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Access to Housing in Ireland

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ACCESS TO HOUSING IN IRELAND

Dublin Institution of
Technology:
Department of Law

Access to Housing in Ireland

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Introduction

Chapter One: The Constitutional and Human Rights Framework.

What is home? My favourite definition is "a safe place," a place where one is free from attack, a place where one experiences secure relationships and affirmation. It's a place where people share and understand each other. Its relationships are nurturing. The people in it do not need to be perfect; instead, they need to be honest, loving, supportive, recognizing a common humanity that makes all of us vulnerable.¹

The concept of 'home' encompasses important emotional, cultural and physical qualities through which the physical structure of a house or other dwelling acquires the quality of a home. Access to adequate and suitable housing is not simply a matter of law or policy, but of human development and security. A house that becomes a home is a place where children and adults are cared for, feel safe, and from which they become active citizens, participating in social and economic life. Without housing, an individual or family becomes 'homeless,' they are forced to make choices about their everyday life from very limited options. Even those who secure emergency accommodation generally have to leave it during the day, there is no access to adequate cooking facilities and their health can suffer as a result. The family unit can become totally disrupted. Education and ability to remain employed or gain employment also suffers. Focus Ireland describes homelessness as 'the most extreme form of social exclusion' and as 'a strong indicator of social exclusion in any society.'²

Despite the importance of a safe and secure place to live to social cohesion and individual lives, there is no constitutional or legislative focus on housing as way to enhance opportunities for personal and social development. There is no constitutional right to housing, and although statutory and administrative measures have been put in place to

¹ Gladys M Hunt, *Honey for a Child's Heart: The Imaginative use of Books in Family Life* (Zondervan, 2002).

² Focus Ireland, *The Impact of Homelessness Information sheet*. Available at <<http://www.focusireland.ie/files/publications/Info%20sheet%20-%20The%20impact%20of%20homelessness.pdf>>

prevent homelessness, they do not amount to a guarantee of housing for all. Nonetheless, rights already existing in the Constitution have the potential to create new legal concepts, and the European Convention on Human Rights (ECHR), although not directly obliging states to provide homes, contains a number of important civil rights which can impose positive obligations on the State to provide housing. This chapter gives a brief overview of Irish cases dealing with housing rights, relevant applications of the ECHR and a recent attempt to improve conditions in social housing through the complaint mechanism under the International Covenant on Economic Social and Cultural Rights.

Housing rights and the Irish Constitution

There is no specific right to housing in the Irish constitution. There is however potential for rights already existing in the Constitution to be developed into housing related rights. For example, the right to have a family and to achieve an education could form the basis for creation of new legal concepts. The State is obliged to support the Family (based on marriage) and an important element of this support is the availability of a secure home. The State is also required to vindicate children's rights; children must grow up in a safe place and the availability of housing is an important element of this. Nonetheless neither Article 41 nor 42 has been successfully engaged to create constitutional protection for homes, nor to confer a right to housing.

A somewhat surprising protection for the home was found in Article 40.5 by Hogan J in the High Court decision in *Wicklow County Council v Fortune*.³ Article 40.5 of the Constitution provides that '[t]he dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law', and had previously been interpreted to limit the powers of Gardaí to issue search warrants in respect of private dwellings. Hogan J, in refusing to order the demolition of a chalet built in contravention of planning permission because it was the defendant's home, stated that it is necessary for the planning authority to show,

... that the continued occupation and retention of the dwelling would be so manifestly at odds with important public policy objectives that demolition was the only fair, realistic and proportionate response.⁴

³ [2012] IEHC 255.

⁴ [2012] IEHC 255, 27.

Hogan's creative approach was comprehensively rejected by the President of the High Court in the more recent decision in *Wicklow County Council v Kinsella*.⁵ Kearns P, focused on the purpose of planning laws noting that 'anarchy would rule the roost with regard to all sorts of developments' were Article 40.5 to be applied in this manner. By way of example he asks, rhetorically, 'might an individual create a structure overnight outside the GPO, bring in sleeping and cooking facilities, and claim thereafter that he is immune from removal as his "dwelling" is "inviolable" under article 40.5 of the Constitution?' This question makes a poignant, if unintentional point. Irish people expect their homes to consist of more than makeshift dwellings on the side of busy thoroughfares, they expect, and need, permanency and security.

Housing Rights in International Instruments

Ireland has ratified a number of international instruments which have been used internationally to bring housing related actions before domestic courts.⁶ Ireland takes a dualist approach to international obligations, requiring that they be expressly incorporated into domestic law in order to be enforceable before national courts. Thus the International Covenant on Economic Social and Cultural Rights (ICESCR), which specifically protects housing rights, cannot be litigated before the Irish courts. The European Convention on Human Rights (ECHR) has been incorporated into domestic law, at sub-constitutional level, by the ECHR Act 2003, and this has played a central role in recent housing law litigation in Ireland.

The ECHR is an international treaty intended to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member States are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. Although Ireland was one of the original countries to sign up to the ECHR in 1950, the Convention was not brought directly into Irish law until quite recently. The Good Friday/Belfast Agreement of 1998 contained a commitment to incorporate the Convention into domestic law in all parts of the island of Ireland, resulting in the European Convention on Human Rights Act 2003 (ECHR Act). The ECHR Act gives effect in domestic

⁵ [2015] IEHC 229.

⁶ Aoife Nolan, 'Litigating Housing Rights: Experiences and Issues' (2006) 28(1) *Dublin University Law Journal* 145, 145.

law to the provisions of the European Convention on Human Rights so that Irish people can claim a breach of these rights before Irish courts. It also means that the Convention may be argued in the Irish Courts, and a remedy provided, without the need to make a complaint to the European Court of Human Rights (ECtHR). The 2003 Act means that the rights contained in the Convention are part of Irish law and, subject to certain conditions, Irish courts are obliged to interpret any law in a way that is compatible with the Convention.

Article 3 ECHR and Housing Obligations

While Convention rights do not directly oblige states to provide homes for citizens, there are a number of important civil rights which can impose positive obligations on the State to provide housing. These include ensuring that accommodation is available and the timely provision of measures to avoid inhuman and degrading treatment. Article 3 provides that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.' The English House of Lords in *R (on the application of Limbuela) v Secretary of State for the Home Department*⁷ considered the State's positive obligations to homeless, destitute and failed asylum-seekers under Article 3. Lord Bringham stated that a State must act:

... when it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life. Many factors may affect that judgment, including age, gender, mental and physical health and condition, any facilities or sources of support available to the applicant, the weather and time of year and the period for which the applicant has already suffered or is likely to continue to suffer deprivation⁸.

The applicants had sought asylum in the UK but were unable to access conventional support because the Secretary of State considered that they had made their applications for asylum too late. The House of Lords acknowledged that there was no right to be provided with housing nor a basic standard of living by the State, nonetheless the treatment experienced by these men constituted more than mere failure to provide support. They were attempting to exist without access to cash, work or accommodation and had all developed serious illnesses as a result of living rough in London. Baroness Hale explains the attitude of the State to the Applicants:

⁷ [2005] UKHL 66, [2006] 1 AC 396

⁸ [2005] UKHL 66, [2006] 1 AC 396

The State has taken the Poor Law policy of 'less eligibility' to an extreme which the Poor Law itself did not contemplate, in denying not only all forms of state relief but all forms of self-sufficiency, save family and philanthropic aid, to a particular class of people lawfully here.⁹

The implication of this case is that there is a positive obligation on public bodies charged with the care of people to maintain a minimum threshold of care, and that street homelessness crosses the threshold into degrading treatment.

Article 8 and Housing Rights – The Donegan Case.

Article 8 of the ECHR provides that '[E]veryone has the right to respect for his private and family life, his home and his correspondence.' 'Home' is an autonomous concept, which does not depend on classification under domestic law, but the existence of sufficient and continuous links with a place can point to the existence of a home. Interference with the right to respect for one's home is permissible only to the extent that it is 'in accordance with the law,' 'necessary in a democratic society' and generally proportionate to the aim sought to be achieved. It is well established that Article 8 does not give an enforceable right against the State to guarantee that a home is provided. However, it has proved useful in a number of cases to prevent the state taking action which would render an individual homeless.

Most recently in the joined cases of *Donegan v Dublin County Council* and *Gallagher v Dublin City Council*¹⁰ the Supreme Court affirmed declarations of incompatibility of certain sections of the Housing Act 1996 with Article 8 of the ECHR. The decision is an important landmark because it was the first time the Supreme Court made a declaration of incompatibility of a statutory provision with s5 of the European Convention on Human Rights Act 2003. Mr. Donegan has been a tenant of the Council for more than 25 years. He discharged his rent and otherwise complied with the terms and conditions of his letting agreement. In November 2003 Gardaí searched his house on foot of a warrant issued under the Misuse of Drugs Acts. No unlawful drugs were found, however the Gardai reported that substantial evidence had been uncovered in his son's bedroom during the search which indicated that heroin was being prepared and packed for sale on the streets. They also stated that other 'drug paraphernalia' was found, and that these items were brought to Mr. Donegan's attention, along with the fact that 'his son was known to be selling heroin on the

⁹ [2005] UKHL 66, 77.

¹⁰ [2012] IESC 18

streets'. Donegan denied the allegations and contended that only one plastic bag was found and the used syringes were for his son's personal use.

The Council considered the son's actions to constitute a breach of the tenancy agreement and as an alternative to seeking repossession of the property, gave Donegan the option of obtaining an exclusion order against his son. Following a number of attempts by the council to have Mr Donegan obtain an exclusion order and his insistence that his son was not a drug dealer the Council served notice to quit on Mr. Donegan, seeking possession the following February. Proceedings under s62 of the Housing Act 1966 were initiated in the District Court in March 2005 because Mr. Donegan had not surrendered possession.

The High Court noted that the factual dispute between Mr. Donegan and the Council related to the status of Mr. Donegan's son as a drug addict, as opposed to a drug dealer. The decisions of the ECtHR on Article 8 of the Convention, were considered and the court accepted that as a 'home' was involved, Article 8 was engaged. It was therefore necessary that the interference was 'in accordance with law,' pursued a legitimate aim and was 'necessary in a democratic society.' Laffoy J referred to the ECtHR conclusion in *Connors*, which was to the effect that the procedural safeguards in place, including the possibility of judicial review, were insufficient to justify the serious interference with the complainant's rights and thus, such interference 'cannot be regarded as justified by a pressing social need or proportionate to the legitimate aim being pursued'. Laffoy J considered the post-*Connors* United Kingdom cases noting that

[I]t is the act of eviction, rather than the act of making a possession order, which interferes with a person's right to respect for his home ... [T]hroughout the judgment in *Connors* the emphasis is on eviction rather than on the possession order. I think that a distinction exists. In the plaintiff's case it was not the decision to serve the notice to quit, or the service of the notice to quit which interfered with his Article 8 rights. Rather, the application for a warrant for possession under s. 62 is an anticipatory interference with his rights under Article 8, because of the inevitability that the application will be successful.

Laffoy J observed that what transpired between the Council officials and Mr. Donegan, from late January, 2004 until 4th October, 2004, the date of the managerial order directing the service of the Notice to Quit, could not be viewed as a procedural safeguard or as a method of review of the Council's decision-making process, it was an investigation. Had judicial review been sought by Mr. Donegan immediately after the issuance of the Notice to Quit, his application 'would have had no prospect of success' and in any event judicial

review does not constitute a proper procedural safeguard where this is a dispute of facts. She therefore held that: the house was Mr. Donegan's home for the purposes of Article 8; obtaining and executing a warrant for possession under s. 62 of the Act would interfere with his rights under Article 8 of the Convention; there is no defence available under s 62 and the interference with private and family life envisaged by s 62 pursues the legitimate aim of good estate management. In relation to whether the interference answered a pressing social need and was proportionate she held that the lack of fair procedures inherent in the s 62 process rendered the interference disproportionate.

The case was appealed to the Supreme Court and heard with another eviction case concerning a man who wanted to succeed to his mother's tenancy of a Dublin City Council dwelling following her death. He had lived in the house with his mother for several years until 1995, when he moved in with his partner for two years. At this point, his name was removed from the rent account and was not restored when he moved back. Succession of tenancy depends on two conditions: having lived in the house for at least two years prior to the death of the main tenant and being on the rent account. The council claimed he did not fulfil these conditions and sought possession of the house. In the High Court, Mr Justice O'Neill found that, because the District Court had no discretion to examine the underlying merits of the case or examine the procedures employed by the council, the Section 62 procedure was incompatible with the European Convention on Human Rights and in particular article 8. In both cases, the state argued that the remedy of judicial review was adequate to address any deficiencies in the decision-making process, and that disrupting the operation of Section 62 would impose an intolerable burden on the council.

Section 62 of housing act 1966 deals with the provision and management of housing authority dwellings and it specifically provides a mechanism whereby a housing authority can recover possession of dwellings 'where a housing authority are of opinion that a house is unfit for human habitation in any respect'. A local authority must first serve the tenant with a Notice to Quit. Where the tenant does not give up possession, the local authority may make an application to the District Court which is then obliged to grant a warrant for possession, provided the formal proofs under the section are complied with. The Court does not have any discretion in respect of the underlying merits of the eviction. Subject to any stay in proceedings put in place by the Court, the local authority may immediately execute the warrant for possession. Where a local authority tenant has been subject to section 62

possession proceedings on the basis of a decision by a local authority that the tenant has engaged in anti-social behaviour, the future entitlements of the individual will also be affected.¹¹

Section 14 of the Housing (Miscellaneous Provisions) Act 1997 provides that where a local authority considers that a person was engaged in anti-social behaviour, it may refuse to make, or defer the making of a letting of a dwelling to such a person. Also, under section 16 of the Housing Act 1997, the Health Service Executive may also determine that such an individual is not entitled to a payment of rent supplement allowance for private accommodation. A person found guilty of anti-social behaviour may thus end up in emergency accommodation indefinitely

In the Supreme Court, Justice McKechnie held that under the relevant legislation,

an occupier has no right or entitlement to raise any defence to ... an application [for possession], other than by way of challenging the housing authority on ...[certain] formal proofs. In addition, the absence of judicial discretion means that the personal circumstances of such occupier must be disregarded as being irrelevant; equally so with questions regarding the reasonableness or fairness of making the Order: these simply have no part in this statutory procedure.

The suggested procedural safeguard of judicial review was held to be unsatisfactory in such instances and a further declaration of incompatibility issued. While such a declaration does not affect 'the validity, continuing operation, or enforcement' of the provision, the Taoiseach must formally notify the Oireachtas that it has been made, though s/he is not obliged to initiate steps to amend the law or even to tell the Oireachtas what the Government's intentions in the matter are.

Article 8 was also considered in the Irish Courts in *Doherty and others v South Dublin County Council and others*.¹² The applicants in this case were members of the travelling community and challenged the council's refusal to provide accommodation other than a bricks and mortar house. They claimed that the failure to provide culturally appropriate housing was contrary to the right for respect for private and family life under Article 8.

¹¹ Section 14 of the Housing (Miscellaneous Provisions) Act 1997 provides that where a local authority considers that a person was engaged in anti-social behaviour, it may refuse to make, or defer the making of a letting of a dwelling to such a person. Also, under section 16 of the Housing Act 1997, the Health Service Executive may also determine that such an individual is not entitled to a payment of rent supplement allowance for private accommodation. A person found guilty of anti-social behaviour may thus end up in emergency accommodation indefinitely.

¹² [2007] IEHC 4

The High Court held that there was no violation of Article 8. The plaintiffs had a right to have their private and family life respected but this did not mean that they had a right to accommodation of their choosing. The ECtHR has recognised a duty to take into account the sensitivities of Roma, Gypsies, Sinti and Irish Travellers. There is, however, no automatic duty on States to intervene so as to protect a nomadic way of life.¹³ The government's responsibility to lifestyle into account does not amount to a right to housing, or to housing of one's choice.

The text of Article 8 contains no positive obligation to intervene and uphold the right to private and family life. The English Court of Appeal in *Anufrijeva and Another v Southwark*¹⁴ remarked that it would be hard to imagine any positive obligation under Article 8 of the ECHR where an individual is not in a predicament that is sufficiently severe so as to engage Article 3 of the ECHR.¹⁵ In *Ilascu and others v Moldova and Russia*¹⁶ the Court emphasized that in pronouncing upon the extent of positive obligations a fair interest has to be struck between an individual's Convention rights, the general community interest and the choices which elected governments must make in terms of priorities and resources. The ECtHR has held that Article 8 could impose a positive obligation on authorities to provide accommodation for homeless Gypsies, including the provision of culturally sensitive housing. However, this obligation under Article 8 could only arise where such accommodation was at the disposal of the local housing authority.¹⁷ For both settled and nomadic people, however, this provision is of little use as local councils rarely have sufficient housing to accommodate even basic needs, let alone a choice of housing. The approach was endorsed by the Irish Courts in *O'Donnell v South Dublin County Council*¹⁸ where the Supreme Court confirmed that Article 8 does not confer a right to be provided with a home of one's choice or alternative accommodation of an applicant's choosing.

¹³ *Codona v United Kingdom*

¹⁴ [2004] 1 All ER 833, CA; [2003] EWCA Civ 1406; LBC [2004] 1 QB 1124, 16 October 2003 paras 43, 44, and 45

¹⁵ Article 3 contains a prohibition on inhuman and degrading treatment.

¹⁶ No 48787/99, 40 EHRR 1030, 8 July 2004

¹⁷ *Codona v United Kingdom*, No 484/05 (unreported), 7 February 2006

¹⁸ [2015] IESC 28

The European Social Charter – A Collective Complaint

Introduction

The European Social Charter (ESC) is a Council of Europe treaty enacted in 1961 and revised in 1996. The Charter guarantees fundamental social and economic rights and in particular contains an obligation to protect against poverty and social exclusion and a right to housing. It was intended to fill gaps in the European Convention on Human Rights which protects mainly civil and political rights. Enforcement of the Charter is through a reporting system and through collective complaints lodged by social partners (such as trade unions) and non-governmental organisations. The European Committee of Social Rights (ECSC) is responsible for enforcement. Collective complaints go through a two stage process. Initially the ECSC determines admissibility. It then goes on to adopt a decision on the merit of the complaint. The decisions of the ECSC are binding on signatory states in accordance with the terms of the charter, but they are not enforceable in the domestic legal system.

In 2014 Ireland's compliance with charter rights in the provision of local authority housing was challenged by a collective complaint made by the International Federation for Human rights (FIDH),¹⁹ in association with FLAC, on behalf of a number of law centres, nongovernmental organisations (NGO's) and community development organisations. The complaint alleges that the Government of Ireland has not ensured satisfactory application of a number of Articles on the Revised European Social Charter (RESC) specifically in respect of local authority housing. The following articles are allegedly breached:

- Article 11: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
- Article 16: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
- Article 17: Children and young people have the right to appropriate social, legal and economic protection.
- Article 30: Everyone has the right to protection against poverty and social exclusion.
- Article E: Non-discrimination.

¹⁹ Complaint No 110/2014: *International Federation for Human Rights (FIDH) v Ireland* <rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048379f> accessed 15 April 2016.

The collective complaint outlines how, under the RESC, every family must be provided with adequate shelter in order to comply with article 16.²⁰ In the decision *Autism v France*²¹ the ECSC held that State Parties are required to take not only legal action, but also practical action, to give full effect to the rights recognized in the charter. The state must use their full resources in insuring that the objectives of the charter are met and be mindful of their choices regarding the impact of their choices on people with vulnerable backgrounds who are dependent on these particular rights. *Autism v France* established 3 main criteria to be met when implementing Charter Articles:

- (i) A reasonable timeframe
- (ii) Measurable progress
- (iii) Financing consistent with the maximum use of available resources.

Violations of the Charter in Ireland.

The 2014 complaint alleges that the Irish State does not meet the criteria that the charter has set out. It has no adopted timeframe to implement the housing laws or policies set out in the Charter. Therefore there is no way to measure progress in achieving the goals laid down by the Charter for specific and vulnerable groups of people. Ireland also does not maintain meaningful statistics on particular needs, resources and results, so there is no way of knowing what is required. The last report on local authority housing was the 2002 census. It is also alleged that conditions in local authority housing are very poor representing a failure by the Irish state to implement Articles 16 and 30. Considerable numbers of local authority housing units do not meet the legal standards for rented dwellings. Private rented dwellings are regularly inspected while local authority houses are not, demonstrating the difference of care and resources used when it comes to local authority tenants. This has in turn affected the health and welfare of the tenants.

²⁰ Ireland has not ratified Article 31 of the RESC, therefore a right to shelter was argued on the basis of Article 16 which refers to ensuring the necessary conditions for the full development of the family, including the provision of family housing.

²¹ *Autism v France* Complaint No13/2002

Complaint in Detail

1. Failure to adopt the Charter rights within the legal, policy and administrative framework of housing in Ireland.

The Complaint details three specific elements. First it details Ireland's failure to adopt the Charter rights within the legal, policy and administrative framework of housing rights in Ireland. The Irish State Department of Environment, Local Government and Community (The Department)²² are the organisation responsible for housing in Ireland. They develop housing laws and policies and allocate funding for social housing to local authorities and voluntary housing bodies who are responsible for the direct provision and maintenance of social housing. The Census in 2011 stated there was 130,000 rented social housing units in Ireland. Since the 1980s the Department has provided funding through a number of schemes to renew local authority housing. The schemes have failed to have a significant impact on the most disadvantaged estates, as the policies only accounted for external physical renewal of the houses. Department policies have resulted in local authority housing stock being sold and to the process of 'residualisation'²³. Remaining units have poor conditions including, overcrowding, dampness and antisocial behaviour. Social tenants live in areas experiencing high levels of unemployment, dependency on social welfare, lone parent poverty, drug addiction and lack of participation in education. Thus a failure to improve the quality of housing, has affected the quality of the life in these areas.

According to the European Committee of Social Rights (ECSR) states must ensure that housing is adequate through different measures including a certain quantity of housing stock being available, injunctions for landlords who disregard their obligations to tenants, urban development rules and maintenance obligations that apply to landlords. Essential services such as water, electricity and telephones must also be provided.²⁴ The government must also supervise the needs and wants of these areas. Ireland is obligated to follow these charter requirements or show some efforts in applying these charter rules.

²² <http://www.environ.ie/>

²³ The term 'residualisation' means a process in which a residue is created. When people move in some number from a neighbourhood or community because they believe it is no longer a desirable place to live, then what they leave behind is a social residue of less enabled people. The social balance of the area is disturbed by the departures and the people who remain are faced with concentrated poverty together with strengthening social stigmatisation.

²⁴European Committee of Social Rights, Conclusions of the Committee of the European Committee of Social Rights, 2003, France, p. 224.

2. *The adequacy, habitability and suitability of some Local Authority housing violates the Charter and RESC.*

The complaint details how the adequacy and suitability of some Local Authority housing violates the Charter and RESC. The conditions in certain local authority dwelling do not meet the legal standards for private rented homes. The condition of some local authority housing very poor when compared to private rented properties, and there is no form of redress for violations, nor is there effective right to protection against poverty and social exclusion for the tenants of these properties. These conditions indicate a failure on the part of the Irish State to take practical steps towards realising Article 16²⁵ and Article 30²⁶ of the RESC. In *ERRC v Bulgaria*²⁷ and *FEANTSA v France*²⁸ the ESCR concluded that emergency housing cannot be considered adequate because it is temporary.

Adequacy Standards

Adequate housing is defined in accordance with a series of factors. First, the dwelling must be safe from a sanitary and health perspective, possessing all basic amenities including water, heating, waste disposal, sanitation facilities, electricity. Health hazards such as mould, lead or asbestos must be controlled. Secondly the dwelling should not be overcrowded; the size of the dwelling must be suitable for number of people living there. It must also be located in areas near to schools, services and workplaces.

In Ireland rented housing standards are regulated through a number of primary and secondary legislation including the Housing Act 1966 and Regulations in 1993, 2008 and 2009 and accompanied by the Tenancies Act 2004 which was later amended by in the Housing Act 2009. This means there is a clear legal standard in relation to the quality and adequacy of all rented properties but there is still no enforcement system in place for local authority housing. Part V of Housing Act 1966 section 66 outlines that if the housing

²⁵ Article 16 - the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing.

²⁶ Article 30 - to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance and to review these measures with a view to their adaptation if necessary.

²⁷ Complaint No. 31/2005.

²⁸ Complaint No. 39/2006.

authority is to believe that a rented property is unfit for human habitation they may serve a repair notice of up to 28 days upon the resident to give time for the repairs of the house to take place. If the house is of an unrepairable manner then it may be knocked down with the resident being provided with an alternative property. The matters of which a Housing Authority may consider a house to be unfit for human habitation include stability, resistance to spread of fire, safety of staircases, resistance to moisture, infestation and transmission of heat and sound, water supply, sanitary arrangement and drainage, air space and ventilation, natural and artificial lighting, facilities for preparing, storing and cooking food and finally breach of building regulations.

Public housing does not have such enforceable rights. The local authorities have primary responsibility for the repair and maintenance of these dwellings. The state provided guidance to assist the local authorities by organising a state sponsored Centre for Housing Research which completed a report on the 'Good Practice in Housing Management – Guidelines for Local Authorities'. This report sets out the guidelines for three types of repairs: emergency repairs, urgent repairs and routine repairs. Emergency repairs will take place when there is a risk to the life of the tenant or general public. Urgent repairs will take place when there is a risk to the landlords/tenants property. Routine repairs are just general repairs without any risk to the tenant or property. These guidelines are not regularly met as evidenced highlighted by the substandard conditions of the local authority houses. Neglect in maintenance of these houses has worsened conditions and contributed to the further social exclusion of the vulnerable residents residing in these areas. The complaint highlights the substandard conditions in the local authority housing estates around the country. The data for the table was gathered by local community NGOs²⁹, locally based tenant groups, the Central Statistics Office Census results, statutory reports and the Dublin City Council data.

²⁹ Some of the NGO's include the Community Action Network Dublin, Inner City Organisations Network and the Rialto Rights in Action Group.

Substandard issues in local authority accommodation: results of tenant surveys & research
2007-2012

Local Authority Estate/Area	Housing Units	Question	Proportion of tenants/residents affected
Dolphin House, Dublin	436	Dampness and fungal contamination	72%
		Sewage Invasions and odours	89%
St. Theresa's Gardens, Dublin	346	Not satisfied with maintenance	79.9%
		Dampness in bedroom	40%
Eight Dublin City Centre Local Authority Flat Complexes	800	Substandard maintenance issues	85%
Balgaddy, Co. Dublin	465	Poor quality materials, presence of pyrite, dampness and mould	85%
Moyross, Limerick	1100	Housing unsuitable for remediation-require demolition	33%
Southill, Limerick	1000	Housing unsuitable for remediation-require demolition	50
Eight Dublin City Centre Local Authority Flat Complexes	800	Of tenants who reported their problems to the local authority were not happy with the outcome.	90%

The Complaint uses a number of case studies to illustrate the difficulties experienced by local authority tenants. These case studies highlight the inadequacy of local authority housing in Ireland.

Case Study 1. Dolphin House and the Rialto Rights in Action Tenant Survey.

The Dolphin House complex is comprised of 436 flats and was built in the 1950s. The 2011 Census showed that only 4.6% of people aged 15 and over living within the estate went to

third-level education in comparison to national figures in 2006 of 29.1%. Only 34% of people aged 15 and over are employed compared to Dublin City and national rates of 51% and 50%. Some 29% of residents 15 and over were unemployed in 2011, in comparison to Dublin and national rates of 11.5% and 19%.

The Rialto Rights in Action Group (RRIAG) carried out a survey of residents in 2010 which reported that 72% of residents experienced damp, 63% reported mould, 89% reported sewage invasions and smells, and 62% were concerned about health because of sewage and damp. Grey and black wastewater would repeatedly back up and overflow into household fixtures including sinks and baths. Delays of up to four days for Dublin City Council (DCC) to responding to blockages were reported. DCC claimed that the waste water was not dangerous to health, but scientific analysis of the water showed that it could be harmful to human health. The analysis also showed that the level of dampness present in the properties created contamination, including by aspergillus which can cause lung diseases such as asthma and bronchitis. DCC claimed that there was no serious mould or damp, but just condensation. The RRIAG research argued that there are significant health implications for tenants living in these flats, especially for children who reportedly suffered from serious chest infections, pneumonia, bronchitis and e-coli infections.

As a result of this research DCC carried out a survey on conditions in 376 flats in the local authority Dolphin House Complex. The survey found that 212 (56%) of the flats had dampness, 114 (30%) had high levels of damp, 95 (25%) had mould present and 252 (67%) reported drainage odours in kitchen and bathrooms. This identified the causes of the dampness and mould as structural problems such as cold walls, insufficient ventilation and insulation, and overcrowding. DCC claimed they would address the conditions immediately, but they did not and the tenants still live in the substandard conditions. A case³⁰ was brought to Circuit Court in 2011 by a disabled tenant of the Dolphin Housing estate. He was awarded €15,000 in damages against the DCC. The Judge ruled that the flat was 'unfit for human habitation and in breach of the council's contractual duty of care under the Housing Act.'

Similar Conditions were also reported in other local authority housing estates including St. Theresa Garden's. A 2012 Report, *Improve Our Homes* by the North Dublin

³⁰ Managh,R. (2011) 'Damages for Disabled Man over Sewage in Council Flat Shower,' The Irish Times, 8 July 2011.

Inner City Community Organisation Network (ICON) claimed that 85% of tenants in eight local authority flat complexes in Dublin's North Inner city experienced substandard conditions. Other issues included social problems and maintenance issues for older people living alone. These residents required social support to access maintenance work, but no effort was made to assist them. There were also concerns regarding emergency repairs, and the charge of €100 that the DCC makes if a call out is not deemed an emergency.

Case Study 2. Balgaddy development

The Balgaddy development consists of a mix of 465 social houses and apartments built in 2004 and 2007 on the outer South suburbs of Dublin. The complaint alleges that these dwellings have been built with poor quality materials making them unsafe. They already show signs of mould, damp and other indications of poor construction. Residents have reported poor housing conditions, a lack of community facilities, and an increase in anti-social behaviour. South Dublin County Council reported a total of 4,606 maintenance requests/complaints from 2007 to the end of 2011 with number of complaints increasing over time. A report by independent architects found that defects of the dwellings included badly fitted doors and windows, ongoing problems with heating systems, poor plaster work within some apartments, poorly installed insulation and electrical appliances, piping issues and breach of building regulations concerning fire, ventilation, stairs and disability.

Case study 3. Limerick City

A report was commissioned by the government in 2007 on conditions in social housing in Limerick City. The report was solely based on the Moyross and Southill areas of Limerick, which experience some of the highest levels of socio economic deprivation in the country. Unemployment is 5 times higher than the national rate, there is a high level of one parent families, substantial educational disadvantages and a high level of mostly drug related crime. The level of drug use is also high, with the National Drugs Strategy Team³¹ identifying Limerick city as the area of most concern in regard to problematic drug use. The appearance of the areas is poor with extensive illegal dumping and littering and houses are burnt out as a result of criminal activity. The level of housing stock is very low also. There are

³¹ National Drugs Strategy Team.

http://www.drugsandalcohol.ie/12388/1/DCRGA_Strategy_2009-2016.pdf

approximately 1,100 units in the Moyross area, with more than a third of these houses unsuitable for further remediation work. There are around 1,000 houses in Southill, over a half of these are unsuitable for further remediation work. The Limerick Regeneration Masterplan, published in 2008, proposed the demolition of all the old housing, community and retail facilities in four key deprived areas in Limerick including the Moyross and Southill areas and their replacement with better quality neighbourhoods. The programme would cost up to €3 billion from both private and public sources. The launch of the plans overlapped with the economic crisis which meant homes were demolished but there was very little replacement. By the beginning of 2013 there was a total of 726 occupied and unoccupied homes in Southill, 199 of these are to be demolished, 527 are to be refurbished and a total of 209 new homes are proposed for the area. There is now a total of 530 local authority homes in Moyross of which a further 257 are to be demolished and 273 to be refurbished.

Heating Facilities

The 2011 Census³² recorded 2,305 local authority households with no central heating, approximately 1.8% of all local authority tenants. The Census also revealed that 17,235 owner occupied households are without central heating, equating to .0149% of all owner-occupier households.

Local Authority Housing compared to Private Tenants

The Housing Act 1966 and related statutory instruments set out minimum standards for private rented housing. There are no similar standards for local authority housing. Local Authorities are responsible for the enforcement of the minimum standard regulations and have the right to inspect properties and issue legally binding enforcement notices. There is a significant difference between the level of inspection of private housing and local authority housing.

This table,³³ compiled in 2012, demonstrates levels of enforcement of standards in private rented properties local authority inspectors.

³² The 2011 Census

<http://www.cso.ie/en/census/census2011reports/census2011thisisirelandpart1/>

³³ Department of Environment, Heritage and Local Government. Website: <http://www.environ.ie/>

Local Authority/ County Councils	Dwelling Inspected	Inspections carried out	Do not meet requirements	Notices served on Landlords improvements carried out	Legal Action initiated
Carlow	225	380	221	4	4
Cavan	737	737	60	0	0
Clare	706	843	659	0	0
Cork	613	735	612	16	0
Donegal	532	532	0	0	0
Dun Laoire Rathdown	279	545	371	4	0
Fingal	231	380	177	0	0
Galway	74	67	33	49	0
Kerry	951	814	301	0	0
Kildare	573	692	312	271	0
Kilkenny	163	273	54	0	0
Laois	173	246	73	0	0
Leitrim	66	66	0	0	0
Limerick	135	149	5	0	0
Longford	268	277	217	0	0
Louth	61	122	61	22	0
Mayo	562	728	98	95	0
Meath	58	81	12	4	0
Monaghan	342	390	27	0	0
North Tipp.	438	451	40	37	0
Offaly	62	102	62	62	0
Roscommon	260	468	319	0	0
Sligo	921	1092	719	443	0
Sth Dublin	880	1087	207	0	0
Sth Tipp.	208	211	42	0	0

Waterford	600	600	0	0	0
Westmeath	311	459	137	0	0
Wexford	1122	1122	704	0	0
Wicklow	1082	1083	77	0	0
City Councils					
Cork	628	827	380	280	0
Dublin	1701	2831	876	867	36
Galway	88	124	54	0	0
Limerick	488	581	318	26	0
Waterford	515	515	120	0	0
TOTALS	16,055	19,616	7,348	2,280	40

There are no such inspections carried out for Local Authority Housing. As a result, there is no statistical information on conditions in local authority houses.

Health and Well-being

Article 11 of the Charter deals with the right to protection of health. It states that ‘with a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed to remove as far as possible the causes of ill-health, to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health and to prevent as far as possible epidemic, endemic and other diseases, as well as accidents’.³⁴ With the presence of dampness in local authority housing, it has proven dangerous to the health and well-being of the residents which breaches article 11. The Rialto Rights Action Third Monitoring report stated that 40% of the tenants who reported their children had been suffering from either respiratory or stomach upsets related it to dampness, mould and sewage conditions. The Dolphin Housing estate has also reported³⁵ that over 40% of the adults and children living in

³⁴ Article 11 of the Charter.

³⁵The Rialto Rights in action Group. Report on the Third Monitoring Housing Conditions in Dolphin House estate Rialto Dublin 8, Community Action Network, Dublin. Page 10.

the estate have trouble breathing easily and 90% were concerned for their health because of the damp and sewage issue within their homes. The report has also found that children had missed numerous school days as a result of the illness. The residents have emphasised that the impact of the poor housing conditions has made them feel ashamed and embarrassed, it has affected them financially by paying for the health care costs and by paying for endless repairs of the homes has had a significant impact on the already financially challenged residents. These residents have also been left feeling angered and powerless when trying to seek a response for their housing issues from the local authorities as they are often ignored. From the evidence of this report it is obvious that dampness poses a risk to the health of the residents and as such should at least be categorised as an urgent repair and should be addressed within the recommended timeframe as outlined in the charter.

3. The Regeneration Scheme

In recent years the Government, the Department of the Environment and local authorities have tried to deal with the issues of substandard housing conditions, social exclusion and poverty in deprived estates through a number of regeneration projects. These projects have failed to address the housing issues and have in many cases have made them worse. A Regeneration scheme was commenced in the local authority housing area of Ballymun in the Dublin Suburbs in 1997. This was backed by state funding, but from 2001 onwards Public Private Partnerships (PPPs) took over the regeneration projects. This led to land being transferred from the local authorities to the private developers. The Department of Environment's 2005 Housing Policy Framework showed that since 1997 €1 billion had been spent on regeneration and remedial works for local authority housing estates. It was intended to have regeneration programmes for all deprived estates, prioritising maintenance and management of the estates. A National Regeneration Programme was then developed which included regeneration projects in Ballymun, Limerick City, parts of Dublin City and regional towns including Sligo, Dundalk and Tralee. This programme did not come to fruition because of the lack of financial support from central government.

In 2007, two new special purpose Government Agencies were established to implement regeneration programmes in disadvantaged areas in Limerick City and Dublin City. These programmes included planned investments of €3 billion from public and private sources to build and replace local authority homes and private dwellings. The Limerick

Programme included the building and replacing of 7,240 homes, including a mix of 2,450 local authority houses and 4,790 private dwellings. The Dublin Programme included the regeneration of at least twelve large disadvantaged local authority estates in inner city Dublin which would involve 2,000 inner city flats. The property crash in 2008 revealed that the regeneration programmes were too reliant on private sector funding and the booming housing market. As the property prices plunged, the private residential and commercial aspects of the programmes were no longer deemed economically viable by private financiers and as a result all of the PPP projects collapsed, save for the Fatima estate, which was mostly completed at the time of the crash. Private finance was no longer available and state investment was reduced. The National Regeneration Programme has now been reduced, redeveloped and rescaled and is now only based on Government funding which has been significantly reduced as shown by the table.

To accomplish the goal of regeneration, the Department of the Environment and local authority decided to relocate the residents and demolish the empty homes, rather than trying to retain the homes and improve living conditions. By de-tenanting these estates, the management and maintenance was further reduced and the estates became worse than before creating destabilisation, decay and destruction for remaining residents. Remaining tenants have highlighted how de-tenanting has impacted community spirit. Communities have begun to lose hope with an increase in anti-social behaviour and there is a loss of a sense of place as people are separated from their family and friends. Some tenants believe that the local authorities have a strategy of neglecting the estates in order to remove the remaining tenants. Tenants felt the land was so deteriorated that they have no choice but to suffer or move. They believe the land in these areas is prime for private development and that is why the local authorities have been so neglectful. Parents feel that the anti-social behaviour is so bad, that not only do they feel fear for their own lives, but they feel fear for their children's lives, living within environments that promotes crime and drug use. There is a real sense of disempowerment. The Irish Times published a report on 17 November 2012 which stated the in relation to the O'Devaney Gardens estate in Dublin's North Inner City:

The small group of tenants who remain live amid a wasteland of boarded-up derelict blocks. A resident claimed the place is all smashed bottles. You can't let the kids out to play once they get in from school, that's it. Almost every night the fire brigade is

down. There was one day when they were down five times in the one day. People set fire to the bins and they get into the empty flats and set fire to whatever's there.

The regeneration programme in Limerick has faced similar problems, with more houses being demolished and no new houses being built. Some residents are moved while others are left behind. The Limerick Local Authority have taken over the regeneration projects from the once prominent Limerick Regeneration Agency. To date only €116 million has been spent by the Department of Environment instead of the once planned €3 billion. €20 million of this was spent to demolish 700 homes and €53 million was used to buy 365 homes in various parts of Limerick city to relocate families from the regeneration areas. Families have become worse off with up to 1,000 residents moving because of the lack of progress and terrible living conditions. A survey undertaken in 2011 by a local residents group in Limerick found that in the Ballinacurra Weston estate 71.2% of residents felt conditions had deteriorated since the beginning of the regeneration programme and 66.6% didn't feel safe and secure in the estate.

Cuts to Community and Social Services

The Regeneration Programme areas have been significantly affected by the lack of government spending on community development projects, youth services, partnership companies and community drug projects. From 2008 to 2012 government spending has been cut in a number of these services by 2.82%. Also the voluntary social housing budget was reduced by 54%, the local community development Programme by 35%, initiatives against drugs by 29%, and family support projects by 17%. In 2013, the voluntary and community sector has declined by 35% compared to its 2008 level, leading to a loss of 11,150 jobs in this sector. Employment in the community and voluntary sector is projected to be down to 36,638 by the end of 2015.³⁶ In 2010, funding was also cut for regeneration development workers in a number of estates by Dublin City Council. These cuts were made to support for key social based public services such as the Gardaí, local authority estate managers and local health services. The current government policy in this area allows cuts to be made in education, community employment, housing, mental health, disability and services for the protection and welfare of children. The regeneration communities already

³⁶Harvey, B (2012) Changes in employment and services in the voluntary and community sector in Ireland. Dublin ICTU 20/08/2012.

had high levels of risk of poverty groups, such as lone parents, people who are unemployed, people of low skill sets and a lack of educated people. The groups are being further impacted from all directions concerning austerity. The Survey on Income and Living Conditions in Ireland showed that from 2010 to 2011 that the percentage of those 'at risk of poverty' increased from 14.7% to 16%. Ireland's 'consistent poverty' rate also increased from 8.8% in 2010 to 9.3% in 2011. 250,000 children are at risk of poverty due to the regeneration programmes.³⁷

Absence of inclusion of housing/human rights approach in regeneration policy and plans
Article 30 of the RESC states that everyone has the right to protection against poverty and social exclusion. Since Ireland has ratified this article, they must follow the conclusions and obligations that the Committee have set out within this Article. This means Ireland is required under Article 30 to:

... adopt a coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.³⁸

The measures made are to strengthen the entitlement to social rights, to monitor the enforcement of these rights, to improve the procedures and management of benefits and services, to improve the information about social rights and the related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. Ireland has, however implemented a number of schemes to fund estate regeneration measures. These schemes did not provide a national regeneration policy which would address housing rights and there is no legally established and measurable set of standards or guidelines for regeneration which would specifically incorporate Article 30 or any Articles under the Charter of RESC.

Significantly, in complying with obligations of the Charter in relation to adequacy of housing, there are no deadlines or timetables for ensuring that all local authority housing meets the required standards. The area-based regeneration plans require clear defined

³⁷Harvey, B (2012) Changes in employment and services in the voluntary and community sector in Ireland. Dublin ICTU 20/08/2012.

³⁸ Article 30 of the Revised European Social Charter.

targets and schedules, benchmarks, monitoring, clear dedicated funding, timetables for implementation, and sufficient mechanisms for community participation. In this regard, the UN Expert on Poverty and Social Exclusion, Magdalena Sepulveda, detailed a recommendation to Ireland in 2011, following a country inspection: “The State should consider adopting a legislative framework for a National Public Housing Estates Regeneration Programme to ensure that international human rights standards and community participation are ensured in all regeneration projects around the country.”³⁹

Tenants’ involvement in Regeneration Projects.

Tenants and residents have had very little involvement in the regeneration projects. This is a result of the state’s failure to develop and support any form of proper participation. In Limerick the regeneration boards were made up of senior official with very little tenant engagement. No official state organisations were created to represent tenant views. The Ballinacurra Weston Residents’ Alliance highlighted the lack of participation tenants in the Southside Regeneration project. The only form of participation was an informal resident’s forum on the project. A number of the alliance members were a part of the forum in which they felt they ‘were being officially consulted while being ignored at the same time’.⁴⁰ There was talk of social regeneration in the forum but there was very little to show for this talk as things became worse rather than better. Anti-social behaviour and illegal dumping started occurring and tenants began to leave. Homes began being boarded up as a result which made them prone to vandalism and eventually being burnt out. This forum went on for 3 years and participants felt it was a waste of time and left, the only people left in the forum were not representatives of the community and did not even bother to consult with residents any further.

The Alliance conducted a survey of residents in Ballinacurra from June to September 2010. They found that out of 179 respondents 90% felt that they hadn’t been properly consulted about what they wanted in the regeneration master plans, 78% were unaware of the existence of the forum and 81% were unaware of who represented them on the forum.

³⁹UN Doc A/HRC/17/34/Add.2. Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepulveda Carmona, Mission to Ireland (17 May 2011), p. 20.

⁴⁰Ballinacurra Weston Residents’ Alliance (2012) Newsletter Christmas 2012.

94% said they did not trust the Southside Regeneration Agency the agency in charge of the project.⁴¹ To ensure all Regeneration Projects allow tenants to properly participate in projects the UN Expert on Poverty and Social exclusion has recommended that the Irish State should consider adopting a legislative framework for the National Public Housing Estates Regeneration Programmes to ensure that the international human rights standards and community participation are ensured.

Collective Complaint Admissible

This information, gathered by a number of organisations, was submitted to the ECSR to support a finding that the Irish state is in violation of Articles 11, 16, 17 and 30 of the European Social Charter and the Revised European Social Charter alone or in conjunction with Article E. The articles may be taken together or cumulatively in respect to the failure of the state to adopt the relevant Charter rights within the legal, policy and administrative framework of Local Authority housing in Ireland, to ensure the adequacy, habitability and suitability of Local Authority housing which is in violation of the Charter and RESC standards and to respect Charter rights in State Regeneration programmes.

The ECSR considered the FIDH submission and decided Ireland was bound to these Articles but accepted that Ireland had not ratified Article 31⁴² of the Charter. The Complaint was declared admissible and the Irish Government has been invited to make a written submission on the merits of the complaint by 28 May 2015. The FIDH have also been invited to respond to the Government submission with the date to be determined. Submissions are still ongoing between both sides, it will be a matter of time until a decision can be made by the European Committee of Social Rights on if Ireland is in breach of the Charter Laws. Nonetheless, the application highlights the significant difficulties that exist for local authority tenants in Ireland.

⁴¹Ballinacurra Weston Residents' Alliance (2012) Newsletter Christmas 2012.

⁴² Article 31 - The right to housing

Chapter Two: Supporting Private Rental Accommodation.

For those who cannot afford market rents from their own means and are unable to secure long term local authority housing, rent support schemes are available through the Department of Social protection and local authorities. The three schemes in place are Rent Supplement, the Rental Accommodation Scheme (RAS) and the Housing Assistance Payment (HAP). All three schemes are subject to strict eligibility criteria. This chapter outlines the operation of these schemes and how they interact with one another. It identifies specific weaknesses with the schemes and makes a number of recommendations for improvement.

Rent Supplement

Rent supplement is a payment given to persons living in rented accommodation who can no longer afford to pay the cost of their accommodation from their own resources. It assists with the payment of rent and is seen as a temporary support for those experiencing economic hardship. It is a discretionary payment, disbursed in accordance with the Social Welfare (Consolidation) Act 2005 (as amended) as a 'supplementary welfare allowance.' S 189 of the 2005 Act provides that such a payment will be made to 'every person in the State whose means are insufficient to meet his or her needs and the needs of any qualified adult or qualified child of the person.' A person is not necessarily precluded from obtaining rent supplement if they are in employment, and the intention of the allowance would appear to be the supplementing of an individual's income to ensure they can discharge their rent. although in practice it would appear that only those in receipt of welfare payments receive it.

Eligibility:

Several eligibility requirements must be met in order to receive rent allowance. Different criteria can be met in different cases.

An individual:

1. Must have been living in rented accommodation for six of the previous twelve months and can now no longer afford to pay their rent due to a substantial change in circumstances that occurred after they started renting.

This implies that an individual must have been in a position to pay the full amount of the rent at the commencement of their tenancy, although it is not necessary that they have lived in the same rented dwelling for the entire of the 12 month period.

2. Must have been living in homeless accommodation for six of the last twelve months (183 days)
3. Must have been assessed by their local authority to be in need of social housing in the last twelve months.

An individual will not be eligible for rent supplement:

1. If they are in full time employment or self-employment of over 30 hours per week unless assessed to be in need under the Rental Accommodation Scheme.
2. A second offer of local authority housing in the last twelve months has been offered to an individual they will not be eligible for rent allowance.
3. If they are leaving or have left local authority housing without reasonable
4. If they have been excluded from their local authority housing for anti-social behaviour.
5. If they are renting from a parent.

Persons in full time education will not be eligible for rent allowance unless they are participating in the following programmes;

1. The Back to Education Allowance scheme, an educational opportunities scheme for those in receipt of social welfare who wish to pursue second and third level courses.
2. Momentum, an initiative which provides education and training to assist long- term unemployed people gain skills needed to access areas of the economy where there are job opportunities.⁴³

All of these programmes are certain to certain eligibility requirements within the entry criteria and rent allowance will not be cut to those enrolled in these programmes.

⁴³ Citizens Information Ibid Eligibility

Disposable Income

An individual's eligibility to receive rent supplement and the amount of rent supplement they will receive is based on the income remaining after rent has been paid.

The following income is taken into account in calculating rent supplement:

1. Net income from employment (Gross income less PRSI and travel expenses)
2. Social Welfare Payments
3. Family Income Supplements (FIS)
4. Cash income, e.g. maintenance
5. All income and the value of the property of which the claimant deprived himself/herself in order to qualify for Social Welfare Allowance
6. Capital (i.e. property besides your own home; savings or investments) and when evaluating these funds the weekly means is assessed after the first €5000.

Some specific payments will not be taken into account when calculating disposable income: Child Benefit, Mobility allowance, Foster Care payments, Money or payments received from charitable organizations, Carers Benefits/allowances (half-rate payment), State (Contributory) Pension, Fuel Allowance and the Living Alone Allowance, Rehabilitative earnings disregard, additional income disregard. ⁴⁴

How and Where to apply

To apply for rent supplement an individual must complete all of the following requirements:

1. Fill in an application form. The Department of Social Protection can assist an applicant with this.
2. The landlord must fill in part of the form with their Tax Reference number and provide it to the department of social protection. If the landlord does not wish to fill in the form, a separate form (SWA 3C), is available. If the landlord does not have a tax reference number, they should state this in writing to the DSP and explain why this is the case. Rent Supplement may not be paid if the landlord has not given their tax number to the DSP or has not explained why they do not have one.
3. The local authority must also fill out another part of the form confirming that you are on the housing list and that you have a housing need.

⁴⁴ Department of Social Protection: Rent Supplement; Rules
<http://www.welfare.ie/en/Pages/Rent-Supplement.aspx> accessed 6th January 2016

4. The applicant must bring all identity documents for themselves and all their dependents, such as full birth certificates, passports, driving license, work permit, immigration (GNIB) card, etc.
5. Documents to show the applicant's income and financial situation, such as, pay slips, P45, P35, P60, bank statements, etc.
6. Documents to prove where the applicant is living, such as electricity, gas or phone bills, etc.
7. Documents relating to the tenancy, such as a rent book, lease or tenancy agreement
8. Subsequently, The Department of Social Protection's representative (formerly known as the Community Welfare Officer) usually visits to confirm circumstances.⁴⁵

Appealing a Decision

If an applicant is unhappy with a decision relating to their application for rent supplement they first need to find out why the decision was made by asking the DSP's representative and they should provide extra documentation to back up their case. If the decision has not changed, the applicant can request an appeal form and include as much details as possible. If their appeal is unsuccessful, they can refer the appeal to the Social Welfare Appeals office and subsequently request a personal hearing where they may bring a personal representative along to help argue their case.

Rates

The amount of rent supplement an applicant receives is calculated so that it will generally ensure that their income, after rent, does not fall below minimum level. This level is the basic Supplementary Welfare Allowance rate for an applicant's circumstances minus €30 (or €40 for a couple). An applicant must always pay at least €30 towards their rent. However, an applicant may have to pay more depending on their means. These top up payments are paid directly to the landlord and are enforceable as rent via the Residential Tenancies Board. Further, although rent supplement is calculated on the basis that the tenant's means do not fall below a particular level, top-up payments more than the maximum €30 are not prohibited. In RTB case reference TR113- 00501 from 2014, the tenant was paying a top up of €50 per month and in case reference TR0814-00792 from 2015 the tenant was paying a top of €180 per month. Failure to pay top-ups, which are considered rent for the purposes

⁴⁵ Citizens Information Where to Apply

of the Residential Tenancies Act 2004, can result in the eviction of tenants and a build-up of substantial arrears.

The levels of rent supplement cannot exceed the maximum rent limit set for an applicant's county or area (this provision can be waived in some circumstances). The maximum rent limit for each county is set out by the Department of Social Protection (DSP). However, the Community Welfare Office may set lower rates within these limits. There is a maximum rent limit for each area and if an applicant's actual rent is higher than that limit for the area a tenant may be refused rent allowance entirely or must pay the difference themselves.

Where rent is over the limit the DSP may give an increased allowance where:

1. If the applicant or a member of their household has special housing needs (for example, a disabled person in specially adapted accommodation).
2. If the applicant may be able to pay the rent themselves after a short period of time for example where they are beginning new employment at the start of the payment period. The applicant may be given rent allowance for a period of 6-8 weeks.
3. If the applicant has additional income to pay the balance after the maximum limit has been exceeded.
4. If there are exceptional circumstances for example if you are not in receipt of rent allowance you may run the risk of being homeless.

If on re-evaluation an applicant's rent is over the maximum limit, the applicant must renegotiate their rent with their landlord. If the landlord does not reduce the rent down to the limit, a number of options are available to the applicant e.g. seeking other accommodation i.e. in an area where rents are lower.

Rent Supplement – Case Studies

The following case studies illustrate some of the difficulties experienced by those who rely on rent supplement to pay rent on private accommodation. The specific rules for calculation of the payment are set out on the Department of Social Protection website which also provides a worksheet to calculate the payment amount. This information is very difficult to follow and the worksheet is very complex with minimal explanation. Three different situations were chosen and accommodation selected from current advertisement. Some houses or apartments were over the maximum rent limits for the areas, which might mean that rent supplement would not, in fact, be paid.

Case Study 1:

Mary is a single parent who has two children aged 4 and 6. She receives social welfare and has no other means. Mary cannot afford her rent in Dublin.

Step 1:

Income source	Claimant
Social welfare payments	€247.60
Total Gross Weekly income	€247.60

Step 2:

Total Gross Weekly Income	€247.60
Appropriate SWA rate (subtract)	€245.60
Income in excess of SWA rate	€2

Step 5:

Contribution from means	€2
Add Min. Household contribution	€30
Total weekly contribution to rent	€32

Step 6:

Weekly rent	€242.31
Less weekly contribution to rent	€32
<u>Total Rent Supplement payable</u>	€210.31

We can see here that Mary would receive €210.31 in rent supplement towards her weekly rent. The maximum rent supplement for the area of Dublin is €975 a month. The rent supplement that Mary would receive monthly is lower than this, at €911.35 a month. The 2 bedroom apartment that I have chosen for Mary, one of the cheapest I could find, is €1,050 a month. Mary would have to contribute around €138.65 a month towards her rent from her welfare payments. This is the apartment we found for Mary.

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Property Overview:

- Furnished
- 2 Bedrooms (1 double, 1 twin), 2 Bathrooms

Available to Move In: Immediately

Pat Collins

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Case Study 2:

Steve is a single 27 year old man living on his own in Cork city. He works 25 hours a week at €9.15 an hour. He earns €228.75 a week. He cannot afford his rent in Cork.

Step 1:

Income Source	Claimant
Gross Income from employment	€228.75
Total gross assessable income	€228.75

Step 2:

Total assessable weekly income	€228.75
Subject travel costs to work	- €10
Subject appropriate SWA rate	- €186
Income in excess of SWA rate	€32.75

Step 3:

Additional Income	(A+B)-C
A Gross Income from part-time work	€228.75
B Assessable Income other sources	-
C SWA rate for circumstances	€186
(A+B)-C =	€228.75-€186=€42.75
Additional Income for	€42.75
Disregard/Subtotal	
25% of subtotal	€10.68
Add €75 + 25% of subtotal	€75+€10.68=€85.68
Additional Income Disregard	€85.68

Step 4:

Subtract Additional Income	€32.75-€85.68= -€52.93
Disregard from Income in excess of SWA rate	
Contribution from means	€0

Step 5:

Contribution from means	€0
Add Minimum Household contribution	€30
Total weekly contribution to rent	€30

Step 6:

Weekly rent	€161.54
Less your total weekly contribution	- €30
to rent	
Total Rent Supplement payable	€131.54

Steve will receive around €131.54 in rent supplement a week, having to contribute €60.75 towards it every week. Steve's monthly rent will be €700. Steve will receive around €570 a month in rent supplement, leaving him to contribute around €200 a month. As bills and utilities are not included with this apartment, Steve will also have to pay for his bills and grocery shopping.

Below is the apartment we found for Steve.



Smithgrove Terrace, Middle Glanmire Road, St. Lukes, Co. Cork

€700 Monthly Apartment to Rent | 1 Bed | 1 Bath



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Overview

Property Overview:

- Furnished
- 1 Bedroom (1 double), 1 Bathroom

Available to Move In: Immediately

Lease: Minimum 1 Year

Property Description:



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Case Study 3:

Jimmy and Lorna are a retired couple living in Dublin. They each receive a non-contributory state pension. Together they earn €460.60 a week. They cannot afford their rent for their one bedroomed house.

Step 1:

Income source	Claimant
Social Welfare Payments	€460.60
Total assessable weekly income	€460.60

Step 2:

Total assessable weekly income	€460.60
Subtract over 65 disregard	-€149.80
Subtract appropriate SWA rate	-€310.80
Income in excess of SWA rate	€0

Step 3:

Additional Income	(A+B)-C
A Gross income	N/A
B Assessable income from other sources	€460.60
Subtract Over 65 disregard	-€149.80=€310.80
C SWA rate from family circumstances	€310.80
(A+B)-C=	€310.80-€310.80
Additional income for disregard	€0
25% of subtotal	€0
€75 + €0	€75
Additional Income disregard	€75

Step 4:

Subtract	Additional	Income	€0-€75= -€75
Disregard from Income In Excess of SWA rate			

Contribution from means	€0
--------------------------------	----

Step 5:

Contribution from means	€0
--------------------------------	----

Add	minimum	household	€40
contribution			

Total weekly contribution to rent	€40
--	-----

Step 6:

Weekly rent	€253.85
--------------------	---------

Less your total weekly contribution	-€40
--	------

to rent

Total Rent Supplement payable	€213.85
--------------------------------------	---------

Jimmy and Lorna would receive around €213.85 a week in rent supplement. As their rent is higher than the maximum amount per month at €1,100, they will have to contribute the extra, which is €173 a month.

Below is the house we chose for Jimmy and Lorna.



Lohunda Grove, Clonsilla, Dublin 15

€1,100 Monthly House to Rent | 1 Bed | 1 Bath



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Property Overview:

- Furnished
- 1 Bedroom (1 double), 1 Bathroom

Available to Move In: Thursday 10th March

Lease: Minimum 1 Year

Property Description:

Available 10th March 2016.



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Case Study 4:

This case study is from 'Citizens Information'.

Susan and Paul have 2 children aged 6 and 12. Paul has been unemployed for 1 year but has recently found work and will start his new full-time job in a couple of weeks. His net income from work will be €440 each week.

Susan had been getting half-rate Carer's Allowance because Paul was getting Jobseeker's Benefit and claiming for her as an adult dependant. When Paul returns to work she will get full-rate Carer's Allowance. She will not get any increases for their children because Paul's income is over €400 a week. Their 6-year old child is getting Domiciliary Care Allowance. Their only other income is from Child Benefit. However, they may also apply for Family Income Supplement when Paul starts work.

Susan wants to know if they can keep any of their Rent Supplement when Paul starts work.

Their rent is €950 per month which is within the limit for their area. They have been assessed by their local authority as in need of housing under the Rental Accommodation Scheme so they can retain their Rent Supplement while Paul is in full-time employment.

Step 1:

Income source	Amount
Assessable Income from employment	€440
Carer's Allowance	€204
Family Income Supplement	€25.20
<u>Gross assessable weekly income</u>	<u>€669.20</u>

Step 2:

Gross assessable weekly income	€669.20
Less carer's disregard	-€79.20
Less PRSI	-€17.60
Less Appropriate SWA rate for a couple with 2 children	-€370.40

Income in excess of the SWA rate	€202
Step 3:	
Additional Income = (A+B)-C	Income
A= Gross income from:	€440
-Full or part-time work	€25.20
-Family Income Supplement	
Total A:	€465.20
B= assessable income from other	€204
sources:	
-Carer's Allowance/Benefit	- €79.20
-Subtract Carer's disregard	
(Subtract SWA IQA rate from actual carer's payment)	
Total B:	€124.80
C = SWA rate for family	€370.40
circumstances	
Total C:	
(A+B)-C= Additional income	€219.60
Subtract PRSI, pension	- €17.60
contributions, income continuance	
<i>Additional Income for disregard</i>	€202
If <i>Additional Income for disregard</i> is less than or equal to €75 this figure is the Additional income disregard	
If not do this calculation:	
Subtract €75	-€75
Subtotal	€127
25% of subtotal	€31.75
Add €75 + 25% of subtotal to get	€106.75
<i>Additional Income disregard</i>	

Step 4: Subtract the *Additional Income disregard* from your income in excess of the *SWA rate* (figure at the end of Step 2). This figure is your *contribution from means*.

Income in excess of the SWA rate: €202

Less Additional Income disregard: €106.75

Contribution from means: €95.25

Step 5: Find your *total weekly contribution to rent* by adding your *contribution from means* to your *minimum Household Contribution*.

Contribution from means: €95.25

Plus Minimum Household Contribution: €40

Total weekly contribution to rent: €135.25

You must pay a minimum contribution towards your rent in addition to any assessable income. This is €30 for a single person and €40 for a couple. This minimum contribution may be increased depending on the number of non-dependent members in the household getting social welfare payments. In this case, the minimum household contribution is €40.

Step 6: Find your *Rent Supplement* payment by subtracting your *total weekly contribution to your rent* from your *weekly rent*.

Susan and Paul are paying €950 per month for accommodation. To get the weekly rent figure, multiply €950 by 12 and divide by 52.

Monthly rent €950 x 12 ÷ 52 = €219.23

Weekly rent: €219.23

Less Susan and Paul's total weekly contribution to rent: €135.25

Susan and Paul will get a weekly Rent Supplement of €83.95

Conclusion

Overall the case studies were difficult to work out and very complicated. Although worked out, there is no way of knowing if the rent supplement calculated would be the rent supplement the families would receive. As rent limits are quite low in relation to actual rent, it was hard to find suitable accommodation. This is obviously a big problem which needs to be addressed. It would be very frustrating trying to figure out your rent supplement on your

own, and after everything is filled out, you may not even receive the figure you calculated due to rent limits etc. Rent supplement may be completely refused if the rent which a tenant proposes to pay is more than the maximum set by the Department of Social Protection.

The Housing Assistance Payment

HAP or the Housing Assistance Payment was introduced in 2014 to help people with long term housing needs. It was introduced in the Housing (Miscellaneous Provisions) Act 2014 and is being rolled out throughout the country by statutory instrument. It aims to fill the gaps for long term accommodation with the current schemes (rent supplement and RAS), to make social housing support accessible through the local authorities, and to allow the tenant to remain in full time employment and still receive the social housing support.

Currently the Housing Assistance Payment programme is operational in 17 counties. They are; Carlow County Council, Clare County Council, Cork County Council and City Council, Donegal County Council, Galway County Council, Kilkenny County Council, County Council, Limerick County Council and City Council, Louth County Council, Mayo County Council, Meath County Council, Monaghan County Council, Offaly County Council, Sligo County Council, Tipperary County Council, Waterford County Council and City Council, Dublin. (Dublin City Council, Fingal County Council, Dún Laoghaire -Rathdown County Council and South Dublin County Council.)

Those eligible for rent supplement will be transferred to the Housing Assistance Payment once it is introduced into their areas. To qualify for HAP an individual must be on the local authority housing waiting list, which means they must have either have left an institution (Prison, hospital, care home), having spent 6 months in the last 12 months there, or have spent 6 months in the last 12 months in private rented accommodation and can show an event or incident that caused them to be unable to afford your rent. If they have spent 6 months in the last 12 months in a homeless shelter you may also qualify for HAP.

In January 2016, legislation was enacted to prevent landlords discriminating against tenants in receipt of rent support or availing of the HAP. The Equality (Miscellaneous Provisions) Act 2015, which came into force on 10 December 2015 amends s 3 of the Equal Status Act 2000 by the inserting a new subsection after subsection (3A): "(3B) For the

purposes of section 6(1)(c), the discriminatory grounds shall (in addition to the grounds specified in subsection (2)) include the ground that as between any two persons, that one is in receipt of rent supplement (within the meaning of section 6(8)), housing assistance (construed in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2014)⁴⁶ or any payment under the Social Welfare Acts and the other is not (the “housing assistance ground”). If a landlord refuses to house a tenant on the grounds that s/he is in receipt of rent allowance then they are in breach of this legislation. The landlord can only refuse to grant tenancy to an applying tenant if the tenant does not consent to rent being paid directly to the landlord. If an applicant feels they have been discriminated against by a landlord or their agent they can make a complaint under the Equal Status Acts and they can assert this right by contacting the Workplace Relations Commission.

Once an individual qualifies for HAP, they must find their own private rental accommodation and the landlord must produce a tax clearance certificate.⁴⁷ The house must meet the minimum standards for private rental accommodation and will be inspected by the local authority for the purpose of ensuring compliance. If it does not meet the standard a temporary payment may be made until alternative accommodation is found.⁴⁸ The rent payable is calculated similarly to the rent supplement, that is, according to location and size. If the rent goes above the prescribed level for the area the tenant will be required to renegotiate and if that fails may be required to find other accommodation. The tenant must pay a contribution to the local authority, which is calculated on income, rent paid and other forms of social welfare payments.⁴⁹ The local authority pay the rent in full directly to the landlord. The legislation states that ‘[t]he payment by a housing authority of housing assistance to a landlord or his or her agent does not imply any liability on the part of the housing authority for rent due to the landlord or in respect of any other tenant obligation under the tenancy concerned.’⁵⁰ The contract of tenancy remains between the tenant and the landlord who are subject to the terms of the Residential Tenancies Act 2004.

The benefits of HAP for the tenant is that they can remain in full time employment and receive HAP payments (cannot be in full time employment and receive rent

⁴⁶ Housing (Miscellaneous Provisions) Act 2014

⁴⁷ S 42, 2014 Act.

⁴⁸ S 41, 2014 Act.

⁴⁹ S 43, 2014 Act.

⁵⁰ S 40, 2014 Act.

supplement); HAP is a long term solution for rental payments; the standard of housing is also improved by the HAP health and safety requirements and will be inspected by the local authority; lastly those using HAP are still entitled to apply for other social housing schemes and social welfare supports. The scheme was intended to assist in the regulation of rental prices as rent support recipients represent a large sector of the private rental market. As noted below, this has not happened as demand continues to outstrip supply in the private rented sector and rents continue to increase. HAP has the potential to prevent “top up payments” as no money is paid by the tenant directly to the landlord, however additional payments by the tenant to the landlord are not specifically prohibited by the legislation.

There are also benefits for the landlord. These are that they will receive their payments on time, on a monthly basis, directly from the local authority. Rent does not have to be collected from the tenant, which saves time and money. All payments are made electronically. However, the tenant must make a contribution to the local authority, if this contribution is not made the local authority can cease payment.

HAP is not intended to replace RAS or rent supplements, rather it is intended that they will provide alternatives, although it is intended that people will be moved from rent supplement to RAS over time. Maximum rent limits for the scheme are set by statutory instrument from time to time. The most recent rent limits were introduced on the 16th of November 2015 and are listed in the table below.⁵¹

Local Authority area	One adult in shared accommodation	A couple in shared accommodation	One adult	A couple	One adult or a couple with one child	One adult or a couple with two children	One adult or a couple with three children
Carlow CO.	230	250	375	433	520	560	590
Clare CO.	190	210	320	350	400	450	500
Cork City	250	270	485	575	700	725	750
Cork CO.	250	270	485	575	700	725	750
Donegal CO. CO.	175	200	300	325	350	400	450
Dublin City	350	400	520	750	950	975	1000

⁵¹ S.I. No. 474/2015 - Housing Assistance Payment (Amendment) (No. 4) Regulations 2015

CO.								
Dun	350	400	520	750	950	975	1000	
Laoghaire- Rathdown								
CO. CO.								
Fingal CO.	300	350	520	700	850	900	950	
CO.								
Kildare CO.	350	400	520	750	950	975	1000	
CO.								
Kilkenny	200	230	390	430	540	565	590	
CO. CO.								
Limerick	200	240	375	400	500	550	600	
City CO. & CO. CO.								
Louth CO.	215	250	390	400	550	575	600	
CO.								
Meath CO.	300	350	520	700	850	900	950	
CO.								
Monaghan	180	190	300	350	400	433	450	
CO. CO.								
Offaly CO.	200	220	360	400	450	475	500	
CO.								
South	420	480	624	900	1140	1170	1200	
Dublin CO.								
CO.								
Tipperary	195	220	370	400	485	500	525	
CO. CO.								
Waterford	220	240	375	390	475	500	525	
City CO. & CO. CO.								
Galway CO.	280	300	475	540	700	725	750	
CO.								

The scheme has been the subject of criticism. Depute Paul Murphy reported to the Dáil that:

A recent survey published by the Simon Community found that only 12% of available properties were within rent supplement and housing assistance payment limits. Landlords are refusing to take rent supplement or the HAP.⁵²

Rents are rising nationally and the HAP payments are not enough to cover the rent in most urban areas. In Dublin the rent levels are much higher than the national average and the HAP payments are not sufficient. Landlords are reluctant to take HAP tenant, and the difference between market rents and HAP limits make it increasingly difficult for tenants to find accommodation. The *Irish Examiner* has referred to the scheme as ‘a flop’ with rates of uptake much lower than expected.⁵³

⁵² Leaders' Questions (Continued), Thursday, 9 July 2015

⁵³ Norma Costello. ‘State housing scheme ‘a flop’’. *Irish Examiner* October 13, 2015.

Housing assistance payment for homeless persons was introduced as a pilot scheme in Dublin in December 2014 to combat the growing problem of homelessness in the city. This programme is administered by the Dublin Region Homeless Executive (DRHE) and operates in Dublin City, Dun Laoghaire, Rathdown, Fingal and South Dublin councils. To be eligible an applicant must be on the homeless housing list for one of the areas. The scheme allows for rents of 20% above the statutory limits to be paid, but this was found to be inadequate and in Budget 2016 this margin was increased to 50%. The Minister for the Environment, Community and Local Development referred to this revised HAP scheme as 'of significant assistance to homeless families in Dublin moving out of emergency accommodation into longer term housing.'⁵⁴ Nonetheless, as pointed out by Depute Paul Murphy, the scheme is dependent on the availability of private landlords willing to take HAP.⁵⁵

Set out in the tables below are average rents reported by the property website DAFT and by the Residential Tenancies Board for Quarter 3 of 2015.

Daft Rental Report Q3 2015:

<u>Area:</u>	<u>Average:</u>
North City	€1310
City Centre	€1408
South City	€1520
North County	€1178
West County	€1243
South County	€1604

<u>Area:</u>	<u>Average:</u>
Dublin	€1377.17
Outside Dublin	€654.84
National	€964

PRTB Rental Reports Q3 2015:

<u>Area:</u>	<u>Type:</u>	<u>Average:</u>
--------------	--------------	-----------------

⁵⁴ Minister for the Environment, Community and Local Government (Deputy Alan Kelly), Housing and Homelessness: Motion [Private Members] (Continued), Tuesday, 17 November 2015

⁵⁵ Deputy Paul Murphy, Leaders' Questions (Continued), Thursday, 9 July 2015

Dublin	All	€1277
Dublin	Houses	€1408
Dublin	Apartments	€1265
Outside Dublin	All	€707
Outside Dublin	Houses	€712
Outside Dublin	Apartments	€698
National	All	€901
National	Houses	€873
National	Apartments	€945

Looking at the reports from both organisations, it is obvious that it is difficult, if not impossible for an individual in Dublin City or County to acquire rental accommodation within the Housing Assistance Payment rent limits. The average rent in Dublin is €1377.17. The maximum rents paid by HAP by the Dublin Councils range from, €950 and €1200. This is only achievable if you are a parent or couple with three children. A couple with no children can get between €700 and €900. This shows that the majority of people in Dublin County, especially those living the city, are unable to find suitable rent under the HAP scheme as there is no properties available within the caps set by the HAP legislation. This is also the case throughout most of the country. Deputy John Halligan reported the position in Waterford to the Dáil:

I carried out a survey of 13 auctioneers in Waterford city and Tramore and found only one landlord willing to accept tenants who are paid through the council-administered HAP scheme.... Why do landlords not want to take people on the HAP scheme? It is because the rent ceilings are too low. Hence, there is, again, a perfect storm in the rental market.⁵⁶

Similarly in Kildare, Deputy Anthony Lawlor reported ⁵⁷'the limit of €1,000 needs to be upped because rent for a three-bedroom semi-detached house in Kildare starts at €1,500. Increasing the threshold would allow people some stability in the rental market.'

A further difficulty with the scheme is that the 2014 Act provides that the provision of assistance under HAP is deemed to be an appropriate form of social housing support for the household. In effect, this means that, unlike rent supplement recipients, HAP tenants will be removed from the social housing list. The agreement between the local authority and

⁵⁶ Deputy John Halligan, Housing and Homelessness: Motion (Resumed) [Private Members], Wednesday, 18 November 2015

⁵⁷ Deputy Anthony Lawlor, Housing and Homelessness: Motion (Resumed) [Private Members] (Continued), Wednesday, 18 November 2015)

the Landlord does not allow for security of tenure beyond that normally applying in the private residential sector. A tenant availing of the programme will be removed from the social housing list, but will have little security of tenure. The landlord can increase the rent in line with the market every two years, and tenants can be asked to leave if the landlord intends to sell the dwelling or to occupy it himself.⁵⁸ The security of tenure available in the private rented sector is not comparable with that which obtains in social housing and market rents are generally higher than those paid in the social housing sector. HAP is not a long term solution with the current legislative framework and without significantly improved security of tenure and rent certainty in the private rental market cannot provide a substitute for good quality social housing.

The Rental Accommodation Scheme

The Rent Accommodation Scheme or RAS was established by the Minister for Social Protection on the basis of a departmental Circular in 2005. A number of local authority and government websites explain the scheme and how it operates, but the administrative guidelines governing it are not freely available.⁵⁹ We made an application to the Department of the Environment for a copy of all relevant circulars, receiving two supplemental circulars, included at Appendix A. Despite a further request we have not received a copy of circular HPSS6/2005 which established the scheme.

The Rent Accommodation scheme is administered by local housing authorities. It aims to provide medium to long term private rented accommodation to people in receipt of rent supplement. To be eligible for this scheme an individual must have been in receipt of rent supplement for eighteen months or more and have a long term housing need that they cannot fund with their own income. The local authority makes the final decision regarding who is eligible. This scheme has many advantages over the others, the main one being that the local authority can enter into agreements of up to 10 years with landlords. Although the relationship between the landlord and tenant is governed by the Residential Tenancies Act 2004, the length of the agreement between the local authority and the landlord can provide

⁵⁸ Residential Tenancies Act 2004, s 34.

⁵⁹<http://www.citizensinformation.ie/en/housing/local_authority_and_social_housing/rental_accommodation_scheme.html> last accessed on 04/04/2016

<<http://www.environ.ie/en/DevelopmentHousing/Housing/SocialHousingSupport/RentalAccommodationScheme/>> last accessed on 17/02/2016

<<http://www.iwa.ie/services/housing/rent-supplement>> last accessed on 17/02/2016

greater security to tenants. As with the HAP rent is paid directly to the landlord. Tenants may still have to contribute to the rent. The contribution is based on income and is paid to the Local Authority not the landlord.

This scheme is different to the rent supplement scheme because the rent goes directly to the landlord without the need for the tenant to authorise a direct payment. This can make it a little easier to find accommodation while on this scheme, and it is more secure for both the tenants and the landlord. There are contracts in place between the landlords and the local authorities to provide the housing for an agreed term. However, the local authority is not party to the tenancy agreement, which is between the landlord and tenant. This means that tenants remain subject to the terms of Residential Tenancies Act 2004 which restricts security of tenure to four year rolling contracts which can be terminated by the landlord in certain circumstances unrelated to the tenant's actions.⁶⁰ Landlords wishing to rent a dwelling must produce a tax clearance certificate to the local authority, the dwelling must meet minimum standards for private rental accommodation and landlord must register the tenancy with the Residential Tenancies Board. Tenants on the RAS scheme are not precluded from taking up employment, as is often the case with rent supplement. In the event of a RAS tenant taking up employment, the contribution to the local authority will be reassessed based on your new income. Some local authorities attach additional conditions to RAS applicants. For example in the South Dublin County Council area, two refusals of RAS accommodation will result in notification to the community welfare officer which may result in the suspension of rent supplement payments.

The accommodation sourced may be a rent supplement recipient's existing accommodation, but where this is not suitable or where the landlord is unwilling to enter into RAS the local authority will source alternative accommodation. The scheme seems to envisage that local authorities source suitable dwellings both in the private and voluntary sector in order to house homeless people and those on their waiting lists.⁶¹ The scheme also allows local authorities to engage third parties to identify and manage suitable properties. In 2007 guidance notes for the scheme, the Department of Environment

⁶⁰ Such as the property being placed for sale, being the subject of substantial alterations or needed by the landlord or a member of his immediate family. S 34 Residential Tenancies Act 2004.

⁶¹ Department of Environment Circular No: N2/07 – 2 January 2007

recommended that that contracts for the supply of houses represent value for money, being at or below market rent. In a 2010 circular they recommend that an 8% discount on market rent be applied, justified by a reduction of risk to the landlord for vacancies, rent arrears and administration.⁶² They also recommended that contracts be entered into for a minimum of 4 years, that rent reviews be kept to a minimum and the properties entering into the scheme not be those currently contracted to a rent supplement or private tenant. Circular SHIP 2010/05 from the Department of the Environment records that 24,813 households transferred from rent supplement to social housing, including RAS, Local Authority and Housing Association schemes. Detailed county by county figures suggest that about 50% of these households transferred to RAS

The Rental Accommodation Scheme is, in effect, a means for local authorities to source social housing supply from the private sector. As agreements for up to 10 years can be entered into with a housing supplier, tenants have more security than under HAP. The landlord is obligated to provide the dwelling to the local authority for the contracted period. The tenant will therefore likely only be subject to eviction when the contracted period ends or if they breach obligations other than non-payment of rent (rent is paid direct to landlord by the Local Authority). The scheme was established prior to the housing crisis and it seems likely that the Department of the Environment expected that developers and housing agencies would provide houses for local authorities under the scheme.

⁶² Department of Environment Circular

Chapter Three: Accessing Local Authority Housing.

In this chapter, we begin with an overview of the legislation governing social housing in courts point of view, this will show the reader how the courts govern social housing law.

Legislation

The seventeen individual pieces of legislation governing social housing in Ireland will be collectively referred to as the Housing (Miscellaneous Provisions) Act 2009. The various enactments have been conveniently consolidated by the Law Reform Commission and are available on their website.⁶³ The Act consists of 7 parts, each part contains a number of dealing with the various aspects of social housing, from functions of housing authorities to tenant purchase schemes. Section 4 deals with directions given by the Minister and how they are to be followed, section 5 outlines the guidelines from the Minister which the local authority must make available for any member of the public to inspect without charge at its buildings as well as online. However, to stop the minister from having total power in this area, the Act states that the minister cannot exercise any power of control in relation to any particular case with which the authority is concerned. Any expenses the Minister incurs in the administration of the Act are sanctioned by the Minister for Finance and paid out of central funds

Functions of the Housing Authorities

This part deals with housing services. A local authority can provide housing by way social housing, affordable housing, granting of shared ownership leases, subsidies payable, loans under the housing (traveller accommodation act), grants for improvement or adaptation, services for homeless persons, assistance other than financial assistance or housing support (must be carried out in accordance with a homeless action plan). The next issue addressed is the provision for ancillary services, included in this are roads, shops, facilities for the benefit the community including health, leisure and education as well as buildings or lands

⁶³ www.lawreform.ie

that serve a beneficial purpose. The local authority is also charged with the maintenance and repair of such services provided.

Funding for all of the above seems like an awful burden to place on local authorities but the legislation has provided for that also, with consent of the Minister for Finance the Minister may pay to housing authorities a grant or subsidy for the following reasons; provision/ refurbishment of dwelling or site provided by the authority, the provision of caravans, acquisition of land, any measure taken by the authority to improve its housing service. The Minister may attach conditions to the payment of a grant, such as

- (a) the class or classes of accommodation in respect of which the grant or subsidy may be paid and the class or classes of households for whom such accommodation is provided;
- (b) the amount of the grant or subsidy;
- (c) requirements in relation to—
 - (i) the assistance in respect of which the grant or subsidy may be paid,
 - (ii) the payment of the grant or subsidy,
 - (iii) the financial and other circumstances of households occupying accommodation in respect of which the grant or subsidy may be paid,
 - (iv) the occupation and maintenance of accommodation in respect of which the grant or subsidy may be paid,
 - (v) the floor area of accommodation in respect of which the grant or subsidy may be paid, measured in such manner as may, from time to time, be determined by the Minister,
 - (vi) standards of construction, works and repair and the availability in accommodation, in respect of which the grant or subsidy may be paid, of water, sewerage and other services, and
 - (vii) the payment under any enactment (including this Act) of any other grant, subsidy or assistance in respect of the accommodation concerned.

Housing authorities don't just provide grants and subsidy's as the sections above have provided for, they also receive money from, the sale of dwellings, the resale of a dwelling, payments of outstanding amounts under section 47 or 75, the purchase of an interest of the housing authority, the resale of sites or dwellings on such sites and the

repayment of grants. This money should be accounted for in a separate account and is subject to prior approval by the minister may be used for the provision of housing or maintenance and refurbishment of existing houses. This proves that local authorities have an additional source of funding other than the money granted to them by the government. The question is though are local authorities moving on assets in the hope of spending the money received on maintenance and refurbishment so that the money granted to them by the government can be used in other areas away from housing?

Housing Services Plan

The next part deals with Housing Services Plans. Each Local Authority must have one of these plans in place, setting out the objectives of the authority and the strategies that they have to have in place. The plan must be in writing and state how the authority plans to provide housing services, the plan shall be adopted no later than 6 months after the date on which the current development plan is made. The plan shall relate to the remaining period of the current development plan, the minister may instruct an authority to make a plan relating to the remaining period of the development plan in operation, on the coming into operation of the operation of this section, in respect of the administrative area concerned, this applies to the preparation and making of such a plan. The preparation, making, adopting or variation of a housing plan or draft plan is a reserved function.

The plan must take certain factors into account including the following, development plan(s) administrative area, summary(s) of social housing assessments prepared under s21, demand for social housing, accommodation plan(s), homeless action plan, highlight the need to ensure that housing services promote sustainable communities and counteract segregation of persons of different social backgrounds and ensure a mix of dwelling types. The plan must also contain an anti-social behaviour strategy, any direction given by the minister, all matters specified in s69 local government act 2001. The minister may request the housing authority to include information they deem to be necessary. When drafting a housing plan the authority must send a copy to, the minister, every local authority whose area adjoins that area, the Health Service Executive, approved bodies involved, the homelessness consultative forum, any local traveller consultative committee. Any bodies or person the authority considers appropriate. Any of the above named has 8 weeks to submit

any thought or concerns relating to the plan in writing. If the minister is not satisfied that the plan takes into account the objectives set out in the paragraph above, then they may direct the authority to take specified measures to ensure it takes adequate account of the matters. The Chief Executive has 4 weeks after receiving any suggestions to submit any feedback from above bodied, ministerial directions received and that reason for them, any aspect of the plan that in their opinion fails to take into account any of the matters mentioned above.

Within 6 weeks of this submission the authority shall, give a copy to the minister, make the plan available for inspection to anyone free of charge, provide a copy on request, publish and maintain a copy on the internet. If the chief executive feels there has been a change in matters that significantly affects the housing plan, he/she shall submit a report to the matter to the members of the housing authority and, where necessary recommend the plan be changed accordingly. If the minister considers a change has significantly affected the plan , they may give direction requiring the authority to vary the plan.

A Housing Action Plan is enacted from time to time by the chief executive for implementation of the housing services plan. This action plan shall include, an account of the financial resources available, matters which the minister specifies. A copy of the action plan shall be given to the minister, members of housing authority and council with the area.

Social Housing Support

Housing authorities may provide, facilitate or manage the provision of social housing support in accordance with the housing acts and regulations. This may include dwellings provided by housing authority or approved body, housing assistance under Housing Act⁶⁴, entering into and maintaining rental accommodation, provisions for sites of caravans⁶⁵, sites for building purpose⁶⁶. A housing authority may provide on a permanent or temporary basis⁶⁷, purchase, build, lease dwellings or sites, convert buildings and refurbish dwellings. Ensuring that a mixture of dwellings and counteracting segregation is vital here as well. An example of the extreme measure that are legislated can be seen in the next piece, an

⁶⁴ Part 4 of the Housing (miscellaneous Provisions) Act 2014

⁶⁵ Section 13 1988 Act, Housing (Traveller Accommodation) Act 1998

⁶⁶ Section 57 Principal Act

⁶⁷ Housing Acts 1966 to 2009

authority may enter into a public private agreement to provide social housing as long as the minister approves.

Assessing the need is a critical part of social housing and will be looked into in the following paragraphs. When a household applies for social housing support, the housing authority will carry out an assessment on the household in order to determine the need for social housing support for the purpose of determining, if the house qualifies for such a support, an appropriate means of support for that house. The authority may conduct an assessment even when a member of the household is in receipt of a supplement towards rent⁶⁸. The minister may make regulations by which the eligibility of households shall be determined by the following but not limited to, a maximum income threshold on a one person household, Housing authorities must consider rent and average purchase prices of dwelling in the area, which cannot be more than the maximum income threshold mentioned above. The procedure applied to determining a households eligibility in regards to income , the availability to the house hold of alternative accommodation that would meet the housing needs, social housing support previously provided by any housing authority to the household which may be taken into account by the authority in deciding the appropriate form of social housing support for the household. The period that the household member requires the supplement.

In particular cases where the authority is unable to establish for the time being whether suitable accommodation is available to suit the household needs, the authority may determine that the household is suitable for forms of social housing support, if this is approved it shall be reviewed by the authority.

A household shall be refused social housing support if at any time in the three years immediately before the carrying out of the social housing assessment, any member of the household was in arrears of rent, rent contribution, charges, fees loan repayments or any money owing to a housing authority or approved body for a period of 12 weeks or more in respect of a dwelling or sites previously mentioned above. Or if the member has failed to arrange payment of such arrears, or having done so not in the authority's opinion substantially complied with their terms. Failure to comply with the above will be

⁶⁸ Section 198(3) of The Social Welfare Consolidation Act 2005

disregarded if the authority or body is satisfied that failure was due to circumstances out of the household's control.

The allocation of dwellings of which the housing authority owns or has leased will be discussed next

Case Study

During the research for the project a case study interview with a local authority tenant was conducted. The tenant lives in a local authority house in Fingal County Dublin. The tenant is

a middle aged single mother with a teenage daughter who works part time. The interview was chosen as a way of getting a true understanding of how local authority housing works on the ground in real life situations, not in paragraphs of legislation. The following is a transcript of the interview with the tenant.

Q. What local authority provides your home?

Fingal County Council.

Q. Do you live in local authority housing? If no do you receive rent allowance or did you receive it while waiting?

Yes, no I did not receive any rent allowance while waiting.

Q. What did you think of how the application system worked?

The application process was very stressful and took two years to complete, the process itself is fair in my opinion it's the lack of housing that makes it so stressful.

Q. When did you first apply for local authority housing?

Q. How long did the application process take, from first application to moving into your home?

The process took a total of two years to complete

Q. What was your marital/employment status when you first applied?

I was single when I applied

Q. How many children if any did you have when you first applied?

One child when first applied

Q. If any of the above changed during the application process did it affect your application?

No it remains the same today.

Q. Have you ever refused local authority housing that was offered to you ?

Yes the first house I was offered I refused, due to knowing the previous owner and issues that had happened with the property.

Q. If yes did it affect your standing on the waiting list?

Yes my application was frozen for 6 months.

Q. What housing were you first given and what was provided for within the housing?

I was given a two bedroom semi-detached house.

Q. Have you ever needed to have work done on your home?

No I have not required any work during my time here.

Q. If yes did the local authority provide you with a grant or assistance?

No, but the local authority paints the house every couple of years.

Q. Have you lived in more than one local authority housing unit?

No I have only been a local authority resident in this house.

Q. If so between what years?

Q. If between 2005-2013 would you say your application was effected by the recession?

Q. Is your current home a fixed or lease for life?

The lease I have is for life

Q. How does employment effect you living in local authority housing?

Yes, I have to submit paper work every year relating to previous earnings, the amount I earn determines the rent I have to pay for the following year.

Q. Have you ever been offered the chance to purchase your home?

Q.If so, on how many occasions?

Q. Have you or anyone you know ever been cautioned or evicted?

No, but several residents in the estate have

Q. If so on what grounds?

The grounds for the cautions have been for anti-social behaviour but no one in the estate has ever been evicted despite there being several issues among tenants and the same few on multiple occasion. The Guards have also been called on several occasions.

The feedback from this questionnaire really helped me to understand the area of local authority housing and how it worked, it also gave an insight into how legislation and the rules on local authority housing worked in the real world. The biggest surprise that came from this was discovering that no one had been evicted from the estate despite the fact that the tenants were cautioned on several occasions over anti-social behaviour and the Garda Siochana were called on several occasions. This is a surprise because prior to *Donegan v Dublin City Council* a local authority could evict residents with prior notice only and if that's anything to go by it would seem that any call for anti-social behaviour would lead to eviction particularly if the waiting list are so long.

The case study also gave us additional information that we did not expect to receive in the form of a local authority housing contract. The first interesting fact that comes up in the contract is that the contract can be terminated by either party with 4 weeks' notice in writing to take effect on a gale day. The rent shall be paid weekly, any estate management cost shall be payable by the tenant. The tenant is eligible for the Council's scheme of differential renting, the council is free to abandon this scheme at any time but shall give 4 weeks prior notice. The Council may also at any time vary the differential rate at any time without stating the reason or being required to state. The tenant must furnish full and detailed information of income of the tenant and members of the household, failure to do this means that the tenant is now determined liable to pay the full and maximum rate. The tenant may not assign, sub divide or part with the possession of the dwelling or part possession, however the tenant may subject to written consent of the council, exchange the tenancy let for the tenancy of another dwelling provided for by the council. The tenant must reside and occupy the dwelling for the duration of the tenancy, no person(s) shall be allowed by the tenant to reside in the dwelling during the life of the tenancy without the express consent in writing by the council. The council must be notified of any personal or other changes in circumstances of the tenant such as death, divorce, judicial separation, separation, departure of tenant from the dwelling for a period exceeding six weeks in any 52 week period. All minor repairs are the onus of the tenant, however the tenant should not make any addition, alterations, improvement or other works in relation to the dwelling or shall not remove any internal walls or partitions or damage the dwelling in any way. No work on the outside of the dwelling such as garage, shed, office or other building shall be done without prior consent. The contract put an obligation on the tenant to keep the premise of the dwelling in a clean and tidy condition and not allow any refuse to accumulate on any portion of the premise, the gardens must be properly maintained, must not cut down any trees without permission. The keeping of any poultry, pigs, birds or any other animal other than a domestic pet is prohibited. The boundaries of the property are to be maintained, improved and replaced by the tenant and no walls or fences shall be erected in the front or rear gardens without written permission.

The contract then deals with anti-social behaviour; neither the tenant nor any member of the dwelling or visitor shall cause any nuisance or be guilty of or permit any

conduct likely to cause annoyance or disturbance to any neighbours. The following are deemed to be a nuisance, annoyance or disturbance;

Harassment

The unlawful possession, cultivation, use and or supply of a controlled substance within the meaning of the misuse of drugs Act 1977

Violence or threats of violence against the person or property

Threats, abuse or harassment of any kind or any act or omission causing disturbance, discomfort or inconvenience,

Obstruction of any of the common areas, doorways, and other exits and entrances in the block or estate.

Making an unreasonably loud noise by shouting, screaming, playing any musical instruments or sound reproduction equipment or using of machinery.

Any Act or omission which creates a danger to the well-being of any neighbour or his belongings

Chapter Four: Conclusion and recommendations.

Conclusion

There is no right to housing in the Irish Constitution and although international instruments such as the European Convention have provided some assistance to those in abject need or those unfairly treated by local authorities, they fall short of guaranteeing a general right to housing. The recent application by the FIDH to the European Committee on Social Rights demonstrate that even when the State does provide housing, it is often substandard and poorly maintained.

Despite the absence of a constitutional or statutory right to housing, the Irish government has established a number of statutory and non-statutory schemes which aim to provide housing for those unable to do so from their own means. All of these schemes are worthy in their own right but are limited by lack of funding. Maximum rent supplement is hopelessly inadequate in a tight housing market. Although local authorities enforce minimum standards for accommodation in this sector, the Department of Social Protection sets unrealistic maximum rents, effectively excluding many low income families from the market or forcing them further into poverty through the payment of 'top up' rents.. The Rental Accommodation Scheme has the potential to provide high quality housing to local authorities, but is again hampered by lack of supply. Private landlords can easily obtain private tenants and developers are not rushing to supply houses to local authorities under the scheme. The Housing Assistance Scheme is also a worthwhile scheme, however it again offers inadequate rent levels. Further, the legislative imperative to remove HAP tenants from local authority housing lists is a huge disincentive to tenants. HAP agreements can be for periods as short as one year, whereas local authority housing is generally granted for life. As noted in the introduction, housing is not solely a matter of accommodation. A house becomes a home, a place for people to raise families and forge a future. Security of tenure is an essential element in building a 'home.'

Recommendations

- Top-up payments, whereby tenants pay an additional sum of rent to the landlord over and above that paid by the Department of Social Protection or Local Authority should be made specifically illegal making them irrecoverable in a claim for rent arrears.
- Maximum rent limits should be raised to market levels across the schemes. It is unrealistic to expect landlords to accept sums below market rent from social housing tenants.
- Greater incentives to landlords and potential landlords to provide housing under the Rental Accommodation scheme should be provided to increase supply.
- Section 37 of the Housing (Miscellaneous Provisions) Act 2014 should be repealed and tenants offered accommodation under HAP allowed to remain on local authority housing lists. Section 37 acts as an incentive for families to remain in homeless accommodation rather than accept short term accommodation under the HAP Scheme.
- The Rental Accommodation Scheme should be more transparent with the relevant circulars easily available on the Department of Environment Website. Government should also consider placing this scheme on a statutory footing or amending HAP to facilitate long term agreements, as it the case with RAS.
- There should be more transparency in the provision of rent supplement. It is currently classed as a supplementary welfare allowance and the rules applicable are overly complex.

Department of Environment Circulars On RAS.