent cases, acting under instruction from the **London Borough of Waltham Forest**, which provide useful guidance on what kind of information a First-tier Tribunal can, and cannot, take into consideration when conducting such re-hearings under the Housing Act 2004.

Waltham Forest LBC v Rahman [2023] UKUT 139 (LC) involved a civil penalty imposed against the owner ("R") of a flat in Waltham Forest which had been let out to the same tenant since May 2015. Waltham Forest has had two selective licensing schemes in operation under Part 3 of the Act; a first scheme in operation between April 2015 and March 2020, and a second scheme which commenced in May 2020 and continues to operate until April 2025. R was required to apply for separate licences for the property under each of the schemes. Failure to obtain such a licence is an offence under section 95 of the Act. Whilst R obtained a licence for the property under the first scheme, he failed to re-apply for a license under the second scheme. As such, in September 2021, the Waltham Forest informed R of its intention to issue him with a civil penalty of £5,000 (pursuant to s.249A of the Act, and in accordance with the level of fines set out in its approved Enforcement Policy). Whilst R subsequently applied for a licence for the property in October 2021, Waltham Forest nevertheless issued him with a final civil penalty notice in November 2021, but reduced the penalty by 20% to £4,000 in recognition of the fact that he had latterly applied for a licence. Again, that 20% reduction was in accordance with the Council's approved Enforcement Policy.

R appealed against the civil penalty to the FTT, asserting that the level of the penalty was excessive. During the course of the appeal, it was said that R did in fact own a number of other properties across the country. Waltham Forest's Enforcement Policy specifies that where a landlord owns more than five properties they are to be subject to a heavier penalty due to being a more experienced landlord. As a result of this new information, Waltham Forest asserted that as the appeal was a re-hearing in which the FTT could take into consideration matters of which the Authority was unaware, it should therefore follow Waltham Forest's Enforcement Policy and increase the penalty so that R would receive an increased penalty with a starting point of £15,000. The FTT refused to do so, and instead upheld the penalty in the amount that Waltham Forest had imposed.

Waltham Forest appealed to the Upper Tribunal (Lands Chamber) ("the UT"), seeking a decision that the FTT was obliged to apply Waltham Forest's Enforcement Policy and increase the penalty accordingly.

Upper Tribunal Judge Cooke held that the FTT *"uncontrovertibly"* had power to increase the penalty in light of information coming to light during the course of the appeal and emphasised that:

"If the local housing authority imposed a penalty on a landlord on the basis that he or she owned and was renting out, say, 15 properties, and the FTT found as a fact in the appeal that he or she owned only one, then it is implausible to suggest that the FTT should or could do anything other than to start from the local authority's policy and determine the penalty on the basis that only one property was owned. Such a penalty would no doubt be substantially lower. Conversely, in a hypothetical case where the local authority proceeded on the basis that one property was owned but the FTT found as a fact that 15 properties were owned then the FTT would determine the penalty on the basis of that finding of fact."

In **Waltham Forest LBC v Hussain [2023] EWCA Civ 733**, the Court of Appeal grappled with two main issues: firstly, when conducting a re-hearing on appeal, was the FTT entitled to consider facts that existed at the time of that hearing, but which had not existed at the time of the Authority's original decision? Secondly, to what extent was the FTT required to defer to the Authority's original decision?

Nassim Hussain ("**NH**") was convicted of offences relating to the provision of false information on a property licensing application form in 2016. NH held several property licences for other properties in the Borough, and following her conviction the Council revoked all of these licenses on the basis that she was not a 'fit and proper person' to hold such licences. In addition, and having concluded that NH's operation was a family endeavour, it also revoked licences and refused licence applications made by her daughter, Farina Hussain ("**FH**"), and FH's company, FHCO.

Appeals were brought against all refusals and revocations.

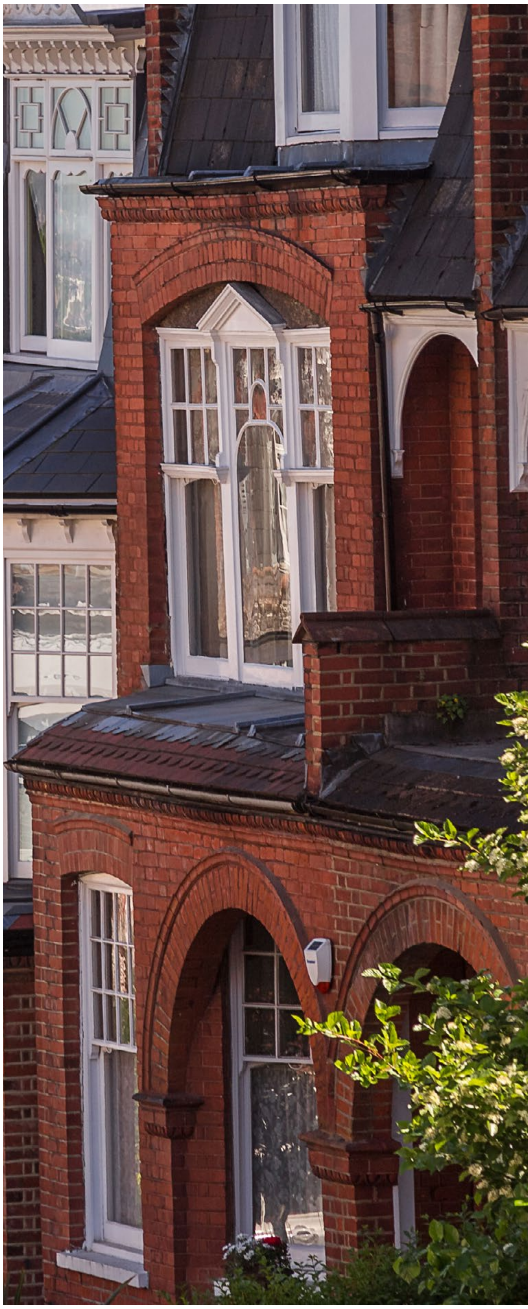
The FTT dismissed NH's appeals, but part-allowed FH's and FHCO's appeal on the basis that by the date of the appeal hearing, FH and FHCO had gained further experience and demonstrated that they were fit and proper persons to hold property licences at that point in time.

Waltham Forest appealed against this decision, arguing that the FTT had erred in considering FH/FHCO's fitness and propriety as at the date of the hearing rather than at the date of their original decision, and had also failed to give due consideration to the Council's original decision. The UT part-allowed the Council's appeals in relation to FH, but its appeals in relation to FHCO were unsuccessful. Waltham Forest appealed to the Court of Appeal.

In regard to the first issue, the Court of Appeal held that *"[the UT] was wrong to find that it was open to the FTT to decide the appeal by addressing fitness and propriety as at the date of the appeal … [and] on the basis of material that did not exist at the time of the decision".* The correct task for the FTT was therefore to decide whether the authority was wrong when it made its decision by reference to matters that existed at the time of its decision, rather than when the FTT happened to be hearing the appeal against that decision.

In relation to the second issue, the Court of Appeal held that *"the FTT must pay careful attention to the reasons why the authority reached the decision that it did, and explain why it disagrees with them. Since Parliament intended such decisions to be taken by the authority, the FTT must afford the decision the weight and respect that must be afforded to any decision involving a value judgment made by the decision maker which was also the finder of primary fact".*

This point reinforces the importance of councils' decision-making powers, and that the FTT should not just dismiss the reasons for their decisions. In this case, it was held that the FTT had failed to pay sufficient deference to the original decision of the Council.



The Court of Appeal therefore allowed the Council's appeal on both grounds.

In view of the above decisions, Local Authorities can be encouraged that if new information comes to light during the course of an appeal which was in existence (but not known about) at the time of their decision, that they can encourage the FTT to take this into account on appeal. However, they can also be reassured that if Appellants take steps to address issues which led to the Authority taking enforcement action in the first place, that this will not operate to undermine their original decision to take action against the Appellant in the first place.

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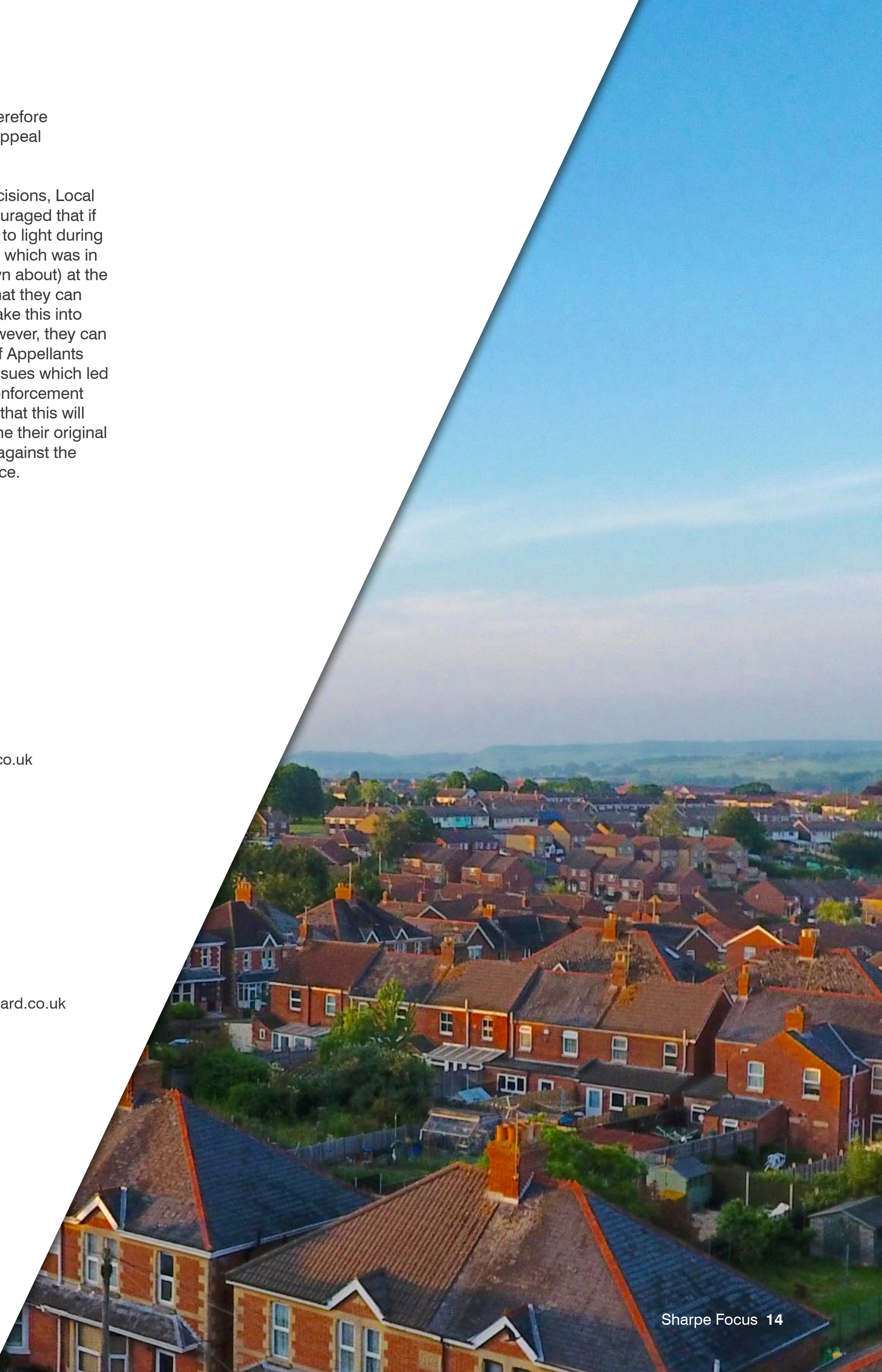
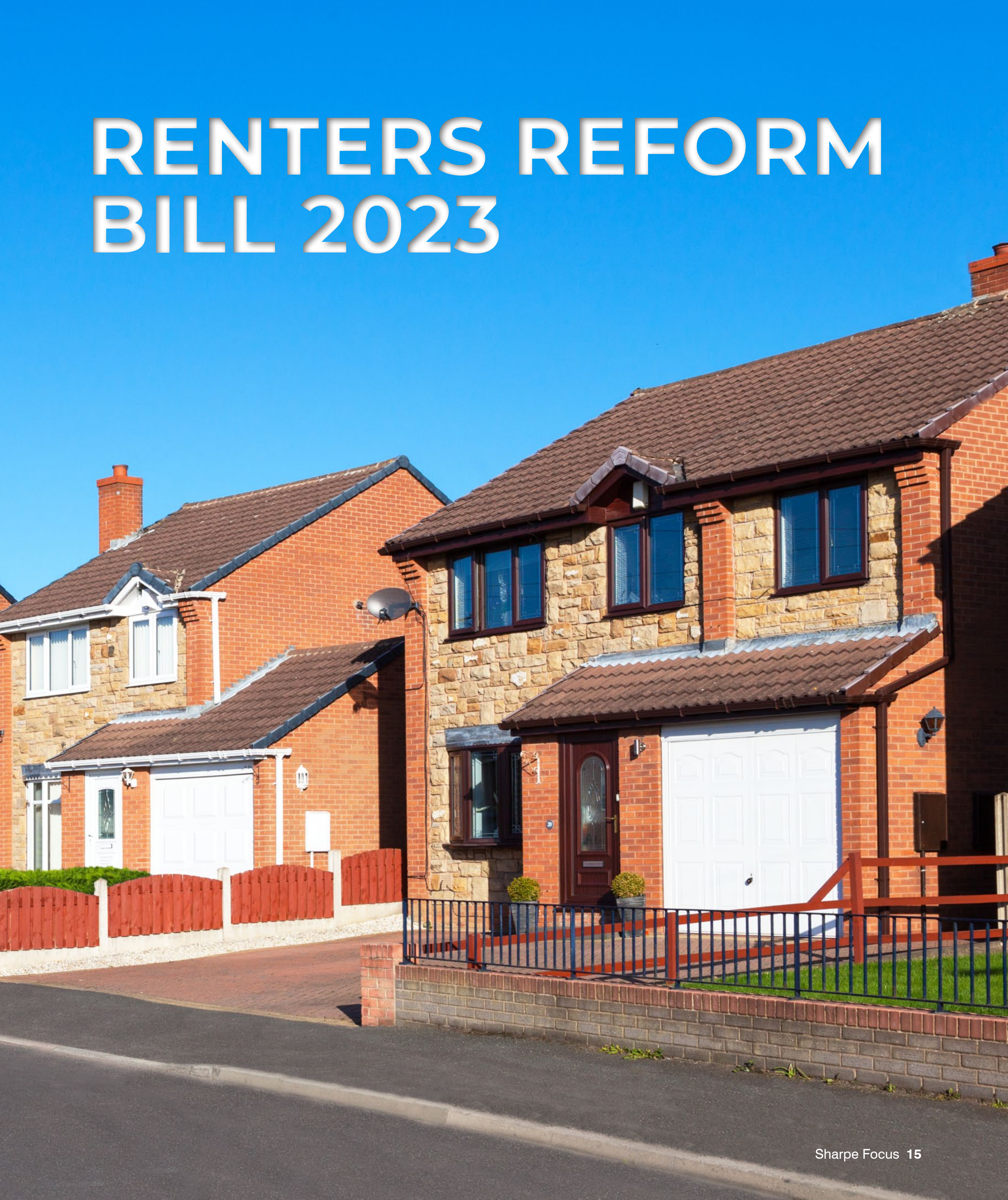


RENTERS REFORM BILL 2023



The Renters (Reform) Bill 2023 passed its first reading in the House of Commons on 17th May 2023. This Bill is the second limb of the Government's planned leasehold and renter reforms. The first limb was the recently passed Leasehold Reform (Ground Rent) Act 2022 which, amongst other things, restricts ground rent to a nominal sum on newly created long residential leases and lease extensions (with some exceptions).

"A better deal for leaseholders and tenants"

The Government announced plans in 2017 to address the growing trend of new-build houses being sold as leaseholds rather than freehold and to limit ground rents on new lease agreements. Alongside, the CMA has been pursuing several major housebuilders and investment firms in relation to mis-selling and unfairly escalating ground rent and the cost of buying the freehold of properties. The Government has also committed to rental sector reform to address concerns about poor housing standards and the lack of security felt by many tenants.

The need for reform

Concerns about the private rental sector have been building for some time. The sector has doubled in size since 2004, and now makes up 19% of the housing market, with an estimated 11 million private renters and 2.3 million private landlords in England alone.

A 2022 report found that 23% of privately rented and 12% of socially rented properties do not meet the Decent Homes Standard and hazards that present an imminent risk to health exist in 13% and 5% of properties respectively, placing an additional strain on the NHS.

In addition, the lack of security for renters has been shown to affect people's opportunity for stable employment and to have a negative effect on children's educational outcomes.

What's in the bill?

- **Repeal of s21 Housing Act 1988 to abolish 'no fault' evictions –** this provision has gained the most publicity and will mean that a landlord can only evict a tenant in 'reasonable circumstances' for example in the event of repeated arrears.
- **Strengthening of landlord's grounds for possession pursuant to s8 Housing Act 1988 –** the Bill contains new grounds for possession if the landlord wishes to sell the property or if the landlord or close family wish to move into the property. Evictions will also be mandatory where a tenant has been in at least two months' rent arrears three times within the previous three years.
- **Replacement of Assured Shorthold Tenancies with periodic tenancies –** this will require tenants to provide at least two months' notice of intention to terminate their tenancy.
- **Protection against 'backdoor eviction' –** landlords will not be able to use above-market rent increases to force a tenant out. Landlords will be permitted to raise rents annually in accordance with market prices, upon giving the tenant two months' notice. Tenants can appeal rent increases through the first-tier property tribunal.
- **Right to have a pet –** tenants will be able to request permission to have a pet, and landlords cannot unreasonably withhold consent. The tenant must have pet insurance and cover cost of landlord's insurance for pet damage.

Some reforms contemplated by the Bill will require further legislation to bring them into force, including:

- **Private Rented Sector Ombudsman –** the Bill will enable the Government to set up a Private Rented Sector Ombudsman to ensure that all tenants have access to redress for complaints about their landlord, the property standard or repairs not being completed within a reasonable timeframe. The Ombudsman is intended to be fair, impartial and provide binding resolutions more quickly and cost-effectively. It is intended that Landlord membership will be mandatory.
- **Privately Rented Property Portal –** the Bill also enables the Government to set up a Private Rented Property portal, which will enable tenants to check that landlords are complying with their legal requirements. Landlords will be required to register their property in the portal.

Impact for local authorities

If significant numbers of landlords remove themselves from the private rented sector, this could increase pressure on local authorities' already stretched housing responsibilities. Some types of tenancy are excluded from the scope of the bill, e.g. accommodation used for employment purposes and student lets granted by educational establishments but private student lets are not excluded and it will be interesting to see whether this is amended as the bill passes through parliament.

The Property Portal will provide local councils with more easily accessible data about private sector properties, including identifying owners and non-compliant properties. This should create more time for enforcement action against criminal landlords and mean less time is spent gathering intelligence. Enforcement action will include the power to issue fines of up to £30k or prosecuting for a criminal offence.

Significant investment will be required both for the increased enforcement role for local authorities and for the courts after the Government indicated that it wishes for court improvements, including 'end-to-end digitisation of the process'.

Many authorities are concerned about funding their expanded role despite being able to ring fence fines levied through enforcement action for future enforcement activity. However, the Government has pledged to "fully funding any additional costs that may fall on council as a result of our proposed reforms".

What next?

The aim of the Government is to achieve Royal Assent within the lifetime of this parliament and as renter reform was a key manifesto pledge, the Government will likely want to see the bill pushed through as swiftly as possible.

In addition, some previously publicised reforms have not made it into the bill, but the Government has said that it intends to bring forward legislation "within this parliament" to deal with reforms such as:

- applying the Decent Homes Standard to properties within the private rented sector to match the social housing sector regime;
- making it illegal to have blanket bans on tenants with children or who are in receipt of benefits;
- strengthening local authorities' enforcement powers;
- obliging local authorities to report on enforcement activity to help target criminal landlords.

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