



# Standards in Private Rental Accommodation

July 2018

Submission to the Joint Oireachtas Committee on  
Housing, Planning and Local Government



## About Threshold

Threshold was founded in 1978. We are a national housing charity whose aim is to secure a right to housing, particularly for households experiencing poverty and social exclusion. We do this by:

- Providing independent advice, tenancy protection and advocacy services
- Facilitating access to rented housing for people who are homeless
- Developing innovative housing policies based on quality analysis of evidence from our services and supports
- Advocating for a rights based approach to housing to policy makers

## Standards in Private Rental Accommodation: Key Elements

Threshold's input to the Joint Oireachtas Committee on Housing comprises of the following:

- An examination of poor standards in the sector, drawing on case studies from clients accessing our services □  
Consideration of enforcement and inspections
- Threshold's policy solution: an 'NCT' for Housing; how it would work; benefits to the state and the pitfalls of selfcertification
- Defining and dealing with overcrowding

## Poor Standards in Private Rental Accommodation

Eight months have passed since the Strasbourg-based European Committee of Social Rights (ECSR) ruled (23.10.17) that Ireland failed to provide adequate housing conditions on Local Authority estates and that more needs to be done to address substandard living conditions for social housing tenants. This judgement means that the Government can no longer shy away from its commitment to provide quality housing and adequate standards for those with a social housing need. The Government needs to lead by example and ensure minimum standards are strictly adhered to, not only for social housing, but also in the private rented market – a substantially larger rental tenure than social housing in Ireland. Inadequate physical standards consistently rank as one of the top complaints raised by clients to Threshold, as evidenced by the following client case studies.

### Case Study 1:

A couple based in the Midlands contacted us because they were living in substandard accommodation with no proper heating or ventilation. The landlord did not provide a washing machine or fridge and there was limited space to store or prepare food. Fire safety was also a major issue as there was no smoke alarm, fire blanket or fire extinguisher fitted. When the tenant raised these issues with their landlord, they were given a 28-day notice to move out.

### Case Study 2:

We assisted a male in his mid-forties who had been homeless but had managed to sustain a tenancy within the Dublin City area for 4 consecutive years. The client had very significant physical and mental health issues. During our initial consultation with this client, he spoke in detail about the poor condition of his rented home. He explained how he had no bathroom facilities within his studio flat; that his cooker was not working properly and there were issues in relation to dampness, mould, poor ventilation and an inadequate heating system. Attending to his medical and personal hygiene needs was extremely challenging for him at times and he firmly believed that his poor living conditions have negatively impacted on his mental health and overall well-being in a very profound way. When asked what outcome he hoped to achieve by coming to Threshold our client informed us that he just wanted somewhere "a bit more decent to live".

In brief, other scenarios that clients have recently reported to us regarding standards have included the following:

- An expectant mother living with two young children in accommodation that is heated inadequately through two small electric heaters.
- A couple and their two children who all sleep in the living room of their home, which is heated through an open fire, as long-term problems with the central heating have resulted in cold, damp and mouldy bedrooms.
- A couple and their premature baby living in a cold and draughty property, where the heating and shower are broken and some of the windows don't close properly.

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. Many clients are reluctant to report poor standard accommodation as they fear being given notice of termination and that they will not be able to find alternative accommodation. For the last forty years, standards and repairs has remained one of the most common issues about which clients contact us. In the year to date, Threshold has dealt with 585 standards and repairs queries and in 2017 our housing advisors dealt with 1,261 queries in relation to standards.

We live in an era in which employees are afforded protection in the workplace by health and safety regulations in the work place; diners in a restaurant can expect that the kitchen of the premises is regularly inspected to ensure health and safety standards and road users are obliged to adhere to preventative road safety measures that ensures vehicles on Irish roads are in sound working order. A raft of consumer legislation now shapes conduct in most markets that ordinary people encounter. In particular a consumer can insist that a good is 'fit for the purpose', that it can in fact do what it is sold as being capable of performing – and rightly so. Someone looking for a home to rent is a consumer, albeit one who is less well placed to determine a dwelling's safety and adequacy. The potential tenant's familiarity with building standards typically is limited, and they may feel unable to reject or walk away from a letting, especially where supply is so scarce and where high rent levels mean that lower income tenants in particular have few options in any event. Few consumer goods more strongly merit protection than a home. It is homes – the focus of family life and the focus of our identity and belonging – that is at stake.

We regularly deal with clients living in substandard properties that lack the basic necessities for living, including freedom from dampness and condensation, proper heating facilities, inadequate ventilation and hot and cold running water. It is estimated that around 20% of rented dwellings have a Building Energy Rating (BER) of F or G, and more than 55% of the private rented dwellings are likely to be considered to have poor energy efficiency, with BERs between D and G. Research by the ESRI has found that households living in relatively energy inefficient properties spend €160-€419 per annum more on energy than households in a home rated with a BER of B.

### **Enforcement and Inspections**

Similarly, enforcement and inspection of standards in the private rented sector is a recurring concern for Threshold. The National Oversight and Audit Commission (NOAC) have been critical of the role of local authorities in meeting their statutory obligations to ensure that accommodation in the private rented sector meets minimum standards. In 2014, there were 13,913 inspections carried out of a total of **285,025** registered tenancies. This is only 5% of all registered rented properties. In 2014, eight local authorities with more than 10,000 tenancies inspected less than 5 per cent of the registered properties in their area. Counties such as Kilkenny, Louth, Offaly and Limerick scored a 100 per cent failure rate. The NOAC found that of 55% of the private rented accommodation inspected by local authorities were deemed non-compliant with the Housing (Standards for Rented Houses) Regulations 2008. The bulk of inspections are either reactive or inspections required under the RAS and HAP schemes.

It recently emerged that all 496 rental dwellings inspected and found to be non-compliant by Kilkenny County Council in 2017 were in response to complaints made. Threshold believes it is critical that Local Authorities not only investigate complaints regarding standards in private rented properties, but also proactively carry out inspections. While there have been some welcome changes announced in the Strategy for the Rental Sector, Threshold does not believe that increasing inspections incrementally each year with the aim of achieving a 25% annual inspection coverage rate by 2021 is sufficient or reflects the urgency of the problem.

### **An 'NCT' for Housing**

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. Threshold has been advocating for the introduction of a certifications scheme or 'NCT' for rented housing for many years. In such a scheme, the burden of proof for compliance with minimum standards would rest with the landlord who would be required to provide a certificate of fitness to the local authority.

The integration of such a scheme with certification requirements in respect of energy efficiency, fire safety, tax obligations, and registration with the Residential Tenancy Board (RTB), would promote greater compliance in general.

If landlords are required to furnish BER certificates, then it should be extended to cover fire safety and minimum standards. This should not result in greater costs for the landlord. If a certificate does not exist, the penalty for renting an uncertified property should be severe so that there is no excuse for being outside the system. Inspections would then focus solely on whether the landlord held a certificate of compliance.

Given the importance of this issue, and the historic failure of the policy making system to respond to this, Threshold recently established an online petition to seek public support for an NCT-type certification system in rented accommodation. As of late June the number of signatures is 10,229.

### (i) How a certification scheme would work

The 'NCT' for Housing would operate according to the following measures:

- Landlords would have to prove their compliance with minimum standards and fire safety standards before a property could be rented. This would be based on an **independent inspection by a suitably qualified professional** (e.g. architect, surveyor). The scheme would require that a **certificate be displayed in the rented dwelling** in the same way that hotel rooms display certification and it would be an offence not to do so.
- **A certificate would be valid for a fixed period**, unless specific events (e.g. flooding, significant storm damage) leading to a notable deterioration of the property occurred.
- **The landlord would be required to supply the RTB with the details of certification** as part of the tenancy registration process (i.e. copy of certificate or reference number).
- **The certification scheme could be rolled out on a phased basis** for existing rented properties, in a similar way to recent changes in standards regulations, and Threshold considers that a four-year rollout period would be appropriate.
- **An indicative fee structure can be established** in advance through professional bodies such as, for example, the Royal Institute of Architects in Ireland (RIAI).

### ii) Benefits to the State

The 'NCT' for Housing would provide the following benefits to the state:

- **The onus would be placed on landlords to prove that they are compliant** with the law, not just in relation to dwellings standards, but also fire safety and Building Energy Rating (BER). The role of the local authority will be to verify that certificates are in place; to inspect clearly underperforming areas and respond to complaints.
- A tenant currently has no way of knowing that a property is compliant before they rent the property. With the 'NCT' for Housing, **a prospective tenant would be assured that the dwelling complies with all legal requirements**. The certificate could, for example, be presented to a Department of Employment Affairs and Social Protection representative to process rent supplement payments.
- **Overall compliance levels are likely to rise** and this could be incentivised if the cost of certification and the cost of remedial works to the property were to become allowable as a business expense under tax rules for landlords operating in the private rented sector.

### The Pitfalls of Self-Certification

From talking with our clients, we do not believe that self-certification is the answer to the widespread problem of poor standards in the sector. Like the present system, it relies on landlords being caught and the prospects of that are slim. There needs to be sufficient sanction for failure to comply with standards and self-certification is not going to achieve this. Self-certification has not worked in the past and the fire safety situation some years ago in Priory Hall, Dublin is a case in point. Threshold believes that if car owners can't self-certify a motor vehicle, then rented homes should be no different.

The passing of the Sinn Féin motion on minimum standards by the Dáil late last year (see *Appendix: Private Members Motion passed by Dáil on 8 Nov 2017*) was a positive step towards acknowledging the importance of the NCT concept. However, it was disappointing to see the suggestion by Minister for Housing, Planning and Local Government, Eoghan Murphy, that self-certification for landlords could be the solution and we are asking the Minister to reconsider this given our arguments above.

## Overcrowding

Examples of egregious overcrowding in the Private Rented Sector are increasingly coming to light. As a result it is imperative that a definition of overcrowding for private rented accommodation is inserted into existing minimum standards to enable local authorities or a national agency to inspect properties and ensure compliance. There are existing definitions of overcrowding, both in Irish legislation and abroad which could be used to frame such an amendment.

Increased reports of the incidence of overcrowding can be attributed to dramatic rent increases and a lack of supply. It is often the most vulnerable who are found to be living in such accommodation. We know that bunk beds are now more common across rental accommodation in cities such as Dublin, with people doubling, tripling, and quadrupling up in rooms because of the lack of affordability and supply. In some situations, shift workers share a bed, using it at different times of day. Dublin's chief fire officer has recently described the legislation covering the enforcement of fire controls in overcrowded houses and apartments as "poor" and "difficult", and that it is often unclear which legislation the local authority should use to take enforcement action over fire safety risks. This is because there is various legislation related to fire safety and overcrowding including the Housing Acts, the Fire Services Acts, the Building Control Acts and the Planning and Development Acts.

While there are minimum standards covering some aspects of private rented accommodation, the regulations are silent on how many people should occupy the accommodation provided. Previously a landlord had to state the number of occupants and record the estimated floor space but this obligation was removed by s. 62 of the Residential Tenancies (Amendment) Act 2015, and their inclusion would be useful in terms of measuring overcrowding in order to inform policy.



## Appendix: Private Members Motion passed by Dáil on 8 Nov 2017

Specific mention of Threshold's NCT-type certification system for private rented housing is made below (in bold for emphasis):

### DÁIL ÉIREANN

*Fógra Tairisceana : Notice of Motion*

#### GNÓ COMHALTAÍ PRÍOBHÁIDEACHA PRIVATE MEMBERS' BUSINESS

"That Dáil Éireann: notes, with alarm, the revelations regarding breaches of minimum standards in the private rental sector contained in last week's RTÉ Investigates documentary 'Nightmare to Let'; further notes that:

in 2016 only four per cent of private rental properties were inspected by local authorities;

in 2016 two thirds of inspected properties were not compliant with minimum standards regulations;

local authorities have failed to adequately enforce standards in the private rental sector;

central government has failed to adequately resource local authorities to carry out their enforcement functions with respect to the private rental sector; and

significant numbers of tenants continue to live in unacceptable and substandard private rented accommodation;

and calls for:

the Minister for Housing, Planning and Local Government to set out, as a matter of urgency, a plan for ensuring compliance with minimum standards regulations in the private rental sector;

the Government to adequately resource local authorities, to ensure that a comprehensive inspection and enforcement regime is put in place;

**the Government to support the proposal by Threshold for an NCT-type certification system for private rented housing to further strengthen compliance with legal standards;**

the Government to review the penalties faced by landlords, to ensure adequate sanctions for those that fail to register tenancies or who fail to meet minimum standards; and

the Government to publish an annual report detailing levels of private rental sector inspections and enforcement in each local authority."

— Eoin Ó Broin, Gerry Adams, John Brady, Pat Buckley, Seán Crowe, David Cullinane, Pearse Doherty, Dessie Ellis, Martin J. Ferris, Kathleen Funchion, Martin Kenny, Mary Lou McDonald, Denise Mitchell, Imelda Munster, Carol Nolan, Jonathan O'Brien, Caoimhghín Ó Caoláin, Donnchadh Ó Laoghaire, Louise O'Reilly, Aengus Ó Snodaigh, Maurice Quinlivan, Brian Stanley, Peadar Tóibín. [3 November, 2017]