

# Submission to Pillar Four of Rebuilding Ireland: “Develop a strategy for a viable and sustainable rental sector”

## Introduction

Focus Ireland is one of the leading providers of support services to individuals and families experiencing or at risk of homelessness and to vulnerable young people leaving care. In the course of our work we have day-to-day exposure to the faults and weaknesses within our housing system. Given that a very high proportion of people facing homelessness previously resided in the private rented sector, the failings of the private rental system feature strongly in the experience of the over 5,000 customers who used our Advice and Information services in 2015.

Since 2012 Focus Ireland has been designated by the Dublin Region Homeless Executive (DRHE) as the Family Homeless Action Team (HAT) in the Dublin area. During that period of time we have seen the number of families newly presenting as homeless in the Dublin area and allocated to this team grow from 15 a month in 2013 to 81 a month in 2016<sup>1</sup>. A large majority of these families had their last secure home in the private rental sector and the most significant driver of these families becoming homeless has been the increasing cost of rental accommodation. More recently a growing number have become homeless due to their landlords selling the housing unit.<sup>2</sup>

It is well documented that both of those phenomena are the long-run consequences of the last housing boom. As a result of the economic boom and the decisions taken consequent to the crash, Ireland currently has a significant and continuing under supply of housing that requires urgent attention. Rebuilding Ireland confirms that the government understands this and is seeking to tackle it. While a viable and sustainable Private Rental Market is a key part of solving these problems, measures to develop and regulate this sector must be based on a clear understanding of where this sector fits within a much broader functioning housing system<sup>3</sup>.

## The Private Rental Sector in a sustainable Housing System

Focus Ireland believes the starting point for the “Strategy for a viable and sustainable rental sector” must be a clear statement of the role that the private rented sector is to play within the overall housing system that Rebuilding Ireland sets out to create.

The Pillar 4 strategy for the private rented sector must both tackle the ‘overhang’ issues which are causing such hardship in the sector and set out a clear vision of where the sector will go in the future. These are two distinct but interrelated roles. If the new strategy deals with only one of these elements it will fail to gain widespread support and will fail to deliver.

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<sup>1</sup> Focus Ireland Administrative figures, 2016 average covers January to August 2016

<sup>2</sup> See “Insights into Family Homelessness No.5 Survey of the families that became homeless during June 2016” [www.bit.ly/Flresearch](http://www.bit.ly/Flresearch)

<sup>3</sup> See NESC, Housing in Ireland: Performance and Policy, November 2004

The following are some of the key features needed to create a functioning and sustainable housing market which is also capable of addressing the immediacies of the current homelessness crisis:

- Because of the debt levels involved, traditional home ownership is not a realistic or sustainable goal for a growing proportion of our population, particularly younger people and low-to-middle income households. It is not sustainable to overcome this by re-introducing forms of public subsidy to aspiring home owners. As result, a sustainable housing system for the future is likely to require lower levels of home ownership than Ireland has historically aspired to. This, in turn, requires policies that will make other forms of housing tenure secure and attractive.
- Different forms of ‘public’ or ‘subsidised’ rental housing will be needed to provide homes for a larger and more diverse section of the population. A number of forms of sustainable and long-term public investment will required to make this happen.
- A functioning housing system needs to reflect that people aspire to an experience of community, home and neighbourhood as well as housing. Mixed tenure communities are a key part of delivering this, but communities providing homes for a range of household type are also important.
- The private rented sector should be viewed as form of housing tenure with its own contribution to make to the housing system, rather than as a temporary second choice for those who are saving to own their own home or waiting on a social housing list. This cannot be achieved if investment in the private rented market is primarily driven by expectations of capital asset appreciation. Being a landlord in the private rented sector needs to be regarded for tax and regulatory purposes not as an investment in an asset but as an investment in a business – where the business is the provision of secure homes to customers.

These elements, working together, can protect society and the economy from the cycle of inflated and deflated housing markets by increasing the policy instruments available to the state to maintain a more consistent balance between demand and supply for housing.

The framework set out in Rebuilding Ireland has many of the elements within it that are required to ensure that the private rental market can fulfil the roles required of the sector in such a framework. As is widely recognised, the success of the strategy will be in finding the correct balance between regulation and incentive.

We note the viewpoint that ‘one size does not fit all’ within the private rented sector, and the view expressed by some groups that a range of tenancy types should be developed with different contractual obligations and different rights for different classes of tenants. While we recognise that different forms of investment structure may be appropriate for different parts of the market, Focus Ireland believes that the rights and obligations of tenants should be derived from their rights as citizens and their human right to provide themselves with secure housing. We would be deeply concerned that the development of a range of potential tenancy agreements would

be not only confusing but would also result in more vulnerable tenants having access only to the most insecure form of tenancy agreement. Selection of housing tenure is by no means entirely a matter of free choice in the free market; broadly speaking people aspire to the highest level of security, social connection and quality that they can afford. The role of state regulation of tenancy contracts is then to provide core standards and tenancy legislation which protects all tenants.

Pillar 4 of the action plan sets out that the rental strategy will be structured around four key areas: security, standards, supply and services. For ease of reference this submission will follow that structure.

## Security

The private rental market in Ireland currently provides homes for more than 20% of households, with recent figures suggesting this may be growing. Rebuilding Ireland explicitly states that it is the intention to maintain existing levels of rental stock and to encourage investment in additional supply. Given the overall increases in all forms of housing envisaged in the plan, it is not clear what level of private rental housing stock is envisaged by the government but even if the status quo were to be maintained then more than 1 in 5 households will continue to make their homes in the private rental sector.

Despite the dire warnings from landlord groups at the time, the wave of private rental regulation from 2004 onward heralded a substantial increase in both the number and proportion of homes provided by that sector. The greater sense of security experienced by tenants and landlords encouraged both demand and supply. Many of the negative features which had made the private rented sector unpopular prior to 2004, such as poor physical standards and insecure leases, were removed.

It is worth noting that prior to 2004, homeless services would have been very cautious about encouraging a person to move out of emergency accommodation into private rented housing, because of the low standards and insecurity involved. From around 2004 onwards this caution declined and exits to the private rented sector became the main route out of homelessness under the 'A Way Home' strategy.

The two key sources of insecurity – absence of rent regulation and the right of the landlord to terminate the lease for certain reasons – did not feature in practical experience until well into the economic crisis. However in the last three years they have come to dominate tenant experience in the sector, completely undermining all other provisions designed to create security.

The escalation of these sources of insecurity co-occurred with large numbers of households who had been living in the private rented sector and providing for their own rents from their wages becoming unemployed and having to rely on Rent Supplement to maintain their homes. In this way, the burden of regulatory weakness in the private rented sector came to fall first on households that had recently lost employment and from there onto public expenditure.

A 2014 report for the European Commission on rental market regulation<sup>4</sup> reviewed rent stability and tenant-landlord relations across Europe. The report shows that Irish

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<sup>4</sup> [http://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2014/pdf/ecp515\\_en.pdf](http://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp515_en.pdf)

tenants experience lower levels of rent stability than other Europeans and that Ireland has a tenancy protection system that favours landlords.

The experience of the last 4 years clearly demonstrates that tenants, landlords and the public exchequer all require a greater degree of rent certainty and security of tenure.

Focus Ireland believes that the following range of measures will assist both in tackling the current problems and establish a fair and sustainable structure for the future.

### **Indexing Rent Increase**

Focus Ireland believes that rental increases should be linked to an appropriate index. We recognise there are some technical difficulties in deciding the best index to use. We also recognise that landlords need assurances that the Government will not arbitrarily make decisions which add to their costs, while at the same time removing their capacity to recoup these costs. Similar concerns exist on the tenant side and this points to the need for a clear mechanism to recalibrate the link in the very rare circumstances where unforeseen factors result in disproportionate impacts on the agreed index.

The DKM report commissioned by the PRTB gave a disproportionate weight to criticisms of index linking of rents. A large part of this argument relies on a speculative piece of analysis of what would have happened to rents if an index were introduced at an inappropriate time. In our view this analysis demonstrates not that an index is a bad idea but rather that indexing systems should be used as a broad policy instrument and not as an ‘iron rule’.

Nevertheless, some form of broad linkage between cost inflation and increases in rents during tenancies is the foundation of security in the sector, both for tenants and landlords. Consideration should be given to creating some form of advisory council, involving both landlord and tenant representatives along with experts, analogous to the review mechanism in the National Minimum Wage.

### **The removal of the cyclical aspect of Part 4 tenancies.**

The number of tenancies which are terminated using the opportunity provided by the ‘4 year cycle’ of tenancies is unknown, and such cases do not feature strongly in our case work. This suggests that removing this provision would not in practice cause any problems for landlords. On the other hand, its removal would be an important step in creating a new culture of long-term sustainable tenancies in the sector.

Allowing for indefinite leases will move Ireland in line with many other European jurisdictions. As noted in the NESC report on Ireland’s private rental sector<sup>5</sup>, indefinite leases contribute more to the sector than simply giving tenants peace of mind. Indefinite leases contribute to the stabilising of rent increases and provide landlords with a more stable income.

It is recognised that removing the 4 year cycle in which landlords can evict tenant’s places much greater focus on the other conditions under which landlords can terminate tenancies.

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<sup>5</sup> NESC, Pathways to Secure Occupancy and Affordable Supply

### Sale of property as ground for termination

The right of a landlord to terminate a tenancy on the ground that they wish to sell the property has emerged in recent years as a major insecurity for tenants.

In recent months, some 30-40% of presentations to Focus Ireland's homeless prevention service reported that they had received a notice of termination on foot of their landlord planning to sell the property. According to the Central Bank, in June 2016 there almost 15,000 buy-to-let mortgages where the landlord was in arrears of more than two years. In the first six months of the year, over 600 of these buy-to-let properties were repossessed by the banks and sold - almost always after the household renting in the accommodation had been evicted. This large number of buy-to-let properties in substantial arrears is likely to remain a major source of insecurity for a number of years.

The Rebuilding Ireland Action Plan acknowledges the importance of prevention in tackling homelessness. There is an urgent need to slow down the number of households entering homelessness.

As noted above this is one of the most significant 'overhang' problems facing the sector.

However this is not just a short term problem, if we are to ensure that the private rental sector is to be a place that provides a viable medium to long-term home for individuals and families then the potential to lose that home must be reasonably limited. Crucially the existence of this clause creates a context in which investors are encouraged to enter the private rented market on the basis of the asset value of the housing unit, rather than a business in which the tenant is a stakeholder.

If we are to create a private rented sector which creates sustainable and secure homes then we need to find a way to attract investment which sees being a landlord as a long-term business, with rental return being a much greater motivating factor than capital appreciation. Capital appreciation will, of course, remain a factor for such investors but the need to liquidate the asset at short notice and as a vacant unit will be much less.

Therefore Focus Ireland calls for the removal of the provision under which landlords have right to evict the tenant in any property they wish to sell. This would not limit the right of the landlord to sell the property, but it would require the property to be sold with the tenant in situ – along the lines of 'tenant not affected' sales familiar in the commercial property sector.

We further believe that it is an urgent necessity to remove this 'right to evict to sell' for existing properties. It may be impossible and unfair to do this for all properties which are tenanted, as it may be contrary to the expectations of the landlord and the financial institution which funded the loan. However we believe it is possible and reasonable to do so for all properties which were purchases using a mortgage product specifically designed and described for the 'buy-to-let' market.

The case for retrospective removal of this 'right to evict to sell' is overwhelming where the 'buy-to-let' loan also attracted Section 23 tax reliefs.

This large number of 'buy-to-let' tenancies is the substantial legacy from past errors made at an individual, institutional and policy level. At present the penalty for these errors is falling primarily on the tenants who are being evicted – who are the only party to the contracts involved who did not enter them knowing the risk involved.

### Use of the property by family as a ground for termination

The provision under which landlords can evict tenants to use the property themselves or for the use of family also creates a degree of insecurity for the tenant. In our experience, this is a much less common cause of eviction. It also presents much greater problems to regulate where in Ireland the majority of landlord own 1 or 2 properties, and many have started renting as a temporary solution to their own financial difficulties.

Focus Ireland would support making the rights of landlords in these circumstances more limited, through specifying, for instance, that eviction could not take place where family members only required the premises for a short period.

In order to balance these rights there is a need to ensure that provision is made for compensation to be paid to the tenant where they are required to leave under this clause.

### Early Legislative Actions in this Area

Two amendments are incorporated in the new Planning and Development (Amendment) Bill 2016 as early legislative actions under Rebuilding Ireland. These are to amend Part 4 and to introduce the so called 'Tyrellstown amendment' to curb the power of institutional investors to evict in pursuit of vacant possession. While these are welcome, Focus Ireland believes that neither action goes far enough.

The current Part 4 provision for a new probationary period every four years creates an opportunity for landlords to evict tenants without cause and results in undue uncertainty for some tenants. It is particularly problematic for tenants of Approved Housing Bodies who previously held indefinite tenancies. The proposed amendment essentially narrows this 'four yearly opportunity to evict without cause' and makes it technically more difficult for landlords who wish to avail of it to time their eviction notices, but the unfair insecurity is retained. We recognise that the broader issue is more appropriately dealt with in legislation arising from the strategy.

The 'Tyrellstown amendment' is proposed as a means to curb the power of institutional investors to evict in pursuit of vacant possession. However the amendment is very limited in scope and essentially only limits the investor to seeking vacant possession from 19 families in a six month period in a given estate. The families which are in reality being evicted into homelessness on an almost daily basis will not be covered by this amendment. Focus Ireland strongly believes that the amendment discussed above, requiring that 'buy-to-let' properties must be sold with the tenant in situ, is urgent and targeted, and should be included in the current legislation.

### Supply

The data about investment and dis-investment in the private rented sector is partial and contradictory. While there appears to be good evidence that the overall number of rental properties is growing, there is also overwhelming evidence that landlords in particular sectors are selling up (or being required to sell up by lending agencies) in substantial numbers. Focus Ireland's experience indicates that this is a rapidly accelerating trend.

One reasonable hypothesis is that supply is expanding at the top end of the market, responding to the opportunity provided by above average income families unable to purchase, but shrinking in the lower part of the market. This highlights the importance

of looking at the question of supply right across the sector rather than as a single phenomenon.

Rebuilding Ireland has outlined a number of initiatives that will seek to increase the stock of private rental accommodation in the state. This includes the encouragement of the build to rent sector and rolling out of the affordable rental scheme.

Focus Ireland believes that setting out a clear and reliable pathway for the future of the sector will be the single most important policy instrument for attracting the investment needed to increase the sector.

### **Build to Rent**

The encouragement of the build to rent sector targeted at institutional owners, while quite aspirational as sketched out in Rebuilding Ireland, has the potential to provide a useful and credible response to the shortage of accommodation. It may prove to be particularly useful in growth areas such as the docklands where there would appear to be a high and growing level of demand that could be met by such an initiative.

Good planning regulations for such developments has the capacity to make them a much more attractive place to live than apartments built for owner occupiers which are then used for rental on a piecemeal basis. Progress in this area is also important as it is the key area where the private rented strategy can be an engine to drive completely new housing supply, rather than be dependent for supply on purchasing property built primarily for the owner-occupier market.

However, it is of great concern that property companies report that, even at the current high rents, there are few areas where such projects would be viable. Such areas are exclusively at the higher, luxury end of the market. To some extent this reflects the problems of building costs and land prices which also beset the owner occupier market. Rent certainty would help to create a more predictable context for long-term investment decisions, but work is also required to develop financing instruments operating over the required period. The concentration here should not be exclusively on large scale institutional investors, models can be developed which allow individuals who wish to invest in property to combine in ways which can lead to construction of new projects and provide the investor with on-going income and asset appreciation without the demands of individual landlordism. The strategy should act as a catalyst to developing such models.

It is crucial that public policy in this area proceeds in such a way as to ensure that such developments (and the quality of life they can deliver) are available across a range of income levels and this does not develop as an exclusively 'top end' approach.

### **Affordable Rental**

Affordable rental models of accommodation provision have the potential to provide homes to those on moderate household incomes but who do not qualify for social housing supports. Such an initiative, if well considered and delivered, would have the potential to deliver a number of positive outcomes and would be welcomed.

We note that Rebuilding Ireland commits to delivering 2,000 rental properties by 2018.

However the structure of the scheme is not well developed in the plan. In the first paragraph it is described as for those who ‘fall outside the scope’ of social housing supports. But the first goal of the programme is to reduce pressure on social housing lists. It is hard to see how these statements can be reconciled.

The funding levels outlined for this initiative in Rebuilding Ireland suggest €5,000 per unit which in turn seems to indicate that the initiative is envisaged as a subsidy paid directly to landlords who would in turn reduce rent rates.

Focus Ireland believes that support for affordable rental should be directed to local authorities and approved housing bodies. This would allow AHBs to broaden the range of tenures they provide to create more diverse and sustainable communities.

Furthermore, directing this approach to the not-for-profit sector reduces the risk which exists with any revenue-based subsidy that it is simply absorbed by the market. Directing funding to local authorities and approved housing bodies to develop more affordable rental means that rent from affordable rental provides a source of income to AHBs which can be used to increase stock, maintenance standards and services.

### Single Person Accommodation

It is the experience of Focus Ireland that it is single people who often experience the greatest problems with poor quality private rented accommodation.

This is partly because of the historic and continuing failure of local authorities and AHBs to build social housing for single people. It is unlikely that the private market, particularly a private market that is moving toward higher levels of quality and professionalism, is going to meet the needs of low income, vulnerable citizens without encouragement.

We assume that the private rented strategy will address the changing structure of Irish households, and the growing need for single person accommodation. We strongly recommend that this analysis also extends to the challenges faced by particularly vulnerable single people – whether these are young people, elderly people, or vulnerable single people generally.

Secure housing solutions to these groups will involve the Local Authorities and Approved Housing Bodies, but specific consideration of their needs must be included in the private rented strategy.

### Housing Assistance Payment

When the roll out of the Housing Assistance Payment is complete the number of households that will be able to avail of this payment will be substantial. Research undertaken on household income distribution by NERI in 2014 showed that 33% of households had an income of less than €27,000 and the median household income was just over €38,000.

This means that the potential growth of households to be supported by the state while living in the private rental market is significant. This potential exposure of the state to the peaks and troughs of the market requires attention

### Standards

Focus Ireland services are still seeing significant instances of very poor quality accommodation in the private rental system. The current standards were developed

in 2008 with a lead in time of 5 years allowed to the sector. In 2013 the inspections on the current standards began. Despite this there is still accommodation in the system that not only does not meet the standards but has not yet been inspected.

Focus Ireland welcome the review of standards and focus on the enforcement of standards in the private rental sector. It is clear that the reliance on local authorities to carry out this task has had very disappointing results in many areas. There is a very strong case for a national framework and reporting structure for such reports to meet that ambition.

## Services

The Rebuilding Ireland Action Plan commits to the reform of the RTB to improve services for tenants and landlords. The RTB has significantly improved its efficacy in recent times by speeding up its dispute resolution process. This development is to be welcomed.

## Funding of the RTB

Focus Ireland believes that the RTB plays an essential role in regulating a key part of the housing market in the interests of society generally and under the authority of the Oireachtas.

As such we believe that strong consideration should be given to funding its operation from general taxation rather than through individual subscriptions by landlords. Funding the RTB from general taxation would demonstrate its role as a key regulatory arm of the state and increase its standing with landlords.

## Support for Tenants

Approved Housing Bodies now operate within the remit of the RTB and parties can avail of the services provided. We welcome the commitment to place a greater emphasis on non-adversarial dispute resolution and prevention. However, in doing so, the RTB must acknowledge the spectrum of needs experienced by tenants of AHBs. Since the introduction of the Residential Tenancies (Amendment) Act 2015, Focus Ireland has advocated for specific supports for tenants engaged in a dispute with a housing association. Our advice and information services have already been approached by a number of tenants from other AHBs who are in need of support. We are concerned that more tenants are not being supported in any way and may find engaging with the RTB difficult as a result.

## Education and Awareness

In addition, we would very much welcome steps to improve awareness by tenants and landlords of their rights and responsibilities. While the RTB has invested in advertising aimed to alert individuals about their services, heed must be paid to the perceived power imbalance between landlord and tenant, particularly in the midst of a housing crisis. Some customers who seek support from our services have experienced patently unacceptable conditions in properties, but felt unable to refer matters to the RTB for fear of losing their home. This is particularly true of tenants on lower-incomes who are at the mercy of market. It must be clearly communicated to these tenants that unacceptable conduct by landlords can and should be reported, regardless of whether they have a formal tenancy agreement in place.



## Research

We welcome the intention to position the RTB as the leading provider of data and evidence about the rental sector. This will become all the more important as fundamental changes to the sector occur. Policy must respond to changes in the market, and the RTB is best placed to relay information to policy-makers. Importantly, RTB data must be released in a timely manner. Changes in the market can occur over a number of months. Relying on data from a previous calendar year may not be sufficient and may obscure issues.

In addition to the RTB with the roll out of the Housing Assistance Payment local authorities will have a substantial footprint in the private rental market. The data and experience held with local authorities should also be valued by the department and crucially resources put in place that allows collection, evaluation and dissemination of their experience.

## Conclusion

As stated above Focus Ireland believes that the rental strategy must set out a clear long-term vision of the housing system we need into the future and the place of the rental market in that system.

It would be an error to think and act as if the rental market was exclusively the 'private rental market' and fail to take account of the possibilities for the state through Local Authorities and Approved Housing Bodies to play a role. That mistake would only be compounded if the shortage of new supply of housing into the housing system is singled out as the single most important area to address without seeing the opportunity to overhaul, to the benefit of all, our housing system.

There is a need to acknowledge that there are different private rental markets and that, like all private markets, the vulnerable and those with less resources tend to fare poorly in the absence of regulation and enforcement. Focus Ireland is deeply concerned that proposals for different forms of tenancy agreement for different sections of the private market will result more vulnerable households only having access to tenancy arrangements with lowest forms of security and housing standards. We believe that it should be a core principle that the rights of tenants are based on their rights as human beings and not be dependent upon the individual funding arrangements of the person who happens to be their landlord.

A functioning and sustainable private rented sector needs to meet the needs of landlords/investors and tenants as well as the wider economy and society.

In rethinking the role of the private rented sector, the strategy needs to reposition the role of the 'landlord' into the role of 'investor in a business.' Investors in the private rented sector should have access to the same rights and supports as other business sectors. However this needs to reflect that the primary function of the residential rental business is to provide tenants with the peaceful and secure enjoyment of their home.

This is achieved through the introduction of rent certainty and increasing security of tenure while also providing accessible systems of support for landlords' thereby increasing professionalism in the sector.