



**Threshold's Submission to the Central Bank
Consumer Protection Code Review**
June 2024

Introduction

Threshold welcomes the opportunity to contribute to the Central Bank Consumer Protection Code Review.

Threshold, the national housing charity, has worked with and supported tenants living in the private rental sector since 1978. Each year, Threshold assists approximately 20,000 households who are experiencing difficulties in their private rental tenancies and prevents thousands of households from entering homelessness.

Threshold's focus is on people, with staff aiming to keep people in their homes and ensure they live in sustainable communities. Homelessness prevention and tenants' rights are at the core of what we do.

We do this in a variety of ways: through meaningful client engagement, by providing clients with the advice and supports they need to thrive in sustainable tenancies, by protecting their tenancies and by preventing homelessness.

This submission will focus exclusively on buy-to-let ('BTL') mortgage arrears, the impact of the actions taken by financial institutions on tenants who make their family homes in the private rented sector, and the need for regulation.

In the last decade, 1,877¹ BTL properties had receivers appointed¹. Threshold is concerned that insufficient policy attention has been paid to tenants affected in these cases. They find themselves caught in the crossfire between financial institutions and the landlord.

Threshold is calling for the rights of tenants whose landlord's property has been repossessed or gone into receivership to be protected and for measures to be put in place to prevent the loss of tenancies arising from such interventions. Threshold are asking for the Central Bank to advocate for the amendment of the Residential Tenancies Act 2004 to recognise receivers and financial institutions, in cases of repossession, as landlords and for the introduction of a Code of Conduct specific to buy-to-let mortgage arrears.

These measures are underpinned by two of the new principal policy proposals for the updated Consumer Protection Code². These are unregulated activities by regulated firms and vulnerability.

¹ Residential Mortgage Arrears and Repossession Statistics – Central Bank of Ireland;
<https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/mortgage-arrears>
(Accessed on 24/05/24)

² Consultation Paper on the Consumer Protection Code; Central Bank of Ireland -
https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp158/cp158-consultation-paper-consumer-protection-code.pdf?sfvrsn=45d631a_5 (Accessed on 30/05/24)



Advocate for the amendment of the Residential Tenancies Act 2004 to recognise receivers and financial institutions, in cases of repossession, as landlords with rights and obligations.

Regulation of the private rental sector is governed by legislation (Residential Tenancies Act 2004) but there is currently no clear process as to how financial institutions should engage with landlords and tenants. This results in a tenant essentially losing their rights once a receiver is appointed.

The primary rights which are undermined are tenants' rights to security of tenure, the right to have their rental deposit returned 'promptly' and the right to live in accommodation that meets minimum required standards and to have repairs addressed, all of which are safeguarded by the Residential Tenancies Act 2004.

In Threshold's experience, receivers do not always comply with the Residential Tenancies Act in several ways including:

- treating tenants simply as an occupant
- seeking to remove tenants without giving appropriate notice (i.e. eviction) and
- collecting rent but stating they have no obligations to the tenant.

Tenants are often being advised to approach their former landlord when they are seeking repairs or the return of the rental deposit. Clearly no tenant will obtain satisfaction from a landlord who retains no economic interest in the property.

In addition, some landlords, who do not accept the appointment of the receiver, are seeking to rely on uncertainty in the Residential Tenancies Act to continue to collect rent and to seek to terminate tenancies if the tenant deals with the receiver or financial institution.

It is Threshold's position that clarification may be achieved through amendments to the Residential Tenancies Act. The introduction of an amendment that clearly places the landlord's obligations on the receiver or financial institution is needed. It will clarify that they 'step into the shoes' of the former landlord in all respects.

Threshold proposes that Section 5(1) of the Residential Tenancies Act, 2004 be amended regarding the definition of "landlord". The aforementioned section must include any receiver appointed to a previous landlord's interest in a dwelling or to the financial institution in cases of repossession. To do so, the amendment must provide that they have all the necessary powers to comply with all landlord obligations under this Act.

Threshold also proposes the insertion of new section 5A into the Residential Tenancies Act. The new section must set out the obligation of the receiver or financial institution to notify the tenant that a receiver has been appointed or the property has been repossessed and provide evidence of same, i.e. the deed of appointment or court order.

Threshold believes that the introduction of these amendments will be important from a financial perspective as they will help to optimise the income to be derived from the receivership process. The tenant will switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and they will remain paying rent because there is no adverse impact on their tenancy.

In addition, such amendments will ensure that regulated firms are not engaging in unregulated activities, as well as ensuring protection for renters who are vulnerable to eviction and homelessness.

Introduce a code of conduct on buy-to-let mortgage arrears like the CCMA for residential mortgages.

A code of Conduct on Mortgage Arrears³ (CCMA) was introduced in 2013 by the Central Bank for residential mortgage arrears and Threshold is seeking the introduction of a similar code of conduct specific to buy-to-let mortgage arrears.

Such a code would:

- Introduce a transparent process for financial institutions, landlords and tenants;
- Set out the required steps for engagement with the landlord and tenant and the forms of communication required;
- Ensure that financial institutions respect and uphold tenants' rights.

Threshold recommends that this code be drafted in consultation with the relevant State stakeholders including the Department of Housing, Local Government and Heritage, the Department of Social Protection, and the Department of Finance as well as those representing the experiences of landlords and tenants.

A code of conduct on buy-to-let mortgage arrears would ensure that the requirements of landlord and tenant law become an explicit consideration in the receivership and repossession processes.

Under these measures tenants will be empowered to switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and because there is no adverse impact on the tenancy. A receiver will be aware of the correct legal procedure to obtain possession of a buy-to-let property in accordance with landlord and tenant law.

Conclusion

³ Central Bank of Ireland; Code of Conduct on Mortgage Arrears - <https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/other-codes-of-conduct/24-gns-4-2-7-2013-ccma.pdf> (Accessed on 21/05/24)



We conclude this submission by setting out our desire to work in partnership with relevant stakeholders on the aforementioned suggestions. Threshold firmly believe that the most impactful and sustainable outcomes regarding residential tenancies law are achieved through partnership and collective effort.

By leveraging the diverse perspectives, expertise, and resources of all involved parties, it is possible to address the longstanding and complex challenges regarding BTL mortgage arrears.

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ⁱ Authors own calculations. Entity group includes banks and non-banks. Final number only includes repossessions where the property has been repossessed on foot of an order.