



Threshold Pre-budget Submission 2014

To Department of Finance

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Summary

Threshold is a national housing charity that helps over 20,000 people with housing problems annually. We make this submission to the Department of Finance in advance of Budget 2014. The recovery of the housing market is fundamentally important to an overall turnaround in Ireland's economic fortunes and this must be a priority for the forthcoming budget. Threshold's recommendations fall into two categories i) measures related to threats currently facing the housing market and ii) measures related to improving the efficiency of the housing system.

A. Measures to overcome threats to the housing market

Current threats:

- Housing construction has fallen to critically low levels. Output is not keeping pace with the 20,000-30,000 additional households formed each year.
- Local authority waiting lists are growing, but supply has dwindled. Almost 100,000 people are waiting lists, but a maximum of 5,000 additional social housing units will be provided in 2013.
- The new Housing Assistance Payment is recognised as a critical measure to improve employment activation and the housing security of tenants, but its rollout has been delayed.
- Disruption is being caused in the private rented market by repossessions and receiver appointments to buy-to-let properties. This is negatively impacting on the lives of tenants and creating instability in the private rented sector.

Proposed measures:

1. Introduce a stimulus for private housing construction in Budget 2014 that is directly based on the current needs of households in Ireland.
2. Provide a significant financial package for the purchase and construction of social housing. It should be a goal to have a social housing sector that comprises a reasonable proportion of overall housing stock. Social housing output should increase to at least 9,000 units per annum.
3. Promote institutional investment in the private rented sector by financial institutions, pension funds and private investors by means of the Real Estate Investment Trusts (REITs) provision announced in Budget 2013 and included in Finance Bill 2013.

4. Protect family homes of tenants and overall stability of the private rented sector by changing the legal and regulatory code:
 - i) Amend the Residential Tenancies Act 2004 to state that receivers must 'step into the shoes' of the landlord and take on their obligations; and
 - ii) Introduce a code of conduct on buy-to-let mortgage arrears similar to the CCMA for residential mortgages.
5. Put resources in place to overcome operational obstacles (e.g. IT systems) to the speedy rollout of the Housing Assistance Payment (HAP).
6. Include a provision for employment activation supports as part of the overall housing and welfare package under the HAP payment.
7. Make special financial provision to enable higher rent payments to be made under the HAP scheme to secure accommodation for people who are homeless.
8. Consider amending the tax code as a means of incentivising landlords to engage more fully with the State in providing accommodation for low income households.

B. Measures to improve the efficiency of the housing system

Efficiency challenges:

- The Government's revised homelessness strategy aims to reduce investment in emergency homeless services in favour of more lasting solutions to homelessness, but the funding mechanism is currently not aligned with the strategy.
- Local authorities are responsible for enforcing standards in the private rented sector but do not have the capacity to inspect all properties. The growth of the private rented sector and the inspection requirements of new state housing initiatives delivered in the private rented sector calls the current approach into question.
- Threshold welcomes the planned introduction of a deposit protection scheme where tenancy deposits will be lodged with a third party. This will generate revenue and operational efficiencies for the State, but a speedy rollout is needed to optimise the benefits.

Proposed measures:

9. Rebalance existing homelessness spending towards the provision of homelessness prevention services and a housing-led approach to ending homelessness.
10. Amend Section 10 of the Housing Act 1988 to ensure that funding may be provided by local authorities to services that prevent homelessness.
11. Introduce a certification scheme for private rented properties that requires landlords to have their property certified as legally compliant by a qualified professional. Local authorities to become responsible for overseeing the scheme and for engaging in targeted inspections to complement the scheme.
12. Deposit protection scheme to be operationalised as soon as possible after legislation has been enacted, and should seed funding be required to make the scheme profitable more quickly, then this should be provided by the Department of Finance.

Introduction and Background

The recovery of the housing market is fundamentally important to an overall turnaround in Ireland's economic fortunes. Budget 2014 provides the Government with an opportunity to take important steps to promote a sustainable housing recovery. Ireland's property crash is recognised as one of the most severe ever experienced by a modern economy. Ireland's house price boom was one of the longest and biggest in Europe, with the average price of new houses rising by 250% and second-hand homes by around 330% from 1996 to 2006. But when the property bubble burst in 2008, Ireland's was the world's biggest property bust. Threshold believes that the measures outlined in this pre-budget submission have the potential to generate construction employment and economic growth, while fundamentally addressing the social needs of the thousands of families who seek Threshold's help with their housing problems.

Threshold is a national housing charity that provides housing advice to over 20,000 households across Ireland annually through our advice centres based in Dublin, Cork and Galway. Our professional housing advisors help to resolve housing problems and to prevent homelessness. Homelessness carries an enormous human cost for the individual or family affected, but it also carries a large economic cost for the State (for example, the cost of providing emergency homeless accommodation for an individual is up to 30,000 euro per annum). Threshold's success rate in preventing homelessness has been independently assessed as 83% and this is saving the State considerable resources on an annual basis.

Historically Threshold's work has centred on the private rented sector, where the majority of low income households make their home. For example, over three quarters (78%) of Threshold's clients have a household income of less than 15,000 euro per annum. A recent study by the Economic and Social Research Institute (ESRI) shows that households where the adults are under the age of 45 have been hit dramatically harder by the recession and a considerable number of our clients are in this category. Despite the difficulties they face, it remains the case that many of our clients have aspirations toward home ownership or would be more appropriately housed in local authority housing. Our work therefore has a wide scope, comprising not just the one in five households that now live in the private rented sector but also families who reside in the social rented and owner occupied sectors. This is reflected in the range of recommendations made in this submission.

Since the property crash of 2008, significant prominence has been given in public discourse to the problems faced by the owner occupied sector. This includes a fall in average house prices of between 50-60% from peak prices at the height of the housing boom. Davy Stockbrokers estimated in 2012 that over 50% of residential mortgage accounts were in negative equity. At the end of Q1 2013, the Central Bank reported there were 95,554 (12.3

per cent) private residential mortgage accounts in arrears of over 90 days. The effect on home owners has been devastating and remedying the problems caused must be a Government priority, but it is also important for the Government to recognise other threats to the housing market and to seize opportunities to generate greater efficiencies in the housing system by adopting new approaches.

A. Measures to overcome current threats to the housing market

The following recommendations are related to current threats facing the housing market and how to overcome them:

1. Increasing Housing Supply

The effect on housing supply of the property crash has been dramatic. The construction sector which accounted for almost 24% of GNP in 2007 now accounts for just over 5% leading to high and persistent unemployment among those formally employed in the sector. The effect on housing construction has been a 90% drop in output, from 93,000 housing units in 2006 to just 8,500 in 2012. **An estimated additional 20,000-30,000 properties are needed on an annual basis just to meet the demand generated by new household formation, which means that supply is not keeping pace with demand. This emerging housing shortage could become a full-blown crisis if left unaddressed in Budget 2014.**

Owner Occupation

The evidence of an emerging housing shortage is clear in urban areas. The most recent DAFT.ie property report shows that the total stock of property for sale nationally has fallen by one-third from an average of 60,000 in 2008-2011 to just over 40,000 currently, with just seven months of supply available in Dublin. While an estimated oversupply of 110,000 housing units did arise from the property crash, much of this housing is in geographical locations where there was no demand for housing in the first place, where there is little employment and where few families will want to live in the foreseeable future. **The Government and the Minister for Finance must consider a stimulus for housing construction in Budget 2014 that is directly based on the housing needs of families.**

Private rented sector

The private rented sector has grown from 9.5% of housing stock in 2006 to 18.5% in 2011. The sector has absorbed many Irish families affected by the economic downturn over the past five years. The mix of households living in the private rented sector now includes low income families in receipt of welfare payments, the working poor who are in low paid jobs, people who would traditionally accessed homeownership, as well as students and higher income workers. Threshold is now seeing a trend where it is becoming increasingly difficult

for our clients in receipt of rent supplement to source accommodation within urban areas, as they are increasingly being outbid by cash-paying tenants who are in employment.

Threshold's clients in the private rented sector face two simultaneous problems i) a reduction in their overall resources caused by reductions in rent supplement payments of up to 30% in recent years and ii) an overall reduction in the supply of available rented housing. A recent property market report states that there are currently 2,400 properties to rent in Dublin, at a time when students are just about to enter the market in their thousands. It is therefore critical that the housing market is kick-started to ensure that an overall lack of supply does not crowd out households with lower incomes. **Threshold would like to see the Minister for Finance promote institutional investment in the private rented sector by financial institutions, pension funds and private investors by means of the REITs mechanism introduced in Budget 2013.**

Social housing

Social housing supply is also being outstripped by demand. The national assessment of housing need is currently being finalised by the Department of the Environment, but recent media reports suggest that the numbers on housing waiting lists may be substantially higher than the 98,000 households in 2011. Since 2008, capital expenditure for social housing has been substantially reduced from €1.3 billion to €275 million in 2012. A variety of revenue funded programmes including long-term leasing, Rental Accommodation Scheme and NAMA-sourced housing is being used to complement reduced capital spending, but this is not filling the gap. Social housing output by local authorities and voluntary and co-operative housing bodies fell from just under 8,000 units in 2008 to less than 1,500 in 2012. The DECLG has stated that an additional 5,000 units of social housing will be delivered through a combination of these mechanisms in 2013, but this will not keep pace with the growth in waiting lists.

A financial stimulus package provided by the Department of Finance is now needed to reverse the decline in the size of the social housing sector and to safeguard its role in stabilising the overall housing market by addressing the needs of the most vulnerable. A 2004 Report by the National Economic and Social Council (NESC) recommended that the total stock be increased to 200,000 social housing units by 2012 in order to address Ireland's social housing infrastructure deficit. This target was not achieved and the current number of local authority and housing association units is approximately 155,000.

It should be a renewed goal of Government to have a social housing sector that comprises a reasonable proportion of overall housing stock. Threshold considers a proportion of 15% as a reasonable long-term target. In line with this ambition, the scale of annual social housing output should be increased to at least 9,000 units per annum. Long-term support for social housing will assist in stabilising the housing market and ironing out the peaks and troughs that have been a feature of the market to date. A significant stimulus package

for the purchase and construction of social housing should be included as a key measure in Budget 2014.

2. Maintaining the Stability of the Private Rented Sector

The buy-to-let sector is faced with the twin problems of receivership and repossessions which are having a negative knock-on effect on the position of tenants living in the sector. Given the scale of buy-to-let mortgage arrears and the growing importance of the private rented sector, **Threshold is calling on the Minister for Finance to support two critical measures that ensure that the family homes of tenants and overall stability of the private rented sector is protected from the volatility generated by mortgage arrears in the buy-to-let sector:**

i) Amend the Residential Tenancies Act 2004 to state that receivers must ‘step into the shoes’ of the landlord and take on their obligations; and

ii) Introduce a code of conduct on buy-to-let mortgage arrears similar to the CCMA for residential mortgages.

(more detail is provided in Appendix A)

Since the beginning of 2013, there has been a significant increase in the numbers of receivers being appointed to landlords’ interests in buy-to-let (BTL) properties under the deed of mortgage. In addition the Land and Conveyancing Law Reform Act 2013, which recently passed through the Seanad, will facilitate the repossession of greater numbers of dwellings in arrears through the Courts. Both the Governor of the Central Bank and the Minister for Finance have indicated that they envisage that a significantly greater number of BTL residences will be repossessed under the new regime (Mortgage Arrears Resolution Targets and courts system).

With over 29,000 out of a total stock of 150,000 BTL mortgages in arrears of over 90 days, a considerable number of rented properties are under threat of repossession. Tenants who live in these rented homes as their principal residence face serious disruption, and in some instances homelessness, if consideration is not given to their status as family residences. Families should be facilitated to continue renting these properties, where this is possible, and where repossessions are unavoidable, families should be informed at the earliest opportunity and receive appropriate notice in line with the Residential Tenancies Act 2004 (RTA). Given the slight but significant recovery in the housing market as reported by the Central Statistics Office and indications that rents are rising there is serious potential for this emerging recovery to be undermined by significant and unmanaged repossessions of BTL properties.

i) Amendment to Residential Tenancies Act 2004

The purpose of the RTA is to clearly specify the rights and obligations of both landlords and tenants, but it not explicit regarding the extent to which a receiver has to comply with the statutory obligations of the landlord. As a result, tenants are being placed in stressful situations where they are in the middle of a dispute between receivers and their landlord. Many receivers are interpreting the RTA in a manner which does not uphold the tenant's security of tenure, the right to legal notice of termination or the obligation to carry out repairs. Threshold's experience is that receivers are ignoring the RTA in a number of ways including: i) treating tenants as illegal occupiers ii) seeking to remove tenants without giving appropriate notice and iii) collecting rent but stating they have no obligations to the tenant. Tenants are being told to approach their former landlord when they are seeking repairs or the return of the rental deposit. Clearly no tenant will obtain satisfaction from a destitute landlord who retains no interest in the property.

In order to safeguard the stability and sustainability of the private rented sector, Threshold believes that clarification may be achieved through amendments for inclusion in the Residential Tenancies (Amendment) (No. 2) Bill 2012 which is currently before the Oireachtas. The introduction of an amendment that clearly places the landlord's obligations on the receiver is needed. It will clarify that the receiver 'steps into the shoes' of the former landlord in all respects. Threshold welcomes the recent announcement by the Minister for Housing and Planning that she will examine legislative change in this area. It is important to note that such an amendment will not impede the lender's security as under Section 34 of the Residential Tenancies Act 2004 a property may be legally recovered by giving the appropriate notice set out in law.

ii) Code of Conduct on Buy-to-let Mortgage Arrears

A code of Conduct on Mortgage Arrears (CCMA) has been introduced by the Central Bank for residential mortgage arrears and Threshold is seeking the introduction of a similar code of conduct on buy-to-let mortgage arrears. Such a code would:

- Introduce a transparent process for financial institutions, landlords and tenants;
- Set out the required steps for engagement with the landlord and tenant and the forms of communication required; and
- Ensure that financial institutions respect and uphold tenants' rights.

Threshold has raised this issue with the Minister for Finance and we have recommended that this code would be drafted in way that includes all of the relevant State stakeholders including the Department of the Environment, Community and Local Government and the Department of Social Protection as well as those representing the experiences of landlords and tenants. **A code of conduct on buy-to-let mortgage arrears would ensure that the**

requirements of landlord and tenant law become an explicit consideration in the receivership and repossession processes and safeguard the private rented sector from volatility arising from a higher scale of repossessions and receiverships.

We believe that both of these measures would bring greater certainty and stability as all of the parties would have legal certainty as to their position. A tenant will be empowered to switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and because there is no adverse impact on their tenancy. A receiver will be aware of the correct legal procedure to obtain possession of a buy-to-let property in accordance with landlord and tenant law.

3. Rollout of the Housing Assistance Payment

Threshold strongly supports the introduction of the Housing Assistance Payment (HAP). The new payment will remove a significant barrier to taking up work for those currently in receipt of rent supplement and it should therefore be prioritised as an important activation measure in Budget 2014. We are concerned, however, at the slow pace of progress in designing and implementing this new payment and the fact that none of the promised pilot schemes have yet been started. The delivery of this scheme is complex, involving local authorities, central Government and other actors, so it is vital to maintain the momentum. **We request that the Minister for Finance would set aside whatever resources are needed to overcome operational obstacles (e.g. IT systems, technical expertise) in order to ensure the speedy rollout of the HAP payment scheme in 2014.**

The best way to reduce the overall welfare budget for rent supplement is to provide long-term recipients with a real pathway back to work through the provision of a means tested payment. Many clients of Threshold have a desire to take up employment but are presently caught in the poverty trap caused by the rules of the rent supplement scheme operated by the Department of Social Protection. It is Threshold's experience that at least 20% of clients who move from the rent supplement scheme to the Rental Accommodation Scheme (on which HAP will largely be modelled) will take up an opportunity of work if presented. **In order to increase the proportion of those who secure employment, we would recommend that additional activation supports be provided by the Department of Social Protection as part of an overall housing and welfare package for HAP recipients with financial support provided in Budget 2014.**

Threshold is pleased to note that the design of HAP will involve direct payment to landlords, as this will make the scheme more widely acceptable and it will safeguard the security of the tenant. We note the legislative amendments introduced by the Department of the Environment to streamline differential rent schemes nationally and by the Department of Social Protection to make welfare payment deductions a more viable option under the Household Budget Scheme. Nevertheless many landlords have become seriously disaffected

with the rent supplement scheme due to payment cuts and administrative delays. **We believe that an additional incentive is necessary to ensure that a substantial cohort of rent supplement recipients are transferred to the HAP payment. The success of HAP will rely on landlords engaging in longer term rental arrangements. Rents in the private rented sector are currently increasing and it is our belief that the tax code could be amended for landlords that engage more fully with the State in providing accommodation for low income households. Models pursued in other European countries, such as Germany, could be considered.**

Threshold has engaged with the Department of the Environment and the Department of Social Protection to offer our assistance in the piloting of the HAP payment, especially for households who are homeless or at risk of homelessness. In this respect, we are undertaking exploratory research on behalf of the Dublin Region Homeless Executive. People who are homeless should be treated as a priority under HAP and an interim arrangement should be introduced that will enable homeless people to secure HAP accommodation as quickly as possible under the new pilot initiatives. **Given the high costs associated with providing emergency homeless accommodation, we would ask the Minister for Finance would ensure that a provisional financial arrangement is put in place to ensure that the current restrictions caused by rent supplement limits are not a barrier to securing accommodation for homeless people under the new HAP scheme. Where necessary, expenditure on HAP accommodation for individual homeless people should be permitted to exceed those levels. This will still result in a considerable net saving for the State.**

B. Measures to improve the efficiency of the housing system

The following recommendations are related to overcoming inefficiencies and improving overall effectiveness of the housing system:

4. Targeting of Homelessness Expenditure

The Department of the Environment will incur expenditure of approximately 50 million euro on homeless services in 2013. It is critical that the full potential of the State's considerable investment in homelessness delivers results by targeting resources at those measures that are most likely to succeed. **The Government's revised homelessness strategy aims to reduce investment in emergency homeless services in favour of more lasting solutions to homelessness and measures to prevent it. The homelessness budget should be realigned in Budget 2014 to reflect these changed priorities.**

A lot of resources are currently consumed by the provision of emergency homeless accommodation that delivers poor outcomes for homeless people because it does not lead to a longer term housing solution. For example, 70% of homeless people are capable of independent living but few are supported with move-on housing. On the other hand, only

10% of people in homeless services are chronic homeless but they take up 50-60% of resources. Long term homeless people also tend to consume resources from other services such as health and the justice system. **Threshold strongly supports the delivery of a housing-led approach where a person's long-term housing need is made a priority as the best solution both for the individual and the Exchequer.**

Clearly prevention is better than cure when it comes to homelessness, but this type of work goes largely unfunded at present despite its efficiency and cost effectiveness. Both the Government strategy on homelessness The Way Home 2008-2013 and the recent Homelessness Policy Statement identify the role of prevention measures. Housing advice and advocacy is identified in both as having a key role in preventing homelessness among vulnerable and at risk households. Threshold's services prevent at least two families a day from becoming homeless which amounts to 500 households annually. A housing advisor costs just 24 euro per hour, so this intervention is highly cost effective. **We would like to draw the attention of the Department of Finance to the potential outcomes to be achieved through a rebalancing of existing homelessness spending towards the provision of homelessness prevention services.**

It is acknowledged by the Department of the Environment that Section 10 of the 1988 Housing Act, which governs the scope of the remit of local authorities to fund homeless services is now out of date. This means that local authorities are not currently empowered to fund homelessness prevention projects. Threshold is seeking legislative amendments to the Housing Act, 1988, to ensure that homelessness funding is not just available to services that help people who are already homeless but also to services that prevent homelessness. **While the importance and cost effectiveness of homelessness prevention is widely accepted, the current wording of Section 10 of the Housing Act 1988 does not make any provision to fund them. We would ask the Minister for Finance, together with the Department of the Environment, to address this loophole in the law by introducing legislative amendments in the 2014 Finance Bill.**

5. Shifting the Cost Burden of Regulating Standards

Local authorities are currently responsible for enforcing accommodation standards in the private rented sector. These are prescribed in the Housing (Standards for Rented Houses) Regulations 2008 and 2009 which came into force in their entirety this year. The most significant aspect of this legislation was the abolition of the traditional bedsit with shared toilet facilities. Threshold has warmly welcomed this change as a positive step in modernising the private rented sector. **Given the growing number of rented properties in Ireland and the limited capacity of local authorities to inspect all properties in their catchment area, Threshold is proposing that in future the burden of proof should rest with the landlord who will be required to provide a certificate to the local authority confirming that their property is legally compliant with all aspects of the law.**

A total of 1,683 clients presented to Threshold with concerns related to standards and repairs in 2012. Many lacked the basic necessities for living, including for example, hot and cold running water and basic protection from cold and damp. A considerable proportion of these properties were funded by the State under the rent supplement scheme. It is totally unacceptable that the State should subsidise landlords who break the law. Given that responsibility for many of these properties will be shifted to local authorities under the new Housing Assistance Payment, it is vital that this opportunity is taken to remove substandard properties from the housing system. It is Threshold's view that the only solution to this problem is to ensure that all accommodation is certified as compliant with minimum standards prior to being offered for rent and to shift the burden of proof to the landlord.

The total resources allocated to local authorities to carry out inspections in 2012 was approximately 2.4 million euro. This money is derived from a portion of the tenancy registration fees paid by landlords to the Private Residential Tenancies Board (PRTB). Almost 27 million euro has been provided to local authorities since a new funding approach to inspections was introduced in 2005. The latest available figures relate to 2011 and show that almost 17,000 properties were inspected in that year with over 6,000 (37%) failing to comply with the minimum standards. Given the considerable increase in size of the private rented sector over the past five years and the increased requirements to ensure that all properties that receive state payments are inspected, a question arises as to the efficacy of the current approach.

For example, Dublin City Council, which has a conscientious, pro-active and effective approach to private rented inspections, succeeds in inspecting approximately 1,500 of the 80,000 rented properties in its area on an annual basis. It does so by targeting the properties most likely to be non-compliant. Other local authorities carry out inspections but are less effective. The 2011 statistics show that seven local authorities had detection rates of less than 5%, compared with the national average of 37% and the higher rates achieved by Dublin City Council (54%). Between them, these seven local authorities carried out 3,832 inspections but found only 70 substandard properties. In the current economic climate, it is unacceptable that resources for inspections would not be put to maximum available use when the problem of substandard accommodation is so prevalent in the private rented sector.

Under the proposed new certification scheme, landlords would have to prove their compliance with basic quality and safety standards before a property could be rented, rather than depending on inspections by local authorities. 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 for a landlord not to do so. This scheme would be beneficial to the State in a number of ways. The onus would be put on landlords to prove that they are compliant with all aspects of the law, not just dwellings standards, but also fire safety, Building Energy Rating (BER) and registration with the PRTB (as appropriate). A certification scheme linked to tax compliance would inevitably increase Government

revenue. A prospective tenant would be assured that the dwelling complies with all legal requirements and the certificate could, for example, be presented to a Department of Social Protection representative to process rent supplement payments.

A certification scheme will greatly assist with the rollout of the Housing Assistance Payment. The introduction of the new Housing Assistance Payment means long-term rent supplement recipients will in future become the responsibility of the local authority who will make payment to the landlord. This will put requirement on local authorities to inspect over 40,000 properties, which is impossible under current arrangements. The only way to resolve this problem without incurring the cost of an enormous inspectorate is to shift the burden of responsibility to the landlord by means of a certification requirement. **We would ask the Department of Finance to support the introduction of a certification scheme, complemented by a local authority inspection and verification system, as the most cost effective mechanism for ensuring that all accommodation subsidised by the State is legally compliant.**

6. Tenancy Deposit Protection Scheme

Threshold welcomes the commitment by the Minister for Housing and Planning and the Government to introduce a tenancy deposit protection scheme at the final stage of the Residential Tenancies (Amendment) (No. 2) Bill 2012 which is currently before the Oireachtas. This is on foot a feasibility study carried out by Indecon International Economic Consultants on behalf of the Minister which made positive conclusions on the viability of a deposit protection scheme. **Threshold believes that the Deposit Protection Scheme will generate revenue for the State. It is therefore critical that the pool of rental deposits which is estimated at 250 million euro is lodged with the scheme at the earliest opportunity. The NTMA or another body could invest this fund (equivalent to the amount sought under the National Solidarity Bond) and generate deposit interest. Threshold would like to see this happen as soon as possible, and should seed funding be required to make the scheme profitable more quickly, then this should be provided by the Department of Finance.**

Deposit retention is a major source of disputes within the private rented sector. It is standard practice that a deposit (usually equivalent to one month's rent) is paid by the tenant to the landlord at the start of the tenancy, together with the first month's rent. The deposit is held on trust for the tenant by the landlord for the duration of the tenancy, and subject to certain conditions, is to be returned. The problem of deposit retention arises because many landlords regard the deposit as income and are reluctant to return it. The illegal retention of deposits is the most common area of dispute seen by both Threshold (up to 3,000 cases yearly) and the PRTB (37% of all disputes in 2012). A tenant on a low income who does not secure the prompt return of the deposit faces the prospect of becoming

homeless as they do not have the money to put down on a new home. This problem is increasing during the current economic downturn, as often landlords simply don't have the deposit to hand back at the end of the tenancy.

The introduction of a deposit protection scheme is an internationally recognised solution that will resolve the problem of deposit retention by ensuring the money is accessible at the end of the tenancy. It will have a number of significant financial benefits for the State i) a large pool of deposits can be invested and self-fund the scheme iii) deposits paid by the State under the rent supplement scheme and new Housing Assistance Payment will be protected and returned to the State which is not currently the case iv) deposits will be available to tenants affected by receivership or repossession and not entangled with the landlord's debts and iv) tenants will not have to avail of expensive emergency homeless accommodation because of the loss of a deposit and the consequent inability to afford new accommodation. The scheme will also have a significant effect on the deployment of resources within the Private Residential Tenancies Board which is currently congested with deposit retention disputes.

The PRTB is obliged to give a hearing to all complaints in relation to deposits, even where it is clear that there is no legal basis for the landlord's failure to return the deposit. Deposit retention amounts to almost 40% of all disputes heard by the PRTB annually. Over three-quarters (76%) of all such disputes in 2012 resulted in a determination that some or all of the money was to be returned to the tenant, thus proving that most deposits are illegally withheld. Dispute resolution takes an average of 8 months in the PRTB. In many cases where tenants secure a determination order, they face significant difficulties in having the determination enforced. Given the significant hearing and enforcement costs associated with the current PRTB process, the proposed deposit protection scheme will be a more cost effective approach to resolving these disputes. Threshold is asking that resources be provided in Budget 2014 to ensure that the deposit protection scheme can become operational as soon as possible, in order to reduce dispute costs for the State.

Appendix A: Threshold, national housing charity – Receiver Appointments to Private Residential Property, Repossessions of Buy to Let mortgage dwellings, and Code of Conduct on Buy-to-let Mortgage Arrears

The private rented sector has almost doubled in size in recent years and now accounts for one in five households nationally and an even greater number in larger urban areas. Since the beginning of the year, there has been a significant increase in the numbers of receivers being appointed to landlords' interests in buy-to-let (BTL) properties under the deed of mortgage. In addition the Land and Conveyancing Law Reform Bill 2013, which recently passed through the Seanad, will facilitate the repossession of greater numbers of dwellings in arrears through the Courts. Both the Governor of the Central Bank and the Minister for Finance have indicated that they envisage that a significantly greater number of BTL residences will be repossessed under the new regime (Mortgage Arrears Resolution Targets and courts system). Both have also indicated that the principal family residence will be protected as far as possible.

The current stock of 150,000 buy-to-let mortgages were approved by financial institutions on the basis that these would become the homes of tenants. With over 29,000 mortgages in arrears of over 90 days, a considerable number of these homes are under threat of repossession. Families who live in these rented homes as their principal residence face serious disruption, and in some instances homelessness, if consideration is not given to their status as family residences. Families should be facilitated to continue renting these properties, where this is possible, and where repossessions are unavoidable, families should be informed at the earliest opportunity and receive appropriate notice in line with existing legislation. Given the slight but significant recovery in the housing market as reported by the CSO and indications that rents are rising there is serious potential for this fledgling recovery to be undermined by significant and unmanaged repossessions of BTL properties.

In spite of the fact that regulation of the rented sector is governed by legislation (Residential Tenancies Act 2004) there is currently no clear process as to how financial institutions should engage with landlords and tenants. In some cases, a tenant may only become aware of a repossession order at the time it is enforced by the Sheriff. In addition, many receivers are demanding rental payments without providing confirmation that they are legally entitled to the rent or that the tenant's rights will be upheld. This is causing significant confusion for both tenants and landlords.

In order to safeguard the stability and sustainability of the private rented sector, Threshold is respectfully seeking the support of the Minister for Finance for the following:

- a) an amendment to the Residential Tenancies Act 2004 (RTA) to clarify the obligations of receivers appointed to BTL properties;
- b) the introduction of a Code of Conduct on Buy-to-let Mortgage Arrears that sets out how tenants and landlords should be treated by financial institutions.

a) Amendment to Residential Tenancies Act 2004

The RTA sets out the statutory rights and obligations of landlords and tenants. It is implicit that a receiver or a mortgagee in possession should step into the shoes of the landlord, but this is not happening in practice. Threshold's experience is that receivers are ignoring the RTA in a number of ways including: i) treating tenants as illegal occupiers ii) seeking to remove tenants without giving appropriate notice and iii) collecting rent but stating they have no obligations to the tenant. Tenants are being told to approach their former landlord when they are seeking repairs or the return of the rental deposit. Clearly no tenant will obtain satisfaction from a destitute landlord who retains no interest in the property.

Threshold believes that clarification may be achieved through the following proposed amendments for inclusion in the Residential Tenancies (Amendment) (No. 2) Bill 2012 which is currently before the Oireachtas. Threshold also advocates that in view of the uncertainty within the existing framework and the possibility that serious disruption to the private rented market will ensue that a Code of Conduct setting out the obligations of the various parties be arrived at:

Amendment to 5(1) of the Residential Tenancies Act, 2004 – Amendment of the definition of “landlord” to include the underlined –

“landlord” means the person for the time being entitled to receive (otherwise than as agent for another person) the rent paid in respect of a dwelling by the tenant thereof, which for the avoidance of doubt includes any receiver appointed to a previous landlord’s interest in the dwelling, provided that such a receiver has all the necessary powers to comply with all landlord obligations under this Act, and, where the context so admits, includes a person who has ceased to be so entitled by reason of the termination of the tenancy.

Insertion of new section 5A into the Residential Tenancies Act, 2004

A tenant who has received confirmation of the appointment of a receiver to the landlord’s interest in the dwelling is not required to inquire whether the receiver is authorised to act or has been validly appointed.

Threshold understands that the Minister of State with responsibility for Housing and Planning, Jan O’Sullivan T.D., is considering introducing a legislative amendment. In the recent debate on the Land and Conveyancing Law Reform Bill 2013, the Minister for Justice and Equality, Alan Shatter T.D. stated that he would raise the issue with the Minister for the Environment, Community and Local Government.¹

The introduction of such an amendment will be important from a financial perspective because it will help to optimise the income to be derived from the receivership process. The

¹ Seanad Éireann, Debates, 16th July 2013, 51-3

tenant will switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and they will remain paying rent because there is no adverse impact on their tenancy.

b) Code of Conduct on Buy-to-let Mortgage Arrears

A code of Conduct on Mortgage Arrears (CCMA) has been introduced by the Central Bank and Threshold seeks the introduction of a similar code of conduct on buy-to-let mortgage arrears. Such a code would:

- Introduce a transparent process for financial institutions, landlords and tenants.
- Set out the required steps for engagement with landlord and tenant and the forms of communication required
- Ensure that financial institutions respect and uphold tenants' rights

This code should be drafted in way that includes all of the relevant State stakeholders including the Department of the Environment and the Department of Social Protection and also includes those representing the experiences of landlords and tenants.

Threshold would be pleased to provide additional information on any of the above, should this be required.