



Pre-Budget Submission to the Department of Social Protection

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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 from tenants living in the private rented sector.

Threshold has helped people living in the private rented sector for almost 40 years and it has never been harder for tenants in receipt of rent supplement ('RS') to secure accommodation than it is today. Threshold helps hundreds of people each week with their housing needs, and we know from first-hand experience that current RS limits are not high enough to keep pace with rising market rents. As a result of the inadequacy of RS limits, individuals and families are either becoming homeless or face a considerable risk of becoming homeless.

This inadequacy of RS limits has been noted at the highest international level with the United Nations Committee on Economic, Social and Cultural Rights expressing serious concern about:

The growing number of families and children that are, or at the risk of being, homeless, as a result of the lack of social housing and the inadequate levels of rent supplement.¹

Moreover, the way the RS scheme currently operates does not facilitate a smooth relationship between landlord and tenant and is often the cause of difficulties. It should be noted that 11 of Threshold's 16 recommendations in this submission concern the reform of the manner in which RS payments are administered. Implementing these recommendations in relation to the administration of RS would result in little or no budgetary consequences and would significantly improve the effective operation of the RS scheme and may in fact result in overall budgetary savings.

As a result of previous changes to RS and a changing rental market, Threshold's national service has encountered the following significant challenges:

- Individuals and families becoming homeless as a result of rising rents;
- An increased prevalence of top-up payments to cover the difference between RS limits and market rents;
- Landlords displacing RS tenants and no longer accepting RS payments.

1.2 Summary of Recommendations

We ask the Minister for Social Protection to protect RS tenants, people at risk of homelessness and those seeking to move out of homelessness by implementing the following policy improvements:

Rent Supplement Levels

Budget Priority 1: Increase RS limits to reflect current market rents, so as to ensure that RS payments are sufficient to meet the accommodation needs for all successful applicants, as is outlined in the Social Welfare Consolidation Act 2005;

¹ United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third period report of Ireland (E/C.12/IRL/CO/3), June 2015, p.8

Budget Priority 2: Actively engage with the Department of the Environment, Community and Local Government to introduce appropriate rent certainty legislation to moderate rent increases.

Rent Supplement Criteria

Budget priority 3: Ring-fence any budgetary savings made under the RS scheme as a result of improving economic conditions to provide greater flexibility for households that face difficulties in retaining or securing accommodation;

Budget Priority 4: Show greater flexibility for parents with part-time access to children who need additional space in order to meet their parental responsibilities;

Budget Priority 5: Extend the Tenancy Protection Service to Galway, Limerick and the commuter counties of Wicklow, Meath and Kildare and include all tenancies, new and existing, under the Interim Tenancy Sustainment Protocol (ITSP) arrangements.

Rent Supplement Administration

Budget Priority 6: Provide for the automatic payment of RS directly to landlords;

Budget Priority 7: Ensure that RS is paid in advance, rather than in arrears;

Budget Priority 8: Introduce a pre-approval mechanism for RS claimants who have been assessed by the relevant local authority as having a housing need;

Budget Priority 9: Remove the requirement that a claimant furnish a tenancy/lease agreement as part of the applications process;

Budget Priority 10: Review the documentation requirements for RS and provide for direct submission of confidential documents by landlords to Community Welfare Service staff;

Budget Priority 11: Restore the face-to-face applications facility in local social welfare offices and ensure that adequate levels of support be given to claimants in completing their application, in order to expedite approval of rent payments to landlords;

Budget Priority 12: Ensure that eligible rent supplement recipients be afforded an exceptional needs payment where they require a sum of money by way of a security deposit, and are unable to make such a payment out of their own means. The rules around how such decisions are made should be clear and consistent;

Budget Priority 13: Ensure that RS claimants are given at least 28 days' notice of the suspension or termination of RS payments;

Budget Priority 14: Place greater reliance on the local review process in respect of RS decisions, afford priority to appeals relating to RS claims, and ensure that RS continues to be paid while an appeal is pending;

Budget priority 15: Introduce clear guidance for Department of Social Protection representatives to deal with circumstances where receivers are appointed to properties with RS tenants;

Budget Priority 16: Expedite the introduction of the Housing Assistance Payment ('HAP') scheme for long term recipients of RS.

2. RENT SUPPLEMENT LEVELS

2.1 Rent supplement levels are inadequate and mean that many tenants face an increased risk of homelessness

The inadequacy of RS limits, significant increases in rent levels, and the practice of topping up RS payments to bridge the gap between rent limits and the actual rent, have placed tenants at increased risk of homelessness.

2.2. Overview of rent supplement

The purpose of RS is to provide short term income support to assist with the reasonable accommodation costs of eligible persons living in private rented accommodation who are unable to provide for their accommodation costs from their own resources and who do not have accommodation available to them from another source.

More than €344 million was provided for the RS scheme in 2014.² Some 71,500 persons are in receipt of the supplement, of whom approximately 48,000 persons are now deemed to be long term dependent for their housing on the scheme as of December 2014.³

2.3 Market rents continue to rise

RS limits have been become increasingly out of kilter with the market since 2012. Cumulative RS reductions of 20-25% and a more than doubling of tenant contributions were implemented between 2009 and 2012. While average rents fell across the country in 2008 and 2009, they quickly stabilised in urban areas from 2010 to 2012, and since then they have been on an upward trajectory in the main urban centres. RS has not kept pace with these changes, despite significant rent increases. From 2011 to 2014 rent increases averaged 34.5% in Dublin, 14.4% in Galway and 13.9% in Cork. Average rental increases for the 4 commuter counties surrounding Dublin was 14.4% in 2014. In 2014 rents increased by an average of 7% in Galway city, 7.3% in Cork city, 6.2% in Limerick city, and 5.1 % in Waterford city.⁴

This trend has continued into 2015 with rent 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 17%.⁵ The Private Residential Tenancies Board (PRTB) rent index for Q1 2015 shows a similar trend with rents nationally 6.9% higher than the same period in 2014 and rents in Dublin up by 9.6%.⁶

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. It has found that over half (56%) of the clients they have worked with faced rent increases of over 20%, with over a quarter (27%) facing increases of over 30% and 8% facing rent increase of over 40%.

² DKM Economic Consultants, [Future of the Private Rented Sector](#), PRTB/Housing Agency 2014, p.41

³ DSP, [Maximum Rent Limit Analysis and Findings Report](#), Feb. 2015, p.2

⁴ Daft, [Daft.ie Rental Report-2014 year in review](#), February 2015

⁵ Daft, [Daft.ie Rental Report-Q1 2105](#), May 2015, p.2.

⁶ PRTB, [The PRTB Rent Index Q.1](#), June 2015.

2.4 Rent supplement limits have not risen in line with market rents

Reviews of limits for RS have taken place roughly every 18 months. The most recent RS review (February 2015) is the fourth review since rental prices reached their peak in 2007. Since the previous review (June 2013,) asking rental values for available units have increased nationally by 14.7%.⁷ Despite these increases the most recent review did not change RS limits because of a stated concern that doing so would create new rental floors for all properties in the sector, reflected in the report arising from the review process (February 2015).

There is an apparent inconsistency between the decision not to increase maximum RS limits on foot of the most recent review, and the approach adopted in the review conducted in June 2013 on foot of which maximum RS limits were increased, to 'reflect current market conditions'⁸ and to 'alleviate the pressures experienced by customers in these locations, as indicated by the findings of the review.'⁹

The decision not to increase maximum RS limits also diverges from the DSP's stated policy of ensuring 'that value for money is achieved while at the same time ensuring that people on RS are not priced out of the market for private rented accommodation.'¹⁰ The February 2015 rent review recognises there are significant challenges arise for many tenants from the decision to keep RS levels at their current rates, while rents continue to rise:

Where landlords insist on a premium based on the lack of availability of suitable accommodation for a rent supplement tenant, strict enforcement of the maximum rent limits may not be an appropriate policy response.¹¹

By deciding not to increase RS limits the DSP has tacitly admitted that some people in receipt of RS will not be able to find appropriately priced accommodation.

Case study: Obstacles faced by rent supplement recipient in securing accommodation

Daragh was living in a property for 4 years with his wife and son and received notice of termination for the end of the lease in May 2015 as the landlord was selling the property. Daragh had been searching for alternative accommodation but none were within existing rent limits. He was paying €750pm could not find anything at this rate. Threshold advised that whilst Daragh was outside of the Tenancy Sustainment Protocol if he found a landlord willing to accept rent supplement he may be able to make an application for a payment above existing rent caps. Daragh found one property where the agent would accept rent supplement but it was not suitable as it was only a one bed apartment and the rent was €1,000pm. Two weeks later he found another property willing to accept rent supplement but the rent for a two bed apartment was €1,350pm. Threshold assisted in submitting a letter seeking an Article 38 payment but in the interim unfortunately the agent could not hold the property for Daragh and the property was let. Daragh is continuing to search for accommodation.

⁷ DSP, [Maximum Rent Limit Analysis and Findings Report](#), Feb. 2015, p.9

⁸ <https://www.welfare.ie/en/pressoffice/Pages/pr050613a.aspx>

⁹ <https://www.welfare.ie/en/pressoffice/Pages/pr050613a.aspx>

¹⁰ <https://www.welfare.ie/en/pressoffice/Pages/pr050613a.aspx>

¹¹ DSP, [Maximum Rent Limit Analysis and Findings Report](#), Feb. 2015, p.2

This inadequacy of RS limits have been noted at the highest international level with the United Nations' Committee on Economic, Social and Cultural Rights expressing serious concern about:

The growing number of families and children that are, or at the risk of being, homeless, as a result of the lack of social housing and the inadequate levels of rent supplement.¹²

The United Nations Committee goes on to recommend raising RS levels so address to address the current homelessness crisis.

This extent of this divergence between RS limits and market rents is outlined in the following table.

Table 1: Comparison between RS Limits and Average Rents

Area: Dublin City (22 postcode areas)	Single (1 Bedroom)	Couple With no Children (1 Bedroom)	Couple 1 child or one parent family 1 child (2 Bedroom)	Couple 2 children or one parent family 2 children (3 Bedroom)
RS Limit	€520	€750	€950	€975
% of Market Rent	51%	73%	80%	66%
Average Rent ¹³	€1,023	€1,023	€1,183	€1,470
Gap	€503	€273	€233	€495

Area: Cork City	Single (1 Bedroom)	Couple With no Children (1 Bedroom)	Couple 1 child or one parent family 1 child (2 Bedroom)	Couple 2 children or one parent family 2 children (3 Bedroom)
RS Limit	€485	€575	€700	€725
% of Market Rent	68%	81%	77%	71%
Average Rent	€705	€705	€898	€1014
Gap	€220	€130	€198	€289

Area: Galway City	Single	Couple With no Children	Couple 1 child or one parent family 1 child	Couple 2 children or one parent family 2 children
RS Limit	€475	€540	€700	€725
% of Market Rent	76%	87%	84%	76%
Market Rent	€617	€617	€831	€943
Gap	€142	€77	€131	€218

¹² United Nations Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#), (E/C.12/IRL/CO/3), June 2015, p. 8.

¹³ All rental figures are from *Daft, Daft.ie Rental Report-Q1 2105, May 2015*

2.5 Rising Homelessness

Until recently, it was predominantly single people who experienced the most difficulties in securing affordable rental accommodation but this has now extended to families. Competition for family homes has driven up rents and removed the choice that previously existed for low income families. A divergence between maximum rent limits and market rents has resulted in an increased vulnerability to homelessness and has made it more difficult for families who are moving out of homelessness to secure appropriate accommodation. Many landlords are increasing rents above RS limits in order to seek higher-paying tenants and others are refusing RS altogether.

Before the recession families had the twin protections of access to local authority housing and a higher RS payment that generally meant they could secure accommodation suited to their needs. Both of these safety nets have disappeared during the economic downturn and many families now face the same risk of homelessness as single people. Unfortunately it will take a number of years before the increased supply of housing to be provided under the Government's social housing strategy has an appreciable impact on the current housing crisis. More immediate policy interventions are needed.

Tenants faced with the prospect of losing their home due to the inadequacy of RS limits are often forced to make 'top-up' payments to landlords. 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. Tenants in receipt of RS already make means-tested contributions from their social welfare payments under the RS scheme, and any additional contribution inevitably gives rise to rent arrears, debt, and poverty.

The result of maintaining maximum RS limits at their current rate has seen a predictable rise in family homelessness. In April 2015 there were 3,142 people, including 511 families and 1,118 children in emergency accommodation.¹⁴ The situation is particularly acute in Dublin which has 442 families and 970 children in emergency accommodation,¹⁵ but this trend is now spreading to commuter counties in line with rent increases there. Without an appropriate level of income support, the plight of families will deteriorate further as there is little or no new rented housing coming on-stream to dampen rent levels.

2.6 Lawfulness of rent supplement review process

Threshold has reservations as to the lawfulness of the manner in which maximum RS limits are reviewed.

The legislative purpose behind the making of supplementary welfare payments in general, and rent supplement payments in particular, is to provide for the payment of a supplement towards the amount of rent payable by a person whose means are insufficient to meet his or her needs (Social Welfare Consolidation Act 2005 ('the 2005 Act'), s.198 (1) – (3)).

In exercising the power to make regulations which prescribe maximum rent supplement limits,¹⁶ the Minister is required to have regard to two matters only, namely the family circumstances of the

¹⁴ <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/>

¹⁵ <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/>

¹⁶ The Minister for Social Protection has delegated her powers and duties relating to supplementary welfare payments, including rent supplement payments, to Kevin Humphries TD, Minister of State at the Department of Social Protection, by virtue of the Social Protection (Delegation of Ministerial Functions) Order 2014 (SI No 421 of 2014).

person to whom rent supplement is payable, and the location of the dwelling concerned (2005 Act, s.198(3E), as inserted by s.14(2)(c) of the Social Welfare (Miscellaneous Provisions) Act 2008).¹⁷

Threshold would argue that, in conducting a review of maximum rent limits, the Minister is constrained by statute to determining the level of rent supplement required to ensure access to accommodation for those whose means are insufficient to meet their needs, having regard to the family circumstances and the location of the accommodation. It is clear however from the report arising from the most recent review of maximum RS limits that the Minister has had regard to a range of extraneous considerations, and in particular to the potential impact of an increase in RS limits on rent levels in the private rented market as a whole.

As such, it is in Threshold's view strongly arguable that the maximum RS limits prescribed (or rather confirmed) on foot of the most recent review process are vulnerable to legal challenge on the grounds that:

- In seeking to influence prevailing market conditions in the private rented market, the Minister is acting outside the powers to prescribe maximum RS limits under s.198(3E) of the Social Welfare Consolidation Act 2005;
- In adopting a fixed policy whereby maximum RS limits are to be set at a level which is capable of securing the bottom 35% of available rented dwellings the Minister has fettered the discretion conferred by statute;
- In having regard to factors such as market rents, property prices, work incentives, and household consumption, the Minister has had regard to irrelevant considerations;
- Insofar as the legislature has delegated to the Minister the power to regulate market rents by means of regulations prescribing maximum rent supplement limits, this amounts to an unlawful delegation of the sole and exclusive legislative power vested in the Oireachtas, contrary to Article 15.2.1 of the Constitution.

Given the changed market conditions since the previous review, it is clear that RS limits in high demand urban areas should be adjusted upwards rather than maintained at the limits set in June 2013.

Budget Priority 1: Increase RS limits to reflect current market rents, so as to raise levels to a sufficient level to meet the accommodation needs of eligible persons.

2.7 Rent certainty

As it is the DSP's current policy not to increase RS limits to prevent an increase in rental floors for all properties in the sector, it is incumbent on the Department to bring forward a policy response to moderate rising rents. 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 reach an a significant level to address current shortages.

Threshold has submitted proposals to the Department of Environment, Community and Local Government concerning the introduction of rent certainty measures by way of amendment to the Residential Tenancies Act 2004. Threshold believes that appropriate rent certainty measures represent the only adequate and effective immediate response to rapidly rising rents.

¹⁷ See *McCormack v Minister for Social Protection* [2014] IECH 489 (Unreported, High Court, 30 October 2014), per Baker J at para.20

Such rent certainty measures would link future rent increases to an objective measure such as the consumer price index. 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. Full details of the proposal can be found here- <http://www.threshold.ie/news/2015/06/15/thresholds-proposals-for-rent-certainty/>

Rent Certainty measures also moderate future costs and ensure predictability in terms of the administration of the RS scheme.

<p>Budget Priority 2: Actively engage with the Department of the Environment, Community and Local Government to introduce appropriate rent certainty legislation to moderate rent increases.</p>

3 RENT SUPPLEMENT CRITERIA

3.1 Ring fencing of rent supplement budget savings needed

The DSP's most recent review of maximum RS limits indicates that 'the total (additional) cost nationally, of obtaining 35th percentile of available supply would be in the region of €84m.'¹⁸ Ensuring that 35% of the relevant market is suitably priced for RS recipients is the baseline that the DSP has determined is necessary to ensure that 'there will ensure sufficient housing stock is available for those on Rent Supplement.'¹⁹

The total budget allocated to RS has fallen sharply from a high of €516 million in 2010 to €298m in 2015, a cumulative reduction in the budget allocated to RS of €647m over 5 years. If this additional €84m were added to the budget allocated for 2015 this total figure of €382m would still be 25% less than that the budget allocated to RS in 2010. Moreover, not only has the total budget allocated to RS fallen significantly, but the annual unit cost (cost per person) of RS has fallen from a high of €5950 in 2008 to €4744 in 2014, a reduction of 20% in unit cost. This has happened at a time when rents have risen significantly.²⁰ Such budgetary savings should be ring-fenced provide greater flexibility for households that face difficulties in retaining or securing accommodation. This is a much more humane and cost effective approach than paying for inappropriate emergency housing for families.

Separated families, where there are joint access and/or custody arrangements, face many difficulties with RS as it is currently administered. In these cases, RS for the appropriate family size is typically granted to one parent only, with the other receiving payment for a single-person household. The accommodation that can be obtained within the RS limit for single people is unsuited to family living and, therefore, likely to undermine access arrangements and family relationships.

Budget priority 3: Ring-fence any budgetary savings made under the RS scheme, as a result of improving economic conditions, to provide greater flexibility for households that face difficulties in retaining or securing accommodation;

Budget Priority 4: Show greater flexibility for parents with part-time access to children who need additional space in order to meet their parental responsibilities.

¹⁸ DSP, [Maximum Rent Limit Analysis and Findings Report](#), February 2015, p.24

¹⁹ <https://www.welfare.ie/en/pressoffice/Pages/pr050613a.aspx>

²⁰ DSP, [Maximum Rent Limit Analysis and Findings Report](#), February 2015, p.45

3.2 Extend ‘case by case’ approach

Threshold recognises that the current ‘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 the discretion afforded to community welfare officers has helped a significant number of people.

Case study: Successful operation of Tenancy Protection Service

David came to the Tenancy Protection Service in May 2015. His rent was being increased from €1,350 to €1,500. David is married and has three children. David was already making a ‘top up’ payment to try keep the family in their home, where they have lived since 2013. David has cancer; he is in the final stages of kidney disease, receiving treatment three days a week and he is also on the transplant list.

His family were extremely worried as they could not face the prospect of leaving home and having to move into a hotel through homeless services. Although the amount of rent was well in excess of rent supplement limits, Threshold worked with the Department of Social Protection to ensure that an enhanced payment would be made and the family would not lose their home.

However this approach is not sufficient to address the difficulties faced by rent supplement households. The TPS only covers existing tenancies in Dublin and Cork, people who are moving tenancies or renting for the first time, or who have any type of tenancy outside these areas will continue to struggle to find suitable accommodation within the existing RS levels.

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.

Budget Priority 5: Extend the Tenancy Protection Service to Galway, Limerick and the commuter counties of Wicklow, Meath and Kildare and include all tenancies, new and existing, under the Interim Tenancy Sustainment Protocol (ITSP) arrangements.

ADMINISTRATION

4.1 Administration of rent supplement

It is Threshold's experience that the RS scheme does not conform to the modern private rented market in terms of the customs and practices that have evolved in the sector. It is also the case that the RS scheme does not take full account of the regulatory framework for the private rented sector established by the Residential Tenancies Act 2004 (RTA). The main changes introduced in the RTA were: a clear statement of landlord and tenant obligations; increased security of tenure for tenants of up to 4 years; compulsory registration of private rented tenancies; and a purpose-built dispute resolution mechanism for landlord and tenant disputes. These changes were an important step forward in regulating the sector and in placing the landlord and tenant relationship on a more business-like footing.

The way the current supplement scheme is administered is often inconsistent with the rights and obligations set out in the RTA. Landlords and tenants have had to adapt to the changes in the legislation, whereas the RS scheme has retained a model that pre-existed the RTA. **It is a source of some difficulty for landlords and tenants that a state scheme to support tenants in the private rented sector often fails to measure up to the state's own regulations for that sector.** Taking steps to uphold landlord and tenant law would therefore be an important overarching confidence building measure for landlords.

Case study: Payment withdrawal undermines security of family

Aoife was issued with a notice of termination by her landlord's letting agent which was invalid having regard to the provisions of the RTA. Aoife subsequently referred a case of unlawful eviction to the PRTB with the assistance of Threshold. On foot of correspondence between the letting agent and the Department of Social Protection, a deciding officer formed the view that there was no 'bona fide' tenancy, and withdrew Aoife's rent supplement payment. Threshold brought the deciding officer's attention to the relevant provisions of the RTA, which provide that pending the determination of a dispute which has been referred to the PRTB, the termination of the tenancy concerned cannot be effected. Threshold explained that this meant that there continued to be a tenancy of the dwelling until such time as the PRTB reached a determination. Aoife was reluctant to lodge an appeal with the Social Welfare Appeals Office, as this would inevitably result in a delay during which time the rent supplement payment would continue to be suspended. Aoife, who is divorced, and her three young children are now faced with the prospect of having to access homeless services.

4.2 Direct payments to landlords

Threshold has welcomed the system of direct payment to landlords under the new HAP scheme as a measure that gives greater security to both tenants and landlords. This has also been welcomed by landlord bodies. The current position whereby RS payments are only made directly to a landlord if the tenant elects for this option remains a source of difficulty. Threshold believes that the security

provided by automatic direct payment to landlords and/or their agents is a confidence building measure that should also be extended to the RS scheme.

Normally RS will be made directly to a tenant, but he or she can voluntarily nominate a third party such as a landlord or agent to receive this payment directly by making a declaration on the relevant application form (SWA RS 1). Recent figures from the DSP indicate that only in some 20% of cases will a RS recipient nominate an agent or landlord to receive direct payments.²¹ While this figure shows that a proportion of claimants nominate a landlord or his or her agent to receive direct payments, tenants may subsequently choose to opt out of this arrangement without reference to the wishes of the landlord.

The payment of RS to tenants rather than directly to landlords can result in delays in paying the rent over to landlords. The tenant may delay making payment to the landlord for their own financial reasons and, in some cases, it may not be passed on at all. From a landlord's perspective, it is far more convenient to have the full payment deposited into their bank account on the same date every month, rather than having to collect the RS payment and the tenant's contribution separately. As most landlords are not full-time landlords but rather are employed in other sectors, it is an inconvenience to have to call to the property to collect the rent.

With over 33,475 buy-to-let mortgages (24 per cent of total) in arrears²² and many landlords struggling to make repayments, the unpredictability of RS payments can have serious consequences for the landlord's financial position. In many cases, the landlord (possibly on the advice of the financial institution that holds the landlord's mortgage) may refuse to accept RS due to uncertainty around the payment. The level of payment may be a concern but the predictability of payments is also important to landlords.

Delays in RS payments are often not due to the actions of the tenant, but rather caused by administrative delays in the processing of payments (for example, it is not unusual for delays to occur in transferring cheques to local welfare offices on months with public holidays). If salary payments can be made on time, then there is no reason why welfare payments should be delayed in this way. This would be greatly facilitated by direct payment.

Budget Priority 6: Provide for the automatic payment of rent supplement directly to landlords.

4.3 Payment in arrears

The market norm in the private rented sector is that rent is paid in advance. When faced with two potential tenants at the outset of tenancy - one who can pay a deposit and month's rent in advance and one who cannot make a payment until later - the vast majority of landlords will accept a tenant who can pay upfront. The payment of the supplement in arrears therefore puts tenants at a distinct disadvantage when it comes to securing a property.

The payment of RS in advance would ensure that landlords would be more open to accepting RS tenants on the same basis as other tenants in the mainstream rented market. In Threshold's experience, a landlord may have to wait for many weeks before receiving a first RS payment. Payment in arrears, together with delayed approval, means that landlords are less likely to accept welfare dependent tenants when there are plenty of other tenants in the market.

²¹ DSP, Fraud and Error Survey Report, July 2014

²² [Residential Mortgage Arrears and Repossessions Statistics: Q.1 2015](#), Central Bank of Ireland, June 2015

In the current constrained market where there are far more prospective tenants than properties, many landlords who would have previously accepted RS payments have moved out of this segment of the market. This is unlike the situation in 2008 and 2009, when there was an oversupply of rented properties and landlords faced a possible vacancy if they refused to accept a RS tenant. Under those circumstances, a landlord was satisfied to have a tenant underwritten by the State. The DSP must recognise the realities of this changed market and make RS tenants a more attractive proposition for landlords. Threshold therefore recommends that RS be paid in advance.

Budget Priority 7: Ensure that RS is paid in advance, rather than in arrears.

4.4 Pre-approval

The DSP states that it has no involvement in the landlord and tenant relationship. Any breach by the tenant of his/her obligations is therefore at the expense of the landlord. Under these circumstances, landlords consider it crucial to thoroughly screen any potential RS tenant before they move in. One of the proofs often sought by landlords is of the tenant's ability to pay the rent. Tenants in receipt of rent supplement are generally not in a position to provide landlords with this assurance because of the way the scheme is currently administered. Pre-approval of RS payments would considerably help to overcome this barrier.

The main criterion for eligibility for RS is that the applicant has been assessed as having a housing need by the relevant housing authority. Once approved, RS payments are fixed at a particular price point in the market by RS limits. The maximum available amount under the RS limit depends on the household size and on the geographical area. There is therefore no reason why RS approval should be withheld until a tenant has been accepted by a particular landlord and why a tenant could not receive 'approval in principle' before searching for a property. This would increase the confidence of landlords who are approached by prospective RS tenants and it would potentially open up a wider range of properties to RS tenants.

In the current market, it is critical that RS applicants are in a position to view suitable properties and enter into tenancy agreements with prospective landlords. The tenant should be in the position to reassure the landlord that RS payments will be made from the beginning of the tenancy and not from a later date when their RS application is approved. The current failure to backdate many approvals means that some tenants who succeed in securing RS may get off to a bad start with the landlord by accumulating arrears which they find difficult to repay.

Pre-approval could take the form of a letter from the DSP confirming that the individual concerned is eligible for the payment of RS at the appropriate amount, based on their household size and the relevant supplement limit for the geographical area.

Budget Priority 8: Introduce a pre-approval mechanism for RS claimants who have been assessed by the relevant local authority as having a housing need.

4.5 Documentation requirements

A considerable disincentive to landlords is the amount of documentation that they are required to supply to the DSP in order for the tenant to secure approval for RS. Many landlords refuse RS on the basis that it is simply too bureaucratic.

In the mainstream market, a landlord would rarely be required to provide any of the documentation requested by the DSP and a landlord would be unlikely to furnish the information. Many landlords are reluctant to provide confidential information directly to the tenant and cannot understand why the Community Welfare Service (CWS) refuses to engage with them over the phone or by email when they have a query.

Case study: Processing delays give rise to risk of homelessness

Derek is a single man renting a one-bedroom flat in Dublin. Having moved out of homeless services Derek was anxious to maintain his new tenancy. His rent supplement application was dealt with by a Central Rents unit and was severely delayed. Derek was required to submit additional paperwork on several occasions, with considerable gaps in time between requests. On each occasion Derek returned to the bottom of a processing queue and in total his application took four months to process. Derek was in substantial arrears and, without Threshold's intervention, his landlord would have followed through with an eviction.

Threshold has a major concern with regard to the requirement that landlords must provide a tenant with a current lease/tenancy agreement as 'bona fide' proof that a tenancy exists. The existence of a tenancy is not contingent upon the existence of a written lease or tenancy agreement. The RTA expressly provides that a 'tenancy' includes agreements which are written, oral, or implied, and there is no requirement for a tenant to enter into a written lease or tenancy agreement in the private rented sector. Notwithstanding, the CWS insists on seeking copies of lease or tenancy agreements.

Threshold frequently assists clients who have been compelled to enter into a lease or tenancy agreement which is not in the best interests of the landlord or tenant, as there is no guarantee that RS will be paid for the period of the lease. It makes no sense that a tenant would be required to make a legally binding promise to pay rent, typically for a 12 month period, without having the means to do so. Landlords are understandably reluctant to enter into lease agreements in circumstances where there is a high risk of arrears or, in the case of non-approval, a risk that they may receive no rent at all.

One of the most aggravating features of the administration of RS scheme over the period of the economic downturn was that, on the one hand, landlords were compelled by the CWS to enter into lease or tenancy agreements with tenants, and on the other hand, they were asked to reduce the agreed rent when RS limits were reduced in a series of reductions over the period 2010 – 2012. Over this period, the CWS did not respect the legal agreements it insisted upon when tenants applied for RS. This practice seriously undermined landlords' confidence in the scheme.

The requirement to seek proof of ownership of the property from the landlord puts RS tenants at a distinct disadvantage, as it is not required by any other tenant who wishes to enter a tenancy. The provision of this information is regarded as an intrusion by many landlords and they will often refuse to give this information to a prospective tenant.

Further, the requirement of proof of ownership by the landlord as a precondition for the payment of RS is incompatible with the general requirements of landlord and tenant law. All leases are subject to an implied term that the landlord has good title to make such a lease. Moreover, tenants are

expressly precluded from disputing their landlord's title in the context of a dispute before the Private Residential Tenancies Board (PRTB), and in all other proceedings they are precluded from disputing their landlord's title to grant the tenancy. In the circumstances, the requirement that a landlord provide proof of ownership of the property is disproportionate.

With regard to the nature of the documents requested, it is also the case that landlords are requested to supply information that is often difficult or even impossible to provide at the outset of a tenancy. For example, a tenancy does not have to be registered with the PRTB until one month after the tenancy is formed. Proof of PRTB registration therefore cannot always be provided in advance to the CWS, although this is often sought.

In general, there is a lack of consistency as to which documents may be required of applicants. Often applicants inadvertently fail to furnish a necessary document and are required to resubmit their application, resulting in significant delays. On occasion documents previously submitted are lost. The introduction of central rent units has resulted in longer delays, as the lack of face-to-face interaction with CWS staff means that there may be a lag time before the tenant becomes aware that their application is incomplete. The impact on landlords is that payment is delayed, even where the document concerned is of relatively minor importance.

Threshold recommends that the DSP both reviews and streamlines the documentation requirements for the RS scheme, based on the legislative requirements of the RTA. The CWS should be open and willing to receiving documents directly from landlords and to engage with them where they have a query that they do not wish to communicate via the tenant. Processing times should reflect the realities of the market and landlords who accept RS tenants should not be at a disadvantage when it comes to receiving prompt payment.

With regard to proof of tenancy, Threshold recommends that deciding officers be permitted to accept a letter from a landlord confirming the address of the dwelling and the terms of the tenancy and/or confirmation of registration of the tenancy with the Private Residential Tenancies Board as evidence of a tenancy agreement, where it is an existing tenancy.

Budget Priority 9: Remove the requirement that a claimant furnish a tenancy/lease agreement as part of the applications process;

Budget Priority 10: Review the documentation requirements for RS and provide for direct submission of confidential documents by landlords to CWS staff;

Budget Priority 11: Restore the face-to-face applications facility in local social welfare offices and ensure that adequate levels of support be given to claimants in completing their application, in order to expedite approval of rent payments to landlords.

4.6 Deposits

It is a widespread practice in the private rented sector that landlords require the payment of a deposit, usually equivalent to a month's rent, as a condition for entering into a tenancy. This is a practical requirement that provides the landlord with security in the case of the non-payment of rent (and other charges), and damage to the property beyond normal wear and tear.

A landlord is most unlikely to accept a tenant who is unable to provide a deposit in advance. Many tenants do not have the funds for a security deposit before they enter a tenancy and they seek the assistance of the CWS by means of an exceptional needs payment. The refusal of exceptional needs payments for deposits means that landlords are less willing to consider a RS tenant who says that they will pay the deposit once it is approved by the CWS.

Under the Social Welfare Consolidation Act 2005, a deciding officer may determine that a supplementary welfare allowance should be paid by way of a single payment to meet an exceptional need. While an exceptional needs payment is a single payment, this clearly does not preclude repeated once off payments where this is necessary to securing the wellbeing of the recipient, and in particular where all or part of a deposit paid with the assistance of an exceptional needs payment has been withheld by a previous landlord.

In Threshold's experience tenants often face difficulties in securing such payments. The current rules are unclear as to when approval is likely to be provided and a tenant who is taking up a second tenancy is unlikely to be successful. Landlords are therefore not willing to take the risk that the tenant will be approved for a deposit payment.

Budget Priority 12: Ensure that RS recipients are afforded an exceptional needs payment where they require a sum of money by way of a security deposit, and are unable to make such a payment out of their own means. The rules around how such decisions are made should be clear and consistent.

4.7 Review, suspension, termination

Threshold is frequently contacted by individuals whose RS payments have been suspended or withdrawn in the context of a review of their claim. Clearly the DSP has a legitimate interest in regularly reviewing RS claims, but stopping payment to landlords without prior warning has serious consequences for both landlords and tenants. The current review process lacks transparency, as there is insufficient information as to the manner in which reviews are carried out and a lack of consistency as to the requirements made of RS recipients.

Tenants and landlords are often told that the payment will cease if documents are not supplied within a short period of time. Threshold would stress that the unilateral cessation of RS has grave consequences, resulting in a deterioration of the landlord and tenant relationship. The likely impact on the landlord is the loss of income due to arrears of rent. The CWS must recognise that a payment should be stopped only in the most extreme circumstances and it should not be a threat that is applied to both landlord and tenant during the regular review process.

In this respect, Threshold notes with concern that the relevant review form (SWA 3A) provides that failure to return the form fully complete may result in payment being suspended or withdrawn 'without notice'. In circumstances where there is a dispute between the landlord and the tenant, it may be impossible for the landlord or his/her agent to sign the declaration required by the review form. The legislation governing the landlord and tenant relationship is based on proper notice being provided in writing (in particular where rent is being reviewed, or the tenancy is being terminated) and the current approach does not take account of the landlord's legal entitlement to notice even where the payment is being withdrawn. A tenant's failure to provide proper notice to the landlord may give rise to a dispute before the PRTB and result in an award of damages against the tenant.

Budget Priority 13: Ensure that RS claimants are given at least 28 days' notice of the suspension or termination of RS payments.

4.8 Appeals

Delays encountered in progressing appeals in respect of decisions relating to RS, coupled with the suspension of payments while an appeal is pending, have a serious impact on landlords and tenants.

The most recent information available from the Social Welfare Appeals Office indicates that of the 3,233 appeals relating to supplementary welfare allowance lodged in 2014, some 1,442 (45%) either

resulted in a revised deciding officer decision, or in the allowing or partial allowing of the appeal . This was an increase on both the amount and proportion of changed decisions compared to 2013.²³

These figures reveal a significant rate of error on the part of deciding officers in relation to supplementary welfare claims, including claims for RS. The impact of these decisions is that tenants are unfairly deprived of payments and landlords do not receive the rent to which they are entitled. Even where a claimant succeeds in appealing an unfavourable RS decision, this will often be too late for the landlord who may be forced to terminate the tenancy due to the accumulation of rent arrears over many months. The payment of rent to landlords while appeals are being heard would be a confidence building measure.

While delays inevitably arise from a formal appeal of a decision relating to RS, in Threshold's view greater reliance should be placed on the informal review process, whereby the decision in question may be reviewed locally by a more senior person such as a DSP Manager/Assistant Principal Officer. Where a review is successful this will result in the resumption of RS payments without undue delay and will minimise the risk of arrears of rent accruing for landlords.

Under the RTA a tenancy remains in place where a dispute between landlord and tenant is being decided by the PRTB. The same principle should apply to social welfare appeals, with the payment continuing to the landlord until such time as the appeal is decided. It is suggested that, in the event that an appeal is unsuccessful, the payments which have been made in the interim period may be deducted in a proportionate manner from any other payments being made to the claimant concerned.

Budget Priority 14: A greater reliance should be placed on the local review process in respect of RS decisions, that priority be afforded to appeals relating to RS claims, and that RS continue to be paid while an appeal is pending.

4.9 Appointment of Receivers

The appointment of receivers in respect of mortgaged properties can undermine the administration of the RS scheme. As already noted there are currently 33,475 buy-to-let mortgages in arrears²⁴ with receivers in place in respect of 4,512 buy-to-let properties by the end of April 2015.²⁵

The lack of clarity around receiver appointments in terms of the RS scheme can mean that tenants not only have to face competing and sometimes aggressive demands from both the receiver and the former landlord, but also deal with uncertainty as to whether they will continue to receive RS as the receivership process proceeds.

Budget priority 15: Introduce clear guidance for DSP Representatives to deal with circumstances where receivers are appointed to properties with RS tenants.

²³ Social Welfare Appeals Office, Annual Report 2014, p.12

²⁴ [Residential Mortgage Arrears and Repossessions Statistics: Q.1 2015](#), Central Bank of Ireland, June 2015

²⁵ Department of Finance, [Mortgage Restructures Data-April 2015 data set](#), June 2015, Page 11

4.10 Housing Assistance Payment

When it was first introduced in the 1970s, Rent Supplement was designed to be a short-term support for those in housing need. Now, however, it has become a *de facto* social housing support payment. It is hoped that the HAP scheme may in the future, provide a more practical and sustainable solution to meet housing support needs. Under HAP, long-term RS recipients will become the responsibility of local authorities in recognition of their housing need, and rent will be paid directly to landlords rather than to tenants. This should make the payment more attractive to landlords. Furthermore, tenants will have the opportunity to work and to continue to receive some help with their housing costs, unlike the current position where RS is regarded as a 'poverty trap'.

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 2015.²⁶ As it is estimated that 48,000 persons²⁷ are now deemed to be long term dependent for their housing on RS and thus entitled to a payment under the HAP scheme, it is important that the roll-out of this scheme is expedited. This will also have the effect of reducing the administrative burden that the DSP faces in managing the current high number of RS claimants.

Budget Priority 16: Expedite the introduction of the Housing Assistance Payment scheme for long term recipients of RS.

Conclusion

Threshold welcomes the opportunity to make this submission to the Department of Social Protection in advance of Budget 2016.

The private rented crisis that began with a shortage of rented accommodation in Dublin is now spreading to other urban centres and to the commuter counties. Given the lack of new housing supply, the upward pressure on rents will continue for the foreseeable future. Current RS limits are completely out of line with market rents and addressing this shortfall on a case-by-case basis is a not a sufficient response.

In order to protect tenants and to prevent a continued rise in homelessness, it is critical that all RS claimants can secure a payment that reflects actual market rents. In addition, the way the RS scheme operates must be both responsive and flexible enough to provide greater security for tenants and to increase the confidence of landlords who are letting properties to RS tenants.

²⁶ Alan Kelly T.D., [Parliamentary response](#), May 6th, 2015

²⁷ DSP, [Maximum Rent Limit Analysis and Findings Report](#), Feb. 2015, p.2