

Focus Ireland Submission to the Law Reform Commission Fifth Programme of Law Reform

Introduction

Focus Ireland welcomes the opportunity to make representations to the Commission on an area of law which we believe merits review and revision. Focus Ireland is one of the leading housing and homeless charities in the State. We are driven by the fundamental belief that homelessness is wrong. We are committed to tackling the systemic causes of homelessness and supporting individuals and families to exit homelessness as quickly as possible. We believe that the current legislative framework underpinning homeless services is outdated and does not adequately protect the most vulnerable. In this submission we will outline the elements of the legislation which we believe require amendment, as well as areas where additional legislative protection may be needed.

As the Commission will be aware, Ireland is currently experiencing the highest rates of homelessness since administrative records began. The causes of homelessness are varied and complex. However, poverty and structural disadvantage are generally at the root of the problem. We have seen a dramatic increase in the number of families becoming homeless over the past number of years. Focus Ireland has conducted research into the pathways into homelessness for families in the Dublin region and has found that the structural instability of the private rented sector is a major cause of the current crisis.¹ There is general consensus that the key response needed is the urgent provision of affordable housing. However, delivery on this target has been slow. As such, we are concerned that the rate of homelessness will not decrease substantially in the short-term.

This submission is written in light of the above context and Focus Ireland's work with families at risk of and experiencing homelessness. The submission focuses largely on the Housing Act 1988, as the basis for the provision of homeless services in the State. However, the legislation impacting households experiencing and at risk of homelessness is broader than this, and we have included additional points for the Commission to consider in the final section.

Current Legislative Context

The main legislation governing the provision of homeless services is the Housing Act 1988. Section 2 of the Act states that:

2.—A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—

¹ Sheridan and Hoey (2017) Insights into Family Homelessness No.9 - Complete Analysis of all Telephone Surveys with Families that became Homeless during 2016. Available at: <https://www.focusireland.ie/wp-content/uploads/2018/01/Sheridan-and-Hoey-2017-Insights-into-Family-Homelessness-No-9-Telephone-Survey-Data-Across-2016.pdf>

(a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a)

and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

The above provision is the only legislative guidance offered to decision-makers in determining whether a household is eligible for homeless assistance. It is important to note that the section 2 was passed at a time when homelessness was largely understood to be the experienced of single men. Families having to present to local authorities due to homelessness was far less common and women's experiences of homelessness was far less visible. The legislation has not been amended to address the changing nature of homelessness or our enhanced understanding the drivers of homelessness. We believe that this is area of legislative policy which should be reviewed.

We note that other jurisdictions have developed their homeless legislation to offer more prescriptive definitions of homelessness. The following sections examine the legislative programme as it relates to specific issues faced by Focus Ireland customers.

Prevention

It is well accepted that preventing households from becoming homeless should be the prioritised policy intervention. Focus Ireland has introduced pilot targeted prevention services but in order for prevention to successfully address the current crisis it needs to be available to all those who require it.

Other jurisdictions have introduced explicit preventative obligations into their homeless legislation and Focus Ireland believes that this should be considered in an Irish context. We would refer the Law Reform Commission to the Housing (Wales) Act 2014² which contains provisions relating to the duty of local authorities to prevent homelessness and a legislative definition of 'threatened homelessness'. There is no such definition in Irish legislation. While access to housing supports have been introduced in a preventative capacity in Dublin, this practice is not guided by any legislative provisions and relies on local authority engagement.

The Welsh legislation lists the supports which local authorities may be provided to secure suitable accommodation. These include mediation, security measures for applicants at risk of abuse, support in managing debt etc. Focus Ireland believes that similar provisions in Irish legislation would mandate local authorities to focus resources and energy on preventing homelessness, rather than managing emergency situations. Such provisions

² Housing (Wales) Act 2014. Available at: <https://www.legislation.gov.uk/anaw/2014/>

would also provide households with the opportunity to directly challenge local authorities on inadequate service provision.

Accessing Services

As noted above, local authorities are afforded a significant amount of discretion with regards assessing an individual or household as homeless. Focus Ireland has supported many individuals who have been refused access to emergency accommodation because they have been unable to satisfy the local authority as to their circumstances. Many are accepted as homeless a day or two later, once they manage to collate the necessary paperwork. However, for households with dependent children, this delay is inappropriate and can have significant consequences.

Again, other jurisdictions provide much more detailed guidance for decision-makers when children are experiencing homelessness with their families. Section 32 of the Housing (Scotland) Act 1987 as amended outlines local authority duties. Local authorities are statutorily obliged to 'have regard to the best interests of the dependent children'³.

Focus Ireland believes that similar legislative protection is needed in this jurisdiction.

Additional Considerations/Areas for review

- Right to housing:

The Convention on the Constitution recommended that Economic, Social and Cultural Rights (ESCR), which includes a right to housing, should be included in the Irish Constitution. Such a change in the constitution would not in itself eliminate homelessness but would make a strong statement about the values of our society and would provide individuals with a justiciable right. Policies introduced by the State would have to consider and balance the right. It is worth noting that other jurisdictions, including Austria, France and Germany, have introduced legislative housing rights.

- Residential tenancy legislation:

Focus Ireland believes that amendments to the Residential Tenancies Act as amended are required in order to limit the number of households becoming newly homeless each month. Research by Focus Ireland has shown that a significant number of households entering homelessness lost their private rented accommodation because the landlord was selling their property.⁴ Focus Ireland drafted a legislative amendment to the Planning and Development (Amendment) Bill 2016. This amendment restricts the ability of buy to let landlords to terminate a tenancy on the basis that they are selling the property. The property can still be

³ As amended by the Housing (Scotland) Act 2001 Section 3(4)

⁴ Insights into Family Homelessness Series. Available at: <https://www.focusireland.ie/resource-hub/research/>

sold, but this must be done with the tenants in situ.⁵ The amendment was not accepted by Government. We believe that a legal examination of the way in which enumerated property rights impinge on tenant's rights is merited.

Criteria

Below are the criteria listed as necessary to fulfil in order for a reform programme to be accepted. We have addressed each point in turn:

- **Public Benefit** – There is recognised public and political support to tackle homelessness, and we strongly believe that functioning housing and homelessness supports are of public benefit.
- **Suitable for Law Reform Body** – The above proposals concern issues of legislative and constitutional law and are therefore suitable for the Law Reform Commission.
- **Mix of Projects and Resources** – We believe that the above cover broad mix of legislative provisions and queries.
- **Avoid Duplication** - A thorough examination of the legislation impacting those experiencing homelessness has not been conducted to our knowledge.

⁵ Focus Ireland Legislative Amendment (Buy to Let Landlords). Available at: <https://www.focusireland.ie/wp-content/uploads/2016/04/Draft-Amendment-29th-November-2016-Focus-Ireland-campaign.pdf>