

Pre Budget Submission **2019**

Addressing Standards, Supply & Security of Tenure



Threshold is a national housing charity with regional advice centres in Dublin, Cork and Galway. We provide frontline services across Ireland to people with housing problems in the private rented sector. Our primary objective is to prevent homelessness by advocating for tenants through our advice services and through our dedicated national Tenancy Protection Service. Our vision is an Ireland where everyone has access to affordable, secure, suitable and good quality housing.

It is our experience that the best way to deal with the problem of homelessness is to prevent people from becoming homeless in the first place. Through our services we are aware that the most significant cause of increased homelessness has been through people losing their homes in the rented sector. Low- and middle-income households are finding it increasingly difficult to access affordable secure private rented housing.

Significant measures have been taken to ensure greater security and affordability in the private rented sector in recent years – notably the introduction of rent certainty measures in late 2016. There are some anticipated changes on the horizon – greater regulation of short term lets and the transformation of the RTB into a regulator for the private rented sector. Budget 2019 has a role to play in realising and supporting these and other measures to achieve a vibrant, secure, sustainable rental sector that can be a flexible tenure choice for households. Housing is in crisis in Ireland, with increasing costs and restricted availability now undermining the wider economy. Targeted action is necessary.

Summary of Recommendations

As the leading charity in Ireland working people living in the private rented sector we are best placed to identify the main areas requiring budgetary support – Security and Prevention, Affordability, Standards and Supply. We are asking for the following measures to be implemented as part of Budget 2019:

Security and Prevention

- Increase investment in Primary and Secondary Prevention Services such as the Tenancy Protection Service
- Increase investment in prevention services, similar to TPS, for tenants in receipt of the Housing Assistance Payment
- Introduce Indefinite tenancies – removal of Section 34b from the Residential Tenancies Act 2004 (as amended)

Affordability

- Create a Dwelling Specific Rent Register of the actual rent on the property
- Roll out of Rent Pressure Zones nationally
- Increase Housing Assistance (HAP) and Rent Supplement Payments to Market Rent
- Establish yearly registration of tenancies to capture changes in rent during tenancies
- Implement the Deposit Protection Scheme
- Introduce a legal definition of what constitutes a deposit

Supply

- Introduce tax reforms in order to sustain small scale landlords in the sector
- Legislate to ensure that both receivers appointed to mortgaged properties and lenders who have initiated repossession proceedings are regarded as the landlord in relation to existing tenancies
- Develop a code of conduct specifically addressing buy-to-let mortgage arrears to set out in a clear and transparent way how financial institutions may enforce their security without interfering with tenants' rights
- Implement suitable measures to encourage institutional investors to target investment at the lower, more affordable end of the private rented market
- Publish the Report from the Expert Group on Cost Rental
- Legislate to remove any ambiguity which may exist surrounding the tenure status of residents of purpose-built student accommodation and ensure that they are protected by the rent pressure zone legislation
- Introduce robust measures to regulate short-term lets

Standards

- Establish an NCT style system of certification system for the private rented sector
- Introduce a legal definition for overcrowding in private rented accommodation into minimum standards legislation

Recommendations

Recommendation 1: Security and Prevention

Prevention Services:

The issue of security of tenure is the dominating issue for tenants of the private rented sector, as the following figures will show.

Tenancy Terminations continue to dominate as the number one query dealt with by Threshold advisors, making up 34% of the queries dealt with in the first half of 2018 and 31% of all queries in 2017. Cases dealing with notices of termination too, dominate those brought to the RTB, making up 33% of all case in 2017. Research conducted by the Dublin Regional Homeless Executive shows that almost half of all families (45%) presenting as homeless in Dublin came from the private rented sector, the majority on foot of a notice of termination. However, it is likely that some of the families (11%) who reported overcrowding as the reason for homelessness, had moved in with family or friends following a loss of private rented accommodation and that this return to family or friends was unsustainable.

Prevention of homelessness is a cost-effective measure; preventing households entering homeless services, reducing the trauma and disruption that comes with it. In 2017, our Tenancy Protection Service (TPS,) operating the Interim Tenancy Sustainment Protocol (ITSP), protected the tenancies of 1252 households, preventing these households from entering homeless services. This is a huge

financial saving for the Department. Since its inception in 2014 the use of the Tenancy Sustainment Protocol by TPS has saved the Department approximately €118 million in the provision of emergency accommodation. Our outreach offices are oversubscribed, indicating there are more tenants requiring our direct support and advocacy to sustain their homes.

TPS and the ITSP are examples of a **primary and secondary** homeless prevention services both intervening prior to the point of homelessness occurring. Primary prevention services are available to the general population. Secondary prevention services target specific groups at risk of homelessness. In the context of the private rented sector these are low income households or households receiving housing subsidies. This is what makes it an effective and valuable homeless prevention service.

Currently the majority of expenditure on homeless prevention is on services provided to people already experiencing homelessness or exiting homeless, otherwise known as **tertiary** models of homeless prevention. The expenditure on prevention is often less than 30% of what is spent on homeless accommodation and shockingly in the Dublin region was less than 5% of what was spent on emergency accommodation in 2017.

Greater investment in primary and secondary models of homeless prevention is required. With the transition to the Housing Assistance Payment and shortfall of social housing, the private rented sector is increasingly the only long term tenure option available to low income households. There needs to be adequate and well-resourced measures, such as the TPS, in place to prevent these households entering homelessness if their tenancy is put at risk. Increased investment in primary and secondary prevention results in significant cost saving in other areas.

Indefinite Tenancies:

The introduction of indefinite tenancies into legislation, by the removal of 34b from the Residential Tenancies Act 2004, will support the work of prevention services. As a commitment in Rebuilding Ireland, this call is in keeping with Government policy. Both measures combined will also contribute to reducing the number of cases brought to the RTB, effectively freeing up RTB resources to focus on other essential areas of the private rented sector.

Recommendations for Security and Prevention:

- Increase investment in Primary and Secondary Prevention Services such as the Tenancy Protection Service
- Increase investment in prevention services, similar to TPS, for tenants in receipt of the Housing Assistance Payment
- Introduce Indefinite tenancies – removal of Section 34b from the Residential Tenancies Act 2004 (as amended)

Recommendation 2: Affordability

Rent Register:

The introduction of Rent Pressure Zones (RPZs) in December 2016, and the expansion of same since, was warmly welcomed by Threshold as a way to counteract spiralling rent inflation. Early indications were positive and encouraging; 2 years on with rents increasing annually it is time to examine what blockages exist in the rent certainty measures. Threshold's national survey in April 2018 revealed that 45% of tenants pay more than a third of their income on rent and 14% pay more than 50% of their income on rent.

The Daft Rental Price Report (Quarter 2 2018) indicates a 12.4 per cent increase in rents nationally in the year to June 2018, pushing rents to an all-time high of €1,304, on average. Rent reviews and increases remain the 2nd most common query treated by Threshold to date in 2018. Rents set outside the legal limit is one of the most common disputes handled by the RTB.

Present legislation facilitates what we have identified as “*de facto decontrolled rents*” between tenancies. Rent reviews are limited to once every 12 months in Rent Pressure Zones, and an increase cannot exceed 4%, with certain exceptions. However, on creation of a new tenancy, the incoming tenant has no way of confirming the previous rent on the property, or when it was set. Evidence from our advice lines suggests that people are paying more than the permitted 4% increase. The recent figures from the Quarter 2 RTB Rent Index report show that the greater increases, beyond the permitted increases, are happening on creation of new tenancies. Without accurate information tenants are unable to determine the legally permitted rent and therefore are unable to enter into a contract with the landlord as an informed consumer. Without this knowledge, they are unable to assert their rights to challenge an illegal increase. The result is RPZ measures are undermined and rents continue to rise.

Threshold welcomes the creation of a rent register in forthcoming legislation. However, to ensure the effectiveness of RPZs, tenants need access to the **actual rent** as well as **date it was set** on a property, in real time, and not just the average rents for broad geographical areas. Data protection concerns can be examined to devise suitable mechanisms for the provision of this information to tenants. There may be valuable learning from the Residential Property Price Register in making this information available. To further support this and to ensure the accuracy of information held on the private rented market, Threshold propose yearly registration of tenancies by landlords. Currently tenancies only need to be registered on their creation.

It is imperative that RPZs function as intended. If rents continue to rise, HAP and Rent Supplement recipients will be pushed further out of the market. If this occurs, measures will ultimately have to be taken to make up the short fall in these housing supplements, increasing spending by Government.

Expansion of Rent Pressure Zones:

We urge the government to ensure that the RPZs are rolled out nationally and beyond the three years envisaged by the current legislation. Those renting outside the main urban areas are not protected by the rent certainty measures. In our experience clients in these areas are facing substantial rent increases of 20, 30 and in some cases 40 per cent. A national roll out of RPZs will bring stabilisation to the market and give predictable returns to investors. It will also ensure low and middle income

households, those in receipt of rent supplement or HAP can stay in their homes, pay affordable rent and achieve an acceptable standard of living.

Increase Housing Assistance (HAP) and Rent Supplement Payments to Market Rent:

HAP and Rent Supplement rates are insufficient to keep up with the increasing market rents and are not fit for purpose in supporting households to access housing. These rates, most recently set in 2017, do not reflect the realities of the private rented sector and do not bring housing within reach of households eligible for HAP and rent supplement.

Galway City Central, East and West are all rent pressure zones, due to on-going increases in rent. However, the HAP and rent supplement limits do not reflect the affordability crisis in rents in Galway. The average rent of a one bedroom apartment in Galway city is €848, which exceeds the HAP limit for a single person (€575) and a couple (€650). Even when the approved additional 20% increase payable by the tenant is added these rents are still out of reach. The result of these limits is lower income households cannot hope to find good quality, sustainable housing in the private rented sector. They must take poor quality, over priced housing, and may find themselves paying above the 20% increase in an attempt to secure and hold onto housing, putting them under increased financial strain.

It is vital that the limits are set ensure these households have a fair chance of competing and accessing housing in the market. The HAP and Rent supplement limits need to reflect market rent and be flexible enough to adapt to changing circumstances.

Deposit Protection Scheme:

Threshold requests again the immediate roll out of a Deposit Protection Scheme to support the affordability of and access to the private rented sector for all tenants. This scheme has been eagerly awaited since it was legislated for in 2015.

Deposit Retention was the 2nd most common case brought to the RTB in 2017 and Q1 2018 and has remained a major concern of tenants contacting Threshold. This is a wasteful and unnecessary use of resources. A Deposit Protection Scheme will free up the resources of the RTB and Threshold alike to deal with more complex housing difficulties.

The Deposit Protection Scheme ensures a tenant has greater purchasing power and can be more mobile, choosing to move to more suitable accommodation or for work, accommodation of a better standard or to a preferred area if they so wish. It also has a role to play in the prevention of homelessness. The failure to return a deposit can place a tenant at risk of homelessness, as it often represents the full extent of an individual's or family's savings. For landlords, it will prevent deposits from becoming entangled with any debts they may have or with their financial affairs.

A legal definition of what constitutes a deposit is also required to protect tenants. The usual practice regarding deposits is that they are equivalent of one month's rent. However, in recent times, we have become aware of the practice of landlords seeking two or more months' deposit, along with the first month's rent from new tenants. This cost is out of reach for many, meaning they cannot compete for housing or they enter into debt to secure the finances or are placed under huge financial strain with other bills going unpaid or unable to afford basic necessities.

Recommendations for Affordability:

- Create a Dwelling Specific Rent Register of the **actual** rent on a property
- Roll out of Rent Pressure Zones nationally
- Establish yearly registration of tenancies to capture changes in rent during tenancies
- Implement the Deposit Protection Scheme
- Introduce a legal definition of what constitutes a deposit

Recommendation 3: Supply

BTLs Mortgage in Arrears/Receiverships

There numerous factors pertaining to Buy to Let (BTL) mortgages in arrears and properties entering receivership which undermine the economy, the recovery of the housing market, homeless prevention and tenancy sustainment services.

The number of notices of termination issued due to sale of the property constituted 38%, the biggest single reason for the issuing of a notice of termination, and repossession/receivership constituted 5% of all notices of terminations seen by Threshold advisors in 2017.

At year end 2017, 14.9% of BTL mortgages were in arrears of 90 days or more. That is 18,233 BTL mortgages in arrears or 18,233 households at real risk of homelessness, particularly as the availability of properties to rent continues to remain at record low levels. When a landlord wishes to sell a property they are entitled to serve a notice of termination. Many landlords do so in the belief that a vacant unit will make more on the market than as one with a tenant in situ. In the case of repossessions and receivership, the receiver is not bound by the RTA, and as the receiver wishes to realise the asset a termination will almost always be inevitable. Our advisors hear frequently from tenants that they return to look at their previous home to see it sitting empty months later.

To work toward alleviating this matter Threshold proposes that non-institutional landlords, the once off/accidental landlords, be given the same or similar tax incentives as institutional landlords. Tax incentives will contribute toward increased revenue for these landlords and their ability to pay the mortgage. In the case of repossessions and receivership Threshold proposes a change to the law to ensure that both receivers appointed to mortgaged properties and lenders who have initiated repossession proceedings are regarded as the landlord in relation to existing tenancies. Doing so upholds tenant's rights and allows them recourse to the RTB if necessary. It reduces the trauma and disruption of a tenancy termination, reduces financial losses by allowing a property to remain vacant for extended periods of time, and reduces the churn of tenants in the private rented sector. These outcomes contribute to the stabilisation of the private rented sector and ultimately means less demand on homeless prevention and homeless services.

Threshold proposes alongside this, a code of conduct specifically addressing buy-to-let mortgage arrears to set out in a clear and transparent way how financial institutions may enforce their security without interfering with tenants' rights.

Institutional Investors:

We have identified that the institutional investors in the private rented sector in Ireland are restricting their investment to the top end of the market, in residential complexes with rents towards the upper end of the market. Investment in this area alone does not contribute to meeting the need to the low to middle income earners. It also contributes to raising average market rents in areas outside the rent pressure zones. Threshold propose that appropriate measures be put in place to encourage these investors to focus a proportion of their investment in the lower, more affordable end of the market, where rental accommodation can be accessed by a broader spectrum of tenants, to include low and middle income earners, as well as those in receipt of housing supplements.

Cost Rental

Two pilot schemes to provide cost rental are underway in the Dublin region. This is a welcome and innovative step. At present there is little information about these schemes or the model by which they are being delivered. We ask that the Department publish the awaited Report from the Expert Group on Cost Rental.

Threshold is particularly keen to ensure that sufficient subsidises are put in place for the owner at the outset of cost rental schemes to moderate high initial sunk costs. This is extremely important to ensure that rents charged can be kept at reasonable, affordable levels while the cost of building is recouped.

Student Housing and Licensees

Numerous student housing schemes have been developed throughout the country and once the rents are set within market rents and adhere to RPZs, they meet a real and urgent need in the housing market. Threshold takes this opportunity to highlight the importance of ensuring the RTA is respected by companies letting purpose-built student complexes and landlords letting multi-unit developments to students. We have seen cases in which the tenants are provided with licence agreements in an effort to circumvent the RTA and related RPZ regulations. Only certain institutions providing student housing are exempt from the RTA. There have been some attempts by private developers and landlords to take utilise exemptions from the RTA and RPZs to which they do not qualify.

Short-Term Lets

Threshold is cautiously optimistic about the forthcoming regulations for short-term lets. We hope to see the following, previously requested by Threshold earlier in 2018, included in the forthcoming regulations.

- A moratorium be placed on all future full-time lets in areas most effected by rental supply shortages, starting with the Rent Pressure Zones.
- All full-time short let units to require planning permission. We call upon the Government to review the current planning regulations and ensure they are robust enough to achieve this.
- The establishment of a local authority hotline to report full-time short lets.
- Registration of all short-let units that are let for over 90 days in a twelve month period with local authorities.

We are aware the minister issued direction to the local authorities in respect of planning permission requirement for short-term lets. It is imperative that the guidelines, planning code and relevant legislation are adhered to and enforced. We take this opportunity to stress that short-term lets on all online holiday rental platforms, and not just Air BnB, need to be included in forthcoming measures.

While it will not solve the issues of availability and affordability it will contribute to resolving these matters.

Recommendations on Supply:

- Introduce tax reforms in order to sustain small scale landlords in the sector
- Legislate to ensure that both receivers appointed to mortgaged properties and lenders who have initiated repossession proceedings are regarded as the landlord in relation to existing tenancies
- Develop a code of conduct specifically addressing buy-to-let mortgage arrears to set out in a clear and transparent way how financial institutions may enforce their security without interfering with tenants' rights
- Implement suitable measures to encourage institutional investors to target investment at the lower, more affordable end of the private rented market
- Publish the Report from the Expert Group on Cost Rental
- Legislate to remove any ambiguity which may exist surrounding the tenure status of residents of purpose-built student accommodation and ensure that they are protected by the rent pressure zone legislation
- Introduce adequate measures to regulate short-term lets

Recommendation 4: Standards

NCT Certification System:

Standards/Repairs remain one of the main concerns facing tenants in the private rented sector and brought to Threshold for advice, guidance, advocacy and support. It is also one of the main reasons for cases submitted to the RTB.

The issue of substandard accommodation is real and significant, with the majority of properties inspected not meeting the basic legal requirements. In 2017, local authorities inspected 4.8% (16,261) of tenancies across the country. Of these, 78% did not meet the basic minimum legal requirements. However, notices to landlords were issued in respect of only 4.3% of those not meeting the standard and only 5 cases of legal action were taken. No action was taken in regards to the remaining 12,321 dwellings, leaving the tenants living in substandard and likely unsafe accommodation.

Inspections are costly and time consuming. The RTB contributed €1.7 million to the local authorities in 2017 to carry out minimum standard inspections. As the rate of inspections and resulting action on non-compliance show this has not been an effective use of resources.

Threshold proposes an NCT style system of certification to ensure standards are met in the private rented sector. The introduction of such a system would see the burden of proof for compliance with

minimum standards rest with the landlord, who would be required to provide a certificate of fitness to the local authority. In our view this would promote greater compliance across the board.

The NCT system will, after initial set up, become a cost saving measure. It will result in a reduction in cases pertaining to standards brought to the RTB freeing up valuable resources. It will facilitate more targeted inspections of private rented properties by the Local Authority and free up resources to take the appropriate action to have same brought up to standard. There is cross party support for this, a motion to the Dail on same receiving support all round in November 2017.

Threshold identify and call for the introduction a legal definition for overcrowding in private rented accommodation into minimum standards legislation as a supporting piece of legislation to increasing and maintaining standards of private rented accommodation.

Recommendations for Standards:

- Establish an NCT style system of certification system for the private rented sector
- Introduce a legal definition for overcrowding in private rented accommodation into minimum standards legislation



Rialtas na hÉireann
Government of Ireland

**The Scheme to Support National Organisations is funded by the Government of Ireland
through the Department of Rural and Community Development**