

**Questionnaire**  
**Access to Justice for the Right to Housing**  
**Ireland's Response**  
**November 2018**

---

**1. Are the following components of the right to housing subject to hearings and effective remedies before courts and/or tribunals in your country? If yes, please explain which law provides this protection, who has standing to bring claims forward and what court or tribunal adjudicates the claim. Provide an example of a leading case and explain briefly how this may have advanced protection of the right to housing.**

General/Background

It should be noted that Ireland does not have a constitutional or statutory right to housing. However there are certain specific substantive and procedural rights in relation to housing arising from legislation and case law, which include:

Social housing

- the right to apply for social housing assistance and the right to be assessed for social housing assistance once you have applied, and if qualified, to be placed on a waiting list for the allocation of a house;
- the right to obtain Housing Assistance Payment when you have been deemed qualified for social housing (should you choose to do so rather than going on primary waiting list for social housing) subject to the suitability of the accommodation in question;
- the right not to be discriminated against on the basis of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community;
- the right to purchase your local authority house subject to certain conditions;
- rights in relation to the procedure for a Tenancy Warning and eviction;
- The Housing Act 1988 places particular responsibility on local authorities to provide for the accommodation needs of people who are homeless.

Legislative protections in relation to private housing and rented accommodation

- protections for the family home;
- the right to a four year tenancy, with limited grounds for termination, in private rented accommodation if a tenant has been in occupation for six months continuously and no notice to quit has been served;
- the right to a rent that is no greater than current market rent;
- the right to not have rent reviewed more than once in each period of 24 months nor in the period of 24 months after the start of the tenancy;

- the right to refer a landlord and tenant dispute or resolution to the Private Residential Tenancies Board (PRTB) and the right of appeal from the decision of the PRTB to the High Court on a point of law;
- the duty to build all new houses in accordance with the building regulations;
- protections for people who are trying to access housing finance, having difficulty repaying their loans or can no longer meet loan repayments.

**a.) Non-discrimination (including accommodation of disabilities) Yes/No**

Ireland has comprehensive and robust equality legislation in place, namely the Employment Equality Acts 1998-2015, and Equal Status Acts 2000 -2015.

The Equal Status Acts 2000-2015 prohibit discrimination outside the workplace, in particular in the provision of goods and services, selling, renting or leasing property and certain aspects of education. Equality legislation also provides for remedies for those who have suffered discrimination generally. The Equal Status Acts 2000-2015 address direct and indirect discrimination in the provision of goods and services. This applies on ten specific grounds- Age; Gender; Sexual Orientation; Civil Status; Family Status; Religious Belief; Disability; Race; colour, nationality, ethnic, or national origins; Membership of the Travelling Community and being in receipt of Housing Assistance. The legislation is designed to promote equality and prohibit discrimination (direct, indirect and by association) and victimisation. It also allows for positive measures to ensure full equality across the ten grounds.

The Equal Status Acts require providers of goods and services to accommodate the needs of people with disabilities through making reasonable changes in what they do and how they do it, where without these changes, it would be very difficult or impossible for people with disabilities to obtain those goods and services (unless it cost more than a nominal cost). As indicated above, you are not confined to just taking reasonable steps. Positive action is allowed under the Equal Status Acts. You can take whatever steps are necessary to ensure that people with disabilities can obtain your goods and services.

For instance, the Equal Status Acts 2000-2015 make it unlawful for educational establishments to discriminate on any of the ten grounds including disability. Educational establishments include preschool services, primary or secondary schools, and institutions which provide continuing or third level education, for example universities. This includes both public and private establishments. It is unlawful for an educational establishment to discriminate in relation to the following.

- Admissions
- Access to any course, facility or benefit they provide
- Any other term or condition or participation
- The expulsion of a student, or any other sanction against a student.

However, there are some situations in which the Equal Status Acts allow people to be treated differently in schools, colleges and third level institutions. These are known as exemptions. In the case of a disability, the school or college must provide reasonable accommodation for students who need them so they can participate fully. A place of education can treat a student with a disability differently if the nature of their disability would make it impossible or very difficult to teach other students.

The Employment Equality Acts, Pensions Acts and Equal Status Acts have specific provisions concerning (among other grounds) discrimination on the grounds of disability. The Adjudication Service of the Workplace Relations Commission (WRC) provides a quasi-judicial forum for the hearing of complaints under the Acts.

Under the Employment Equality legislation, the adjudication officer can order compensation of up to two years or pay up to €40,000 whichever is the greater, and re-instatement or re-engagement where the discrimination resulted in dismissal.

Orders can also be made for equal treatment, equal pay from the date of referral, or an order for a specified person to take a specified action.

Where the discrimination occurs in the provision of goods and services, including the provision of State services an adjudication officer can award up to €15,000.

The legislation also protects a person from harassment and the same level of compensation as that of discrimination applies. The adjudication officers are aware that the remedy must be effective, proportionate and dissuasive.

Please find information on each agency below.

### **The Irish Human Rights and Equality Commission (IHREC)**

IHREC is the national equality body dealing with a range of EU anti-discrimination measures and is the State's human rights institution. The Commission is independent in the discharge of its functions, which include the protection and promotion of human rights and equality, and the provision of information to the public in relation to human rights and equality.

The Irish Human Rights and Equality Commission Act 2014 confers powers of investigation on the Commission which can provide advice and assistance to persons who consider that they have experienced discrimination. It is open to any person to make contact with the Commission to inquire as to what advice and assistance may be available in their particular circumstance. IHREC can refer the case to the Workplace Relations Commission (WRC) for investigation and adjudication – or a person can contact the WRC directly.

### **The Workplace Relations Commission (WRC)**

The Workplace Relations Commission provides information on Irish equality legislation and deals with complaints of discrimination under the Equal Status Acts.

**b.) Security of tenure (including prohibition of eviction without appropriate alternative housing) Yes/No**

**Private Rented Sector**

**Background**

The Residential Tenancies Act 2004 introduced security of tenure for tenants based on 4 year cycles from the date the Act came into force (i.e. 1<sup>st</sup> September 2004). The Residential Tenancies Act 2004 also led to the setting up of the Residential Tenancies Board (previously known as the Private Residential Tenancies Board (PRTB)) which was established as a statutory body with dispute and tenancy registration functions, along with the role of providing legislation and policy advice, research and information on the rental market.

**Security of tenure**

For existing tenancies, security of tenure under the Residential Tenancies Act 2004 was based on rolling four-year tenancy cycles. Where a tenant has been in occupation of a dwelling for a continuous period of 6 months and no notice of termination has been served in respect of that tenancy before the expiry of the period of 6 months, the tenancy is established for the remainder of the four year period. This is referred to in the Act as a 'Part 4' tenancy. Landlords and tenants may not contract out of any of the provisions of Part 4 of the Residential Tenancies Act and no lease, tenancy agreement, contract or other agreement may operate to vary or modify the provisions of Part 4 of the Act. This four-year cycle was extended to six years by the Planning and Development (Housing) and Residential Tenancies Act 2016.

In general, under a Part 4 tenancy, a landlord may not serve a notice of termination except in very clearly defined circumstances. Section 34 of the Act provides that the landlord must state in the termination notice the reason the tenancy is being terminated and the termination will not be valid unless that reason relates to one of the following:

- the tenant has failed to comply with the obligations of the tenancy;
- the landlord intends to sell the dwelling within the next 3 months;
- the dwelling is no longer suited to the needs of the occupying household;
- the landlord requires the dwelling for own or family member occupation;
- vacant possession is required for substantial refurbishment of the dwelling;
- the landlord intends to change the use of the dwelling.

Section 62 states that a valid notice of termination must contain, among other things, the reason for termination, if the duration of the tenancy is more than 6 months. Where there is a dispute regarding the validity of a notice of termination, the dispute may be referred to the Residential Tenancies Board (RTB) for resolution.

The RTB replaces the Courts for the vast majority of landlord and tenant disputes which come under the remit of Residential Tenancies Acts. Section 56 of the 2004 Act provides that, where there is an abuse of the termination procedure in section 34, a tenant may bring a complaint to the RTB on the basis that they have been unjustly deprived of possession of a dwelling by their landlord.

## **Social Housing**

### Part 2 of 2014 Act

The repossession procedure for local authority for many years was set down in section 62 of the Housing Act 1966, which provided a summary mechanism in the District/Circuit Court for housing authorities to recover possession of dwellings where there is no tenancy in the dwelling or the tenancy has been terminated. Section 62 did not allow for a court hearing of the merits of the authority's reasons for evicting the occupier, who could, nonetheless, contest the eviction in the High Court. In 2012, the Supreme Court made a declaration under section 5 of the European Convention on Human Rights Act 2003 that section 62(3) of the 1966 Act was incompatible with the State's obligations under Article 8 of the Convention by reason of the absence of appropriate procedural safeguards in circumstances where there exists a factual dispute as to whether a tenancy has been properly terminated for breach of the tenancy agreement. Arising from this court ruling, Part 2 of the Housing (Miscellaneous Provisions) Act 2014 (No. 21 of 2014), which came into force on 13 April 2015, repealed section 62 and provides for a new procedure for recovering possession of local authority dwellings containing the following elements:

- A housing authority may, in addition to its existing procedures for taking up breaches of tenancy agreements with their tenants, issue a statutory tenancy warning to a tenant setting out the serious breach of the tenant agreement concerned, requiring the tenant to ensure that there is no repetition of the breach and indicating the likely consequences of any repetition;
- The housing authority will review the issue of the tenancy warning, if requested to do so by the tenant;
- The housing authority may apply to the District Court for a possession order in respect of a breach of the tenancy agreement and the court will adjudicate on the merits and proportionality of the proposed repossession where the tenant disputes the basis for it, including consideration of the circumstances where the authority did not issue a tenancy warning in respect of the breach of the tenancy agreement concerned. Recovery of possession by the housing authority on foot of the possession order has the effect of terminating the tenancy in the dwelling. Any party to a possession application may appeal the District Court's decision to the Circuit Court;
- In the case of anti-social behaviour by a household member, the Court may, as an alternative to determining a possession application, deem the possession application to be

an application for an excluding order against that person under section 3(2) of the Housing (Miscellaneous Provisions) Act 1997 and deal with the application accordingly;

- A housing authority is required, when setting out the basis for a tenancy warning or applying for a possession order, to have due regard to protecting the identity of any person who provides information to the authority relating to the breach of the specified term concerned where the authority believes that not to do so could render that person liable to violence, threat or fear as a result of providing the information or might prevent those persons from providing the information because of violence, threat or fear.

Part 2 of the 2014 Act also includes provisions for strengthening the power of local authority tenants, tenant purchasers and housing authorities to seek District Court orders excluding individuals engaged in anti-social behaviour from the house or estate concerned for a period up to 3 years. The amendments made to the Housing (Miscellaneous Provisions) Act 1997 include the introduction of a distinction between the type of excluding order that a court may make in respect of adults and persons aged between 12 and 17 years. Under the revised provisions, an excluding order cannot exclude a person under 18 years of age from his or her home but may exclude such a person from entering or being in the vicinity of any other specified house or a specified place or area where the housing authority controls or manages one or more than one house.

## **Private Rented Sector**

### **Background**

The Residential Tenancies Act 2004 introduced security of tenure for tenants based on 4 year cycles from the date the Act came into force (i.e. 1<sup>st</sup> September 2004). The Residential Tenancies Act 2004 also led to the setting up of the Residential Tenancies Board (previously known as the Private Residential Tenancies Board (PRTB)) which was established as a statutory body with dispute and tenancy registration functions, along with the role of providing legislation and policy advice, research and information on the rental market.

### **Security of tenure**

For existing tenancies, security of tenure under the Residential Tenancies Act 2004 was based on rolling four-year tenancy cycles. Where a tenant has been in occupation of a dwelling for a continuous period of 6 months and no notice of termination has been served in respect of that tenancy before the expiry of the period of 6 months, the tenancy is established for the remainder of the four year period. This is referred to in the Act as a 'Part 4' tenancy. Landlords and tenants may not contract out of any of the provisions of Part 4 of the Residential Tenancies Act and no lease, tenancy agreement, contract or other agreement may operate to vary or modify the provisions of Part 4 of the Act. This four-year cycle was extended to six years by the Planning and Development (Housing) and Residential Tenancies Act 2016.

In general, under a Part 4 tenancy, a landlord may not serve a notice of termination except in very clearly defined circumstances. Section 34 of the Act provides that the landlord must state in the termination notice the reason the tenancy is being terminated and the termination will not be valid unless that reason relates to one of the following:

- the tenant has failed to comply with the obligations of the tenancy;
- the landlord intends to sell the dwelling within the next 3 months;
- the dwelling is no longer suited to the needs of the occupying household;
- the landlord requires the dwelling for own or family member occupation;
- vacant possession is required for substantial refurbishment of the dwelling;
- the landlord intends to change the use of the dwelling.

Section 62 states that a valid notice of termination must contain, among other things, the reason for termination, if the duration of the tenancy is more than 6 months. Where there is a dispute regarding the validity of a notice of termination, the dispute may be referred to the Residential Tenancies Board (RTB) for resolution.

The RTB replaces the Courts for the vast majority of landlord and tenant disputes which come under the remit of Residential Tenancies Acts. Section 56 of the 2004 Act provides that, where there is an abuse of the termination procedure in section 34, a tenant may bring a complaint to the RTB on the basis that they have been unjustly deprived of possession of a dwelling by their landlord.

**c.) Adequacy standards (habitability, access to water, sanitation, services, health and safety etc.) Yes/No**

All landlords have a legal duty to ensure that their rent properties comply with certain minimum physical standards. These minimum standards are set out in the Housing (Standards for Rented Houses) Regulations 2017 (S.I. 17 of 2017). The standards apply to all properties let or available to let with some limited exceptions. Local authorities are responsible for enforcing these minimum standards. This includes inspection of properties. If a tenant thinks their accommodation is not up to standard, they can contact the relevant local authority.

Failure to comply with the minimum standards can result in penalties and prosecution. Local authorities can issue Improvement Notices and Prohibition Notices to landlords who breach the minimum standards regulations. An Improvement Notice sets out the works that the landlord must carry out to remedy a breach of the regulations.

<http://www.irishstatutebook.ie/eli/2017/si/17/made/en/print>

**d.) Non-retrogression (review of effect on right to housing of program cuts, removal of legal protections or austerity measures) Yes/No**

There would not be an appeal against austerity measures which meant changes to the statutory rights related to housing mentioned above, unless such measures contravene the Irish Constitution or the European Convention of Human Rights.

**e.) Progressive Realization – (obligation to take reasonable measures, establish and meet goals and timelines, prioritize the most disadvantaged, allocate maximum available resources, etc.) Yes/No**

Ireland takes steps to achieve the housing-related rights recognized in the International Covenant on Economic, Social and Cultural Rights, by all appropriate means, including particularly the adoption of legislative measures.

Rebuilding Ireland is committed to the delivery of over 138,000 **social housing** solutions across the 6 year plan. This will include 50,000 long-term social homes of which, over 33,000 will be delivered under the main programme heading of Build- including Local Authority and AHB new build programmes, regeneration, voids and just under 5,000 Part Vs.

The Plan is already delivering well as evidenced by a total of 57,000 housing solutions delivered to end Q2 2018 which includes:

- 15,700 Build, Acquisition and Leased homes
- 41,500 HAP and RAS tenancies set-up

During the first 6 months of 2018, over 12,300 families and individuals were supported into homes.

While early years focussed on harnessing the maximum capacity of readily available properties through acquisition and remediation of vacant properties, as we reach the mid-way point, the investment and emphasis on developing new build pipelines is yielding significant results.

Some 1,438 homes have been delivered through build programmes in the first half of the year, which includes delivery by local authorities, approved housing bodies, Part V homes and a small number of voids. Construction delivery at year end year is expected to be considerably higher in keeping with the normal annual pattern of delivery. With a target of 4,969 units for all build activity in 2018, which is a significant increase on the equivalent target set for 2017 of 3,200, the focus, drive and determination for all stakeholders is now firmly placed on meeting the targets and expanding pipelines to ensure that we continue to meet targets into the future.

The Housing Assistance Payment and the Rental Accommodation Schemes also continues to deliver well week on week for hundreds of households nationwide. These arrangements ensure that we can react in an urgent capacity to meet immediate housing demand, while continuing in parallel to delivering longer-term solutions also. We are focussing on both. By 2021 it is expected that we will be delivering more long-term properties than HAP on an annual basis.

There is a significant increase in funding being provided in 2018 with a further substantial increase in funding under Budget 2019, when €2.4 billion will be invested - more than in any previous year.



There would not be an appeal against a perceived failure to take such progressive measures unless such perceived failure contravenes the Irish Constitution or the European Convention of Human Rights.

**2. What measures have been taken or are planned to improve access to justice for the right to housing? Please include, where applicable, measures relating to i) education of lawyers, advocates and potential rights claimants; ii) barriers facing women and other groups; iii) access to legal representation; iv) making hearings and other procedures more accessible and less intimidating or costly; v) more effectively addressing systemic issues; and vi) ensuring implementation of remedial orders.**

It is not considered that any such measures are necessary.

**3. Please identify where responsibility lies for education and training of judges and administrative decision-makers regarding their international human rights obligations. What measures have been taken to ensure that domestic law is interpreted as far as possible to provide for effective remedies for the right to housing?**

The Committee for Judicial Studies is the body responsible for Judicial Training.

**Section 19 of the Court and Court Officers Act 1995 provides that:**

“A person who wishes to be considered for appointment to judicial office shall undertake to the Board (The Judicial Appointments Advisory Board) his or her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court to which that person is appointed.”

**Section 48 provides that:**

“The Minister (for Justice, Equality & Law Reform) may, with the consent of the Minister for Finance, provide funds for the training and education of Judges.”

As a result of the above sections of the Court and Court Officers Act coming into force, the Judicial Studies Institute was set up by the then Chief Justice, The Hon. Mr. Justice Liam Hamilton RIP in mid-1996 to provide for the training and for the on-going education of the Judiciary. Initial funds for the purpose of these sections were provided by the Minister. Administrative, secretarial and support services are provided to the Institute by the Courts Service.

The function of the Judicial Studies Institute is to organise conferences, seminars and lectures on legal subjects for members of the judiciary. The object is to enhance knowledge and understanding of law and legal principles among judges with particular regard to new developments in the law, including legislation. Among its main activities is the organisation of the annual judicial conferences for judges of the Superior Courts, the Circuit Court and the District Court respectively, and an annual national conference for judges of all Courts.

Seminars on discrete topics are also organised for each jurisdiction. The Institute nominates judges to attend international conferences on legal topics where relevant. The Board of the Institute meets once every six weeks approximately.

The Committee organises a National Judges' Conference, during which speakers are invited to present papers on a number of different topics. However, the focus of the Committee, insofar as it relates to human rights, is generally on the effect of the European Convention on Human Rights and its case law, and less on international human rights instruments.

Average attendances at conferences organised by the Judicial Studies Institute have been in the region of 95% with 100% on some occasions.

Members of the judiciary also frequently attend or participate in conferences, seminars and lectures concerned with legal topics organised by outside bodies such as universities, law associations and other interest groups.

The Committee is a member of the Lisbon Network, established under the Council of Europe in order to liaise and learn from judicial training bodies in Europe.

On appointment, each new Judge is provided with a copy of the Equal Treatment of Persons in Court Benchbook, which contains a number of sections on The European Convention on Human Rights (ECHR)

Her Honour Judge Susan Ryan, Circuit Court Judge gave a paper entitled "**Summary of latest Developments in "Repossessions"**" at the Circuit Court Judges conference in 2014. The paper focused on the latest statutory provisions relating to repossession proceedings in the Circuit Court.

Her Honour Judge Susan Ryan gave a further presentation in 2015 entitled "**Proceedings for Possession: An update on 2014**", which highlighted some statistics and facts relevant to repossessions; provided a very brief summation of key decisions in 2015 and addressed proofs when orders are sought.

In 2017 Judge Ryan gave a very detailed presentation at the Circuit Court Conference on Repossessions which dealt with inter alia developments both legislative and judge made involving the repossession jurisdiction of the Circuit Court and included information on the following:

Codes of Conduct on Mortgage Arrears

Bankers Books Evidence Acts

Jurisdiction

Courts Act 2016

Market Value – Section 45 of the Civil Liability and Courts Act 2004

Amendment of Civil Liability and Courts Act 2004

Certificates and hearsay

Duty of Financial institutions to borrowers

Reckless lending and Consumer Credit

Duty of care owed by a lender to a borrower

Consumer Credit Directive

MCR – (Mortgage Credit Directive):

(S.I. No. 142 of 2016 EUROPEAN UNION (CONSUMER MORTGAGE CREDIT AGREEMENTS) REGULATIONS (MCR) transposing the Mortgage Credit Directive 2014/17/EU relating to residential immovable property)

Unfair Terms

Launceston Property Finance v Burke Supreme Court March 2017

Exception to the self-representation rule-

In relation to the District Court, The District Court Judges organise their own judicial training on housing rights/obligations either at a quarterly training/ and annual conference. The Landlord and Tenant Acts 1967-1994, Residential Tenancies Act 2004, Residential Tenancies (Amendment) Act 2015, Planning and Development (Housing) and Residential Tenancies Act 2016 have all been addressed in updates to Judges as well as the devolution of Determination Orders by the RTB to the District Court. Fair procedures are applied in all hearings that come before the Court. This topic may well be one of the topics chosen for their Annual Conference in 2019, as it is one of the topics under consideration by the Conference Committee.

District Court Judges are aware that the RTB have a mediation service, that the Legal Aid Board provide civil legal aid to promote access to justice, that FLAC provides free legal advice to ensure the same end, and the RTB provides a dispute resolution service. They are also aware that there are community based Mediation Services and that Mercy Law Resource Centre is especially attuned to issues involving the rights to housing in Ireland within the framework of the European Convention on Human Rights, and European Union Law and Charter of Fundamental Rights.

There is no explicit constitutional or statutory right to shelter or housing in Irish law, save for the State's duty to children under the Child Care Act 1991 and Article 42A of the Irish Constitution. Nor is there any such right under the European Convention on Human Rights. However, a right to shelter or housing may feasibly be secured or implied through the protection offered by other constitutional provisions or through the jurisprudence of the European Convention on Human Rights. This has emerged most prominently in the context of the right of homeless children, or children at risk of homelessness, to appropriate accommodation, and the putative right of members of the travelling community to access suitable accommodation. The impact of the European Convention on Human Rights Act 2003 is also examined here.

Children and the Right to Housing

During the 1980s and early 1990s, a fairly extensive range of studies into homelessness among young people had been generated and a number of organisations, such as the National Campaign for the Homeless, Streetwise National Coalition and Focus Point, campaigned vigorously around this issue. Then in 1991, the antiquated Children Act 1908 was replaced by the Child Care Act 1991, which, for the first time, made specific legislative provision for homeless children. Section 5 of that Act now provided:

a) Where it appears to a health board that a child in its area is homeless, the board shall enquire into the child's circumstances, and if the board is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the care of the board under the provisions of this Act, the board shall take such steps as are reasonable to make available suitable accommodation for him.

Moreover, the 1991 Act extended the definition of 'child' to include people up to the age of 18.

However, the response of many health boards to this new statutory obligation was less than satisfactory. According to O'Sullivan,

The majority of the Health Boards did not have an infrastructure in place to allow [them] to meet the new demands of the Act, in particular the influx of a new category of children, the 16-18 year olds, for whom previously they had no responsibility...Increasingly the boards started to place homeless children in Bed and Breakfast...accommodation when faced with children [that] the existing hostels could not or would not accommodate.

When traditional lobbying methods by an alliance of organisations working with homeless children failed to stop this practice, a number of individuals came together to form what ultimately became known as the Children's Legal Centre. One of the more significant objectives of the Centre was 'to initiate and pursue legal action on behalf or in association with children and young people to secure their rights under legislation'. Their hope now was that such action, invoking the recently enacted Child Care Act 1991, could be used to test the extent of the State's obligations towards homeless children. In addition to the 1991 Act, the Constitution also offered potential support for the claims made by these children against the State. Article 42.5, in particular, provided that:

In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

As of a constitutional referendum in 2012, Article 42.5 is now Article 42A, and the provision reads:

In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the state as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

The constitutional powers and obligations of the State in respect of children at risk had initially been considered by the courts in the context of litigation taken by *parents* arising out of *action* by the State in taking their children into care. In the series of cases under consideration here, however, (many of which were supported by the Children's Legal Centre), the courts were now asked to consider the effect of the Child Care Act 1991 and the Constitution in cases taken by *children* arising out of the State's *failure to act*. Understandably, the claims almost invariably focused on the issue of accommodation. The State's initial response to this new tactic was to settle each case on an *ad hoc* basis, thereby avoiding the creation of any judicial precedent. Inevitably, however, cases arose in respect of which the State agencies were unable to put suitable arrangements in place and so the State's obligations towards homeless children eventually came under judicial scrutiny.

Three points worth noting emerge from this attempt to use the courts to effect social reform. First, this litigation strategy arguably contributed to the improvement in State policy towards children at risk that occurred during the first decade of this century, though this would have been as a result of the indirect consequences of the litigation rather than having been directly ordered by the courts. Second, and less positively, the experience of litigation strategy here arguably demonstrates one limitation of litigation strategy, namely, that the judicial response is invariably limited to the specific problem presented by the particular case and has great difficulty in taking on board a broader perspective on the issue. Thus, the children with whom the Children's Law Centre came into contact were those who were in trouble with the law or who were refused places in youth shelters or hostels because of their unruly nature and consequently the cases taken by the Centre inevitably focused on the needs of this particularly disturbed group of children, rather than on the needs of homeless children generally. Finally, the pursuit of litigation strategy here eventually afforded the Supreme Court an opportunity to restrict the availability of mandatory orders directing the executive to spend public monies in vindication of constitutional rights, demonstrating that litigation strategy can prove quite risky.

**4. Are you aware of examples in your country of community-based initiatives to provide hearings and remedies for the right to housing outside of formal court or tribunal processes? How have they been supported and how effective have they been? Do these**

**operate at the national or subnational level, and do decisions create precedents that can be relied upon by others?**

We are not aware of any such initiatives.

**5. What role does your National Human Rights Institution play in ensuring access to justice for the right to housing? Are there other human rights bodies that play a role in this respect, such as an ombudsperson?**

#### 1. Introduction

The Irish Human Rights and Equality Commission is Ireland's independent national human rights and equality institution. Its purpose is to protect and promote human rights and equality in Ireland and to build a culture of respect for human rights, equality and intercultural understanding. The Irish Human Rights and Equality Commission was established on 1 November 2014, as an independent public body with a mandate under the Irish Human Rights and Equality Commission Act 2014. The Act gives the Commission a range of statutory powers for the protection and promotion of human rights and equality. The Commission operates independently of Government, with its institutional independence guaranteed in the Commission's establishing legislation, which provides for accountability of the Commission for its statutory functions to the Oireachtas.

#### 2. Public Comment

The Irish Human Rights and Equality Commission has consistently raised the issue of housing and accommodation through a number of media statements and media engagements on the matter. These statements have seen significant national print, broadcast and online coverage of the issues raised by the Commission.

Allied to this direct media work the Chief Commissioner has spoken regularly at a range of events focused on housing including. For example, an event in June where the Chief Commissioner spoke alongside Leilani Farha, the UN special rapporteur for adequate housing, at the launch of a new paper by the Simon Communities entitled Making the Case for a Right to Housing in Ireland.

Examples of recent media work on this area over the last year includes the following:

**25<sup>th</sup> June 2018** – News Release “*Human Rights and Equality Commission Annual Report Launched*” - During the launch of the Commission's Annual Report, the Chief Commissioner highlighted specifically the issue of housing, and the increased level and types of discrimination being experienced by certain groups living in Ireland.

**15<sup>th</sup> June 2018** – Media Release “Discrimination and Inequality in Housing in Ireland Set Out in New Research” – New commissioned research was published showing that specific groups, including people with disabilities, lone mothers and young people, are among those facing the highest levels of discrimination and inequality in relation to housing in Ireland.

**10<sup>th</sup> May 2018** – Media release “*County Council Criterion for Traveller Family Access to Services Discriminatory*”. The Commission’s legal work in relation to Traveller access to accommodation with Local Authorities was highlighted. The Chief Commissioner stated that it is essential that Local Authorities, in line with their legal obligations to eliminate discrimination, work proactively to ensure access to the range of their services irrespective of who the user is.

**23<sup>rd</sup> October 2017**– Media release “*Human Rights and Equality Commission Responds to European Committee on Social Rights Finding Against Ireland on Social Housing*” – The Commission issued its response to the ESCR finding of a violation of human rights in relation to the stated failure to take sufficient and timely measures to ensure the right to housing is of an adequate standard for families living in Irish Local Authority housing.

**12<sup>th</sup> July 2017** – Media release “*Human Rights and Equality Commission Challenges Normalisation of Family Homelessness*” – The Commission published its policy statement to provide focus to human rights and equality considerations involved in the provision of emergency accommodation. The statement emphasises the need for a focus on human dignity, and the need for the Constitutional values of autonomy and privacy of people experiencing homelessness to be central to the provision of suitable family accommodation, alongside the Constitutional importance of children’s rights.

### 3. International Reporting

The Irish Human Rights and Equality Commission has placed a particular emphasis on socio-economic rights – including the right to adequate housing – since its establishment in November 2014.

The Commission has regularly outlined human rights and equality concerns relating to housing and homelessness in its policy work, and in its independent reporting to regional and international human rights monitoring bodies. This has included the following.

#### **3.1 The provision of emergency accommodation to families experiencing homelessness, IHREC, July 2017.<sup>1</sup>**

This policy statement focussed on human rights and equality considerations involved in the provision of emergency accommodation, in the context of the opening of ‘Family Hub’ emergency accommodation. It:

- raised concerns regarding risk of normalisation of family homelessness if Family Hubs are used beyond short-term emergency situations.
- Highlighted the negative effects of family homelessness, particularly on children.
- It critiqued the wide discretion provided to local authorities within the current system of emergency accommodation, which does not adequately protect the right to housing for families experiencing homelessness.

---

<sup>1</sup> The provision of emergency accommodation to families experiencing homelessness, IHREC, July 2017. Available at <https://www.ihrec.ie/app/uploads/2017/07/The-provision-of-emergency-accommodation-to-families-experiencing-homelessness.pdf>

## Recommendations

- socio-economic rights, including the right to housing, should be enshrined in the Constitution of Ireland.
- reforms to the Housing Act to limit the time that a family may spend in emergency accommodation to three months
- regulations for emergency accommodation to include provision for family access to cooking facilities and utensils, a play area, a family room, and that a family's right to autonomy and privacy should be respected
- application of the Public Sector human rights and equality duty to the state's review of the *Rebuilding Ireland* strategy
- Amendment of Service Level Agreements related to the provision of emergency accommodation to include commitments to human rights and equality as well as specific references to the rights to family life, autonomy and privacy.
- Development of National Quality Standards Framework for Homeless Services, with homeless services subject to regular inspection by an independent inspection body.

### **3.2 IHREC's report to the European Social Committee in 2017,<sup>2</sup> which:**

- Raised concerns that the pathways to housing for people leaving the direct provision system are not effective in ensuring that all such persons do not become homeless.
- Provided information on current levels of homelessness and family homelessness, from various sources.
- Raised concerns regarding the inadequate conditions of Traveller accommodation, with reference to Article 11 of the Charter.

### **3.3 IHREC's report to the UN Committee Against Torture,<sup>3</sup> which**

- highlighted the key role that housing plays in transitioning from prison to the community, with the risk of homelessness representing a significant hurdle for transition.
- underscored that a structured release approach must link prisoners with supports in the community prior to release, particularly in relation to vulnerable prisoners.

---

<sup>2</sup> IHREC Comments on Ireland's 14th National Report on the Implementation of the European Social Charter, April 2017. Available at: [https://www.ihrec.ie/app/uploads/2017/04/F1-IHREC-Comments-on-Irelands-14th-Report-on-European-Social-Charter\\_April-2017-002.pdf](https://www.ihrec.ie/app/uploads/2017/04/F1-IHREC-Comments-on-Irelands-14th-Report-on-European-Social-Charter_April-2017-002.pdf)

<sup>3</sup> Ireland and the UN Convention against Torture, Submission to the United Nations Committee against Torture on Ireland's second periodic report, July 2017. Available at <https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf>.



- underscored the need for wider improvement in the use of open and step-down facilities for persons transitioning, particularly from longer sentences and who may be vulnerable to institutionalisation, should be improved

#### Recommendations

- that the number of prisoners in open or step-down facilities is increased and that further efforts are made to improve structured release supports
- further development of women-specific alternatives to custody, progress on the development of an open prison for women and resourcing of community supports (including housing supports)

### **3.4 IHREC’s report to the UN CEDAW Committee<sup>4</sup>, which:**

- Highlighted disproportionate impact of housing and homelessness crisis on victims of domestic violence
- Highlighted state failure to realise the right to culturally appropriate housing for Traveller families in consultation with each individual family.

#### Recommendations

- Development of clear policies in relation to applications for social housing from victims of domestic violence.
- That section 2 of the Housing Act 1988 be amended to require housing authorities to consider domestic violence when assessing applicants’ homelessness.
- regulations under the Housing Acts 1966–2009 should be amended to the effect that ‘alternative accommodation’ for the purposes of housing needs assessment excludes accommodation that is unsafe because of risk of domestic violence.
- The State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family.

### **3.5 IHREC’s report to the UN Committee on the Rights of the Child,<sup>5</sup> which highlighted concerns at the growth in family homelessness and its impact on children. Also underlined ongoing gaps in adequate provision of Traveller accommodation.**

#### Recommendations

- that the State take further steps to progressively realise the right to adequate housing, being the right to live somewhere in security, peace and dignity.

---

<sup>4</sup> *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, January 2017. Available at <https://www.ihrec.ie/app/uploads/2017/02/Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-Against-Women.pdf>

<sup>5</sup> *Ireland and the UN Convention on the Rights of the Child: Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland’s Combined Third and Fourth Periodic Reports*, December 2015. Available at: [https://www.ihrec.ie/app/uploads/download/pdf/ireland\\_and\\_the\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ireland_and_the_united_nations_convention_on_the_rights_of_the_child.pdf)

- In line with the State's obligations under Article 27(3) of the Convention, that it take measures to ensure that both social housing and affordable housing are of sufficient quality and are made accessible to low income families.
- the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family. In particular, Local Authorities should be adequately penalised or sanctioned if they do not invest the total money allocated for Traveller housing in a given year.

### **3.6 IHREC's report to the UN Committee on Economic, Social and Cultural Rights,<sup>6</sup>**

which raised concerns regarding:

- the increase in homelessness, particularly family homelessness
- security of tenure
- the standard and appropriateness of Traveller accommodation
- the provision of appropriate housing for people with disabilities.

Recommendations

- the State monitor the efficacy of the Housing Assistance Payment and ensure that it is achieving its objective in ensuring that people on low incomes can access appropriate housing in the longer-term.
- The State should consider the introduction of rent limits to reduce the financial pressure on low income individuals and families in need of private rented accommodation.
- the State should reconsider increasing Rent Supplement limits.
- the State take measures to ensure that affordable housing is available and is of sufficient quality in order to fully comply with its obligations under the ICESCR.
- the State review the operation of the recently enacted Housing (Miscellaneous Provisions) Act 2014 to ensure Section 10 of the 2014 Act provides a sufficiently independent review mechanism for local authority tenants and that people in need of local authority housing are not subject to unfair evictions in line with the requirements surrounding security of tenure contained in ICESCR.
- the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family. In particular, Local Authorities should be adequately penalised or sanctioned if they do not invest the total money allocated for Traveller housing in a given year.

## 4. Research

---

<sup>6</sup> *Ireland and the International Covenant on Economic, Social and Cultural Rights: Submission to the UN Committee on Economic, Social and Cultural Rights*, May 2015. Available at: [https://www.ihrec.ie/download/pdf/ihrec\\_report\\_ireland\\_and\\_the\\_international\\_covenant\\_on\\_economic\\_social\\_and\\_cultural\\_rights.pdf](https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf)

IHREC has invested €300,000 in a two year (2017-2018) research programme delivered by the Economic and Social Research Council. Housing was the focus of one report and has been a consistent issue raised across the reports published to date. The published reports are listed below.

#### Who Experiences Discrimination in Ireland, November 2017

This study draws on the data collected for the equality module of the 2014 Quarterly National Household Survey, carried out by the Central Statistics Office (CSO). Participants were asked if, in the previous two years, they had experienced discrimination, whether in the workplace, while seeking work, in public services or in private services. The data therefore provides an invaluable insight into the groups most likely to report experiencing discrimination in Ireland, and the context in which it occurs.

#### Attitudes Towards Diversity in Ireland, March 2018

This study looks at Ireland's increasing diversity and monitors attitudes for the period from 2002-2014. The results for Ireland are also compared with averages from ten other Western European states

The work draws on a survey of attitudes from the European Social Survey. It has found that the attitudes of Irish-born people to immigrants and immigration vary significantly over time, depending on the ethnicity of the migrants, on respondents' education and financial security, and on the level of individual contact people have with those from different ethnic backgrounds.

#### Discrimination and Inequality in Housing in Ireland, June 2018

This study examines several different aspects of discrimination and inequality relating to housing: accessing housing; housing quality; and a profile of the homeless population. The results are disaggregated according to different population groups, which enable us to identify if any groups experience more discrimination than others. This report gives us a better understanding of access to housing in Ireland, who experiences problems in accessing suitable housing, and if any groups experience more problems than others.

#### Disability and Discrimination in Ireland, October 2018

This study provides a detailed account of the experience of discrimination for people with disabilities in Ireland. Using the Equality module of the Quarterly National Household Survey (QNHS), this report examines the extent to which people with disabilities experience higher rates of discrimination across a range of life settings or domains compared to people without disabilities. These domains include both public and private settings including access to housing, the provision of goods, facilities or services, shops, pubs, restaurants and banks and other financial services.

## 5. Legal Work – Your Rights Service

## 5.1 ‘Your Rights’ provision of information

The Commission operates an information-provision service called Your Rights and receives queries from the public, including from organisations and individuals. The Your Rights service provides information on relevant equality and human rights laws, avenues of redress and also makes referrals to other bodies e.g. Residential Tenancies Board or to NGOs working in housing, such as Mercy Law and Threshold.

## 5.2 Discrimination in accessing housing services

In 2017, the Your Rights service handled 1890 queries. Of these queries, 550 related to the Equal Status Acts and 35% of those queries related to accommodation service-providers. The prohibition on discrimination against those in receipt of housing assistance, rent supplement or other social welfare payments, (the **housing assistance ground**), was among the most frequent grounds queried in 2017, representing 23% of the queries under the Equal Status Acts. In relation to that ground, the Your Rights service receives reports of service providers evading the prohibition on discrimination, for example, by evicting tenants on the basis of non-payment of rent whilst they await housing assistance payments.

In addition to the housing assistance ground, the Your Rights line receives queries relating to discrimination in accessing housing in the private sector experienced by people with children (i.e. discrimination on the **family status ground**).

It also receives queries relating to discrimination reported by people with a **disability**, including people who reported refusals of tenants who have assistance / emotional support / guide dogs.

Furthermore, the Commission receives queries from **members of the Traveller community** and **national and ethnic minorities** who report discrimination in accessing housing services.

## 5.3 Homelessness, social housing and standards of accommodation

Of the 231 human rights queries arising in 2017, **homelessness** and **social housing** represented 16% of the queries. There was a 46% increase in queries concerning human rights in the context of homelessness in 2017, compared to 2016.

Human rights concerns, including the right to private and family life, arise in the context of **emergency homeless accommodation**, for example in family hubs.

Queries are received by Your Rights on the obligations of local authorities in relation to:

- The provision of **Traveller-specific accommodation**;
- Suitable accommodation for **people with disabilities** in social housing; and
- Requests for transfers in **local authority housing** and requests for priority on the transfer list.

**Evictions** from public and private accommodation also arise in queries received.

## 6. Legal Assistance

### 6.1 Background

Under section 40 of the Irish Human Rights and Equality Commission Act 2014, the Commission may grant assistance, including legal advice and representation assistance, to individuals in bringing proceedings relating to equality or human rights.<sup>7</sup>

In 2017 and 2018 the Commission has granted legal advice and/or representation assistance in respect of a number of cases involving housing. Specifically, many of these cases involve proceedings brought or sought to be brought by members of the Traveller community concerning complaints in relation to, for example, the conditions of Traveller accommodation; discrimination in accessing private rented accommodation, and discrimination and breaches of constitutional rights in applying for social housing from local authorities.

Other housing cases involve discrimination against tenants and prospective tenants in receipt of social welfare in accessing private rented accommodation.

Examples of these cases are listed below.

Under section 23(1)(b) of the Equal Status Acts 2000 – 2015 the Commission may refer complaints of discriminatory advertising to the Director of the Workplace Relations Commission. One such complaint referred by the Commission, which included complaints of discriminatory advertising on the housing assistance ground, was settled to the satisfaction of the Commission.

Pursuant to section 6 of the European Convention on Human Rights Act 2003, the Commission was notified of an important test case concerning the lack of legal protection for tenants in homes which have been repossessed by banks, investment funds or others.

### 6.2 Examples of cases

#### *A Family v Donegal County Council*

The Commission provided legal representation to a Traveller family in judicial review proceedings against Donegal County Council. Following the launch of the High Court proceedings, Donegal County Council agreed to an order quashing its original decision to defer housing support to the family, including two children with serious medical needs, who had been living in the county without basic facilities, including running water. The Council further agreed to reconsider the family's social housing application.

The legal challenge focused on the Council's decision to defer the family's housing application, with an emphasis on the decision-making process, including the fact that the

---

<sup>7</sup> Most housing issues do not come within the remit of the statutory civil legal aid scheme.

decision was taken without any opportunity for input from the family concerned. The family argued that the deferral of housing was disproportionate and adversely impacted on the rights of their children, such as their right to bodily integrity, to dignity, to freedom from degrading conditions, to nurture and support within the family structure, and to education.

***Five complainants v. A local authority***

The Commission provided legal representation to a family, including three children, in their successful challenge to the discrimination they faced due to their status as members of the Traveller community, in their application for social housing to their local County Council. The Workplace Relations Commission ordered the Council to pay a total of €20,000 in compensation to the family. The Workplace Relations Commission also directed the Council to review its policy in relation to social housing assessment regulations to remove the legality criterion when interpreting normal residence.

***A Tenant v. A Landlord***

In this matter a landlord refused to sign a form that would have allowed the tenant to apply for Housing Assistance Payment, a form of social welfare. A notice of termination was issued after the tenant sent notification of intention to apply for redress under the Equal Status Acts to the landlord. The Commission granted legal representation to the tenant who was awarded €3,500 for discrimination on the housing assistance ground and €2,000 for harassment following proceedings taken before the Workplace Relations Commission.

***An Applicant v. A Limited Company***

The Commission provided legal representation to an individual who was discriminated against when seeking to access private rented accommodation.

At a viewing of the property in question, the prospective tenant informed the estate agent that she was in receipt of rent supplement. The estate agent requested to speak to the woman's Community Welfare Officer and, in exchanges, stated that he would not be willing to hold the property while the woman's application for rent supplement was being processed, nor guarantee her the property even though he had been assured that the Department of Social Protection would also pay the deposit. In one exchange the estate agent stated: "I have people downstairs willing to pay cash."

The Workplace Relations Commission determined that the woman had been directly discriminated against on the housing assistance ground and ordered €2,500 in compensation to be paid and that all employees acting as the company's estate agents be provided with the appropriate training in relation to all provisions of the Equal Status Acts.

7. The Public Sector Equality and Human Rights Duty

Section 42 of the Irish Human Rights and Equality Commission Act 2014 places an obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights for staff and service users. This is known as the Public Sector Equality and Human Rights Duty. The Duty requires public bodies to set out in their strategic plan an assessment of equality and human rights issues relevant to their purpose and functions. They are also required to identify policies, practices and plans in place to address these issues, and to report on progress in their annual report in a manner that is accessible to the public.

The Irish Human Rights and Equality Commission (IHREC) has a role to raise awareness of the Duty and encourage good practice in relation to equality and human rights. In this context IHREC:

- Addressed a senior management team meeting in the Department of Housing, Planning and Local Government, chaired by the Assistant Secretary (May 2017). IHREC is currently working with the Department to reference the Duty in guidelines which will be issued to local authorities in advance of development of new corporate plans in 2019.
- Worked with the Local Government Management Agency and two local authorities (Monaghan County Council and Cork City Council) to pilot implementation of the Duty (June 2017 – June 2018). These pilots are complete and a video case study and guidance will be available shortly to support other local authorities to implement the Duty.
- Addressed a meeting of the Senior Management Team (April 2017) and the Local Traveller Accommodation Consultative Committee and Elected Members (September 2017) in Offaly County Council.
- Addressed meetings of the Property Registration Authority (July 2017) and the Residential Tenancies Board (November 2018).

Issues related to housing which were identified in the context of the above engagement included transparency of local authority housing lists; addressing barriers to the implementation of the Traveller Accommodation Programme; availability and access to affordable housing; non-discrimination, promoting equality and taking account of diversity and diverse needs in the provision of housing and delivery of housing services.

#### 8. Grants Scheme

The Irish Human Rights and Equality Commission provides grants to support other bodies to carry out certain activities to promote human rights and equality. Since 2016 four grants, totalling €52,000, have been awarded to projects that promoted the right to housing.

In 2016 the Community Action Network (CAN) received the funding to carry out a project promoting awareness of the findings of Collective Complaint FIDH V Ireland (housing rights case), the learning from tenants perspectives of participation in this process and developed models of good practice for tenant participation and an effective complaints mechanism with a view to engaging with duty bearers about the development and implementation of solutions to issues identified as a result of the case from a human rights and equality perspective.

In 2017 three projects related to the housing were funded.

The Community Action Network was funded to apply a human rights based approach to implementing the Public Sector Duty set out in Section 42 of the IHREC Act 2014 in Local Authorities, following on from the findings of the Collective Complaint FIDH V Ireland. The Project built a collaborative environment so that tenants and the Department of Housing, Planning and Local Government and Local Authorities could engage about the requirements of Section 42 and incorporate the human rights and equality issues identified in the Collective Complain in strategic housing plans.

The Dolphin House Community Development Association was funded to support the integration of non-Irish born tenants in Dublin City Flat complexes through a series of learning events involving community leaders, statutory agencies and all participants within estates. The project developed an understanding and appreciation of cultural diversity between host communities and new non-Irish residents of Local Authority housing.

The Travellers of North Cork CLG Group, a member of ITM was funded to support Travellers to understand their accommodation rights and work with the local authorities in Cork to raise awareness of their responsibilities as accommodation providers and to bring local councillors housing officials and Travellers together to develop better understanding.