Local Government Association

Research

Business rates avoidance survey of local authorities

Research Report

July 2019

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Contents

Summary

In July 2019 the Local Government Association (LGA) surveyed councils responsible for collecting business rates to gather information on estimated amounts of business rates lost to avoidance in their local areas and the methods used. This was a repeat of a survey conducted in 2014[1]. The findings of the survey will help inform the development of proposals for how to tackle this behaviour, reduce avoidance and raise revenues that are owed to local and central government.

Methodology

An online survey was sent to all LGA member single tier and shire district councils in July 2019 and a reminder was sent in August. In total, 120 councils responded giving a response rate of 39 per cent.

Key results

- On average, respondents estimated that the total amount of business rates lost to avoidance in their local authority area in 2017/18 was £798,000. Using this average, it is estimated that overall scale of avoidance in England is £250 million per annum, which equates to one per cent of the overall total business rates payable. This is the same percentage as found by the last survey. However the percentage reporting business rates avoidance of over two per cent has risen from six per cent to 15 per cent.

- Repeated short-term periods of occupation was the method of avoidance most commonly identified among respondents, and this also had the highest average loss at £396,000. Vacant properties being leased to a charity with proposals for the next use to be wholly or mainly used for charitable purposes was the second most commonly identified method and the average amount lost for this was £153,000. This was also the most commonly used method in the 2014 survey.

- Respondent councils employed an average of one full-time equivalent (FTE) officer to carry out non-domestic rate inspections and, most commonly, respondents inspected 100 per cent of unoccupied properties to ensure correct reliefs and exemptions were granted.

- The practice of ratepayers using third party/rates mitigation companies to facilitate arrangements in return for a percentage of the rates saved (ie marketed avoidance schemes) was widespread or very widespread in the opinion of 40 per cent of respondents.

- Less than half of respondents (42 per cent) had taken or were taking legal action against those avoiding. Over half (52 per cent) of those who were not

[1] https://www.local.gov.uk/sites/default/files/documents/business-rates-avoidance--7b4.pdf

taking action said this was because the schemes in use were within the law. Among those councils who had taken legal action the variables which they believed have led to success were picking cases they believed they would win (21 per cent), sufficient evidence (18 per cent) and having a good legal team (13 per cent).

- Respondents agreed that more joined-up working with Her Majesty's Revenue and Customs (HMRC) (72 per cent), Charity Commission (71 per cent) and Companies House (66 per cent) would help deal with avoidance. They also made a number of their own suggestions including changes to the legislation/regulations, information sharing and more joined-up working with other organisations.

- Only three per cent of respondents felt that local authorities have adequate powers to tackle avoidance, 84 per cent felt they didn't, while the remaining 13 per cent did not know. When asked to specify which powers they lacked in order to tackle avoidance, most cited shortfalls in the legislation/regulations.

- Respondents suggested reform of empty property regulations (85 per cent), clarification and guidance on occupation (23 per cent) and a duty to notify billing authorities of changes in occupation for liability (20 per cent) as the anti-avoidance regulations and package of changes that should be put in place as a minimum to tackle avoidance and improve success in the courts.

Introduction

In July 2019 the Local Government Association (LGA) surveyed councils responsible for collecting business rates in order to gather information about estimated amounts lost to avoidance in their local areas, the different types of avoidance, and to seek their opinions on possible measures to mitigate against avoidance. This was an update of a survey conducted in 2014. The findings of this survey will help inform the development of proposals for how to tackle this behaviour, reduce avoidance and raise revenues that are owed to local and central government.

Methodology

An online survey was sent to Directors of Finance in all LGA member single tier and shire district councils in July 2019 and a reminder was sent in August. Overall, a total of 120 responses were received, one of which was from a shared service covering three councils, giving an overall response rate of 39 per cent. A full breakdown of the responses received by council type is shown in Table 1.

Table 1: Responses by council type

	Per cent
Shire district	29
London borough	63
Metropolitan district	50
Unitary authority	52
Total	39

Base = All English shire district and single tier councils that are members of the LGA (311, due to a shared service across three councils)

Please note the following when reading the report:

- Where tables and figures report the base, the description refers to the group of people who were asked the question. The number provided refers to the number who answered each question. Please note that bases may vary throughout the survey.
- Throughout the report, percentages in figures and tables may add to more than 100 per cent due to rounding.
- The following conventions are used in tables: '*' – less than 0.5 per cent; '0' – no observations; '-' – category not applicable/data not available.
- Where the response base is less than 50, care should be taken when interpreting percentages, as small differences can seem magnified. Therefore where this is the case in this report, absolute numbers are reported alongside the percentage values.
- Where figures are grossed for England, calculations have been made on the basis that those answering would be representative of non-responding councils.

Among respondents both the average and median number of staff employed to carry out non-domestic rate inspections was one FTE, this was also the most common number (mode) of FTE staff employed by respondents. There were some variations, with the answers provided ranging from less than 0.5 to nine. Table 2 shows these findings.

Table 2: Number of FTE staff employed to carry out non-domestic rate inspections

	Average
Average	1
Median	1
Mode	1
Minimum	*
Maximum	9

Base: all respondents (113)

The average number of unoccupied properties inspected to ensure correct reliefs and exemptions are granted among respondents was 78 per cent, while the median and mode were both 100 per cent. The answers provided ranged from 0 to 100 per cent. These findings are shown in Table 3.

Table 3: Percentage of unoccupied properties inspected to ensure correct reliefs and exemptions are granted

	Per cent
Average	78
Median	100
Mode	100
Minimum	0
Maximum	100

Base: all respondents (108)

The number of unreported new properties retrospectively identified since April 2013 reported by respondents ranged from zero to 1,000 and the most commonly reported number was one. The variations in the numbers gave rise to a marked difference in the average which was 103 and the median number of 40, as shown in Table 4.

Table 4: Average number of unreported new properties retrospectively identified since April 2013

	Number
Average	103
Median	40
Mode	1
Minimum	0
Maximum	1,000

Base: all respondents (58)

In relation to unreported changes resulting in higher rateable value retrospectively identified since April 2013, the average was 114, the median was 52 and the most

commonly reported number was 30. The answers provided ranged from zero to 840. These findings are shown in Table 5.

Table 5: Average number of unreported changes resulting in higher rateable value retrospectively identified since April 2013

	Number
Average	114
Median	52
Mode	30
Minimum	0
Maximum	840

Base: all respondents (84)

The estimated average amount of business rates lost to avoidance in respondents' local authority area in 2017/18 was £798,000. The median estimated amount was £375,000 and the most commonly estimated total was £100,000. The answers provided ranged from £21,000 to £4 million. When calculating these figures, two-thirds (67 per cent) of respondents said they did not impute for unknown cases. Table 6 shows these findings.

Table 6: Average estimated total amount of business rates lost to avoidance in respondent's authority areas in 2017/18

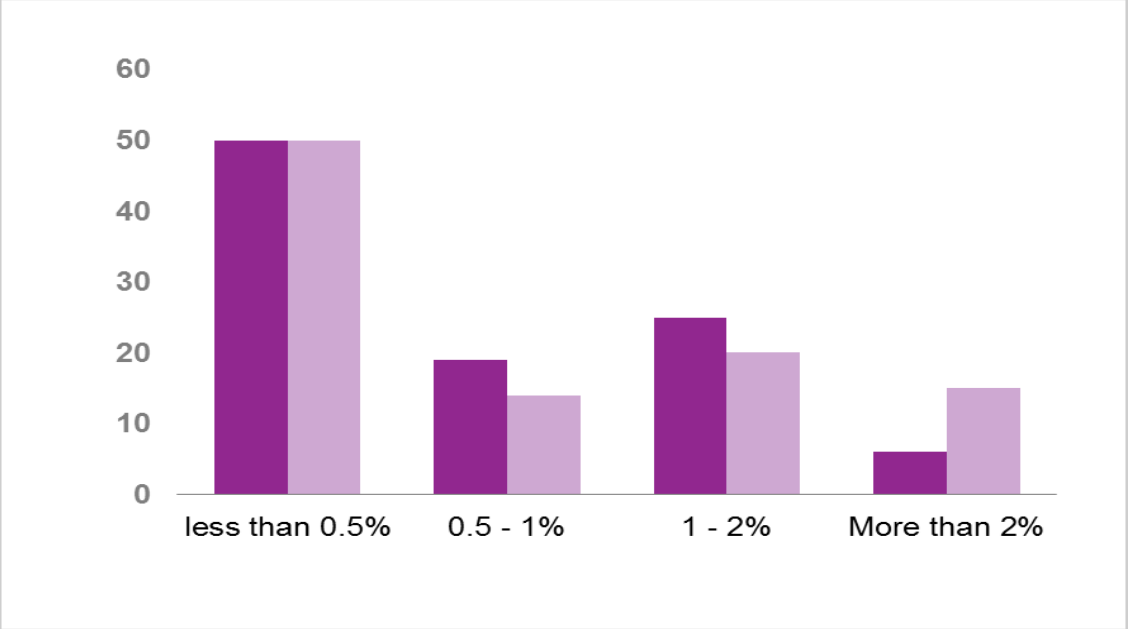
	£ 000s
Average	798
Median	375
Mode	100
Minimum	21
Maximum	4,000

Base: all respondents (84)

Using the average (mean) it is estimated that overall scale of avoidance in England is £250 million, which equates to one per cent of the overall total business rates payable. In half of respondents' authorities (50 per cent) the amount reportedly lost equated to less than 0.5 per cent, which is up to £125 million.

In 2014, the picture was similar, in that 50 per cent of respondents reported the scale of avoidance was less than 0.5 per cent of total business rates collected. However, the proportion of those reporting avoidance of over two per cent has risen from six per cent to 15 per cent, as shown in Figure 1.

Figure 1: Estimated avoidance as a proportion of total rates payable



Percentage of: (106 respondents in 2014, 84 in 2019)

The methods most commonly used to collect information on avoidance were oversight/monitoring by staff (43 per cent), inspections (35 per cent), local knowledge/reports received (25 per cent), and information sharing groups/networks (25 per cent). A breakdown of these findings is shown in Table 7 and all the answers provided are shown in Table A1 in Annex A.

Table 7: How respondents collect information on avoidance	
	Per cent
Oversight/monitoring by staff	43
Inspections	35
Local knowledge/reports received	25
Information sharing groups/networks	25
Analysis of applications/existing exemptions	18
Software/apps	11
Other	14

Base: all respondents (114). Respondents were able to provide more than one method

At the time of the survey respondents were in dispute over four cases on average. The number of current cases among respondents ranged from zero to 38, with zero being the most commonly provided answer and the median number was two. These findings are shown in Table 8.

Table 8: Current number of cases in dispute	
	Number
Average	4
Median	2
Mode	0
Minimum	0
Maximum	38

Base: all respondents (107)

Respondents were asked to identify how much of the total amount of business rates lost to avoidance was lost through particular methods, and the number of properties involved, from a list provided. Repeated short term periods of occupation was identified by 61 respondents as a method of avoidance used, making it the most commonly chosen method, it also had the highest average loss at £396,000, 37 per cent of total average loss. In terms of frequency, vacant properties being leased to a charity with proposals for the next use to be wholly or mainly used for charitable purposes was the second most commonly identified method and the average amount lost was £153,000. These were also the two most frequently reported methods in 2014[1]. While in terms of the amount lost, insolvency to avoid paying empty property rates had the second highest average losses at £282,000, as shown in Table 9.

Table 9: How much of the total amount of business rates lost to avoidance is lost through particular methods, on average.

	£ 000s	Per cent	No. of properties	Frequency
a. Repeated short term periods of occupation (minimum reoccupation period is six weeks) of six weeks or slightly more, resulting in a further period of exemption from empty property rates.	396	37	52	61
b. The vacant property being leased to a charity and it is proposed that when next in use the property will be wholly or mainly used for charitable purposes. However, when questioned the charities do not have clear plans for occupation or intended use and authorities may never be informed that the premises are occupied, which leaves authorities uncertain as to whether the relief is appropriate or not.	153	36	6	40
c. The occupation of vacant properties, for example retail warehouses or shops, by charities. Occupation of a property is often minimal (such as posters in a window, or Bluetooth broadcasting). In addition, the actual evidence of occupation may be limited. Goods may also be spread out to give the appearance of being wholly or mainly used for charitable purposes.	138	30	18	35
d. Creation of new hereditaments through splits and mergers to gain additional empty property rate relief.	72	7	17	11
e. Insolvency to avoid paying empty property rates, the power to disclaim onerous leasehold interests is available to both liquidators and trustees in bankruptcy but is not perceived to have been exercised by them in a timely or expeditious manner.	282	26	10	32
f. Avoidance as a result of properties not being on the rating list, for example, misuse of the agricultural exemption such as setting up snail	82	17	14	20

farms or not completing buildings where they have not yet been sold or let.				
g. Difficulties in establishing ownership such as claims that another person has taken over a business, false tenancy agreements or phoenix companies where the stock is held in third party names.	160	30	16	33
h. Misuse of small business rates relief such as dividing up a property for assessment or setting up multiple companies.	192	18	137	18
i. Exploitation of the overlap between council tax and business rates for example holiday lets and use or halls of residence as conference facilities during holiday periods.	55	27	14	13

Base: all respondents (88).

Respondents were asked to provide examples of how these methods were being used, the answers provided are shown in Annex A, Table A2.

The survey asked for respondents' opinion on what a de-minimis occupation test and a wholly or mainly requirement should entail. Forty-two per cent felt that there should be a specified minimum extent of space occupied, a third (34 per cent) believed that the occupier should be able to demonstrate a genuine business need/benefit, and just over a quarter (26 per cent) felt that the six week period should be extended. As well as providing suggestions, 12 per cent of respondents highlighted potential difficulties or issues, such as businesses doing the minimum to meet any new criteria. A full breakdown of these findings is shown in Table 10 and a list of all the answers provided is shown in Table A3 in Annex A.

Table 10: Respondents' opinions on what a de-minimis occupation test and a wholly or mainly requirement should entail.

	Per cent
Specified minimum extent of space occupied	42
Occupation should support a genuine business need	34
Extension of the six week period	26
Wholly or mainly should be defined	16
Occupation should be appropriate to the property	9
Remove exemptions	6
Other	10
Difficulties or issues	12

Base: all respondents (100). Respondents were able to provide more than one suggestion

When asked how widespread the practice of ratepayers using third party/rates mitigation companies to facilitate arrangements in return for a percentage of the rates saved (i.e. marketed avoidance schemes) was, 45 per cent of respondents felt that it was widespread, fairly widespread or very widespread (17 per cent widespread, five per cent fairly widespread and 23 per cent very widespread). A further 19 per cent thought that this practice was growing without specifying an extent while just one per cent felt it was decreasing. Four per cent said they were not aware of companies operating and 15 per cent were aware of the practice but did not

know the extent of its usage. A full breakdown of these findings is shown in Table 11 and all of the answers provided are shown in Table A4 in Annex A.

Respondents were also asked to specify the amount of business rates that were lost to these schemes but only two provided an answer making it impossible to produce an average figure. The answers provided are shown in Table A4 in Annex A.

Table 11: Respondents' opinions of the extent of the usage of Marketed Avoidance Schemes

	Per cent
Widespread, fairly widespread or very widespread	**45**
Widespread	17
Fairly widespread	5
Very widespread	23
Not very widespread	12
Growing	19
Decreasing	1
Not aware of companies operating	4
Don't know but aware of companies operating	15
Don't know	5

Base: all respondents (110)

Over half of respondents (55 per cent) have not/are not taking legal action against those avoiding, 42 per cent said they had/were while the remaining three per cent didn't know as shown in Table 12.

Table 12: Whether respondents had/were taking legal action against those avoiding

	Per cent
Yes	42
No	55
Don't know	3

Base: all respondents (116)

Those who had not/were not taking legal action were asked to explain why this action was not being taken. Over half (52 per cent) said that this was because the avoidance schemes are within the law, 13 per cent cited a lack of resources while 10 per cent felt there was too much risk involved. A full breakdown of these findings is shown in Table 13 and a full list of all the answers provided is shown in Table A5 in Annex A.

Table 13: Reasons why respondents are not taking legal action

	Per cent
Schemes are within the law	52
A lack of resources	13
Too much risk involved	10
Lack of evidence	8
Other reasons	12
No cases to bring	13

Base: Respondents who had not/were not taking legal action (60). Respondents were able to provide more than one reason

The respondents who said that they had taken action were asked what percentage of their legal challenges had been successful. On average, 70 per cent of cases had been successful, the median figure was higher at 99 per cent while the most commonly reported success rate was 100 per cent. The answers provided ranged from zero to 100 per cent. However, as these figures are based on a small sample, and the survey did not ask how many cases the rate related to, these findings, as shown in Table 14, should be treated with caution.

Table 14: Percentage of respondents' legal challenges which had been successful

	Per cent
Average	70
Median	99
Mode	100
Minimum	0
Maximum	100

Base: Respondents who had taken legal action (31)

These respondents were also asked which variables they believed have/have not led to success. In relation to winning cases, a fifth (21 per cent) of respondents identified picking cases most likely to win, having sufficient evidence was mentioned by 18 per cent and having a good legal team was cited by 13 per cent. Variables which had not led to success included case law (32 per cent), current regulations (21 per cent) and a lack of access to information (11 per cent). Table 15 shows a breakdown of these findings and all of the answers provided are listed in Table A6 in Annex A.

Table 15: Variables which have/have not led to success

Variables which led to success	**Per cent**
Picking cases most likely to win	21
Having sufficient evidence	18
Having a good legal team	13
Other	18
Variables which have not led to success	
Case law	32
Current regulations	21
Lack of access to information	11
Resources involved	8
Other	16

Base: Respondents who had taken legal action (38). Respondents were allowed to provide more than one answer

The survey asked respondents to select the measures they thought would help deal with avoidance from a list provided. Almost three-quarters (72 per cent) felt that more joined up working with HMRC would help, a similar proportion (71 per cent) selected more joined up working with Charity Commission and two-thirds (66 per cent) picked more joined up working with Companies House. The answers provided by those who selected 'other' included changes to the legislation/regulations, information sharing

and more joined up working with other organisations. A full breakdown these findings is shown in Table 16 and of all the answers provided by those who selected 'other' are listed in Table A7 in Annex A.

Table 16: Percentage of respondents who thought these measures would help deal with avoidance

	Per cent
More joined up working with HMRC	72
More joined up working with Charity Commission	71
More joined up working with Companies House	66
Removal of small business rates relief	12
Other	69
Don't know	3

Base: all respondents (116). Respondents were allowed to select more than one answer

Only three per cent of respondents felt that local authorities have adequate powers to tackle avoidance, 84 per cent felt they didn't while the remaining 13 per cent did not know, as shown in Table 17. The respondents who answered no were asked to specify which powers they lacked in order to tackle avoidance: most cited shortfalls in the legislation/regulations. The answers provided are shown in Table A8, Annex A.

Table 17: Whether respondents felt that local authorities have adequate powers to tackle avoidance

	Per cent
Yes	3
No	84
Don't know	13

Base: all respondents (118)

When asked what anti-avoidance regulations and package of changes should be put in place as a minimum to tackle avoidance and improve success in the courts, most respondents (85 per cent) identified reform of empty property regulations. This was followed by clarification and guidance on occupation (23 per cent) and a duty to notify billing authorities of changes in occupation for liability (20 per cent). These findings are shown in Table 18 and of all the answers provided by those who selected 'other' are listed in Table A9 in Annex A.

Table 18: Anti-avoidance regulations and changes respondents felt should be put in place to tackle avoidance and improve success in the courts

	Per cent
Reform empty property regulations	85
Clarification and guidance on occupation	23
Duty to notify changes in occupation for liability	20
Changes to the legislation/regulations	18
Measures to deal with companies set up for the purpose of avoidance	15
Power to request/access information	13
Powers of entry for inspection	12
Information sharing	12
Reform liquidation exemption	10
Legislation to deal with sham leases	10

Measures to deal with charities set up for the purpose of avoidance	9
Greater ability to impose penalties/sanctions	6
Other	25

Base: all respondents (105). Respondents were able to provide more than one answer

At the end of the survey, respondents were given the opportunity to make comments if they so wished. The main themes that emerged were the need for the legislation to be changed, as highlighted throughout this report, and the need for greater support from central government. A small number of examples of avoidance schemes in use locally were also provided. All of the comments received are shown in Table A10 in Annex A.

Annex A

Answers provided to open text questions

Table A1: How respondents collect information on avoidance
Oversight/monitoring by staff
Referrals by team members x 10
Individual case monitoring x 10
Officer oversight x 8
Requests for information x 7
Flagging suspected cases on the system x 5
Team discussions x 2
Robust procedures are in place regarding empty property relief whether this is a result of intermittent short term occupation or empty properties where a charity states they occupy. Charities have to complete a mandatory rate relief application form and in the case of empty premises we request details of the charity/business plan/strategy for their planned occupation. These sites are regularly monitored to ensure they are not on the open market for sale/let. Copies of lease/tenancy agreements are requested to verify the validity of occupied periods
Internet and social media searches.
Investigate when informed of a change. Local press and websites. Google maps.
Investigation of non-payment or properties that are reported empty but are actually occupied.
We ask for evidence, we use google and social media to identify patterns and traits and other issues, we require signed application style forms and declarations.
We check local press for details of small businesses setting up. We check Companies House etc. We have regular reviews of discounts and exemptions. We ask for copies of leases and do not always take the changes of occupiers on face value. We report changes weekly to the valuation office and challenge them if they do not action our reports.
Checking occupation patterns employed by owners/ landlord / occupiers. Maintain awareness of avoidance in other local authority arears and cross reference that to any similar methods being employed by same occupiers in our area.
Inspections
Inspections x 34
We have previously tracked individual cases where we believed rates avoidance is taking place. We took pictures and maintained detailed records in order to challenge the claims that were being made. However since recent case law such as the Principled Offsite Logistics v Trafford, individual records were not maintained in all avoidance cases.
We visit the properties if they say they are occupying, especially if a six week occupation pattern is identified.

Information on rates avoidance is gathered by the inspectors - they visit properties to verify they are in occupation when stated. They also visit re charity applications to ensure the majority of the premises are being used.
Inspections - applications for charitable relief (art gallery in office), applications for re-occurring empty rates inspection, inspect router farms etc.
Prompt inspection of premises backed up with well documented photographic evidence to verify occupied/vacant claims.
We inspect properties where ‘charities’ are rarely in occupation and ensure that they are using this to meet their charitable objectives.
Local knowledge/reports received
Local knowledge x 19
Intelligence/reports received x 10
Forums/information sharing groups/networking
Knowledge sharing with other authorities x 10
Networking x 5
Forums x 7
Forums and other local authorities x 2
Information is often shared between Billing Authorities, forums, IRRV, CIPFA.
Info via <Solicitors>, IRRV updates.
Discussions with neighbouring authorities, through membership of IRRV & other forums and contact with other external partners.
Via local and national networks (Enforcement agent meetings, Land Registry, Companies House, CIPFA/IRRV events, meetings with Neighbouring authorities). Insolvency practitioners we work with.
We have regular discussions with our colleagues at neighbouring authorities as well as discussing both local and national avoidance issues with the IRRV/CIPFA through forum attendance and with companies we work in partnership with on Business Rates collection - enforcement agents and insolvency practitioners.
Analysis of applications/existing exemptions
Analysis using a database x 5
Repeated cases of short term occupation x 4
Through business rate processing x 3
Licence checks.
Cross referencing data.
Planning records.
Revenues and Audit work closely together looking at trends and addressing problems.
Via identifying known rates avoidance companies/charities/landlords and establishing when intermittent occupations are being utilised in order to gain empty relief.

By identifying trends through its own computer system such as non-payment or frequencies of occupation.
We had a recent project where planning applications were revisited to see if there had been any changes to the property after the original valuation. Planning applications were checked where the customer claimed that they were no longer building. We check planning applications and monitor these for any new builds or extension. We serve completion notices in a timely manner. We check local press for information that contradicts the information on our systems.
We have the ability to run reports to identify cases.
Software/apps
The hub system for SBRR checks x 10
We have invested in a bespoke case management package for monitoring trends/patterns and ensuring the optimisation of inspections.
We use our database's reporting mechanism to extract the information.
Use of IRRV 'rates avoidance' tool.
Other
Information not collected x 9
Some companies write to us to openly tell us what they are doing.
Clear admin/billing policy - refusing to accept retrospective leases; regular staff updates on latest avoidance tactics so properties are marked on the system.
Promotion of rates avoidance awareness within the service. Professional bulletins.
We do not actively collect information on a case by case basis, we are just aware of the many rates avoidance tactics used and take appropriate action to minimise loses to the council.
We have successfully challenged a number of what appeared sham tenancies but these have taken significant monies and efforts to defend. In the non pub cases, the majority are caused by businesses owning an asset in one name and putting the rates in another that has no assets to pay.
Information is not separately collated. There are too many varieties of avoidance for it to be easily categorised, tracked and updated to an accurate and useful level.
It is difficult for local authorities to accurately calculate the level of avoidance. However <Council Name> is currently aware of several empty properties in the borough where landlords are seeking to avoid empty property rates through artificial/contrived occupation of properties by charities. One of the properties we had within this category had a rateable value of £900,000k.

Table A2: Examples of methods used to avoid business rates
Repeated short term periods of occupation of six weeks or slightly more
Along with the obvious schemes that have grown around avoidance, we do also have independent landlords who know they are 'entitled' to use their premises as they wish for whatever purpose they consider fit for a short period of time. This

results in Inspectors valuable time being taken up inspecting the occupation, then six weeks later inspecting the void property.
Being let for six week periods to <Organisation Name> who have internet transmitter provider.
Companies moving boxes into premises for six weeks is regular.
<Company name> use six week occupation to avoid rates on a few retail units within the town centre.
Six weeks of underlay sitting in a property plus six weeks of boxes dotted around.
Multiple six week occupations are the most prevalent, although our experience is that most properties do become re-occupied under genuine tenancies after a short period of time. Longer term occurrences are less likely than perhaps may be expected in other areas.
Owner of shopping centre regularly provides evidence of occupation of six weeks minimum thus obtaining three months exemption. <Rating agent> acts for three companies, properties occupied for six weeks minimum by third parties under license thus obtaining three months exemption.
One large office development with adjoining night club waiting for planning permission to demolish. They have adopted the six week occupation three month empty pattern to minimise liability. They use the units to store goods which are circulated from one unit to the next.
Large retail units exercising the six week rule using boxes of toilet rolls as occupation.
Piles of boxes moved round empty office space to satisfy the 42 day occupation rule and qualify for empty property relief.
Particular issue of repeated short term periods of occupation in <Name> shopping centre.
Repeated short-term occupations are managed by agents for entire buildings - so the numbers of hereditaments is high.
We have cases where small amounts of files or screws are placed in properties purely as an exercise to re-trigger the empty exemption.
Example case would be <Organisation Name> - they use a number of units for the storage of archive files; around three boxes in each unit.
Temporary occupations within <Council Name> contribute the highest and take up a significant amount of resource.
Two landlords repeatedly occupying for 43 days then vacating.
We have major issues with avoidance particularly around occupation and the six week rule.
We have examples of the six week occupation being flaunted - we have inspectors but we are struggling to keep up with over 4500 NDR properties.
Examples include cases of Wi-Fi transmitters being put into properties for short term occupations to trigger a new empty period.
An example case, for short term occupation for the benefit of empty property relief, included a single pallet of toilet rolls being stored in a large warehouse. The items stored were vastly disproportionate to the expected scale of use of that unit. These

minimal items remained in situ for the 42 days required, before being removed and reclaiming the empty property relief. Beneficial occupation was argued to exist as these rolls were used for servicing the toilet facilities of their offices located throughout the UK.
We have a number of offices with Wi-Fi boxes installed and other properties that have small quantities of boxes/goods/furniture installed that is removed after six weeks to obtain the exemption. We inspect each property to check that it is occupied /unoccupied.
Short term occupations for the purpose of Bluetooth transmission and short term occupation for the purpose of storage of 'goods'.
The vacant property being leased to a charity and it is proposed that when next in use the property will be wholly or mainly used for charitable purposes
Several examples of small charities taking over large industrial units with no intention of occupying.
We have had claims for the charitable exemption on the basis that when next in use a property will be wholly or mainly used for charitable purposes.
The occupation of vacant properties, for example retail warehouses or shops, by charities
Currently we have issues with a non-registered 'charity' claiming empty exemption and when it was in use for two days it was to let a dog practice sniffing accelerants.
Large warehouse occupied for only Bluetooth broadcasting.
Art charity installations set up to avoid empty charges.
<Organisation Name> previously known as <Organisation name> has been at the forefront of rates avoidance through their alleged ‘storage’ of personal effects for individuals via purported charitable referrals. They take over fairly low yield properties, where landlords have been unable to let them and while being actively marketed, fill them with bric-a-brac, which they allege belong to these cases that they've had referred to them. However, they are never able to provide any paper work or an audit trail to back up what they are doing or storing. A <Name> fronts the organisation and is quite notorious for a number of things, especially being a prolific litigant when being pursued for business rates, to the extent where it would be deemed vexatious. They seek to challenge the Court's ruling against them at every stage, right up to stating a case and seeking a Judicial Review. The hope being that they'll wear the LA down and we'll submit and award the mandatory relief they seek to validate their scheme. I'm aware that they operate across several <council types>, as well as nationally. This case has proved problematic, given despite in their previous incarnation as <Organisation Name>, which was a registered charity, which ended up in liquidation. They now rely on a letter from HMRC, saying that despite not being registered with the Charities Commission, (given concerns they had about their conduct previously), they've applied to HMRC in 2016 and gained accreditation as a charity for tax purposes, with no one at HMRC having apparently investigated or reviewed this decision since, despite me having sought information on it that hasn't been forthcoming. No further updated or reviews have been undertaken by the FSA either.

Charities are provided with leases and ‘occupy’ the property for one or two days a year.
Two current leases in large retail warehouses, lease is in charities name occupies for two days every six months and claims charity exemption when empty, ongoing since February 2017.
Charities occupying large office space and using it to store tents (set up), install Bluetooth boxes sending random public service messages, put on occasional art shows.
Insolvency to avoid paying empty property rates
We have cases concerning companies being liquidated however this is difficult to call avoidance.
Limited companies are given leases and then go into liquidation without ever having occupied the property. Some of these leases confirm that the reason for the lease is to avoid rates on empty properties. Limited companies charging at the same properties on a regular basis. At the point where the enforcement agents are sent out or we make other threats, the company will put themselves into liquidation and a new company rises out of the ashes. This has been reported to trading standards, and Companies House. We have only had one success in getting a man struck off from being a ‘director’, for his next limited company his wife was the director. It is not illegal for a company to go into liquidation and once they do this there is nothing we can do to enforce the debt against a company in liquidation. People who play the system are aware of this and the power to deal with these people does not lie with the local authority. We are no longer classed as a priority debtor in a liquidation and therefore we fall into the classification of unsecured debtors and are rarely paid from a liquidated company.
Phoenix companies are probably our single biggest issue, with companies trading for short periods and then liquidating
<Organisation Name> - owner set up a 2nd company leased large hereditament to 2nd company, 2nd company dissolved within a week.
A lease being given to a company with only assets of £50 when the void rates are over £100,000 and soon afterwards the company is liquidated
We have repeated examples of companies being created for the purpose of becoming liable for rates on certain property portfolios, only for those companies to be subsequently wound up / dissolved. This occurs periodically.
We have a long-term empty property that is repeatedly let to shell companies that run up large Non-Domestic Rates debts before being struck off. There is never any trace of the company at the registered office when the enforcement agents visit.
We have mainly been affected by a certain director who takes long term leases on properties and then seven days later the company enters into member’s voluntary liquidation. All of these cases involve the same director and he is still operating this as a successful rates avoidance scheme. He readily admits that he takes on properties as a rates mitigation exercise for the landlord.
Members voluntary liquidation where no liquidator is appointed
We have an excellent example of cases where a pub scheme has taken local government and utilities down for nearly £2.5m over the last few years

<Organisation Name> set up in multiple properties with just one router in each - then went insolvent, would not surrender the lease to the owner so we have no one to bill.
The insolvency rules are flouted regularly. The same directors remain in occupation at a property but they set up new businesses with Companies House, describing the business as conducting a different kind of trade. The name is often similar or will carry a theme. We are challenging those that simply use number such as 'Company 57' followed by 'Company 25', however, those using random names provide reduced opportunity to challenge. We have had company directors remaining listed as company directors on Companies House after they have been made bankrupt.
We have recently received notices of a number of 'shell' companies that signed leases for empty properties which then went into liquidation. We will be writing to the Insolvency Service about these companies.
Avoidance as a result of properties not being on the rating list
We have had a 'snail farm' designed to make use of an exemption.
Refurbishing offices or shops that have been empty for a while and getting the Valuation Office Agency to reduce the value to Rateable Value nil. Then only fully completing the property once and occupier is found
Monk Case/Completion Notices and BAR's - Rating agents are utilising the case law that was created by the Monk decision[2] to avoid bringing properties back into the list. Rating agents are taking the position that properties that are classified as reconstitutions and reduced to zero or removed from the list cannot be brought back into the list either by BAR or Completion Notice. This means that properties that have had all work completed and are ready to occupy cannot be rated until they are actually occupied. The CN process appears to be limited to cases where some structural alteration has taken place and the BAR process is also being disputed as a correct method to bring these cases back into the list. With the Valuation Office Agency now taking reconstituted properties out of the rating list completely there is no method to bring these assessments back into the list until they are occupied. The Monk decision generally, and the way it was applied meant that <Council Name> refunded millions of pounds in Business Rates. Cases that were subject to appeal had values reduced to zero going back into the 2010 list. There was no way to bring them back in until they appeared on the next schedule in the 2017 list. This meant huge refunds for companies that we knew had occupied the property weeks after the reconstitution of the property had been completed. This lacuna in legislation urgently needs to be addressed.
<Council name> actively challenges rates avoidance, an example being the snail farming scheme, were we received a positive outcome at court as supported by <insolvency solicitors>.
In court next week to contest snail farm application in local office block.

[2] https://www.supremecourt.uk/cases/uksc-2015-0069.html

We are receiving increasing request for empty rate exemption due to presence of ‘air borne asbestos’ - works carried to disturb asbestos in order to claim an exemption
Difficulties in establishing ownership
Taking one ratepayer to court for two properties with what we believe to be sham leases
We have problem properties where false/fictitious tenancies are provided.
Have issues with public houses. Although we are utilising data provided to the licensing section before billing, when an enforcement agent calls the occupants will provide evidence of fixtures and fitting belonging to the landlords or they will suddenly produce a sub-lease claiming they are not the business in occupation.
We have particular properties where the landlord creates leases to a limited company who never occupy and never pay, legal advice is that it is difficult to prove a sham lease. We also have landlords moving around furniture which they claim is of benefit to them as the furniture is required in premises they let.
Misuse of small business rates relief (SBRR)
Smaller units used for storage to occupy to claim SBR.
Artificial multiple companies to take advantage of small business rate relief.
We have council tax payees advising their home is a holiday rental so they can claim SBR. These are flushed out by removal of domestic waste bins. An exercise that could be negated if this avoidance was prevented.
Cases of multiple companies being created to receive SBR, increased to 13 premises in 2019 from five recorded in 2017. In terms of rates loss that's an increase of £60k.
Split assessment one into 1,512 (individual assessments). All property Rateable Values under EPRX threshold and could be entitled to SBRR. Overall loss of revenue could reach nearly Â£300,000 if reliefs apply due to split.
Biggest issue is division of large retail units into multiple small units in order to benefit from SBRR.
Main issues are with the misuse of SBR and the splitting of properties, the Valuation Office appear to accept the word of the ratepayer and assessments are split without any prior warning to us, the VO appear unwilling/ understaffed to challenge these requests or consider our arguments to reverse such decisions.
With regard to SBRR - <Council Name> has seen an increase of over 1500 SBRR applications in just over a year. This equates to an increase of 126% in Small Business Relief being awarded in the last 12 months with significant numbers still in the pipeline. This is becoming an increasingly difficult situation to manage in <Council Name> with ongoing growth in the provision of these sort of units. At present we have approximately 33 companies operating business centres in <Council Name>. The total number of individual assessments contained within the business centres is 6699. This represents 30% of the total number of business rates assessments within <Council Name>. High turnover with the occupants of this type of property mean that it is very difficult to stay on top of the changes and it would be very difficult to bill each individual occupier. If we attempted to bill

individually it would create a significant administrative burden at put at risk collection due to the high turnover of occupiers.

At present the business centre/ serviced office provider usually administers the Business Rates on behalf of the occupant under a signed letter of authority. This tends to be signed as part of the sign up agreement.

Rating agents representing the business centres are encouraging the businesses in occupation to claim Small Business Rate Relief. This results in a reduction in the bill through the application of small business rate relief. One of our concerns with this process is that it is not the small business that is benefiting from the reduction. It is the service office provider that benefits from a reduction in the combined business rate liability for the property. Many of the providers are large companies such as <Organisation Names>.

The Legislation and the Valuation Office approach to valuing these units means that legally we have no option other than to award the relief as the business in occupation of the particular unit is the liable party and is entitled to the relief. We have explored the possibility of Paramount Occupation which would allow us to make the Serviced Office provider liable but the legal advice we received suggested that we would be unlikely to succeed if this approach was challenged.

In order to try to ensure the small business can claim some benefit from the reduction we do insist that they complete the application form for the relief and we also notify them of the award. However, it is clear through correspondence that these companies are charging based on space occupied but are not offering any reductions for a business that would qualify for small business rate relief. The providers will argue that any reduction will be passed onto the occupier through reductions in the rent and the overall cost of supplying and running the centres but there is no direct link and the rental rates on offer do not stipulate that a reduction will be forthcoming if SBRR is applied. We also know that rating agents approach the serviced office companies offering to reduce their business rates bill. This is clearly perverse and not why small business rates relief was introduced.

The same approach has now been floated by one rating agent as being relevant to Chamber's for Barristers, e.g. each barrister is self-employed and occupies a separate assessment within the Chambers. This has yet to be tested but this would have a significant impact in <Council Name> if it was to be successful.

Exploitation of the overlap between council tax and business rates

<Council Name> have particular issues with holiday lets. A number of cases were referred to the Valuation Office Agency who found they should remain in Council Tax despite our providing evidence of use over 140 days per year.

However; similar properties with a rateable value below the Small Business threshold are put into the Rating list. Various websites can be found suggesting this as a way of escaping paying Council Tax on a second property as well as in national newspapers.

We have had a significant increase in the number of properties transferring from council tax to business rates. In October 2010 we had 788 holiday lets and we now have 2,156. The current legislation permits this to happen provide it meets the relevant criteria (which is very easy to achieve).

Other or more than one method used

Presence of known national companies engaging in avoidance tactics

Short term period of occupation tend to be Bluetooth devices, storage by landlord or a third party. Charity tends to be the same organisations.
Companies using the Principled offsite logistics Ltd v Trafford Council[3] case to mitigate rates.
Most of the rates avoidance within our area is artificial/contrived occupation (Makro style schemes) orchestrated by third party rates mitigation companies. Some of these companies are well-known, operating nationally and advertising their services online.
We can provide examples of contrived storage avoidance, digital marketing, Bluetooth, snail farms, purported charitable occupations for one to two days after empty periods and abuse of insolvency rules/phoenix companies.
Sham tenancies where the freeholder sets up limited companies (as sole director) with the intention of avoiding personal liability and the risk on bankruptcy proceedings. They are happy not to pay NNDR and have the companies wound up to avoid paying. We need stronger powers to be able to seek evidence of lease payments between the 'sham' company and the freeholder.
We had a landlord recruit a rates avoidance company which she admitted in court. They supposedly set up a snail farm in the premises and notified us retrospectively that they had occupied for six weeks so that the landlord would benefit from the empty property exemption. In summary the judge said he had full sympathy for the authority but we were not allowed to hold her liable for the full period and were required to award the exemption.
We are fighting occupation by challenging leases asking for provision of further documentation to support occupation claims. Rates avoidance companies are assisting landlords avoid empty property charges by entering into a lease and storing assortments of items in crates within the premises, removing their crates and claiming surrender of the lease immediately when the landlord is mitigated against the empty charge.
We have an outlet shopping centre who use the window of empty shops to advertise other shops in the precinct.
We have one case involving the use of the Ancient Monument Exemption to exempt a seven story building. The monument is less than 1% of the floor space in the basement. This is being heard by the court in October.

Table A3: Respondent's opinions of what a de-minimis occupation test and a wholly or mainly requirement should entail
Specified minimum extent of space occupied
At least 50 per cent of the unit should be occupied x 23
At least 90 per cent of the unit should be occupied x 5

[3] https://excelenforcement.co.uk/images/files/POL-Ltd-v-Trafford-18-7-09-11_33-AM.pdf

A minimum level of occupation should be defined x 7
Defining the occupation of a property as a percentage of the utilised floor space.
De-minimis occupation test should include a test to identify the extent of usage (%) compared to the actual size of the property.
I believe the majority of the area of a hereditament should be occupied (meet the four elements of rateable occupation).
Legislation should determine a % of overall area. We currently have a very large site with an RV over 4.5m where there have been six weeks periods of 'occupation' covering an area of less than 220 square metres.
Occupation should be 51% in use (unless in business as a warehouse where it is an inherent risk).
The property should have at least 75% occupation.
We would expect the property to be at least 20% occupied in area.
Occupation should support a genuine business need
Occupier should be able to demonstrate genuine business need/benefit x 7
Beneficial occupation should be for more than storage x 4
Items stored must be of value to the business x 4
A genuine reason for taking the lease or the property.
A test as part of the unoccupied property regulations could be introduced to specify that a property must be wholly or mainly occupied for beneficial use during the minimal or contrived period of 42 days to restrict repeat periods of relief. This, however, may be difficult to administer and subject to frequent litigation.
Available evidence of lease/commercial agreement. Available evidence of utility usage. Available evidence that premises is mainly used for the purpose of occupation, based on comparison of size of premises to size of area occupied for the use.
Clearly occupation should be re-considered as a whole so as to prevent people placing a few items in and this constituting occupation. Storage needs to be looked at in a different way.
De-minimis occupation should be a substantial and genuine use of a property. It is often used as a means of rate avoidance at the moment.
Evidence that companies set up for commercial purposes and trade in that way. It is too easy for freeholders to transfer their liabilities this way but still reap the rewards.
Financially viable need to occupy the property other than rates avoidance.
Occupation should be of financial benefit to support the business model and there should also be an element of actual occupation.
If a property is to be deemed as occupied, then a company must be trading from the address (with the exception of warehouses used for storage) and must prove they are using the property for the purposes of their business. They must be able to show what benefit they have from occupation of a property other than for storage.
Purpose of use should be established - why that hereditament for that use at that time? Should not be for Charity Open Days etc.

Substantial use of the property rather than promotional posters or devices, where the usage is clearly for charitable purposes.
Test should be more than just posters in windows, should be carrying out a trade or business in a property.
Test should include a statutory form setting out requirements and conditions. Has to be a clear visible and beneficial demonstration of occupation. Statement should be obligatory setting out the company's or charity's use of the premises with penalties for providing false information.
The usage needs to be of some use to the occupier with the council able to request confirmation to determine qualification.
There needs to be actual use which is relevant to the size of the building and what the company/charity is using that building for needs to be for the main purpose aims of that company. To use a large building to store a large amount of goods, is reasonable to store a few pallets is not.
There needs to be a benefit test to the person responsible for the payment of business rates of what's being 'stored' or operated from the premises
We believe that there should be beneficial occupation however recent court cases determined that beneficial occupation was applicable where rates avoidance tactics were being employed. It may be useful to have a list of exempted/disregarded types of occupation to discourage companies from being able to store just anything in properties.
It is the nature of the occupation that creates the problem. We have seen space occupied by erected tents, boxed microwaves, pictures stored on easels, junk stored in boxes and archiving. This is in multi floored office space in the centre of <Area name>.
Where properties are occupied for a short period only, ratepayers should be required to meet a set of criteria to qualify for a further period of relief e.g. the property must be shown to be in use for a purpose in accordance with the aims/objectives/activities of the charity/business.
Extension of the six week period
Extend the six week period to six months x 18
Extend the six week period to three months x 4
A change to the period of occupation required (from six weeks) to trigger a new rate free period should be considered urgently to make schemes less financially viable.
Extend the period to a duration in the range of three - six months.
Occupation period to obtain exemption must exceed period for which exemption may be applied i.e. qualifying Industrial not less than six months occupation, all other properties for not less than three months occupation.
The six week occupation period needs to be revised upwards.
Wholly or mainly should be defined
Wholly or mainly should be more than 50 per cent x 4
De-minimis occupation is difficult size is generally not the consideration but the use of the property. Wholly or mainly should be removed as this is subjective. Wholly is

easily 100% but what is mainly? In my opinion this would be over 80% but there is case law for over 50%. Is this by sales, by profit, by floor space? The lack of clarity results in arguments between the LA's and the ratepayer and the valuation office don't seem to be too sure about this either and properties come in and out of the listings. Mandatory charity relief should be granted where a shop is 'wholly' and remove 'mainly' from the discussion.
There should be no de-minimis rule and 'wholly or mainly' should relate to the extent of actual use, not the percentage of space occupied.
Occupation around de-minimis needs to be clearer. I would like the IRRV to be able to express this on behalf of the revenues profession as there is work that has been carried out on this topic that can be easily shared.
Occupation of just one, two or three days is too transient and short stay occupation should for a defined in legislation for a specific minimum period. And there should be some sort of test that defines wholly or mainly occupied, perhaps where 75% of all rooms in a hereditament are occupied to at least 75% of their potential capacity.
Preferably no de-minimis test. A property is either empty or not which removes the need for assessment and dispute of whether it is in use or not. The mainly requirement is interpreted as over 50%. Again this requires a judgement and often leads to dispute as it is subjective. It should be wholly which removes the subjectivity.
The wholly or mainly question regarding use of properties by Charities etc. should be tightened to exclude properties were charities merely install some artwork or posters/information and are only open to the public for short periods of time if at all.
Wholly or mainly needs to be defined in greater detail to remove ambiguity.
Using everyday translation the wholly or mainly requirement is for occupation of more than 50%, but this needs to be better defined - in such a way that is becomes 'entirely' i.e. 100%, or the word 'mainly' is replaced with 'nearly all' and an anecdotal sum of 70-80% is attached to it. We have had feedback from retailers who are in direct competition with large Charity Shops. We have a <Charity Name> store on our high street (+£100k RV) who purchase new 'white goods' and place them front of shop. The shop inventory shows that circa 60 per cent of the goods in the store are donated but placed at the back of the store all piled on top of each other (i.e. to meet the wholly/mainly test) but the 80% relief gave the charity an unfair advantage over the ordinary store, and distorted the market. The requirement for wholly or mainly with regards to charity distorts the market as it allows them to purchase new goods and sell them on the high street but benefit from an 80% reduction on rates. Government supports charities (and likely always will do) but the wholly or mainly requirement allows them an unfair advantage and is changing the face of the high street. If the wholly or mainly requirement was re-phrased with a higher percentage of donated goods then this unfair advantage will reduce.
Wholly or mainly requirement needs to be quantified by a set percentage of floor space to be used.
Wholly or mainly should be clearly defined rather than assuming to mean more than half. Focus should also be placed on occupation not simply that part occupation is occupation of the whole. In this 'part' should be clearly defined so thresholds that have to be met rather than them being left to interpretation which

may eventually be a matter for the courts to decide. Consideration should also be given to the time period that constitutes wholly as a way of defining a genuine business need for occupation of the property. For example a business should be required to trade in a premise for a minimum period of three months during which time evidence can be gathered that there is a genuine need for them to trade from that property.
Wholly or mainly should be defined as at least 80% of the available space/80% of activities
Wholly or mainly should mean the majority of the premises, a percentage could be introduced
Occupation should be appropriate to the property
Occupation should reflect the property description x 3
A substantial use of the property in accordance with its description in the Valuation list.
Occupation of storage is difficult to verify, in certain cases perhaps physical occupation should be required rather than just boxed storage. For example, an office isn't generally a storage unit so any use under storage should be ignored.
Occupation should be for usage in line with the approved usage of the hereditament i.e. Wi-Fi box in a shop is not using the unit as a retail outlet, therefore should not be treated as occupation, or boxes of toilet paper in an office.
The opinion of the NDR section, it is less about de-minimis occupation, or wholly or mainly, but more the relevance of the occupation.
Would a reasonable business pay the rates for the amount of storage in place? Actual occupation should be in line with the property description e.g. not storage in an office or snail farms in an office site.
The nature of occupation should also be appropriate to the accommodation occupied. On this basis, a small pile of boxes in the middle of a large empty office space would not be appropriate. No one would, under normal circumstances, rent out the whole area for this use. Occupation should not be contrived to take advantage of business rates system, similar to the benefit regulations but should be on a clear commercial basis.
Exemptions should be removed
Everyone should pay rates, therefore no avoidance
I think all premises should be charged regardless of being occupied or vacant. Exemptions should be removed completely for unoccupied properties.
In the cases of charities needing to hold a lease of an empty property, this exemption should be removed. Any relief at the discretion of councils should be time-bound preventing opportunity for undue pressure to be applied to the council.
Remove zero rating on empty properties that when next in use it appears they may be used for a charitable purpose
You should also remove zero-rating on empty properties so that when next in use it appears they may be used for a charitable purpose. Local authorities should be provided with local discretion to grant zero rating in genuine cases where a charity needs to own or lease an empty building and not make use of it.

Zero-rating on empty properties to be removed if it appears that when next in use they may be used for a charitable purpose with LAs being allowed local discretion to grant zero rating in genuine cases where a charity needs to own or lease an empty building and not make use of it.
Other
Inspection of the property to confirm occupation x 2
A right of inspection/entry would help.
Consideration should be given to the total number of properties occupied for what appears to be essentially the same purpose.
De-minimis occupation should require greater requirement for the level of occupation or level of use required as a proportion to the size of unit. As a result of the Macro ruling, rateable occupation can be argued for as little as 1% (or less) of physical occupation/use of premises. This makes the operation of short term occupation easier as rateable occupation can be more easily achieved and ended when needed as the logistics required for such schemes are minimal.
The case law and legislation surrounding de-minimis & wholly/mainly occupation requirements seems a reasonable test and it's not this area that needs to be reviewed to tackle rate avoidance. The following changes requirements highlighted below will assist authorities and reduce rate avoidance and help reduce the current loss in business rate revenue: • A legal obligation on ratepayers to notify their local authority of a change in circumstances which would affect their rates bills; • A new legal power for LAs to request information from ratepayers and third parties to aid the billing and collection function.
The test should wholly centre on physical occupation rather than use or intended use.
The steps set out in the Barclay Report are a good benchmark to follow. A general anti avoidance rule should be designed to stop abuse of active use, but it is agreed that setting the level at 51% is still open to abuse itself.
Verification of occupancy by inspection and charities and other documentation.
Wholly requirement.
Difficulties or issues
A de-minimis test could create an additional burden on billing authorities. This is not in our view the best way to tackle this particular rate avoidance.
A very difficult question to answer. De-minimis occupation wouldn't be too much of an issue if it were not for case law surrounding beneficial occupation - this has become worse following the result of the Principled Offsite Logistics case in 2018. Whatever 'test' is produced by government, or by the courts, will immediately be scrutinised for avoidance purposes. Any test should be supported with detailed guidelines and examples to support both local authorities and ratepayers. Wholly or mainly overall works reasonably well based on the existing definition and case law. However, government guidance and examples on how this is intended to be construed would be useful for local authorities and the courts.
Difficult to define - you could say that physical use of a property should be more than 50% of floor space but this is difficult given that some avoidance schemes will

ensure that the floor area is covered to sufficient extent albeit with items being spread out over a wide area. Beneficial occupation should more clearly defined as it is currently too wide a term and easy to get around.
Given the outcome of the Makro case, 0.2% constituting rateable occupation, it is virtually impossible to devise an appropriate test.
Greater clarity, the law has not been updated for in excess of 50 years since the 1967 General Rate Act in this area and the type of business and occupation have changed beyond all recognition. Also reliefs have just increased as a way of repairing a broken and unfair and making it almost impossible to police by Governments just adding more and more reliefs that have just created a breeding ground for avoidance to take place aligned with the move to 100% charging on empty hereditaments. Coming up with a simple test is not easy as it depends on the mode and type of property involved and needs a proper discussion.
I do not think a de-minimis test would work, ratepayers would just do enough to meet the test.
I would not advocate defining de-minimis or wholly or mainly as to do so will only give rise to the opportunity to circumvent. For example, if you set the de minimis level at above 50% of floor space, it is easy enough to ensure that you use less than that figure. It could also potentially mean a conflict in relation to s44a (part occupation relief). Each case must continue to be treated on its own individual circumstances. There are better methods to defeating rate avoidance.
In my opinion, any answer that is given to this question will create a scenario where; whatever the test or bar that is set in terms of de-minimis or wholly or mainly will simply set a bar for rates mitigation companies to meet. For example: If one palette of bricks are being stored in a warehouse for rates mitigation purposes and this takes up 10% of the floor space. If legislation finds that 50% of the floor space must be met insofar as the occupation test, then rates mitigation companies will simply store six pallets of bricks. The point I am making is that whatever bar is set, rates mitigation companies will simply meet/exceed it as the effect of achieving a saving is such a lucrative one.
The Makro case offers clarification, but sets an unreasonably low threshold.
These are both legal definitions as a result of High Court rulings. I don't think attempting to change the definition would help in tackling avoidance.
We believe that the sophistication of many contrived occupations mean that any attempt at a formal definition of ‘de-minimis occupation’ or ‘wholly or mainly’ requirement would only increase the scale of the current activities to meet the requirements laid down
We do not believe that the amount of occupation is a relevant factor. The amount of floor space used would not deter avoidance schemes as they would simply ensure that they use the amount of space specified.

Table A4: Respondents’ opinions of the extent of the usage of Marketed Avoidance Schemes

Very widespread
Very/Quite widespread x 3
Extensive and growing x 3
1. Very 2. £2m per year
I believe this is extremely wide spread. You only have to type ‘rates avoidance’ into a search engine to find a number of organisations that offer a service for rates mitigation.
I think it's very widespread, we receive quite a lot of communication direct from third parties.
It is extremely widespread. Companies having been carrying out rates mitigation for many years and approaching landlords of vacant premises in order to benefit from these schemes.
It is very prevalent nationwide - dependent on the state of the local economy on the high street/shopping centres
It is very wide spread and is only getting worse. The marketplace for rates avoidance / rates mitigation (even rates evasion) is huge and the main benefactor is certainly not the residents for which the local authority serves.
It is very widespread but not limited to specific rate avoidance companies as it seems to be common practice among rating agents as well
It's very prevalent, especially with the Principled Offsite Logistics Limited v Trafford Council [2018], which has seen a spike in such applications across the <Council type> and these are being instigated invariably by agents.
Makes up for most of the cases we come across.
Quite widespread. On the information we keep record of, most avoidance is Bluetooth, closely followed by 'Art' exhibitions and storage of insulation, plastic bottles for short term occupations.
This is something which is extremely widespread - FOI's are not helping as this allows companies to target other companies whom are paying empty rates.
Very wide spread, frequent use of leases with peppercorn rents payable only if required, we have a large shopping centre worth 20% of our database and the company leases empty hereditaments to a MAS who fill the unit with furniture and other such items.
Very widespread - more should be done to notify the ratepayer that they do not need to pay for such a service. The current ‘Check, Challenge, Appeal’ process is complex and in our opinion aids these companies business rates take up.
Very widespread and seems to be impacting on every authority across the country.
Very widespread with information/companies advertising freely on the internet.
Very. If someone is carrying out short term periods of occupation, 80% of the time it will be a different ratepayer.
We believe that it is very widespread and is now a national problem. We are aware of a number of companies who specialise in this type of avoidance scheme. However, there may be many more which are unaware of. Landlords are now

aware of the schemes and ways to minimise their rates liability and we are seeing an increase in landlords employing these tactics themselves.
We believe that this is a very widespread, although it is not always clear from the outset that a scheme is in operation.
We feel there is a lot of widespread involvement in our experience.
Fairly widespread
Fairly widespread here
Fairly widespread. This authority currently has two known companies that practice this avoidance and use short term periods of occupation to facilitate a further period of exemption.
In our experience this is fairly common and it mainly involves larger landlords. This is especially true of a large property owner which regularly makes use of members voluntary liquidation schemes to avoid paying rates.
It is a fairly common practice within Business Rates and is normally targeted at high rateable value assessments which of course has a big impact on Councils. On average you will have at least two to three rate mitigation schemes taking place within a normal high street and further schemes being run for industrial units.
The practice of rates avoidance is fairly wide spread due to current legislation and this is undertaken by not only Rates Mitigation Companies but respected Rating Agent Companies exploiting the legislation.
Widespread
Widespread/common x 8
Approx. 50% of the estimated rate avoidance.
Common in larger properties where a rent paying tenant cannot be obtained.
It is now widespread as such companies have become well know facilitators of avoidance. Most of the avoidance cases on a large scale are run through 3rd parties.
It's a repeated strategy for certain ratepayers and in increasing use.
Lots of evidence to suggest this is widespread. Aggressive agents often make spurious complaint to influence decision makers. Recent case claiming short term occupation with boxes defeated as premises undergoing some refurbishment. Relies on timely inspection.
Our area is quite rural and we have not suffered as some authorities have with long term empties properties, however experience from talking to others in the same positions shows many different schemes currently being used and advertised widely - there needs to be some sort of regulations applied to the companies offering these scheme - advertising should be monitored
Talking to many local authorities this appears to be widespread. Companies are advertising on sites such as LinkedIn. Making it a criminal offence to assist landlords in avoiding business rates obligations would assist in preventing. As we are a geographically small local authority we have seen companies assisting landlords in this way. The estimated value lost to this in 2017/18 is £100,000

The use of marketed avoidance schemes is widely used in our area involving a number of companies. As widespread as 'Makro' style avoidance is, it is very difficult to combat due to recent case law. Of late, we've also seen the emergence of 'blue tooth' style schemes which, again, are practised through third parties specialising in marketed avoidance schemes.
This is common in our area, especially with bigger companies.
This appears to be a common practice but it is difficult to estimate a percentage for this.
This is something which is widespread - FOI's are not helping as they allow companies to target companies paying empty rates.
Not widespread
As a small authority, there has been very limited commercially arranged avoidance schemes. There is information freely available to enable rate avoidance and current interpretation of legislation allows for common practice which is contrary to the original intention of regulation.
Although not widespread it is noticeable that this happens on the larger properties in our area that are occupied by large companies using rating agents.
Luckily in our area these type of practices are very low. However in my experience of working for a very large LA this is the biggest problem LA's face.
Not too bad in our area, but examples are beginning to be seen
Not widespread in our area, but we are aware of several incidents.
Not widespread of 2200 properties.
Occurs but not prevalent.
Only aware of one agent.
Owing to the large amounts of listed buildings in the area <Council name> have not encountered this directly very often, only known two cases in the past three years, as listed exemptions are open ended. However, we are aware that neighbouring authorities encounter these practices fairly regularly.
The practice is not as common as once was the case put in part that is driven by the level of unoccupied property within the borough at any given time. However we still see instances of short term occupation by third party / rates mitigation companies with Bluetooth, storage and next intended use for charitable purposes being the most common.
This has reduced greatly with cases now minimal.
To our knowledge mitigation companies aren't used that widely by businesses in our area. However, the advice and tactics used by some of the agents used by national companies are just as bad.
We are aware it occurs, but we don't feel it is particularly widespread at the moment. However, this could be a growing industry as awareness of ‘avoidance strategies’ increases.
Growing usage
Becoming increasingly common x 6
Becoming more common. Mostly in relation to short term occupation x 4

Becoming increasingly common in certain areas, particularly high street locations and office blocks.
Becoming more common practice as knowledge of service providers is becoming more widespread
I have no data, however I have a case on going at the moment (for one of our partner authorities) where an agent is involved and papers are being ‘stored’ on the premises for short periods. Anecdotally I understand this practice is increasing.
It appears to becoming more widespread as landlords look to mitigate their liabilities and the options available to them become more sophisticated and well organised. We believe that the extent of such arrangements are more significant than currently identified, particularly if payments are being made. The changes to Small Business Rate Relief, offering 100% relief to occupiers of premises up to £12K rateable value will have further added to the potential for third party/ mitigation companies to contrive occupations.
It is becoming more common, fortunately <Council Name> is a growing expanding commercial city and hasn’t experienced excessive avoidance schemes. However, we do recognise it is happening and in some cases can be difficult to spot.
It is becoming more widespread as ratepayers and agents become aware of the avoidance tactics. The fact that businesses are being set up openly for the purpose of avoidance schemes shows the scale of the problem.
It seems to be more common now than a couple of years ago.
Most major landlords utilise third party agents to aid in rates mitigation. It is becoming more prevalent in smaller landlords, therefore the risks to local authorities is growing.
Not totally sure. However the number of Freedom of Information Requests we receive that appear to be from rates mitigation companies would suggest that it is on the increase.
On the increase especially with large rateable value properties.
Suspect it is increasing, no hard evidence in <Council Name> so far.
The practice has gradually got more widespread since 2008 when the Government changed the regulations on empty properties, especially industrial. In these situations shell companies are created purely just to take on liability. Exploitation of the six-week occupancy limit is also on the increase, with companies specifically set up and marketed to take advantage of the six-week rule.
This is a growing practice. The companies that offer this are generally giving leases to charities for peppercorn rents. They have no scruples about how they advertise this and in the large case that this authority is dealing with the company that originally handled the case for the ratepayer advertised on their website that you could advertise your property with them and they would mitigate your empty rates too.
This seems to be a growing area of avoidance tactics and driven by agents.
We receive more and more FOI requests from companies clearly using the info to identify potential customers
Decreasing usage

The numbers used have reduced - but advertisements for their services are widespread on the internet.
Aware of companies operating
As we disclose our NNDR information on our website we receive three to four phone calls a day from agents requesting various reliefs or SBRR.
Aware of one company recently openly operating a scheme in the <Council Name> area.
Help with rates avoidance can be very easily accessed from many websites, which have been specifically created by companies for this purpose. This is in addition to rating agents who already use many of available measures.
Nearly all the schemes and examples that we have provided are backed either by rating agents or more commonly companies that specialise in mitigating business rates. Most openly advertise these services.
One agent (<Organisation Name>) is particularly proactive within the <Council Name> area with regards to six weeks occupancy periods.
Rates mitigation is almost exclusively handled by a third party. The main reason for this is due to landlords of empty properties being approached by the third party in order to strike up a relationship in which the third party rates mitigates for the landlord in return for payment (usually a percentage of rates saved). As empty property information is freely available to the public via freedom of information, this is easy to get hold of by third party rates mitigation companies or rating agents who specialise in rates mitigation. Furthermore, landlords simply do not want to get their hands dirty in what is often a case of moving boxes between their properties. As long as they are getting a saving, that is all that matters and the small cost of employing a third party is clearly one that is worth paying.
Rating agents are known to aid and abet fraud with small businesses. They complete SBRR forms advising companies are the in one unit when they have others within our own area. The percentage cut the rating agents take lead to false information being given out and ratepayers not realizing they are committing a criminal offence when applying.
Since check, challenge and appeal has killed off the appeal process. Ratepayers are being approached and I would estimate 33% of our list are making use of them.
Some companies are even advertising that they can mitigate rate liability.
This is well advertised by a lot of the large rating firms and certainly a large number of ratepayers with industrial premises have been approached to see if they can ‘save’ money on their rates. Both <Organisation Name> and <Organisation Name> use an agent to take advantage of the six week occupation by using offices for storage of a few boxes to claim empty exemption repeatedly over the last three years.
We are aware but not able to quantify.
We are aware of at least two companies that apply for small business rate relief on behalf of their clients for a percentage fee. We suspect that a number of companies are providing services to ratepayers in order to reduce their rate liability but we are unable to provide detail of the charges involved.

We certainly have cases but these are difficult to prove and say how widespread.
We have a number of retail units in our <council type> under the 'management' of <Organisation name> orchestrate rate avoidance for their clients. This is mainly confined to retail units.
We have seen a number of companies use these I would say that equates to about 3% of the NCD here but these are only the one's we are pretty sure of.
We know that <Organisation names> advertise on their websites. It would also appear that the <Organisation name> are linked to <Organisation name> as looking at <Organisation name> Facebook page their venues are all advertised on <Organisation name> website.
Not aware of any companies operating
No direct experience of use of third party agents for rates mitigation. However, we have experienced instances of separate registered companies within the same company 'group' using rates mitigation schemes.
No evidence, however suspicion does arise in certain cases, especially where the potential avoidance relates to large assessments.
We have not seen evidence of companies marketing this service.
Whilst we are not aware of such companies within our area, we believe this to be widespread and needs to be stopped to avoid the loss in rates.
Don't know
Not known x 3
Not known as the ratepayer or Landlord approaches the Council.
Not known. However, we suspect that some ratepayers are finding these avoidance scenarios online or have connection which advise them.
We only have suspicions of this happening.

Table A5: Reasons why respondents are not taking legal action against those avoiding
Schemes are within the law
The scheme are within current legislation x 19
At present the regulations and case law allow these loopholes to occur. Who do you pursue in such cases? The landlord or occupier?
In view of the small numbers involved and the fact that the practices are potentially immoral, rather than illegal.
None of the tactics used are illegal morally wrong yes, but legally all schemes are established schemes that have already gone through court as test cases.
The law needs to change.
Previous case law, Principle Logistics, Macro, Sunderland v Stirling etc. have had a major impact on us taking legal action
Recent case law has effectively legalised Rates avoidance.

Ratepayers are now well educated in the schemes of avoiding rates that work. There is no legal action we can take against them.
Regulation loopholes are being exploited and no value in challenging legally as regulations currently allow such avoidance.
Six week occupation is difficult to prove it is fraud due to previous case law. There is also a time issue with the council along with employing barrister for very small gain sometimes.
The way in which they are avoiding rates has been challenged in the courts and found in the favour of the ratepayer
These are court endorsed tactics to avoid rates so there is little point in us taking action despite feeling it is unsavoury. The court is a court of law and not a court of morals so would always rule in their favour.
This is primarily because of difficulties due to legislation and recent court rulings such as Makro, Principled
We have not taken legal action because rates avoidance schemes are legal and make use of legal loopholes to enable Ratepayers to avoid paying Business Rates. However, when someone advises us that a property is empty we always seek to inspect and verify that this is indeed the case.
We have sought legal advice in regard to various scenarios and have been advised that we would not be successful due to current legislation
A lack of resources
Lack of resources x 3
It is very costly and time consuming, our resources are limited and decisions are often against the LA.
With a severe lack of resources available the council cannot commit to this.
A lack of resources and in depth knowledge. These cases take a huge amount of time and effort to investigate and bring to legal proceedings. As a <council type> we do not have the resources to bring these cases.
Cases a difficult to identity early and require significant resources to investigate with little return.
We currently do not have capacity to pursue these cases, the problem is quite small for our authority
Lack of evidence
Evidence gathered and checks/inspections undertaken so far provide reasonable evidence for ratepayer to demonstrate occupation.
The difficulty of proving an event after the fact.
No evidence against specific rate payer
Unable to prove beyond doubt it is avoidance
Where we have felt confident in our knowledge we have considered legal action but having compelling evidence of avoidance is proving a negative and can the LA afford to go to court on speculation - in these instances we have then decided not to take legal action.
Too much risk involved

The risk of losing money in a legal challenge is something we're very wary of.
The ‘grey area’ cases can be time consuming, expensive, and the risk to the local authority (under the present rating rules) is not always sufficient to consider commencing proceedings.
The majority of recent case law goes against local authorities and therefore poses a significant risk into the time and money required to invest in legal action.
Even with cases that could possibly be contested, the cost and risk to the council is normally too high to progress through to high court.
No current cases referred for legal process. Risk of financial loss on process if unsuccessful.
The cost implications against the loss of income.
No cases to bring
No cases identified x 4
No requirement to do so as liability settled
We are not at the moment but will in appropriate cases, e.g. phoenix companies - for these we really need legislation which stops directors from creating such companies
We are unaware of any of these organisations that are illegally avoiding rates
Other reasons
Action not being taken at present. Our intention is to refer selected cases to specialist legal service providers for consideration and further recovery action from Qtr3. 2019/20 onwards.
All avoidance currently identified is being actively monitored in order to ensure that the operation of schemes are made as difficult as possible. This includes enhanced evidential requests and inspections for occupations of properties which are deemed to be at a higher risk of avoidance actions taking place.
Legal action will rely on the results from our investigation team. We will take action if there is a case to be made.
Little anecdotal support from either the Courts or Government
Most losses over the past 12/18 months relates to issues with the Valuation Office and their decisions not to rate large holiday lets. The property that has not been completed was leased to a company who went insolvent and remains a shell so no action is possible.
The properties are inspected and most pay for the short term occupation. We have obtained Liability Orders on the accounts that haven't paid
We are waiting the outcome of a high court hearing re PPOA due end October. In the main any council that has tried to take action has lost e.g. Makro, Principled Offsite Logistics, Hurstwood Property, Pall Mall Investments Ltd, Kenya Aid, and Digital Pipelines. It is therefore hard to argue a case when anything in a property can be treated as beneficial. Plus any company can claim to be a charity without any regulations as they do not have to register with the Charity Commission.

We have taken lots of action in the past including cases going to judicial review in the Magistrates' Court and one case to High Court. We lost all cases and feel that only changes in legislation can make enforcement more successful.

Table A6: Variables which have/have not led to success
Led to success: Picking winnable cases
Careful case selection x 3
Having a detailed knowledge of the regulations/case law (to identify which of the cases are worth challenging).
Selecting the cases we feel that we can win. Carefully considering business rates legislation and associated case law. The cases we've won include a number of examples where the judge agreed that the tenancy arrangements were a 'sham' (snail farms and an 'art gallery'). In the past we've considered progressing Makro style schemes to a disputed liability order hearing but felt in the end it was not worth the risk, particularly in light of recent judgements relating to this type of scheme.
Whilst we have had successes in the cases we have challenged, those successes are mostly due to the careful choice of case and building a case not directly around 'avoidance' in its purest sense. Successful cases so far have been charity related issues and avoidance with associated liability issues.
Legal challenges can only be considered where there is a clear flaw within the avoidance measure used.
Good risk analysis of the impact of taking or not taking action.
Led to success: Having sufficient evidence
Thorough records including inspections.
Obtaining quality evidence that carries a lot of weight.
Prior to court action we would have inspected property, and gathered as much evidence as possible, and sought legal opinion prior to enforcing action via court.
Gathering the appropriate evidence and building a strong case from the beginning
Liability orders obtained.
Proving that an individual operating under several different banners does not constitute different parties liable for business rates; demonstrating that a charity is unable to prove intention to occupy and engage in charitable activities given its resources and size and number of properties it 'intended' to occupy at some unknown future dates.
Witness evidence.
Led to success: Having a good legal team
Having a good barrister!
Close liaison with councils fraud team, and police involvement have definitely led to the success in our case.
In order to succeed you usually need to use the services of a specialist legal firm as this is such a complex area littered with case law.

Working closely with external Insolvency Practitioners / Recovery Solicitors - own internal legal sections are not resourced for the challenging nature of this type of work.
Proactive recovery action in using a specialist legal firm for more complex cases has led to some success.
Led to success: Other
Success has invariably come about by continually challenging cases where empty rate avoidance is being sought, by upping the evidence required to substantiate a case, refusing to back date and pro-active inspection cycles.
Where we have challenged ‘charitable occupation’ that appears to be solely for the purpose of rates avoidance we have had some success in that landlords are reluctant to enter into protracted correspondence and will terminate the lease.
1) Clearer legislation/procedures for dealing with rate avoidance cases - retrospective leases. 2) Full investigation into liability from the outset, request for documentation /photographic evidence - funding for a legal team/barrister to look into evidence.
Challenging lease agreements has worked and challenging what happens on the ground has worked.
Good case management, good policy and decision making.
Full investigation into liability from the outset, request documentation, data (if necessary), photographic evidence etc. We then need to carefully check the documentation of everything received and pay for barristers to assess the evidence.
Tenacity; Perseverance; NDR Knowledge and Professionalism. Time and Effort - we know our actions have pushed people seeking to avoid out of the borough or stop them trading.
Did not lead to success: Case law
Success is very difficult because many of the schemes are now well established, backed up by case law.
Success will very often depend on how 'professional' the 3rd party avoidance company is - if they do a good job and know the loopholes we will not succeed. It is becoming harder and harder to win an avoidance case due to the way case law has gone against us.
The main issue for us has been the lack of court cases which have found in favour of the ratepayer rather than the local authorities.
Current legislation and judicial decisions based on narrow focus of what law states and not the morality.
De-minimis occupation issues, in particular, the Principled Offsite Logistics Ltd, R (On the Application Of) v Trafford Council decision has thrown a real spanner in the works when it comes to pursuing the most virulent cases of avoidance.
In light of recent judgements the periodic occupation for storage scheme is difficult to challenge.
Not yet known. However, it is clear to see that if a scheme is set up correctly and in line with established case law then it will succeed.

Previous case law does not support the local authority's position when challenge such schemes. Where case law now exists changes to legislation are required to address where the rulings help facilitate avoidance schemes.
The courts agree with us but the law doesn't allow them the rule in our favour even when they know it is morally wrong.
The courts seem to be of the understanding that any storage/goods is occupation regardless of how minimal and how beneficial to the company.
The legal challenge is ongoing however current legislation does not support the notion of wholly or mainly in occupation. Recent decisions over beneficial occupation are greatly affecting Local Authorities in challenging liability.
Courts tend to rely on the statement that 'this is a court of law, not a court of morals'. Clearly this statement suggests that the law needs revision to reflect the current economic climate that both business and local authorities operate in.
Did not lead to success: Current regulations
Charitable occupation for six weeks, where they're a registered charity or purport to have charitable objectives is also proving to be increasingly problematic.
Many elements of Business Rates legislation are open to interpretation. Clarification through meaningful definitions would assist, such as for the purpose of establishing Beneficial Occupation. The ease of occupation for a period of 42 days before reclaiming empty property relief ensures the problem is cyclical. Extending the period of required occupation would reduce the financial benefits achievable by schemes utilising short term occupation.
As long as the lease is valid, even though the company will never trade or have any assets to pay the liability, the Courts have no choice but to find in the Company's favour.
The attitude now that is 'yes, it is avoidance but is perfectly legal, what are you going to do about it?'
The case that was unsuccessful was successful and we were granted a liability order, however it failed at the Court of Appeal due to the following: No certain clarification of 'di-minimis occupation'.
The four tests of rateable occupation - mainly beneficial occupation. As the bar is so low to establish/argue this, rates mitigation companies store extremely low value goods (a pack of toilet roll or a few planks of wood) and claim that by storing these there is a benefit.
We usually lose on beneficial occupation.
More robust legislation would help court staff to be able to understand avoidance schemes and reduce time taken on complex cases with little chance of success, key to moving towards higher rate retention for LAs.
Did not lead to success: Lack of access to information
Absence of a proper lease/supporting information.
Current lack of data sharing with other government bodies.

There is no requirement for the Ratepayer to provide information to the Local Authority, whose powers are limited to obtain information. This can make it difficult for the Local Authorities to build their case or accurately identify avoidance cases.
LA's are limited on being able to access information from third parties which can help prove their case.
Did not lead to success: Resources involved
Costs and resources are also an issue when considering a legal challenge.
The extent of the time, money and expertise of the local authority is in direct correlation to the chances of success. It is a time consuming and exhausting process as the law does not back us.
It's a long and complicated process, which is very resource intensive. Often avoidance schemes take a period of time to notice that a pattern is developing on a particular property.
Did not lead to success: Other
Too much elapsed time since debt became due. Risk vs reward, based on consideration of court costs should we lose the case
Appeal process with courts takes too long - still awaiting outcomes - companies have also gone into liquidation/dissolved in the process and monies not being collected.
Constant changes put forward at the 11th hour by freeholders/ratepayers, usually on the day of the court hearing.
Landlords have managed to arrange their tax mitigation which has led to our legal team not being confident in the success of our case and therefore agreement made to save council costs in continuing action.
Need clear procedures and policy for dealing with such things as retrospective leases.
Agents can easily use legitimate schemes and past case law to challenge our decisions sending long complicated letters and being dogged that can at times make it feel easier just to give in and award.

Table A7: Other measures respondents think would help deal with avoidance
Changes to the legislation/regulations
Reform empty relief regulations x 18
Reform of the legislation/regulations x 12
Extension of six weeks occupation period x 12
1. Change in regulations to make owners legally obliged to notify of changes in occupation and in a timely manner. 2. Give power to local authorities to make internal inspections of properties on spec without having to make a prior appointment. 3. Change occupation period from six weeks to six months.
Clearer rules for occupation and for courts to work with local authorities rather than against.
A review or replacement of SBRR.

Amendments to legislation for ratepayers to notify changes in circumstances which affect liability. Amendment to legislation to allow Council to request relevant information and impose penalty for non-compliance. Amendment to legislation to provide power of entry and inspection. Amend to the minimum period of occupation before exemption from empty rates would apply.
Changes to Empty property legislation, amendment to SBRR, obligation on ratepayer/landlord to notify LA of changes.
Compel ratepayers to provide LAs with evidence of commerciality of tenancies.
Duty on ratepayers to provide information or to allow internal inspection by Local Authorities.
End the six week occupation rule and the 100% for future occupation by charities
Mandatory to notify vacation and occupation, new builds.
MHCLG Take action on closing loopholes.
More powers for LA's. Longer occupation period in access of 42 days. Charities to clarify the need for the property and its intended use.
Need a change in legislation, increase the six week period to min of six months or longer, change empty relief to a discretionary relief determined by guidelines from government, power of entry, onus on the owners and occupiers to advise the LA when liability changes, tighter controls at Companies House and quality information relating to directors who frequently dissolve companies and set up new ones immediately.
Removal of empty rates.
Removing member’s voluntary liquidation from the insolvency exemption.
Replace six week rule with a six month rule (to claim fresh empty exemption). Charity relief to become discretionary. Empty exemptions to become discretionary. Insolvency exemptions discretionary.
The return of 50% empty rates. General anti avoidance legislation to deal with any new schemes that appear. The removal of any reliefs relating to empty property. Longer periods between reoccupation to prevent the six week scheme.
Tightening of regulations regarding ‘empty property relief’ in particular, greater investigatory powers; power to levy sanctions such as meaningful fines for failure to provide information/documentation in a timely fashion, greater powers to inspect a property, review frequency of how many times the three or six month rate free period can be applied in a year, review the reset period of 42 days, meaningful definition of occupation during the 42 day period, review when next in use charity exemption and involve the Charity Commission where rates avoidance may be used by a charity.
To simplify the legislation, we believe that when it was a tax on occupation and a 50% charge for unoccupied non industrial premises based on a hypothetical rental value of the property it was a relatively simple tax which less people tried to avoid.
Working with Companies House, Charities Commission would not necessarily help as companies house is only a register and charities commission only deal with charities. What is required is a review of legislation to ensure all the loopholes are closed which allow companies to mitigate their rates burden. Extent of actual

usage needs to be clarified. Maybe even holding company directors personally liable for avoidance schemes their companies use.
Make empty relief more difficult to award increase six week rule to three or six months depending on description of property and only one award instance of empty property relief in one financial year. This should not affect genuine cases.
Allowing billing authorities more discretionary power when awarding mandatory reliefs will allow authorities to apply local knowledge and understanding to assess whether a relief is appropriate. Making it a legal responsibility for the owner to inform us when a new tenant / business moves in if they want billing authorities to transfer liability.
Greater prosecution powers, up to date better legislation.
Need central government to remove ambiguity on avoidance/evasion and what constitutes full occupation of a property. Change the period of occupation from six weeks to six months before a void exemption can be applied. Give local authorities the legal powers to demand information and inspect properties.
Power to inspect premises. Legal obligation for ratepayers to provide information
Information sharing
Data sharing with the Valuation Office Agency x 3
National database of recipients of Small Business Rate Relief.
Better access to information held by other Billing Authorities.
Joined up working with Companies House and HMRC, as part of the digitisation initiative, will help identify and confirm business owners and their details to ensure correct liability and billing, which will ultimately lead to better collection. HMRC are considering introducing an information gateway for council tax purposes where information can be shared with billing authorities. <Council Name> recommends this be extended to include business rates too.
More sharing of data e.g. with other local authorities.
A databank of avoidance companies with other councils to share information.
All Councils should pull information together so any avoidance cases can be identified at a central level rather than each Council trying to fight the avoidance case on their own.
Create database where LAs can regular provide information that can be shared by all LAs.
More access to other LA records.
National access to all NDR records to check against before awarding relief e.g. SBRR. These records need to include sole traders and not just companies.
Share data, information and resources with other local authorities.
More joined up working with LAs (i.e. a central avoidance hub etc.). Better joined up working with the Valuation Office Agency in relation to sharing of information.
Data sharing between Companies House, HMRC, Charities Commission and Local Authorities would assist to reduce losses in income to local and central government.

Having a right of entry, legal power to request information and enforce if not provided, abolish six week exemption or make it longer.
Joined up working
Access to a central legal team that can deal with these cases that are normally countrywide but each authority does not have the means to defend on its own.
Closer working/more access to Valuation Office Agency.
More joined up working with insolvency service to report directors who abuse the system, we have reported directors but nothing seems to happen.
Other
Make owner liable for rates not tenant x 3
Additional ring fenced funding for avoidance, including contribution from central government to pay for software available to identify non-assessed properties (allowance in cost of collection and central government pay a % of ongoing fee in line with retention as they are also benefiting from this.
The Charities Commission can assist billing authorities identify non registered charities who have requested charity relief fraudulently. They should also do more to investigate charities that are clearly only set up as vehicles for business rates avoidance.
Tougher penalties for breaches of Companies House, Charity Commission and HMRC rules.
Need the Charity Commission to be more robust and do due diligence on charities before awarding status
Making Pub Chains Liable for all rates.
Stringent checks on the information provided to Companies House. Directors registering new companies should be required to provide identification and given a unique identifying number to prevent directors mixing up the use of their names and giving false information. When registering as bankrupt any company director then should be required to provide their unique identifying number allowing the insolvency practitioners and insolvency service to quickly identify a director's interests. Automation in this area would also enable identification of those directors who have transferred their interests to a third party in the period immediately before personal bankruptcy.
More joined up working with all the Insolvency Services.

Table A8: Powers respondents felt they lack in order to tackle avoidance
Legislation/regulations to tackle avoidance
Legislation to prevent avoidance/close loopholes x 26
Power of entry and power to request information x 8
Power of entry to inspect properties x 2
- Greater legal powers. - Updated definitions for relief. - Better Inspection Powers.

- Obligation on ratepayers to notify the Authority of changes (e.g. like with Council Tax).
1. Change in Regulations to make owners legally obliged to notify of changes in occupation and in a timely manner. 2. Give power to local authorities to make internal inspections of properties on spec without having to make a prior appointment. 3. Change occupation period from six weeks to six months.
1. Removal of mandatory charity relief on empty properties, but LA's to have discretionary powers to award in relevant circumstances; i.e. intention to use is evidenced. Gives the Local Authority a fair approach to awarding genuine charities the relief. 2. Statutory duty on ratepayers/landlords/managing agents to provide information to LA's upon request. (This already exists on council tax). 3. Powers for LA's to reject retrospective information if provided more than six months from the effective date. 4. Only one period of 42 days occupation to be disregarded on any property, or the period to be increased to 12 weeks. 5. Statutory right for LA's to request the power to inspect a premises from the Court if no information can be obtained. 6. Insolvency exemption only to be applied where a company has occupied and traded from the premises concerned. 7. Information sharing with the Valuation Office Agency.
As the legislation / case law precedent allows for rates avoidance, we don't have any powers in order to prevent this. While there are options available to make rates avoidance trickier in some instances, there is nothing to put an end to it.
Better legislation and/or more discretion on if to apply an exemption.
Business rate legislation and Valuation Office service needs to be fit for purpose to allow billing authorities to protect the public purse.
Business Rates legislation requires amendment to remove the loopholes allowing such schemes to operate e.g. increase the minimum period of required occupation, reducing the achievable benefit of short term occupation schemes. Clearly defined requirements to meet de-minimis and wholly or mainly criteria. Sanctions should be applicable to landlords, directors and occupiers operating schemes for the purpose of Business Rates avoidance. Ability to restrict director's abilities to create new companies suspected for purpose of rates mitigation. Restrictions to Business Rates information that must be supplied under Freedom of Information requests by making certain information exempt from disclosure. Requests by companies operating avoidance schemes are regularly received by Local Authorities for empty hereditaments in their area. The supply of this information simply helps them identify empty hereditaments for them to subsequently target the landlords and owners as potential customers for take up of avoidance schemes.
Case law is now against authorities in rate avoidance. The Council lack the power of entry to establish occupation. Ratepayers, Landlords and 3rd party agents should have a legal obligation to inform the Council of changes. Power for the Council to have greater investigation powers to see a company's trading accounts to establish occupation where there is a dispute in occupation.

Duty of ratepayer to notify changes in occupation for liability. Imposition of penalty. Right of access / inspections.
It should be made clear what the occupation test is. More powers to challenge the owners.
Legislative powers backed up case law, power to levy meaningful sanctions for not supplying information or allowing inspection of properties, general anti-avoidance rule.
Local authorities are restricted by law. The schemes fall loosely within the legislation and therefore why wouldn't businesses try to reduce their outgoing liabilities. The power to enter premises. The power for local authorities to request information from ratepayers and third parties.
Make it a legal obligation on ratepayers to notify councils of liability changes. Give councils the legal power to demand information from ratepayers/landlords and powers of entry. Change the six week empty period to six months to claim a further void. Give Council's a financial incentive to retain additional revenue collected.
Power needs to come from central government, primary and / or secondary legislation. For example, the impact of temporary occupations could be mitigated by amending Regulation 5 SI 2008/386 to replace 'six weeks' with, 'twelve weeks'. Other ideas may include: A duty for owners and occupiers to inform local authorities of a change in circumstances. A robust system for local authorities to request particular information from owners and occupiers. An ability for local authorities to issue penalties for providing false information or information provided late.
Powers and rule changes to deal with avoidance, not evasion, may remove incentives which stem from the 100% empty charge by the removal of the six week rule. Also, changes to the CVA exemption rules could be considered, as local authorities are often lower value creditors, but the losses incurred to the public purse can cumulatively be significant.
Powers similar to Regulation 3 of The Council Tax Administration and Enforcement Regulations, a legal power to enter and inspect non-domestic properties (in line with the actions being taken in Wales).
Six week minimum occupation period increased (three/six months).
The bar has been lowered to such a degree (Makro & Principled case law) that rates mitigation companies are taking advantage of a legal loophole.
Example. Directors continually making companies insolvent and setting up straight away in a different company name. We cannot demand the lease. There are no penalties we can issue.
Power to obtain information. Requirement of individuals/businesses to notify changes in circumstances. Powers of entry.
Power to access financial information and bank details. Power to put onus on businesses to provide information in a timely manner, i.e. occupation of a property
A definitive right of access - too many times billing authorities are not allowed to inspect properties. Making the 80% mandatory relief a discretionary award.

Do not have the ability to enter a property without first seeking permission. Leases to be made public documents, to include home addresses.
More powers to inspect premises. More powers to request information from utility companies and other agencies such as telecommunications, letting agents. More powers to ensure owner provides info and enabling of penalties where owner persists in ignoring requests.
Powers of entry/inspection to verify for billing purposes. Putting a cap on backdated reliefs/retrospective applications.
Powers to enter property. Legal obligations on ratepayers and agents to notify the authority of changes in circumstance.
Powers to prosecute give sanctions.
Rating legislation and case law (specifically the Makro properties case) and the ease in which someone can set up a limited company that has no assets and never trades mean that it is easy for a ratepayer to avoid paying empty rates.
Regulations have failed to keep pace with case law, and the reality of rating agents encouraging minimal periodic occupation.
Right of entry, right to request specific information, owners to inform the LA when a material change happens, restrict backdating by the Valuation Office Agency, review of Ford vs Burnley.
Right to inspect. Avoidance regulations.
Right to refuse relief if it is clear that the actions are only to avoid rates.
Abolish the Charity exemption when next in use. Amend the six week occupation rule to six months (in line with the recent Welsh change). Clear direction on what constitutes rateable occupation. Greater discretionary powers to enable local authorities to determine the rateable occupier when avoidance measures are being taken. To ensure companies are fully investigated where there is a potential rate avoidance issue.
Should have discretionary powers to award charity exemptions. Legal powers for ratepayers/landlords to advise in a timely manner when changes occur. Not allowing retrospective exemptions - inspections to be carried out if council request first.
Some sort of general power to allow us to withhold relief where we suspect that avoidance is an issue.
The legislation regarding what constitutes rateable occupation should be reviewed. At present case law has favoured certain avoidance measures.
The power to award reliefs should not be legislated for, but awarded under section 47 by the LA, so they're awarded at our discretion. The six week occupation period before a further three month award is made, needs to be revised. For example, it could only be applied once every 12 months.
The powers that are being introduced in Wales would improve the position significantly. This could be coupled with general anti avoidance legislation similar to that used by HMRC. Powers of entry for Inspectors would also significantly improve the information that we have available to tackle avoidance.
Too many loopholes in the legislation, with no actual body to enforce the rules and regulations that company directors are meant to adhere to. Too many steps in

legislation leaving onus on authorities to prove liability which gives rise to unnecessary loopholes. Needs to be tightened up to make identification of target liable easier and please legal liability on businesses and business owners to register business as liability non domestic rates.
Powers of entry and to request information. Obligation to notify of changes. Extending occupation period.
We believe that the legislation enables rates avoidance schemes to operate too easily. For example, moving in a few paperclips could theoretically constitute occupation of a property. Also, we have little ability to compel companies to allow us to carry out an internal inspection, although typically this is not an issue. Furthermore, the Courts routinely find against Local Authorities who have challenged the legitimacy of leases which makes it very difficult to prove that a lease is a sham.
We come across many cases where companies may use either charities or companies to be made liable for large industrial properties in order for owners to avoid paying empty rates. Where we can see the obvious abuse we should be able to refuse the updating of account and leave the owners as liable. The High Court ruling in the Macro case has given these companies the authority to issue bogus leases to companies and so called charities for a six week occupied period.
While rate mitigation/avoidance schemes are lawful, authorities are unable to tackle these. The only option we have is to regularly review/inspect premises to ensure adequate occupation is occurring.
The legislation states a property must be occupied for six-weeks in order for an exemption to recommence. If there is actual occupation during this period there is no legal defence available to a billing authority.
We should move to a model where the legal owner is liable for empty rates. Removal of charitable relief as currently awarded and linked closer to a tighter criteria aligned with the charity commission.
Ability to access centrally held information
Power to access Valuation Office Agency records to see ownership and liability x 3
Access to HMRC records x 2
Personal data sharing is restricted and more information relating to ratepayers should be freely shared between LA and Valuation Office Agency.
Access to HMRC/VAT/accounts data.
Data sharing.
Resources
A number of councils are challenging rates avoidance schemes through the Courts. However, these cases are time consuming, costly, and carry a significant risk factor for the local authority concerned. Although councils can mitigate risks via joint actions, it is felt that more should be done in this area. The Government could make funds available to support these actions, which would ease the burden on local authorities.
Additional resources.
The risk/resource issues in attempting to challenge through the Courts, even where a strong case is perceived to exist, are a significant disincentive.

Lack of resources to challenge the validity of leasehold agreements.
Resources to be able to take comprehensive action against avoiders
Time. Staff. Solicitors that specialise in rate avoidance and have the experience, knowledge and time to deal with these cases.
Other
Billing authorities being able to make a charge on all property where rates are not paid irrespective of who is deemed liable.
Faster professional tribunal service rather than magistrates courts.
The ability to deal with 'rogue' Insolvency Practitioners.
A national forum of rate avoidance be formed with reps from MHCLG, HMRC, LAs and Cabinet Office
A combined list of ratepayers throughout England.
Specialist legal teams.
There should be a central government based rate avoidance unit which tackles this issue. Local authorities are not resourced to deal with these issues, and will mostly dealing with them independently. A central unit would be best placed to receive wider intelligence and take class action (and set precedents) on behalf of multiple local authorities - safety in numbers.
Any power to take action against directors of limited companies
The option to refuse premises/alcohol/food licences could be linked to the payment of business rates and if a business is wilfully refusing to pay the council should have the power to deny a licence. Why should a business be allowed to wilfully run up debts without an intention of making payments and contributing to the public purse?
We could inspect properties more frequently.

Table A9: Anti-avoidance regulations and changes respondents felt should be put in place to tackle avoidance and improve success in the courts
Reform empty property regulations
Extend the six week period to six months x 23
Extend the six week period x 6
Extend the six week period to three to six months x 4
Extend the six week period to three months x 3
Remove empty property exemptions x 3
Extend the six week period and limit the number of exemptions per year x 2
Limit the number of exemptions per year x 2
Reform empty property regulations x 2
Remove the charitable relief provision for empty properties x 5
Reform empty relief for charities x 4
Make empty relief for charities discretionary x 10

Abolish the 6 week rule. More clarification of what is occupation after 6 weeks.
Extend the de-minimis occupation period from 6 weeks to 12 months before an empty property exemption granted.
Extend the 6 week occupation period for all property other than shops (pop-up shops at seasonal times may only be occupied legitimately for short periods).
Increase the 42 day occupation period and remove automatic exemption.
Some changes to the minimum period of occupation in between periods of occupation (similar to those being introduced in Wales) should be introduced, where by the current six week period is extended to 3 or 6 months. Or the complete removal of the three/six month void allowance altogether.
Review of the reset period (42 days) and definition of occupation during that period, as well as the 3 or 6 months rates free periods,
Only one period of 42 days occupation to be disregarded on any property, or the period to be increased to 12 weeks.
The 6 week occupation rule should be extended or if there are multiple periods of occupation which are contrived then this should be disregarded i.e. there has to be a genuine reason for occupation.
Empty exemptions to become discretionary.
Change regulations on 'empty periods' or on what constitutes occupation.
Reduce empty rates to 50%. Increase period of occupation before trigger for a further entitlement to empty rate relief.
Removal of empty rate exemptions - suggest every business is entitled to claim 6 months empty rates - nothing further.
Remove 6 week occupation unless the unit is occupied by minimum of 50% and meets all the rateable occupation criteria. I.e. what is the Benefit of them being there with one pallet?
Remove most categories of exemption e.g. particularly the 3 & 6 month exemption.
Review of exemption periods that stops avoidance being financially viable so the cost of avoidance would outweigh the benefit of empty relief.
Reintroduction of empty rate relief.
Changes to regulations for empty property relief e.g. lengthening the period of temporary occupation, removing zero-rating on empty properties that when next in use appear will used for charitable purposes, leaving LAs with the local discretion to grant zero rating in genuine cases.
Consideration should be given to allow one period of empty property exemption within a 12 month period, rather than 3/6 months on a rolling period following a purported 6 week period of occupation. Consideration should also be given to local authorities being given the powers to set its own local empty property rates policy based on local conditions at that time in much the same way that has given via recent amendments to Council Tax legislation by setting the level of discount granted to empty properties. Such legislation may also be beneficial to combined authorities as it looks to encourage business growth etc.
Regulations need to change from 42 day to 6 month before the empty rate is reset.

Restrict empty relief for listed building to 2 to 3 years. We have a large number of empty listed building in the city centre where there is little or no incentive to re-occupy. Also introduce after the set period of 2/3 years increase the rate of empty charge by 25 or 50%?
A change to the exemption for properties that get exemption on the basis that they will be occupied by a charity. There needs to be clear criteria around proof of the charitable use or removal of the exemption entirely.
Restrict empty relief to charities to 50%
Better definition of ‘wholly or mainly used for charitable purposes’.
State run schools and academies should be charged the same net rate. Mandatory charity relief should neither apply to council run schools, or academies. NHS Trusts should not be allowed to believe they are able to claim Mandatory relief, the case should not have gone on this long with intervention from central government made before now. Remove empty charity relief under the when next in use category.
Change/remove minimum occupation period.
Clarification and guidance on occupation
Legal definition of de minimis for occupation x 5
Legal definition of ‘wholly or mainly’ x 3
Clearer rules or guidance on what is deemed occupation x 3
More detailed legislation on what constitutes 'beneficial occupation' to help avoid schemes where organisations 'occupy' a property as a charity.
The rules around beneficial occupation need to change so that minimal use of a property does not lead to it being regarded as occupied.
Legislation needs to be updated with loopholes around usage and occupation of a property firmly set out so there is no grey area around what constitutes ‘occupation’, with a set percentage of floor space to be utilised before it can be considered to be occupied. All ’occupation’ needs to be ‘essential’ to the occupier.
Criteria for Mandatory relief should be altered, so ratepayer is only entitled to relief if their occupation is of actual benefit to the local community (or national benefit).
Clearer guidance on benefits of occupation.
Occupiers should be required to provide a clear business need for their occupation of the property. A clear period of occupation to support that business need should also be defined which is greater than six months, in reality how many new business occupying premises for the first time will be able to confirm whether or not they are viable within a six week period and make a decision to close vacate at the end of that period.
Where a property is leased, there should be some intention to use the property and not for the lease just to be for purposes of avoidance of business rates. The 'beneficial' test for rateable occupation should involve more than the minimal use of a property particularly for repeated short periods of occupation.
Have a minimum percentage of the property needing to be used to limit the use of Bluetooth boxes being used.
Primary legislation that defines minimum rateable occupation - both in terms of floor space and period of time.

It would be helpful if legislation stated that the majority of the property has to be in full occupation to attract occupation relief. Similar to charitable relief where legislation states the whole property must be in use for the furtherance of the charity.
Pre-determined set of criteria to be met to satisfy 'de minimis' and 'wholly or mainly'.
Change de-minimis regulation to occupy at least 50% of property.
Clarification of 'beneficial' occupation to avoid the courts considering occupation by a blue tooth transmitter or random box of goods on a floor of an assessment with multiple floor.
Duty to notify changes in occupation for liability
Requirement for ratepayer to notify changes x 8
Requirement for landlords / tenants to notify changes x 3
Requirement for landlords to notify changes x 2
Requirement to notify changes x 2
Remove the onus on LA's to identify occupiers via landlord, managing agent etc. make it legislatively required that we are informed.
Make it mandatory for landlords/agents/occupiers to supply information together with documentary evidence associated with occupancy details.
Obligation on interested parties to notify LA of changes.
Obligation to notify of changes.
Exploring a new legal obligation on ratepayers to notify their local authority of a change in circumstances which would affect their rates bills (With Council Tax you can impose a £70 or £280 financial penalty - you can appeal against this to the Independent Appeals Tribunal).
Businesses to provide information in a timely manner, i.e. occupation of a property.
Changes the legislation/regulations
Closure of loopholes x 5
Introduction of general anti-avoidance legislation x 4
The current regulations over occupation ensure local authorities have no real power in the courts. A review of small business rate relief & empty property charges and reliefs is required if the rate base is to be maintained.
Consolidation and simplification of all the rating acts
Make all mandatory reliefs and exemptions discretionary. This reduces the legal requirement to apply the relief and removes the ratepayers' legal redress if the mandatory relief is not awarded. The move from mandatory to discretionary is also consistent with the aims of the Localism Act and the move towards 100% retention.
Simplify the legislation.
The main issue is that rates avoidance is legal, therefore 'well founded/designed' schemes would continue, and will not be able to be successfully challenged in the Courts. Councils however will still be able to successfully challenge 'poorly

founded/designed' schemes. Essentially, there needs to be a change in the law to minimise these schemes.
The schemes we encounter are not illegal - the regulations need to be changed.
A review and possible removal of mandatory reliefs, in particular charitable relief. Changes to SBRR with better legislation and case law. Stronger regulation and closing of loopholes so avoidance is more difficult.
Remove charity and liquidator exemptions (as these are the most commonly abused) or at least make them discretionary so Billing Authorities can ensure they are granted where the current regulations intended them to be granted.
The legislation needs to be regularly reviewed to reflect the economic circumstances that business and local authority operate within. More reaction from government to High Court decisions is required to ensure that a fairer playing field than the one that currently exists comes into play, with more definition of key intentions such as rateable occupation, six week occupation (consideration for a genuine business need to occupy rather than to deny public funds), charitable use (including next intended) would be welcome.
At a minimum steps should be taken to tackle 'Makro' and insolvency schemes. A review into what the Barclay report describes as 'The Empty Property Loophole' would also be welcome. These measures could form part of a General Anti-avoidance Rule.
Measures to deal with companies set up for the purpose of avoidance
Greater scrutiny of Companies House data to prevent companies from having false or incomplete registered office addresses. Prevent the same director being able to hide behind multiple limited companies. E.g. dissolving one company only to immediately set up another with a similar name. If this happens a number of times we should be able to pursue the Director personally. Companies House to require identification of Directors to prevent the same person from using their middle name or even an alias to prevent being linked to their other businesses. Make the practice of touting tax avoidance schemes illegal. The majority of FOI requests are from rating agents who are simply touting for business and often selling rates avoidance schemes.
Limited companies with the same director cannot qualify for Small Business Rates.
Prevention of the ability to create phoenix companies.
Not allowing Ltd companies to dissolve and set up again with the same directors under another name immediately (sometimes within days).
Set a low threshold of number of instances of a director's involvement in liquidations before they are banned as a company director.
More effective monitoring of registered charities including FCA registered Industrial and Provident Societies.
Prevent or introduce laws on phoenix companies and 'easy' liquidations or insolvency (liability of owners where successive tenants go into liquidation).
Legislate to make it illegal for organisation/agents to devise avoidance schemes.

It should also be more difficult for someone to register as a company director where there is evidence of them having previously not adhered to their duties as a director and where there is a history of non-payment of their companies.
Disqualification of directors made easier.
Stringent checks on the information provided to Companies House. Directors registering new companies should be required to provide identification and given a unique identifying number to prevent directors mixing up the use of their names and giving false information. When registering as bankrupt any company director then should be required to provide their unique identifying number allowing the insolvency practitioners and insolvency service to quickly identify a directors interests. Automation in this area would also enable identification of those directors who have transferred their interests to a third party in the period immediately before personal bankruptcy.
Change to how many companies directors can set up when companies are not viable, i.e. have no assets or finances.
Any power to take action against directors of limited companies
More specific regulations on the setting up of companies on Company House register to prevent shell companies being created that are used as avoidance vehicles.
Sanctions directly on directors and owners who operate or use schemes for the purpose of Business Rates avoidance. Tighter laws and control on the creation and operation of companies (phoenix companies).
Power to request/access information
Legal power to request information from ratepayers and third parties x 8
More powers to request information from owners or agents to prove they have entitlement to relief rather than the LA needing to prove they don't.
Statutory duty on ratepayers/landlords/managing agents to provide information to LA’s upon request. (This already exists on council tax). Powers for LA's to reject retrospective information if provided more than 6 months from the effective date.
Greater discretionary powers to enable local authorities to determine the rateable occupier when avoidance measures are being taken. To ensure companies are fully investigated where there is a potential rate avoidance issue.
Statutory duty for ratepayer to provide information when requested and penalties for failure.
Give councils the legal power to demand information from ratepayers/landlords.
Requiring businesses to provide evidence of their occupation.
Powers of entry for inspection
Powers of entry for local authority rates inspectors x 12
Statutory right for LA's to request the power to inspect a premises from the court if no information can be obtained.
Information sharing
Information sharing with the Valuation Office Agency x 2

Enhanced data sharing between Local Authorities.
Improve data sharing with local authorities and other government agencies. Creation of a tax avoidance register to alert authorities of potential tax avoidance.
National database of companies so Small business rates relief can be verified.
A combined list of ratepayers throughout England.
Work with local authorities to publish a list of ratepayers in receipt of rates relief, subject to a list complying with General Data Protection Regulation.
More data sharing with the VOA. Working with other LA's to see if there are ratepayers with more than one business to reduce SBBR fraud.
Data sharing between Companies House, HMRC, Charities Commission and Local Authorities would assist to reduce losses in income to local and central government.
Publish known company directors who consistently practice rates avoidance schemes.
More joined up working to check SBRR claimants really do not have any other UK business.
Publish list of rate payers receiving reliefs including charities if compliant.
A central database of known schemes would assist local authorities identifying cases and taking a more joined up approach.
Reform liquidation exemption
Removal of member's voluntary liquidation exemption x 2
Declare null and void any tenancy taken on by a company that then immediately goes into administration/liquidation The business rates liability would then remain with the landlord.
Insolvency exemption only to be applied where a company has occupied and traded from the premises concerned.
Tightening up of insolvency laws so that liability reverts to the property owner in the event of a leaseholders liquidation.
Liquidation exemption should not be available unless the company has traded from the property for 6 months plus.
Liquidation exemption should be amended to exclude member's voluntary liquidation from exemption of empty rates.
A limit on how long responsibility of a hereditament can remain with a liquidated company.
Insolvency exemptions to become discretionary.
Tighter regulation of insolvency practices and transfer of assets to new companies under the same director.
Legislation to deal with sham leases
Legislation against sham leases x 2
Introduce legislation that makes phoenix or ghost leases illegal.
Owner liable for rates regardless of occupant (prevents sham tenancies).
Peppercorn rent leases should not be acceptable.

Sham leases with a peppercorn rent are a problem as the lease creates a legal change to the ownership for rates so changes to be made so that a lease to avoid rates can be disregarded and the Landlord be charged.
Need powers that if a lease is only set up for avoidance the landlord should still be liable.
Penalties or sanctions on rating agents who encourage or promote such practices/schemes.
Compulsory registration of all leases.
We need stronger powers to be able to seek evidence of lease payments between the ‘sham’ company and the freeholder. Stiffer penalties against creators of sham tenancies should be considered, such as heavy fines and more robust disqualification criteria for directors of sham companies.
Measures to deal with charities set up for the purpose of avoidance
Greater scrutiny of charities to stop them being used as vehicles for tax avoidance, which is clearly not in the public interest.
More effective monitoring of registered charities including Financial Conduct Authority registered Industrial and Provident Societies.
The Charity Commission should more clearly define exactly what is required to be a charity and not just an organisation set up purely for rates avoidance.
It could be argued that the Charity Commission should not be recognising ‘Charities’ whose sole aim is to avoid rates, receive reverse payment premiums, and offer no charitable benefit to the local community.
Powers to prosecute companies falsely claiming charitable status for the purpose of avoiding rates and other liabilities.
Greater scrutiny of charities by the Charities Commission.
There needs to be a definite tightening up around what constitutes charitable purpose and the Charities Commission needs to adopt a far more rigorous criteria before granting the accreditation and work collaboratively with LAs where concerns are raised to proactively investigate and be required to report back on their findings. At present, they take no apparent responsibility for the decision to give accreditation or seek to investigate, where concerns are raised. Similarly, HMRC & FSA happily provide documentation to ratepayers for example confirming them as a charity for tax purposes, but where's the scrutiny of these applications in following years? When I've tried to challenge this with HMRC, you hit a brick wall. Again, I've had similar problems with HMRC confirming people are no longer part of a partnership, which the court then allows them to absolve themselves of any liability.
The charity commission should become more closely involved and be quicker in tackling ‘rogue’ charities brought to their attention.
Greater penalties for Charities which become involved in rates avoidance and company directors which continually set up phoenix companies.
Greater ability to impose penalties/sanctions
Fines for false and fictitious information/documentation
The introduction of heavy fines for any form of tax avoidance, such as HMRC already have on their statute books.

Imposition of penalty.
Larger and Proportionate Penalties - the costs and penalties don't fit the crime when weighed against what can be huge benefits. These should be shared with LA's to encourage them to pursue and investigate matters.
There should be a way to penalise repeat offender directors which can result in disclaiming of the lease to ease the burden on local authorities.
Penalties or sanctions on rating agents who encourage or promote such practices/ schemes.
Other
Adopt the measures introduced by the Welsh Assembly x 3
Use Tribunal for liability disputes x 3
Tightening legislation around what constitutes holiday let - perhaps removing small business rates relief from those properties.
Increase requirements relating to holiday homes (rather than available for 140 days make the requirement let for 200 days).
Limits to retrospective backdating.
A number of councils are challenging rates avoidance schemes through the Courts, where are there are 'grey' areas of law. However, these cases are time consuming, costly, and carry a significant risk factor for the local authority concerned. Although councils can mitigate risks via joint actions, it is felt that more should be done in this area. The Government could make funds available to support these actions, which would ease the burden on local authorities (especially as Government will also continue to loss income if these national schemes continue).
Reduce risk of costs to local authorities when challenging ratepayers.
Landlords should not be able to split large properties into small units - as this is done to claim SBRR.
Power to tackle contrivance .Power to withhold reliefs if occupation is not appropriate to the property or on a commercial basis.
Working with local authorities to develop a share-gain approach this will enable those local authorities which make efforts to maximise compliance to keep a percentage of the additional revenue collected, rather than it being paid into the central pool for redistribution.
Give Council's a financial incentive to retain additional revenue collected.
Make breweries liable for pubs rather than tenants.
Reverse premiums be made illegal.
Compulsory liability of owners for all properties.
All the schemes are known and in fact promoted on many company's websites - each one needs to be looked at individually and a measure put in place to prevent the exploitation of them.
Billing Authorities need to be able to gather evidence to take a case to court.
Can we become a preferred creditor in insolvency cases?

Clearer guidelines to ensure there is no need for 'challenges'.
Greater joined up workings with other local authorities would help tackle fraudulent small business rate relief applications.
Improvement could be gained with further guidance to give clarity for qualifying criteria.
Often Magistrates are not fully aware of the law and how it works for Business rates and the guidance given by clerks is inconsistent. Split of large buildings into smaller units - the VOA should not be splitting these assessments without good cause. Changes in the way the VOA split assessment should be considered. Businesses often set themselves up as separate entities to claim SBR on additional premises. It is almost impossible for councils to argue that the additional or second business has been set up purely to avoid rates liability. Creating additional companies for this practice should be deterred and make more difficult.
This information is well documented via the IRRV who can provide this.

Table A10: Additional comments
Need for change to the legislation/regulations
Business Rates Avoidance is currently far too easy to undertake due to the limited powers that LA's currently enjoy. There are a number of ways that avoidance could be reduced - mainly the increase the 42 day rule to 6 months. Reintroduction of empty rate relief would practically get rid of rate avoidance schemes but could impact LA revenue.
A law change is crucial or at the very least the government supporting a legal challenge.
A total review of business rates has been delayed several times and is now needed. The uncertainty that persists as a result of this causes great harm to the stability of local government. Tinkering with regulations before completing this long awaited review seems inappropriate.
Any changes/amendments to reduce tax avoidance would be welcomed.
One of our main areas of concern is around the holiday let legislation. We would welcome changes in legislation to tighten up this loophole. We are also finding more of an issue with the granting of leases to dormant companies. There should be closer working with Companies House around this and more emphasis should be put on external parties such as Companies House and the Charity Commission carrying out enforcement for breaches. In order to try to avoid rates avoidance tactics being deployed, then as a minimum the occupation period should be increased from 6 weeks to 6 months.
Rates avoidance is difficult to counteract and with widespread use of marketed avoidance schemes, therefore we'd welcome the rapid introduction of new regulations and other anti-avoidance measures.
As the primary form of avoidance appears to be the use of the regulations to legally avoid paying rates then a change to the regulations would be required to combat it. Beyond checks to ensure compliance with current case law and regulations, which

we undertake as necessary, there is no further action to be taken when ratepayers are complying with the law.
Business Rates Avoidance should become illegal in statute
Change legislation so that avoidance can be classified as evasion and therefore illegal.
Changes to the law rather than changes to how we are able to prosecute would be preferred.
In a lot of cases the companies are not doing anything wrong and there is an acceptance they are using the legislation to benefit from a reduction in the charge.
It is becoming more prevalent and requires action fast to increase it further.
It is difficult to see how anyone, other than the perpetrators of the avoidance schemes, could argue against general avoidance legislation. The only argument that the council is aware of is the argument that it would place too much power in the hands of billing authorities, which could result in genuine applications being refused relief. This is a false and unfounded argument. Billing authorities already successfully administer a number of Business Rates discretions, such as Discretionary and Hardship reliefs and I am unaware of any examples where a local authority has abused these discretionary powers. There is therefore no reason or evidence to suggest that local authorities would abuse a new power to refuse Business Rates relief/exemptions applications relating to avoidance schemes. In addition, in our view that argument does not stand up due to the introduction of Localism. It is accepted that there will need to be an independent body (similar to the Valuation Tribunal) to administer appeals from ratepayers who were aggrieved by the decision of a local authority to utilise the proposed general anti-avoidance legislation. However, it is not envisaged that an independent body would be excessively administrative or costly. This is because there are only a limited number of types of avoidance scheme in existence at any point in time and once the independent body had made a ruling on a particular scheme the outcome will be understood by all local authorities and rating agents/advisors, which in turn will prevent similar appeals for the same avoidance scheme coming before the independent body. Finally, ratepayers would have the right to challenge a decision of a local authority to use the general anti-avoidance legislation through the courts. It is suggested that a council’s use of anti-avoidance legislation would not be a defence against the issue of a Liability Order in the Magistrates Court. However, a ratepayer would still have the option to seek a judicial review of a local authority’s decision.
I've worked in business rates for over 25 years and I've never experienced the scale of rates avoidance that we're encountering in today's climate. It definitely calls for a radical overall of the legislation and the decentralisation of the power to award reliefs to the LA's, who will be better placed to regulate it and the conditions around which such awards are made and controlled.
Legislation will need to change.
Loop holes in legislation are exploited resulting in additional financial burdens being placed on local authority budgets. Business rates in general needs modernising and simplifying.

Reforms being considered in both Wales and Scotland could, and in some places should, be applied to England as well. I must also flag that this should be treated as an officer response.
Review of existing case law and revise the legislation.
Specific action (i.e. changing the law, or government supporting a legal challenge) needs to happen to minimise these schemes. Otherwise, a larger number of ratepayers will result to these schemes, which are, legal, financially rewarding, and easy to operate. Raising 'moral' (i.e. rather than legal) objections will not be sufficient to deter those ratepayers who are already set to exploit existing loopholes in the law. Furthermore, as the majority of schemes reduce empty rate liability, a number of rates avoidance companies also use the reverse 'moral' argument, i.e. against the levy of 100% empty rates (therefore encouraging their prospective clients to initiate these rates avoidance schemes). At a time where a large number of businesses are experiencing difficulty (especially within our High Streets), the government could have the option to fund increased business rates reliefs through income saved if rates avoidance schemes could be reduced, or successfully challenged.
The Barclay review had some good ideas and comments that could be implemented in England rating systems. The resetting of dates to longer and a lower empty rate charge would be an option.
The legislation is not fit for purpose as it currently stands. Decisions taken on recent high profile avoidance cases such as Makro etc. have set precedents that need addressed by changes in the legislation. The definition of a charity should be tightened so that unless they are excepted they have to be registered as a charity in order to receive relief that the charity is entitled to. This would enable the charity commission to monitor such actions with the local authority, there are currently organisations are claiming they are charitable but are not registered as a charity and are actively avoiding the payment of rates throughout the country. The charity commission has no remit to look at this as it currently stands.
The schemes we encounter are not illegal - the regulations need to be changed
There must be changes to the current loopholes to stop any form of avoidance as the methods currently being used to avoid tax are underhand but lawful - there needs to be more emphasis on taking action against the directors of limited companies barring them from being able to trade in the future and making them liable for their debts.
We don't support a raft of additional complex measures and powers which will merely complicate administration and generate further challenge. Local authorities just need tighter business rate legislation i.e. six week rule extension, to protect the rate income.
We like some of the measures proposed by the Welsh Assembly and think that the UK Parliament should adopt them in England as well as Wales.
We need legislation changed to tackle avoidance. LA's will be exposed to huge losses with the introduction of 100% retention under current legislation which will affect budgets and services.

Whilst local authorities can try and minimise the impact of rates avoidance, its prevention requires legislative change. Until this is made, Local Authorities will find it increasingly difficult to challenge such practices, since many of these schemes act within the law as it currently stands. The need for meaningful legislative change which restricts or closes the areas of rates avoidance is more important than ever for Local Authorities as we move closer towards full rates retention.
Without rate avoidance cases being looked into and changeds being made I see no changes going forward and I anticipate the problem continuing or even getting worse.
The only other thing we would say is that while we appreciate that it's an issue that's probably quite far down the list of Government priorities, the fact that known loopholes are not being closed for years after they are brought to light can be somewhat frustrating, with consequent loss of revenue when Councils funding is stretched. We responded to a White Paper discussion four-and-a-half years ago from which nothing seems to have progressed. Some of the measures can very easily be implemented. If something is not done, the ratepayers who do not 'avoid' will be the minority, particularly in relation to empty rates. There may need to be a complete review of how and the level of empty of empty rates levied.
Need for support from government
Adjust the collection allowance to help with administering avoidance detection infinitives and enable more effective sharing of data across government and Local authorities.
Central government have been promising to look at this issue for a number of years, but as yet no changes have been made. The package of measures put forward by the Welsh Government, should at least be looked at as a starting point for change.
Government Departments use agents to assist with their own rates reduction, could central government set an example and not use agents, who seem to be at the heart of this problem. In terms of halls of residences being used during out of term time, it wasn't a concern in <Council Name> during 2017, however a recent planning application has been received which suggests additional uses for one property predominately student occupied premises. Whilst the legislative loopholes exist, businesses will use legitimate avoidance tactics to reduce their rates liability. The new measures input by the Welsh Assembly and some of the Scottish changes would be a welcomed start.
It is disappointing that we had a very similar survey in 2014 (from DCLG as it was then known) but nothing was done. We remain optimistic that action will be taken on this issue in the near future.
Local Government finance is, with the abolition of rate support grant, dependent on a volatile business rates market, which businesses pay agents and companies to avoid business rates, to fund local council services through the Business Rates Retention. Therefore updated guidance is required from the MHCLG, more data sharing powers as well as more legal powers. The recent court case outcomes (apart from a couple of notable cases on small business rates relief) on local

authorities trying to tackle business rates avoidance shows that the current powers including legal are not fit for purpose.
MHCLG intervention to close the loopholes already identified and to react quicker to new exploits/loopholes.
Stop treating tax avoidance as though it is a hilarious game of 'cat and mouse'. Services are at risk - If the government supported councils in this we might not have to go cap in hand looking for grants and might have to money to fulfil out statutory obligations.
The government needs to do more to reduce rates avoidance, we are currently in austerity and companies who can afford the rates on properties they own are issuing fake leases to reduce their liability. It is not just rates avoidance, it is tax fraud and evasion - white collar crime and should be seen and prosecuted as such.
We need fully government funded pilot projects involving Council's with Insolvency Practitioners / Solicitors to take legal action test cases on business rates avoidance/evasion cases
Local Examples
Greater discretion over reliefs. Allow authorities to exercise greater discretion over mandatory reliefs. Under the current system charities attract 80% charity relief and this includes educational facilities. There are two major universities in <Council Name> who continue to expand and are in prime locations but there is limited increased business rates income in return for the collaborative working with the local authority. In addition this would allow billing authorities to objectively assess whether relief is due, for example, where a property installs a SMS text messaging service for a charity to claim 80% mandatory charity relief.
In our area, we also have issues with unregistered Charities claiming that they are using empty properties for things such as art exhibitions etc. As the legislation in terms of Charitable Relief does not stipulate 'registered', this allows behind closed doors rates mitigation for financial gain. In my view, proceeding on an unregistered basis for a rates mitigation charity is safer as the Charity Commission have no powers to investigate.
Influencing the VOA - if there is a case of rate avoidance by a landlord who rents a large property to a company on a peppercorn rent, for 6 weeks at a time (normally for transmitters) we inspect the property before the empty rate relief is awarded to confirm it is empty then when they say it is occupied we go back again on these cases but the property only have one transmitter per floor. We raise reports to the VOA to have the assessment split so that only the parts with the transmitters in there are occupied, the rest of the property would remain as empty on full charge to the landlord. The VOA no action these reports without even inspecting them as ‘present assessment sufficient’ which is not helpful and allows the avoidance to continue.
It is normally the small ratepayers that continue to struggle to pay empty rates and do not use these scams whereas the larger property development companies are able to avoid paying rates
<Council Name> is currently challenging <Organisation Name> over anti avoidance tactics, this is in conjunction with Wigan v PAG challenge to the Supreme Court. The avoidance scheme in <Council Name> concerns Sham

Tenancies. <Council Name> collects £13.3 million per year. The arrears of NNDR outstanding from these tenancies equates to 5% of our annual collection.
The lost revenue is having a significant impact of council finances. Also devours council funds and considerable officer time in dealing with disputes and aggressive rating agents.
We are hugely affected by taxpayers moving self-catering accommodation properties into the NNDR list and claiming SBRR. Ratepayers are creating separate companies for each property, and manipulating profit and loss accounts to keep the rateable value low. We have a property that is worth in excess of £3m that was in band H paying £3,500 a year council tax. It is self-catering accommodation rented out for £7,500 a week. The taxpayers successfully moved it into NNDR and it has a RV of £12,000 so receives 100% SBRR. We estimate we have over 550 of these types of property. The VOA need to be stronger and challenge these scenarios when deciding RVs to avoid huge losses to local authorities.
We challenge each case where we consider avoidance to be the issue regardless of the amount of money involved as we believe that not only do we have a duty to protect the public purse but in our experience once you allow these schemes then they become more widespread within the local authority area. Unfortunately it takes up a huge amount of staff resources with the majority of cases ending with an unsatisfactory outcome for the authority since it seems that currently the law is on the side of the rate payer.
These are loopholes with unintended consequences. There are a number of these loopholes which we could definitely say are deliberate rates avoidance but it is difficult to say that every time someone goes into liquidation and then creates a new company that this is rates avoidance. We would however call it avoidance if this was the 4th time it had been done at the same address. We do our best with these but unless trading standards or the insolvency service do something about it, there is actually nothing more we can do. The problem where a lease is created and the company goes immediately into liquidation is an unintended consequence of the changes to rating for liquidators but has been argued that rates mitigation is not the same as fraud. Anyone is entitled to work within the legislation to reduce their liability for rates. In one such case in <Council Name> <Company Name> were the Insolvency Practitioners who facilitated the rates avoidance via a lease and liquidation proceedings. This was in 2016 but the example is relevant. We have over the years taken ratepayers to court, complained to trading standards and made complaints to the Insolvency service about Insolvency Practitioners.
Clarification on an answer
These figures do not reflect cases in 2017/18 where we won the trial - therefore not allowed 'occupied' periods or further voids or where we won the trial or the company was subsequently put into liquidation, therefore the authority got no revenue from these cases.
The figures provided are from the 01.04.2018 onwards.
Need to be able to take action against the company directors
More action should be taken to give director's a personal liability where their actions have been undertaken to either avoid rates, or mitigate rates on behalf of someone else.

Regarding working closer with Companies house. It would be useful to follow Directors not just companies.
Other
It is a massive issue and is losing both councils and central government hundreds of millions of pounds per year. With the introduction of 75% rates retention I fear this will become even less of a concern for Central Government as the councils will take most of the loss not them.
as RV increases and possibly SBRR reduces - we will see more rewards / gains from avoidance schemes being sold online
Business rates avoidance could be avoided by making owners responsible for rates whether occupied or unoccupied. Owners should include rates charges within any lease arrangements. Alternatively collection through HMRC tax processes. Make it the duty of the owner to inform of changes in occupation or to the premises. Penalties for noncompliance.
Business rates avoidance industry has developed to assist businesses to avoid paying their liabilities. Additionally, limited companies are being created as ‘shell companies’ with the intention of subsequently liquidating those companies to avoid all liabilities, not just business rates.
Due to the split of funds between <Council Name>, county and central government it would mean <Council Name> would foot the costs of any investigation work as the inspectors are funded by <Council Name> rather than <Council Name> and the county.
It is frustrating and unfair on those individuals and businesses paying empty rates.
It needs to be addressed and work with the Welsh Government and IRRV as the main professional institute to work together in finding the right solutions to address what is a really difficult area to police. As the skillsets in councils is lost with reduced resources and ongoing cuts there needs to be a more joined up inspection regime across agencies to ensure avoidance isn’t allowed to increase unchecked by the fact that the companies can use very easy loopholes to tie up significant resources. No win no fee arrangements with agents means it is a no brainer and the penalty if found out is a slap across the wrist and all we seek to do is recover what legitimately you should have paid without further penalty.
Over recent years it has become more difficult for local authorities to police and administer the avoidance of business rates, in particular now that maximising business rates income is an essential part of a council's budget. Court rulings such as Makro and Principled have become embedded and agents and ratepayers realise how they can manipulate the regulations.
Rate avoidance is time consuming for the team and inspectors to monitor and gather information. It is not fair on the ratepayers that do pay and do not avoid rates when there are certain landlords that avoid payment.
Tackle the companies that are making money by exploiting the legislation.
Urgent action is required by government to support LA's with rate avoidance for all of the reasons given above and that of the other survey responses.
We are affected by rate avoidance, and whilst the sums cited will be a lot less than neighbouring authorities in comparative terms - this is still money taken from the

public purse and money which should be available for funding essential local services as Parliament intended back in 1988 when rates began.
With a shortfall in housing and so many empty business rates premises, consideration to providing an incentive to move business premises into residential properties should be considered.

Annex B

Survey Questionnaire

Business Rates Avoidance Survey 2019

The aim of this survey is to gather information, from a range of local authorities, about estimated amounts of business rates lost to avoidance in their local areas. This will help inform the development of proposals for how to tackle this behaviour, reduce avoidance and raise revenues that are owed to local and central government.

By its nature, tax avoidance - finding ways not to pay tax by interpreting the rules not as Parliament intended - is difficult to estimate and identify. The data and examples gathered as part of this exercise should help to build up a clearer picture of business rates avoidance.

You can navigate through the questions using the arrows at the bottom of each page. Use the back arrow if you wish to amend your response to an earlier question.

If you stop before completing the return, you can return to this page using the link supplied in the e-mail and you will have the option to continue from where you left off.

If you have any queries regarding local government finance please email lgfinance@local.gov.uk, queries relating to completion of this survey should be directed to Helen Wilkinson (helen.wilkinson@local.gov.uk) 020 7664 3181.

Please complete the survey at your earliest convenience and no later than **9 August 2019**

Thank you for your assistance in this matter.

Please amend the following information, if necessary

Name _____

Authority _____

Job title _____

1. How many FTE staff are employed to carry out non-domestic rate inspections?

2. What percentage of unoccupied properties inspected are to ensure correct reliefs and exemptions are granted?

3. How many un-reported **new properties** have you retrospectively identified (e.g. with effective dates greater than six months prior to submitting a Billing Authority (BA) report) since April 2013?

4. How many un-reported changes **resulting in higher rateable value** have you retrospectively identified (e.g. with effective dates greater than six months prior to submitting a Billing Authority (BA) report) since April 2013?

5. What is your estimate of the total amount of business rates lost to avoidance in your local authority area in 2017-18?

For the purposes of this exercise we consider business rates avoidance to be where a ratepayer exploits legislation to gain a financial advantage that was never intended. This sometimes involves artificial arrangements that serve little or no purpose other than to benefit the ratepayer such as through the grant of a relief or an exemption.

5b. Does your estimate attempt to impute for unknown cases of avoidance?

❍ Yes
❍ No

5c. How does your authority collect information on avoidance?

5d. How many cases are you in dispute over currently?

6. Of the total amount of business rates lost to avoidance, how much is lost through the following:

Please provide the amount, the percentage this is of the total that should be collected, and the number of properties involved

	£	%	No. of properties
a. Repeated short term periods of occupation (minimum reoccupation period is six weeks) of six weeks or slightly more, resulting in a further period of exemption from empty property rates.			
b. The vacant property being leased to a charity and it is proposed that when next in use the property will be wholly or mainly used for charitable purposes. However, when questioned the charities do not have clear plans for occupation or intended use and authorities may never be informed that the premises are occupied, which leaves authorities uncertain as to whether the relief is appropriate or not.			
c. The occupation of vacant properties, for example retail warehouses or shops, by charities. Occupation of a property is often minimal (such as posters in a window, or Bluetooth broadcasting). In addition, the actual evidence of occupation may be limited. Goods may also be spread out to give the appearance of being wholly or mainly used for charitable purposes			
d. Creation of new hereditaments through splits and mergers to gain additional empty property rate relief			
e. Insolvency to avoid paying empty property rates, the power to disclaim onerous leasehold interests is available to both liquidators and trustees in bankruptcy but is not perceived to have been exercised by them in a timely or expeditious manner.			
f. Avoidance as a result of properties not being on the rating list, for example, misuse of the agricultural exemption such as setting up snail farms or not completing buildings where they have not yet been sold or let			
g. Difficulties in establishing ownership such as claims that another person has taken over a business, false tenancy agreements or phoenix companies where the stock is held in third party names			
h. Misuse of small business rates relief such as dividing up a property for assessment or setting up multiple companies			
i. Exploitation of the overlap between council tax and business rates for example holiday lets and use or halls of residence as conference facilities during holiday periods			

6b. Please provide details of any examples you wish to share

6c. In your opinion, what should a de-minimis occupation test and a wholly or mainly requirement entail?

6d. In your experience, how widespread is the practice of ratepayers using third party/rates mitigation companies to facilitate arrangements in return for a percentage of the rates saved and amount of business rates lost to this? (i.e. Marketed Avoidance Schemes)

7. Have you / are you taking legal action against those avoiding?

- ❍ Yes
- ❍ No
- ❍ Don't know

If not, please explain why

7a. What percentage of your legal challenges have been successful?

7b. Which variables do you believe have/have not led to success?

8. Which of these measures do you think would help deal with avoidance?

- ❍ Removal of small business rates relief
- ❍ More joined up working with HMRC
- ❍ More joined up working with Companies House
- ❍ More joined up working with Charity Commission
- ❍ Other
- ❍ Don't know

9. In your opinion do local authorities have adequate powers to enable them to tackle avoidance?

❍ Yes
❍ No
❍ Don't know

If not, what powers do you think you lack?

9b. What anti-avoidance regulations and package of changes should be put in place as a minimum to tackle avoidance and improve success in the courts?

10. Do you have any other comments to make on the issue of business rates avoidance?

Thank you for your assistance

Local Government Association
Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000
Fax 020 7664 3030
Email info@local.gov.uk
www.local.gov.uk

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