



Submission to the Strategy for the Private Rented Sector

Threshold
21 Stoneybatter
Dublin 7
www.threshold.ie

November 2016

1. KEY RECOMMENDATIONS

1.1 Executive Summary

Threshold is a national housing charity that provides frontline advice and support services to people with housing problems across Ireland. Last year, we dealt with 32,000 housing queries from vulnerable households and prevented 8,550 people from becoming homeless.

Threshold proposes a broad range of recommendations to ensure the National Strategy paves the way for healthy and sustainable private rented sector.

Section A- Security of Tenure makes recommendations in relation to rent certainty measures, indefinite tenancies, deposit protection, protection in the event of sale of rented property and licensees.

Section B- Social Housing Supports makes recommendations in relation Housing Assistance Payment and Rent Supplement. It also illustrates methods for homelessness prevention such as the Tenancy Protection Service, Access Housing Unit and the important role advice and advocacy play in preventing homelessness.

Section C- Minimum Standards makes recommendations including an 'NCT for housing' and how to address overcrowding, fuel poverty and carbon monoxide monitoring.

Section D- Promoting Affordable Supply highlights how the State could increase affordable supply through purchasing existing properties by using State land, taxation and the promotion of Institutional Investment. Affordable Rental models are also discussed such as the Cost Rental System.

Section E- Student accommodation & Miscellaneous Measures addresses the issues of student accommodation, mortgage arrears and repossession of owner occupied properties and tax relief for renters.

1.2 Summary of Recommendations

Threshold proposes the following policy recommendations:

A. SECURITY OF TENURE

Recommendation: Amend the Residential Tenancies Acts 2004-2015 to provide for rent certainty as to the rate of increase in rents.

Recommendation: Ensure that tenants are afforded greater security in their homes, by introducing indefinite tenancies.

Recommendation: Introduce a defence for tenants on the grounds of hardship.

Recommendation: Expedite the roll-out of the Deposit Protection Scheme.

Recommendation: Introduce a definition of deposit into legislation.

Recommendation: Establish a protocol between the Residential Tenancies Board (RTB) and relevant Local Authorities, so that a Local Authority is alerted when an over-holding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Give Local Authorities a clear obligation to find alternative accommodation for the tenant within a specified timeframe through a fast track accommodation finding service.

Recommendation: Introduce legal safeguards to give residential tenants, similar rights to the tenants of commercial properties, to allow them to continue in their tenancy during and after the sale of a rented property.

Recommendation: Amend the Residential Tenancies Act 2004 to extend the definition of 'landlord' to include both receivers and lenders in relation to repossession of a property.

Recommendation: Introduce a code of conduct for buy-to-let mortgage arrears.

Recommendation: Amend the Residential Tenancies Acts 2004-15 to bring licensees under the remit of the Residential Tenancies and introduce standard license agreements with minimum rights for licensees mandatory.

B. SOCIAL HOUSING SUPPORTS

Recommendation: As HAP is a social housing support all Local Authorities should be responsible for recruiting landlord to the scheme and be responsible for providing alternative accommodation for a tenant in the event that a HAP tenancy is terminated.

Recommendation: Ensure that all HAP limits relate to market rents and that the scheme can provide discretionary uplifts where necessary.

Recommendation: Reform the administration of HAP to remove unnecessary delays.

Recommendation: Increase rent supplement (RS) limits to reflect current market rents so as to reach a sufficient level to meet the accommodation needs of eligible persons, as set down by legislation. The setting of new RS limits should be more targeted, related to submarkets within each Local Authority area and more related to individual circumstances. This will mean that the level of support available to tenants will be less visible to the market.

Recommendation: Reform the administration of the RS scheme to reflect the realities of the rental market.

Recommendation : Immediately roll out the TPS nationally

Recommendation: Provide additional resources for the AHU to extend its visiting tenancy sustainment services to those both in the private and social rental sectors that will support more people to sustain their tenancies and prevent them from entering into or returning to homelessness.

Recommendation: Provide appropriate and secure funding for the delivery of housing advice and advocacy supports to help resolve housing problems and prevent homelessness

C. MINIMUM STANDARDS

Recommendation: Introduce a 'NCT' for housing scheme.

Recommendation: Introduce guidelines to prevent overcrowding in private rented accommodation.

Recommendation: Introduce a minimum BER rating for private rented accommodation.

Recommendation: Make it a requirement under minimum standards legislation for the provision of carbon monoxide detectors in private rented accommodation.

D. PROMOTING AFFORDABLE SUPPLY

Recommendation: Social housing, affordable rented accommodation and affordable private housing should be built in unison in a single development.

Recommendation: Ensure that affordable rented accommodation remains as rented accommodation for the long-term.

Recommendation: Make use of existing state land to increase supply of social and affordable supply

Recommendation: Institutional investment in the private rented sector should be promoted and incentivised by the State but with safeguards put in place to ensure that tenant's rights are protected.

E. STUDENT ACCOMODATION & MISCELLANEOUS MEASURES

Recommendation: Introduce measures to increase the supply of student specific accommodation.

Recommendation : Update Code of Conduct on Mortgage Arrears for Owner Occupied properties to take into account tenant rights

Recommendation: Re-introduce tax relief for rent for tenants in private rented accommodation

1.3 Context

Over the past number of years Threshold has been a strong advocate for the introduction of a National Strategy for the Private Rented Sector (PRS). Key to the success of such a strategy is ensuring affordability, security of tenure and equality amongst tenants. The growing numbers of families living in the private rented sector (PRS) and the State's own reliance on the sector to meet social need through Rent Supplement, Rental Accommodation and most recently Housing Assistance Payment means that the strategy must recognise and support the PRS as a long-term housing option.

In doing so, the strategy should take a human rights based approach to housing. In the groundbreaking report "Private Rented Accommodation: The Forgotten Sector of Irish Housing" Threshold in 1982 strongly recommended that strong consideration be given to revising the Constitution to include an Article guaranteeing the right to housing and that this should be seen as the first step towards developing a housing policy.¹

Thirty two years later in 2014, the Constitutional Convention called for greater constitutional protection to be afforded to economic, social and cultural rights including the express inclusion of the right to housing.² In the absence of such rights in domestic law it is imperative that the strategy is underpinned by Ireland's international human rights commitments. The Universal Declaration of Human Rights³ and the International Covenant on Economic, Social and Cultural Rights⁴ enshrine the right to adequate housing as a clear component of the right to an adequate standard of living. In

¹ O'Brien, Lancelot & Dillion, Brian "Private Rented Accommodation: The Forgotten Sector of Irish Housing" 1982 at p.93

² Constitutional Convention, Press Release "[Constitutional Convention Votes in Favour of Reforming Economic, Social & Cultural rights in the Constitution](#)", 23 February 2014.

³ Article 25.1 of the Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

⁴ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights states that "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

order to live in security, peace and dignity⁵ the UN Committee on Economic, Social and Cultural Rights (CESCR) has identified the following criteria as necessary elements for the fulfilment the right to adequate housing namely, legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location ; and cultural adequacy.⁶ In 2015, the CESCR expressed its concern about the difficult housing situation in Ireland including the lack of availability of social housing and ineffective social supports which do not reflect rent increases.⁷

To ensure the fulfilment of right to adequate housing, and against the backdrop of skyrocketing rents, supply shortage and increased homelessness, the Strategy for the Private Rented Sector must be adequately resourced with clear targets to address issues like long-term rent certainty, security and protection from eviction, increasing affordable supply, social housing and social assistance payments, improving the quality of rented housing, promoting institutional investment and dealing with the difficulties in the buy-to-let sector

⁵ UN Committee on Economic, Social and Cultural Rights, [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#) at para 7.

⁶ UN Committee on Economic, Social and Cultural Rights, [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#) at para 8.

⁷ 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 at, p.8.

2. SECURITY OF TENURE

2.1 Rent Certainty

Economic evictions arising from unaffordable rent increases are the main cause of family homelessness in the PRS. The measures introduced as part of the Residential Tenancies (Amendment) Act 2015 which extended the rent review period from 12 to 24 months provided a welcome breathing space for many tenants, however, this is only a temporary measure with a sunset clause after 4 years. A more long-term approach to regulating rents is needed.

The recently published "A Rent Forecasting Model for the Private Rented Sector in Ireland" by John McCartney, Director of Research Savills Ireland predicts increases of around 25% in the next 30 months.⁸

The latest Daft.ie rental report for Q2 2016 found on average rents had increased by 11% on the same quarter in the previous year and that national average rent stood at €1,037 pm.⁹ If we apply the Savills forecast to this we will see average rents increase to €1296.25pm.

If rents are allowed to continue to rise unchecked this will put many thousands of households at risk of hardship and homelessness.

Rent Certainty will not only bring obvious benefits to tenants struggling to pay their rent, it will also have a positive budgetary impact for the state. It is estimated that around 99,000 households receive State support for housing in the private rented sector, or 96,207 (32%) of all RTB registered tenancies. These figures exclude dwellings let by local authorities as well as properties which are managed by AHBs. The State is "a significant funder of activity in the private rental sector, with over one half of all rents received by private landlords coming from Rent Supplement, the Rental Accommodation Scheme and other schemes, at an annual cost to the Exchequer of over €500m."¹⁰ If rents continue to rise at their current rate of over 10% it will mean an additional annual cost for such housing support programmes.

Threshold has proposed the introduction of rent certainty measures, whereby future rent increases in areas of high rental inflation are linked to changes in the cost of living¹¹. Threshold's proposal also recommends that the Minister for Housing be given the power to make regulations for the setting of initial rents in areas with high levels of demand and low levels of supply with reference to an index of rents.

This model of regulating rent is the norm in many developed European economies. Rent certainty measures are an essential component of a well-regulated housing market, and benefit both

⁸ McCartney, J "A Rent Forecasting Model for the Private Rented Sector in Ireland" 2016 p14

⁹ Daft.ie Q2 2016 Rental Report

¹⁰ Department of the Environment, Community, and Local Government (2014), [Social Housing Strategy 2020: Support, Supply and Reform](#) at pp. .x-xi.

¹¹ <http://www.threshold.ie/news/2015/06/15/thresholds-proposals-for-rent-certainty/>

landlords and tenants by ensuring that rent increases (and indeed decreases) are foreseeable, predictable, and reasonable. Rent certainty should be introduced as soon as possible.¹²

Recommendation: Amend the Residential Tenancies Acts 2004-2015 to provide for rent certainty as to the rate of increase in rents.

2.2 Indefinite Security of Tenure

The current degree of security for tenants in the PRS is not sufficient and needs to be increased. The PRS has, in the past, been viewed as a transition or stepping stone to other tenures such as home ownership or social housing, however the findings of the Threshold report in 1982 resonate even louder today:

*"For many people in fact it is not a precarious "stepping stone" which eventually leads to better permanent accommodation; these people are trapped on the "stepping stone" without reaching, or even hoping to reach, firmer ground."*¹³

A tenant is currently protected in their property for up to four years. After an initial six-month period, landlords can only terminate the tenancy under certain circumstances over the following 3.5 years. This protection does not go far enough to meet the needs of longer-term renters and families with school-going children who need to remain in the communities in which they have put down roots. According to figures from 1 January to 31 October 2016 38% of Threshold's clients are households with children.¹⁴

Threshold believes that tenants should have indefinite security of tenure. This view is supported by NESCC, who have stated that in most cases tenancies should be of indefinite duration.¹⁵ This objective of ensuring greater security of tenure for tenants may be achieved by removing the four-year limit on Part 4 tenancies, so as to create indefinite periods of tenure security. These measures would give security and stability to those who want to make a home in the PRS.¹⁶

In order to provide the security of tenure necessary for a stable private rented sector, indefinite tenancies have to be underpinned by legislation. Such tenancies cannot simply be voluntary in nature.

Therefore, providing that a landlord and tenant comply with their respective responsibilities under S12 and S 14 of the Residential Tenancies Acts 2004-15, it should not be possible to terminate an indefinite tenancy except in accordance with S34 of the Act, revised to take into account Threshold's suggested amendments outlined below to promote greater security of tenure.

¹² [Threshold, Pre-Budget Submission to the Department of Housing, Planning and Local Government, September 2016](#) at p.9.

¹³ O'Brien, Lancelot & Dillion, Brian, *"Private Rented Accommodation: The Forgotten Sector of Irish Housing"* 1982, at p.5

¹⁴ In addition Threshold figures show that whilst over half of our clients are protected through a 'Part 4' Tenancy, only 23% are in a 'Further Part 4' tenancy.

¹⁵ [NESCC, Ireland's Rental Sector: Pathways to Secure Occupancy and Affordable Supply](#), 2015, pp. 62-69.

¹⁶ [Threshold, Pre-Budget Submission to the Department of Housing, Planning and Local Government, September 2016](#) at p.8.

An instructive example of the application of indefinite security of tenure can be found in the German Civil Code. This provides for private tenancies which can either be open ended or unlimited or limited for a fixed term however they are mainly indefinite. The grounds upon which a landlord can end an open ended tenancy are limited to where they can demonstrate a legitimate interest, namely:¹⁷

- Tenant in breach
- Landlord needs property for their own/family use
- If tenancy agreement prevents the landlord from making appropriate economic use of the property

In an open ended tenancy the normal notice period is three months which is increased after five and eight years up to nine months. The average length of tenancy is 9 years.

Recommendation : Ensure that tenants are afforded greater security in their homes, by introducing indefinite tenancies

Hardship defence

In addition German law provides a hardship defence for tenants. Under Irish law a landlord can only end a tenancy in accordance with the Residential Tenancies Act 2004 and if a tenant wishes to dispute the validity of the notice or the person issuing it they have 28 days within which to refer a dispute to the Residential Tenancies Board (RTB).

Threshold proposes the insertion of a defence for tenants where they are given notice similar to the provision provided under German law whereby if a landlord wants to terminate an open-ended tenancy for ordinary reasons, the tenant may object to the notice and seek continuation if it would constitute a hardship for him or his family.¹⁸

Hardship could arise, for example, on grounds of age, a serious disease or that substitute residential space cannot be procured on reasonable terms.

In Germany if an agreement between the landlord and tenant cannot be reached the duration and the terms under which the tenancy is continued are determined by a judge. The decided duration usually amounts to between six months and a maximum of three years.

The introduction of such a defence could be essential in providing security of tenure protection for the most vulnerable.

Recommendation: Introduce a defence for tenants on the grounds of hardship.

¹⁷ Fitzsimons, Jonathan *"The German Private Rented Sector-A Holistic Approach"* Working Paper 2014, The Knowledge Centre for Housing Economics, at p.13.

¹⁸ Fitzsimons, Jonathan *"The German Private Rented Sector-A Holistic Approach"* Working Paper 2014, The Knowledge Centre for Housing Economics, at p.15.

2.3 Deposit Protection Scheme

In 2015 Threshold dealt with 969 cases where tenants had difficulty getting their deposit back from their landlord in a timely manner. The introduction of a Deposit Protection Scheme, as set out in the Residential Tenancies (Amendment) Act 2015, will make a real difference to the lives of tenants who face financial difficulties due to the unlawful retention of their deposit or who face the prospect of becoming homeless because they are unable to pay for a new private rented home.

Landlords are required to promptly return any deposit paid by the tenant, unless there are arrears in rent (or other taxes or charges payable under the lease), or damage to the property over and above normal wear and tear. The reality is that landlords are often unwilling or unable to return their tenant's deposit. The failure to return a deposit can place a tenant at risk of homelessness. A typical deposit of €1,000 will often represent the full extent of an individual or family's savings, and the failure to return the deposit creates a significant obstacle to obtaining alternative accommodation.

The introduction of a deposit protection scheme in Ireland, whereby deposits will be held by a third party or the RTB, will ensure that deposit monies are safeguarded and returned promptly to the tenant (or landlord) at the end of the tenancy. Such a scheme will also have the effect of freeing up the resources of both Threshold and the RTB to deal with more complex housing difficulties, such as illegal evictions. In circumstances where a landlord is facing financial difficulties, a deposit protection scheme will ensure that the deposit is not entangled with other debts owed by the landlord. It is important that this new scheme is set up as soon as is possible.¹⁹

In the Irish context it is helpful to look at the success of deposit protection schemes that are currently in place in England and Wales, Scotland, Northern Ireland and several other jurisdictions. These schemes provide a simple dispute resolution mechanism for one of the most frequently contentious areas of the landlord/tenant relationship. England and Wales was the first UK jurisdiction to enact a deposit protection scheme in 2007.²⁰

The Introduction of a Tenancy Deposit Protection scheme in Scotland in 2012 had an immediate impact with two thirds of tenants stating they were aware of deposit protection in 2013 compared to 40% for the previous year.²¹ The largest provider under the scheme, Safe Deposits Scotland, found that, in the first two years since launching, high numbers of landlords and letting agents have paid in deposits to SafeDeposits without hesitation since 2012.²²

In the Scottish model landlords must protect their tenants' deposits with an Approved Scheme and issue them with certain Prescribed Information within 30 working days of receiving the deposit. There are currently three approved schemes in operation.

¹⁹ [Threshold, Pre-Budget Submission to the Department of Housing, Planning and Local Government, September 2016](#) at p.6.

²⁰ The Dispute Service Annual Review 2014-15 In England and Wales the Tenancy Deposit Scheme (TDS) is a government approved tenancy deposit protection scheme operated by The Dispute Service Ltd. In England and Wales they protect 1.13 million deposits accounting for £1.34 billion as of 31st March 2015. The service received 105,167 calls and 11,900 disputes. 53% of disputes were made by tenants and 61% of disputes saw an award split between the parties.

²¹ mydeposits Scotland, [Press Release](#), 3rd July 2013

²² Safe Deposits Scotland, "[SafeDeposits Scotland, Two years on](#)" 2014, at p. 5.

Should a landlord fail to protect deposits or provide the Prescribed Information, tenants can apply to Court for sanctions against the landlord. Financial penalties, payable to the tenant, will be imposed on a landlord who fails to comply. The court may order the up to three times the amount of the deposit be paid to the tenant, should the landlord be found to have failed to carry out his obligations. The Scottish model allows the tenant three months to apply to court for a sanction against the landlord after the tenancy has ended.

Recommendation : Expedite the roll-out of the Deposit Protection Scheme.

2.4 Definition of Deposit

As part of the introduction of the deposit protection scheme it is essential that a deposit is clearly defined and that practices such as front loading of rent, key money or other measures are prohibited. Threshold in our submissions in relation to the Residential Tenancies (Amendment) (No.2) Bill 2012 has provided a definition of deposit as:

“An amount of money paid or payable by the tenant or any other person as security for the observance and performance of any of the tenancy obligations of the tenant under the Act or under a tenancy agreement; but does not include any sum payable or paid by way of rent.”

In our proposals for the introduction of rent certainty measures we provided the following definition:

“A sum of money held (whether by the landlord or otherwise) as security for the performance of the tenant’s obligations arising under or in connection with a lease or tenancy agreement.”

Ancillary to any definition of deposit legislation should include a provision similar to s. 213(7) of the United Kingdom Housing Act 2004, stating that in connection with a private tenancy no person may require a deposit which consists of property other than money.

Recommendation: Introduce a definition of deposit into legislation.

2.5 Protection for Tenants under Notice

Under the Residential Tenancies Act 2004, a landlord seeking to end a tenancy must provide notice of termination in writing to the tenant. The minimum notice period is 28 days and the maximum notice period was extended from 112 to 224 days (for tenancies of eight years or more) in the Residential Tenancies (Amendment) Act 2015. In a normally functioning housing system a tenant should be easily able to secure new accommodation within the notice periods set out in law.

The reality is that many households who receive a valid notice of termination from their landlord face becoming homeless due to the inability to secure alternative accommodation. In Threshold’s experience this is fast becoming one of the key drivers of homelessness. 50% of the tenant households (554 households) supported by the Cork TPS in 2015, who were deemed to be at immediate risk of homelessness, were in the process of having their tenancy terminated. This problem is also reflected in the number of disputes being heard by the RTB related to tenants

occupying a tenancy beyond the expiry of the notice period ('over-holding'), which amounted to 508 in 2015.

A protocol should be developed between the RTB and relevant local authorities, so that a local authority is alerted when an over-holding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Local authorities should assume an obligation to source suitable alternative accommodation in either the PRS or in a relevant social housing unit (if the person qualifies for social housing), within a specified timeframe through a fast track accommodation finding service. Such a service could be run in conjunction with the community/voluntary sector, possibly as an extension of Threshold's TPS service.

Recommendation: Establish a protocol between the Residential Tenancies Board (RTB) and relevant Local Authorities, so that a Local Authority is alerted when an over holding case which identifies a *bona fide* inability to secure alternative accommodation as the source of the dispute. Give Local Authorities a clear obligation to find alternative accommodation for the tenant within a specified timeframe through a fast track accommodation finding service.

2.6 Continuation of Tenancy upon Sale of Rented Property

The number of rented households facing a loss of their home due to the proposed sale of the property by the landlord, lending agency or investment fund is becoming a growing concern. Threshold recently provided on-site advice and support to tenants who faced a mass eviction in Tyrrelstown, northwest Dublin.

This is set to become an even more serious issue in the next few years as a significant amount of distressed mortgaged properties have been purchased by non-bank entities such as large investment funds, who have a business model of selling on these assets within three to five years.

The extent of this issue is further emphasised by the Central Bank of Ireland figures which indicate that there are 47,409 mortgage accounts held by non-bank entities. A total of 19,081 of these mortgages were in arrears of more than 90 days as of March 2016.²³

The sale of a rented property should not automatically lead to the termination of tenancy, especially if the property is to be sold to another investor. While it has been the custom and practice of financial institutions and investment funds to seek vacant possession, there is no legal impediment to allowing a tenant to remain. Legal safeguards should be put in place to give residential tenants similar rights to the tenants of commercial properties who remain unaffected by the sale of a property.

Threshold has welcomed the commitment to bring forward legislation to allow tenants to remain in situ during the sale of a development of 20 units or more. It is our view however that the extent of the proposed protection is too narrow. The proposed legislation won't cover properties taken over by a receiver where a landlord has a small portfolio of properties. Most of the families that

²³ Central Bank, [Residential Mortgage Arrears and Repossessions Statistics: March 2016](#)

Threshold works with that are at risk of homeless due to a sale of a property are in this situation. The proposed legislation needs to address these cases as well.

The protection, for example does not apply where a landlord can 'show' that the price to be obtained by selling the dwelling is more than 20 per cent below that which could be obtained with vacant possession. The legislation if enacted must be drafted in a manner that ensures that this requirement is robust and subject to rigorous proofs and cannot be simply overcome by obtaining an opinion from an individual who is not a suitably qualified property professional.

As stated, our view is that the sale of any rented dwelling should not lead to the termination of a tenancy. That is particularly so where the dwelling is sold to another investor. In that respect therefore we are of the view that Section 34 of the RTA 2004 should be reviewed to remove sale as a justification for the termination of a tenancy in any situation where that property is in the ownership of an institutional landlord or where the landlord in question works as a property professional. The extent of vacant properties in Ireland has been brought into sharp view recently. This is in clear contrast to the severe shortage of properties to rent as indicated by the recent daft rental index. The current market situation is leading to rapidly rising rents over the entire country and such a change in the law would be justified on those grounds alone. There is clear evidence available to us from our services that when vacant possession is obtained for sales purposes, for example where receivers are appointed properties are left unoccupied for a considerable time.

<p>Recommendation: Introduce legal safeguards to give residential tenants, similar rights to the tenants of commercial properties, to allow them to continue in their tenancy during and after the sale of a rented property</p>

2.7 Expand the Definition of Landlord

A change in the law is required to protect tenants in cases where their landlord's property is being repossessed or where a receiver is appointed to a mortgaged property. The legal definition of 'landlord' needs to be changed to explicitly include both lending institutions and receivers so that the rights established under landlord and tenant law cannot be undermined or ignored as is currently the case.

Due to a legal loophole in the Residential Tenancies Act 2004, lenders or receivers may seek vacant possession without giving a tenant the notice required under law. In some extreme cases tenants have come home to find their locks changed, effectively making them homeless. Receivers may also refuse to carry out repairs and ask the tenant to pursue their former landlord for the return of their rental deposit. A tenant should not lose these basic rights just because their landlord is in financial difficulty.

In the case of repossession, tenants cannot refer a dispute to the Residential Tenancies Board for resolution, as a lender will not generally be regarded as a party to the tenancy (Residential Tenancies Act 2004, s.76). Their landlord will not be held liable for terminating the tenancy without the requisite written notice, as it will be the lender rather than the landlord that is effecting the

termination. This means that tenants in mortgaged properties can be evicted without any means of redress.

Threshold believes that a simple amendment to the definition of 'landlord' in the Residential Tenancies Act 2004, so as to explicitly include both receivers and lenders, would introduce a welcome degree of certainty for landlords, tenants, financial institutions and receivers. It would impose a requirement on a lender that has commenced repossession proceedings to terminate a tenancy in the manner provided for by the Residential Tenancies Act 2004. It would also impose a responsibility for repairs and the return of the tenant's deposit upon the expiry of the tenancy.

In addition to this legislative change, Threshold is seeking the introduction of a code of conduct on buy-to-let mortgage arrears. A Central Bank of Ireland code of conduct on residential mortgage arrears (CCMA) has been in place for all mortgage lenders since 2009. A code for buy-to-let arrears 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.

The appointment of receivers in respect of mortgaged properties can undermine the administration of the RS scheme. As already noted there are currently 27,891 buy-to-let mortgages in arrears²⁴ with rent receivers in place in respect of 5,682 buy-to-let properties by the end of December 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.

Recommendation: Amend the Residential Tenancies Act 2004 to extend the definition of 'landlord' to include both receivers and lenders in relation to repossession of a property.

Recommendation: Introduce a code of conduct for buy-to-let mortgage arrears.

2.8 Licensees

Where an individual rents a room in their landlord's home they do not have a standard tenancy agreement. Instead, they are considered to have a *licensee* agreement with their landlord. The protection that tenants are entitled to under the residential tenancies legislation does not extend to licensees.

Due to the current shortage of rental accommodation, a growing number of people are becoming licensees, in particular students and younger people on social welfare or low incomes.

However license arrangements under the law are very informal in nature with little if any meaningful protection for the licensee. License arrangements can be terminated with little if any notice and with no recourse to justice for those affected. The recovery of deposits paid in such situations is also a significant problem.

²⁴ [Residential Mortgage Arrears and Repossessions Statistics: Q.1 2016](#), Central Bank of Ireland, June 2016

²⁵ [Residential Mortgage Arrears and Repossessions Statistics: Q.1 2016](#), Central Bank of Ireland, June 2016

In an effort to encourage more households to rent out rooms in their homes the ceiling for exemption from income tax under the *Rent-a-Room scheme* was recently increased from €12,000 to €14,000 in Budget 2017.

If additional tax breaks are to be made available under the rent a room scheme certain minimum rights should be put in place for licensees. The Residential Tenancies Act 2004-15 should be amended to bring licensees under the remit of the Residential Tenancies Board, thereby making a dispute resolution mechanism available. Furthermore, standard license agreements with minimum rights for licensees, for example in terms of minimum notice, should be mandatory.

Recommendation : Amend the Residential Tenancies Act 2004-15 to bring licensees under the remit of the Residential Tenancies and introduce standard license agreements with minimum rights for licensees mandatory.

3. SOCIAL HOUSING SUPPORTS

3.1 Social Housing supports in PRS

Threshold welcomes commitments in *Rebuilding Ireland: Action Plan for Housing and Homelessness* to increase the level of new social housing to be built or acquired by local authorities. However, there is a danger that such acquisitions may be sourced from stock currently in the private rented sector. Moreover, the majority of new social housing is still expected to be sourced in the PRS. This is a significant change of policy as to the provision new social housing and will potentially involve a serious dilution in security of tenure for social housing tenants due to the existing regulatory framework. This approach also poses serious budgetary risks for the government due to on-going rent inflation. In the absence of rent certainty, cost estimates for the roll-out of HAP are probably underestimated.

3.2 Development of a two-tiered social housing system

Over the last number of decades there has been a very significant drop in the number of housing unit that that have been built or acquired in Ireland. Increasingly the private rented sector has been turned to as an alternative source of social housing. Various schemes including the Rental Accommodation Scheme, Rent Supplement and more recently the Housing Assistance Payment are now used as alternatives to traditional social housing provided either directly by local authorities or through Approved Housing Bodies.

The HAP scheme in particular, though having advantages over the RS scheme, has some key challenges compared with social housing provided directly by a local authority or an Approved Housing Body (AHB). The fact that well over 90% of tenants on the HAP scheme apply for a social housing transfer clearly indicates that this is seen as a lower form of social housing

Although stated government policy ostensibly may seek to bring about tenure neutrality and ease mobility between different tenures, the reality is that a two-tiered social housing system is developing in Ireland.

On the one hand there is the traditional social housing provided by local authorities and Approved Housing Bodies. Such housing provides real security of tenure to tenants (essentially housing for life) and a differential rent ensures that rent is based on household income.

On the other hand there is housing supports such as HAP, Rent Supplement and the Rental Accommodation Scheme. Under such schemes, social housing applicants are responsible for sourcing accommodation themselves, but have little security of tenure. A landlord may for example terminate such a tenancy if he or she decides to sell the property or require it for the use of a family member.

Individuals and families who apply for the Housing Assistance Payment are now regarded as having their housing need met and they automatically come off the local authority waiting list (although they may apply to go onto the transfer list).

This raises the question of equality of treatment for recipients of different types of social housing support and reduces mobility between different housing tenures.

Under HAP the tenant sources accommodation in the private rented sector, rather than a local authority or AHB providing a new social housing unit. Such 'new' social housing units are temporary as there is no long term commitment required from the landlord to continue to rent the unit as a social housing unit on an on-going basis.

Under the Rental Accommodation Scheme, the responsibility for sourcing accommodation under the scheme rested with the local authority as opposed to the tenant. In a scenario where the landlord terminates a RAS tenancy the local authority has an obligation to find alternative accommodation for the tenant

Threshold strongly advocates that the local authority should have the same responsibility in relation to HAP tenancies.

3.3 Housing Assistance Payment

The Housing Assistance Payment, introduced in 2014, will in time replace Rent Supplement as the main means by which people will receive social housing support from the State. Rent Supplement will continue to be available for those who have short term social housing support need.

Administered by Local Authorities, the HAP differs from Rent Supplement in a number of key ways:

- Subject to rent limits, HAP is paid directly by the Local Authority to the landlord
- The tenant pays a HAP rent contribution to the local authority, based on the household's weekly income, calculated in the same way as standard local authority differential rent, based on income and the ability to pay.
- The local authority is required to inspect all HAP accommodation within 8 months of the first HAP payment to the landlord, to ensure that it meets the required standards.
- All landlords are required to produce evidence of tax compliance within 5 months from the first HAP payment
- Importantly, if a tenant takes up a job or increase their working hours, they continue to be eligible for HAP if they fulfil the other conditions of the scheme.

To date HAP has been rolled out in 19 local authority areas and it is planned to extend to the remaining local authorities in 2017. To date, in excess of 11,000 households have transferred to the Housing Assistance Payment.

Rationale for the introduction of HAP

- allow all social housing supports to be accessed through the local authority
- allow recipients to take up full-time employment and still keep their housing support

Threshold welcomes the introduction and roll-out of the Housing Assistance Payment and considers that in the main it is of benefit to tenants.

However, a number of problems and shortcoming with the operation of the scheme to date have become apparent.

Lack of awareness

There has been no public awareness campaign to date in relation to the Housing Assistance Payment and how it operates. In many cases when tenants seek to rent a property and ask their prospective landlord if they will accept HAP, it is apparent that the landlords don't know what it is or how it operates and are in many cases refuse to accept it. Despite the fact that refusing to accept HAP or RS is now considered discriminatory under the Equal Status Acts, many landlords are still unwilling to accept tenants in receipt of such payments.

The Housing Assistance does have potential benefits for both tenants and landlords, particularly the fact that the rent is paid directly from the local authority to the landlord. However, to ensure greater take up of the payment, landlords need to be informed of the benefits of the scheme.

Sourcing accommodation

The HAP scheme places the onus on tenants to locate landlords willing to sign up to the HAP scheme. There has been no Local Authority-led (apart from Dublin City Council) engagement/recruitment strategy for landlords in relation to HAP. Once a tenant finds a suitable landlord they are expected to stay in this property for up to 2 years. There is no corresponding obligation on the landlord to rent the property for 2 years.

Security of tenure

Though deemed to be social housing, the tenancy is with a private landlord, which is covered by the Residential Tenancies Acts 2004-15, which provides for more limited security of tenure, compared to social housing provided by local authorities.

Payment in arrears and delays in processing applications

The fact that HAP, like Rent Supplement is paid in arrears is a significant problem for many tenants. There can be significant delays between the signing of a rental agreement and the HAP application being processed which can put tenants in arrears from the beginning of a tenancy and potentially put the tenancy at risk. This delay can also act as a barrier to some landlords accepting HAP tenants. Many landlords require one month's deposit and one month's rent in advance before they will agree to let a property to a tenant, which some tenant's simply cannot afford.

Non-Payment of deposits

Another problem with the operation of HAP is the fact that a deposit is required by the tenant, which is not the case for LA or AHB social housing. Although it is possible to get support with a rental deposit from the Department of Social Protection

Maximum Rent Levels for HAP

The increase in the maximum rent levels for HAP and Rent Supplement that came into effect in July 2016 have brought some welcome relief and made it somewhat easier for tenants to find a HAP property that comes under the limits. However the 20% discretion that is available to local authorities needs to be reviewed to allow for additional flexibility in certain circumstances such as that available to the Department of Social Protection in making increase rent supplement payments under Article 38.

Top-Ups

Unlike under Rent Supplement, top up payments are allowed under HAP. Despite the fact that the maximum rent limits for HAP were increased in July 2016 a significant number of tenants in receipt of HAP are now paying top ups. From Threshold's experience tenants who are forced to pay top-ups face extreme financial strain and can put tenancies at risk in the longer term. 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. Rent supplement tenants already make means-tested contributions from their social welfare payments under HAP scheme, and any additional contribution inevitably gives rise to rent arrears, debt, and poverty. Threshold is aware that the Department of Housing, Planning and Local Government is recording the rate of top-ups among tenants in receipt of HAP but these figures have not been made public.

Homeless HAP

A Homeless HAP scheme has been operating in the Dublin region since February 2015 and is designed to transition qualified households from emergency accommodation into private rented tenancies. Under the scheme the maximum rent payable can be increased by up to 50% above maximum rent supplement levels. *Rebuilding Ireland – Action Plan for Housing and Homelessness* has identified a target of 1,750 tenancies under the scheme by 2017 and there is a strong argument that Homeless HAP should be extended to other urban centres across the country, in particular Cork, Galway and Limerick.

Place on Housing List

Once an individual goes onto the HAP scheme, their housing need is deemed to have been met and they are removed from the local authority waiting list. This is despite the fact that there is no greater security of tenure for a HAP tenant than there is for any tenant in the private rented sector. It is possible for a HAP tenant to go onto the local authority transfer list but the chances of being offered accommodation from the transfer list is at best slight. There is an inherent inequality in this.

In the last number of years a number of schemes have been developed whereby local authorities accommodate people eligible for social housing through the private rented sector, in schemes such as the Rental Accommodation Scheme (RAS) and the Housing Assistance Payment (HAP).

Meeting Minimum Standards

As landlords have up to 8 months to comply with minimum standards requirements, it creates an uncertainty concerning the tenants' rights, occupancy and alternative housing options should the property not comply. Also, it is unclear what supports are available to a household should a tenancy end, where they are in receipt of HAP.

Moving between Local Authority Areas

The HAP scheme presents problems for people living beside local authority boundaries who are trying source rented accommodation. This is because once people are on the housing list in one local authority area they cannot source HAP accommodation in the other. If entitled to RS, they can seek accommodation anywhere in the county.

Unlike the rent supplement scheme, HAP recipients must source accommodation within their relevant local authority. This limits opportunities to source appropriate accommodation for residents living beside a bordering local authority that has an urban centre. It is paramount that there is more flexibility to enable people to easily move between local authorities to secure social housing, regardless of what housing list they are on.

Recommendation: As HAP is a social housing support all Local Authorities should be responsible for recruiting landlord to the scheme and be responsible for providing alternative accommodation for a tenant in the event that a HAP tenancy is terminated.

Recommendation: Ensure that all HAP limits relate to market rents and that the scheme can provide discretionary uplifts where necessary

Recommendation: Reform the administration of HAP to remove unnecessary delays

3.2 Rent Supplement

In 2015 the UN Committee on Economic, Social and Cultural Rights expressed its 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."*²⁶

While there is not a specific right to housing, Article 34(3) of the European Charter of Fundamental Rights states: "In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the Rules laid down by Community law and national laws and practices."

Rent Supplement Limits

One of the biggest barriers for rent supplement (RS) recipients is that there are maximum rent limits set depending on the household composition and location. Threshold welcomed the

²⁶ 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.

Government's measures to increase rent supplement limits across rural and urban areas and to normalise top up payments in July 2016.

However RS limits need to be maintained at market rates. Previously RS limits were not raised as rents rose due to fears that this would exacerbate rent inflation. It is now widely recognised that RS limits are not the appropriate mechanism to regulate rent levels. Threshold believes that ensuring rents are at affordable level can best be achieved through long-term rent regulation. Threshold recommends that rent increases would in future be linked to the cost of living (CPI), similar to rent certainty measures that exist in most developed European economies.

It is also important to note that 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, the Minister is required to have regard to two matters, namely the family circumstances of the 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).²⁷

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 important that regular reviews of rent supplement limits are undertaken to ensure that they don't again fall significantly below market rents, especially in high demand urban areas. This is especially pertinent as it will take a number of years for market forces to moderate rents due to the time it will take to increase the supply of rented accommodation to a more appropriate level.

Despite the measures in July 2016, we are already seeing the gap widen between rent supplement limits and market rent as illustrated below:

- A single person in Galway seeking a one bed property the rent supplement limit is €650pm but the average rent is €672pm a difference of 3%.
- A couple in Cork the rent supplement limit is €650pm but the average rent is €780pm a difference of 20%.
- A family in Dublin seeking a three bed property the rent supplement limit is €1,300pm but the average rent is €1,500pm a difference of 15%.

RS limits are currently established for broad geographical areas. This approach doesn't take account of how the PRS operates within local markets. Future limits should be more targeted, related to submarkets within each Local Authority area, and more tailored to individual circumstances.

²⁷ See *McCormack v Minister for Social Protection* [2014] IECH 489 (Unreported, High Court, 30 October 2014), per Baker J at para.20

Moreover, the level of support available to tenants should be less visible to the market and landlords should not be fully aware of the exact level of support available to tenants. Information about the potential mortgage levels available to prospective buyers is not available to those selling a property. The same principle should apply to the rental market to ensure that information about rent supplement payments available to tenants seeking to rent a property is not available to landlords.

Recommendation: Increase rent supplement (RS) limits to reflect current market rents so as to reach a sufficient level to meet the accommodation needs of eligible persons, as set down by legislation. The setting of new RS limits should be more targeted, related to submarkets within each Local Authority area and more related to individual circumstances. This will mean that the level of support available to tenants will be less visible to the market.

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). A number of minimal cost measures could be made to improve the administration of rent supplement. These are summarised as follows:

- ✓ Provide for the automatic payment of RS directly to landlords;
- ✓ Ensure that RS is paid in advance, rather than in arrears;
- ✓ Introduce a pre-approval mechanism for RS claimants who have been assessed by the relevant Local Authority as having a housing need;
- ✓ Review the documentation requirements for RS and provide for direct submission of confidential documents by landlords to Community Welfare Service staff;
- ✓ 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;
- ✓ Ensure that eligible RS recipients are afforded an exceptional needs payment where they require a sum of money for 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;
- ✓ Ensure that RS claimants are given at least 28 days' notice of the suspension or termination of RS payments;
- ✓ 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;
- ✓ Introduce clear guidance for DSP representatives to deal with circumstances where receivers are appointed to properties with RS tenants.

Recommendation: Reform the administration of the RS scheme to reflect the realities of the rental market.

Preventing Homelessness

3.4 Tenancy Protection Service

The most recent homeless figures for September 2016 show a record total of 6,709 people are now homeless across the country. The figure comprises 4,283 adults and 2,426 children. 1,173 families and 2,426 children in emergency accommodation with 1,014 families in Dublin.²⁸

Many families are accessing homeless services for the first time and coming from private rented accommodation due to rent increases or being given notice of termination and unable to access alternative accommodation.

The most effective way to prevent homelessness is by ensuring that households can remain in their current rented home. For rent supplement (RS) tenants facing unaffordable rent increases, this means providing them with additional financial support. Threshold's highly successful Tenancy Protection Service (TPS) which is operated on behalf of the local authorities and in partnership with the Department of Social Protection (DSP), provides a targeted response that prevents households from becoming homeless.

The Dublin TPS commenced in June 2014, Cork TPS in January 2015 with the roll out to Commuter Counties and Galway and surrounding areas taking place this year. As part of the service, an Interim Tenancy Sustainment Protocol (ITSP) put in place by the DSP allows Threshold to make an application on behalf of clients for a payment in excess of existing RS limits. This payment initially last for 26 weeks (6 months) but may be renewed if the household circumstances have not changed. As of May 2016, the service helped 5,845 households at risk of homelessness and prevented 3,655 households (including 5,579 children) from becoming homeless. As the housing and homelessness crisis is a nationwide crisis, Threshold believes that the TPS should be extended nationwide in line with the Draft Programme for Government and Rebuilding Ireland An Action Plan on Housing and Homelessness p38 states:

"...the Tenancy Sustainment Protocol operated by Threshold for any tenants worried about losing their home has been hugely successful, with favourable interventions in approximately 9,000 cases over the last two years. The Threshold Tenancy Protection Service, which originally operated in Dublin City and Cork City, has recently been extended to Galway City and Counties Kildare, Meath and Wicklow. Building on this, the service will be extended nationwide by the end of the year. Much of the success of these support services, and others, was down to successful awareness campaigns, which we will repeat and intensify in order to ensure the highest possible levels of awareness of the range of supports in place to help prevent homelessness."

Recommendation: Immediately roll out the TPS nationally

²⁸ Department of Housing, Planning, Community and Local Government - [Homeless Report September 2016](#).

3.5 Access Housing Unit (South West Region)

This service focuses on the Housing First approach to homelessness and delivers practical and effective support to people who are homeless or at risk of homelessness to secure and sustain accommodation in the private rented sector. The project is funded by Section 10 and covers the entire South West Region.

The project has two main services:

1. Provides a route into mainstream housing – the service works to support people to move out of emergency accommodation and secure accommodation in the private rented sector.
2. Provides a visiting tenancy sustainment service – the service works with vulnerable tenants in the PRS and in some cases social housing (Local Authority and AHBs) who may be at risk of homeless to sustain their tenancies.

The Access Housing Unit (based in Cork city) has, since September 2012, has supported 295 Individuals, comprising of 168 households, 173 adults and 122 children to move on from emergency accommodation. The Table below reflects where accommodation was secured and where tenancy sustainment and resettlement was provided. By October 2016, **82%** of these households have sustained their tenancies and not returned to homelessness

Acc. Source	No. of Individuals	No. of Households	No. of Adults	No. of Children
Private Rented	221	134	134	87
RAS	18	10	11	7
VHB	8	5	5	3
City Council	43	17	20	23
Cork County Council	5	2	3	2
Total	295	168	173	122

Due to the current market conditions in the PRS, where accommodation is becoming more difficult to seek and secure (particularly for those who are in receipt of rent supplement and HAP) the work of the AHU has increasingly become more sustainment focussed. As the service continues to sustain the tenancies of those who have moved on from homeless services, it has now taken on an even greater significance in preventing the reoccurrence of homelessness due to tenancy failure.

Recommendation: Provide additional resources for the AHU to extend its visiting tenancy sustainment services to those both in the private and social rental sectors that will support more people to sustain their tenancies and prevent them from entering into or returning to homelessness.

3.6 The Role of advice and advocacy in preventing homelessness.

The Homeless Agency Partnership set out its vision in the 2007 – 2010 action plan, A Key to the Door:

“Long-term homelessness and the need for people to sleep rough will be eliminated in Dublin. The risk of a person or family becoming homeless will be minimal due to effective preventative policies and services. Where it does occur, homelessness will be short term and all people who are homeless will be assisted into appropriate housing and the realisation of their full potential and rights.”

Housing advice and advocacy has a key role in relation to preventive policies and services with Sustaining Dublin’s Pathway to Home identifying one of the key aims is to stop the occurrence of an episode of homelessness by delivering comprehensive preventative support services in housing, health and welfare alongside relevant, accurate and timely housing information and advice.²⁹

The Homeless Agency Comprehensive Strategy to Prevent Homelessness 2005-2010 stated that a “great deal can be done to prevent homelessness through information, advice, tenancy support and mediation, particularly when this is targeted in the most disadvantaged areas”. It sets out a range of actions to make information and housing advice and mediation available in local areas through mainstream services, with specialist services such Threshold providing a more specialised second tier service.³⁰

Threshold is the key provider of housing advice and advocacy services in Ireland and last year dealt with over 32,000 calls. Our experience to date is that these services help prevent homelessness and keeping people in their homes is both the best solution for the households involved and the most cost effective solution for the State.

An impact study of the role of advice in the prevention of homelessness in 2010 found that 83 percent of Threshold’s clients who were at risk of homelessness when they first contacted Threshold were not homeless between one and three months later demonstrating the effectiveness of the role of advice in preventing homelessness.³¹

In evaluating the cost of providing housing advice and advocacy the report calculated a unit cost by taking the total expenditure of Threshold’s office and dividing it by the number of hours spent by staff in the provision of advice and advocacy reaching a figure of €16 per hour.

The cost benefit of housing advice as opposed to the provision of emergency accommodation is therefore easy to see. The Review of Finances and Expenditure for Homeless Services in Dublin found the cost of a rented unit with support is €4,800 per year, the cost of accommodating a single

²⁹ Sustaining Dublin’s Pathway to Home: The Dublin Region Homeless Executive Action Plan Framework for Dublin 2014-16 p19

³⁰ The Homeless Agency Comprehensive Strategy to Prevent Homelessness 2005-2010, 2005 p12

³¹ Brooke, Simon, “Does Housing Advice Work? An impact study of the work of Threshold” 2010 p36

person in private emergency accommodation to be €14,600 and €29,222 for other emergency accommodation.³²

In terms of the homeless budget in 2008 the total figure was €62,582,825 with 72% for accommodation but only 7.6% for advice, food etc.

The demand for emergency accommodation continues to increase with 1,014 families in Dublin at the end of September 2016 and this is resulting in the increasing cost of emergency accommodation with Budget 2017 providing a 40% increase in homeless funding from €70m to €98m.

Whilst Threshold gratefully acknowledges the ongoing support of the Department in 2015 we received €340,000 however our overall expenditure is almost €2.3 million. There is currently no dedicated stream of funding for housing information, advice and advocacy in Ireland. Threshold also receives grants from the Dublin Region Homeless Executive and local authorities in Cork and Galway for the provision of services in their areas.

It is essential, as part of the strategy for the rental sector that if housing advice and advocacy is to be part of the strategy to prevent homelessness then there must be a specific and adequate source of funding and support for such services.

Recommendation : Provide appropriate and secure funding for the delivery of housing advice and advocacy supports to help resolve housing problems and prevent homelessness.

Provide appropriate and secure funding for the delivery of housing advice and advocacy supports to help resolve housing problems and prevent homelessness.

³² Review of Finances and Expenditure for Homeless Services in Dublin 2008 p58

4. MINIMUM STANDARDS

"A further important indicator of the degree of security enjoyed by a tenant is the extent to which he/she is able to ensure that the physical conditions of their premises are maintained at a reasonably comfortable level³³."

4.1 A 'NCT' for Housing

A significant number of rented properties are substandard and the current system of local authority inspections is failing to enforce the minimum standards required by law. In 2015, Threshold dealt with 1,429 cases related to substandard accommodation. This is now the second most common issue for tenants contacting Threshold. Many of the people that we helped were living in properties that lacked the basic necessities for living including freedom from dampness and condensation, proper heating facilities, and hot and cold running water.

Many clients are reluctant to report poor standard accommodation as they fear being given notice and that they won't be able to find alternative accommodation.

Compliance is currently the responsibility of local authorities. They are empowered to detect substandard private rented accommodation by means of inspections, conducted principally by environmental health officers.

Some 13,066 private rented dwellings were inspected by local authorities in 2015 with 8,444 (64 per cent) of those dwellings failing to meet minimum standards but legal action initiated in only 27 cases.³⁴ There is a noticeable variation in the number of properties inspected by local authorities last year with a sample highlighted below ranging from the highest in South Dublin County Council to the lowest in Offaly.

Local Authority	Dwellings Inspected
South Dublin	1731
Kerry County Council	1427
Dublin City	1388
Cork City	635
Galway City	152
Offaly County Council	26

³³ O'Brien, Lancelot & Dillion, Brian "*Private Rented Accommodation: The Forgotten Sector of Irish Housing*" 1982, p53

³⁴ Department of Housing, Planning, Community and Local Government (DECLG), House Building and Private Rented, Enforcement of Requirements for Standards (2015).

Based on research undertaken by Threshold in 2016, at the current rate of inspections, it will take 10-15 years for the whole of the PRS to be inspected by Local Authorities. However, now that Local Authorities have prioritised inspections of HAP properties, there is little capacity, based on the current resources, to local authorities, to undertake any other inspections in the PRS. This means that the vast majority of properties in the PRS will continue to avoid inspection.

Threshold believes that the introduction of a certification scheme or 'NCT for housing' is the best approach to address the shortcomings of the current system. Under the proposed certification scheme, the burden of establishing compliance with the minimum standards regulations would rest with the landlord. This would remove many of the obstacles currently faced by tenants and local authorities in ensuring the effective enforcement of the regulations.

Under such a scheme landlords would be required to establish compliance with the regulations as a pre-condition for the letting of a dwelling, the registration of a tenancy and the receipt of rent paid to a tenant under the RS and Housing Assistance Payment schemes. This could be done through certification issued from a suitably qualified third-party. The certification scheme could be introduced on a phased basis, with immediate application in respect of new tenancies, and application to existing tenancies on a date prescribed by way of regulations.

Such a scheme is especially warranted due the fact that many affected tenants are in receipt of RS and HAP, which means that the State is subsidising accommodation which often fails to meet minimum legal requirements. A 'NCT' scheme would enable local authorities to maximise the use of available resources by carrying out targeted inspections. The integration of such a scheme with certification requirements in respect of fire safety, building energy regulations, tax obligations, and registration with the RTB would, in the view of Threshold, promote greater compliance across-the-board.³⁵

Recommendation: Introduce a 'NCT' for housing scheme.

4.2 Overcrowding

Examples of egregious overcrowding in PRS are increasingly coming to light. This 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.

While there are minimum standards covering other 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 Residential Tenancies (Amendment) Act 2015, and their inclusion would be useful in terms of measuring overcrowding.

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, inspect properties and ensure compliance.

³⁵ [Threshold, Pre-Budget Submission to the Department of Housing, Planning, Community and Local Government, September 2016](#) at p.5.

There are existing definitions of overcrowding, both in Irish legislation and abroad which could be used to frame such an amendment.

The Housing Act 1966 Section 63 sets out a definition of overcrowding used for assessing households for social housing. It states that a dwelling will be deemed to be overcrowded when the number of persons ordinarily sleeping in the house and the layout of the rooms are such that either (a) two or more people, over the age of ten and of the opposite sex, who are not married, are forced to share a room or (b) the free air space in any room used as a sleeping room, for any person is less than four hundred cubic feet.

In the UK, the Housing Act 1985 provides a legal definition of overcrowding which is calculated in two complimentary ways. The first is room standard (the number of rooms for people to sleep in) the second is space standard (the amount of space in the home and the number of people living in it). Overcrowding is where there are too many people living in the property using either of the calculations. Under the room standard overcrowding is where two people of the opposite sex that are not a couple have to share a room to sleep in. Children under 10 are not counted under the room standard. Under the space standard, the number of people in the property is compared with both the number of rooms and the floor area.

Recommendation: Introduce guidelines to prevent overcrowding in private rented accommodation.

4.3 3 Fuel Poverty

A household is considered to be experiencing fuel poverty if they are using 10% or more of their disposable income to adequately heat their homes; using this measure more than one quarter of Irish households experience fuel poverty. The problem is particularly serious in the social housing sector where almost 70% of households exceed the 10% threshold. Within this group the average energy spend is 17% of disposable income³⁶. The problem is complex and a multi-faceted approach is required which includes both increased energy efficiency, particularly in the private rented sector, and energy-related income supports for those experiencing fuel poverty. Energy efficiency schemes in the private rented sector are unfocused and haphazard. The Better Energy Homes Scheme is available to landlords, but the up-take is low. Other schemes, such as the Warmer Homes Scheme, are limited to owner-occupiers and housing association tenants.

While a BER rating is required in order to let a dwelling, there is no minimum BER threshold below which a dwelling is considered unfit for letting. A one grade improvement in BER is associated with a 4-10% improvement in household energy expenditure³⁷. Improving the energy efficiency of properties in the private rented sector could provide a substantial financial boost that could make significant difference to the lives of tenants experiencing fuel poverty. A mix of legislation and incentives are required to increase energy performance in the private rented sector however immediate consideration should be given to the introduction of a minimum BER rating, below which a property may not be let.

³⁶ Bottom-up analysis of fuel poverty in Ireland, Element Energy Final Report, DCENR 20th November 2015 <http://www.dccae.gov.ie/energy/SiteCollectionDocuments/Energy-Efficiency/An%20Objective%20Analysis%20of%20Energy%20Poverty%20in%20Ireland.pdf>

³⁷ ESRI Working Paper 2014 – Changes in Household Fuel Expenditure Associated with Improvements in Building Energy Efficiency, John Curtis and Anne Pentecost, <https://www.esri.ie/pubs/WP478.pdf>

Recommendation: Introduce a minimum BER rating for private rented accommodation.

4.4 Carbon Monoxide Detectors

Carbon monoxide is produced by the incomplete burning of fuel. It is poisonous, and even breathing in a small amount can cause loss of consciousness and death. In Ireland, the HSE estimate that about 40 people die from accidental carbon monoxide poisoning every year.

From 1st September 2014 Part J of the Building Regulations were amended to make carbon monoxide detectors compulsory in all new homes and in all homes where a new or replacement heat producing fixed appliance is installed such as boilers, fires, heaters and any appliance designed to burn solid fuel, oil, bio-fuel or gas. This includes private rented accommodation. Threshold proposes that current minimum standards legislation is updated to require all private rented accommodation to have carbon monoxide detectors.

Recommendation: Make it a requirement under minimum standards legislation for the provision of carbon monoxide detectors in private rented accommodation.

5. PROMOTING AFFORDABLE SUPPLY

5.1 State Intervention to Increase Affordable Supply

Just 3,600 homes were available to rent in Ireland on August 1st this year, by far the lowest total since before the economic downturn.³⁸ It is widely recognised that supply in the PRS needs to be increased; a clear and strategic enabling framework for new PRS accommodation is yet to emerge. It has not been agreed what the optimum size of the PRS in Ireland is, nor have targets been set out for the amount of new PRS accommodation to be provided year on year.

Threshold favours an approach where social housing, affordable rented accommodation and affordable private housing are built in unison in a single development. Threshold also proposes that measures need to be introduced to ensure that such affordable rented accommodation remains as rented accommodation for the long-term. Such an approach corresponds with the Social Housing Strategy 2020, which envisions “developments where social renting, private renting and affordable and cost renting options are provided side by side.”

In terms of output, the Government’s *Rebuilding Ireland: Action Plan for Housing and Homelessness*³⁹ aims to facilitate the construction of 25,000 houses every year to meet existing demand. As the majority of new social housing units are expected to be sourced from the PRS under Social Housing Strategy 2020 and the underlying conditions that have reduced the level of private home ownership are set to continue, approximately 5,000 new rental units need to be added to the housing system every year⁴⁰.

The private sector has so far proven unable to provide this level of new supply, therefore there is a need for the State to step in and become a ‘housing developer’ in its own right. It would be preferable for the State to finance mixed social and affordable developments, using borrowed monies available at historically low interest rates. The State can also develop appropriate Special Purpose Vehicles (SPV) to fund such developments off-balance sheet through established and agreed bonds issuance mechanisms backed up by existing state-owned housing assets.

The State should look to increase affordable supply in two ways: by purchasing existing properties and by using State land. The State can purchase existing accommodation being offered at below construction cost, including appropriate developments which remain under NAMA control estimated to have a value of €5 billion at current rates (2016). In many cases these developments would be bought up by non-bank entities to be sold on at a large mark up in a number of years’ time, leaving many existing tenants at risk of eviction or massive rent hikes and in need of State support.

The second way the State can increase supply is to use existing State land. By financing, designing and building such developments itself, the State can drive down building costs by removing or greatly reducing profit margins, site costs, part V costs and VAT. The State could contract suitable builders to construct the housing units, but the development will remain in State ownership.

³⁸ Daft, [Daft Rental Report, Q.2 2016](#), August 2016.

³⁹ Government of Ireland, *Rebuilding Ireland- Action Plan for Housing and Homelessness*, July 2016, p.23

⁴⁰ This figure is a fifth (the current size of the rental sector) of current estimates of the level of housing construction needed over the next few years- 25,000.

Depending on the financing model, such developments could be leased long-term to Approved Housing Bodies or other suitable bodies and any private units could be sold on to the general public at an affordable rate.

5.2 Taxation, Subsidies and Incentives

In the short to medium term demand for rented accommodation will continue to rise as “trends in Ireland’s tenure mix, affordability, demography and economy suggest that one-quarter to one-third of the population will find it increasingly difficult to achieve homeownership.”⁴¹

Previously tax incentives were a strong motivation for investment in new residential accommodation, both rental and owner-occupied. This approach became problematic over time in that it encouraged excessive building activity in areas with limited underlying need for new housing and included no measures to ensure affordability.

Any new subsidies or tax incentives to promote rental supply must be contingent on the provision of permanent and affordable rental accommodation. Such incentives should be focussed on large urban areas where demand exceeds supply, they should be time-bound and subject to regular review to ensure that they are addressing issues of affordability as well as supply.

The introduction of subsidies to increase supply should be undertaken in tandem with the introduction of rent certainty measures and increased security of tenure for tenants in a co-ordinated approach to addressing affordability issues.

As the National Economic and Social Council has stated, reforming the rental sector –

“requires breaking free of the current dualist debate on the private rental sector, in which some argue for rent control and others counter with the need to create better incentives to keep existing landlords in the sector and encourage developers and investors to resume construction and supply. Neither approach, on its own, will be effective. We need policies that both provide tenants with more secure occupancy and create supply-side supports to increase the availability of affordable rental housing.”⁴²

Commercial rates could be restructured to encourage the use of vacant space for rental accommodation. Reform of the tax treatment of rental income should also be explored including making all mortgage interest deductible in the computation of rental income (as is the case in relation to commercial rent) and allowing the payment of local property tax to be treated as an expense for tax purposes. Another possibility to consider is the use of Part V of the Planning and Development Act 2000 to require that a share of new accommodation be allocated to affordable rental housing in addition to the existing provision made for social and affordable housing.

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

⁴¹DECLG, *Social Housing Strategy 2020*, 2014, p.17.

⁴²NESC, *Ireland’s Rental Sector: Pathways to Secure Occupancy and Affordable Supply*, 2015, p. v and vi

5.3 Promoting Institutional Investment in the Private Rented Sector

Ensuring a sufficient supply of affordable, long-term and high-quality rented accommodation is one of the key challenges currently facing policy-makers. Many agencies, such as NESAC, business and employers' groups, property professionals and investment agencies have identified the absence of this type of accommodation in the PRS as a threat to Ireland's future economic health.

The Private Rented Sector in Ireland is dominated by small scale, part-time individual landlords. Over 90% of landlords own three properties or less⁴³. Many are motivated by capital gain which does not help the stability of the sector in the medium to long-term. Landlords may sell their rental properties once their properties have appreciated in value, often terminating tenancies in the process.

The advantages of attracting institutional investors are clear. Institutional investors, such as pension funds and insurance companies, are interested in very long-term investments. They prefer longer-term tenants, as re-letting and refurbishing properties is costly. Institutional investors can also bring more professional management practices and contribute to the supply of accommodation in high-demand areas.

To date only a small number of investment companies have started to enter the market. These companies have tended to concentrate on the commercial market rather than the residential rental market, and at the higher end of the market.⁴⁴ A differentiation must be made between long-term institutional investors and investment funds ('vulture funds') who are interested only in short-term gains, as the latter are generally not beneficial to the stability of the rental market.

The overarching benefit of greater institutional investment in the Private Rented Sector is the additional stability it would bring, a view echoed by Stefan Gerlach, former Deputy Governor of the Central Bank of Ireland:

*"Attracting more institutional investors would promote a well-functioning rental market that is so important for financial stability. Furthermore, these investors are likely to be less leveraged and have more diversified portfolios than individuals owning one or two rental properties, and are thus better able to withstand an economic downturn."*⁴⁵

However, it is essential that if institutional investment is promoted and incentivised by the State, safeguards are put in place to ensure that tenant's rights are protected. Threshold has witnessed situations where there have been wholesale rents increases in large residential developments. Rents are increased in a number of properties in a development and these new higher rents are then used as reference market rents to justify rent increases across the board in the development. Such practices need to be outlawed.

The increase in the numbers of large scale mixed developments can bring with additional layers of complexity. Tenants may have to interact with local managing agents and have to contend with 'house rules' for developments –factors external to the traditional landlord-tenant relationship that

⁴³DKM Economic Consultants on behalf of PRTB, [Future of the Private Rented Sector](#), 2014.

⁴⁴It is estimated that REITS to own 1,500 rental properties, nearly all in Dublin, with projections suggesting that in five years this could grow to 15,000 properties or 2% of the market-DKM Economic Consultants on behalf of PRTB, [Future of the Private Rented Sector](#), 2014.

⁴⁵Stefan Gerlach, speech given at the Twenty-First Dubrovnik Economic Conference, June 2015.

may have a significant impact on tenants' rights. The interaction of the Residential Tenancies Acts 2004-15 and the Multi Unit Developments Act 2011 needs to be revisited to take into account recent developments.

Although the general benefits of institutional investment in the Private Rented Sector is acknowledged by many, a long term strategy for such investment is necessary and thought needs to be given to what part it plays in the wider Private Rented Sector. It may be beneficial to look at models of institutional investment in the private rented sector elsewhere in Europe.

One possibility that could be explored is making it a requirement for pension funds to invest in housing. However, before any such requirement could be put in place certain fundamental stability measures in the sector such as security of tenure and rent certainty which would lead to predictable returns would need to be put in place.

Proposed regulatory reforms outlined in this submission in relation to security of tenure and rent certainty could provide more stable and predictable rental returns that would be attractive for long-term institutional investors. Threshold's research on this topic indicates that institutional investors prefer well-regulated markets with steady rates of return. Targeted and contingent subsidies will also help encourage investment in this type of rental accommodation. Moreover, guarantees for maintaining occupancy rates and rental income in the social or affordable sections of this accommodation would also be welcomed by providers and investors.

Alternative Rental Models

5.4 Affordable Rental National Rollout

In *Rebuilding Ireland: Action Plan for Housing and Homelessness* the Government commits to developing an affordable rental pilot project in 2016, where the overall objective of an affordable rental programme would be "to provide long-term affordable residential accommodation for low to moderate income key-worker households in urban areas of high demand." This pilot is currently being progressed in the Dublin area. There is a need for this programme to be rolled out nationwide to ensure that low-income workers are no longer at risk of homelessness.

Cost Rental System

The NESC report on social housing, *Social Housing at the Crossroads: Possibilities for Investment, Provision and Cost Rental (2014)*, proposed the use of a cost rental model in Ireland to be adopted to finance social provision into the future. In this model rents are calculated to reflect the historic costs of providing the accommodation, rather than based on the prevailing market.

Moving to a cost rental model of providing social and other forms of rental accommodation has many benefits. The main benefits accrue where a provider has a growing portfolio of rented accommodation. Rents can be kept at an affordable level as the higher cost of providing new rental accommodation can be offset against the reducing costs of providing older accommodation.⁴⁶ Moreover as the cost rental sector grows, the ability to charge affordable rents puts downward pressure on market rents.

⁴⁶This is especially true if any loans or mortgages related to the older accommodation have been paid off.

Cost rental has the potential to provide greater certainty for Government in terms of social housing provision. It will help to address the difficulties in the supply of local authority housing that arise from borrowing constraints and on-going costs not being covered by differential rent. A cost rental sector of sufficient size means the cost of providing housing supports such as HAP would be more predictable and less subject to rapid cost increases.

However, there is limited capacity to provide affordable rents through a cost rental approach at the early stages without the provision of subsidies to moderate high initial sunk costs. Subsidies can be either given to providers and/or be given to social housing tenants and low income households. This is important as rents will increase for some social housing tenants, who in many cases pay about 15% of their disposable income on differential rents at the moment.⁴⁷

Subsidies for providers could be similar to those mentioned previously. If providers don't receive initial subsidies they will need to be provided to tenants, as initial cost rental rates without subsidies would be similar to the currently unaffordable market rents.

Recommendation: Social housing, affordable rented accommodation and affordable private housing should be built in unison in a single development.

Recommendation: Ensure that affordable rented accommodation remains as rented accommodation for the long-term.

Recommendation: Make use of existing state land to increase supply of social and affordable supply

Recommendation: Institutional investment in the private rented sector should be promoted and incentivised by the State but with safeguards put in place to ensure that tenant's rights are protected.

⁴⁷Simon Brooke, 'Social renting: Outcomes and Outlook' in Renting in Ireland, Lorcan Sirr (ed.), IPA, 2014, p. 125.

6. Student Accommodation & Miscellaneous Measures

6.1 Student Accommodation

The Higher Education Authority (HEA) estimates that demand for places in full-time education will increase from 168,000 in 2014 to nearly 193,000 in 2024⁴⁸. Increased demand for places brings with it increased demand for accommodation.

They estimate that there are currently approximately 25,000 students renting in the private rented sector and an unmet demand of about an additional 25,000 bed spaces. This has a significant impact on the private rental sector.

The shortage of student specific accommodation means that students are competing with private renters in the private rented sector, often for accommodation that is not of a particularly high standard. This has the effect of driving rent inflation. The lack of student specific accommodation has the potential to become a significant barrier to international students and students with disabilities in particular.

Increased provision of designated student accommodation, both on and off campus, has the potential in the medium to long term, to ease on-going demand pressures in the private rented accommodation sector⁴⁹.

Threshold believes that consideration should be given to the introduction of tax incentives to stimulate the provision of student accommodation. However, any such incentives must have safeguards attached which ensure any such accommodation is remains affordable for students.

The shortage in availability of rental accommodation has seen a significant increase in demand for traditional student 'digs'.

Recommendation : Introduce measures to increase the supply of student specific accommodation.

6.2 Tax Relief for tenants

Previously tenants in private rented accommodation paying tax were able to claim tax relief but this was stopped for new applicants who commenced renting from 7th December 2010 and is in the process of being wound down so that for 2016 a single person under 55 is entitled to €80. The relief will cease in its entirety in 2017.

⁴⁸Higher Education Authority. Report on Student Accommodation: Demand and Supply 2015
http://www.heai.ie/sites/default/files/student_accommodation_report_310815.pdf

⁴⁹Ibid p1

The relief for tenants is in contrast to the increase of 5% in mortgage interest relief for landlords and the increase of €12,000 to €14,000 tax free for people availing of rent-a-room scheme provided as part of Budget 2017.

Recommendation: Re-introduce tax relief for rent for tenants in private rented accommodation.

6.3 Mortgage Arrears and Repossession of Owner Occupied Properties

The most recent figures from the Central Bank show that there are currently 82,092 principal dwelling houses in mortgage arrears and of these 57,571 were in arrears of 90 days or over⁵⁰. It is essential that steps are taken to minimise the numbers of properties that are repossessed by financial institutions. The consequences of repossessions is families and individuals in a worst case scenario presenting becoming homeless and in best case scenario being forced into the already crowded private rented sector. The introduction by the Central Bank of the *Code of Conduct on Mortgage Arrears* (2013) was a welcome development.

However, the current legislative and administrative framework for the repossession of residential properties does not take account of the rights and interests of tenants in mortgaged properties. It is not uncommon for properties purchased with an owner occupier mortgage to be subsequently rented out, without the knowledge of the financial institution in question.

No consideration is given to the rights or interests of tenants in the current mortgage arrears resolution process. The *Code of Conduct* does not make any provision for circumstances where a mortgaged property is occupied by tenants, and does not apply to properties which are made available for letting in circumstances where the borrower owns another residential property in the State.⁵¹ Tenants in such properties are in an extremely vulnerable position and the *Code of Conduct* needs to be amended to reflect such situation.

Furthermore, the take-up of the Local Authority mortgage-to-rent and the Approved Housing Body mortgage-to-rent scheme have been very low to date and should be reviewed urgently to encourage greater up take of the scheme. One possible step that could be taken is to integrate the Mortgage to Rent Scheme into the Code of Conduct for repossession of owner occupied properties.

Recommendation: Update Code of Conduct on Mortgage Arrears for Owner Occupied properties to take into account tenant rights.

⁵⁰ Central Bank Residential Mortgage Arrears and Repossessions Statistics: Q2 2016

⁵¹ 'Primary residence' is defined for the purposes of the Code as (a) the residential property which the borrower occupies as his/her primary residence in this State, or (b) a residential property which is the only residential property in this State owned by the borrower. As such, the Code will apply in circumstances where an individual has rented out their only house, and they live elsewhere (e.g. in another rented property or with relatives).



An Roinn Tithíochta, Pleanála,
Pobail agus Rialtais Áitiúil
Department of Housing, Planning,
Community and Local Government

