



# **Pre-Budget Submission to the Department of Housing, Planning and Local Government**

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# 1. KEY RECOMMENDATIONS

## 1.1 Introduction

Threshold is a national housing charity that provides frontline advice and support services to people with housing problems across Ireland. Last year, we dealt with 32,000 housing queries from vulnerable households and prevented 8,550 people from becoming homeless.

A growing affordability crisis for low income households living in the private rented sector (PRS) has become the main cause of family homelessness. Despite recent regulatory changes, the PRS remains unaffordable and insecure.

Threshold proposes the following solutions to the current crisis in the PRS, which has been caused by a shortage of supply, skyrocketing rents and a regulatory framework that does not support long-term renting. These solutions involve supporting low income households and preventing homelessness, more security and protection from eviction, promoting the supply of affordable rented housing, and the need for a national strategy for the PRS.

## 1.2 Summary of Recommendations

We ask the Minister for Housing, Planning and Local Government to consider the following policy recommendations which are aimed at protecting tenants in the PRS, preventing households from becoming homeless and supporting individuals and families to move out of homelessness:

### A. Regulation of the Private Rented Sector

Recommendation 1: Ensure that the proposed national strategy for the private rented sector is adequately resourced and has clear targets to address issues like achieving long-term rent certainty, increasing affordable supply, improving the quality of rented housing, promoting institutional investment and dealing with the difficulties in the buy-to-let sector.

Recommendation 2: Introduce a certification scheme whereby landlords would be required to prove compliance with the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

Recommendation 3: Expedite the roll-out of the Deposit Protection Scheme.

### B. Preventing Homelessness

Recommendation 4: Extend the Tenancy Protection Service (TPS) nationwide.

Recommendation 5: Set-up a strategic framework for the planning, organisation, monitoring and long-term funding of housing advice and advocacy services in Ireland within the new Department of Housing, Planning and Local Government.

Recommendation 6: Undertake an annual assessment of the level of 'hidden homelessness' in Ireland using the ETHOS<sup>1</sup> classification of homelessness.

### C. More Security and Protection from Eviction

Recommendation 7: Ensure that tenants are afforded greater security in their homes, by implementing measures for secure occupancy.

Recommendation 8: Amend the Residential Tenancies Acts 2004-2015 to provide for rent certainty as to the rate of increase in rents.

<sup>1</sup> <http://www.feantsa.org/spip.php?article120>

Recommendation 9: Introduce legal safeguards to give residential tenants, similar rights to the tenants of commercial properties, to allow them to continue in their tenancies during and after the sale of a rented property.

Recommendation 10: Amend the Residential Tenancies Acts 2004-2015 to extend the definition of 'landlord' to include both receivers and lenders in relation to repossession of a property.

Recommendation 11: Introduce a code of conduct for buy-to-let mortgage arrears.

Recommendation 12: Establish a protocol between the Residential Tenancies Board (RTB) and relevant Local Authorities, so that a Local Authority is alerted when an overholding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Give Local Authorities a clear obligation to find alternative accommodation for the tenant within a specified timeframe through a fast track accommodation finding service.

#### **D. Promoting Affordable Supply**

Recommendation 13: The State should fund, design and build mixed tenure developments to increase the supply of social and affordable housing and affordable rented accommodation.

Recommendation 14: Implement measures to encourage the development of large scale permanent mixed-income rented accommodation by institutional investors.

Recommendation 15: Roll out an affordable rental scheme model nationwide whereby rental properties can be offered to low income workers at a rent below the market rate.

Recommendation 16: Develop a cost rental system of social and other forms of affordable rental accommodation and ensure that adequate subsidies are put in place to help cover the initial up-front costs associated with cost rental accommodation. The size of this new cost rental sector should be large enough to positively influence general market rents in terms of affordability.

#### **E. Social Housing and the PRS**

Recommendation 17: Undertake a review of the implementation of the HAP schemes to identify the most appropriate way to deal with the obstacles and anomalies in relation to its rollout. Undertake a review of the HAP and RAS schemes a view to assessing the appropriate level of social housing that should be provided by these schemes in the future.

Recommendation 18: Agree a protocol between Dept. Of Social Protection and Dept. of Housing to ensure that there are the same criteria for landlords in relation to the RS, HAP and RAS schemes, so that landlords can be automatically approved for all.

Recommendation 19: Ensure that all HAP limits relate to market rents and that the scheme can provide discretionary uplifts where needed

Recommendation 20: As HAP is a social housing support, all Local Authorities should be responsible for recruiting landlords to the HAP scheme, and should develop appropriate engagement with landlords in their area to promote the scheme.

Recommendation 21: Publish the rate of top-ups being paid by tenants in receipt of HAP and seek to reduce the number of tenants paying top-ups to zero.

Recommendation 22: Amend the criteria relating to state housing supports schemes (RS, HAP, RAS and exceptional needs payments) to take account of the situation of those leaving direct provision and develop a specific scheme to support asylum seekers to secure accommodation in the PRS and in particular support with deposits and fitting out accommodation.

## 2. REGULATION OF THE PRIVATE RENTED SECTOR

### 2.1 Context

The PRS is the second largest housing tenure after home ownership, providing homes for one in five households in Ireland (approximately 700,000 tenants). It is increasingly the tenure of choice, as well as being the only available housing option for those who are excluded from social housing and owner occupation. In recent years, a growing affordability crisis for low income households living in the PRS has become the main cause of family homelessness.

Government must recognise the growing mainstream role played by the PRS in Ireland's housing system. The National Economic and Social Council (NESC) has estimated that one-third of households are likely, for the foreseeable future, to have difficulties in affording accommodation at market rates and will need housing supports. Given the smaller relative size currently of the social rented sector the majority of long-term renters will, at least in the short term, be living in the PRS. This means that there can be no return to the past where the PRS was regarded as a short-term housing option for students, couples saving to buy a home, and poorer people.

Despite recent regulatory changes introduced in the Residential Tenancies (Amendment) Act 2015, the PRS remains unaffordable and insecure for many tenants. There is a need for a strategy that recognises and supports the PRS as a long-term housing option, by taking into account the needs of tenants for security and certainty and the needs of landlords to be treated fairly as a business. In the meantime, everything possible should be done to protect and keep people in their rented homes and to prevent homelessness.

### 2.2. A National Strategy for the PRS

It is over 15 years since the last strategic review of the PRS took place (Commission on the Private Rented Residential Sector, 2000). For the past number of years Threshold has been calling for the development of a national strategy for the PRS in Ireland, with affordability and security of tenure the key elements that must be achieved by such a strategy. This is critical because of the numbers of families living in the PRS and the State's own reliance on the sector to meet social need.

In this context Threshold welcomes the commitment in the recently published *'Rebuilding Ireland: Action Plan for Housing and Homelessness'* to develop a real and meaningful strategy for the rented sector by the end of the year. It is important that adequate consultation is undertaken with all stakeholders before the strategy is developed and that it is adequately resourced and has clear targets to address issues like achieving long-term rent certainty, increasing affordable supply, improving the quality of rented housing, promoting institutional investment and dealing with the difficulties in the buy-to-let sector. A robust implementation framework is also needed.

**Recommendation 1:** Ensure that the proposed national strategy for the private rented sector is adequately resourced and has clear targets to address issues like achieving long-term rent certainty, increasing affordable supply, improving the quality of rented housing, promoting institutional investment and dealing with the difficulties in the buy-to-let sector.

## 2.3 Certification Scheme for Minimum Standards

A significant number of rented properties are substandard and the current system of local authority inspections is failing to enforce the minimum standards required by law. In 2015, Threshold dealt with 1,429 cases related to substandard accommodation. This is now the second most common issue for tenants contacting Threshold. Many of the people that Threshold helps were living in properties that lacked the basic necessities for living including freedom from dampness and condensation, proper heating facilities, and hot and cold running water.

Currently it is the responsibility of local authorities to detect substandard private rented accommodation by means of inspections, conducted principally by environmental health officers. Some 13,913 private rented dwellings were inspected by local authorities in 2014 with 7,317 (53 per cent) of those dwellings failing to meet minimum standards.<sup>2</sup> Based on research undertaken by Threshold in 2016 it will take 10-15 years for the whole of the PRS to be inspected by Local Authorities, at the current rate of inspections. However, now that Local Authorities have prioritised inspections of HAP properties, there is little scope, based on the current resources available to local authorities, to undertake any other inspections in the PRS. This means that the vast majority of properties in the PRS will continue to avoid inspection.

Threshold believes that the introduction of a certification scheme or 'NCT for housing' is the best approach to address the shortcomings of the current system. Under the proposed certification scheme, the burden of establishing compliance with the minimum standards regulations would rest with the landlord. This would remove many of the obstacles currently faced by tenants and local authorities in ensuring the effective enforcement of the regulations.

Under such a scheme landlords would be required to establish compliance with the regulations as a pre-condition for the letting of a dwelling, the registration of a tenancy and the receipt of rent paid to a tenant under the RS and Housing Assistance Payment schemes. This could be done through certification issued from a suitably qualified third-party. The certification scheme could be introduced on a phased basis, with immediate application in respect of new tenancies, and application to existing tenancies on a date prescribed by way of regulations.

Such a scheme is especially warranted due the fact that many affected tenants are in receipt of RS and HAP, which means that the State is subsidising accommodation which often fails to meet minimum legal requirements. A 'NCT' scheme would enable local authorities to maximise the use of available resources by carrying out targeted inspections, particularly in high density urban areas. The integration of such a scheme with certification requirements in respect of fire safety, building energy regulations, tax obligations, and registration with the RTB would, in the view of Threshold, promote greater compliance across-the-board.

**Recommendation 2:** Introduce a certification scheme whereby landlords would be required to prove compliance with the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

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<sup>2</sup> Department of Environment, Community and Local Government (DECLG), [House Building and Private Rented, Enforcement of Requirements for Standards \(2014\)](#).

## 2.4 Deposit Protection Scheme

In 2015 Threshold dealt with 969 cases where tenants had difficulty getting their deposit back from their landlord in a timely manner. The introduction of a Deposit Protection Scheme, as set out in the Residential Tenancies (Amendment) Act 2015, will make a real difference to the lives of tenants who face financial difficulties due to the unlawful retention of their deposit or who face the prospect of becoming homeless because they are unable to pay for a new private rented home.

Landlords are required to promptly return any deposit paid by the tenant, unless there are arrears in rent (or other taxes or charges payable under the lease), or damage to the property over and above normal wear and tear. The reality is that landlords are often unwilling or unable to return their tenant's deposit. The failure to return a deposit can place a tenant at risk of homelessness. A typical deposit of €1,000 will often represent the full extent of an individual or family's savings, and the failure to return the deposit creates a significant obstacle to obtaining alternative accommodation.

The introduction of a deposit protection scheme in Ireland, whereby deposits will be held by a third party or the RTB, will ensure that deposit monies are safeguarded and returned promptly to the tenant (or landlord) at the end of the tenancy. Such a scheme will also have the effect of freeing up the resources of both Threshold and the RTB to deal with more complex housing difficulties, such as illegal evictions. In circumstances where a landlord is facing financial difficulties, a deposit protection scheme will ensure that the deposit is not entangled with other debts owed by the landlord. It is important that this new scheme is set up as soon as is possible.

**Recommendation 3:** Expedite the roll-out of the Deposit Protection Scheme.

## 3. SUPPORTING LOW INCOME HOUSEHOLDS AND PREVENTING HOMELESSNESS

### 3.1 Tenancy Protection

The most effective way to prevent homelessness is by ensuring that families can remain in their current rented home. For rent supplement (RS) tenants facing unaffordable rent increases, this means providing them with additional financial support. Threshold's highly successful Tenancy Protection Service (TPS) in Dublin, Cork and Galway which is operated on behalf of the local authorities and in partnership with the Department of Social Protection (DSP), provides a targeted response that prevents families and individuals from becoming homeless.

The Dublin TPS commenced in June 2014, in Cork in January 2015 and in Galway June 2016.. As part of the service, an Interim Tenancy Sustainment Protocol (ITSP) put in place by the DSP allows Threshold to make an application on behalf of clients for a payment in excess of existing RS limits. This payment initially lasts for 26 weeks (6 months) but may be renewed if the household circumstances have not changed. By the end of 2015, the service had helped 4,845 households at

risk of homelessness and prevented 8,550 people (including 4,483 children) from becoming homeless.

Threshold's TPS service is now recognised as the key intervention in preventing homelessness. As a result, the Dublin service was extended to the commuter counties of Kildare, Wicklow and Meath on 25<sup>th</sup> April and a new Galway service will commence in June 2016. The most recent Daft rental report<sup>3</sup> shows that rent increases are not a Dublin or urban issue but affect the entire country. As the housing and homelessness crisis is a nationwide crisis, Threshold believes that the TPS should be extended nationwide in line with the Programme for Government, the recommendations of the Oireachtas Committee on Housing and Homelessness and commitments set out in the *Rebuilding Ireland: Action Plan for Housing and Homelessness*.

**Recommendation 4:** Extend the Tenancy Protection Service (TPS) nationwide.

### 3.2 Recognising the Role of Housing Advice and Advocacy

Housing advice and advocacy are identified in both the Government's *Homelessness Policy Statement* (2013) and The Implementation Plan on the State's *Response to Homelessness* (2014) as having a key role in preventing homelessness among vulnerable and at-risk households. Threshold is delivering a dedicated expert advice and advocacy service that meets the Government's goals in relation to the protection of tenancies and the prevention of homelessness. However, there is currently no strategic framework for the planning, organisation, monitoring and funding of housing advice and advocacy services in Ireland. Tens of millions of euro is provided on an annual basis for emergency homeless services, whereas the amount allocated to homelessness prevention is significantly less and much harder to access. Threshold believes that a dedicated funding mechanism for homelessness prevention is urgently needed to avert human suffering and to make cost savings for the State.

**Recommendation 5:** Establish a strategic framework for the planning, organisation, monitoring and long-term funding of housing advice and advocacy services in Ireland within the new Department of Housing, Planning and Local Government

### 3.3 Ensuring accurate homeless figures are compiled

In addressing the current homelessness crisis it is essential that accurate data on the true level of homelessness is compiled. The Department of Housing, Planning and Local Government currently publishes monthly figures of those accessing homeless services, but this doesn't include homeless people who are not on the PASS system. These include rough sleepers; many non-nationals in the NCU (New Communities Unit); sofa surfers; people living in overcrowded accommodation with relatives and/or friends and women and children who are experiencing domestic violence accommodated in refuges. Based on the fact that the number of people identifying as 'staying with family/friends' accessing Threshold services has doubled in the last two years it is safe to say that the level of 'hidden homelessness' is rising.

<sup>3</sup> Daft, [Daft Rental Report, Q.2 2016](#), August 2016.

**Recommendation 6:** Undertake an annual assessment of the level of ‘hidden homelessness’ in Ireland using the ETHOS<sup>4</sup> classification of homelessness.

## 4. MORE SECURITY AND PROTECTION FROM EVICTION

### 4.1 More Security of Tenure

The current level of security for tenants in the PRS is not sufficient and needs to be increased. A tenant is currently protected in their property for up to four years. After an initial six-month period, landlords can only terminate the tenancy under certain circumstances over the following 3.5 years. This protection does not go far enough to meet the needs of longer-term renters and families with school-going children who need to remain in the communities in which they have put down roots.

**Case Study:** Sarah lives in a rented house with her partner and three children aged 10, 7 and 3 years. Both Sarah and her partner work in low wage jobs and have little chance of ever being able to purchase their own house. They have been on the social housing list for a number of years but are not very hopeful of securing a permanent home anytime soon.

Out of the blue the family were informed by their landlord that the bank was seeking to repossess the property; they then received a notice that the land lord was terminating the tenancy, as the bank had instructed the landlord to sell. The family suffered months of uncertainty before sourcing alternative accommodation, and the situation caused great stress and upset. *‘It’s the uncertainty,’* Sarah told Threshold. *‘Not knowing from one day to the next whether you’re going to be out. Are we safe for now? And how long is that going to last?’*

In this case the family were lucky enough to source alternative accommodation, but the situation remains the same. *‘What if it happens again? Are we always going to have to depend on someone else’s situation-the landlord paying his mortgage, selling the house, increasing the rent? It’s like everything is put on hold. Normal life stops. We can barely breathe with the worry’*

Hundreds of the people Threshold work with are in a similar situation.

Threshold believes that tenants should have indefinite security of tenure. This view is supported by NESCC, who have stated that in most cases tenancies should be of indefinite duration.<sup>5</sup> This objective of ensuring greater security of tenure for tenants may be achieved by removing the four-year limit on Part 4 tenancies, so as to create indefinite periods of tenure security. These measures would give security and stability to those who want to make a home in the PRS.

**Recommendation 7:** Ensure that tenants are afforded greater security in their homes, by implementing measures for secure occupancy.

<sup>4</sup> <http://www.feantsa.org/spip.php?article120>

<sup>5</sup> NESCC, *Ireland’s Rental Sector: Pathways to Secure Occupancy and Affordable Supply*, 2015, p 62-69.



## 4.2 Rent Certainty

Economic evictions arising from unaffordable rent increases are the main cause of family homelessness in the PRS. The recent rent freeze introduced as part of the Residential Tenancies (Amendment) Act 2015 is providing a welcome breathing space for tenants. However, this is only a temporary measure with a sunset clause after 4 years. A more long-term approach to regulating rents is needed.

Rent Certainty will not only bring obvious benefits to tenants struggling to pay their rent, it will also have a positive budgetary impact for the state. It is estimated that around 99,000 households receive State support for housing in the private rented sector, or 96,207 (32%) of all RTB registered tenancies. These figures exclude dwellings let by local authorities as well as properties which are managed by AHBs. The State is “a significant funder of activity in the private rental sector, with over one half of all rents received by private landlords coming from Rent Supplement, the Rental Accommodation Scheme and other schemes, at an annual cost to the Exchequer of over €500m.”<sup>6</sup> If rents continue to rise at their current rate of over 10% this will mean an additional annual cost for such housing support programmes.

Threshold has proposed the introduction of rent certainty measures, whereby future rent increases in areas of high rental inflation are linked to changes in the cost of living<sup>7</sup>. Threshold’s proposal also recommends that the Minister for Housing be given the power to make regulations for the setting of initial rents in areas with high levels of demand and low levels of supply with reference to an index of rents.

This model of regulating rent is the norm in many developed European economies. Rent certainty measures are an essential component of a well-regulated housing market, and benefit both landlords and tenants by ensuring that rent increases (and indeed decreases) are foreseeable, predictable, and reasonable. Rent certainty should be introduced as soon as possible.

**Recommendation 8:** Amend the Residential Tenancies Acts 2004-2015 to provide for rent certainty as to the rate of increase in rents.

## 4.3 Continuation of Tenancy upon Sale of Rented Property

The number of rented households facing a loss of their home due to the proposed sale of the property by the landlord, lending agency or investment fund is becoming a growing concern. Threshold recently provided on-site advice and support to tenants who faced a mass eviction in Tyrrelstown, northwest Dublin.

This is set to become an even more serious issue in the next few years as a significant amount of distressed mortgaged properties have been purchased by non-bank entities such as large investment funds, who have a business model of selling on these assets within three to five years. Examples include:

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<sup>6</sup> Department of Social Protection, [Opening Statement to the Committee on Housing and Homelessness](#), May 2016.

<sup>7</sup> <http://www.threshold.ie/news/2015/06/15/thresholds-proposals-for-rent-certainty/>

- Goldman Sachs and private equity group CarVal, which together bought a €2bn portfolio of Irish buy-to-let residential and small commercial mortgages in 2014;
- Lone Star, whose purchases in Ireland have included loan portfolios with a face value of €7bn sold by the Irish Bank Resolution Corporation in 2014;
- Apollo Global Management and Deutsche Bank, who purchased a €500m real estate loan book from Ulster Bank last year;
- Cerberus, which has been buying property loan portfolios from the State and banks over the past four years.

The extent of this issue is further emphasised by the Central Bank of Ireland figures which indicate that there are 47,409 mortgage accounts held by non-bank entities. A total of 19,081 of these mortgages were in arrears of more than 90 days as of March 2016.<sup>8</sup>

The sale of a rented property should not automatically lead to the termination of tenancy, especially if the property is to be sold to another investor. While it has been the custom and practice of financial institutions and investment funds to seek vacant possession, there is no legal impediment to allowing a tenant to remain. Legal safeguards should be put in place to give residential tenants similar rights to the tenants of commercial properties who remain unaffected by the sale of a property.

Threshold has welcomed the commitment to bring forward legislation to allow tenants to remain in situ during the sale of a development of 20 units or more. However, this proposed legislation won't cover properties taken over by a receiver where a landlord has a small portfolio of properties. Most of the families that Threshold works with that are at risk of homeless due to a sale of a property are in this situation. The proposed legislation needs to address these cases as well.

**Recommendation 9:** Introduce legal safeguards to give residential tenants, similar rights to the tenants of commercial properties, to allow them to continue in their tenancy during and after the sale of a rented property.

#### **4.4 Repossessions and Receiverships**

A change in the law is required to protect tenants in cases where their landlord's property is being repossessed or where a receiver is appointed to a mortgaged property. The legal definition of 'landlord' needs to be changed to explicitly include both lending institutions and receivers so that the rights established under landlord and tenant law cannot be undermined or ignored as is currently the case.

Due to a legal loophole in the Residential Tenancies Act 2004, lenders or receivers may seek vacant possession without giving a tenant the notice required under law. In some extreme cases tenants have come home to find their locks changed, effectively making them homeless. Receivers may also refuse to carry out repairs and ask the tenant to pursue their former landlord for the return of their

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<sup>8</sup> Central Bank, [Residential Mortgage Arrears and Repossessions Statistics: March 2016](#)

rental deposit. A tenant should not lose these basic rights just because their landlord is in financial difficulty.

In the case of repossession, tenants cannot refer a dispute to the Residential Tenancies Board for resolution, as a lender will not generally be regarded as a party to the tenancy (Residential Tenancies Act 2004, s.76). Their landlord will not be held liable for terminating the tenancy without the requisite written notice, as it will be the lender rather than the landlord that is effecting the termination. This means that tenants in mortgaged properties can be evicted without any means of redress.

Threshold believes that a simple amendment to the definition of 'landlord' in the Residential Tenancies Act 2004, so as to explicitly include both receivers and lenders, would introduce a welcome degree of certainty for landlords, tenants, financial institutions and receivers. It would impose a requirement on a lender that has commenced repossession proceedings to terminate a tenancy in the manner provided for by the Residential Tenancies Act 2004. It would also impose a responsibility for repairs and the return of the tenant's deposit upon the expiry of the tenancy.

In addition to this legislative change, Threshold is seeking the introduction of a code of conduct on buy-to-let mortgage arrears. A Central Bank of Ireland code of conduct on residential mortgage arrears (CCMA) has been in place for all mortgage lenders since 2009. A code for buy-to-let arrears would: introduce a transparent process for financial institutions, landlords and tenants; set out the required steps for engagement with the landlord and tenant and the forms of communication required; and ensure that financial institutions respect and uphold tenants' rights.

**Recommendation 10:** Amend the Residential Tenancies Acts 2004-15 to extend the definition of 'landlord' to include both receivers and lenders in relation to repossession of a property.  
**Recommendation 11:** Introduce a code of conduct for buy-to-let mortgage arrears.

#### **4.5. Protection for Tenants under Notice**

Under the Residential Tenancies Act 2004, a landlord seeking to end a tenancy must provide notice of termination in writing to the tenant. The minimum notice period is 28 days and the maximum notice period was extended from 112 to 224 days (for tenancies of eight years or more) in the Residential Tenancies (Amendment) Act 2015. In a normally functioning housing system a tenant should be easily able to secure new accommodation within the notice periods set out in law.

The reality is that many households who receive a valid notice of termination from their landlord face becoming homeless due to the inability to secure alternative accommodation. In Threshold's experience this is fast becoming one of the key drivers of homelessness. 50% of the tenant households (554 households) supported by the Cork TPS in 2015, who were deemed to be at immediate risk of homelessness, were in the process of having their tenancy terminated. This problem is also reflected in the number of disputes being heard by the RTB related to tenants occupying a tenancy beyond the expiry of the notice period ('overholding'), which amounted to 508 in 2015.

A protocol should be developed between the RTB and relevant local authorities, so that a local authority is alerted when an overholding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Local authorities should assume an obligation to source suitable alternative accommodation in either the PRS or in a relevant social housing unit (if the person qualifies for social housing), within a specified timeframe through a fast track accommodation finding service. Such a service could be run in conjunction with the community/voluntary sector, possibly as an extension of Threshold’s TPS service.

**Recommendation 12:** Establish a protocol between the Residential Tenancies Board (RTB) and relevant Local Authorities, so that a Local Authority is alerted when an overholding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Give Local Authorities a clear obligation to find alternative accommodation for the tenant within a specified timeframe through a fast track accommodation finding service.

## 5. PROMOTE AFFORDABLE SUPPLY

### 5.1 State Intervention to Increase Affordable Supply

Just 3,600 homes were available to rent in Ireland on August 1<sup>st</sup> this year, by far the lowest total since before the economic downturn.<sup>9</sup> It is widely recognised that supply in the PRS needs to be increased; a clear and strategic enabling framework for new PRS accommodation is yet to emerge. It has not been agreed what the optimum size of the PRS in Ireland is, nor have targets been set out for the amount of new PRS accommodation to be provided every year

Threshold favours an approach where social housing, affordable rented accommodation and affordable private housing are built in unison in a single development. Threshold also proposes that measures need to be introduced to ensure that such affordable rented accommodation remains as rented accommodation for the long-term. Such an approach corresponds with the Social Housing Strategy 2020, which envisions “developments where social renting, private renting and affordable and cost renting options are provided side by side.”

In terms of output, the Government’s *Rebuilding Ireland: Action Plan for Housing and Homelessness*<sup>10</sup> aims to facilitate the construction of 25,000 houses every year to meet existing demand. As the majority of new social housing units are planned to be sourced from the PRS under Social Housing Strategy 2020 and the underlying conditions that have reduced the level of private home ownership are set to continue, approximately 5,000 new rental units need to be added to the housing system every year<sup>11</sup>.

The private sector has so far proven unable to provide this level of new supply, therefore there is a need for the State to step in and become a ‘housing developer’ in its own right. It would be preferable for the State to finance mixed social and affordable developments, using borrowed

<sup>9</sup> Daft, [Daft Rental Report, Q.2 2016](#), August 2016.

<sup>10</sup> Government of Ireland, *Rebuilding Ireland- Action Plan for Housing and Homelessness*, July 2016, p.23

<sup>11</sup> This figure is a fifth (the current size of the rental sector) of current estimates of the level of housing construction needed over the next few years- 25,000.

monies available at historically low interest rates. The State can also develop appropriate Special Purpose Vehicles (SPV) to fund such developments off-balance sheet through established and agreed bonds issuance mechanisms backed up by existing state-owned housing assets.

The State should look to increase affordable supply in two ways: by purchasing existing properties and by using State land. The State can purchase existing accommodation being offered at below construction cost, including appropriate developments which remain under NAMA control estimated to have a value of €5 billion at current rates (2016). In many cases these developments would be bought up by non-bank entities to be sold on at a large mark up in a number of years' time, leaving many existing tenants at risk of eviction or massive rent hikes and in need of State support.

The second way the State can increase supply is to use existing State land. By financing, designing and building such developments itself, the State can drive down building costs by removing or greatly reducing profit margins, site costs, part V costs and VAT. The State could contract suitable builders to construct the housing units, but the development will remain in State ownership. Depending on the financing model, such developments could be leased long-term to Approved Housing Bodies or other suitable bodies and any private units could be sold on to the general public at an affordable rate.

**Recommendation 13:** The State should fund, design and build mixed tenure developments to increase the supply of social and affordable housing and affordable rented accommodation.

## **5.2 Promoting institutional investment**

Ensuring a sufficient supply of affordable, long-term and high quality rented accommodation is one of the key challenges currently facing policy-makers. Many agencies, such as NESC, business and employers' groups, property professionals and investment agencies have identified the absence of this type of accommodation in the PRS as a threat to Ireland's future economic health.

In 2004 Threshold commissioned a report entitled 'Opportunity Knocks? Institutional Investment in the Private Rented Sector in Ireland.' This was the first report of its kind undertaken in Ireland and explored the barriers to institutional investment in the PRS. Since this report was published, the policy and regulatory environment has changed and there are now renewed opportunities to promote institutional investment.

The advantages of attracting institutional investors are clear. Institutional investors, such as pension funds and insurance companies, are interested in very long-term investments. They prefer longer-term tenants, as reletting and refurbishing properties is costly. Institutional investors can also bring more professional management practices and contribute to the supply of accommodation in high-demand areas.

According to Stefan Gerlach, former Deputy Governor of the Central Bank of Ireland:

*"This suggests that attracting more institutional investors would promote a well-functioning rental market that is so important for financial stability. Furthermore, these investors are likely to be less*

*leveraged and have more diversified portfolios than individuals owning one or two rental properties, and are thus better able to withstand an economic downturn.”<sup>12</sup>*

To date only a small number of investment companies have started to enter the market. These companies have tended to concentrate on the commercial market rather than the residential rental market, and at the higher end of the market.<sup>13</sup> A differentiation must be made between long-term institutional investors and investment funds (‘vulture funds’) who are interested only in short-term gains, as the latter are generally not beneficial to the stability of the rental market.

Proposed regulatory reforms outlined in this submission in relation to security of tenure and rent certainty could provide more stable and predictable rental returns that would be attractive for long-term institutional investors. Threshold’s research on this topic indicates that institutional investors prefer well-regulated markets with steady rates of return. Targeted and contingent subsidies will also help encourage investment in this type of rental accommodation. Moreover, guarantees for maintaining occupancy rates and rental income in the social or affordable sections of this accommodation would also be welcomed by providers and investors.

**Recommendation 14:** Implement measures to encourage the development of large scale permanent mixed-income rented accommodation by institutional investors.

### **5.3 Affordable Rental National Rollout**

In *Rebuilding Ireland: Action Plan for Housing and Homelessness* the Government commits to developing an affordable rental pilot project in 2016, where the overall objective of an affordable rental programme would be “to provide long-term affordable residential accommodation for low to moderate income key-worker households in urban areas of high demand.” This pilot is currently being progressed in the Dublin area. There is a need for this programme to be rolled out nationwide to ensure that low-income workers are no longer at risk of homelessness.

**Recommendation 15:** Roll out an affordable rental scheme model nationwide whereby rental properties can be offered to low income workers at below the market rate.

### **5.4 Cost Rental System**

The NESC report on social housing, *Social Housing at the Crossroads: Possibilities for Investment, Provision and Cost Rental (2014)*, proposed the use of a cost rental model in Ireland to be adopted to finance social provision into the future. In this model rents are calculated to reflect the historic costs of providing the accommodation, rather than based on the prevailing market.

Moving to a cost rental model of providing social and other forms of rental accommodation has many benefits. The main benefits accrue where a provider has a growing portfolio of rented accommodation. Rents can be kept at an affordable level as the higher cost of providing new rental

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<sup>12</sup> Stefan Gerlach, speech given at the Twenty-First Dubrovnik Economic Conference, June 2015.

<sup>13</sup> It is estimated that REITS to own 1,500 rental properties, nearly all in Dublin, with projections suggesting that in five years this could grow to 15,000 properties or 2% of the market- DKM Economic Consultants on behalf of PRTB, [Future of the Private Rented Sector](#), 2014.

accommodation can be offset against the reducing costs of providing older accommodation.<sup>14</sup> Moreover as the cost rental sector grows, the ability to charge affordable rents puts downward pressure on market rents.

Cost rental has the potential to provide greater certainty for Government in terms of social housing provision. It will help to address the difficulties that arise in the supply of local authority housing that arise from borrowing constraints and on-going costs not being covered by differential rent. A cost rental sector of sufficient size means the cost of providing housing supports such as HAP would be more predictable and less subject to rapid cost increases.

However, there is limited ability to provide affordable rents through a cost rental approach at the early stages without the provision of subsidies to moderate high initial sunk costs. Subsidies can be either given to providers and/or be given to social housing tenants and low income households. This is important as rents will increase for some social housing tenants, who in many cases pay about 15% of their disposable income on differential rents at the moment.<sup>15</sup>

Subsidies for providers could be similar to those mentioned previously. If providers don't receive initial subsidies they will need to be provided to tenants, as initial cost rental rates without subsidies would be similar to the currently unaffordable market rents.

**Recommendation 16:** Develop a cost rental system of social and other forms of affordable rental accommodation and ensure that adequate subsidies are put in place to help cover the initial up-front costs associated with cost rental accommodation. The size of this new cost rental sector should be large enough to positively influence general market rents in terms of affordability.

## 6. SOCIAL HOUSING AND THE PRS

### 6.1 Social Housing supports in PRS

Threshold welcomes commitments in *Rebuilding Ireland: Action Plan for Housing and Homelessness* to increase the level of new social housing to be built or acquired by local authorities. However, there is a danger that such acquisitions may be sourced from stock currently in the private rented sector. Moreover, the majority of new social housing is still planned to be sourced in the PRS. This is a significant change of policy as to the provision new social housing and will potentially involve a serious dilution in security of tenure for social housing tenants due to the existing regulatory framework for the PRS. This approach also poses serious budgetary risks for the government due to on-going rent inflation. In the absence of rent certainty, cost estimates for the roll-out of HAP are probably underestimated.

In the last number of years a number of schemes have been developed whereby local authorities accommodate people eligible for social housing through the private rented sector, in schemes such as the Rental Accommodation Scheme (RAS) and the Housing Assistance Payment (HAP). The HAP scheme in particular, though having advantages over the RS scheme, has some key challenges

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<sup>14</sup> This is especially true if any loans or mortgages related to the older accommodation have been paid off.

<sup>15</sup> Simon Brooke, 'Social renting: Outcomes and Outlook' in *Renting in Ireland*, Lorcan Sirr (ed.), IPA, 2014, p. 125.

compared with social housing provided directly by a local authority or an Approved Housing Body (AHB). The fact that well over 90% of tenants on the HAP scheme put in for a social housing transfer clearly indicates that this is seen as a lower form of social housing. Some of the key drawbacks of this scheme compared with 'traditional' social housing are:

- Source of accommodation: Under HAP the tenant sources accommodation in the private rented sector, rather than a local authority or AHB providing a new social housing unit. Such 'new' social housing units are temporary as there is no long term commitment required from the landlord to continue to rent the unit as a social housing unit on an on-going basis.
- Affordability: HAP rental limits are based on RS limits. Despite recent increases in limits, suitable accommodation is still out of reach in many areas without the tenant having to pay top-ups, even though HAP is based on the differential rent system. This is not the case for other tenants, outside the private rented sector, on the differential rent system.
- Security of tenure: Though deemed to be social housing, the tenancy is with a private landlord, which is covered by the Residential Tenancies Acts 2004-15, which provides for more limited security of tenure, compared to social housing provided by local authorities.
- Arrears- Tenants in arrears will be responsible for not only paying the Local Authority (LA) differential rent, but also any outstanding rent due to the landlord, if the HAP payments are stopped by the LA due to on-going arrears. To reduce the risk of this happening, HAP recipients will generally be required to set up automatic electronic payment arrangements.
- Deposit- Tenants have to pay a deposit which is not the case for LA or AHB social housing.
- The ability to work full time and avail of differential rent are of advantage to a tenant moving to HAP from RS. However, for many vulnerable non-working tenants, being approved for HAP is disadvantageous. There is no mechanism or discretion to increase payments above rental limits with HAP as is the case with RS. Moreover, people seeking to move out of homeless services must avail of rented accommodation that is part of the HAP scheme, even though RS is often a more viable way to secure accommodation in the PRS (more availability and close to market rent). Those in homeless services must wait 183 days before becoming eligible for rent supplement. The system often militates against a quick exit from homeless services.

**Case Study:** Threshold provides a service which supports people in homeless accommodation to source and sustain homes in the Private Rented Sector (PRS). Threshold worked with Anne as part of this service. Anne is a single mother with a young child, who had been in homeless services for over 6 months and was desperate to leave as she was expecting a second child. Although Anne was deemed HAP eligible she was not able to find a landlord willing to take her on, as she was on the City's Housing list she could not seek accommodation in the County. However, after 183 days in homeless services she became



eligible for rent supplement and because of the flexibility with this payment she was able to secure accommodation within 2 weeks.

- As HAP limits are based on RS limits and notwithstanding that they have been raised by 20% in a number of places, these limits are still below market rents in many areas. In such cases, tenants faced with the prospect of losing their home, or desperate to find a new home, are often forced to make 'top-up' payments to landlords. As the legislation pertaining to HAP doesn't mention top-ups, they are being deemed legal, unlike top-ups in the RS scheme. This must be seen as a regressive step.
- Top-up payments will typically be drawn from a tenant's social welfare payments, meaning that limited financial resources for food, clothing and utilities will be reduced to unsustainable levels. Rent supplement tenants already make means-tested contributions from their social welfare payments under HAP scheme, and any additional contribution inevitably gives rise to rent arrears, debt, and poverty. Threshold is aware that the Department of Housing, Planning and Local Government is recording the rate of top-ups among tenants in receipt of HAP but these figures have not been made public.
- The HAP scheme places the onus on tenants to locate landlords willing to sign up to the HAP scheme. There has been no Local Authority-led (apart from Dublin City Council) engagement/recruitment strategy for landlords in relation to HAP. Once a tenant finds a suitable landlord they are expected to stay in this property for up to 2 years. There is no corresponding obligation on the landlord to rent the property for 2 years.
- The availability of properties under the RAS scheme is becoming severely limited as landlords are leaving this scheme. Difficulties can arise where a RAS tenant needs to move, which can be for a variety of different reasons but can only happen if they source alternative RAS accommodation themselves. RAS tenants can only go on a transfer list after 2 years on the scheme. RAS accommodation is much rarer than RS accommodation making such moves extremely difficult.
- With HAP and RAS, a tenant's social housing need is deemed to be met once accommodated and they have a very short window to get placed on the transfer list to ensure they are still eligible for social housing support. Accepting this form of social housing has risks for vulnerable tenants.
- Most landlords and agents request a deposit and a month's rent in advance. Both RS and HAP pay rent in arrears, which does not make it attractive to landlords especially with so many cash renters in the market. This has direct implications on the length of time people are spending in homeless accommodation.
- As landlords have up to 8 months to comply with minimum standards requirements, it creates an uncertainty concerning the tenants' rights, occupancy and alternative housing

options should the property not comply. Also, it is unclear what supports are available to a household should a tenancy end, where they are in receipt of HAP.

- The HAP scheme presents problems for people living beside local authority boundaries who are trying source rented accommodation. This is because once people are on the housing list in one local authority area they cannot source HAP accommodation in the other. If entitled to RS, they can seek accommodation anywhere in the county.
- Unlike the rent supplement scheme, HAP recipients must source accommodation within their relevant local authority. This limits opportunities to source appropriate accommodation for residents living beside a bordering local authorities that has a urban centre. It is paramount that there is more flexibility to enable people to easily move between local authorities to secure social housing, regardless of what housing list they are on.

Recommendation 17: Undertake a review of the implementation of the HAP schemes to identify the most appropriate way to deal with the obstacles and anomalies in relation to its rollout. Undertake a review of the HAP and RAS schemes a view to assessing the appropriate level of social housing that should be provided by these schemes in the future.

Recommendation 18: Agree a protocol between Dept. Of Social Protection and Dept. of Housing to ensure that there are the same criteria for landlords in relation to the RS, HAP and RAS schemes, so that landlords can be automatically approved for all.

Recommendation 19: Ensure that all HAP limits relate to market rents and that the scheme can provide discretionary uplifts where needed

Recommendation 20 : As HAP is a social housing support, all Local Authorities should be responsible for recruiting landlords to the HAP scheme, and should develop appropriate engagement with landlords in their area to promote the scheme.

Recommendation 21: Publish the rate of top-ups being paid by tenants in receipt of HAP and seek to reduce the number of tenants paying top-ups to zero.

## 6.2 Direct Provision

Individuals and families coming out of Direct Provision are facing significant difficulties in securing accommodation in the PRS. In certain cases, people have to remain in direct provision after they have been given status or leave to remain. In many cases those leaving direct provision don't qualify for existing housing supports. There is a requirement for a specific scheme to support asylum seekers to secure accommodation in the PRS and in particular support with deposits and fitting out accommodation.

Recommendation 22: Amend the criteria relating to state housing supports schemes (RS, HAP, RAS and exceptional needs payments) to take account of the situation of those leaving direct provision and develop a specific scheme to support asylum seekers to secure accommodation in the PRS and in particular support with deposits and fitting out accommodation.

## 7. CONCLUSION

Threshold welcomes the opportunity to make this submission to the Department of Housing, Planning and Local Government.

Given the difficulties being experienced in the private rented sector and its prominent role in housing families, Threshold would like to see attention focused on the supply, regulation and protection of tenancies in the private rented sector.

The time lag between construction output and the impact of new supply on the housing market means that measures like rent certainty, improved security of tenure and tenancy protection are vital to give people greater security in existing accommodation and to avert homelessness.