



Study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services

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David Silke

Conor Farrell

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Executive Summary

Background

Following a review of the Residential Tenancies Act, Minister Michael Finneran announced (4 November 2009) his intention to initiate amending legislation to address a range of issues including the inclusion within the remit of the Residential Tenancies Act of those segments of the voluntary and co-operative housing sector that most closely parallel the current remit of the RTA, i.e. standard social housing.

It is within this context that the Housing and Sustainable Communities Agency have been asked by the Private Residential Tenancy Board (PRTB) to undertake a study on the implications of the voluntary and co-operative sector coming under the remit of the PRTB. This study has two main objectives;

- to outline a profile of the sector and;
- examine the implications of these tenancies falling under the remit of the PRTB.

Methodology

The following methodology was used to complete this study:

- analysis of statistical data supplied by the Department of Environment Heritage and Local Government (DEHLG) and the Irish Council for Social Housing
- interviews were undertaken with the following organisations: the PRTB, Irish Council for Social Housing (ICSH), National Association of Building Co-operatives (NABCo) and six Approved Housing Bodies (AHBs) (See appendix 1 for list of those contacted)
- interviews with RAS co-coordinators in Dublin City, South Dublin and Cork City were also undertaken.

Some consideration was given to surveying tenants, but given the methodological issues attached to this task, the resources required to do so and the limitations of the timeframe available to complete the work, it was not possible to include this group in the present study.

Profile of Voluntary and Co-operative Sectors

The voluntary and co-operative sector is made up of just over 700 approved housing bodies (AHBs) and 24,400 units of accommodation. Approved status is given by the Minister under Section 6 of the Housing (Miscellaneous Provisions) Act, 1992. Voluntary housing is provided by non-profit organisations formed for the purpose of relieving housing need and the provision and management of housing. Housing co-operatives are self-help and jointly-owned member/user associations or societies.

The majority of voluntary and co-operative accommodation was provided under two DEHLG funding schemes: the Capital Assistance Scheme (CAS) and the Capital Loan and Subsidy Scheme (CLSS).

CAS was introduced in the mid 1980's and has been used since to meet the special housing needs of persons including older people, people with a disability, homeless, returning emigrants, etc. 75 per cent of the tenant allocations are required to be made to persons eligible for local authority housing. By end 2009, output from this scheme was almost 13,200 units.

CLSS was introduced in the early 1990's and has been used to meet the general housing needs of low-income families. It is a requirement of CLSS that all tenants should be eligible for local authority housing and the rents charged are based on the differential rents scheme (i.e. based on the income of the household). By the end of 2009, output from this scheme amounted to 9,344 units. CLSS is currently being phased out with no new funding available. Instead funding is being made available to rent or lease properties and more recently to purchase units.

Roughly 1,850 units pre-date the introduction of the two schemes, two-thirds of which were for older people.

An important feature of this sector is that while there are over 700 AHBs, a small number of organisations provide the majority of units. Under the CAS scheme, 10 AHBs delivered 54% of dwelling and under the CLSS scheme, 10 AHBs provided 96% of dwellings. A recent survey of the sector recorded high levels of corporate governance.

The following are important features arising from the profile:

- the voluntary and co-operative housing stock is relatively young in comparison to the general housing stock – the vast majority of units are less than 30 years old. The stock is spread around the country, with high levels in the Dublin and other urban regions
- most tenants are taken from the social housing waiting list and are therefore lower income households, rent levels reflect this
- it is estimated that initially approximately 18,500 tenancies will be covered by the RTA (i.e. those in self-contained units). From an operational point of view it is important that the PRTB, tenants and landlords can easily assess if a unit comes within the remit of the RTA
- a considerable amount of this stock is managed by large AHBs who can be considered as professional landlords with a not-for-profit ethos, and many with specialised staff.

Implications of the voluntary and co-operative sector coming under the PRTB

The most common tenancy arrangement in the voluntary and co-operative sector has been the standard landlord tenant agreement based on a monthly periodic tenancy automatically renewed until ended by either party. The four year cycle under the RTA will be a new experience for the sector. There are approximately 1800 – 2,000 licensees in the sector, including, for example, homeless persons in hostel and emergency short-stay accommodation (this arrangement is likely to be used less frequently in the future). It is estimated that about 6% of the stock is re-let each year.

A learning to highlight from the incorporation of the operation of the Rent Tribunal by the PRTB was the difficulty of staff working under different sets of legislation and the need for staff training in this area.

The following are points to come from the study which will be important in considering the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services:

- initial registration of the stock should be fairly straightforward given that a good proportion of it is owned by the 10 main providers. The process would benefit from a dedicated staff member to manage it in year one
- at current activity rates (to include all functions of the PRTB), the inclusion of the voluntary and co-operative sector under the remit of the PRTB could result in approximately 185 additional dispute referrals, an additional 128 hearings and 73 Determination Orders to be issued each year. At current staffing ratios it will require a minimum of 5.5 additional staff in year 1 to provide the on-going services of the PRTB. If the sector expands by 2,500 per year, an additional .75 of a post would be required per year to keep pace with the likely increased caseload
- the main dispute areas are likely to centre on rent arrears, anti-social behaviour, neighbour disputes, maintenance – all of which have the potential to be time consuming for the PRTB to process
- consultation with AHBs suggested that mediation may be favoured as a dispute resolution mechanism, but this would require agreement from both sides – currently the vast majority of disputes are dealt with through the adjudication process.
- registration fees could raise up to €1.66 million to cover a four year period, or €2 million over the period if re-let fees are included. AHBs may find it difficult to raise the necessary fees revenue and mechanisms to address this should be explored. Access to dispute resolution services at below costs levels will also lead to savings for AHBs
- PRTB staff training on the voluntary and co-operative sector will be an important feature in ensuring the successful inclusion of the sector under the PRTB registration and dispute services.

Section 1

Background to the Study

Introduction

Following a review of the Residential Tenancies Act, Minister Michael Finneran announced (4 November 2009) his intention to initiate amending legislation to address a range of issues including the inclusion within the remit of the Residential Tenancies Act of those segments of the voluntary and co-operative housing sector that most closely parallel the current remit of the RTA, i.e. standard social housing.

The Housing and Sustainable Communities Agency was by the Private Residential Tenancies Board to undertake a study to examine the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services.

Terms of reference

It was agreed the study would focus on two main issues:

- a profile of the sector, and in particular how many tenancies will fall within the remit of the RTA
- the implications of this for the PRTB.

And that it would address the following questions:

- what is the profile of the voluntary and co-operative sector?
 - how many organisations are active in this area and how big are they?
 - how many dwellings and tenancies are involved?
- what types of disputes are likely to arise from the sector?
 - how many tenancy disputes might be reasonably expected to arise from the sector?
 - how might the nature of these disputes compare to the current dispute profile ?
 - what dispute mechanism (mediation or adjudication) is likely to be most popular and the implications of this?
- what are the staffing implications of implementing this change?
 - how many staff will be required (administrative and dispute)?

- will there be any particular staff training requirements?
- what are the revenue implications of implementing this change?
 - how much revenue is likely to be raised through registration fees?
 - What are the revenue implications for the PRTB?
 - are there likely to be any particular affordability issues for voluntary and co-operative bodies in paying registration fees or substantial savings from inclusion under the PRTB services?
- what has been the experience to-date of the PRTB taking on responsibility for the operation of the Rent Tribunal.
- what has been the experience to-date of the PRTB in dealing with disputes in RAS tenancies.

Methodology

Given the short timetable available to complete this study, it was agreed that the following methodology would be used:

- analysis of statistical data supplied by the Department of Environment Heritage and Local Government (DEHLG)
- interviews would be undertaken with the following organisations: the PRTB, Irish Council for Social Housing (ICSH), National Association of Building Co-operatives (NABCo) and three Approved Housing Bodies (AHBs) (See appendix 1 for list of those contacted)
- interviews with RAS co-coordinators in Dublin City, South Dublin and Cork City would also be undertaken.

Some consideration was given to surveying tenants, but given the methodological issues attached to this task, the resources required to do so and the limitations of the timeframe available to complete the work, it was not possible to include this group in the present study. Such a survey would be useful to gain a better understanding of possible disputes from a tenant perspective and preferences in relation to dispute resolution. Comments and feedback from tenants on the proposal may also be received through a public consultation exercise.

Report outline

This introductory section has provided a background to the study. Section 2 will profile the voluntary and co-operative sector and Section 3 will examine the implications for the PRTB of the sector's tenancies falling under its remit.

Section 2

Profile of the Voluntary and Co-operative Sector

This section of the report addresses the first part of the study's terms of reference – namely to profile the voluntary and co-operative sector. It begins by providing a background to the sector, then the main funding schemes are outlined and this is followed by a look at the geographical spread of units. It concludes by commenting on the future development of the sector.

Background to the voluntary and co-operative sector

The voluntary and co-operative sector is made up of just over 700 approved housing bodies (AHBs) and 24,400 units of accommodation. Approved status is given by the Minister under Section 6 of the Housing (Miscellaneous Provisions) Act, 1992. Bodies which may be considered for approved status are as follows:

- Limited Companies formed by guarantee of their members and not having shareholdings, registered under the Companies Acts, 1963 – 2001;
- Societies registered under the Industrial & Provident Societies Acts, 1893 – 1978;
- Trusts incorporated under the Charities Acts.

A body seeking to obtain, and to retain, approved status under Section 6 of the 1992 Housing Act must:

- Have as primary objects the relief of housing needs, or poverty or hardship or the welfare of Travellers, and the provision and management of housing;
- Have in its memorandum of association or registered rules, as the case may be, provisions prohibiting the distribution of any surplus, profit, bonus or dividend to members and requiring that the assets of the body be applied solely towards its objectives.

Each AHB must have a properly functioning governing body, or Board of Directors or Trustees, which is directly responsible for the commissioning of housing projects and services, the ownership, management and maintenance of dwellings let and compliance with all relevant statutory regulations. A recent survey of the sector concluded, of those surveyed, quite high levels of corporate governance was evident (Grant Thornton, 2009)

While voluntary and co-operative housing is considered as one sector, there are important distinctions between the two:

- voluntary housing is provided by non-profit organisations formed for the purpose of relieving housing need and the provision and management of housing.

- housing co-operatives are self-help and jointly-owned member/user associations or societies. The members share responsibility for their co-op and are represented on the management committees or boards of directors. There are approximately 1,200 rental co-operative dwellings in Ireland.

Funding mechanisms

As detailed in Table 1 below, there are currently in the region of 24,400 voluntary and co-operative housing units, the majority of which were provided under two DEHLG funding schemes: the Capital Assistance Scheme (CAS) and the Capital Loan and Subsidy Scheme (CLSS).

Table 1 Output by Funding Scheme

Years	CAS	CLSS	Other	Total
Up to 1984*	--	--	1,850	1,850
1984 to 1991**	1,600	--	--	1,600
1992-2009***	11,593	9,344	--	20,937
Total	13,193	9,344	1,850	24,387

Sources: * Mullins et al (2003, p.38), ** *Plan for Social Housing* (1991: p.18) *** DEHLG Annual Statistics, various years.

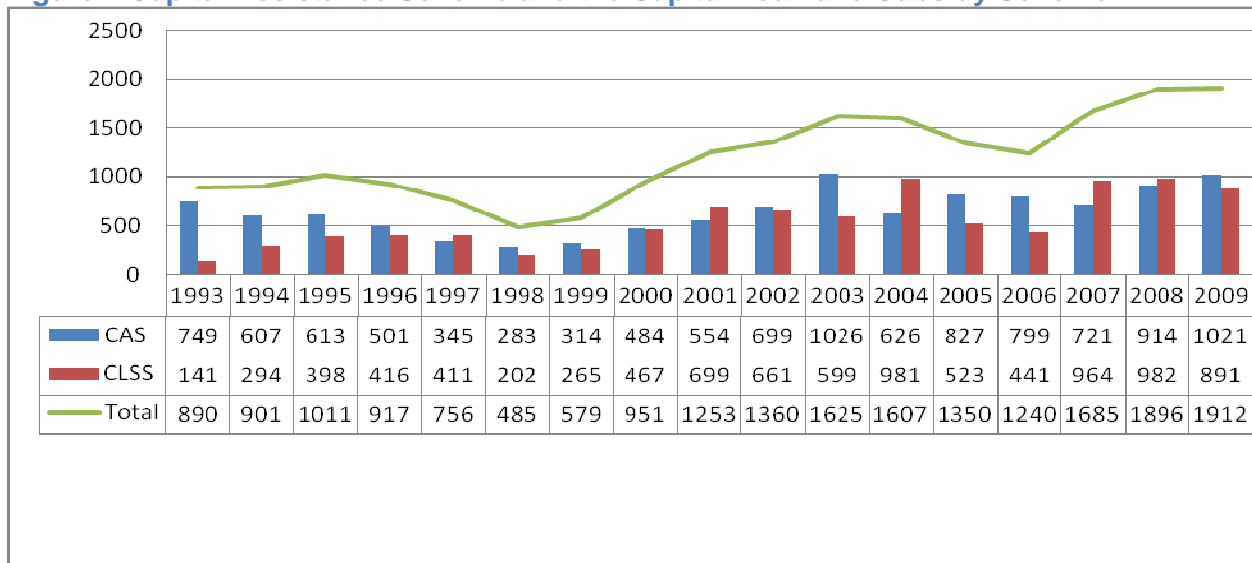
CAS was introduced in the mid 1980's and has been used since mainly to meet the special housing needs of persons including older people, people with a disability, homeless, returning emigrants, etc, often in the form of one / two bed accommodation. Under CAS, 95% funding towards the capital (building) costs of a project are provided (in some cases this can be 100%) subject to maximum levels and 75 per cent of the tenant allocations are required to be made to persons eligible for local authority housing (25% can be at the discretion of the AHB). In the region of 13,200 units had been provided under this scheme by end 2009.

CLSS was introduced in the early 1990's and has been used to meet the general housing needs of low-income families. It is a requirement of CLSS that all tenants should be eligible for local authority housing and the rents charged are based on the differential rents scheme (i.e. based on the income of the household). It provides 100% capital funding and a management and maintenance allowance is paid to the AHB on a yearly basis. By the end of 2009, output from this scheme amounted to 9,344 units. CLSS is currently being phased out with no new funding available. Instead funding is being made available to rent or lease properties and more recently to purchase units.

Roughly 1,850 units pre-date the introduction of the two schemes, two-thirds of which were for older people (Mullins, et al, 2003, p.38).

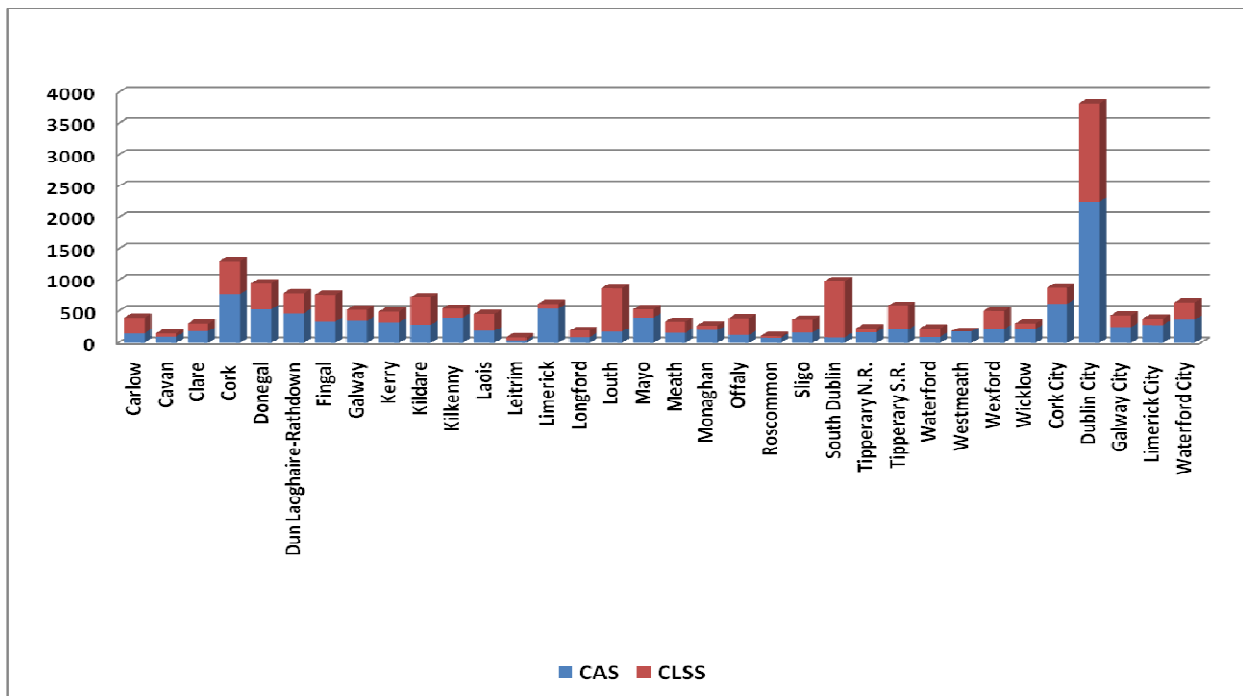
Figure 1 below gives details of CAS and CLSS output from 1993 – 2009 and shows a steady level of output over the years, albeit that output has been a little higher over the last three years.

Figure 1 Capital Assistance Scheme and the Capital Loan and Subsidy Scheme



The geographical distribution of the stock is displayed below in Figure 2. As can be seen, while there is a spread of units across the country, Dublin City area has the highest number of units, followed by the other city councils and Cork and also Donegal and Louth County Councils.

Figure 2 Geographical spread of CAS and CLSS units 1993 – 2009



Source: DEHLG

As detailed above, the Minister’s announcement referred to ‘those segments of the voluntary and co-operative housing sector that most closely parallel the current remit of the RTA, i.e. standard social housing’. From an operational point of view, it is important that PRTB staff, tenants and AHBs can easily identify which units will come under the RTA. For the purpose of this paper, ‘standard social housing’ has been taken to refer to accommodation that is self-contained (where tenants are not required to share communal cooking, eating or bathroom facilities) and a ballpark figure of 18,500 units has been provided to us as a reasonable estimate of the number of tenancies involved.

An important feature of this sector is that while there are over 700 AHBs, a small number of organisations provide the majority of units. The recent Grant Thornton survey of the sector, found, for example, that the sector is deeply fragmented in terms of size, with a number of larger housing bodies having a considerable housing stock along with a large number of groups providing a small number of units. The 128 respondents to the survey provided some 13,840 units, implying that the remaining bodies, some 600, provide fewer than 10,000 dwelling units in total or an average of 17 each.

Table 1 lists the top ten providers (in terms of number of units since the early 1990s) under the two schemes. Under the CAS scheme, 10 AHBs delivered 54% of dwellings (some 6,000 units) and under the CLSS scheme, 10 AHBs provided 96% of dwellings (about 9,000 units). This is an important feature of the sector, as it suggests typically a professional landlord with a non-profit ethos.

Table 1: Top 10 providers under CAS and CLSS

CAS Top 10 Providers	CLSS Top 10 Providers
Respond	Cluid
St. Vincent de Paul	Respond
Iveagh Trust	NABCO
Focus	BIH/Helm
Simon	Circle
Sue Ryder	Iveagh Trust
Catholic Housing Aid	Oaklee
Salvation Army	North & West
Newgrove Housing	North & East
St. Michael House	Cill Dara

Source DEHLG

The Grant Thornton Review (2009) of the voluntary and co-operative sector found high levels of corporate governance, such as: appointments of directorships; meetings of directors and/or trustees; preparation of audited accounts. The predominant legal structure among the AHB respondents to the survey was that of a company limited by guarantee, with co-operative bodies and trusts forming the balance. Amongst the approved bodies, virtually all had also been

approved for charitable status by the Revenue Commissioners. This is consistent with previous work in the area¹ and suggests a sector which has previous experience of legal compliance.

The Grant Thornton Review found that about half (53%) of AHBs that responded to their survey employed paid staff; three quarters of staff (78%) were involved in the provision of services to people such as care services. Those approved bodies who are involved solely in the provision of housing generally employ relatively small numbers of persons. On the other hand, voluntary housing associations providing social and personal care services to, for example, persons with special needs, the elderly or persons with social needs, employ significant staff numbers. In many cases, approved housing bodies provide a housing model and a range of on-site supports not normally associated with accommodation provided by private landlords. About a half of companies and trusts also reported having unpaid voluntary staff, undertaking activities such as fund-raising, providing services to people and administration.

The sector's current level of compliance and level of staffing indicate that registration enforcement is unlikely to be a significant issue for the PRTB and also that the nature and type of disputes that occur are unlikely to be emergency cases (eg illegal evictions are extremely unlikely) due to good landlord/tenant relationship management (see also Section 3 below).

Future Development of the Sector

As mentioned earlier, funding for CLSS projects will be for existing commitments only. This is in line with a shift in Government social housing policy away from capital expenditure to current expenditure in the form of leasing arrangements. This is viewed as the main outlet for the development of social housing into the future.

There are two main forms of leasing arrangements. Option 1 is a long-term lease arrangement where property owners will lease properties to local authorities or AHBs for 10 – 20 years. Under this option, the AHB will lease properties and enter a tenant/landlord relationship with tenants. The AHB will be the landlord but not the owner of the property. Option 2 is a shorter-term arrangement for one to ten years but the arrangement can only be entered into with a local authority. AHBs are also currently in the process of leasing unsold affordable properties from local authorities as part of the provision of long-term leasing and they may also pursue an 'acquisition /construct to lease' model. A target of 4,500 social leasing units has been set for 2010 and the Government recently approved €60m for the purchase, by AHBs, of houses and apartments (431 units in total) for persons with special categories of housing need in 2010. Over 100 of the units will provide for long-term accommodation for people who are moving out of temporary homeless accommodation.

What is important to note here is that the increased use of current funding mechanisms (RAS and social leasing) is likely to lead to an increase in the stock of AHB units which will require registration and possible dispute resolution services. The expansion in the number of funding mechanisms open to AHBs will require clarity as to what segments of the voluntary and co-operative sector will be included within the remit of the RTA. In relation to AHBs leasing, for

¹ Mullins, David et al. (2003) Non-Profit Housing Organisations in Ireland, North and South: Changing Forms and Challenging Futures. Belfast: Northern Ireland Housing Executive

example, there may be issues arising where the lease period is longer than the 4-year tenancy covered by the RTA.

Profile Summary

The following are important features arising from the profile:

- the voluntary and co-operative housing stock is relatively young in comparison to the general housing stock – the vast majority of units are less than 30 years old. The stock is spread around the country, with high levels in the Dublin and other urban regions
- most tenants are taken from the social housing waiting list and are therefore lower income households, rent levels reflect this
- it is estimated that initially approximately 18,500 tenancies will be covered by the RTA (i.e. those in self-contained units). From an operational point of view it is important that the PRTB, tenants and landlords can easily assess if a unit comes within the remit of the RTA
- a considerable amount of this stock is managed by large AHBs who can be considered as professional landlords with a not-for-profit ethos, and many with specialised staff.

Section 3

Implications of the Voluntary and Co-operative Sector Coming Under the PRTB

This section of the report begins by examining tenancy arrangements in the sector and then goes on to examine the type of disputes likely to arise and the most popular dispute resolution mechanism. It concludes by drawing out the implications for the PRTB of the inclusion of the sector under its registration and disputes services.

Tenancy arrangements

The most common tenancy arrangement in the voluntary and co-operative sector has been the standard landlord tenant relationship through an agreement. This has been in the form of a periodic tenancy (usually on a monthly basis). In this situation the monthly periodic tenancy is automatically renewed and continues indefinitely beyond the initial period until ended by either party. In speaking with representative bodies (ICSH and NABCo), it is clear that AHBs endeavour to create long-term secure tenancies, so there is likely to be fewer turnovers of tenancies. It is common practice for prospective tenants to be interviewed prior to being offered housing and successful applicants are usually required to undergo pre-tenancy training before taking occupancy of their accommodation. The point was also made that tenants have a good sense of ownership and rootedness to the community in which they live.

In consultations it was pointed out that the four year tenancy cycle in place under the Residential Tenancies Act is substantially different from current practice in the voluntary and co-operative sector where most tenancies are viewed as 'lifelong' tenancies. An up-date of the typical lease agreement used by AHBs may be necessary.

Licenses

It is estimated that 1,800-2,000 voluntary units provided by the sector do not have tenancies, the occupants are licensees. They are defined as 'persons occupying accommodation in which the owner is not resident under a formal license arrangement with the owner where the occupants are not entitled to its exclusive use and the owner has continuing access to the accommodation and/or can move around or change the occupants'

This form of occupancy is particularly common in the homeless sector which provides services to homeless persons in hostel and emergency-short stay accommodation. It is mostly single person households in this situation. The length of stay for the household may be for a night or a longer basis and effectively there is a payment of an occupancy charge by the user. The occupant may receive assistance from the community welfare officer towards the payment of the occupancy charge set by the housing association.

In the past, there may also have been a few situations such as in the case of older persons and those with disabilities where a condition may be included in the tenancy agreement indicating the tenant may be offered a tenancy as long as they can fulfil their tenancy obligations in line with the tenancy originally offered. This would mean if the tenants' needs change and they require, for example, more intensive forms of care, they would move to more suitable accommodation to meet their housing and care needs.

The license arrangement is likely to be used less frequently in the future as it is in the process of being phased out by some AHBs and being replaced by tenancies. This may be an important consideration for the PRTB as this client group may have more needs than others, and for instance, may need to be referred to advocacy services.

Types of Disputes

It is impossible to be definitive as to the levels and types of dispute that are likely to be referred to the PTRB by voluntary and co-operative tenants and landlords. An estimate of the likely levels and nature of these disputes will be based on data collected by the ICSH and interviews with voluntary and co-operative providers. It should be noted that it was not possible to interview tenants within the scope of this study.²

The Irish Council of Social Housing (ICSH) has developed a project called Housing Association Performance Management (HAPM) for voluntary housing associations to capture information on management indicators from a number of their members. 40 housing associations participated in the HAPM 2009 which represented 12,274 units of accommodation representing about half of the total voluntary housing stock. It must be remembered that the results of this project are based on voluntary input. Although the results give an indication of the disputes within the sector they should not be considered as statistically reflective of the sector as a whole.

The forms of disputes that arise in the voluntary and co-operate sector broadly mirror those in the private rented sector. The big exception is deposit retention. AHB's do not take deposits from their tenants and therefore deposit retention cases will not arise unless this practice changes. It is generally accepted that AHB's have progressive tenancy management (pre-tenancy training for tenants, encourage active tenant participation, repairs and maintenance policies) and a not-for-profit ethos.

The main forms of dispute that occur within the sector are now outlined.

Rent Arrears

The 2009 HAPM survey found that over that year the 40 voluntary housing associations collected 99.7% of total rent receivable, with the majority collecting 100% of rent due in that year. However 21 of the 40 voluntary housing associations participating in the survey did report some outstanding rent arrears (including from previous years). Voluntary housing associations

² Currently two-thirds of dispute cases submitted to the PRTB are from tenants.

do have policies in place to deal with rent arrears and therefore not all arrears will necessarily result in a dispute.

The rent calculation is dependent on the capital funding scheme employed: CAS sets an economic rent which reflects the running cost of the property, CLSS rents are based on income similar to the local authority differential rents (or based on household income). An example of how this is calculated in one voluntary body is provided in Table 2 below.

Table 2 Differential Rent Calculation Example

<p>The formula used for calculating rent is €10 for the first €100 of income and then 20% on all income over €100. For example: If your income is €185 per week then</p> <ul style="list-style-type: none"> • The first €100 = €10 • The remaining €85 is calculated at 20%, or 20 cent in every € • So €85 x 20% = €17.00 <p>• Add €10 + €17 Total rent = €27</p>

Many housing associations have a minimum and maximum rent. Table 3 outlines the range of weekly rents level for CAS, CLSS and RAS accommodation. CAS sets an economic rent which reflects the running costs of the property, while the CLSS and RAS rents are both income related rents. As can be seen from Table 3, rents tend to be low.

Table 3 Rents per week in 2009

	Capital Assistance Scheme weekly rent	Capital Loan and Subsidy Scheme weekly rent	Rental Accommodation Scheme weekly rent
	€	€	€
Maximum	97	259	126
Minimum	10	7	17
Average	65	47	53

Source: Irish Council for Social Housing (2010) *Housing Association Performance Management 2009 Results*

An issue that was highlight from the interviews with AHBs was that disputes can arise when an undisclosed person is resident in the household which is then taken into account and the rent increased, which is subsequently disputed by the tenant concerned.

Anti-social behaviour

Specific data in relation to anti-social behaviour was not available, however this was an issue raised by AHBs in interviews as a potential source of disputes. In the case of one larger AHB

(with approximately 4,000 tenancy), it reported having in the region of 5 anti-social behaviour cases on-going at any one time. An important feature of these cases, from the perspective of the PRTB, is that they can be more time consuming to process, compared to, for instance, deposit retention cases.

Notice to Quit

A notice to quit was served on 104 households in 2009 (0.9% of total housing stock covered by the HAPM survey), 27 of these were enforced. While a detailed breakdown of this figure is not available, it is understood that most of these cases involve rent arrears and tend to be cases brought by the larger housing bodies. It may not be accurate to project upwards by the same proportion (i.e 0.9%) for the 18,500 self contained voluntary units (to predict 166 Notices to Quit going forward), but equally in the medium term at least, increases in the stock are likely to be driven by the larger bodies. When the worsening financial situation facing many households is included in the consideration, it is reasonable to expect that the number of Notices to Quit issued is likely to increase.

Complaints

The voluntary housing associations recorded 118 formal complaints in 2009. There were 9 complaints on-going at the end of the year and 109 complaints had been resolved giving a 92% settlement rate. No detailed breakdown is available concerning the nature of these complaints. The high level of complaints resolved within the year indicates that a substantial backlog of unresolved complaints is unlikely if the sector is included under the PRTB dispute resolution services.

The majority of HAPM participants (95%) had a complaints policy in place to deal with tenant and 3rd party complaints.

Re-lets

Based on the HAPM results, a low level of re-lets is evident. The 2009 results indicated that in that year 6% of the housing stock was re-let. There was also 1,479 first-lets record by HAPM participants in 2009, 98% of these tenants came from the local authority waiting list. Future first-lets, of course, will be dependent on the ability to bring new units on stream. Given the new funding mechanisms outlined in Section 2 above, it is likely that the number of AHBs first-lets (including RAS and social leasing) will increase to an estimated 2,500 – 3,000 per year.

Dispute Resolution

The two main dispute resolution mechanisms provided by the PRTB are mediation and adjudication. Mediation is a confidential process whereby a mediator appointed to the case by the PRTB will try to get both parties to come to an agreement during the mediation hearing. Both parties must agree to mediation in order for it to take place. Adjudication involves an adjudicator appointed by the PRTB to investigate the dispute and decide how it is to be resolved. A third option, a Tribunal Hearing, is available on appeal or in exceptional circumstances.

Interviews with AHBs and their representative groups indicated that mediation is likely to be the preferred choice of dispute resolution in the sector. The AHBs currently use mediation but there was general agreement that having access to an independent mediation service, such as that offered by the PRTB, would help in solving disputes. It was pointed out that as there would be a continuing relationship between landlord and tenant mediation would be a more likely choice for AHB landlords. It is a condition of the mediation service that both parties must agree to this form of dispute resolution for it to be used. It was not possible for this study to consult with tenants on this matter so it cannot be assumed that mediation will be the most popular form of dispute resolution. Indeed the experience to date is that the vast majority of disputes are dealt with through the adjudication process.

The access to other forms of dispute resolution such as adjudication and tribunals were also seen as a generally positive by those interviewed. As it currently stands AHBs have to use the court service in order to issue a determination order requiring a tenant to vacate the property for continual breach of their tenancy agreement. Under the PRTB dispute resolution service, the PRTB can issue such an order once the due process has been followed. During interviews with a number of housing associations, it was mentioned that access to such a service would lead to potential substantial savings in terms of legal costs for them.³ A legal fee of €10,000 was given by one AHB as a typical example of the cost of an anti-social behaviour case going to court.

Concern was expressed, however, by one provider that having an adjudication and tribunal service available would allow certain tenants in some instances to refuse to engage with management or that it could be used as a delaying tactic. This would result in the informal process which has worked successfully to date being bypassed and a more adversarial path being followed, which in their view is not beneficial to either party.

Implications for the PRTB

The registration task associated with the inclusion of the voluntary and co-operative sector is likely to be fairly straightforward for the PRTB under the following circumstances:

- registration is for standard social housing only, and excludes those on licence or sharing communal facilities
- on-line registration is available
- the housing associations covered are mainly larger providers with professional administrative staff to assist with the registration process
- turnover rates remain low.

The registration process would benefit from having a dedicated member of PRTB staff for a period of time to liaise with the appropriate housing organisations concerning the registration process, but this is unlikely to be a substantial task once the initial registrations have been

³ The Residential Tenancies Act 2004 stipulates that failure to comply with a DO made by the PRTB may be enforced by either a criminal prosecution or civil proceedings, or both. However, enforcement is discretionary as the legislation places no onus on the Board to enforce its Dos, and it is open to the Board to make changes to its policy at any time. A total of 307 new enforcement requests were received in 2009 (PRTB Annual Report 2009)

completed. It would be important that this person be briefed on the relevant aspects of the voluntary and co-operative sector – legal, ethos, client groups, funding.

It is difficult to predict the level of dispute staff likely to be required. The HAPM data and the results of the Grant Thornton review of the sector would indicate that there are good housing management practices and good governance practice in place which should reduce the number of disputes being referred to the PRTB from this sector.

Examining previous case history from the PRTB, a dispute rate of approximately 1% of tenancies has been reported. While a substantial proportion of these disputes relate to deposit retention (51 per cent in 2009) which is unlikely to be a significant issue for AHBs, equally it may be the case that AHB tenancies may have additional other disputes, for example in relation maintenance or service charges. Therefore a dispute rate of 1% of tenancies will be used as a predictor of the possible dispute levels.⁴

RAS co-coordinators in some of the larger urban authorities were contacted to ascertain the level of disputes among this group as a further proxy of likely disputes. Those interviewed reported that very few disputes from RAS tenancies have been taken to the PRTB. They explained that tenants tended to leave the dwelling before the case comes before the PRTB. Although the tenancy agreement is between the tenant and the landlord, the local authority is often encouraged to intervene and this usually results in some form of informal mediation. The main disputes that arise in this instance are damage to property, anti-social behaviour and rent arrears. There have been very few cases where a RAS tenant has taken a case to the PRTB, it was reported.

Table 4 below provides an estimate of the likely number of disputes referred to the PRTB based on a 1% dispute rate. This gives a range of likely dispute cases of between 185 and 244 in the first year. What is not possible to predict is the severity of the dispute cases, and this will need to be monitored carefully, particularly in the first year of operation. Anti-social behaviour cases, for example, can be more time consuming for PRTB staff. It may also be possible that there will be a backlog of cases in the first year of operation, tenants and landlords with on-going disputes which will be referred to the PRTB service. The consultations with AHBs did not suggest that a substantial number of cases are on-going, but those that are could be time consuming.

Table 4: Estimates of Number of Dispute Cases

	Number of cases with a dispute rate of 1%
All 24,400 units transferred	244
Tenancies in self-contained units only transferred approx 18,500	185

⁴ This may indeed be a conservative estimate as the number of landlord / tenant disputes received by the PRTB increases year on year. In the Australian province of Queensland, which has a similar private rental tenancy administrative infrastructure to Ireland, a cases load of 4.6% of tenancies was reported in 2009.

It is also useful to estimate the likely number of Hearings and Determination orders to arise from the inclusion of AHBs tenancies under the RTA.

At end 2009, there were 234,582 private tenancies registered under the PRTB. In that year there were 1,618 hearings and 922 DOs issued. If a similar level of activity was generated from AHB disputes than this would lead to approximately an additional 128 hearings and 73 Determination Orders to be issued. These figures do not include any pent-up demand that may exist in the sector; for example on-going cases which may be referred on to the PRTB for resolution.

In terms of the number of additional staff required to undertake this work, the PRTB currently has 40 employees but also requires an additional 30 agency staff to operate its current registration and disputes services. That equates to approximately 1 employee for every 3,350 registered tenancies. Using this ratio, a minimum of 5.5 additional employees would be required in year 1 of the inclusion of AHB tenancies under the RTA. If the sector expands by 2,500 per year, an additional .75 of a post would be required per year to keep pace with the likely increasing caseload.

Rent Tribunal

The terms of reference for this study also indicated that the experience to-date of the PRTB taking on responsibility for the operation of the Rent Tribunal would be documented. The PRTB have taken over responsibility for the Rent Tribunal since October 2009. The Rent Tribunal was set up to fix the terms of tenancy of dwellings formerly controlled under the Rent Restrictions Acts. The Rent Tribunal only deals with these tenancies and it has a separate set of legislation to the Residential Tenancies Act.

The number of formally rent controlled dwellings under the provisions of the Housing (Private Rented Dwellings) Act. 1982 is continuing to decline and is currently in the region of 1,800. During 2009 there were 22 applications made to the Tribunal, compared with 42 the previous year. The overall trend is expected to continue to decline.

The Tribunal held 12 hearings and determinations were issued in 26 cases in 2009. This also shows a slight decrease on the previous year, when the figures were 17 and 42 respectively. These figures have enabled the Tribunal to move towards its aim, as contained in its Statement of Strategy, of hearing cases within 6 weeks of receipt of full documentation from both parties.

The tribunal section of the PRTB took on the administrative responsibility with their existing workload. It has resulted in staff having to make themselves familiar with a completely separate piece of legislation. The work load was divided between existing tribunal staff with one member of staff with overall responsibility who then delegates work to staff.

PRTB staff viewed the experience of taking responsibility for the operation of the Rent Tribunal as a success, albeit with a further strain on human resources. The small number of cases was also noted as important here. One point which was noted was the difficulty of working under different sets of legislation and the need for staff training to address this. This may need to be

considered in the future, if the voluntary and co-operative sector is to be included under the PRTB remit, in terms of drafting legislation and where it would sit in relation to the existing RTA.

Revenue

The study was also asked to consider the revenue implications of implementing this change.

The current tenancy registration fee charged by the PRTB is €70.00, but will increase to €90.00 from January 2011. If the increased registration was applied to the 18,500 tenancies in self-contained units, this would generate about €1.66 million in revenue to cover a four-year period. It is not possible to calculate the number of multiple tenancies payment fees that might apply were tenancies in the one building being registered at the same time and all on time (*i.e. within one month of the commencement of the respective tenancies*) by the one landlord. It is understood, however, that most of the stock is in estates rather than apartment blocks. Also, it is unlikely that there would be substantial issues regarding late registration. After year 1, the main sources of fees revenue for years 2,3 and 4 would be re-lets and new-lets. At 6% per year re-lets would generate in the region of €100,000 per year (6 % of 18,500 units) and new-lets would generate €90,000 per 1,000 units.

Affordability issues and savings

In interviews with the AHB representative bodies and some providers there was a general agreement that housing associations would find it difficult to raise the revenue necessary to pay this registration fee. They argue that their rent levels based on the differential rents which are significantly below the private rented sector does not provide them with the resources to pay a registration fee. The AHBs under both the CAS and CLSS schemes receive further revenue along with the rents they receive. The AHBs under the CLSS scheme also receive an annual management and maintenance allowance towards costs which ranges from €436 to €543 per unit. One option would be to increase the allowance to contribute towards the registration fee. Under CAS scheme, the AHBs receive a rent allowance along with the rent contribution similar to the rent supplement in the private rental sector, and are therefore in a more similar position to private landlords (*i.e.* a proportion of the rent could be used to provide for the fee).

Affordability issues are likely to be particularly relevant for the larger AHBs. One option worth considering would be to allow larger providers (*e.g.* those with more than 50 units) to be able to register all units in year 1, but pay in four equal instalments over the four-year period covered by the registration. Re-lets and new lets would be paid as they arise, but on year 4 adjustments could be made to account for any under or over payments made in previous years.

As mentioned above, access to the dispute resolution services would offer AHBs savings in providing an alternative to the Courts. While it is not possible to quantify this saving, a reasonable estimate of the cost of mediation and adjudication is approximately €750 to €1,000. These services are currently available to registered tenancies for a fee of €25/€40.

Staff Training

Staff training will be an important feature in ensuring the successful inclusion of the voluntary and co-operative sector under the PRTB registration and dispute resolution services. This might take the form of a staff briefing on the specifics of the voluntary and co-operative sector and could be provided by ICSH and NABCo. Training on the relevant legislation would also be important. Given that many tenants in this sector are from lower income households and some

have special needs, staff training may need to reflect this, and as mentioned above in Section 3 referral to advocacy services may also be required.

Summary of Implications

The following are points to come from the study which will be important in considering the implications of including the voluntary and co-operative sector under the PRTB registration and dispute resolution services:

- initial registration of the stock should be fairly straightforward given that a good proportion of it is owned by the 10 main providers. The process would benefit from a dedicated staff member to manage it in year one
- at current activity rates (to include all functions of the PRTB), the inclusion of the voluntary and co-operative sector under the remit of the PRTB could result in approximately 185 additional dispute referrals, an additional 128 hearings and 73 Determination Orders to be issued each year. At current staffing ratios it will require a minimum of 5.5 additional staff in year 1 to provide the on-going services of the PRTB. If the sector expands by 2,500 per year, an additional .75 of a post would be required per year to keep pace with the likely increased caseload
- the main dispute areas are likely to centre on rent arrears, anti-social behaviour, neighbour disputes, maintenance – all of which have the potential to be time consuming for the PRTB to process
- consultation with AHBs suggested that mediation may be favoured as a dispute resolution mechanism, but this would require agreement from both sides – currently the vast majority of disputes are dealt with through the adjudication process
- registration fees could raise up to €1.66 million to cover a four year period, or €2 million over the period if re-let fees are included. AHBs may find it difficult to raise the necessary fees revenue and mechanisms to address this should be explored. Access to dispute resolution services at below costs levels will also lead to savings for AHBs
- PRTB staff training on the voluntary and co-operative sector will be an important feature in ensuring the successful inclusion of the sector under the PRTB registration and dispute services.

Appendix 1: List of Those Consulted

Karen Murphy, ICSH

Irene Byrne, ICSH

Brian O’Gorman, Cluid Housing Association

Christine Dibelius, Cluid Housing

Frank Gunter, Inagh Housing Association

Kevin Lunny, Newgrove, Housing Association

Dolores Grady, Respond!

Finbarr Hennessy, Respond!

Lyndsey Anderson, Respond!

Bob Jordan, Threshold

Kevin Baneham, Threshold

Mick Fagan, South Dublin County Council

John MacEivilly, Dublin City Council

Ger Cummins, Cork City Council

Bernard Thompson, NABCO

Vincent Keenan, NABCO

Justin O’Brien, Circle Housing Association

Simon Brooke, Housing and Social Policy Consultant

Cian Ó Lionáin, DEHLG

Catherine Higgins, DEHLG

Anne Marie Caulfield, PRTB

Frank Gallagher, PRTB

Janette Fogarty, PRTB

Carolyn O'Brien, PRTB

Eoin O'Sullivan, PRTB Board Member

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