

*Homelessness in Ireland: Law, Policy, and Practices*

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## **Abstract**

This chapter examines homelessness law and policy in the Republic of Ireland. The first section sets the topic in the wider housing context by outlining the history of homelessness in Ireland. The ‘strategy’ based approach to homelessness policy in Ireland is critically appraised. In section two, legal measures on homelessness prevention are discussed. The legal definition of homelessness is explored against the backdrop of the legal framework governing local authorities housing functions and a partial explanation is offered for the limited success of legal challenges. In section three, a range of homelessness prevention practices are discussed including distinctive rent subsidy mechanisms, homelessness agencies, data collection, tenancy support schemes and Housing First initiatives. In section four, the discussion turns to the future of homelessness law and policy. It is argued that the narrow definition of homelessness in Irish housing policy fails to account for hidden homelessness and thus obscures the factors driving the homelessness crisis. The chapter concludes by considering how expanding the role of legal, and constitutional, housing rights could support the development of better housing outcomes in this context.

## **Introduction**

In the last decade, according to State statistics, Ireland has “gone through one of the most rapid increases in homelessness recorded anywhere, except in cases of natural disaster or war”.<sup>3</sup> This

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<sup>3</sup> Baptista, I., Culhane, D.P., Pleace, N. and O’Sullivan, E. (2022) *From Rebuilding Ireland to Housing for All: international and Irish lessons for tackling homelessness*. Dublin: COPE Galway, Focus Ireland, JCFJ, Mercy Law, Simon Communities of Ireland, and SVP. p. 8.

chapter provides an overview of homelessness in the Republic of Ireland that sheds light on the contemporary homelessness crisis and the State's response to it. The chapter critically examines central aspects of homelessness law and policy and presents a perspective on what the future of homelessness law and policy in Ireland could look like. In order to set homelessness in the broader Irish housing context, the chapter begins by outlining the history of homelessness in Ireland. The chapter outlines how homelessness is treated within Irish housing policy, both historically and in the present day. The distinctive 'strategy' based approach to homelessness policy in Ireland is discussed and critically appraised. The argument is developed that the 'strategy' based approach is beset by several longstanding limitations, most notably the narrow definition of homelessness which equates homelessness with rough sleeping and numbers in emergency accommodation and therefore fails to capture or address hidden homelessness. The chapter then sets out various legal measures on homelessness prevention, including the legal definition of homelessness in Irish law and the housing obligations on local authorities under the homelessness and Traveller frameworks. The absence of rights for those experiencing homelessness is a recurring theme in Irish homelessness law and the lack of enforceable rights goes some way towards explaining the remarkably low number of successful legal challenges to local authorities administration of their housing functions. Following this, the discussion turns to a range of homelessness prevention practices including distinctive rent subsidy mechanisms, homelessness agencies, data collection, tenancy support schemes and Housing First initiatives. Although some of these initiatives have met with some successes, it is argued that they have failed to stem the rapid increase in homelessness. The chapter concludes by looking to the future of homelessness law and policy and it outlines some of the limitations of the current definition of homelessness and considers how expanding the role of legal, and constitutional, housing rights could shape law and policy in the future.

## **Housing and homelessness in Ireland**

### **a. History of homelessness in Ireland**

Legislation to control homeless people was first passed in 1331 to arrest beggars, and the first vagrancy law was passed in England in 1349.<sup>4</sup> From 1838, the Irish Poor Law Act formed the basis of legislation in relation to homelessness and created a new class of citizen “entirely new to Ireland, the ‘pauper’”,<sup>5</sup> as well as a system for raising funds locally to administer poor relief. Between one and two hundred thousand people regularly lived in Workhouses in the second half of the 19th century.<sup>6</sup> Irish history is replete with stories of homelessness, displacement, eviction and emigration, where homes were lost, sometimes recreated, but always as part of a struggle to survive. The social history of the cities of Manchester, Liverpool, London and New York bear testimony to massive levels of Irish homelessness.

After Independence, in 1922, the Democratic Programme of the First *Dáil* [Irish Parliament] promised to end the institutionalised poverty of the Poor law system and declared that:

The Irish Republic fully realises the necessity of abolishing the present odious, degrading and foreign Poor Law System, substituting therefor a sympathetic native

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<sup>4</sup> O’Sullivan, E. (1996) *Homelessness and Social Policy in the Republic of Ireland* (Dublin, TCD), p 13.

<sup>5</sup> Prunty, J. (1998) *Dublin Slums* (Dublin, IPA), p 200.

<sup>6</sup> Meghen, P. “Building the Workhouses” (1955) 3(1) *Administration* 44.

scheme for the care of the Nation's aged and infirm, who shall not be regarded as a burden, but rather entitled to the Nation's gratitude and consideration.<sup>7</sup>

After 1922, the Workhouses and Boards of Guardians who organised them were made redundant. The Workhouses were renamed asylums, infirmaries, and County Homes, where many single homeless people found occasional shelter. The Report of the Commission on the Relief of the Sick and Destitute Poor in 1927, had identified 3,257 homeless people, including 901 children. However, in the new State, religious groups took on a major charitable services role, and contributing to a policy of invisibility on homelessness.

A right to institutional assistance was created in the Health Act 1953 for those unable to provide shelter and maintenance for "himself and or his dependants" using the stigmatised County Home system. There was a legacy of wandering homeless casual labourers or "tramps", who walked from place to place seeking accommodation and food. Of course, it is now emerging in studies that many of these were victims of institutionalised abuse within the care system at the time.<sup>8</sup> Of course, since the foundation of the State, Ireland has exported many of its poor, including its homeless, to Britain.<sup>9</sup>

Policies in the 1960 and 70s of removing homeless people from County Homes and reducing psychiatric hospital beds created new visibility and growth in single homelessness. New

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<sup>7</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1919-01-21/15/>

<sup>8</sup> Raftery M. & O'Sullivan, E. *Suffer the Little Children* (Dublin, New Island, 1999).

<sup>9</sup> Harvey, B, 'Homelessness, the 1988 Housing Act, State Policy and Civil Society, in the Homeless Agency', *Perspectives on Irish Homelessness: Past, Present and Future*. (Dublin, 2008), p 10. Brent Irish Advisory

approaches were being adopted by emerging voluntary groups working with homeless people.<sup>10</sup>

In 1983, the Simon Community introduced a Housing (Homeless Persons) Bill, modeled on the iconic English legislation of 1977, as well as a Vagrancy Law Repeal Bill. Neither was passed, but prompted the Housing Act 1988, which created a definition of homelessness, decriminalized homelessness,<sup>11</sup> and a set of obligations on local authorities towards homeless people. The legislation was the result of many years of campaigning:

... to end the exclusion of homeless people from the national housing system. Until the 1980s, homeless people were at best a marginal concern to the Irish administrative and political system. Homeless people were seen as dropouts, vagrants, tramps, anti-social people, for the most part unwanted elderly men. They were cared for by a range of charities which crossed the spectrum of nineteenth century Protestant philanthropic societies to Catholic religious orders. In the twentieth century they were joined by radical campaigning groups and organisations which not only housed and cared for them but argued that society as a whole had a responsibility for them and should ensure that they had the same rights as other citizens.<sup>12</sup>

Section 2 of the 1988 Act created the first legal definition of homelessness since the Poor Law.

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Service (1988) *Irish Homeless Families in London*, (London BIAS); O'Connor, T, (1988) *The Irish in London*, (London, GLC).

<sup>10</sup> O'Sullivan, E. (1996) *Homelessness and Social Policy in the Republic of Ireland* (Dublin, TCD), p 2.

<sup>11</sup> The Housing Act 1988 repealed the provisions of the Vagrancy Act 1847 which criminalised 'wandering abroad'.

<sup>12</sup> Harvey, B. "The Use of Legislation to Address a Social Problem. The Example of the Housing Act 1988" (1995) 4(1) *Administration* 76.

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

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

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in *paragraph (a)*, and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

Section 8 obliged housing authorities to carry out regular assessments of existing and prospective housing requirements. In making this assessment of housing requirements, the authority “shall have regard” to the extent to which there are persons who are homeless or living in temporary or movable accommodation.<sup>13</sup> Section 9 of the Act of 1988 included homeless people as one of the categories of people included in the assessment of needs.<sup>14</sup>

Section 10 of the Act of 1988 provided for State payments to agencies and providers to offer housing to homeless people, including hostels and emergency shelter.

(1) A housing authority may, subject to such regulations as may be made by the Minister under this section —

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<sup>13</sup> Section 8(2)(b). This has now been repealed and replaced with s 20 of the Housing (Miscellaneous Provisions) Act 2009 which refers to assessments of persons for eligibility for social housing support.

<sup>14</sup> Section 9 of the Act of 1988 is replaced by S 20 of the Housing (Miscellaneous Provisions) Act 2009.

- (a) make arrangements, including financial arrangements, with a body approved of by the Minister for the purposes of section 5 for the provisions by that body of accommodation for a homeless person,
- (b) provide a homeless person with such assistance, including financial assistance, as the authority consider appropriate, or
- (c) rent accommodation, arrange lodgings or contribute to the cost of such accommodation or lodgings for a homeless person.

As a result, the provision of accommodation for homeless people was undertaken by voluntary and charitable bodies, most of which were approved bodies under section 6 of the Housing Act 1992. This legislation forms the basis of State provision for homeless people today although it has been supplemented by institutional measures such as the establishment of the Homeless Agency, a number of strategies and action plans, and statutory obligations on local authorities to create Homelessness Action Plans under the Housing (Miscellaneous Provisions) Act 2009 (see section 1c below).

## **b. Travellers and homelessness**

The homelessness and nomadic movement of Irish Travellers has long been recorded, yet all housing legislation and Government housing reports until the late 1980s failed to refer to Traveller accommodation needs. The *Report of the Commission on Itinerancy* (1963) showed that there were 1,150 Traveller families living on the roadside,<sup>15</sup> while there were still 591 in 2019.<sup>16</sup> A Report by the IHREC shows that Traveller children comprised 12% of homeless

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<sup>15</sup> *Report of the Commission on Itinerancy*, (Dublin, The Stationery Office, 1963).

<sup>16</sup> See <https://www.gov.ie/en/publication/6f4e1-2019-estimate-all-categories-of-traveller-accomodation/>



children in emergency accommodation, although Travellers account for only 1% of the population in 2020.<sup>17</sup>

There is special regime governing the accommodation needs of Travellers which is set out in the Housing (Traveller Accommodation) Act 1998. This Act provided for national and local Traveler Accommodation Consultative Committees,<sup>18</sup> and placed a duty on local authorities to prepare and adopt, as respects their functional area, a Traveller Accommodation Program (TAP) and to specify in that Programme the accommodation needs of Travellers and the provision of accommodation required to address these needs, for a five-year period.<sup>19</sup> Consultation with Travellers plays a central role in the preparation and implementation of the local accommodation schemes. The National Accommodation Consultative Committee (NTACC)<sup>20</sup> established under the Housing (Traveller Accommodation) Act 1998, advises the relevant Minister on matters regarding accommodation for Travellers, including the most effective means of improving participation and consultation of Travellers in the provision and upkeep of accommodation at local levels, and matters concerning the creating and

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<sup>17</sup> IHREC (2021) Submission to the Joint Committee on Key Issues affecting the Traveller Community Irish Human Rights and Equality Commission February 2021. Available at:

<https://www.ihrec.ie/app/uploads/2021/03/Submission-to-the-Joint-Committee-on-Key-Issues-affecting-the-Traveller-Community-FINAL.pdf>

<sup>18</sup> Housing (Traveller Accommodation) Act 1998, ss. 19–22.

<sup>19</sup> Housing (Traveller Accommodation) Act 1998, s 7.

<sup>20</sup> [http://www.NationalTravellerAccommodationConsultativeCommittee|DepartmentofHousing,LocalGovernmentandHeritage\(old.gov.ie\)](http://www.NationalTravellerAccommodationConsultativeCommittee|DepartmentofHousing,LocalGovernmentandHeritage(old.gov.ie))

implementation of Traveller accommodation programmes and initiatives.<sup>21</sup> (see section 2(c) below).

### **c. Homelessness policy**

Although the provision of homeless services is mainly undertaken by voluntary and charity sector, the State, acting through the Department of Housing at national level and Local Authorities at local level retains a central role in funding services and devising homelessness policy in Ireland. Eoin O’Sullivan argues that “the current policy is best described as *reacting to homelessness* via a series of ad hoc interventions that are designed to minimise and mitigate the impact of housing instability and resultant homelessness on families and individuals, rather than the drivers of homelessness”.<sup>22</sup>

#### *Homelessness Strategies and Action Plans*

Over the past three decades, the State has shaped the development of homelessness policy by devising and adopting national Homelessness Strategies and Action Plans. An extensive volume of homelessness policy has been generated in the process.<sup>23</sup> Indeed, a recent survey of national homelessness policy has found that since 2000, there have been well over a dozen national strategies and reports.<sup>24</sup> Instead of attempting to detail all of the different Strategies

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<sup>21</sup> Department of Housing, Local Government and Heritage, [http://www.National Traveller Accommodation Consultative Committee | Department of Housing, Local Government and Heritage \(old.gov.ie\)](http://www.National Traveller Accommodation Consultative Committee | Department of Housing, Local Government and Heritage (old.gov.ie))

<sup>22</sup> O’Sullivan, E. (2020) *Reimagining Homelessness for Policy and Practice* (Bristol and Chicago, Policy Press and University of Chicago Press), p. 75.

<sup>23</sup> Baptista, I. et al. p. 21-22

<sup>24</sup> Ibid,

and reports here, the approach here is to draw attention to some notable features and particularly important Strategy documents.

In general, the various homelessness strategies set out aspirational objectives and place considerable emphasis on the development of homelessness policy and practice through informal consultation arrangements between local authorities, health officials and voluntary bodies. This approach to the development of homelessness policy and practice has led to the development of some innovative and internationally distinctive practices, such as PASS (Pathway Accommodation & Support System). This is a national integrated bed and case management system that records the number of adult individuals with accompanying child dependents experiencing homelessness and residing in designated emergency and temporary accommodation. However, these strategies tend to calcify a narrow definition of homelessness that equates it with rough sleeping and living in emergency accommodation which, consequently, fails to capture the extent of hidden homelessness in Ireland. Furthermore, despite the lofty aspirational targets in many homelessness strategies, they tend not to contain ‘performance frameworks which are open to objective accountability,’ and many of the objectives around ending homelessness have not been met.<sup>25</sup> Furthermore, the absence of any real commitment to enhanced legal rights for those experiencing homelessness is a recurring feature of the strategy-based approach.<sup>26</sup>

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<sup>25</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 265

<sup>26</sup> *ibid.*

The initial strategy - *Homelessness – an Integrated Strategy Report* (2000) sought to develop an integrated State response to the many issues which affected homelessness.<sup>27</sup> These included emergency, transitional and long-term housing responses, as well as issues relating to health, education, employment, and homemaking. Avoiding a right-based approach, the “core element” of the Strategy was that each local-year Action Plan address homelessness. The requirement that local authorities prepare Action Plans was made a legal requirement in 2009.<sup>28</sup> This plan must be prepared in consultation with a homelessness consultative forum. The members of this forum must be appointed by housing authorities in a statutorily prescribed form. In appointing members, the authority is required to appoint an employee(s) of the housing authority, the Health Service Executive (HSE), as well as persons nominated by specified bodies or the Minister.<sup>29</sup>

### ***Governance/oversight bodies***

Over the past 30 years, the State has established a number of governance/oversight bodies to develop and/or co-ordinate homeless related services, policies and practices. Perhaps the single biggest institutional development in Irish homelessness policy was the establishment of the Dublin Regional Homeless Executive (DRHE – formerly known as the Homeless Agency).<sup>30</sup> In 2020, the DRHE spent €158.7m on homelessness services including: €6.68m. on homelessness prevention, tenancy sustainment and resettlement supports; €7m on supported

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<sup>27</sup> Department of Environment & Local Government, *Homelessness – An Integrated Strategy* (Dublin, The Stationery Office, 2000).

<sup>28</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 273.

<sup>29</sup> Housing (Miscellaneous Provisions) Act 2009, s. 37(1).

<sup>30</sup> <https://www.homeleExecutivedublin.ie/info>; [https://www.homelessdublin.ie/content/files/Homelessness-Action\\_Plan-2019-2021.pdf](https://www.homelessdublin.ie/content/files/Homelessness-Action_Plan-2019-2021.pdf)

emergency housing for families (mainly ‘family hubs’); €37m. on supported emergency housing for singles; €66.4m. unscheduled emergency accommodation (including commercial hotels and B & Bs; €9.2m. on long-term supported accommodation; €3.5m. on day services; €0.325m. on housing authority preventative services; and €8.4m. on other housing authority services including administration.<sup>31</sup> The DRHE established the Pathway Accommodation and Support System (PASS), an online server that provides important information regarding access to (emergency) accommodation. This system provides ‘of-the-moment’ data in terms of bed occupancy and availability. The DRHE also publishes homelessness figures and research reports on homelessness.<sup>32</sup>

Service	Cost
Homelessness prevention, tenancy sustainment and resettlement supports	€6.68m
Supported emergency housing for families (mainly ‘family hubs’)	€7m
Supported emergency housing for singles	€37m
Unscheduled emergency accommodation (including commercial hotels and B & Bs	€66.4m
Long-term supported accommodation	€9.2m
Day services	€3.5m
Housing authority preventative services	€0.325m
Other housing authority services including administration	€8.4m

<sup>31</sup> See Dublin Region Local Authority Homelessness Financial Report end of Year 2020:

<https://www.gov.ie/en/publication/b0631-homelessness-financial-report-end-of-year-2020-dublin/#>

<sup>32</sup> Morrin, H. (2019) A profile of families experiencing homelessness in the Dublin Region: 2016-2018 families, DRHE. [A-profile-of-families-experiencing-homelessness-in-the-Dublin-Region-2016-2018-families.pdf](#)

[\(homelessdublin.ie\)](#); Morrin, H. (2019) Family progression through homeless services: 2016-2018, DRHE.

[Family-Progression-through-Homeless-Services-2016-2018.pdf](#) [\(homelessdublin.ie\)](#); Reported Reasons for

Family Homelessness in the Dublin Region: January to June 2018, DRHE. [Reported-reasons-for-family-](#)

[homelessness-in-the-Dublin-Region-January-to-June-2018.pdf](#) [\(homelessdublin.ie\)](#); Quality Standards for

Homeless Services: National Quality Standards Framework (NQSF) (2017), DRHE. [Quality-Standards-for-](#)

[Homeless-Services.pdf](#) [\(homelessdublin.ie\)](#)

The 2009 Act places an obligation on housing authorities to prepare and adopt a “homelessness action plan” to address homelessness.<sup>33</sup> This plan must be prepared in consultation with a homelessness consultative forum. The members of this forum must be appointed by housing authorities in a statutory prescribed form. In appointing members, the authority is required to appoint an employee(s) of the housing authority, the Health Service Executive (HSE), as well as persons nominated by specified bodies or the Minister.<sup>34</sup> The result is that the majority of members are representatives of the State and ministerially specified bodies. The remainder is made up of representatives of approved housing bodies and there is no specified role of consumers of homeless services or representatives of consumer protection bodies.<sup>35</sup> Although membership is highly prescribed, there are significant variations in how forums operate in practice. Some forums hold meetings rarely or not at all while some appear to be poorly organised or do not reflect the broader views of the voluntary sector.<sup>36</sup>

The homelessness action plan must specify detailed measures proposed to be undertaken to address homelessness by the housing authority, the HSE and voluntary bodies whose services include the prevention of homelessness, the reduction of homelessness, the provision of services (including accommodation), the provision of assistance (including financial) and the

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<sup>33</sup> Housing (Miscellaneous Provisions) Act 2009, s. 37(1). The process for preparing and adopting the homelessness action plan is outlined at section 40.

<sup>34</sup> Housing (Miscellaneous Provisions) Act 2009, s. 38(8).

<sup>35</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 276.

<sup>36</sup> Government of Ireland, *The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008-2013* (The Stationery Office, 2008) 68-70.

promotion of effective co-ordination of activities.<sup>37</sup> The homelessness action plan must be in writing and take account of a range of matters including local housing need, the cost of any proposed measures and the financial resources available to states. The plan must also take into account policies and objectives of the Government or Minister as well as any other matters as Minister may direct. As Kenna notes, these considerations place significant restrictions on the scope of any plan given that state bodies are not in a position to set out resources available to them over the three or more years of plans.<sup>38</sup>

At the national level, the Cross Departmental Team on Homelessness (CDT) was established in 1998, with representation from across Government Departments and State agencies. In 2007, the National Homelessness Consultative Committee (NHCC) was established to provide for representation from a wide range of stakeholders in the ongoing development of Government homelessness policy. Since 2009 both groups have been meeting on joint basis. A High-Level Homelessness Task Force was established in July 2020, to provide a forum for engagement with key organisations working together to address homelessness. It also provides input on the implementation of the commitments on homelessness in the Programme for Government. The membership of the taskforce consists of the Chief Executives of: DRHE, Crosscare, DePaul, Focus Ireland, the Peter McVerry Trust, Dublin Simon Community and Threshold. In December 2021, the Task Force amalgamated with the National Homeless Action Committee. The aim of this Committee is to ‘ensure the continued coherence and co-ordination of homeless related services, policies and action’.<sup>39</sup>

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<sup>37</sup> Housing (Miscellaneous Provisions) Act 2009, s. 37(2).

<sup>38</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 274.

<sup>39</sup> Baptista et al.

*Current Government homelessness policy*

*Housing for All – A New Housing Plan for Ireland*, published in 2021 by the Department of Housing, Local Government and Heritage sets out the most recent statement of Irish homelessness policy. This sets out the Government commitment to:

...a housing-led approach as the primary response to all forms of homelessness. It includes the prevention of loss of existing housing. It also includes the provision of adequate support to people in their homes according to their needs and the provision of high levels of additional social housing.<sup>40</sup>

While the Plan outlines a commitment to increase housing supply, it makes particular reference to increasing the building of one-bedroom units. It also contains commitments to enhance homelessness prevention practices through the expansion of health supports and street outreach services, and grow the role of housing-led and Housing First approaches. It also contains a recognition for the need for further not-for-profit emergency accommodation in order to reduce the use of private hotels and B&Bs for emergency accommodation. Finally, the document re-states the Irish Government’s commitment to ‘work towards’ eradicating homelessness in line with the objectives of the Lisbon Declaration to eradicate homelessness by 2030.<sup>41</sup>

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<sup>40</sup> Government of Ireland, 2021, pp. 50–51.

<sup>41</sup> Lisbon Declaration on the European Platform on Combatting Homelessness [2021] Conference: Combatting Homelessness – A Priority for Our Social Europe.

<https://www.2021portugal.eu/en/news/lisbon-declaration-on-the-european-platform-on-combatting-homelessness/>



A recent critical appraisal of *Housing for All* found that it contains some of the same failings that have plagued Irish homelessness policy for the past three decades. In particular, at the heart of the strategy is a narrow definition of homelessness that in effect equates homelessness with rough sleeping and people living in emergency accommodation. It has been pointed out that this narrow definition fails to capture the extent of hidden homelessness in Ireland and as a result “the structural, individual and policy factors” that are generating homelessness are not being highlighted in enumeration systems.”<sup>42</sup> The resulting lack of meaningful statistics inhibits the development of a more comprehensive, effective strategic response to homelessness. Furthermore, this narrow definition centres the policy response on people who are in what are defined as ‘homeless places’ i.e. in emergency accommodation or on the street. As a result, “women, young people and other populations experiencing hidden homelessness, which ultimately means no legal or physical security and may often mean limited privacy or control over living space, are undercounted in Ireland”.<sup>43</sup>

#### **d. Contemporary homelessness situation in Ireland**

The extent of the contemporary homelessness crisis is reflected in the extraordinary increase in numbers of people in emergency homeless accommodation. Since 2014, the number of adults in such accommodation has almost tripled from 2,500 to 7,100 in April 2022, while the number of children in such accommodation has quadrupled from under 800 to nearly 3,000 in the same period.

#### *Homelessness and precarious housing*

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<sup>42</sup> Baptista et al. p. 42.

<sup>43</sup> Baptista et al. p. 56.

The numbers in emergency accommodation do not capture the extent of the homelessness crisis. When one considers the numbers living in precarious housing i.e. housing which is unaffordable, insecure, over-crowded, unsuitable or unfit, a much fuller picture emerges. Statistics on those living in precarious housing are collected by local authorities as part of their statutory housing need assessments.<sup>44</sup> Local authority assessments of housing need record that “over the period 2016–2021, there were just over 59,000 households assessed as qualified for housing support as of June 2021, a decrease of over 32,000 households on the 2016 figure”<sup>45</sup>. However, it has been pointed out that this drop does not reflect “a decrease in objective need for social housing, but a policy decision to treat those households in receipt of a HAP payment as having their social housing needs”.<sup>46</sup>

#### *Drivers of homelessness in Ireland*

While there are numerous drivers of the homelessness crisis, Eoin O’Sullivan points out that “the primary determinant of the residential instability experienced by those presenting to homelessness services” in Ireland is “the housing affordability and accessibility crisis”.<sup>47</sup> The housing affordability crisis “manifests itself in spiralling rents in the private rented sector that price out welfare-dependent households, despite the increase in the rent allowances, and provides a rationale for landlords to terminate tenancies in order to command higher market rents”.<sup>48</sup> At the same time, the accessibility crisis “is demonstrated in the demand for secure

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<sup>44</sup> Housing (Miscellaneous Provisions) Act 2009, s 20

<sup>45</sup> Baptista et al. p. 33.

<sup>46</sup> Ibid.

<sup>47</sup> O’Sullivan, E. (2020) *Reimagining Homelessness for Policy and Practice* (Bristol and Chicago, Policy Press and University of Chicago Press), p. 74

<sup>48</sup> *ibid*

social housing massively outstripping the supply”.<sup>49</sup> These twin crises can be traced to “longer term trends in the commodification of housing” which have intensified residential instability in Ireland and across the Global North.<sup>50</sup> Current challenges for addressing homelessness in Ireland include the arrival of some 50-60,000 Ukrainian citizens under the Temporary Protection Directive, and the exodus of small landlords from the private rented sector.

### *Traveller housing and homelessness*

There is an acute shortage of Traveller specific accommodation in Ireland and many of the existing sites are in an inadequate condition.<sup>51</sup> A report released in May 2021 by the Ombudsman for Children condemned the poor housing conditions that 38 families, including 66 children living on a local authority halting site were facing.<sup>52</sup> The Ombudsman found that the local authority had failed to address inadequate housing conditions including faced rodent infestations, severe overcrowding, lack of sanitation facilities, illegal dumping, unsafe electrical work, lack of adequate heating and no safe play areas for children.<sup>53</sup> Furthermore, Irish Travellers face considerable discrimination when trying to buy or rent homes in Ireland.<sup>54</sup> The structural barriers faced by Irish Travellers are reflected in how approximately 7.5% of

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<sup>49</sup> Ibid

<sup>50</sup> Ibid.

<sup>51</sup> *ERRC v Ireland* Complaint No. 100/2013 Decision on the Merits 2015. [https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkJmH2bYG/content/no-100-2013-european-roma-rights-centre-errc-v-ireland?inheritRedirect=false](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-100-2013-european-roma-rights-centre-errc-v-ireland?inheritRedirect=false)

<sup>52</sup> Office of the Ombudsman for children (2021) No End in Site: An investigation into the conditions of children on a local authority halting site, p.4. <https://www.rte.ie/documents/news/2021/05/no-end-in-site-final.pdf>

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., p. 62.

all adults and children in emergency accommodation in 2016 were Irish Travellers, even though Irish Travellers comprise just 0.7% of the general population.<sup>55</sup>

## **2. Legal measures on homelessness prevention in Ireland**

There is an extensive legal framework around addressing homelessness in Ireland.<sup>56</sup> Where an applicant presents as homeless to a housing authority, the application will be addressed as part of the wider social housing support regime. An application must progress through a number of sequential steps before the applicant household will be allocated a social housing support. As a first step the applicant household must establish they are eligible<sup>57</sup> and demonstrate need for social housing support.<sup>58</sup> As part of this assessment, the authority will consider the housing needs of the applicant household. Household is defined as (a) a person who lives alone, (b) two or more persons who live together, or (c) two or more persons who do not live together but who, in the opinion of the housing authority concerned, have a reasonable requirement to live together.<sup>59</sup> Where an applicant presents as homeless, they must demonstrate that they meet the statutory definition of homelessness, as outlined below. When the housing authority has determined that the applicant is homeless and qualifies for support, their application will

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<sup>55</sup> O’Sullivan, 2020, p. 67-68; Office of the Ombudsman for children (2021) *No End in Site: An investigation into the conditions of children on a local authority halting site*, p.62.

<sup>56</sup> See Brown, D. *Law of Local Government* 2<sup>nd</sup> edn (Round Hall, 2020), chapter 14; Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) chapter 11.

<sup>57</sup> Those who have a legal right to remain in the State on a long-term basis will be eligible. See Department of Environment, Community and Local Government, *Housing Circular 41/2012*.

<sup>58</sup> Household income will be assessed by local authorities and there are three maximum income thresholds that apply to different authorities. See Department of Housing: Local Government and Heritage (DHLGH), *Social Housing Support: Household Means Policy* (DHLGH, 2021)

<sup>59</sup> Housing (Miscellaneous Provisions) Act 2009, s. 20(1).

progress to the allocation stage. Once eligible, applicants will be added to the housing waiting list. This scheme is administered by local authority according to a broad notion of housing need.<sup>60</sup> Where an application reaches the top of the list, they will be offered a social housing support. This can take various forms including temporary accommodation, a tenancy from a local authority or an approved housing body. In practice, local authorities may provide emergency or temporary accommodation to the household but the main form of social housing support for many homeless households will be financial support from the local authority in the form of Housing Assistance Payment that is paid directly to private landlords.

#### **a. Definition of homelessness**

In order for a person to be regarded as being homeless, they must be considered by the housing authority to have no accommodation available to them and be unable to provide such accommodation from their own resources.<sup>61</sup> This legal definition of homelessness provides the housing authority with considerable discretion in making this crucial determination.<sup>62</sup> In practice, this means that the opinion of the housing or local authority officer dealing with the application is decisive. The open textured nature of the definition of homelessness and the broad discretion accorded to local authorities in making a determination has given rise to different approaches.<sup>63</sup> Local authorities have employed criteria such as homeless “through no fault of their own,” indigenous to the area, intentionally homeless, having no local connection,

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<sup>60</sup> See Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) chapter 4.

<sup>61</sup> Housing Act 1988, s.2.

<sup>62</sup> *Tee v Wicklow County Council* [2017] IEHC 194; *Middleton v Carlow County Council* [2017] IEHC 528.

<sup>63</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 804; TSA/Simon Communities/CPA, *Settlement First – Assessment of the Effectiveness of the Housing Act 1988 and the Integrated Strategy 2000 in meeting the Housing Needs of People who are Homeless* (2005) 5

refusal of an offer of accommodation,<sup>64</sup> to restrict entitlement under the Act.<sup>65</sup> This is despite the fact that these criteria are not mentioned in the statutory definition of homelessness. As a result there is no commonly agreed definition of what constitutes homelessness across statutory and voluntary agencies.<sup>66</sup> This allows for Government policy to use narrow definitions of homelessness, which equate homelessness with rough sleeping and numbers in emergency accommodation, when devising and implementing homelessness policy.

There is a real tension between the open textured definition of homelessness and the legal obligation on local authorities to promote equality, prevent discrimination and protect the human rights of service users and everyone affected by their policies and plans.<sup>67</sup> The centrality of an individual housing officer's opinion creates a real risk of discrimination against particular groups and individuals. This is because the definition effectively allows "agencies to widen or narrow the definition of homelessness dependent on their perspective and/or the individual that presents".<sup>68</sup> These tensions are arguably exacerbated by the absence of any specified appeals procedure in respect of the local authorities' determinations.<sup>69</sup> Despite these criticisms, there

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<sup>64</sup> *Doherty v South Dublin County Council (No.2)* [2007] IEHC 4; [2007] 2 I.R. 696.

<sup>65</sup> *Ibid*, see *C v Galway County Council* [2017] IEHC 784 [17].

<sup>66</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 207.

<sup>67</sup> Irish Human Rights and Equality Act 2014, s. 42.

<sup>68</sup> TSA/Simon Communities/CPA, *Settlement First – Assessment of the Effectiveness of the Housing Act 1988 and the Integrated Strategy 2000 in meeting the Housing Needs of People who are Homeless* (2005) p. 5

<sup>69</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 207. The decision in *Meadows v Minister for Justice, Equality and Law Reform* [2010] 2 IR 701 may require local authorities to explain the reasons for their decision where that decision affects constitutional or fundamental rights. See P. McGarry, 'Major Revolution in Administrative Law: Judicial Review, Proportionality, and Damages Against Local Authorities' 1 *Local*

have been few judicial review cases of local authority determinations. The reasons for this are discussed below. There have been proposals to introduce a definitive interpretation of homelessness to ensure greater consistency in the national understanding of what constitutes homelessness but these have not been implemented.<sup>70</sup>

### **b. Rights, duties and powers**

Housing authorities are subject to a number of legal obligations to take certain actions in relation to those who are determined to be homeless. These obligations have changed overtime as practices and policies have evolved and the current regime is outlined in the Housing (Miscellaneous Provisions) Act 2009. A consistent feature of legislation in this area is how it has not placed an obligation on public authorities to provide accommodation to an applicant who is determined to be homeless. As Barrett J. pointed out in *EBS Ltd. v Kenehan*<sup>71</sup> there is no constitutional or statutory right to housing in Irish law.

There is no express right to housing in Irish law; but that is not to say that a qualified, as yet unrecognised, un-enumerated right pertaining to housing may not at some point be recognised by the courts as existing in and under the Constitution. There is a relative abundance of sources by reference to which the existence of such a right might conceivably be identified by analogy.

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*Government Review* (2010) 11-22; C. O’Connell, ‘The Focus of Ireland: Homelessness in the Courts Fagan v Dublin City Council [2019] IESC 96’ 19(1) *Hibernian Law Journal* (2020) 110-129.

<sup>70</sup> TSA/Simon Communities/CPA, *Settlement First – Assessment of the Effectiveness of the Housing Act 1988 and the Integrated Strategy 2000 in meeting the Housing Needs of People who are Homeless* (2005) p. 11.

<sup>71</sup> [2017] IEHC 604. Para 13. This was a mortgage possession case. See also *O’Donnell v South Dublin County Council* [2015] IESC 28 where the Supreme Court noted that Article 8 ECHR has not been interpreted as a right to be provided with a home.

If, for example, one looks to instruments which are not a part of Irish law but which could nonetheless be of influence in identifying the extent of Irish law, in particular when it comes to recognising (if it comes to recognising) a qualified, as yet unrecognised, un-enumerated right pertaining to housing in the Constitution:

(i) in the European Convention on Human Rights, there are several articles of that Convention which, indirectly, provide protection for a right to housing, e.g., Arts. 2, 3, 5, 8, 14, and Art.1, Protocol 1. Moreover, the European Court of Human Rights has a burgeoning line of case-law that recognises some legally defined minimum State obligations as regards housing rights (see, inter alia, *Moldovan v. Romania* (2007) 44 EHRR 16, *Marzari v. Italy* (1999) 28 EHRR CD175, *Botta v. Italy* (1998) 26 EHRR 241, and *Guerra v. Italy* (1998) 26 EHRR 357);

(ii) in the European Social Charter (Revised), there are a multiplicity of rights of relevance to housing, including Arts. 12, 15, 16, 23 and 30, though notably Ireland has opted out of Art.31 (the right to housing);

(iii) in international law, e.g., Art.11.1 of the International Covenant on Economic, Social and Cultural Rights, Art. 27 of the Convention on the Rights of the Child, Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Art.14 of the UN Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Economic, Social and Political Rights, all make provision of relevance to a right to housing; and

(iv) the constitutions of certain other European Union member states steeped in the same liberal democratic tradition as Ireland, viz., Belgium, Finland, Greece and the Netherlands, recognise a right to housing.

The learned Judge went on to point out that:

Viewed against the backdrop of the foregoing, the prospect that a qualified, un-enumerated right to housing may yet be found to be extant within and under our living and versatile Constitution must be a possibility. But such a right, were it found to exist, would doubtless not



be absolute. Thus the claim of Mr Kenehan and Ms Ryan in this regard, which seems to be that there is an unqualified constitutional right to housing which has the effect that (a) a possession order granted in accordance with law and following a fair trial, (b) falls now to be set aside or varied by the court for being in contravention of such unqualified right, is respectfully not accepted by the court to be correct as a matter of law.<sup>72</sup>

Under the foundational Housing Act 1988 authorities were obliged to carry out regular assessments of existing and prospective housing requirements.<sup>73</sup> In doing so, authorities were required to have regard to the extent to which there are persons who are homeless or living in temporary or moveable accommodation. This obligation was repealed and replaced by the Housing (Miscellaneous Provisions) Act 2009.<sup>74</sup> This Act codified the informal consultation arrangements set out in the various strategies as well as giving a legislative basis to homelessness action plans and their implementation.<sup>75</sup>

Finally, it is important to note the role of the Minister in directing policy of housing authorities. The Minister may give general policy directions in writing to a housing authority in relation to the performance of any of its functions under the Housing Acts. The housing authority must comply any such directions and have regard to any Ministerial guidelines when performing its housing functions.<sup>76</sup>

### *Powers of housing authorities*

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<sup>72</sup> [2017] IEHC 604. Para 14.

<sup>73</sup> Housing Act 1988, s. 8.

<sup>74</sup> Housing (Miscellaneous Provisions) Act 2009, s. 20.

<sup>75</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 273.

<sup>76</sup> Housing (Miscellaneous Provisions) Act 2009 ss 3-4.

Housing authorities have long been provided with broad powers to fulfil their legal duties and take actions to address homelessness. The legal basis for such actions is set out in the Housing Act 1988.<sup>77</sup> Under this provision, authorities are empowered to make arrangements for the provision of accommodation to those who were determined to be homeless. While authorities have the power to provide housing directly to applicants, in reality the primary action taken by authorities is to make payments to cover the costs of homelessness provision. It is a consequence of this approach that the provision of accommodation for homeless people has mainly been undertaken by voluntary and co-operative bodies. Thus, where a request for accommodation is made to a housing authority by, or on behalf of, a homeless person, the authority may pay for temporary lodgings or accommodation for a specified period, and the authority may require the homeless person to pay charges.<sup>78</sup> The provision of such accommodation does not preclude the household from being included in any assessment of housing need leading to longer term housing.<sup>79</sup>

### **c. Housing obligations and the Traveller Community**

The legal framework governing homelessness provides for distinctive duties and powers in relation to the Traveller Community. Housing authorities are empowered to provide, improve, manage and control sites for caravans used by persons “belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life”.<sup>80</sup> These powers were amended and extended by the Housing (Traveller Accommodation) Act 1998. This Act placed a duty on

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<sup>77</sup> Housing Act 1988, s. 13.

<sup>78</sup> Housing Act 1988, s. 10(2).

<sup>79</sup> Housing Act 1988, s. 10(9).

<sup>80</sup> Housing Act 1988, s. s13, as amended by the Housing (Traveller Accommodation) Act, 1998, s. 29.

local authorities to prepare and adopt a Traveller accommodation plan and to specify in it the accommodation needs of Travellers and provision of accommodation required to address these needs for a 5 year period.<sup>81</sup> In making this assessment, the authority is required to make an assessment of the need for sites in the area – taking into account the need for sites and the views of the local consultative committee concerned. The Act also provided local authorities with wide powers to provide facilities on unauthorised sites in emergency situations. An emergency situation can be discerned where “in the opinion of the Manager, the works concerned are urgent and necessary (having regard to personal health, public health and safety considerations) in order to provide a reasonable standard of accommodation for any person”.<sup>82</sup> The legal regime that applies to Traveller accommodation has generated several legal challenges around the housing obligations on local authorities and in particular the use of qualification requirements for local authority permanent halting site accommodation and local authorities use of eviction powers, these are discussed in the next section.

But it is also important to set out the ongoing public policy developments in this area. The Independent Expert Review Traveller Accommodation (2019) addressed the key areas relating to Traveller accommodation and sought to identify the barriers to the full implementation of the Housing (Traveller Accommodation) Act, 1998.<sup>83</sup> The Expert Group identified major

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<sup>81</sup> Housing (Traveller Accommodation) Act, 1998, s. 7.

<sup>82</sup> City and County Management (Amendment) Act 1995, s 2(10) as amended by s 27 of the Housing Act 1988.

<sup>83</sup> Joyce, D., Norton, C & Norris, M. (2019) Independent Expert Review Traveller Accommodation (Dublin: The Housing Agency) <https://www.paveepoint.ie/wp-content/uploads/2019/07/Expert-Review-Group-Traveller-Accommodation.pdf> Regular updates are published in relation the recommendations of the Report Traveller

Accommodation Expert Review Programme Board Update

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problems and set out some 32 recommendations in relation to four key themes: delivery reflecting need; planning; capacity and resources; governance. Some of the issues which were highlighted include: the current methods of assessing Travellers' accommodation needs; supporting Travellers living in the private rented sector: allocation of social housing to Travellers; the inadequate connection between the Housing (Traveller Accommodation) Act, 1998 and the planning legislation: inadequate planning guidance for planning authorities concerning Traveller accommodation; lack of monitoring and reviewing of Development Plans and how they relate to Traveller accommodation. Consultations also revealed to the Expert Group other legislation that impinges on the provision of Traveller accommodation, and the Group called for that to be reviewed, in particular; the Trespass legislation; the specific legislation for the removal of temporary dwellings as introduced in Section 10 of the Housing (Miscellaneous Provisions) Act, 1992 and Section 69 of the Roads Act, 1993.

#### **d. Legal challenges**

There have been relatively few cases of judicial review of local authority actions under the general homelessness framework.<sup>84</sup> Kenna explains that the lack of case law reflects the “absence of homeless advocacy agencies in Ireland taking test cases to establish and clarify rights”.<sup>85</sup> Of course, the central role of voluntary and charitable bodies in the delivery of

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<sup>84</sup> This is in contrast to the situation in England and Wales where the homelessness framework has generated a considerable body of caselaw. See Cowan, D. *Housing Law and Policy* (CUP, 2011) 173-174; Bevan, C. (2021) Reconceptualising Homelessness Legislation in England – *The Modern Law Review* 84(5) DOI: 10.1111/1468-2230.12634.

<sup>85</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 804.

homeless services, and their associated dependence on state funding, may explain the limited appetite for adversarial strategic litigation approaches, but other factors also play a role.

The lack of cases may reflect the narrow and minimalist nature of the statutory obligations placed on housing authorities. Unlike the express obligation on local authorities in the UK to provide housing once a household qualifies for support, the extent of the obligation on authorities in Ireland is to carry out reviews or to prepare plans to address homelessness. The Courts have been reluctant to interpret this as a mandatory obligation to provide accommodation.<sup>86</sup> In the handful of cases where the Court have directed authorities to take specific actions, they have been careful to stress the exceptional facts of the case and make clear the decision is not of wider authority.<sup>87</sup>

At the same time, the powers provided to local authorities to make a determination that a person is homeless and also to address homelessness are drafted in broad terms and they confer considerable discretion on authorities to administer their housing functions as they see fit. Arguably the boundaries of rationality and reasonableness that may be set through judicial review challenges offer minimalist control on the exercise of such powers.<sup>88</sup> This is particularly apparent in the Supreme Court decision in *Fagan v Dublin City Council*.<sup>89</sup> Mr Fagan, who had joint custody and was co-parenting with his former partner, applied for social housing support but was determined by the housing authority not to have a reasonable requirement to live together with his children. As such, he was excluded from consideration for accommodation

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<sup>86</sup> *Mulhare v Cork County Council* [2017] IEHC 288.

<sup>87</sup> *O' Donnell v South Dublin County Council* [2015] IESC 28 at 68.

<sup>88</sup> O'Connell, C. 'The Focus of Ireland: Homelessness in the Courts *Fagan v Dublin City Council* [2019] IESC 96' 19(1) *Hibernian Law Journal* (2020) 119-121.

<sup>89</sup> *Fagan v Dublin City Council* [2019] IESC 96.

with separate bedrooms for his children and his entitlement to Housing Assistance Payment was limited to a single person household. In reaching this decision the local authority placed weight on a number of factors including the accommodation available to his children with their mother, the resources available to the council, the prospect of under-utilisation of bedrooms and the need of others including children for multi-bedroom accommodation.<sup>90</sup>

The Supreme Court overturned the decision. In determining whether a household has a reasonable requirement to live together, the Court made clear that a housing authority may consider the relationship, the separation, the custody agreement, and so forth, but the decision must be based solely on the requirements of those persons.<sup>91</sup> The Court made clear that “any considerations which go beyond establishing the individual requirements of two or more applicants to live together, cannot form part of such an assessment.”<sup>92</sup> While the Court set aside the eligibility decision on the basis that the authority had taken into account an irrelevant consideration, the Court made clear that the decision did not curtail the broad discretion of the authority at the allocation stage. Indeed, the Court made clear that at that subsequent stage, the authority could prioritise those households deemed to have the greatest need.

The deference of the Supreme Court to the housing management decision of the local authority at the allocation stage is consistent with the approach taken by lower courts to legal challenges to determinations that a person is not homeless.<sup>93</sup> In *Tee v Wicklow County Council*, the Court affirmed the housing authorities determination that an applicant was not homeless because she had the option of living with her mother in Malaysia but had chosen to come to Ireland to

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<sup>90</sup> *Ibid.*, para 9.

<sup>91</sup> *Ibid* [33].

<sup>92</sup> *Ibid.*

<sup>93</sup> *C v Galway County Council* [2017] IEHC 784 [17].

further her daughter's education.<sup>94</sup> The court made clear that it is the opinion of the housing authority which is key and that the court's view as to what may or may not render a person homeless is entirely irrelevant.<sup>95</sup>

This deference reflects a reluctance to intervene into, what is regarded by the Court as, a policy decision – an interpretation perhaps aided by the drafting of the legal framework which, as noted earlier, confers broad powers and minimalist duties on authorities.<sup>96</sup> It also arguably reflects the dominance of conservative interpretations of the separation of powers doctrine.<sup>97</sup> The Court have repeatedly expressed a reluctance to review decisions that concern the allocation of scarce public housing. However, this interpretation of the social housing support regime is somewhat outdated. Traditional 'bricks and mortar' public housing is certainly in short supply, but as O'Connell points out there is no similar budgetary cap on Housing Assistance Payment subsidy – which has become the central vehicle for addressing homelessness in Ireland.<sup>98</sup>

The position adopted by the Courts has contributed to the relatively low number of legal challenges to housing management decisions. Aside from dissuading potential challenges, the Court's reasoning makes it less likely that legal aid will be available for potential challenges. This is because legal aid is only available where an applicant satisfies both an eligibility and a

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<sup>94</sup> *Tee v Wicklow County Council* [2017] IEHC 194.

<sup>95</sup> The decision was confirmed by the Supreme Court in *Tee v Wicklow County Council* [2018] IESCDET 44.

<sup>96</sup> *Ward v Dublin South County Council* [1996] 3 IR 195.

<sup>97</sup> See *T.D. v Minister for Education* [2001] 4 I.R. 259, where the Chief Justice outlined that "I would have the gravest doubts as to whether the courts at any stage should assume the function of declaring what are today frequently described as "socio-economic rights".

<sup>98</sup> O'Connell, C. 'The Focus of Ireland: Homelessness in the Courts *Fagan v Dublin City Council* [2019] IESC 96' 19(1) *Hibernian Law Journal* (2020) 119-121

merits test. The marked deference of the judiciary to housing management decisions made by housing authorities means it is less likely that applicants will pass the merits stage.<sup>99</sup> While it is a matter of debate what weight to accord to the various factors that have limited the number of judicial review cases, the result is that housing authority management decisions are subject to minimal constraints, and this has given rise to variable, discretionary interpretations of the law.<sup>100</sup>

Yet, as Lewis points out, although the legislation enables local authorities to provide services rather than imposing a statutory duty, in practice “public expectations, government policy and the weight of international convention have combined to put an obligation on housing authorities to act and provide assistance for homeless persons”.<sup>101</sup> But this is not the same as a legal right to housing under Irish law, and appeals to Irish constitutional rights to underpin the application of this legislation has led to calls for a referendum on a right to housing (see below).

### *Traveller accommodation*

The legal provisions governing Traveller accommodation have been the subject of a number of legal challenges.<sup>102</sup> As with the general framework, the courts have been reluctant to interpret these provisions as imposing a duty on authorities to provide caravan sites.<sup>103</sup>

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<sup>99</sup> *Tee v Wicklow County Council* [2017] IEHC 623. See C. O’Connell, ‘The Focus of Ireland: Homelessness in the Courts Fagan v Dublin City Council [2019] IESC 96’ 19(1) *Hibernian Law Journal* (2020) 113.

<sup>100</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 208.

<sup>101</sup> Lewis, E. *Social Housing Policy in Ireland – New Directions* (Dublin: IPA, 2019), 112/3.

<sup>102</sup> See Browne, D. (2020) *The Law of Local Government* (Dublin, Round Hall).

<sup>103</sup> *O’Reilly and Others v Limerick Corporation* [1989] ILRM 182. Although see *University of Limerick v Ryan and Limerick County Council*, unreported, High Court, 21 February 1991.



However, litigation has established that inactivity on the part of authorities will be a breach of duty.<sup>104</sup> Equally, the courts have made clear that a housing authority has a duty to perform its functions in a “rational and reasonable manner”.<sup>105</sup> The use of residency or “indigenous” requirements for Travellers to qualify for local authority permanent halting site accommodation was considered in *McDonagh v Clare County Council*.<sup>106</sup> The court determined that 3 year residency requirement was lawful but outlined that it must not be applied so rigidly that it becomes an effective bar to any considerations of an application for assistance of a deserving non-indigenous application.<sup>107</sup> Further, unsuccessful, challenges have concerned local authorities barring Traveller families from the housing list because of two minor public offense convictions of one member of the household.<sup>108</sup> Summarising the mixed results of judicial challenges to the legal regime governing Traveller housing Padraic Kenna notes, the “long struggle in the courts for adequate accommodation for Travellers” has met with limited success.<sup>109</sup>

One significant development in *Clare CC v Bernard and Helen McDonagh and IHREC*<sup>110</sup> where the Supreme Court held that Traveller caravans and mobile homes could be treated as

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<sup>104</sup> *Ward v Dublin South County Council* [1996] 3 IR 195 at 203.

<sup>105</sup> *County Meath VEC v Joyce* [1994] 2 ILRM 210.

<sup>106</sup> *McDonagh v Clare County Council* [2002] 2 IR 634. See also *McNamee v Bunrana UDC* [1983] IR 213.

<sup>107</sup> *Ibid.*

<sup>108</sup> [2021] IEHC 205; which concerned under Section 10 of the *Housing (Miscellaneous Provisions) Act 1992* (as amended) and Section 19 of the *Criminal Justice (Public Order) Act 1994* (as amended). See *Report of the Expert Group on Traveller Accommodation* (2019) <https://www.paveepoint.ie/wp-content/uploads/2019/07/Expert-Review-Group-Traveller-Accommodation.pdf>

<sup>109</sup> Kenna, P. *Housing Law, Rights and Policy* (Clarus Press, 2011) 817.

<sup>110</sup> [2022] IESC 2.

“dwellings” for the purposes of constitutional inviolability protection of Article 40.5 of the Irish constitution,<sup>111</sup> in addition to any ECHR rights to respect for home. This decision integrated the jurisprudence of the Article 8 ECHR in *Winterstein*<sup>112</sup> and *Yordanova*<sup>113</sup> by providing for a proportionality assessment in such situations where the Travellers were being evicted from local authority land, where that local authority had not provided adequate housing for those Travellers under the relevant legislation.

### **3. Homelessness preventative practices in Ireland**

In the last decade, there has been very considerable expenditure on services for people experiencing homelessness and a number of innovative homelessness preventative practices have been introduced. These include the Housing Assistance Payment scheme, Family Hubs, Housing First initiatives and Tenancy Support Schemes. Although these measures have achieved some relative successes, on the whole these measures have failed to adequately respond to the scale of the crisis in Ireland and the number of households in emergency accommodation increased by over 150% between 2014 and 2019.<sup>114</sup>

#### ***a. Housing Assistance Payment***

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<sup>111</sup> This states that “The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law”.

<sup>112</sup> *Winterstein and Others v. France*, Application no. 27013/07, Judgment 17 October 2013.

<sup>113</sup> *Yordanova v. Bulgaria* [2013] ECHR 1768.

<sup>114</sup> O’Sullivan, E. (2020) *Reimagining Homelessness for Policy and Practice* (Bristol and Chicago, Policy Press and University of Chicago Press), p. 95.

Since the 1980s, there has been a persistent decline in local authority social housing output. This is part of a long-term trend as successive Irish Governments have sought to transition social housing policy away from a bricks-and-mortar approach to a rent subsidy-based approach.<sup>115</sup> Central to this change has been the introduction of demand-side subsidies by local authorities namely Rent Supplement (RS), the Rental Accommodation Scheme (RAS) and the Housing Assistance Payment (HAP). Under current Government policy, both RS and RAS will be fully replaced by HAP in the coming years and therefore this section will focus on HAP.<sup>116</sup>

The main feature of HAP is that households source their own accommodation in the private rented sector at a market rent. Although the tenancy is between the tenant and the private landlord, the local authority pays the market rent to the landlord directly while the tenant pays a differential rent to the local authority, which is based on household income. In general, the rent must be within the allowed HAP rent limits which vary according to household size and the relevant area. However, local authorities have discretion on a case-by-case basis to go above the HAP rent limits by up to 35% of the market rent, if the tenant cannot find accommodation within the limits. A Homeless HAP scheme is operated by the Dublin Region Homeless Executive (DRHE) on behalf of the Dublin local authorities. This has the same features as the general HAP scheme however it provides further discretion to the local authority to pay deposits, make advance rental payments and to exceed the HAP rent limits by up to 50% for households that are accepted as homeless by the local authority, if this is necessary to source suitable accommodation.

Under the Housing Act (Miscellaneous Provisions) 2009, HAP is designated as a long term social housing support, the recipients of HAP are deemed to have their housing needs met and

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<sup>115</sup> *ibid*, pp.77-79.

<sup>116</sup> *ibid*, p. 78.

are removed from the housing waiting list. One of the problems with the HAP model is that it is dependent on the commitment of private landlords who enjoy wide powers to end a tenancy. Furthermore, the HAP model is dependent on market rent system at the centre of the private rental market. In recent years, Ireland has had some of the most expensive rents in Europe. This is reflected in how approximately 25% of all households living in the private rented sector in 2019 were in receipt of one of these three housing benefits, at a cost of just under €600 million.<sup>117</sup> Furthermore, spiralling rents have frequently outstripped uprating on HAP rent limits, leaving tenants to cover the shortfall or face eviction.

### ***b. Family Hubs***

Family Hubs are first response facilities for families who find themselves homeless and have no alternatives other than private hotels. The Hubs claim to provide play spaces, cooking and laundry facilities and recreational spaces. The Hubs were originally established as a provisional attempt to reduce the ‘hotelisation’ of family life by moving families out of hotels, B&Bs and emergency accommodation.<sup>118</sup>

According to the Peter McVerry Trust in 2020 there were 368 families with 528 children in their family hubs.<sup>119</sup> In 2019 the Ombudsman for the Children’s Office released a report discussing the quality of life for the children in Family Hubs. The DRHE provided the

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<sup>117</sup> *ibid*, p. 78.

<sup>118</sup> Power, J. (2017) Family Hubs are ‘normalising’ homelessness-Human Rights Commission says three month limit needed,’ *The Irish Times*. [Family hubs are ‘normalising’ homelessness, rights body says \(irishtimes.com\)](https://www.irishtimes.com)

<sup>119</sup> Peter McVerry Trust Annual Report (2020) p.14. [PeterMcVerryTrust-Annual-Report-2020-Online.pdf \(pmvtrust.ie\)](https://www.pmvtrust.ie)

Ombudsman office with figures from August 2018 when 580 children under 18 were living in Hubs in the Dublin area.<sup>120</sup>

A report in 2017 questioned the quality of life lived in Hubs and their usefulness as *temporary* emergency accommodation.<sup>121</sup> A recent statement by the Committee on Housing, Planning, Community and Local Government has revealed that Family Hubs ‘restrict the capacity’<sup>122</sup> to lead normal and fulfilling lives and have devastating and lasting effects on family life and the wellbeing of both adults and children.<sup>123</sup>

The risk of Family Hubs is the danger that they will become a lasting feature of emergency accommodation options, much like the devolvement of the Direct Provision system, with families left in the Hubs for years, to their own detriment. Murphy and Hearne believe a three-month limit should be instated as well as regular standard inspections and that these measures should be legislated into an amendment in Section 10 of the 1988 Housing Act.<sup>124</sup>

Another issue with Hubs is whether they are becoming a quick remedy in the circuitous housing allocation process, many families forced to exceed the proposed three-month sojourn in these facilities. This occurs due to little or no support from housing services, rental support services and local government. Hearne and Murphy have outlined issues faced by families in Hubs who are all competing for homes in the private rental sector. These issues include emailing, calling,

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<sup>120</sup> Ombudsman for Children’s Office (2019) No Place like Home: Children’s views and experiences of living in Family Hubs, p.8. [No-Place-Like-Home.pdf \(oco.ie\)](#)

<sup>121</sup> Hearne, R. & Murphy, M. (2017) Investing in the Right to a Home: Housing, HAPs and Hubs, University Maynooth, p. 6. [Family hubs may be a form of institutionalization of vulnerable women and children | Maynooth University; https://www.maynoothuniversity.ie/Family Hubs](#)

<sup>122</sup> Ibid.

<sup>123</sup> Ibid., p. 6.

<sup>124</sup> Ibid., p. 32-33.

and attending viewings and not receiving replies, rent above HAP funding, competing with professionals-bidding wars, references etc., forced to look in unsuitable areas where they have no family and must change schools.<sup>125</sup> Furthermore, procuring adequate HAP funding is yet another barrier for those in Hubs. To avail of HAP, families must source their own accommodation in the private rented sector and then make a HAP tenancy agreement with the landlord. However, wherein the tenancy agreement is not renewed the local authority is not obliged to rehouse the tenant.<sup>126</sup> In 2019 the number of households receiving HAP had risen to 57,630<sup>127</sup> in comparison to 16,000 HAP recipients in 2016.<sup>128</sup> This reliance on HAP begs the question of suitability long-term; is HAP appropriate as the primary means of securing a home given a history of the rented sector's inability to provide security of tenure to long-term renters in Ireland. Thus, the problems enumerated here are but a few of the issues faced by families living in Hubs across Ireland.

*c. Housing First initiatives*<sup>129</sup>

In Ireland, the Dublin Housing First Demonstration Project which ran for three years from 2011-2014 was a collaboration between State and voluntary agencies comprising the Dublin Region Homeless Executive (on behalf of the four Dublin Local Authorities), Health Service

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<sup>125</sup> Ibid., p. 22.

<sup>126</sup> <https://Your landlord and Tenancy | Tenants | HAP>

<sup>127</sup> Social Housing in Ireland 2019 - Analysis of Housing Assistance Payment (HAP) Scheme (2020) [Press Statement Social Housing in Ireland - Analysis of HAP 2019 - CSO - Central Statistics Office](#)

<sup>128</sup> Hearne, R. & Murphy, M. (2017) Investing in the Right to a Home: Housing, HAPs, and Hubs, University Maynooth, p.12.

<sup>129</sup> Government of Ireland, Housing First National Implementation Plan 2018-2021:

<https://assets.gov.ie/41658/0a0d8517d31848e78ad2b54829958b9f.pdf>

Executive (HSE), Focus Ireland, Peter McVerry Trust, Dublin Simon Community and Stepping Stone. The project targeted 30 long-term rough sleepers. An independent evaluation (Greenwood, 2015) of the project found that Housing First clients achieved considerably greater levels of housing stability than a comparison group of service 17 users in pre-existing homeless services. 80-85% of tenancies were sustained among a more vulnerable group with higher support needs, compared with 50% tenancy sustainment outcomes for those accessing ‘staircase’ or ‘continuum of care’ models. The Peter McVerry Housing First 2020 Annual Report showed that by the end of 2020 Housing First had over 800 sustained tenancies across Ireland, the majority of these were situated in Dublin and over 400 active tenancies in Dublin, Mid East & North East, and the Midlands, accounting for 61% of Housing First services delivered.<sup>130</sup> A further 150 housing units were built by the Trust in 2020 to house the homeless.<sup>131</sup> Following the success of the Dublin Housing First initiative, the Government launched the *National Housing First Implementation Plan 2018-2020*. This plan is directed at rough sleepers and those in emergency accommodation on a long term basis with high support needs. It proposed to create 663 tenancies over the three year period of the plan. Given the scale of increases in numbers in emergency accommodation since the commencement of the plan, the creation of just over 220 tenancies a year, while providing benefits to the individuals concerned, “will not disrupt the flow of households into homelessness during the period of the plan” and will only “moderate, rather than reduce” the numbers in emergency accommodation for more than six months.<sup>132</sup>

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<sup>130</sup> Peter McVerry Trust Annual Report 2020, p. 11. [PeterMcVerryTrust-Annual-Report-2020-Online.pdf](#)  
([pmvtrust.ie](#))

<sup>131</sup> Ibid., p. 15.

<sup>132</sup> O’Sullivan, E. (2020) *Reimagining Homelessness for Policy and Practice* (Bristol and Chicago, Policy Press and University of Chicago Press), p. 85-86.

#### *d. Tenancy Support Schemes*

Threshold are a registered NGO founded in 1978. Their aim is to secure a right to housing, especially for those living in poverty. They campaign for adequate housing standards via a rights-based approach, and they provide advisory and advocacy support services for the homeless. They also work in collaboration with other similar organisations in attempt to create a platform for the disadvantaged housing-wise. In 2019 they initiated their ‘Strategic Plan 2019-2021: Executive Summary.’<sup>133</sup> The objectives of this initiative mirror the aims including working towards a rights-based approach to housing by means of policy, research and legal-work and facilitating access for those in need of housing. Threshold have created a national Tenancy Protection Service (TPS) which aims to prevent homelessness by assisting tenants in the private sector who are at risk of homelessness due to rent increases or the termination of tenancies by providing them with an enhanced rent subsidy, advocating for the tenant to maintain the tenancy and/or obtaining an alternative tenancy.<sup>134</sup>

Threshold developed the Interim Tenancy Sustainment Protocol (ITSP) in 2014 which assists those at immediate risk of becoming homeless. Operating through the ITSP, Threshold has the means to facilitate access to increased rent supplement payments for families who have become at risk of homelessness due to a sizeable rent increase.<sup>135</sup> The ITSP remains with clients for the duration of the entire ITSP protocol process, providing support services for families. Between 2014 and 2019 the ITSP supported 6, 339 households, including 9,707 adults and 10,622

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<sup>133</sup> Threshold Ireland, [Threshold Publications | Threshold - The National Housing Charity](#)

<sup>134</sup> Ibid.

<sup>135</sup> Threshold Pre-Budget Submission to the Department of Employment Affairs and Social Protection (2021) p.5. [threshold\\_prebudget\\_submission\\_2021\\_to\\_the\\_deasp.pdf](#)



children.<sup>136</sup> Though many tenants have transferred to HAP subsidiary payments, ITSP rental funding exceeds the HAP cap and its 20% discretionary payments.<sup>137</sup>

## **4. Conclusions: The future of homelessness law and policy in Ireland**

### **a. Defining homelessness**

In Irish housing policy, homelessness has tended to be equated with rough sleeping and numbers in emergency accommodation. This narrow definition fails to capture the extent of hidden homelessness in Ireland and arguably obscures the scale of the homelessness crisis as well as the factors driving the crisis. It is arguable that the open textured legal definition of homelessness as set out in the Housing Act 1988 facilitates the adoption of a narrow conception of homelessness that is central to housing policy. As noted earlier, in practice the definition also makes the individual housing officer's opinion central to the determination of whether a person is or is not regarded as homeless. Given the risk of discrimination and the tensions between performing this duty and the equality and human rights obligations on local authorities, it is striking that there have been few successful judicial review cases of local authority determinations in this area. Although given the growing debate in Ireland about expanding the role of housing rights in Irish housing law and policy, this may well change in the future.

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<sup>136</sup> Ibid., p. 5.

<sup>137</sup> Ibid.

A recent Report on tackling homelessness in Ireland<sup>138</sup> made some valuable recommendations on addressing homelessness in Ireland. Its first observation was that the definition of homelessness matters quite a lot.

Homelessness does not exist in fixed forms and is characterised by flows from one ‘population’ of people to others. There is not a ‘rough sleeper’ population, instead there are people at risk of living rough in institutional settings, in emergency accommodation, homelessness services and other locations, who are sometimes living rough. Equally, homelessness does not equate to the people living in emergency accommodation, both because households can transition in and out of emergency accommodation, but also because this population intersects with people experiencing hidden homelessness (notably, women). The most effective homelessness strategies in Europe use a wide definition of homelessness. A wider definition encompasses both specific populations that a country wishes to reduce i.e. people experiencing recurrent and sustained homelessness associated with multiple and complex needs, people in emergency/temporary accommodation and people living rough, and the other forms of homelessness that *intersect* with and are also among the *sources* of people sleeping rough or living in emergency/temporary accommodation.<sup>139</sup>

The Report also pointed out that prevention cannot be effective in isolation –preventative services need to be able to triage effectively, i.e. prevent eviction where feasible and desirable, provide assistance with securing alternative housing quickly where needed and to be able to offer integrated packages of support where needed. In practice, a preventative service should

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<sup>138</sup> Baptista, I., Culhane, D.P., Pleace, N. and O’Sullivan, E. (2022) From *Rebuilding Ireland to Housing for All*: international and Irish lessons for tackling homelessness. Dublin: COPE Galway, Focus Ireland, JCFJ, Mercy Law, Simon Communities of Ireland, and SVP.

<sup>139</sup> Ibid. p. 92.

be able to refer someone with multiple and complex needs, at high risk of homelessness, directly to Housing First or a similar service as a preventative measure, not in the sense of stopping homelessness from recurring, but instead stopping it from happening in the first instance.<sup>140</sup> Homeless services and Housing First require a supply of suitable housing - social housing tends to offer better standards, more affordability and better security of tenure. The report also highlighted the importance of the gender dynamics of homelessness. Women do not have the same trajectories through homelessness as men, domestic abuse is much more likely to be a cause of women's homelessness and women also appear more likely to rely on friends, family and acquaintances, experiencing hidden homelessness at higher rates. This also applies to family homelessness, which is disproportionately experienced by lone women parents both domestically and internationally, where both a tendency to rely on informal options and an association with domestic abuse are again present.

#### **b. Constitutional issues and homelessness**

There is a healthy debate in Ireland on homelessness as a violation of human and housing rights. Ireland has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR)(1966)<sup>141</sup> in 1989, which obliges Ireland to respect, protect and fulfil these rights. Ireland also ratified the European Social Charter (ESC) of the Council of Europe in 1964 and the Revised Charter in 1996, but not Article 31 on the right to housing. The reason given was that the provisions of the Constitution precluded this ratification.<sup>142</sup>

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<sup>140</sup> Ibid. p. 93.

<sup>141</sup> Article 11 ICESCR (1966) UN Doc. A/6316 states: 'The States Parties [ . . . ] recognize the right of everyone to an adequate standard of living for himself and his family, including adequate [ . . . ] housing'..

<sup>142</sup> See European Committee of Social Rights (ESCR) (2021) *Fourth Report on Non-Accepted Provisions of the European Social Charter – Ireland*. 6. "Article 31 of the Charter [on the right to housing] could not be accepted

This resonates with the current moves on a referendum placing a specific right to housing in the Constitution.<sup>143</sup> As it stands at the moment, the only Constitutional provisions which can be engaged are those based on a case in 1965 on “unenumerated rights” to bodily integrity under Article 40.3.2.<sup>144</sup> This provides that “The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.” The Article has been invoked in many cases where homeless people were seeking to compel a local authority to carry out its obligations under housing legislation. Significant cases, such as

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because of existing provisions in the Irish Constitution which have not changed since the ratification of the Charter... The issue of accepting Article 31 will be re-examined if and when the constitutional position changes.” <https://rm.coe.int/4th-report-on-non-accepted-provisions-of-the-esc-by-ireland-2021/1680a3c1b4>. The ECSR “considers that the legislative and practical measures, including funding, taken by the Irish authorities to ensure the right to housing open the possibility for Ireland to accept Article 31 of the Charter. It therefore encourages the Irish authorities to consider accepting this provision in the near future”.

<sup>143</sup> The current government has established a Housing Commission and one of its remits is to bring forward proposals on the wording for a referendum on housing. See <https://www.gov.ie/en/campaigns/2ae5e-the-housing-commission/>. In May 2022 The Commission held a Conference on a Referendum on Housing in Ireland where many papers were presented on the right to housing; See <https://www.gov.ie/en/publication/127ea-conference-on-a-referendum-on-housing-in-ireland/>. These were presented under three broad themes: The role of the state: Private Property Rights, State Duties and Housing Rights adjudicating on Housing - Challenges for the Courts: International experience with a Referendum on Housing. For an examination of the current constitutional protection of the right to housing based on the right to bodily integrity see Kenna, P. [https://www.universityofgalway.ie/media/housinglawrightsandpolicy/CHLRP-Submission-to-Referendum-Conference-on-Right-to-Housing-\[4\].pdf](https://www.universityofgalway.ie/media/housinglawrightsandpolicy/CHLRP-Submission-to-Referendum-Conference-on-Right-to-Housing-[4].pdf)

<sup>144</sup> Whyte, G. (2015) *Social Inclusion and the Legal System: Public Interest Law in Ireland*, (2nd ed,) (Dublin: IPA).

*O'Reilly v Limerick Corporation*<sup>145</sup>, *O'Brien v Wicklow UDC*<sup>146</sup>, *O'Donnell v South Dublin County Council*<sup>147</sup> have all been decided on the principles of judicial deference and citing separation of powers doctrines to preclude curial direction on housing allocations, prioritization or even spending decisions. Many housing and homeless organisations are now pushing for a more substantive constitutional provision for housing, drawing on international housing rights.<sup>148</sup>

In conclusion, it is important to remember that addressing homelessness through legislation and court cases has limited effects. Even modern policy responses such as Housing First require dedicated, sufficient and consistent resources. Prevention of homelessness requires actions at many levels and often requires significant “upstream” intervention in people’s housing pathways. In terms of ending homelessness a recent international comparison summed up the challenges:

One of the challenges presented by homelessness is that it is simultaneously extremely complex and very simple. It is simple to solve because all it needs is access to affordable housing and a recognition that people who are homeless are fellow human beings who need to be given

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<sup>145</sup> *O' Reilly v Limerick Corporation* [1989] ILRM 181 at 194.

<sup>146</sup> *O' Brien v Wicklow UDC*, ex tempore (10 June 1994) High Court.

<sup>147</sup> [2015] IESC 28.

<sup>148</sup> “Home for Good” is a broad coalition of organisations and individuals who believe that Constitutional change is an essential underpinning for any successful programme to tackle our housing and homelessness crisis. See <https://www.homeforgood.ie/who-we-are/>

choices, dignity and support that they need. It is complex because these do not turn out to be easy things for us to do.<sup>149</sup>

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<sup>149</sup> Allen, M., Benjaminsen, L., O' Sullivan, E. & Pleace, N. (2020) *Ending homelessness? The contrasting experiences of Denmark, Finland and Ireland*. (Bristol : Policy Press). p. 176.