



Pre-Budget Submission to the Department of the Environment, Community and Local Government

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1. KEY RECOMMENDATIONS

1.1 Introduction

Threshold is a national housing charity that provides housing information, advice and advocacy services for people with housing problems and people at risk of homelessness. Last year our advisors dealt with 20,000 housing queries, principally from tenants living in the private rented sector (PRS) but also from social housing tenants and from households in owner occupation.

Threshold has helped people living in the private rented sector for almost 40 years and it has never been harder for tenants to secure and retain their accommodation than it is today. Threshold helps hundreds of people each week with their housing needs, and we know from first-hand experience the difficulties being experienced by tenants due to accommodation shortages and rising market rents. As a result of these difficulties, individuals and families are either becoming homeless or face a considerable risk of becoming homeless.

In 2014 Threshold's Chairperson, Aideen Hayden called on the Government to introduce a national strategy for private rented housing as a matter of urgency saying "this strategy must provide real security for individuals and families who are making their home in the rented sector - a security which is lacking today."¹ Threshold believes that the key principle governing such a strategy is that everyone has a right to adequate housing regardless of the tenure in which they make their home.² Such a strategy should complement and reinforce the Government's Construction 2020 Strategy and the Social Housing Strategy 2020, both announced last year.

1.2 Summary of Recommendations

We ask the Minister for Environment, Community 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

Budget Priority 1: Develop and implement a comprehensive strategy to ensure that Ireland has a modern, affordable and inclusive private rented sector.

Budget Priority 2: Introduce a deposit protection scheme in line with the commitment given in the Programme for Government.

Budget Priority 3: Amend the Residential Tenancies Act 2004 to provide for rent certainty as to the rate of increase in rents.

¹ Threshold, [Annual Report 2013](#), December 2014, page 2.

² The right to adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights which Ireland has ratified.

Budget Priority 4: Ensure that tenants are afforded greater security in their homes, by implementing measures for secure occupancy.

Budget Priority 5: Introduce a certification scheme whereby landlords would be required to prove compliance with the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

Budget Priority 6: Undertake a review of the content and operation of the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

Budget Priority 7: Amend the Residential Tenancies Act 2004 to clarify the respective rights and obligations of landlords, tenants, lenders, and receivers. Introduce a code of conduct for dealing with buy-to-let mortgage arrears.

B. Promoting the Supply of Affordable Rental Housing

Budget Priority 8: Introduce a series of appropriate and conditional subsidies for either institutional and/or individual investors to increase the supply of affordable rental accommodation, in appropriate locations.

Budget Priority 9: Implement measures to encourage the development of large scale permanent mixed-income rental accommodation by institutional investors.

Budget Priority 10: 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.

Budget Priority 11: Increase HAP limits so as to reach a sufficient level to meet the accommodation needs of eligible persons, without the need for top-up payments.

Budget Priority 12: Expedite the introduction of the Housing Assistance Payment (HAP) across all local authorities.

C. Preventing Homelessness

Budget Priority 13: Engage with the Department of Social Protection (DSP) in order to safeguard households at risk of homelessness through increased rent supplement limits that reflect market rents.

Budget Priority 14: Extend the Tenancy Protection Service to Galway, Limerick and the commuter counties of Wicklow, Meath and Kildare. Seek agreement of DSP to include all tenancies, new and existing, under the Interim Tenancy Sustainment Protocol (ITSP) arrangements.

Budget Priority 15: Create a dedicated funding line for housing advice and homelessness prevention services and provide adequate funding to resource such services.

2. REGULATION OF THE PRIVATE RENTED SECTOR

2.1 A National Strategy for the Private Rented Sector (PRS)

Threshold believes that it is time to develop a national strategy to provide Ireland with a modern, affordable and inclusive PRS. The PRS has doubled in size over the past decade, with one in five households in Ireland renting from a private landlord, and an even higher proportion in urban centres. Demand will remain high for some time to come due to limited access to other housing tenures.

Major reforms of the PRS were introduced in the Residential Tenancies Act 2004 which increased security of tenure, introduced limited rent regulation and a dispute resolution process through the Private Residential Tenancies Board (PRTB). Revised minimum standards for PRS accommodation were introduced in 2008/9. However, it is clear that the PRS is in need of further reform.

The PRS currently faces numerous challenges: high rents are making accommodation unaffordable for many households; increasing numbers of landlords are struggling and choosing to leave the market; tenants' security of tenure remains limited; and a significant amount of rented accommodation still fails to meet basic legal standards. The clearest evidence of these difficulties is the significant rise in family homelessness over the last eighteen months. The vast majority of these families were living in the PRS immediately before they became homeless.

While these difficulties affect the vulnerable in society most acutely, they also have an impact on the wider economy and society. A range of bodies including business and employers' groups, property professionals and investment agencies have stated that shortcomings in the PRS pose a threat to Ireland's future economic health.

In the past twelve months a number of important reports on the future of the PRS have been published by the Private Residential Tenancies Board (PRTB) and the National Economic and Social Council (NESC) to foster dialogue around reforming the sector. The Social Housing Strategy 2020 and the Construction Strategy 2020 have both identified improved regulation of the PRS as necessary for their ambitious goals to be realised. The recommendations in the remainder of this submission comprise the elements of what Threshold considers should be included in such a strategy.

Budget Priority 1: Develop and implement a comprehensive strategy to ensure that Ireland has a modern, affordable and inclusive private rented sector.

2.2 Deposit Protection Scheme

The introduction of a Deposit Protection Scheme, as committed to in the Programme for Government, 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.

The illegal retention of security deposits by landlords has been the most common problem faced by Threshold's clients in the past decade, accounting for approximately 26,000 queries. It is also the most common single reason that disputes are referred to the PRTB since 2007. It is important to note that in over three-quarters (76%) of such cases in 2013 (most recent figures), the PRTB determined that the tenant was entitled to partial or full refund of the deposit.³

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. With average PRTB dispute processing times for cases relating to non-return of deposits standing at some 9-12 months⁴, and with determination orders made by the PRTB often going unenforced, the current system for resolving deposit disputes is clearly not fit for purpose.

Threshold has been advocating for the introduction of a deposit protection scheme for many years. Such schemes have proven to be an effective solution to the problem of deposit retention internationally (e.g. UK, New Zealand and Australia). In the Programme for Government 2011, the Government committed to introduce a deposit protection scheme in Ireland "in order to put an end to disputes regarding the return of deposits."⁵ On foot of this commitment, Threshold submitted detailed legislative proposals to the Department of Environment, Community and Local Government (DECLG) in relation to the development of a deposit protection scheme.

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

³ PRTB, [Annual Report 2013](#), page 24.

⁴ <http://www.prtb.ie/faq>

⁵ [Programme for Government 2011-16](#), p.16.

Case Study: Importance of a securing the return of a deposit to avert homelessness

Evelyn and her two children were given notice of termination to leave their rented home as the landlord was seeking to sell the property. Evelyn's landlord agreed to return the deposit during a final inspection and handover of keys. Evelyn had managed to secure a new property. She had borrowed from family to cover the first month's rent in advance and was relying on the return of her deposit for her next accommodation.

Evelyn's landlord returned her deposit by cheque and subsequently cancelled payment. He was not contactable and the potential new tenancy fell through as Evelyn could not afford to pay a deposit. Evelyn has referred a dispute application to the PRTB but lost the property she had hoped to rent. She and her two children are currently residing in emergency homeless accommodation.

Threshold believes that the Residential Tenancies (Amendment) (No.2) Bill 2012 provides the perfect opportunity for the legislature to ensure that the Residential Tenancies Act 2004 protects tenants by bringing into law a deposit protection scheme for all tenancies. We understand the amendments to provide for such a scheme will be introduced to the Bill at Committee Stage in the Seanad. The early enactment of this legislation would alleviate one of the most consistent difficulties faced by tenants across the private rented sector, especially low income tenants who rely on the return of the deposit in order to secure move-on accommodation.

Budget Priority 2: Introduce a deposit protection scheme in line with the commitment given in the Programme for Government.

2.3 Rent Certainty

Rents are now at unaffordable levels for many tenants, especially in Dublin, but also in other urban centres. From 2011 to 2014 average rents increased by over one-third (34.5%) in Dublin. Last year, Dublin rents increased by 11%, while rents in Cork city increased by 7.3%, Galway city by 7%, Limerick city by 6.2%, and Waterford city by 5.1%.⁶

This trend has continued into 2015 with rents continuing to increase in every county in the country, albeit at varying rates, with the highest rates of rental inflation now in the commuter counties at up to 15%.⁷ The Private Residential Tenancies Board (PRTB) rent index for Q1 2015 shows a similar trend with rents nationally 6.9 % higher than the same time in 2014 and rents in Dublin up by 9.6%.⁸

However, these average figures mask the extent of the rent rises faced by tenants at the lower end of the market. Threshold's new Tenancy Protection Service, which was set up in Dublin in June 2014 to support people at risk of homelessness, primarily due to rent increases, keeps detailed records of the level of rent increases being faced by its clients. The service has found that over half (56%) of its

⁶ Daft, [Daft.ie Rental Report-2014 year in review](#), February 2015.

⁷ Daft, [Daft.ie Rental Report-Q2 2105](#), August 2015, p.10.

⁸ PRTB, [The PRTB Rent Index Q.1](#), June 2015.

clients faced rent increases of over 20%, with over a quarter (27%) facing increases of over 30%, and 8% facing rent increases of over 40%.

Threshold believes that the introduction of rent certainty measures by way of amendment to the Residential Tenancies Act 2004 represents the only adequate and effective response to the current affordability crisis that places tenants at risk of homelessness. This needs to be developed immediately, as the appropriate policy response of increasing the supply of social housing and other types of housing will take a number of years to address current shortages.

Threshold has developed a rent certainty proposal which it presented to Minister for Environment, Community and Local Government, Alan Kelly T.D. in June 2015 at a conference hosted by Threshold on the future of the PRS.⁹ Threshold's proposal seeks to link future rent increases in areas of high rental inflation to the cost of living, as is the case in many other European countries. 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 is a justified response to the volatility in the rented sector caused by boom and bust in the housing market more generally. Concerns that the introduction of rent certainty measures may inadvertently result in a decline both in the supply and standards of rented properties can be easily addressed by measures to promote investment, for example, by providing for increased rates of rent where a landlord has significantly upgraded a dwelling. Rent certainty may also lead to increased supply as institutional investors that favour steady predictable returns, such as pension funds, will regard the sector as a better investment opportunity. Rent certainty measures will also moderate future costs and ensure predictability in terms of the administration of the HAP scheme.

Threshold welcomes recent public statements by Minister for the Environment, Community and Local Government, Alan Kelly T.D., that he is exploring introducing rent certainty measures.¹⁰ It is important that such measures are brought in promptly, not only to address the affordability crisis, but also to prevent a situation developing where landlords may attempt to increase rents before such measures come into operation.

Budget Priority 3: Amend the Residential Tenancies Act 2004 to provide for rent certainty as to the rate of increase in rents.

2.4 Security of Tenure

Security is important to many aspects of human well-being, including family life, childhood development, economic and social participation and physical and mental health. Secure occupancy can be defined as the extent to which households can make a home and stay in their private rented accommodation, subject to meeting their obligations as tenants. Many European countries have provided for a larger degree of security of tenure in the PRS than currently exists in Ireland. A key safeguard for tenants in these countries is that the sale of the property does not end the lease.

⁹ Threshold, [Legislative Proposals for the introduction of Rent Certainty Measures](#), 2015.

¹⁰ ["Rents May Be Fixed for Three Years under Proposals from Alan Kelly."](#) *The Irish Times*, March 1, 2015.

A majority of Irish tenants wish to see increased security of tenure. In recent surveys, 55% of tenants expressed unhappiness with the security of their rental situation¹¹ while 61% tenants expressed a wish for a long lease which would give them increased security¹².

Tenancy security is also of critical importance for landlords and in shaping the long-term role of the rental sector, especially in terms of attracting long-term investment. As was observed in a recent OECD review of the PRS in a number of European countries: “Germany and the Netherlands show that strong tenancy protection is a pre-condition for long-term demand for rental dwellings...Landlords in the Netherlands and Germany also have an interest in strong tenancy security, because it creates the long-term demand for rental housing, and there are no calls for weakening tenancy security.”¹³

Limited security of tenure in the PRS in Ireland, combined with the risk of rent increases, is undermining the viability of renting as a long-term housing option, thereby contributing to imbalances in the housing market as a whole. Part 4 of the Residential Tenancies Act 2004 provides for four year cycles of tenure security for tenants who have been in occupation for more than six months (s.28), known as ‘Part 4 tenancies’ (s.29). During a Part 4 tenancy, a landlord may only terminate a tenancy on certain specified grounds (s.33 – 34). However the grounds for terminating a Part 4 tenancy are open to abuse by landlords who wish to recover vacant possession. On the expiry of a Part 4 tenancy the landlord may terminate the tenancy for any reason or no reason, simply by giving written notice of termination (s.42). This is in contrast to many EU members states which provide for indefinite periods of tenure security for tenants (e.g. the Netherlands, Sweden and Germany).

Case Study: Insecurity of tenure can lead to homelessness

Daragh has been living in a property for four years with his wife and son. He received notice of termination in May 2015 as the landlord wished to sell the property. Daragh and his family are happy with the accommodation and have made it their home. Their son goes to school locally. They would like to remain in the property after it is sold but currently they have no right to do so.

Daragh had been searching for alternative accommodation but none were within existing rent supplement limits. Daragh found one property where the agent would accept rent supplement but it was not suitable as it was a one-bed apartment and the rent was €1,000 per month (pm). Two weeks later he found another property willing to accept rent supplement but the rent for this two-bed apartment was €1,350pm.

Threshold assisted Daragh in seeking an enhanced rent supplement payment from the Department of Social Protection, but in the interim the agent could not hold the property and it was let to another family. Daragh is continuing to search for accommodation. If he doesn't find a suitable property in the next month, his family face the prospect of becoming homeless.

¹¹ DKM Economic Consultants, [Future of the Private Rented Sector](#), PRTB/Housing Agency, 2014.

¹² SCSi, *Trends in Tenure Mix in the Irish Property Market*, 2012.

¹³ de Boer, R. & Bitetti, R., *A Revival of the Private Rental Sector of the Housing Market? Lessons from Germany, Finland, the Czech Republic and the Netherlands*, OECD Economics Department Working Papers, No. 1170, Paris: OECD Publications, 2014, p.22.

The National Economic and Social Council (NESC) has expressed the view that “[e]xperience in other European countries shows that there is considerable scope to improve the security of tenure in Ireland.”¹⁴ Noting the disparity in approach, DKM Economic Consultants have recognised that security of tenure is a key factor in encouraging demand and stability in the PRS, and that it can benefit both landlords (in the form of long-term revenue streams) as well as tenants. DKM conclude that “[i]f the rented sector is to provide a viable and stable tenure choice for renters in the long term, security of tenure would appear to be one important mechanism for achieving this outcome.”¹⁵

The most recent NESC report¹⁶ on the PRS recommends making tenancies more secure and, in most cases, indefinite, by removing sale of the property as a reason for ending the tenancy. 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.

Budget Priority 4: Ensure that tenants are afforded greater security in their homes, by implementing measures for secure occupancy.

2.5 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 2014, Threshold dealt with 2,266 dealt cases related to substandard accommodation. This is now the most common issue for tenants contacting Threshold. Many clients 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.¹⁷ Moreover in Dublin City Council, which has the most developed and proactive inspection regime, a recent report found that almost 85 per cent of Dublin flats inspected, in attempt to address substandard private rented accommodation, failed to meet minimum standards.¹⁸

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

¹⁴ NESC, *Homeownership and Rental: What Road is Ireland On?*, No. 140, December 2014, p.51.

¹⁵ DKM Economic Consultants, *Future of the Private Rented Sector*, October 2014, p.127.

¹⁶ NESC, *Ireland’s Rental Sector: Pathways to Secure Occupancy and Affordable Supply*, 2015.

¹⁷ Department of Environment, Community and Local Government (DECLG), [House Building and Private Rented](#), Enforcement of Requirements for Standards (2014).

¹⁸ [“Dublin Flats Fail to Meet Minimum Housing Standards.”](#) *The Irish Times*, June 2, 2015.

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.

Case Study: Current system means that tenants are living in substandard accommodation for prolonged periods of time

Siobhan and her two young children moved into their rented house in September 2014. After two months mould appeared in every room, bathroom and kitchen. She informed her landlord who kept promising to send a repair person 'straight away', but this never happened. Siobhan increased her heating levels to deal with the problem, as she was concerned about her children's health. She spent over €600 for heating in one month and this affected her ability to pay for food and rent.

She contacted Threshold in March 2015, six months after the problem first materialised. Threshold ensured that the property was inspected by an Environmental Health Officer who confirmed that it didn't comply with minimum standards. Following the inspection the inspection Siobhan was threatened with illegal eviction. With Threshold's support Siobhan is taking a case to the PRTB in relation to standards and invalid notice. The property still does not comply with minimum standards.

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 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 PRTB would, in the view of Threshold, promote greater compliance across-the-board.

Budget Priority 5: Introduce a certification scheme whereby landlords would be required to prove compliance with the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

2.6 Updating of Minimum Standards Regulations

The updating of building regulations in 2014 has seen a number of positive steps towards ensuring safer and more energy efficient new buildings. However, these positive developments have not been incorporated into the minimum standards for existing private rented accommodation, which are set out in the Housing (Standards for Rented Houses) Regulations 2008 and 2009. It is important that this issue is addressed, especially as low income households often spend comparatively more on

heating and fuel bills due to poor standards, lack of insulation and other deficiencies with their property.

Listed below are some of the issues repeatedly raised by Threshold clients that need to be addressed in relation to minimum standards for private rented accommodation:

- No requirement for the installation of CO Alarms (as is the case in new buildings)
- No energy efficiency standards
- No requirement to share inspection reports with tenant and PRTB
- No requirement for rented properties to be re-painted when re-let
- No clear responsibility outlined with regards to septic tanks
- No clear landlord responsibility with regards to substandard plumbing and water pipes

Budget Priority 6: Undertake a review of the content and operation of the Housing (Standards for Rented Houses) Regulations 2008 and 2009.

2.7 Protecting Tenants' Rights during Receiverships and Repossession Proceedings

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, is needed. Such a change will provide sitting tenants with clear legal protection and clarity in terms of provision of adequate notice, upkeep of the property, deposit return and adherence to the existing terms the tenancy. A tenant shouldn't lose these basic rights just because their landlord is in financial difficulty.

The impact of the mortgage arrears crisis is not limited to homeowners. Often it is a sitting tenant in the property who loses their home and potentially faces homelessness by the enforcement of a repossession order, rather than the person who actually owns property. Frequently homeowners who are unable to meet their mortgage payments will put tenants into their property and try to cover their mortgage commitments through rental payments. These tenants may be particularly vulnerable to unsustainable increases in rent due to changes in repayment arrangements between the homeowner and the bank. Most mortgage agreements restrict the power of the borrower to rent out the mortgaged property. Only in very limited circumstances will a bank be bound by a tenancy in relation to a mortgaged property entered into without its prior written consent. If the borrower does not obtain such consent it means that the tenancy is not binding as against the lender, and accordingly the lender can terminate the tenancy without regard to the Residential Tenancies Act 2004.

The appointment of receivers in respect of mortgaged properties, as well as the increasing rate of repossession by lenders, undermines tenants' security of tenure. In such cases many tenants are been given limited notice to find a new home, sometimes just a few days. In some extreme cases tenants have come home to find their locks changed, effectively making them homeless.

Where a landlord falls into mortgage arrears, and a lender commences proceedings for repossession and sale, tenants are deprived of any effective protection from eviction. Their statutory rights under the Residential Tenancies Act 2004 to security of tenure and written notice of termination are set at naught. Many tenants continue to pay rent in good faith to their landlord for some time after an order for possession has been made, and only become aware that their home is at risk when they are served with an execution order by the sheriff.

While tenants will usually be served with a civil bill for possession by a lender who has commenced proceedings against their landlord, they will not be a party to those proceedings and as such will not have a right to be heard by the court, or to make representations as to the impact which repossession will have on them as the occupiers of the property.

Tenants who are served with an order for possession and sale by a lender cannot refer a dispute to the Private 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. Thus, tenants in mortgaged properties may be summarily evicted from their home without any redress as against their landlord or the lender concerned.

Case Study: Landlord disputing appointment of receiver and lack of clarity around rent

Mark and his family were renting a house for 2 years when a receiver was appointed. They had built up a good working relationship with their landlord and were put in a very difficult position when their landlord insisted the appointment was not valid and that that rent payments should continue to be paid directly to him.

Mark and his family were caught up in a dispute of which they had no part. Both parties continued to insist on rent simultaneously and while the receiver sent formal letters their original landlord put Mark under a lot of pressure by calling to the property and threatening eviction if rent did not continue to be paid to him as before. Mark felt he had no choice but to continue with rent payments to his original landlord.

The receiver subsequently referred a dispute to the PRTB and the PRTB found that the tenant should have been paying the receiver from the time of his appointment. Mark is now legally obliged to pay what the PRTB have deemed 'arrears' and feels aggrieved at having to pay rent twice for the same period of time.

The Residential Tenancies Act 2004, which sets out the rights and obligations of landlords and tenants, is silent as to a receiver's obligations to sitting tenants in a buy-to-let property. The lack of clarity around receiver appointments means that tenants can face competing and sometimes aggressive demands from both the receiver and the former landlord to pay them rent. Receivers are often more familiar with the rules surrounding commercial property and seek to apply the same approach to buy-to-let properties. Since 2013, Threshold has been dealing with a growing number of cases (1189 to the end of August 2015) where the rights of tenants have been either undermined or ignored. Tenants are treated as illegal occupiers, are deprived of their right to proper notice of

termination of the tenancy, or are required to pay rent to the receiver in circumstances where the receiver does not accept responsibility to carry out repairs or return the rental deposit.

Amendment to Residential Tenancies Act 2004

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. Such a measure should be complemented by the introduction of a code of conduct specifically addressing buy-to-let mortgage arrears. Such a code should set out in a clear and transparent way how financial institutions may enforce their security without interfering with tenants' rights to security of tenure.

The effect of such an amendment would be to 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. This obligation would not amount to an undue restriction on the right of financial institutions to realise their security, in that they would normally be entitled to rely on the 'intention to sell' ground for termination as provided for by s.34 of the Residential Tenancies Act 2004. Such an amendment would therefore achieve a reasonable balance between the rights of tenants and financial institution.

Budget Priority 7: Amend the Residential Tenancies Act 2004 to clarify the respective rights and obligations of landlords, tenants, lenders, and receivers. Introduce a code of conduct for dealing with buy-to-let mortgage arrears.

3. Promoting the Supply of Affordable Rental Housing

3.1 Improving affordable supply

The affordability of the private rented sector is being undermined by the corresponding challenges of falling supply coupled with rising demand. Over the course of 2014, just 34,000 properties were listed for rent in Dublin. This is 13% less than in 2013 and over 40% less than in 2011¹⁹. While in the short to medium term demand for rented accommodation will continue to rise as “trends in Ireland’s tenure mix, affordability, demography and economy suggest that one-quarter to one-third of the population will find it increasingly difficult to achieve homeownership.”²⁰

In earlier decades tax incentives were a strong motivation for investment in new residential accommodation, both rental and owner-occupied. This approach became problematic over time, in that it encouraged excessive building activity in areas with limited underlying need for new housing and included no measures to ensure affordability. Any new subsidies or tax incentives to promote rental supply must be contingent on the provision of permanent and affordable rental accommodation. Such incentives should be focussed on large urban areas where demand exceeds supply, they should be time-bound and subject to regular review to ensure that they are addressing issues of affordability, as well as supply.

The introduction of subsidies to increase supply should be undertaken in tandem with introduction of rent certainty measures and increased security of tenure for tenants (discussed previously ,) in a co-ordinated approach to addressing affordability issues. As the NESC report on the rental sector states; reforming the rental sector “requires breaking free of the current dualist debate on the private rental sector, in which some argue for rent control and others counter with the need to create better incentives to keep existing landlords in the sector and encourage developers and investors to resume construction and supply. Neither approach, on its own, will be effective. We need policies that both provide tenants with more secure occupancy and create supply-side supports to increase the availability of affordable rental housing.”²¹

Subsidies to increase supply could include access to state land on favourable terms, tax incentives and loan guarantees. Also commercial rates could be restructured to encourage the use of vacant space for rental accommodation. Reform of the tax treatment of rental income should also be explored including making all mortgage interest deductible in the computation of rental income (as is the case in relation to commercial rent) and allowing the payment of local property tax to be treated as an expense for tax purposes. Another possibility to consider is the use of Part V to require that a share of new accommodation be allocated to affordable rental housing, in addition to the requirement for social housing.

As the system that has evolved is complex, detailed research and consultation will need to be undertaken to produce the most appropriate measures. Reform should produce as simple, clear and uniform a tax regime as is possible, with limited use of special tax allowances that are focused on the provision of permanent and affordable rental accommodation.

¹⁹ Daft, *Daft.ie Rental Report-2014 year in review*, February 2015, p. 2.

²⁰ DECLG, *Social Housing Strategy 2020*, 2014, p.17.

²¹ NESC, *Ireland’s Rental Sector: Pathways to Secure Occupancy and Affordable Supply*, 2015, p. v and vi.

Budget Priority 8: Introduce a series of appropriate and conditional subsidies for either institutional and/or individual investors to increase the supply of affordable rental accommodation in appropriate locations.

3.2 Promoting Institutional Investment

Ireland does not have a tradition of developing mixed-income, institutional rental accommodation, so there is a need to devote attention to the specific requirements of this type of new supply. This approach is promoted in the new Social Housing Strategy 2020, which envisions “developments where social renting, private renting and affordable and cost renting options are provided side by side.”²²

Such accommodation has the potential to not only to address current supply issues but also to provide a stable and affordable stock of rented accommodation into the future. This type of accommodation could be provided by voluntary housing associations, the private sector or possibly new local authority-linked bodies. Financing and investment would be based on the presumption that accommodation would remain in the rented sector long-term, with the possible imposition of restrictions that prevent the loss of properties to the rented sector.

In 2004 Threshold commissioned a report²³ into the barriers for institutional investment in the PRS. The report recommended the introduction of a “tax transparent property investment vehicle [that] would allow financial institutions to invest in residential property without involving direct contact between institutions and tenants.” Real Estate Investment Trusts (REIT) were introduced as part of the 2013 Finance Act and now offer an opportunity to increase institutional investment. A small number of companies have started to enter the market, but they have tended to concentrate in the commercial, rather than the residential rental markets.

Another key recommendation in the Threshold report was that sufficient and reliable data must be made available on the rent and yields available through investment in the sector. 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. 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.

Budget Priority 9: Implement measures to encourage the development of large scale permanent mixed-income rental accommodation by institutional investors.

3.3 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

²² DECLG, *Social Housing Strategy 2020*, 2014, p.27

²³ Threshold, *Opportunity Knocks?: Institutional Investment in the Private Rented Sector in Ireland*, 2004.

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 accommodation can be offset against the reducing costs of providing older accommodation.²⁴ 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.²⁵

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.

Budget Priority 10: 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.

3.4 Housing Assistance Payment (HAP) Limits

The Housing Assistance Payment (HAP) is a central aspect of increasing supply of social housing as part of the Social Housing Strategy 2020. The HAP scheme will bring all social housing supports provided by the State under the aegis of local authorities. The scheme will remove a barrier to employment by allowing recipients to remain in the scheme if they gain full-time employment (unlike rent supplement). However, unless HAP rent limits are set at realistic levels that are related to market rents the scheme is likely to become unsustainable.

Under legislation, the Minister for the Environment, Community and Local Government sets limits for HAP payments based on the number of people in a household and the rented market in the

²⁴ This is especially true if any loans or mortgages related to the older accommodation have been paid off.

²⁵ Simon Brooke, 'Social renting: Outcomes and Outlook' in Renting in Ireland, Lorcan Sirr (ed.), IPA, 2014, p. 125.

locality. To begin with, as HAP is being introduced, these limits are based on the current RS limits²⁶ (with the exception of a Dublin-only pilot, which provides up to 20% above RS limits for people who are homeless).

As is demonstrated in the table below current RS limits are set too low to afford people at the lower end of the market the opportunity to source homes in the PRS. This means that the practice of ‘topping up’ their payments to their landlord will be a reality for HAP recipients, as it is for many tenants receiving RS. The fact that (unlike RS) such top-up payments will not be prohibited under this major social housing scheme is a retrogressive step, that will undermine the security of tenants. 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, inevitably giving rise to rent arrears, debt and poverty.

The inadequacy of HAP levels in South Dublin County Council has already been recognised in relation to South Dublin County Council. Minister Paudie Coffey, TD stated in the Dáil on July 20th, 2015:

“I have recognised that South Dublin County Council requires additional flexibility in the operation of HAP given the challenging rental market within its administrative area. Regulations will be signed very shortly to provide for an additional 20% flexibility above the previous maximum rent limits in South Dublin where such flexibility is necessary in order to secure a suitable dwelling for a relevant household.”²⁷

It is important that similar changes to HAP levels are implemented as HAP is rolled out across the country, especially in urban and commuter areas experiencing the highest rent inflation.

Table 1: Comparison between HAP²⁸ Limits and Average Rents

Area: Dublin City (22 postcode areas)	Single (1 Bedroom)	Couple with no Children (1 Bedroom)	Couple with 1 child or one parent family 1 child (2 Bedroom)	Couple with 2 children or one parent family 2 children (3 Bedroom)
HAP Limit	€520	€750	€950	€975
% of Market Rent	50%	72%	80%	66%
Average Rent ²⁹	€1,035	€1,035	€1,187	€1,470
Gap	€515	€285	€237	€495

Area: Cork City	Single (1 Bedroom)	Couple with no Children (1 Bedroom)	Couple with 1 child or one parent family 1 child (2 Bedroom)	Couple with 2 children or one parent family 2 children (3 Bedroom)
HAP Limit	€485	€575	€700	€725
% of Market Rent	75%	89%	97%	80%

²⁶ <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,40373,en.pdf>

²⁷ <https://www.kildarestreet.com/debates/?id=2015-07-16a.34>

²⁸ All HAP limits are based on existing Rent Supplement limits

²⁹ All rental figures are from Daft.ie, [Rental Report-Q2 2105](#), August 2015.

Average Rent	€646	€646	€723	€904
Gap	€161	€71	€23	€179

Area: Galway City	Single	Couple with no Children	Couple with 1 child or one parent family 1 child	Couple with 2 children or one parent family 2 children
HAP Limit	€475	€540	€700	€725
% of Market Rent	82%	92%	100%	89%
Market Rent	€581	€581	€650	€812
Gap	€106	€141	€ ---	€87

Budget Priority 11: Increase HAP limits so as to reach a sufficient level to meet the accommodation needs of eligible persons, without the need for top-up payments.

5.4 Roll-out of HAP

Despite the shortcomings with regard to the level of financial support to be provided, the overall design of the HAP is most welcome as it addresses some of the key difficulties associated with the rent supplement scheme. For example, the ability of a tenant to take up employment and continue to receive help with their housing costs, and the payment of rent directly by local authorities to landlords rather than indirectly via the tenant, is welcomed.

The national rollout of HAP has been slow to date, with only 1,600 households in receipt of HAP as of May 2015 and 8,400 targeted to be added to the payment by the end of 2015.³⁰ As it is estimated that 48,000 persons³¹ are now deemed to be long term dependent for their housing on RS and thus entitled to a HAP payment, it is important that the roll-out of this payment is expedited so that this large group of tenants can benefit from this more suitable payment.

Budget Priority 12: Expedite the introduction of the Housing Assistance Payment (HAP) across all local authorities.

³⁰ Alan Kelly T.D., [Parliamentary response](#), May 6th, 2015.

³¹ DSP, [Maximum Rent Limit Analysis and Findings Report](#), Feb. 2015, p.2.

4. PREVENTING HOMELESSNESS

4.1 Rising Homelessness

The affordability crisis in the PRS, coupled with the fact that rent supplement (RS) limits have not increased since June 2013, has seen a predictable rise in family homelessness. In July 2015 there were 3,285 people, including 657 families and 1,383 children in emergency accommodation.³² The situation is particularly acute in Dublin which has 556 families and 1,185 children in emergency accommodation,³³ but this trend is now spreading to commuter counties in line with rent increases there.

In 2014 over €49 million was provided by the DECLG to local authorities for the provision of homeless services.³⁴ The rising numbers of households becoming homeless will inevitably generate demand for additional resources in 2015. This is evidenced by the high occupancy levels in emergency accommodation (including commercial hotels) and the current projected shortfall in the Dublin homeless budget of €18.5 million.³⁵

It is critical that both the DECLG and DSP work together to implement appropriate policies that protect tenants who depend on State payments. Threshold's pre-budget submission to the Department of Social Protection (DSP) describes how the inadequacy of rent supplement limits is now one of the leading causes of homelessness.³⁶ While the 'case by case' approach to the inadequacy of RS limits through interventions like the Tenancy Protection Services (TPS) operated by Threshold in Cork and Dublin and the use of discretion by community welfare officers has helped a significant number of people, it does not go far enough.

Without making an appropriate level of income support available through increased rent supplement limits, the plight of families will deteriorate further as there is little or no new rented housing coming on-stream to dampen rent levels. The introduction of rent certainty measures by the DECLG would have a dampening effect on rent increases and make the introduction of increased rent supplement limits by the DSP more effective and more predictable in terms of the budget required. Both measures are needed to protect tenancies and prevent homelessness.

Budget Priority 13: Engage with the Department of Social Protection in order to safeguard households at risk of homelessness through increased rent supplement limits that reflect market rents.

³² [Homeless Persons - July 2015](#)

³³ [Homeless Persons - July 2015](#)

³⁴ CIC, Relate, April 2015. P.5.

³⁵ "Dublin Homeless Services Left €18.5 Million Short." *The Irish Times*, July 6, 2015.

³⁶ Threshold, [Pre-budget Submission to Department of Social Protection](#), 2015.

4.2 Support for Threshold's role in Preventing Homelessness

The Government's Homeless Policy Statement (2013) and The Implementation Plan on the State's Response to Homelessness)Statement (2014) both aim to reduce investment in emergency homeless services in favour of prevention services and more lasting solutions to homelessness. Housing advice and advocacy are identified in both policies as having a key role in preventing homelessness among vulnerable and at risk households.

Threshold is the only organisation that 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. We interface directly with thousands of people through our regional advice centres and many more through our online presence. The recent establishment of Tenancy Protection Services (TPS) operated by Threshold on behalf of local authorities in Dublin and Cork has enabled Threshold to provide a valuable and essential role in this regard.

The Tenancy Protection Service is aimed at individuals, couples and families living in private rented accommodation in Dublin or Cork City (and surrounding areas) that are experiencing housing problems and at risk of homelessness, especially due to rent increases. The supports this service provide include contacting the landlord where invalid notice of termination has been issued, negotiating a more limited rent increase or making an application to the Department of Social Protection (DSP) on behalf of clients for a payment in excess of existing rent supplement limits under the Interim Tenancy Sustainment Protocol (ITSP).

The Dublin TPS has protected 898 tenancies in its first year of operation (to June 2015) which has meant that 2,808 people (including 1,625 children) were prevented from becoming homeless. On average the Dublin TPS is saving 74 tenancies every month. The Cork Service has supported 620 families at risk of homelessness since January 2015, protecting 471 tenancies. In the absence of a policy decision to increase RS limits to match market rates, a 'case by case' approach is a necessary, though imperfect, intervention. However, to be most effective, this intervention needs to be extended to all areas in the country that are experiencing serious rent inflation and cover all types of tenancies, not just existing tenancies.

While we appreciate that the Department of the Environment, Community and Local Government recognises that more resources should be directed towards homelessness prevention, the reality is there is currently no strategic framework for the planning, organisation, monitoring and funding of housing information, advice and advocacy services in Ireland. Threshold's frontline advice and advocacy services have been underfunded historically and we would welcome the establishment of a dedicated funding stream for housing advice and homelessness prevention services.

Budget Priority 14: Extend the Tenancy Protection Service to Galway, Limerick and the commuter counties of Wicklow, Meath and Kildare. Seek agreement of DSP to include all tenancies, new and existing, under the Interim Tenancy Sustainment Protocol (ITSP) arrangements.

Budget Priority 15: Create a dedicated funding line for housing advice and homelessness prevention services and provide adequate funding to resource such services.

Conclusion

Threshold welcomes the opportunity to make this submission to the Department of the Environment, Community and Local Government in advance of Budget 2016.

Significant strides were made in Budget 2015 to promote the supply of social housing with a large multi-annual capital investment package and the subsequent publication of a national strategy for the delivery of social housing.

Given the difficulties being experienced in the private rented sector and its prominent role in housing families, Threshold would like to see Budget 2016 focus attention on the supply, regulation and protection of tenancies in the private rented sector. A national strategy for the private rented sector is needed to complement and reinforce Construction 2020 and the Social Housing Strategy 2020.

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, tenancy protection, and the national rollout of HAP are vital to give people greater security in existing accommodation and to avert homelessness.