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Consultation – summary of responses

Reforming the Non-Domestic Rates Appeals System in Wales

April 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses to the consultation on proposals for reforming the system for appealing non-domestic rating valuations in Wales.

Action required

This document is for information only.

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Additional copies

This summary report and copies of all the consultation responses are published in electronic form only and can be accessed from the Welsh Government's website.

Related Documents

Link to the consultation document:

<https://consultations.gov.wales/consultations/reforming-non-domestic-rates-appeals-system-wales>

Reforming the Non-Domestic Rates Appeals System in Wales

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Reforming the Non-Domestic Rates Appeals System in Wales

Introduction

1. Non-domestic rates (NDR) contribute more than £1 billion to fund vital local services in Wales – services that all ratepayers benefit from.
2. A key feature of the NDR system is the appeals process. The Non-Domestic Rating (Alterations of Lists and Appeals) (Wales) Regulations 2005 specify the operation of the appeals system, including the timescales and grounds for making appeals and the process which must be followed. The appeals system in Wales had been largely unchanged since those regulations were made. In 2017, the Welsh Government began the process of improving the appeals system with changes to the operation and governance of the Valuation Tribunal for Wales.
3. A review by the UK Government of the administration of the NDR system in England identified problems which were considered to make the appeals system inefficient, leading to frustrations for ratepayers and costs for government, business and other ratepayers.
4. To address these issues in England, in 2017 the UK Government implemented a new NDR appeals system called Check, Challenge, Appeal (CCA).
5. Similar issues have been identified with the efficiency of the NDR appeals system in Wales though to a much less significant extent.
6. The purpose of the Welsh Government's consultation, *Reforming the Non-Domestic Rates Appeals System in Wales*, was to seek views from a broad range of stakeholders on improvements to the NDR appeals process. We consulted at this early stage of the process to enable us to take account of the available evidence and viewpoints before bringing changes into effect. We will be working with the Valuation Office Agency (VOA) and the Valuation Tribunal for Wales (VTW) to ensure we design a suitable system for Wales.

Proposals

7. The consultation focused on how the system for non-domestic rates appeals in Wales could be improved, setting out how the appeals system could better

reflect changing circumstances and make the best use of current technology. The consultation also included specific aspects such as when information should be provided during the appeals process, the potential introduction of fees for unsuccessful appeals, new civil penalties for providing false information and the requirement to make appeals in a responsible and accountable manner.

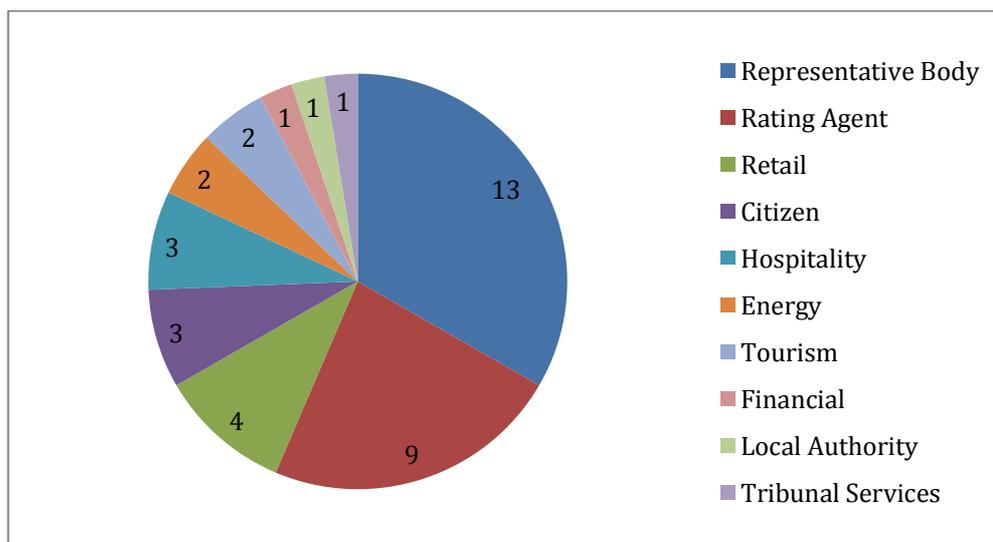
Engagement

- Views were invited as part of a 12-week consultation period which began on 17 October 2017 and ended on 9 January 2018. The consultation was published on the consultation pages of the Welsh Government’s website. Respondents were able to submit their views and comments on paper, by email or online, and in Welsh or English.

Overview of Responses

- In total, the consultation received 39 substantive responses, with almost all being from ratepayers or representative bodies. Figure 1 illustrates the responses received by category. Of the 39 responses, 22 were from rating agents or professional representative bodies. There were also responses from particular sectors – retail, tourism and hospitality (nine in total). The remaining responses were from individual ratepayers and other interested parties.

Figure 1: Number of responses by category to the consultation – *Reforming the Non-Domestic Rates Appeals System in Wales*



10. A full list of respondents is given in Annex A. Individual responses are available on request from the Non-Domestic Rates Policy Branch.

Summary of Responses

11. This document is intended to be a summary of the responses received. It does not aim to capture every point raised by respondents, but to highlight the key themes.

Improving the appeals process

12. The consultation set out the current appeals system, its drawbacks and why Welsh Government is seeking to make changes to the system.

Question 1 If you agree that the appeals process can be improved, which aspects of the system do you think could be improved and how?

13. Consultation responses

- Respondents thought that the current appeals system in Wales works reasonably well and that what was required was greater transparency in the assessment of rateable values and in comparative data.
- Many respondents did not consider the current system in Wales to be overburdened with speculative and unnecessary appeals. They were aware that the VOA had made changes which they considered should eliminate spurious appeals and potentially free up the appeals process.
- The point was made that CCA is overly cumbersome, restrictive and would ultimately increase the administrative burden for ratepayers and the VOA.
- Concerns were expressed regarding the resourcing of the VOA. It was suggested the implementation of a version of the CCA system in Wales would require significant investment in ICT and staffing resources to deal with Checks and Challenges in a timely manner.
- Many respondents cited a lack of the information made available to ratepayers on their valuations as a major flaw in the system. It was suggested that any new system should ensure ratepayers are provided with the full range of information used in make their valuation. Information should flow both ways if a negotiation is to take place effectively, and facilitate a speedy resolution of disputes.
- It was proposed the appeals process include a section where an appellant can lodge an appeal against the valuation method, not just the individual valuation level.
- The point was raised that lessons should be learnt from England where the information sharing is unbalanced with the ratepayer being asked to provide

much more information than the VOA, effectively undermining the 'Challenge' process.

- The VTW commented that the key to improving the procedures for challenging rating list entries was the early exchange and consideration of information and that this should occur at the proposal stage.

Conclusion

14. Broadly, respondents took the view that the current appeals system in Wales works reasonably well and acknowledged elements of the appeals process could be improved. An exact replication of the English system or something too similar was not regarded as desirable.

Registration for the appeals process

15. The consultation proposed that ratepayers should continue to be required to register individually before initiating any stage of the appeals process. Applicants would need to declare their interest in the property concerned before progressing.

Question 2	What are your views on ratepayers being required to register their property or properties before initiating the appeals process?
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Question 3	How do you think ratepayers should be able to declare their interest in a property?
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16. Consultation responses

- The general view was that it was not necessary to introduce this requirement, considering it another level of bureaucracy which would slow down the appeals process.
- Most respondents favoured the retention of the 'Authority to Act' procedure, introduced by the VOA for ratepayers to authorise an agent to act on their behalf as the simplest and most workable solution. It was considered that this procedure would provide adequate validation of a written proposal and would deter speculative appeals.
- Some respondents said they believed it was extremely unlikely that a ratepayer would consider instigating a challenge or appeal against a property in which they had no interest, thereby drawing the necessity for registration of properties by the ratepayer into question.
- There were suggestions that billing authorities, being aware of who the ratepayer is in most cases as they issue rates demands, should share the information with VOA.
- It was suggested that submission of a rates demand, utilities bill or similar proof should suffice, and that landlord appeals could be witnessed by Land

Registry entries or self-certification. It was also suggested that ratepayers could refer the VOA to the Land Registry to obtain the information.

- There was widespread opposition to adopting the CCA system used in England, with much criticism of what was seen as an inadequate gateway system and poor performance of the portal.
- Some respondents supported the initiative, and agreed with the registration of appellants. However, the slowing down of the process that this might bring was recognised, and it was stressed that any online registration process should not be onerous and should be a straightforward and easy process, with functional ICT that is fit for purpose.
- It was also suggested that ratepayers should be able to declare an interest in writing, by telephone or online to either the billing authority or the VOA.
- The VTW highlighted that the current legislation gives people other than ratepayers the right to challenge a particular rating assessment and commented that there should be no further restrictions to this right.

Conclusion

17. Respondents did not consider it necessary to require ratepayers to register their interest in a property. It was considered to be a further level of bureaucracy which could slow down the appeals process.
18. The submission of a rates demand, utilities bill or similar proof was considered sufficient, and ratepayers should also be able to declare an interest in writing, online or by telephone.

Time periods for each stage

19. The consultation proposed the appeals process would be accompanied by new time-limits and these new limits would set the timeframe for dealing with an appeal. It was also suggested a new timeframe should be established for the VTW to deal with appeals.

Question 4 What are your views on introducing time-limits for different stages of the appeals process? What do you think would be appropriate time-limits?
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20. Consultation responses

- Generally, respondents supported earlier engagement between ratepayers and the VOA, with a fair and transparent exchange of all relevant information to support this.
- There was broadly support for the introduction of sensible time-limits on the VOA and the VTW for the consideration of appeals.

- Respondents welcomed the introduction of time-limits. Citing the importance to ratepayers and occupiers of certainty regarding their rates liability to enable them to manage their finances and to plan effectively.
- Respondents considered time-limits could assist councils in reducing unnecessary administration around issuing bills and recovery procedures.
- Respondents suggested that, assuming sufficient information was provided by the VOA at the outset, it would be reasonable to expect simple cases to be resolved in 6 months and more complex cases, in 12 months.
- There were differing opinions regarding a reasonable timeframe for the VTW's consideration of appeals. Opinion ranged from 3 to 12 months.
- There were concerns that limits at each stage of the process could have resource implications as it should not be assumed a projected reduction in the volume of appeals would necessarily lead to better service levels.
- The VTW commented that it would not be unreasonable to set a 'standard' maximum time-limit of 12 months for the VOA to consider proposals to alter the rating list and issue a decision. This time limit could be extended by the mutual agreement of the parties.

Conclusion

21. Respondents were in favour of the introduction of time-limits for different stages of the appeals process and various timescales were suggested.

Provision of information

22. The consultation set out an approach for the provision of information and proposed that under the reformed approach, ratepayers would be required to present all the available information at the beginning of the appeals process.

Question 5 We would welcome your views on the provision of evidence as part of the appeals process and the controls on the introduction of new evidence once the appeals process has been initiated. Are there other ways to ensure that relevant information is provided?

23. Consultation responses

- There was broad support for enabling the sharing of information by the ratepayer and the VOA at the outset. However, it was felt that the requirement should not be placed solely on the ratepayer but should apply equally to the VOA.
- A number of respondents considered the VOA should be required to explain and justify its valuations to ratepayers.
- It was suggested that a set of parameters as to what would be deemed to be 'relevant' evidence could be agreed between the VOA and the Rating Agents Forum.

- It was suggested the Welsh Government should put in place a system requiring the VOA to provide the rental information on which they have made their assessments early in the process to promote understanding for the ratepayer and reduce the number of appeals, reducing the burden on the VOA and the VTW.
- The majority of respondents believed ratepayers should not be denied the right to provide additional information later in the process if it would assist the VOA or the VTW in arriving at the correct valuation.
- Respondents were concerned that under the proposals, the VOA would have power to determine the admissibility of evidence and that this might give the VOA an undue advantage in the appeals process.
- The VTW commented that when evidence is advanced by an appellant, the VOA should be required to respond proportionately and produce evidence to support its position and that this exchange of evidence should take place before the VOA notifies the appellant of its decision.

Conclusion

24. Respondents supported in principle the introduction of a requirement that ratepayers or their representatives present all the available information at the beginning of the appeals process and that controls be put in place regarding the introduction of new evidence once the process has been initiated. They also thought any process should be clearly communicated to the ratepayer including details of acceptable evidence so as not to deter any genuine appeals.

Additional information

25. The consultation proposed the NDR appeals system should include the provision of additional detailed valuation information to the ratepayer about their property. Such information would be provided through the VOA's website and would be available once the ratepayer has registered their property.

Question 6 What additional information could help ratepayers to understand how individual valuations have been calculated?

26. Consultation responses

- Respondents considered making available the underlying evidence on which an assessment was based would reduce the number of speculative appeals.
- Respondents welcomed more openness at this stage of the process on the part of the VOA. Full disclosure provides clarity and transparency.
- Respondents took the view that the rental information upon which assessments are based should be made available.
- It was suggested full details of how a rateable value is calculated is provided to ensure the ratepayer understands the link to the evidence required when

making a challenge. Details could include property plans and a breakdown of areas, how they are valued etc.

- The point was raised that the VOA currently shares rental evidence as part of the procedures leading up to a tribunal hearing and there was no reason in principle why this sharing should not be undertaken at an earlier stage. This would enable a ratepayer to decide, without appeal, whether the evidence available to the VOA justifies the assessment.
- The VTW noted that summary valuations and details of valuation schemes were available online and it was relatively easy for ratepayers or interested parties to be able to check the details and measurements used to value their property by accessing the VOA's portal. The VTW considered it difficult to see how this could be improved.

Conclusion

27. Respondents called for more transparency in the valuation process. In principle it was suggested that this should include information which contributed towards the valuation, subject to data protection legislation.

Backdating appeals

28. The consultation proposed to change the arrangements for the backdating of successful appeals.

Question 7 What are your views on the backdating of successful appeals and linking this to the timely provision of relevant information?

29. Consultation responses

- Almost all respondents considered the proposal neither fair nor reasonable, and that successful appeals should be backdated to the date of the hereditament's entry onto the rating list. Respondents considered unjust that tax could be levied but not repaid if it was found to be wrong.
- Some respondents thought the VOA should regularly maintain its valuation databases and that ratepayers should expect a correct valuation. If a valuation were incorrect through no fault of the ratepayer, the ratepayer should be entitled to full reimbursement.
- Several respondents felt that the proposal would put further burden on the appeals process as it would lead to more assessments being appealed (sometimes without foundation) at the beginning of a rating list to protect against potential loss.
- Respondents felt that it would be impossible to make a challenge to a valuation immediately, due to ratepayers having to register and claim properties, and prepare detailed challenges, all with supporting evidence. It

was considered that this would not allow the possibility of achieving a fully backdated refund.

- One respondent believed that appeals should be backdated to the point at which they were incorrect, and other mechanisms found to encourage the early provision of information.
- Another respondent was in favour of restrictions on backdating successful challenges being reintroduced, with reductions on compiled rating list entries being backdated to 1 April of the year in which the proposal for alteration was lodged.

Conclusion

30. The overall view was that the proposal was unfair, and that successful appeals should be backdated to the date of a hereditament's entry onto the rating list. To deny a successful appellant a full refund when a valuation had been shown to be incorrect was considered unjust.

Civil Penalties (Fines)

31. The consultation proposed changes to the appeals system should include the introduction of civil penalties (fines) if ratepayers or their designated representatives knowingly, recklessly or carelessly provide false information at any point during the appeals process.

Question 8 What are your views on the introduction of Civil Penalties for knowingly, recklessly or carelessly providing false information and on the levels of such penalties?

32. Consultation responses

- The general view was that fines were appropriate for the deliberate provision of false information. However, the terms 'recklessly' or 'carelessly' were thought to introduce a degree of subjectivity which could lead to further disputes and genuine errors being penalised. Responses considered the circumstances for introducing fines would need to be carefully defined. Valuation was seen as being based on opinion, judgement and experience with a fine line between false information and incorrect information.
- Several respondents highlighted the need for the VOA to ask only questions that were relevant.
- Some respondents noted that ratepayers might shy away from the appeals process under the threat of a fine, particularly ratepayers who act independently of an appointed agent. Responses considered a smaller fine of £100, in line with tax return penalties, would have a reduced disincentive effect.

- Some respondents were concerned with the level of penalty being linked to the rateable value of a property. The higher valuations that prevail in some sectors could result in different standards being applied, with the potential for fines to become a revenue raising exercise. Therefore, they considered a flat penalty to be the only fair solution.
- One respondent felt it inappropriate for the VOA to be given powers to impose fines, and that the power to impose a fine should be with the VTW on application by the VOA.
- Other respondents felt that the introduction of a fines system would lead to additional bureaucracy and disputes unrelated to the tax regime. It was pointed out that the VOA currently has powers that require ratepayers to provide tenure and other information (including costs and trading) relevant to the valuation of their property and a civil penalty regime (via the Enterprise Act 2016) to ensure compliance with the requirement. An additional penalty regime should not be needed.
- Most of the respondents indicated that an appeals process against fines incurred would be essential.
- The VTW noted that the Enterprise Act 2016 allows regulations to be enacted to provide powers for valuation officers to impose penalties of up to £500 for knowingly, recklessly or carelessly providing false information. It also noted that, if this provision were enacted, there should be an avenue of appeal against the imposition of the penalty to the valuation tribunal.

Conclusion

33. Respondents took the view that fines would be appropriate for deliberate submission of false information, but the parameters would need to be carefully defined to avoid further disputes. Respondents took the view that the level of fines should be affordable for all to avoid exclusion from the appeals process.

Fees

34. The consultation proposed that fees should be introduced for non-domestic rates appeals, in line with the approach taken for other appeals and tribunals.

Question 9 What are your views on the introduction of fees and the levels of such fees?

35. Consultation responses

- Those respondents who supported, or were not against, the introduction of fees were concerned that fees should be kept to an affordable level. They also suggested that the level of fees should not deter potential appellants and should be refunded in the event of a successful appeal.

- Some respondents said the introduction of fees should be based on the premise that the VOA was required to be transparent and share all relevant underlying rental evidence in advance of an appeal being made. Minimum standards of service should be introduced and closely monitored.
- There were concerns about the introduction of fees when such matters are considered by a lay tribunal. One suggestion was that any fees collected could be used to ensure a higher quality of tribunal members.
- Those who mentioned the timing of the introduction of fees agreed that it should be at the appeals (VTW) stage.
- Those who were against the introduction of fees felt that even a small fee could deter some ratepayers, particularly small businesses, from appealing, and that the right of appeal should be open to all ratepayers ensuring equal access to justice.
- The VTW thought that fees should be introduced at the appeal stage and should be refunded where appeals were successful in whole or in part. The tribunal should be given the power to determine the level of the refund where an appeal is partially successful. The VTW also thought that any fees should be set at a modest level. It also thought that any fees should not exceed those which applied to CCA in England and there should be a lower rate for properties with rateable values less than the upper threshold for small business rates relief. Fees should not be linked to rateable value.

Conclusion

36. In general, the respondents felt that the introduction of fees as a deterrent to spurious or protective appeals would be acceptable, but the level of fees should not be so high as to deter some appellants. Most respondents took the view that fees should be payable at the appeals (VTW) stage and appellants should be refunded if an appeal proved successful.

The role of the Valuation Tribunal for Wales

37. The consultation proposed that the introduction of any new evidence at the tribunal stage would be limited and allowed only on the agreement of the parties involved or in exceptional circumstances. The VTW would make the determination as to whether the new evidence should be allowed.

Question 10 What are your views on the use of controls over the submission of additional information (information not submitted earlier in the appeals process) to inform the decision of the VTW?

38. Consultation Responses

- Almost all respondents disagreed with the proposal. It was considered essential that the VTW had all pertinent evidence available for it to reach a fair

decision, and that no artificial restrictions were imposed on the appeals process. Any relevant evidence should be permitted to be subsequently considered by the VTW.

- It was suggested that relevant information sometimes only comes to hand later in the process, and to prohibit the submission of such relevant information runs contrary to the rules of natural justice.
- A reference was made to the disproportionate amount of information that the VOA holds which is not available to appellants in the early stages of the process, and that the VOA should be required to disclose the evidence on which its valuations have been based.
- Concerns were raised over the VOA having absolute discretion as to the relevance of late information. Both parties have a duty to disclose, and it should be the VTW that decides on the relevance of late evidence.
- It was suggested that a set of parameters as to what is deemed 'relevant' could be agreed between the VOA and the Rating Agents Forum.
- The VTW commented that the use of additional evidence, not submitted earlier during the proposal stage, to inform the decision of the VTW should be restricted in any new procedures unless it could be shown that the existence of such information could not have been determined or that it has become available since the conclusion of the proposal stage of proceedings.

Conclusion

39. Respondents thought it essential that the VTW was presented with all relevant information to enable it to reach a correct and fair decision, and no restrictions should be imposed on its submission. Respondents outlined that sometimes vital information is not available to appellants in the early stages of an appeal.

Welsh Language

40. We asked a range of questions relating to the impact of these proposals on the Welsh language.

Question 11	<p>The Welsh Government would like to know your views on the effects these proposals would have on the Welsh language, specifically on:</p> <ul style="list-style-type: none"> i) opportunities for people to use Welsh; and ii) on treating the Welsh language no less favourably than English <p>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</p>
Question 12	<p>Please also explain how you believe the proposed policy could be formulated or changed so as to have:</p> <ul style="list-style-type: none"> i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

41. Consultation responses

- Respondents considered the appeals system should be fully accessible to all, regardless of language.
- It was acknowledged that all documentation is provided in Welsh and Welsh speakers are accommodated at tribunals.
- The majority of respondents believed the proposals would not have a negative impact on the Welsh language or its use.

Conclusion

42. Respondents were positive about the way the Welsh language is currently used in the NDR appeals process but were keen to ensure any procedural changes to the system should not create adverse effects on the use or treatment of Welsh.

Other Comments

Question 13	<p>We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.</p>
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43. Consultation responses

- Generally, it was felt that the current system of appeals works well in Wales, and that the introduction of 'Authority to Act' would eradicate speculative appeals.
- If there were to be changes, it was thought they should be deferred until the next revaluation, as to change the method of appeal mid-list could prove complex and cause confusion.
- There should also be close monitoring of the success, or otherwise, of CCA in England.
- Several responses suggested that the lack of useful and complete information provided to the ratepayer by the VOA was the main problem with the rating system in Wales. Full disclosure by the VOA at the earliest stage was considered essential in reducing speculative or fact finding appeals.

Next Steps

44. The consultation responses will be analysed and used to inform any legislative and administrative changes designed to improve the system.
45. Welsh Government officials will continue to work collaboratively with stakeholders to explore fully the potential implications of the proposals.
46. The Welsh Government will consider the broader points raised by respondents as part of the wider non-domestic rates policy making process.

We would like to thank everyone who has taken the time to respond to the consultation. Your views were important in informing the decisions on delivering a reformed appeals system for Wales. We are grateful for your contributions.

Annex A: List of Respondents

Responses were received from:

Anonymous

GVA (on behalf of the NHS Wales Primary Care Estate)

Yorkshire Building Society

Deloitte Real Estate

Halfords Group plc

Daniel Watney LLP

Gerald Eve LLP

Costa Limited

Atlas Hotels

Valero

Specsavers

Boots plc

Celtic Manor Resort

Whitbread Group

GVA Cardiff

Accessible Retail Ltd

Valuation Tribunal for Wales

RICS Wales

ALMR

Homebase

Monmouthshire County Council

British Beer and Pub Association

Revo

FSB Wales

G L Hearn

Altus Group/CVS

Kelvin Jefferies

IRRV

Association of Convenience Stores

British Property Federation

Welsh Retail Consortium

Central Association of Agricultural Valuers

British Hydropower Association

Colliers International

Rating Surveyors Association

Montague Evans

Tom Dixon

Stonegate

Mr R W Ebley