

**Investigation of the Viability
of
Establishing
a
Deposit Retention/Protection Scheme (s)
In Ireland**

CMAAdvice Ltd

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Chapter 1 Introduction

An international review of deposit retention schemes was prepared for the Private Rented Tenancies Board (PRTB) in 2006, (CMAAdvice, 2007) followed up by a review of international approaches to dealing with overholding disputes in 2008. (CMAAdvice, 2009). Both studies found that counties that have Alternative Dispute Resolution (ADR) schemes for dealing with rent deposit disputes also have deposit retention/protection schemes in place which also fund their dispute resolution procedures.

This study builds on these findings to examine the viability of introducing a deposit retention scheme in Ireland, drawing on best international practice.

Aim of Study

To assess the viability of introducing a deposit retention scheme in Ireland.

This involved:

1. Reviewing available international literature on deposit retention schemes, particularly in England and Wales, Scotland New Zealand, and Australia, followed up by telephone interviews with key informants to identify lessons that can be learnt from the experience in these countries. (See Appendix 1 for a list of those interviewed)
2. Interviews with key stakeholders in Ireland, landlord and tenant bodies, and relevant agencies. (See Appendix 1 for a list of those interviewed)
3. Collection and analysis of available relevant information.
4. Assessment of the viability of establishing a deposit retention scheme or schemes in Ireland, including an assessment of the advantages and disadvantages of introducing such schemes, including illustrations of the likely costs and revenues of establishing such schemes under a number of different assumptions and an assessment of how they might

best operate and might affect different elements of the private rental market.

5. Drafting and finalising a report which presents the key findings, conclusions and recommendations of the study.

Main Issues to be explored in the Study

As required in the Terms of Reference the study focused on the following issues:

- advantages and disadvantages of various deposit protection models;
- potential costs and benefits of establishing a deposit retention scheme in Ireland and identification of the elements that are most likely to make it both financially viable and operational, including how the proposed new body would relate to the existing dispute resolution services of the PRTB;
- the potential for incentives to improve implementation and take-up of any such new scheme and the potential implications for low-income / state supported tenants arising from the introduction of any deposit retention scheme.

Note

This study has only been able to illustrate the possible financial impact of introducing a deposit protection scheme in Ireland. A full assessment of financial viability would require the development, testing and running of a full financial model based on comprehensive information on the true costs and revenues associated with the different assumptions used in the model and was therefore beyond the scope of this study. The current study does however clarify the type of data that would be required for such a model and indicate the type of resources that have been put in to such models in England and Wales.

Background to the Study

According to the PRTB, deposit retention complaints have consistently been the single largest category of cases submitted to the PRTB for dispute resolution. Deposit cases increased from 35% to 43% of all cases between 2007 and 2008. They represented nearly 61% of Tenants' cases during 2008, an increase from 52% in 2007. In 76% of such cases during 2008, it was determined that Landlords should refund part or all of the deposits which they had retained to their Tenants.

The 2008 Annual report of the PRTB states that:

'The PRTB has emphasised repeatedly that deposits are the Tenants' and not the Landlords' property and must be returned to Tenants in a timely manner. Deposits should only be retained, either fully or partially, in circumstances and in a manner consistent with the Residential Tenancies Act 2004. Deposits should only be used to offset rent arrears where they may exist following the termination of the tenancy or to defray the cost of damage to the dwelling by the Tenant that is beyond normal wear and tear. Landlords are advised to inspect the dwelling prior to the Tenant vacating in order to resolve any issues in relation to damage.'

The PRTB goes on to state that:

'The PRTB is concerned about the potential serious consequences for Tenants (particularly those on low incomes) when Landlords do not refund deposits in a timely manner. This can increase the risk of homelessness for this category of tenant. Deposit retention cases contribute significantly to the workload of the PRTB. Resources would be freed up to progress other categories of disputes by the PRTB if Landlords refunded deposits (partial or full) as required.'

These findings are reinforced by Threshold. Threshold in its 2008 Annual report (not yet published) stated that the most significant problem experienced by tenants in 2008 was the non-return of rent deposits. The number of deposit queries received by Threshold more than doubled last year, from 1,603 in

2007 to 3,688 in 2008. Threshold goes on to state that unjustified deposit retention places people in danger of homelessness – people cannot move on their next rented home until their current landlord returns their deposit.

These figures indicate that while only a very small percentage of tenancies end in disputes about deposit retention, representing 1-2%¹ of the total number of tenancies registered with the PRTB, for the tenants concerned such disputes are very serious, particularly for those on low incomes. Added to this, such disputes are currently absorbing a significant amount of the resources of the PRTB, as well as of other tenants support organisations such as Threshold.

Layout of Report

The study's findings are presented as follows:

Chapter 2 presents an analysis of the deposit protection schemes internationally, including information provided through telephone calls with key personnel in the relevant countries

Chapter 3 presents the views of Irish stakeholders on the desirability and viability of establishing a deposit protection scheme in Ireland

Chapter 4 assesses the viability of establishing a deposit protection schemes or schemes in Ireland and examines the key factors that will influence the acceptability and viability of such a scheme(s) in Ireland

Chapter 5 draws out the conclusions and recommendations drawn from the study.

¹ 480 deposit retention disputes were processed by the PRTB in 2008 and 709 applications in relation to deposit retention were received by the PRTB in 2008 out of a total of 206,000 deposits registered with the PRTB, representing between 0.2 and 0.3%. Taking Thresholds figure of 3,688, this represents 1.8% of total tenancies.

Chapter 2 Review of International Deposit Protection Schemes

2.1 Introduction

In this chapter the experience with deposit protection schemes internationally are reviewed. The countries considered are England and Wales, Scotland, N. Ireland, New Zealand and Australia. England and Wales and New Zealand have deposit protection schemes in place- New Zealand and Australia for many years and England and Wales introduced such schemes in 2007 for all new tenancies. Scotland and Northern Ireland are currently considering introducing such schemes.

The information presented below is based on internet based reviews supplemented with email and telephone contact with key personnel in England, Scotland, New Zealand and Australia.

In the following sections the schemes in operation are explained in detail and relevant figures where available are provided.

2.2 England and Wales

Introduction

In the UK, The Housing Act 1988 brought about the de-regulation of tenancies and the ability for landlords to let on a shorter-term basis via the assured short hold tenancy. This gave tenants less security of tenure and landlords greater control over their properties. Many tenants paying a deposit on a private rented property felt that part or all of their deposit had been unfairly withheld (Survey of English Housing, 2005-06). Previous to the introduction of tenancy deposit schemes, if a tenant considered that their deposit has been unfairly withheld, their only redress was to seek to recover it through the small claims court. However, this was often a long and cumbersome process.

The Tenancy Deposit Scheme (TDS), a voluntary pilot scheme, was launched in 2000. However, there was a poor take-up of the scheme which led the UK Government to conclude that legislation would need to be introduced to

protect tenancy deposits, and such provisions were introduced through the Housing Act 2004.

Section 212(2) of the Housing Act 2004 sets out two main purposes of tenancy deposit schemes, these are:

- To safeguard tenancy deposits paid in connection with assured short hold tenancies; and
- To facilitate the resolution of disputes arising in connection with such deposits.

The Office of the Deputy Prime Minister (2005) broke down the overall potential benefits of tenancy deposit protection into four parts:

- 1) **Return of deposits.** This would be a direct benefit to those tenants whose deposits are currently withheld.
- 2) **Small claims court savings.** This would be of benefit to tenants, who currently have to pay a fee to gain an unfairly withheld deposit.
- 3) **Warrant of execution savings.** This would be of benefit to tenants, where a warrant is required to obtain a deposit from landlord who does not comply with any court order made in the tenant's favour over the deposit.
- 4) **Additional interest earned on deposits.** This will be of benefits to tenants whose deposit is safeguarded by a custodial scheme, as they currently do not receive any interest on their deposits. This may also be of benefit to some landlords who have the deposit returned to them at the end of the tenancy as they may earn a high rate of interest that they would have otherwise received.

In reviewing the operation of these schemes to date we can assess the extent to which these objectives have been achieved and their relevance to the Irish situation.

Description of Deposit Protection Schemes in England and Wales

This section provides a background to rent deposit schemes in England and Wales and examines in detail the three schemes currently in operation there.

Legislative background

As part of the Housing Act 2004, the UK Government introduced tenancy deposit protection for all assured shorthold tenancies (ASTs) in England and Wales where a deposit is taken. This legislation came into effect on the 6th of April 2007. From this date on, all deposits paid under an AST have to be protected within 14 calendar days of receipt by the landlord. The legislation aims to ensure that tenants who have paid a deposit to a landlord or letting agent and are entitled to receive all or part of it back at the end of that tenancy get it back.

The legislation covers virtually all new AST contracts through which private landlords let property in England and Wales. The following do not need to be registered with a tenancy deposit protection scheme:

- resident landlords (those living in the property)
- landlords of properties with rent of over £25,000 a year
- company lets
- student accommodation let directly by universities or colleges.

Background to the Legislation

It is worth noting that an extensive period of research, piloting, consultation and assessment was gone through in England and Wales by the relevant government Departments before the deposit protection disputes were introduced. This involved:

- Piloting the schemes and evaluating the pilots
- Assessing the policy implications
- Carrying out detailed consultation
- Commissioning the development and running of a very detailed financial model based on a range of different assumptions by Cambridge Economic Policy Associates.

Details of the different studies involved can be found at:
<http://www.communities.gov.uk:80/housing/rentingandletting/privaterenting/tenancydepositprotection/publicationsabouttenancy/>

Some of the key research findings² that informed the decision were that:

- Of the 905,000 tenancies finished each year, approximately 127,000 are in disagreement.³
- Two options were preferred:
 - Option 1 – No Government intervention: voluntary custodial deposit protection schemes, voluntary industry accreditation schemes.
 - Option 2 – Statutory tenancy money protection scheme(s):

In relation to Option 1 the conclusion was that:

‘Many tenants would continue to distrust their landlords/agents, and withhold their final month’s rent. It is clear from the low take-up to the pilot TDS (and NALS) that the industry as a whole is unlikely to be voluntarily self-regulating. It is also likely that such schemes are attracting members who already have good management practices in place...Voluntary schemes are not therefore providing the anticipated benefits to tenants and indeed landlords and agents. There could still be up to £20million misappropriated’

In relation to Option 2 they concluded that:

‘A considerable amount of tenants’ money would be returned, which would previously have been wrongfully withheld; up to £21 million. If £790 million, the amount estimated to be currently held in deposits, were held in a single custodial deposit scheme for a year, it would raise £31.6 million in interest (calculated at the Bank of England’s current base-rate). Obviously the larger the amounts of interest raised, the greater the potential for increasing funds through investment. Therefore the potential for increasing funds would decline if the number of approved statutory custodial schemes increased...Such funds could be utilized in number of ways. The Queensland and New Zealand schemes are self-financing, using the additional interest to fund provision of

² Tenancy money: probity and protection A consultation paper, November 2002, Office of the Deputy Prime Minister

³ Based on the findings of the Survey of English Housing, 2005-06. If this figure is taken as a percentage of total tenancies with a deposit-estimated to be 1.547 million gives a dispute rate of 8%

residential accommodation, research on the private rented sector and loans to low income tenants who cannot afford to raise a deposit.’

The report went on to say that:

‘Other benefits are difficult to quantify but could have a far-reaching impact. For example increased professionalism and transparency, and the removal of the atmosphere of mutual suspicion, could lead to increased confidence in the sector and the encouragement of institutional investors. It could also discourage potentially unscrupulous landlords from entering the sector. A larger, better-run private rented sector brings knock-on benefits through encouraging greater mobility... There are also equity and distribution issues concerning transfers from landlords, traditionally from higher income deciles, to tenants. 63% of private rented sector households earn less than £300pw, compared to 51% of households across all tenures (SEH99/00). The forthcoming Treasury Green Book, which sets out guidelines on appraisal of central government proposals, recommends adjusting non-Exchequer monetary costs and benefits according to the relative prosperity of those receiving the benefit or bearing the cost. Whilst it is not proposed to carry out such analysis in this instance, it is worth noting that the proposals are likely to disproportionately benefit lower income earners... There may also be resource savings related to the freeing up of the justice system, as it may be assumed that few cases will be taken up through the small claims mechanism.’

They went on to say that

‘It should be noted that although calculations have to be considered as if 100% of disputed cases were to go to adjudication, it is most unlikely that maximum costs would be incurred. It is currently estimated that of those pilot TDS tenancies which have ended, only around 1.5% have led to adjudication. Custodial deposit schemes in Queensland and New Zealand report the percentage of disputes as 3% and under 2% respectively. It should also be noted that this does not imply that only 1.5% of tenants have a genuine problem with the way their deposit is returned.’

Other options that were considered but were not assessed as likely to be as effective were:

- Option 3 – Deposit protection through the tenancy agreement, using the Law Commission’s approach.
- Option 4 – A statutory bank guarantee scheme.
- Option 5 – A ban on deposit-taking by landlords/agents (with no statutory custodial deposit protection scheme)
- Option 6 – Statutory requirements with regard to inventory-taking, regulation of “non-deposit” fees and charges.
- Option 7 – Statutory protection of clients’ monies held by letting agents.

It should be noted that these recommendations were made in the context where tenants in the private rental sector at that time only had recourse to the courts and estimates of the level of disputes occurring at the time were based on a Survey of English Housing, 2005-06. The report concluded that international evidence and the results of the pilot voluntary scheme in England and Wales indicated that the level of disputes to be adjudicated on were likely to account for 1-3% of tenancies. Interest rates also were based on 2002 figures.

Rate of compliance with the England and Wales Compulsory Schemes

Using 2009 figures it is estimated that there are currently 1.4 million deposits under protection. The Department of Communities and Local Government (CLG) Survey of English Housing 2007-08 states there are 1.864 million tenancies in England – indicating a compliance rate of 78%. Therefore, it is estimated that there could be as many as 400,000 tenancies still with unprotected deposits -22% of the total. (www.mydeposits.co.uk).

Average deposit levels

According to the Department of Community and Local Government (2006) the average rent deposit in England during 2005/2006 was £695. Recent research (2009) from The Deposit Protection Service states the average

deposit value of the deposits protected by them is £764 According to mydeposits.co.uk latest figures; the average deposit with them is £1,052. (2009). This indicates a considerable range in the level of deposits protected in England and Wales, which in part at least, reflects the geographical location of tenancies but may also indicate an increase in deposit rates since the introduction of the scheme or a higher rate of protection in higher end tenancies. However there is no independent evidence to assess that any increase is due in part or in whole to the introduction of deposit protection schemes.

Impact on state funded/low income tenants

Shelter (2005a) welcomed the introduction of statutory rent deposit schemes as they believed they could be effective in securing an improved supply of properties in the private rented sector for homeless, or potentially homeless, households. According to Shelter, with the increase in the rate of movement around the private rented sector in recent years, low-income households were increasingly likely to be required to supply a deposit, and the likelihood of deposits not being returned was increased (Shelter, 2005a).

According to the Office of the Deputy Prime Minister (2005:14), 87 per cent of local authorities operate a service, whereby they either pay a deposit to the landlord on behalf of the tenant or offer a guarantee in the event of damage or unpaid rent. Under this scheme the landlord may agree to take a bond from the council which guarantees a payment up to the sum of a deposit, should a claim be necessary at the end of the tenancy. The tenant remains liable for this amount and is invoiced for any payment that is needed to be made. The advantage of the bond to the tenant is that it keeps down the amount they need to borrow (www.huntsdc.gov.uk)

A number of district councils also offer schemes which provide low income families with rent deposit loans. Huntingdonshire District Council, for example, operates a 'Rent in Advance/Rent Deposit Loan Scheme'. The scheme is aimed at helping more low-income individuals and families to take up private sector tenancies. Those who qualify for the scheme may borrow an amount to

cover the rent in advance and/or the rent deposit. A loan is made interest free and can be paid back over 12 -24 months. Alternatively the landlord may agree to take a bond from the council which guarantees a payment up to the sum of a deposit, should a claim be necessary at the end of the tenancy. The tenant remains liable for this amount and is invoiced for any payment that is needed to be made. The advantage of the bond to the tenant is that it keeps down the amount they need to borrow (www.huntsdc.gov.uk).

Deposit Retention Schemes

There are three deposit schemes authorised by the Department of Communities and Local Government (CLG). These are:

- 1) The Custodial Tenancy Deposit Protection Scheme run by the Deposit Protection Service (DPS)
- 2) The Insurance-based Tenancy Deposit Protection Scheme, **my|deposits**, run by Tenancy Deposit Solutions Ltd
- 3) The Insurance-backed Deposit Protection and Dispute Resolution Scheme run by The Dispute Service Ltd

The penalties for landlords not complying

Since the introduction of the tenancy protection schemes, the landlord is unable to regain possession of the property using the usual 'notice only grounds', if the deposit has not been safeguarded and the prescribed information passed on to the tenant within 14 days of the landlord receiving it.

In terms of financial penalties:

- Tenants can apply for a court order requiring the deposit to be safeguarded or the prescribed information to be given to him about the scheme in which the deposit is safeguarded.
- Where the court believes that the landlord has failed to comply with these requirements, or the deposit is not being held in an authorised scheme, the court must either order the landlord within 14 days of the making of the order to repay the deposit; or order the landlord to pay the deposit to the custodial scheme administrator.

- The court must also order the landlord to pay to the tenant a penalty of three times the deposit amount within 14 days of the making of the order. There is no provision for this penalty to be reduced/mitigated. It is automatic if the Court finds against the landlord (www.rla.org.uk).

For instance In the case of landlords who have registered a tenancy with the DPS but not paid the deposit after the legal requirement of two weeks, The DPS writes to landlords giving them a further week to pay. In the event that the money is not received, tenants will be told that their deposit may not be protected, potentially giving them grounds to take offending landlords to court. If found guilty, landlords face being fined up to three times the amount of the deposit (www.depositprotection.com). In this way tenants have a strong interest in ensuring compliance as they will be compensated financially if they can prove that landlords have not complied.

Different types of landlords in each of the different schemes

The Custodial Tenancy Deposit Protection Scheme run by the Deposit Protection Service (DPS) and the Insurance-based Tenancy Deposit Protection Scheme, **mydeposits**, run by Tenancy Deposit Solutions Ltd protect deposits of landlords and letting agents.

The Insurance-backed Deposit Protection and Dispute Resolution Scheme run by The Dispute Service Ltd protect deposits held by regulated agents and resolves disputes. It also runs the Association of Residential Letting Agents (ARLA) complaints scheme to deal independently with complaints against its members, as well as a similar scheme for members of the Ombudsman for Estate Agents (OEA) who undertake residential lettings.

Details of the Operation of the Schemes in England and Wales⁴

1. The Custodial Tenancy Deposit Protection Service

The Custodial Tenancy Deposit Protection Scheme is managed by Computershare Investor Services PLC, on behalf of the Government. The scheme is guaranteed by the government.

How the scheme works:

Registration

- The tenant pays the landlord the deposit in accordance with the terms of the tenancy agreement. If the landlord chooses to protect the deposit with the Custodial Tenancy Deposit Scheme, the Housing Act 2004 requires that the landlord must pay the deposit to the DPS within 14 days of physically receiving it. The DPS will, however, accept deposits after this time.
- Landlords must complete a deposit submission form and submit it to the DPS with a payment equal to the amount of the deposit.
- Landlords and letting agents can also register online or by phone.
- Correspondence between landlords and tenants and the DPS can be written, over the phone or online.
- Following the successful protection of a deposit, the DPS will provide confirmation of receipt and other information to the landlord and tenant including:
 - Name, address and contact details of the DPS;
 - The deposit ID;
 - The amount of the deposit and the date of receipt;
 - The name and contact details of the landlord;
 - Names of tenant(s);
 - The address of the tenancy property;
 - Start date of the tenancy;

⁴ The amount of detail given below and the extent to which the information is up to date on each scheme is influenced by the extent to which the different schemes were willing to share up to date and confidential information with CMAAdvice Ltd. The most comprehensive statistics were provided by mydeposits.co.uk

- Tenancy duration;
- A copy of DPS terms and conditions;
- A Landlord's Repayment ID or a Tenant's Repayment ID, as applicable.
- A Landlord ID, which is a unique identifying reference number, is allocated to landlords by the DPS following registration with the service.
- A Deposit ID, which is a unique identifying reference number, is allocated to a deposit in relation to a particular tenancy following the successful submission of a deposit to the DPS by the landlord.

Repayment

- At the end of the tenancy, a Joint Repayment Form is completed by both the landlord and tenant on paper or online:
 - i. Requesting that all or part of the deposit be repaid in accordance with the agreed instructions it contains; and/or
 - ii. Notifying the DPS that there is a dispute in relation to the repayment of all or part of the deposit, requesting that the dispute be referred to Adjudication in accordance with the DPS terms and conditions and confirming that the tenant and landlord will be bound by the decision of the Adjudicator.
- Any agreed amount of the deposit including any interest accrued will be paid out by the DPS in accordance with the Joint Repayment Form within 10 calendar days of receipt of the correctly completed Joint Repayment Form.
- A Statutory Declaration can be completed by either the landlord or tenant claiming repayment of all or part of the deposit.
- A Statutory Declaration Notice is served by the DPS following the receipt of a Statutory Declaration.
- A Landlord's Repayment ID, which is an identifying number issued by the DPS to the landlord which is unique to the landlord and to the deposit to which it relates, is required by the landlord to claim repayment of the deposit.

- A Tenant Repayment ID, which is an identifying number issued by the DPS to the tenant which is unique to the tenant and to the deposit to which it relates, is required by the tenant to claim repayment of the deposit
- A Repayment ID is a combination of the Landlord's Repayment ID and a Tenant Repayment ID.
- A Single Claim may be made by a landlord or tenant for the repayment of all or part of the deposit when the other party is not contactable or not responding to correspondence.

Disputes

- In the case of a dispute, landlords may fill in a Landlord's Evidence Form containing evidence of the dispute and tenants may respond with a Tenant Evidence Form
- The DPS will attempt to settle the dispute between the landlord and tenant and if this is not possible refer the dispute to arbitration
- The Alternative Dispute Resolution (ADR) Procedure means all or any of:
 - The procedure for permitting the Landlord's Evidence Form and the Tenant's Evidence Form to the DPS;
 - The acceptance of a dispute into the adjudication process; and
 - The adjudication, including implementing the decision.
- The DPS will not release any part of the deposit unless it has:
 - All parties' agreement to do so; or
 - A decision from an Adjudicator; or
 - A court order which refers specifically to the deposit and/or the scheme administrator and the amount of the deposit to be paid out.
 - The DPS forwards the Landlord's Evidence Form/Statutory Declaration, Tenant's Evidence Form/ Statutory Declaration Notice and any additional evidence submitted by the landlord or tenant to the Adjudicator.

- The Adjudicator is fair and unbiased and will make a decision based on the evidence in the dispute papers.
- Adjudications are made on the documentary evidence submitted to the DPS. Any documentation or evidence submitted after the dispute has been sent to the Adjudicator will not be considered by the Adjudicator if a decision has already been made.
- The Adjudicator may contact the tenant/landlord to request additional information.
- The Adjudicator may end the adjudication if it appears the dispute cannot be settled under it, or if the parties settle their dispute before a decision is made.
- The Adjudicator will make a decision within 28 calendar days of receipt of the dispute papers.
- The ADR decision is binding and cannot be appealed through the ADR Procedure.
- Any appeal must be through the courts.
- If a court order is obtained against the tenant/landlord, the DPS will only release the deposit if the court order specifically refers to the deposit and/or the scheme administrator holding the deposit and includes a direction as to how much of the deposit is to be paid to the successful claimant.

Cost

- The DPS is free to use.
- The DPS is funded entirely from the interest earned from deposits held.
- Interest is paid by the DPS on all deposits at the rate equivalent to the base rate of the Bank of England less 2.32 per cent.
- As far as we can ascertain no interest is currently being paid to tenants due to the low interest rate environment
- The Alternative Dispute Resolution (ADR) Service is free of charge to the landlord and tenant.
- Direct Bank Transfer payments can be used for online deposit submissions.
- £25.89 must be paid if a cheque bounces or a payment has to be made to an overseas bank account.

Statistics

- Since 2007, 173,000 and 15,000 agents have used the DPS to protect their deposits.
- Since 2007, over 711,000 deposits worth over £532 million have been protected and in excess of £200 million of deposits have been returned.
- There are approximately 200 new dispute cases per month and 15% are sifted.
- 326,000 deposits are protected at present.
- Over £1 million in interest has been returned.
- An estimated £330 million is in deposit at any one time
- 650 cases have been adjudicated (0.7% of claims) with 19% in favour of landlords and 39% in favour of the tenant; the remaining 42% are split between landlords and tenants.

(Sources Presentation to PRTB by DPS December 2009, DPS Press release July 2009 and email correspondence)

This indicates that less than 1% of protected deposits have been adjudicated to date.

Pros of the scheme:

- The DPS is the only Government-authorized custodial scheme and is free to use. Landlords and letting agents can access online accounts 24/7 and submit deposits in minutes, resulting in minimum administration for landlords.
- All funds are ring fenced in accordance with client money regulations.
- Landlords, agents and tenants can in principle earn interest on any proportion of the deposit they are entitled to retain at the end of a tenancy. However we understand that this is not happening at the moment.
- The DPS is open to all private landlords and letting agents, with no pre-conditions to meet or assessments to take. The independent and free Alternative Dispute Resolution (ADR) service aims to resolve any disputes quickly and without the need for court action.

- The DPS is managed by Computershare Investor Services Plc, a global business with more than ten years' deposit protection experience.
- Accounts and information can be accessed and managed online.
- Any disputes between tenants and landlords are easier and cheaper to resolve than in the previous system which involved going to the courts.
- Tenants are encouraged to look after the property they are renting and both landlords and tenants are encouraged and supported to keep evidence of the condition of their property at the beginning and end of their tenancy.

www.depositprotection.com

2. Insurance-based tenancy deposit protection scheme

my|deposits

my|deposits is an insurance-based tenancy deposit protection scheme operated by Tenancy Deposit Solutions Ltd. Tenancy Deposit Solutions Ltd is jointly owned by the National Landlords Association and Hamilton Fraser Insurance.

How the scheme works:

Registration

- Within 14 days of receiving the deposit from the tenant, the landlord/agent, must protect the deposit with **my|deposits**. In addition, they must provide the tenant with details of how their deposit is being protected and what to do if there is a dispute regarding the deposit amount returned to the tenant at the end of the tenancy agreement.
- **my|deposits** provides proof of the deposit protection in the form of a Deposit Protection Certificate (DPC) which is sent to the landlord/agent. It is the landlord's/agent's responsibility to check that the details on the DPC are correct and then sign it. They should send the tenant the Certificate to check and sign.

- Tenants can check on the **my|deposits** website to find out if their deposit is protected with **my|deposits**.
- As a member of **my|deposits**, the landlord/agent will, upon receipt, hold the tenant's deposit for the duration of the tenancy. The only time **my|deposits** will hold the deposit is if a dispute is raised and the landlord/agent lodges the disputed amount with **my|deposits**. **My|deposits** safeguards the disputed amount until a resolution has been decided.

Repayment

- The landlord/agent must attempt to agree the deposit amount that should be returned to the tenant. If the tenant does not agree, they should formally ask for their deposit to be returned and keep evidence of this request.
- The landlord/agent is legally obliged to return any agreed amount to the tenant within 10 days of that agreement. Any amount of the deposit that cannot be agreed on becomes the subject of the 'disputed amount' and **my|deposits** must be notified of a deposit dispute.
- Once the landlord/agent has returned the agreed deposit amount to the tenant they will be able to request that **my|deposits** 'unprotects' the deposit.
- If the tenant agrees to the deposit being unprotected by the landlord/agent then the tenant will be unable to raise a dispute with **my|deposits** at a later date unless they can prove that they did not agree to the unprotection or did not actually receive the deposit amount as agreed.

Disputes

- The tenant can notify **my|deposits** of a dispute up to 90 days after the landlord/agent has unprotected the deposit provided that the tenant did not agree to the unprotection. **my|deposits** will not accept disputes after this period has elapsed or where the deposit was unprotected with the tenant's agreement.

- A deposit dispute can be initiated in two ways:
 - Online dispute handling
 - Paper dispute handling
- **my|deposits** offer a free and impartial Alternative Dispute Resolution (ADR) service to resolve deposit disputes. Both tenant and landlord/agent must agree to use the **my|deposits** ADR service. If either party does not agree to ADR the dispute must be resolved through the Court system. If the Court system is used the landlord/agent must still lodge the disputed amount with **my|deposits**, as they must if ADR is used.
- The final decision of the Adjudicator is binding on the parties and is not open to appeal through the Scheme. Either party may however, on certain limited grounds, appeal the Adjudicator's decision through the Courts.
- After **my|deposits** receive a completed claim form, or after 10 working days from the date a deposit dispute is registered online, they will send the landlord/agent the details of the dispute together with copies of any supporting evidence that the tenant provided. The landlord/agent must then acknowledge the dispute within 10 working days of receiving the request and send the disputed deposit amount to **my|deposits** for safe-keeping whilst the dispute is being resolved.
- At the same time the landlord/agent must tell **my|deposits** whether they wish the dispute to be resolved by using the **my|deposits** ADR process. The tenant will be informed if they decide not to use the ADR process. The dispute will then have to be resolved directly with the landlord/agent and tenant through the Court.
- If the landlord/agent agrees to the ADR process they will have a further 10 working days (making 20 working days in total from the date that they received the first notification of the dispute) to submit their evidence. Both sets of evidence are then passed to the Adjudicator to make a decision on the disputed deposit. Once the Adjudicator's decision has been received by **my|deposits**, they will distribute the disputed amount in accordance with that decision within 10 days.

- If the landlord/agent does not co-operate with **my|deposits** request for the disputed amount or counter-information regarding the dispute within the prescribed timescales **my|deposits** can, if the tenant has agreed to use the ADR service, submit their evidence to the Adjudicator for a decision. **my|deposits** will distribute the disputed amount within 10 days of receiving the decision.

Cost

- There is a joining fee of £57.50 and an annual membership renewal fee of £14.70.
- The deposit protection fee to register a deposit of £300 or less by phone is £29.36 per tenancy agreement.
- To register a deposit over £300 by phone or online is £29.36.
- In 2008, **my|deposits** launched an internet-only service, **mydeposits** site which costs £17.50 to protect a deposit of £300 or less online.

Statistics

VALUE OF TENANCY DEPOSITS PROTECTED:

Value of deposits protected	£308 million
Average deposit amount protected	£1,052

REGISTERED MEMBERS:

Landlords	43,189
Letting agents	3,057
TOTAL	46,246

NUMBER OF TENANCY DEPOSITS PROTECTED:

Deposits protected by landlords	165,387
Deposits protected by letting agents	169,514
TOTAL	334,901

DISPUTES:

Number of notifications of a dispute	4,492
Notified disputes as a percent of total tenancies	1.34%
Number of disputes adjudicated by Alternative Dispute Resolution (ADR)	1,183
Average disputed amount	£733
Percentage of disputes going to Arbitration	0.35%

ADR DISPUTE DECISIONS:

In favour of tenant	57%
In favour of landlord or letting agent	9%
A split	34%

www.mydeposits.co.uk)

Pros of the scheme

- The majority (91%) of dispute cases are settled in favour of the tenant.
- Can register by phone or online.
- It is cheaper to register online.

3. The Tenancy Deposit Scheme

The Tenancy Deposit Scheme is designed primarily for letting agents, but membership is also open to landlords. While, mandatory deposit protection was implemented in April 2007, The Dispute Service Ltd offered a voluntary scheme to regulated agents for three years before that (the Tenancy Deposit Scheme for Regulated Agents).

The Dispute Service Ltd

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly.

The company currently runs the following schemes:

- The **Tenancy Deposit Scheme**, to ensure that the deposits held by regulated agents are protected and to resolve disputes about their return.
- The **Association of Residential Letting Agents** (ARLA) complaints scheme to deal independently with complaints against its members.
- A similar scheme for members of the **Ombudsman for Estate Agents** (OEA) who undertake residential lettings.

The Tenancy Deposit Scheme operates as follows:

Registration

- Members join directly, rather than through their membership of another body.
- All landlords and regulated agents are eligible to be considered for membership of TDS. They must complete application form TDS 1A for agents, or TDS 1B for landlords.
- All Members of Approved Bodies will gain membership unless they fail to meet essential criteria.
- Applicants may be subject to approval and credit checks by The Dispute Service Ltd.
- Members are contractually bound to comply with the conditions of TDS. Failure to do so could lead to termination of membership.
- Each application is reviewed and determined by the ICE and the Chair of TDS Ltd.
- The member holds the deposit.

How membership works?

Membership of the Scheme is open to all landlords and agents in the Private Rented Sector subject to the approval of the Insurers. Prospective Members will be asked to complete an application form to provide, amongst other things, the following information:

- a) *Do they hold separate clients accounts for deposits and other client money?*

- b) *Do they have a written complaints procedure?*
- c) *Are they covered by a Client Money Protection Scheme?*
- d) *Do they hold Professional Indemnity insurance?*
- e) *Do they adhere to a recognised Code of Practice?*
- f) *Are they members of a self-regulatory body?*
- g) *Are they members of an accreditation scheme?*
- h) *Are they members of a trade or professional body?*
- i) *Are they members of an Approved Body?*
- j) *Have they ever been refused a licence to operate an HMO under the mandatory requirements of the Housing Act 2004?*

And other matters at the Board's discretion. Their answers will determine the insurers' estimate of risk and affect their annual subscription fee (The Dispute Service, 2007).

Repayment

- Where there is no dispute at the end of the tenancy, the member will, as normal, pay out the deposit promptly.
- If any of the parties wants to challenge the proposed apportionment of the deposit, they must do so within 20 working days. If there is an agent, they must try to negotiate a settlement between the parties within 10 working days.

Disputes

- If a settlement cannot be negotiated, any of the parties can refer the dispute to the Independent Case Examiner (ICE) for third party independent adjudication.
- The deposit-holder must transfer the deposit to The Dispute Service Ltd. The ICE will carry out an adjudication and pay out the deposit. If the deposit has not been submitted, The Dispute Service Ltd will claim the amount in question from its insurers, and seek to recoup it from the member. Persistent failure to submit disputed deposits will probably lead to the termination of membership.

- The ICE will make his decision within 28 days of receiving all the necessary information and evidence. Only paper based evidence is accepted. The deposit will be paid out within a further 5-10 working days.
- There is no appeal to the adjudicator but a small number of cases are appealed to the courts

(The Dispute Service, 2008)

Cost

- Agents pay an annual subscription based on the number of offices they have and their membership of professional, trade or regulatory bodies.
- The subscription for landlords is based on the number of properties they own, and can be ameliorated by their membership of other bodies. It is a matter for members to decide if and how they recover the subscription from landlords or tenants.
- There is no additional fee for adjudication on disputes arising out of tenancies which started after the member joined the scheme. The company decided to fix the subscriptions for the first two years. (The Dispute Service, 2008).

Cost of participating in the scheme

Letting Agents	Cost
<i>Members of self-regulatory bodies:</i>	£583
<ul style="list-style-type: none"> ○ Association of Residential Letting Agents ○ National Association of Estate Agents ○ Royal Institution of Chartered Surveyors 	
○ Members of the National Approved Lettings Scheme	£1,050
○ Members of the Law Society	£1,138
○ Number of members	3,000

Statistics:

Tenancies and disputes

	2007-2008	2008-2009
Tenancies registered	470,323	611,861
Disputes	577	6284
Dispute rate %	0.12	1.0
Total amount of deposits protected from current tenancies registered	£466.19m	£694.7m

Income April 2008-March 2009	Amount
Subscription	£3,123,398
ARLA complaints scheme	£47,400
OEA complaints scheme	£43,590
Other income	£32,102
Interest received	£129,691
Total	£3,376,181

Costs

Overheads	Cost
Staff costs	£1,019,779
Travel and subsistence	£6,471
Board	£6,471
Staff training	£32,484
Staff recruitment	£84,973
Accommodation	£87,688
Office running costs	£199,608
Insurance	£220,730
Publicity and promotion	£52,274
External adjudication	£675,454
Consultancy and professional fees	£95,310

IT support and maintenance	£108,582
Call centre	£421,597
Total	£3,011,421

Source: The Dispute Service 2008 Annual Report

Pros of the scheme:

- Deposit disputes can be resolved quickly and cheaply.
- Going to court which takes time and can be expensive and stressful, is avoided in most cases (The Dispute Service, 2008)

Assessment of the Schemes in England and Wales

No formal assessment of the schemes outlined above has yet been carried out. However consultation with the Department of Communities and Local Government resulted in the following feedback:

‘The schemes are all working well. Positive points include the way the new arrangements were accepted so quickly, the wide coverage achieved and the low level of complaints/problems. The fall in interest rates, which was obviously unforeseen when the schemes were set up, has had an impact on the custodial scheme in that it is not currently possible for the scheme to add interest to returned deposits. Issues that have arisen in relation to the insurance-based schemes include difficulties when letting agents go out of business or misappropriate deposit money.

The average length of tenancy is reported to be 12 - 14 months, so the majority of deposits should be protected by now.

Compliance has been encouraging. In the first 2 years over 1.5 million deposits totalling over £1.4 billion have been protected. There is concern that some landlords are still not protecting their tenants’ deposits. We know that some landlords have made the decision not to take deposits. Instead they may take two months rent in advance. Others may take credit card details instead of a deposit or charge a non-returnable “administration fee”. In

addition, various new schemes are emerging which provide insurance packages aimed at both landlords and tenants to cover damage and avoid the need to take a deposit. It is very difficult to measure coverage when we don't really know how many landlords are taking deposits for assured shorthold tenancies. The proposals being taken forward following the Rugg Review of the Private Rented Sector, such as the National Register of Landlords, are designed to raise professionalism across the sector and address problems at the lower end of the market.

In the first two years there were 8,500 disputes, (estimated as less than 1% of the total.) This is lower than anticipated.

As far as I understand three schemes were introduced to provide an element of choice and competition. However, there can only be one custodial scheme. A scheme would need to be a certain size to be viable.'

(Private email from Julia Gristwood, Private Housing Management, Condition and Adaptations, Communities and Local Government, September 2009)

This analysis indicates that:

- Overall up to 1% of tenancies have been in ADR to date.
- The findings would indicate that a higher level may have disputes –up to 3% but that many of these are settled without adjudication.
- It is not possible to assess whether the introduction of deposit protection schemes in England and Wales has increased or decreased the number of deposit retention disputes due to lack of comparable data.
- Compliance levels are at about 73%.
- One of the insurance based schemes stated that they 'have discovered that calculations of the dispute rate are unreliable. Our members often don't tell us when tenancies come to an end.' (The Dispute Service, email 14.9.09)

- Some landlords have opted out of taking deposits rather than participate in the scheme and new insurance based schemes are being introduced to support these landlords and tenants. However the numbers involved are not known
- Consideration is now being given to introducing landlord registration to raise professionalism across the sector and address problems at the lower end of the market.
- The reduction in interest rates has caused some difficulties, especially in relation to passing on some of the interest to tenants.
- A custodial scheme needs to be of a certain size to be viable
- The ADR used in the England and Wales schemes is purely paper, postal or IT based. There is no appeal within the ADR system or possibility of giving evidence in person. Appeals are only to the courts and such appeals are limited to certain conditions. All other disputes between landlords and tenants in the UK are to the courts.
- The custodial scheme is commissioned out to a private profit making company.
- According to the Disputes Service Ltd., registration of tenancies has been more gradual than expected and tenancies are only brought into the system as they have turned over or been renewed.
- There may also have been some under-reporting of tenancies which ended, but that is impossible to quantify (The Dispute Service, 2008).
- Registration and submission of deposits under the custodial scheme is online or by post and in all three schemes disputes are settled speedily.

2.3 Scotland

Current situation

At present, there are no statutory deposit protection schemes operating in Scotland. The Scottish Government recently published a Review of the Private Rented Sector in Scotland (The Scottish Government, 2009). A range of evidence was collected over the course of the review on tenancy deposits through primary research (the Landlords Survey, Tenants Survey, and Scottish Opinion Survey) and secondary analysis. Details of these findings are given below:

Average rent deposit levels

In Scotland, the average rental deposit is around £550, usually the equivalent of one months rent (Shelter, 2005b).

Rate of withheld deposits

Although evidence is conflicting, the Review carried out by The Scottish Government in 2009, suggests that a significant minority of tenants have deposits withheld, in full or in part, at the end of the tenancy. The evidence suggests that approximately one quarter to one third of households seeking return of their deposit have some or all of it withheld – that is, 18,000 to 26,000 tenancies per year. It is estimated that the value of the withheld deposits is in the range from £5.3m to £8.4m per year.

Potential approaches to improving tenancy deposit practice

According to The Scottish Government (2009), there are a number of approaches that could be considered to improve tenancy deposit practice in Scotland. The Scottish Government has identified three broad options:

- 1) To continue and develop existing initiatives, some of which have been introduced only relatively recently, to raise standards in the Private Rented Sector (such as landlord registration, HMO licensing, the national accreditation scheme for landlords, which includes a complaints service in relation to housing conditions involving mediation and a tribunal and involves on site inspections, and work to make private tenants more aware of their rights) and to repeat the Tenants Survey in two years or so to establish what impact initiatives such as these have made on the issue. If there was not found to be a significant improvement in the situation, further action would have to be considered.
- 2) To provide a broad regulatory framework and leave it to the market to meet the requirements; for example, landlords and agents could be required to have client money protection insurance in place and to be a

member of an Alternative Dispute Resolution (ADR) scheme. These could be requirements of landlord registration, brought into effect by regulations, so compliance would be monitored by local authorities.

- 3) To use regulations under the 2006 Act to require deposits to be protected by a scheme or schemes (custodial or insurance based) developed for Scotland.

The Scottish Government presented the evidence from the review to the Tenancy Deposit Working Group representing landlord, tenant and other stakeholders. There were conflicting views on the significance of the problem and how it should be addressed, but there was general agreement that the second option should be ruled out. Most stakeholders favoured either the first option, with additional initiatives, or a statutory scheme, and all of them were interested in exploring the possibility of using some form of ADR to deal with disputes over tenancy deposits.

It is believed that the ADR could help tenants and landlords resolve their disputes without needing to go to court. ADR mechanisms could range from the use of separate existing or new schemes (used either voluntarily or by a legal requirement) up to a mechanism forming part of a tenancy deposit scheme.

The Scottish Government intends working with stakeholders in exploring dispute resolution options in detail, including establishing likely costs and effectiveness, before coming to a final decision on the most appropriate method to improve tenancy deposit practice (The Scottish Government, Working group, 2009)

Discussions with officials in Scotland indicates that any new scheme must present a 'proportionate response' to the issues involved. Consideration is being given to paper or IT based adjudication systems that will be cost effective and timely.

2.4 Northern Ireland

Current situation

There are currently no statutory deposit retention schemes operating in Northern Ireland. The Department for Social Development will shortly launch a consultation document on a Strategy for the Private Rented Sector in Northern Ireland. The proposals in the Strategy will reflect the outcomes of an evaluation of the 2006 Tenancies Order which currently governs the operation of the private rented sector including landlord and tenant obligations. The Department has indicated that proposals reflecting the need for any new or amending legislation emerging from the Strategy will be brought before the Assembly during 2010 (Northern Ireland Assembly, 2009),

Average rent deposit levels

According to the Northern Ireland Housing Executive (2009), more than half of tenants (53%) had to pay a deposit and/or rent in advance, and of these two thirds were in receipt of housing benefit. The average total advance payment was £349.

Rate of withheld deposits

Only 69 per cent of tenants have their deposit returned in full (Northern Ireland Housing Executive, 2009).

Support for a tenancy deposit scheme

The Housing Rights Service believe that a tenancy deposit scheme in Northern Ireland should be devised to ensure deposits are safely managed and not withheld unreasonably and that it has the potential to be funded through interest generated from deposits. The Housing Rights Service maintains that a tenant/landlord dispute resolution service, which incorporates mediation and arbitration, should form an integral part of private rented sector reform (Northern Ireland Assembly, 2009).

In 2006, the Northern Ireland Housing Executive launched a further phase of research into the private rented sector in partnership with the University of

Ulster. This has provided a more in-depth analysis of data from the 2006 House Condition Survey, including a more detailed profile of the households living in the private rented sector. A follow up household survey of 300 private tenants completed in 2007 focused on affordability and landlord-tenant relationships. Two-fifths (41%) of those surveyed had paid a deposit. The average deposit paid was £294. In total more than half (53%) had to pay a deposit and/or rent in advance and of these two-thirds were in receipt of Housing Benefit. The average total advance payment was £439.

The overwhelming majority (89%) stated that they were on good terms with their landlord/agent. Most were very satisfied (56%) or satisfied (27%) with the overall service provided by their landlord/agent. The vast majority (84%) stated they would be more likely to rent from an approved landlord if an accreditation scheme was introduced and 87 per cent of tenants were in favour of a mediation/arbitration service for disputes concerning rent, deposits, eviction or repairs (Northern Ireland Housing Executive, 2009).

2.5 New Zealand

Legislation

The Department of Building and Housing provides 'bond' or deposit services under the Residential Tenancies Act 1986.

The Department of Building and Housing

The Department of Building and Housing was established in November 2004, bringing together building and housing sector policy and related regulatory functions and dispute resolution services from across a range of government agencies (Department of Building and Housing, 2008a). The Department runs a 'one stop shop' covering all elements of the deposit protection and dispute service as well as providing a helpline and advise service to landlords and tenants. The Department estimates that the cost of its services averages out at about \$50 per tenancy.

Average deposit levels

In New Zealand deposit or 'bond' money can be any amount up to a maximum of four weeks' rent. According to the Department of Building and Housing (2008a), there have been increases in average bond per tenancy, with landlords on average seeking three weeks' bond instead of two weeks. The average monthly rent for a standard unfurnished 3 bedroom house is \$370 (www.nz-immigration.co.nz). Average deposits or bonds vary from 197 NZ dollars for state provided housing to 920 NZ dollars for private sector housing.

How the scheme works:

Registration

- The tenant and landlord both fill in and sign a 'Bond lodgement' form.
- Landlords are required to give tenants a receipt for their bond.
- Landlords must send the form and bond to the Department of Building and Housing within 23 working days.
- The tenant can send the bond directly to the Department of Building and Housing if the landlord agrees.
- The Department of Building and Housing writes to both the landlord and tenant to confirm receipt of the bond and sends them a 'Bond refund' form.

Repayment

- At the end of the tenancy, the landlord can claim some or all of the bond money if any money is owed to them by the tenant. Otherwise, the bond should be returned to the tenant.
- If the landlord and tenant both agree that no money is owed they both sign the 'Bond refund' form and return it to the Department of Building and Housing.
- If the landlord agrees that the tenant owes some money for damage or overdue rent, they write this on the 'Bond refund' form and then sign it. For example, if a bond is \$400 and both agree the cost of window

repairs is \$150, the landlord will write: Pay landlord \$150.00 Pay tenant \$250.00

- The Department of Building and Housing check all the signatures to make sure they're the same as the signatures on the 'Bond lodgement' form. If the signatures are not the same, they will not refund the bond without asking for more information.
- If the landlord and tenant have agreed on the amount of the bond to be refunded the Department of Building and Housing will pay the bond money back to the tenant/landlord as appropriate.
- When tenants move out of a property, the bond money can be transferred to a new tenancy, if the landlord agrees to release the bond.
- All bond money is transferred to landlords and tenants bank accounts electronically.

Disputes

- If the landlord and tenant cannot agree on the refunding of the bond they can apply to the Tenancy Tribunal.
- Either the landlord or the tenant can make an application for mediation through completing a Tenancy Tribunal application form, and sending it to Tenancy Services.
- Tenancy tribunal applications can also be completed online.
- Once an application is lodged, Tenancy Services will set up a mediation time with both tenant and landlord. This may be a phone conversation or a face-to-face meeting.
- If agreement is reached in mediation the landlord and tenant will not have to go to the Tenancy Tribunal.
- An agreement made in mediation can be legally binding.
- If the landlord and tenant do not reach an agreement in mediation the next step is to go to the Tenancy Tribunal for a hearing. The Tribunal is part of the Ministry of Justice, and an adjudicator will make a final decision. Tribunal hearings are open to the public.

(Department of Building and Housing, 2008b)

Costs

- There is a cost of \$20 to apply to the Tenancy Tribunal with 40% of applications being made on line.
- The scheme is funded by the interest earned on deposits. The government supports the scheme if required when interest rates are low and in turn when rates are high excess funds are returned to the government. Recently there has been a 20% reduction in income and available income has been topped up by the government.

Department of Building and Housing Operating Costs 2008

(Department of Building and Housing, 2008a)

Overheads	Cost \$000
Administration	5,297
Communications	1,086
Computer costs	1,348
Premises costs	485
Rental and leasing costs	3,433
Tenancy Tribunal	1,625
Consultancy	2,599
Travel – domestic and overseas	1,984
Audit fees for the audit of financial statements	82
Audit fees for the audit of Residential Tenancies Trust Account statements	9
Audit fees for audit of NZ IFRS transition	5
Audit fees for other services	4
Net loss on disposal of property, plant and equipment	9
Other	14,081
Total operating costs	32,047
Employees	358 employees in the Department

	spread across two national and 20 regional offices
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Statistics

According to the Department of Building and Housing in 2009:

- 440,000 bonds were held in July 2009;
- 290 million dollars of bonds were held in July 2009;
- They received 200,330 bonds for lodgement and processed 196,620 bond refunds in 2008-an average of 16,694 tenancies per month;
- 98% of bond lodgements were processed within 10 working days of receipt.
- 82% of bond refunds were refunded correctly based on information held at the time of refund, and were completed within 2 working days.
- They answered 224,010 calls for advice on bonds;
- They answered 219,458 calls for advice to landlords and tenants on tenancy issues;
- A total of 11,334 applications were received through their online application process, representing nearly one in every three applications made by a private landlord or tenant.
- 47,667 Tenancy Tribunal applications were received in 2007/8 and more than 50,000 in 2008/9.
- 28,541 tenancy disputes were resolved through the Department's mediation process.
- Aim to have 50% of mediation cases settled by phone by end 2009 and 75% by July 2010
- 85% of applications referred to mediation were scheduled within 10 working days of receipt
- 18,137 disputes were resolved through adjudication by the Tenancy Tribunal.
- 67% of tenancy applications proceeding to the Tenancy Tribunal had a hearing within 20 working days (excluding vacated applications).

- 72% of applications for dispute resolution (excluding vacated positions) were resolved out of court.
- 8% of Tenancy Tribunal applications were resolved through telephone mediation.
- 46% of Tenancy Tribunal applications involving telephone mediation process were resolved within 24 hours.
- 83% of appeal hearings were held within 20 working days of receipt of the application.
- 118 investigations into non-compliance or alleged breaches of the Residential Tenancies Act 1986 were undertaken.
- Less than 10% of tenancies were in dispute at any one time. This includes some repeat applications for the same tenancy.
(Department of Building and Housing, 2008a)

Low Income Housing

Contact with the Department of Building and Housing revealed that a higher proportion of disputes -25% - involve low income, social housing even though such housing accounts for only 10% of the housing rental stock. In some areas up to 25% of disputes are repeat cases involving the same tenancies. These cases they say involve 'low income areas, poor landlords etc'. Some such landlords they say use the dispute mechanism as a 'cheap data collection service' or as a threat to encourage tenants to pay rent'. They estimate that the number of 'real' disputes could be much lower- under 5%.

Pros of the scheme:

- Supports the effective operation of the rental housing market.
- Supports tenants and landlords to make well-informed decisions, operate with confidence in the rental housing market and resolve disputes.
- Online applications for the dispute service and an online registration system are currently being developed.
- 72% of applications for dispute resolution were resolved out of court.
- Increasing telephone mediation services resolves disputes without the need for the landlord and tenant to physically attend an appointment.

- The majority of bonds are refunded (82% in 2008)
- Speedy resolution of disputes

2.6 Australia

New South Wales was selected because it operates a 'bond' system where bonds (deposits) are held by a third party and they also operate an ADR system.⁵ All bonds (deposits) taken on private residential properties have to be lodged with the Office of Fair Trading, Renting Services within seven days. The Renting Services send the tenant an advice slip and a rental bond number. Non-compliance is punishable by fines

How dispute procedures work

In New South Wales, landlords and tenants apply to the Consumer, Trader and Tenancy Tribunal (CTTT) if there is a dispute in relation to the return of a deposit from the Rental Bond Board. The CTTT is a specialist independent, accessible Tribunal for the fair and timely resolution of disputes according to law. The CTTT resolves disputes at hearing or by alternative dispute resolution, generally through conciliation. Conciliation is a confidential, private process that allows both parties to:

- Look at each other's evidence before a hearing e.g. witnesses statements, photographs, receipts, quotes, reports
- Consider the strengths and weaknesses in each party's case
- Talk to each other
- Understand the other person's case
- Search for options to achieve agreement they can live with

Conciliation results in a negotiated, mutually acceptable agreement which means:

- Parties control the result of the dispute
- A speedy and certain solution on the day
- Avoiding Tribunal determination after what may be a more lengthy Tribunal hearing

⁵ ⁵ INTERNATIONAL REVIEW OF DISPUTE RESOLUTION MECHANISMS IN RELATION TO DEPOSIT RETENTION AND THIRD PARTY COMPLAINTS OF ANTI-SOCIAL BEHAVIOUR IN THE PRIVATE RESIDENTIAL TENANCY SECTOR, Candy Murphy and Associates, December 2006

The hearing is facilitated by a Tribunal Member or conciliator, who is an impartial third party who:

- Is trained in helping parties to achieve agreement
- Checks all necessary legal documents
- Asks questions to identify and clarify the issues that need to be resolved
- Assists parties in generating options and possible solutions in keeping with the law
- Helps write down any agreement reached by the parties
- The Tribunal member or conciliator is not an adviser and does not make decisions for parties

If agreement is reached by both parties they write down and sign the agreement. If a conciliator they help write the agreement and prepare a draft formal Tribunal Order. If no conciliator is present the written agreement is taken before the Tribunal for the member to approve it in the hearing room and make a formal Tribunal Order.

If agreement is not reached, nothing said in conciliation can be repeated in the hearing unless the parties consent. If possible the Tribunal will hold a hearing on the same day. If this is not possible the application will be decided on another day. (www.fairtrading.nsw.gov.au).

The Rental Bond Board in its Annual Report 2007-2008 stated that:

- 'Record 635,490 rental bonds valued at \$741 million held in custody by the Board at 30 June 2008.
- \$ 4.1 million in core service funds provided for the Tenants Advice and Advocacy Program(TAAP), which is jointly funded by the Board and Fair Trading.
- Use of the Rental Bond Internet Service (RBIS) continues to grow – the online rental bond self service channel for real estate property managers now handles 10% of refund claims and 44% of enquiries.'

The 2007-2008 Annual report of the Consumer Trader and Tenancy Tribunal found that there were 51,080 applications from landlords and tenants during 2007-2008 for tenancy related disputes. Of these 5,312 were disputes in relation to rental bonds. This indicates that less than 1% of tenancies are in

dispute (5312 divided by 635,490) and that only 10% of disputes are about rental bonds.

Other key figures are that about half of the total number of applications were made on line and 79% were finalised prior to or at the first hearing.

2.7 Conclusions

Assessment of International Deposit Protection Schemes

A recent survey conducted by The Deposit Protection Service found that ninety-one per cent of tenants feel safer since tenancy deposit legislation was introduced two years ago. Only 9 per cent said the legislation had made no difference at all (www.depositprotection.com). However no independent evaluation has yet been carried out in England and Wales of the schemes in operation and no independent evidence is available yet as to whether the custodial scheme is proving to be financially viable in today's interest rate environment. No figures were available on the costs of establishing the custodial scheme due to the commercial sensitivity of this information. We understand that no interest has as yet been paid to tenants.

The available figures indicate that on average in Australia and England and Wales only about 1% of deposits are adjudicated on at present. However there is some evidence for England that a higher level, maybe up to 3%, are disputed but settled prior to arbitration. This indicates that the levels of disputes are lower than expected before the schemes were set up. It is not clear why this is the case -whether initial estimates were too high or whether many disputes are not yet coming into the dispute resolution system.

In New Zealand the dispute rate is higher –at about 5-10% and such disputes are seen to be concentrated at the lower end of the market with a number of repeat tenancies involved. However, only 10% of disputes are about rental bonds.

Feedback from the insurance based scheme providers is that agents are happy with the scheme. It is unclear whether the level of deposits required

has increased since the introduction of the scheme. However in New Zealand a maximum level of deposit/bond is enshrined in law.

Available evidence suggests that there has been a high, but not a 100% level of compliance with the schemes in England and Wales by landlords. Tenants have an incentive to ensure that landlords comply as the court must order the non-complying landlord to pay to the tenant a penalty of three times the deposit amount within 14 days of the making of the order. There is no provision for this penalty to be reduced/mitigated.

Some landlords in England and Wales have stopped taking deposits rather than join one of the schemes, leaving their tenants outside the dispute resolution service; however no numbers are available on this.

No information was available on whether low income tenants were more likely to be in dispute than other tenants. However information from New Zealand-where a similar scheme has been operating for over twenty years is that low income tenants and 'bad' landlords account for a disproportionately high percentage of tenancies in dispute.

Another interesting feature of the English schemes is that their dispute resolution service is based on independent arbitration, with each scheme having its own ADR system. The ADR is based on available paper work only with no opportunity for their decision to be appealed within the ADR mechanism. Appeals have to be referred to the courts and such appeals are allowed only on limited grounds.

Views expressed from commentators in England and Wales are that more than one scheme must be available to offer landlords and tenants choice and to provide relevant services to the growing number of agents operating in the private residential market. Landlords initially were generally not in favour of deposit protection schemes and it was seen by many commentators to be equivalent to 'a hammer to crack a nut'. However the view was also expressed that landlords have become more favourably disposed to the

scheme as they have seen how it operates. However there is no hard evidence on this. There is also a view that the introduction of the schemes has led to an improvement in landlord/tenant relationships and has improved practice within the sector with more landlords taking inventories in case they are required in a subsequent dispute case.

As highlighted in earlier studies different countries are starting from different positions, Scotland has a landlord registration system but as yet no ADR or deposit retention schemes. England and Wales have three deposit protection schemes with built in paper based ADR with limited appeal only to the courts but no landlord registration system. However they are considering setting up a landlord registration system to improve the professionalism of the sector. New Zealand has a 'one stop shop' system of registration, holding of deposits, ADR and an extensive information and helpline service for landlords and tenants, with personal representation at tribunals, but is moving towards more IT based systems.

All jurisdictions have speedy dispute resolution systems –most cases being resolved within one month. No country is exactly similar to Ireland and therefore no other system is exactly replicable in Ireland.

Chapter 3 Stakeholder Views

Introduction

A number of stakeholder interviews were held to obtain their views on the introduction of a deposit protection scheme in Ireland. Eleven interviews were held (See Appendix for a list of interviewees).⁶

Views on the Introduction of a Deposit Protection scheme in Ireland

Views on the possible introduction of a deposit protection scheme in Ireland are deeply divided. Groups supporting tenants in the private residential sector, especially Threshold are very strongly in favour and have done a lot of preliminary work on the subject. These views are supported by MAPS and the USI. On the other hand landlords groups are strongly opposed to such a scheme or schemes in principle and are not influenced in their view by the potential viability of such a scheme or schemes. Opposition is slightly lower for an insurance protection scheme than a custodial scheme but neither type of schemes are supported by the landlords represented interviewed for this study. Added to this, there is a view that independent evaluations of the viability of the UK systems and assessments of their impact on the private residential market are required before any assessment of their effectiveness can be made.

The main reason given for the views expressed by both sides are given below.

Reasons given for Opposition to a Deposit Protection Scheme

- Only 1% of tenancies in Ireland currently end in dispute. A compulsory deposit protection service is therefore an overly complicated response to this problem. Attention should be focused instead on improving the speed with which the PRTB deals with such disputes. The current

⁶ Despite a number of contacts I was unable to set up an interview with Irishlandlord.com or Focus Ireland. The National Property Services Regulatory Authority did not have a view on the issue. A brief phone conversation plus some documentation was possible with the IAVA

system was described as 'a disgrace' by one group, leading to very serious difficulties for some landlords, and these difficulties will increase in the current economic environment.

- Some interviewees recommended that deposit retention disputes should be handled by a separate company to the PRTB and simple cases should be settled speedily using telephone mediation wherever possible- in 10-20 days as is the case in England and Wales and New Zealand and the PRTB should concentrate on problem tenancies.
- There was a general view that disputes involving a range of issues including deposit retention arise because of the way the existing system operates and if tenants and landlords knew that cases would be settled speedily, based on hard evidence, such disputes would be less likely to arise.
- There is insufficient information on the extent to which deposit disputes are limited to a particular sector of the market or to particular tenants and landlords and this issue would need to be investigated in depth before any decision on a deposit protection scheme is made.
- The current system results in the return of all deposits where found to be required by the PRTB.
- The situation in the UK is very different as they have no landlord registration in England and Wales and most landlords in Ireland have only one property. Prior to the deposit protection schemes being introduced in England and Wales there was no alternative dispute resolution service either.
- The ADR schemes subsequently introduced in the UK are very different to those operating in Ireland as they are based on an assessment of the paper based evidence only with limited appeal only to the Courts.
- There is no reason to introduce a deposit protection scheme as a means of raising funds as the PRTB is very well resourced financially.
- The PRTB already has too many functions to operate efficiently with significant numbers of staff involved in registration issues. The registration system is overly bureaucratic and this system, coupled with

the delays in settling disputes referred to the PRTB has created a very negative attitude among landlords to the PRTB.

- Such a view means that landlords groups would be very resistant to any extension of the PRTB remit at the present time. Landlords' groups state that the PRTB should focus on changing its existing systems to allow it to carry out its current functions more efficiently; including the introduction of paper and IT based registration, paper and telephone-based mediation for cases below a certain level of disputed amounts, staffed by mediation experts, a simplification and/or hiving off of the registration process and a concentration in Tribunals on speedy resolution of cases involving illegal evictions and overholding.
- Some landlord groups in the UK were already linked to insurance schemes and had a particular interest in becoming involved in an insurance based deposit protection scheme. There was a view that insurance schemes would not have a similar level of interest here due to the small size of the Irish private rental market.
- At the lower end of the market the rent supplement system needs to be reformed with deposits being paid directly to landlords and with a speedier role out of the Rental Accommodation Scheme with transference to RAS after 6 months rather than 18 as recommended by the McCarthy report.
- The existence of a deposit protection system might lead to an increase in disputes because at present some landlords forgo their deposit rather than enter into the existing dispute resolution procedure.
- Landlords are already facing increasing costs in a very difficult market with the introduction of BER, new accommodation standards, loss of tax relief etc.
- No incentives were seen as likely to change landlord's views, and there is suspicion that promised incentives would not be implemented, given that the existing legislation has not been implemented as expected by landlords.

- There is a need or more information on rights and responsibilities of landlords and tenants and about how to deal with issues involving accommodating being left in unacceptable conditions.
- Overall there are a small number of very difficult cases involving deposit retention and the focus should be on identifying these tenancies and developing efficient systems to address them.

Reasons given for Supporting a Deposit Protection Scheme

- The deposit belongs to the tenant and third party holding of the deposit simply enshrines this fact.
- While numbers of deposit disputes are low as a percentage of total tenancies they are a high and increasing proportion of disputes handled by the PRTB and are clogging up the PRTB dispute mechanisms.
- Online registration of landlords could easily be accompanied by on line transfer of deposits to a custodial scheme.
- Those at the lower end of the market need additional protection as they are vulnerable to unscrupulous landlords some of whom unfairly retain deposits which prevent tenants moving on and put them at risk of homelessness.
- A significant number of landlords, especially in the student accommodation market are not registered; a deposit protection scheme would increase the pressure on landlords to register their tenancies. International students in particular often have serious difficulties in getting their deposits back, especially if they are leaving the country and need extra protection.
- Currently the DSFA are not getting deposits returned and this is creating a drain on exchequer resources. If a deposit protection scheme was in operation the Government would only need to guarantee deposits and the current funds going into deposit protection would be saved. (According to the DSFA deposits are not automatically paid to tenants on rent supplement and are only paid on an exceptional needs basis. In 2008 12,459 deposits were paid at a

cost of €7.14m. Tenants are only paid a deposit once and there is an expectation that the deposit moves with the tenant. There is no information available from the PRTB or the DFSA on the number or proportion of rent supplement tenants in dispute about their deposit.)

- The deposit protection schemes are operating well in England and Wales with high rates of compliance and with speedy resolution of disputes.
- The private rental sector is an increasingly important part of the housing arrangements of those on low incomes and therefore the likelihood is that the needs for deposit protection scheme will increase. Added to this, in the current economic climate there is a view that there is likely to be more movement around the private rental sector, more 'absentee' and 'amateur' landlords, and this is also likely to increase the number of disputes about deposit retention.
- The introduction of a deposit protection system should be accompanied by a wide ranging education campaign to landlords and tenants about their responsibilities in the private rented sector.
- The PRTB is currently viewed as inefficient and needs reform including the dissemination of guidelines to tenants and tenant groups as to what represents 'wear and tear, what constitutes a deposit etc, and the introduction of more speedy, user friendly mediation systems.
- A custodial scheme could put the PRTB on a strong long term financial footing
- The introduction of such a scheme could remove the need for other agencies such as Threshold and MABS to devote scarce resources to deposit retention disputes and allow them to concentrate on other very serious tenancy issues relating to illegal evictions etc.
- The introduction of a deposit protection scheme could be accompanied by a rapid expansion of the RAS with benefits to both landlords and tenants.

Conclusions

Stakeholders' views on the introduction of deposit protection schemes are widely divided along landlords and tenants line. Views on the impact of the introduction of such schemes in Ireland are also widely divided. Both negative and positive views appear to be reinforced by frustration with the delays in the current PRTB systems. There is limited knowledge of how international deposit protection schemes operate in practice and many questions were raised about how the introduction of similar schemes in Ireland would impact on current Irish legislation, policy and practice in this area. e.g. how they would impact on the ADR system in operation in Ireland under the 2004 legislation.

Chapter 4 Estimates of Financial Viability of introducing a Deposit Protection scheme in Ireland

Introduction

The international review outlined above indicates that the financial viability of a deposit protection scheme depends on a wide range of factors. It depends on:

- Whether there is one or more schemes,
- The level of compliance
- Deposit levels
- Interest rates
- Dispute rates
- The type of dispute resolution service used and its costs
- The extent and nature of the appeal system
- The level of set up costs and how these are funded
- Average length of a tenancy
- The level of transition costs involved if a dispute resolution service is added on to the existing PRTB registration and dispute mechanisms
- The associated promotion, advertising and advice service costs
- Whether this business is subcontracted to a specialist private service provider or is run by the PRTB or another state body

The large number of factors and the number of assumptions that need to be made in relation to each factor illustrates that a comprehensive financial modelling system would need to be developed, tested and run to get really hard data on the financial viability of a deposit protection scheme

What is attempted here is to illustrate the effect of different assumptions on the viability of a scheme or schemes.

Illustrative Costings

Assumptions

1. One custodial scheme only.
2. Set up, IT, promotional and advertising costs would be additional to the costs outlined here.
3. Costings are based on the assumption that the scheme is self financing
4. All tenancies are eligible for the scheme in three years with a third coming into the scheme each year.
5. No interest is returned to tenants or landlords due to the current low interest rate environment
6. Fees to an independent service provider if required are not included
7. All deposits returned are compensated for by new deposits
8. Costs are based on PRTB existing costs

The actual costs are therefore likely to be higher than estimated here under each of the assumptions.

Estimates of Costs and Revenue of a Deposit Protection Scheme in Ireland- three years after its initial introduction (based on PRTB 2008 figures)

YEAR	Number of registrations	Estimated compliance rate after 3 years	Average deposit	Total value of deposits	Income (Interest rate 2% per annum)	Income (Interest rate 1%)	Income (interest rate 3%)
Yr 1	68,666	33%	€1000	68.67m	1.37m	0.69m	2.07m
Yr 2	137,332	66%	€1000	137.3m+ 1.37m = 138.67m	2.77m	1.39m	4.17m
Yr 3	206000	100%	€1000	206 mill +4.14m= 212.86m	4.20	2.10m	6.3m
Total					8.3m	4.18m	12.5m

Estimated Costs

YEAR	Level of Disputes (0.23%)	Level. of Disputes (1%)	Level of Disputes (5.0%)	Cost of Disputes Adjudication (Estimated cost €200)			Cost of Disputes- 10% of cases going to Tribunal (Estimated cost €2700 (including stenographer))			Total Costs	Plus 50% Overhead costs*	Total Costs
				0.23%	1%	5%	0.23%	1%	5%			
1	158	686	3493	31,600	137,200	686,600	43,200	185,220	926,100	74,800- 1,612,700	37,400- 80,350	112,200- 2,419,050
2	316	1373	6866	63,200	274,600	1,373,200	86,400	369,900	1,854,900	149,600- 3,228,100	74,820- 1,614,050	224,460- 4,842,150,
3	474	2060	10,300	94,800	412,000	2,060,000	126,900	556,200	2,781,000	221,700- 4,841,000	110,850- 2,420,500	332,250- 7,261,500

* Based on current overhead rates in the PRTB- €3.5 million as a proportion of total expenditure €6.5 million

Estimated Revenue and Costs

Year	Income (Interest rate 1%)	Income (Interest rate 2% per annum)	Income (interest rate 3% per annum)	Total Costs
1	0.69m	1.37m	2.07m	156,780-1,650,060
2	1.39m	2.74m	4.17m	219,960-4,793,400
3	2.10m	4.20m	6.30m	332,250-7,261,500
	4.18 mill	8.31m	12.54m	

Comment

These illustrative figures indicate that the financial viability of a deposit protection scheme depends on the assumptions made on a number of key indicators. For instance a low dispute rate accompanied by a high interest rate environment is highly financially viable whereas the opposite - a high dispute rate and a low interest rate environment –would not appear to be financially viable. Overall it would be necessary to carry out a very detailed financial modelling exercise based on much more precise costing figures than available here, including estimates based on a lower arbitration and tribunal costs, before any definite conclusion could be reached on the financial viability of a deposit protection scheme in Ireland. This would include taking into account the effect on such viability of the possibility of having two deposit protection schemes, including an insurance based scheme.

Chapter 4 Conclusions and Recommendations

Looking at the key issues to be explored in this report, the findings indicate the following:

What lessons can be learned from England, Wales, Scotland and New Zealand in relation to the potential implementation of a deposit retention scheme.

1. The deposit protection schemes introduced in 2007 in the England and Wales are described as working well. However there has been no independent evaluation of their efficiency, effectiveness and impact to date.
2. Approximately 75% of tenancies are estimated to be protected to date in England and Wales. No information is available on whether compliance tends to be more concentrated in particular elements of the market.
3. Based on the available information, it appears that 1% of tenancies are arbitrated on in relation to deposit retention issues in England and Wales and Australia, a similar percentage to that currently arising in Ireland. This is a much lower rate than anticipated by those examining the potential introduction of the scheme, or estimated in Scotland for instance. There is no information available as yet to indicate whether this is because a higher proportion of tenancies not yet protected may be in dispute or whether the introduction of deposit protection has reduced the level of disputes.⁷ (There is some evidence that up to 2% of additional tenancies involved some kind of dispute but were settled prior to arbitration.)
4. Estimates of up to 5% tenancies in dispute were found in New Zealand where such schemes have been in place for over 20 years. Disputes there tend to be concentrated on the lower end of the market and are seen as likely to involve some repeat tenancies and landlords.
5. Problems are still seen to remain at the lower end of the rental market in all the countries studied. However no hard data is available on this.

⁷ This could also be because original estimates of the extent of disputes were incorrect.

6. Custodial schemes are currently facing difficulties with low interest rates. Such schemes are supported by government if they can not meet their commitments.
7. Feedback from the UK is that a minimum size is required before deposit protection schemes are viable although no figures are available on the parameters of a minimum scheme.
8. Insurance based schemes face difficulties when agents go out of business, an increasing problem in current markets.
9. No comprehensive information could be obtained on the costs involved in running deposit protection schemes internationally due to both the commercial sensitivity of the information sought and the non-availability of the relevant data.
10. Scotland and Northern Ireland are considering the introduction of similar schemes but of yet have not made a decision on this and a number of other options are being considered.
11. In England and Wales a long period of consultation supported by very comprehensive financial modelling was undertaken before the schemes were introduced.
12. No country started looking at these issues from a similar place to where Ireland is now. Prior to the introduction of deposit protection schemes in England and Wales there was no ADR, appeals were only made to the courts and there continues to be no ADR for other landlord/tenant disputes in these countries.
13. England and Wales have no registration of landlords but consider such registration necessary to raise standards and to deal with problems at the lower end of the market. New Zealand has a comprehensive system of deposit protection, advice to landlords and tenants and ADR and is moving towards a more IT paper based ADR system to reduce costs and increase efficiency.
14. Dispute resolution in the UK is based on an independent arbitrator who reviews the available paper work with no possibility for personal appearance before a tribunal and appeal on limited grounds only is available to the courts.

15. Deposit disputes are settled speedily in England and Wales and New Zealand, again this is different to the situation in Ireland

Assessing the schemes in England and Wales against their original objectives indicates the following:

- 1) **Return of deposits.** Dispute rates so far have been much lower than the level forecast. This may indicate a reduction in the level of disputes. However forecasted figures were estimates only. As the scheme has only been in place for 2 years it could also indicate that cases involving a higher level of disputes are not yet in the scheme.
- 2) and 3) Small **claims court and arrant of execution savings.** Costs to tenants involved in taking cases to courts have been removed and there is now an incentive to tenants to ensure that tenancies are protected as they will get 3 times their deposit back from the courts if they can prove that their landlord has not protected their deposit.
- 4) **Additional interest earned on deposits.** Interest earned on deposits is not currently being returned to tenants because of the low interest rate environment which has put the viability of the custodial scheme under pressure.

***Is an Irish deposit retention scheme financially viable?
How would the scheme need to be designed to make it financially viable?***

It proved impossible to answer these two interlinked questions comprehensively given the available data and time available to complete this report. Illustrative figures presented in Chapter 4 indicate the number and complexity of the assumptions that need to be made to begin to answer this question. Additional factors that could not be costed in this study relate to the impact of the possible introduction of a deposit protection scheme in Ireland on the role, operation and financing of the PRTB and particularly in relation to how the Board would continue to deal with other landlord-tenant disputes. Neither was it possible to estimate the set up costs, particularly IT costs involved in setting up such a scheme. The impact of a less costly means of

settling such disputes in Ireland would also have to be taken into account in any further financial modelling work

It is worth noting that the state is currently providing a number of deposits for those on rent supplement. The DSFA stated that approximately 7 million euro was advanced to such clients in 2008. Under a deposit protection scheme it is likely that the state would guarantee such deposits but would not be required to put such deposits into the scheme. This therefore represents a potential saving to the state.

If a deposit protection scheme was self financing the state could also benefit in terms of reduced funding required by the PRTB. However the other services provided by the PRTB would still require some level of state funding.

The illustrative costings in Chapter 4 do show that the viability of a deposit protection scheme in Ireland will be largely determined by the level of disputes, the cost of dealing with such disputes and the level of interest that can be earned on the deposits held.

In making these assumptions it is difficult to assess whether there will be a rise or fall in such disputes under a deposit protection scheme. The current rate of disputes in Ireland is about the same as that in England and Wales and Australia. However, as referred to above the rate in England and Wales is significantly lower than that originally expected based on earlier research. As stated above there is approximately a 75% compliance rate so far in England and Wales. If the level of compliance is lower in the more 'problematic' part of the market it may be that dispute rates will increase as compliance rates increase.

In an Irish context it is not clear whether disputes rates in Ireland as reflected in the level of such disputes dealt with by the PRTB are unrealistically low. Figures provided by Threshold indicate a higher and increasing level of such disputes- 3,688 cases dealt with by Threshold in 2008 compared to 1603 in

2007, many of which were settled without recourse to the PRTB, compared to 480 processed and 706 applications to the PRTB in the same year.

What are the potential costs (including administration, IT) and benefits (e.g. reductions in disputes) of establishing a deposit retention scheme in Ireland?

As referred to above it was not possible within the parameter of the current study to clearly establish the costs of setting up a deposit protection scheme in Ireland. To establish such costs it would be necessary, among other things, to have broad agreement on how such a scheme might operate and this has not yet been considered. For instance would the scheme be linked to landlord registration, be IT based with IT or paper based arbitration only, with no appeal except on limited grounds to the courts, as in England and Wales, or would it involve the current PRTB dispute system involving automatic appeal and personal representation at tribunals? Would the introduction of such a scheme reduce the number of such disputes and thus free up PRTB resources leading to more speedy resolution of all disputes by the PRTB? Would it be outsourced to a private provider? (If the decision is to outsource it to a private provider it is more than likely that an arbitration system similar to that operating in England and Wales would be required, involving significant changes to the current legislation in this area.)

If the effect of the introduction of a deposit protection scheme in Ireland was to increase disputes, even temporarily, the financial viability of such a scheme would be more assured if the related dispute resolution mechanisms were less costly than they are at present.

In relation to benefits, such a scheme would be positive for tenants in the private residential sector as it would give formal recognition to the fact that deposits belong to tenants and such tenants would be assured that their money was safe. If interest rates rise, it could be possible for tenants to obtain interest on their deposits. As referred to above the effect of such a scheme on dispute rates is difficult to gauge as current dispute rates in England and Wales and Australia are similar to rates in Ireland. The expectation, based on

surveys of tenants was that dispute rates in England and Wales would be higher. If the effect of the introduction of such a scheme in Ireland was to increase the number of notified disputes due to the scheme facilitating more of those affected by wrongful holding of deposits to come forward than is now the case, this could not be seen as a negative development. On the other hand, if the effect of such a scheme is to reduce such disputes from their current level of 480 (processed in 2008) to 706 (applications received) the question raised by landlord groups is whether such a comprehensive scheme is a cost effective response to the current problem and whether a simpler response is possible. However answering such a question is as much an issue of equity as efficiency and is influenced as much by the value placed on the principle that landlords should not hold deposits as they belong to the tenant as by the fact that such disputes are currently taking up a considerable proportion of the resources of the PRTB.

What are the advantages and disadvantages of alternative models (e.g. voluntary, compulsory; custodial, insurance based; retention by public or private sectors)?

International experience helps to answer these questions:

Type of Model	Advantages	Disadvantages
Voluntary	Does not require legislation Likely to face less opposition than a compulsory scheme	Low take up Likely to be taken up by the most readily compliant landlords
Compulsory	Will over time ensure a high level of compliance Will give tenants security that their deposit are safe Has the potential to be self financing with lower	Its introduction will be strongly opposed by landlord groups Is seen by landlords as unnecessary given the low level of disputes at present and the fact that

	<p>costs to the state</p> <p>If sufficiently funded and if it involves changes in the current system and /or in the costs of the current ADR system has the potential to facilitate the more speedy resolution of disputes and to be cost effective</p> <p>Could free up resources of the PRTB and other organisations such as Threshold, if it reduced the number of disputes they have to deal with</p> <p>May enable more landlords and tenants to have deposit disputes adjudicated upon at no extra cost</p>	<p>these disputes are settled fairly under the existing system, albeit with considerable delay</p> <p>Could require significant legislative and operational changes in our existing dispute mechanisms</p> <p>Some landlords may stop seeking a deposit to avoid participation in the scheme.</p>
Custodial	<p>No costs involved for landlords of tenants</p> <p>Self financing under certain parameters</p>	<p>Questionable whether it is viable with the current dispute mechanism in Ireland and at current interest rates.</p> <p>Possibly high set up costs</p> <p>Likely to be very strongly opposed if this is the only scheme as it</p>

		<p>allows no choice to landlords</p> <p>May result in higher costs due to lack of competition if it is the only scheme.</p>
Insurance based	<p>May be more attractive to agents that may already be involved in different insurance schemes.</p> <p>This part of the market has been growing but has been hit by the current recession.</p> <p>If one of two schemes competition in the market may reduce costs</p>	<p>Landlords and agents are required to pay fees to the scheme administrators. May not be suitable in the small Irish market with a large proportion of 'small' landlords.</p>
Publicly run	<p>Profits made would accrue to the state.</p> <p>May be more acceptable to tenants</p> <p>Could link in with the PRTB's other work and its move to more IT based systems, as well as help fund it</p>	<p>A publicly run scheme may experience greater difficulties in streamlining the existing arbitration system and such streamlining may be necessary to reduce costs and speed up settlement times.</p> <p>However we were unable to find out any detailed information on the cost-effectiveness of the New Zealand</p>

		scheme which is most similar to the current Irish dispute resolution scheme.
Privately run	Some of the risks involved in setting up and operating the system can be passed on to the private provider, e.g. lower than anticipated volumes in deposits and higher ADR cases, interest rate volatility. May require streamlining of the existing deposit dispute mechanisms Performance indicators and related penalties can be built into the contract awarded to the provider.	Some or all of the profits will be accrued by a private organisation. The state will likely have to guarantee the scheme Will require siphoning off of deposit retention disputes from the PRTB

How would such a scheme work in practice (including appeals)?

As outlined above this is an area that needs to be explored further as the answer depends on the type of system that is set up. A system that is linked to on line landlord registration would be possible. If a separate, privately run system is set up this would create additional initial difficulties in separating the deposit dispute mechanism from the PRTB's wider dispute resolution mechanisms. Also if the current dispute mechanism is used this is likely to be costly, especially if it results in additional dispute cases than that experienced at present and is unlikely to reduce settlement times- a key problem with the

current system as perceived by both landlords and tenant groups. A more streamlined dispute resolution system, with much more limited opportunities for appeal as operated in England and Wales is likely to be more efficient but may not be acceptable to stakeholders.

How would the new body link in with the existing Dispute Resolution Services of the PRTB?

As discussed above, the answer to this question depends on the type of system that is set up. If it were to be run by the PRTB and involves similar ADR mechanisms to other disputes it could be added on to the PRTB functions with some additional costs. It could also potentially fund all or part of the PRTB's work. Again here further information on the New Zealand system would be very helpful. On the other hand if a deposit protection scheme were set up and run independently this would create difficulties where disputes involved more issues than deposit retention. However it has proven possible to operate such a scheme in England and Wales- although they do not have ADR for other landlord/tenant disputes.

A key issue here is whether a deposit protection scheme would help isolate and reduce such disputes and would act as an incentive to both landlords and tenants to not link deposit issues to other potential dispute issues.

What incentives would be likely to have a beneficial impact on the implementation and take-up of any such new scheme?

The landlord groups that were consulted in the course of this study expressed total opposition to any such scheme and such views were not assuaged by any potential incentives. However if a decision was made to go ahead with a scheme one possibility would be to reduce the current registration costs to landlords who participated in the scheme. The effects of such an incentive on the funding of the PRTB would have to be assessed.

Tenants could be incentivised to drive participation in the scheme, if as in England and Wales, new legislation involved a fine on landlords found to have

not protected a tenant's deposit equivalent to 3 months deposit, to be given to the tenant.

If the introduction of the scheme was linked to more speedy resolution of deposit retention disputes this could increase support for such a development.

Would the introduction of a new scheme have any impact on the level of deposit required from tenants on taking up a new lease?

Experience in England and Wales indicates that the introduction of such a scheme may have increased the level of deposits required. However the evidence is inconclusive as only estimates of deposit levels were available prior to the introduction of the deposit protection schemes. There is also evidence that some landlords may stop seeking a deposit to avoid participation in the scheme. There is no information on what part of the market this might impact on most, if any. In New Zealand a maximum level of rent deposit was enshrined in the relevant legislation.

Would the scheme have any particular implications for low-income / state supported tenants?

Under a custodial scheme it is likely that the state would only have to guarantee the deposits of rent supplement clients with savings to the state –in 2008 the state allocated over €7 million euro for deposits to rent supplement tenants. The impact of such a scheme on the level of difficulties experienced by low income tenants in relation to deposits unfairly withheld is difficult to gauge based on current information. In New Zealand a high proportion of such disputes involve the lower end of the market and repeat tenancies and landlords. No information on this issue is available from the English schemes. If such a scheme is introduced it will increase such tenants confidence that their deposits are safe. If the introduction of such a scheme is accompanied by more speed settlements of disputes it is likely to have very significant positive effects for such tenants. More research is needed on how the current system is impacting particularly on low income tenants and on how such tenants are affected by the availability of deposit protection schemes internationally.

Overall Assessment

Deposit protection schemes have been introduced apparently successfully in a number of different countries. Such schemes guarantee the protection of tenants' deposits and are being run on a self financing basis; however with some difficulties in the current low interest rate environment. Most such countries have more streamlined dispute resolution mechanisms than those currently operating in Ireland.

In Ireland while the level of such disputes is equivalent to 1% of tenancies, a similar percentage to that in England, Wales and Australia but lower than in New Zealand, such disputes account for a significant proportion and a growing percentage of disputes handled by the PRTB.

The financial viability of such schemes is influenced by a wide range of factors; most especially by the level of disputes, the cost of the dispute resolution mechanisms and by the level of interest rates paid on deposits. The countries where such schemes are in place are exemplified by the speed at which disputes about deposit retention are resolved and in England and Wales by the limited opportunities provided for appeals.

The effect of such schemes on the level of disputes is inconclusive. Experience in the UK indicates that such schemes may have reduced the level of such disputes; however the data is not strong. In New Zealand dispute rates are higher and concentrated on the lower end of the market. More research is needed on this area.

A key parameter of any such scheme must be to ensure that it benefits those at the lower end of the rental market.

Recommendations

Before deciding on the introduction of similar dispute mechanisms in Ireland it is recommended that the following actions are taken:

1. Carry out research on deposit retention disputes affecting the most vulnerable tenants in the private rental sector to identify how best to minimise the level of such disputes, to assess their impact on these tenants and the extent to which such disputes are being successfully dealt with by the existing dispute resolution mechanisms.
2. Commission the development, piloting and running of a full financial model similar to that undertaken in England, including allocation of the necessary staff within the PRTB to work with the consultants on the costings and other assumptions involved, in consultation with relevant government officials in England.
3. Examine the implications of introducing a deposit protection scheme in tandem with the introduction of on line landlord registration by the PRTB.
4. Provide incentives to tenants to pursue landlords that unfairly withhold deposits by amending the existing legislation to penalise landlords that are found guilty of wrongfully withholding deposits e.g. publication of names especially of repeat offenders; a refund to the tenant of twice the value of the deposit plus costs with increasing penalties for repeat offenders (similar to the system in England and Wales where landlords that are proven in court not to have protected the deposit must give the tenant the equivalent of three times the deposit).
5. Follow up with the Department of Building and Housing in New Zealand to obtain more information on the costs of their state run deposit protection scheme and related services scheme as they currently operate operates on similar lines to the Irish system; also to find out more about how their deposit protection schemes impact on clients at the lower end of the market.

References

CMAAdvice Ltd, Review of International Mechanisms for dealing with Landlord Tenant Disputes about Over-holding, 2009

INTERNATIONAL REVIEW OF DISPUTE RESOLUTION MECHANISMS IN RELATION TO DEPOSIT RETENTION AND THIRD PARTY COMPLAINTS OF ANTI-SOCIAL BEHAVIOUR IN THE PRIVATE RESIDENTIAL TENANCY SECTOR, candy Murphy and associates 2006

Consumer Trader and Tenancy Tribunal, 2007-2008 Annual Report, New South Wales

Department of Building and Housing (2006) *Sorting out renting problems*.

Available to download from:

<http://www.dbh.govt.nz/UserFiles/File/Publications/Tenancy/pdf/Sorting-out-renting-problems.pdf>

Department of Building and Housing (2008a) *Annual Report 2007-2008*.

Available to download from:

<http://www.dbh.govt.nz/UserFiles/File/Publications/Sector/statutory-reports/annual-report-07-08.pdf>

Department of Building and Housing (2008b) *Renting and you – a guide to the law about renting* (2nd Ed.) Available to download from:

<http://www.dbh.govt.nz/UserFiles/File/Publications/Tenancy/pdf/Renting-and-You.pdf>

Department of Communities and Local Government (CLG) (2006) *Survey of English Housing 2005-06*. Preliminary Report available to download from:

<http://www.communities.gov.uk/documents/housing/pdf/152636.pdf>

Department of Communities and Local Government (CLG) *Survey of English Housing 2007-08*. Preliminary Report available to download from:

<http://www.communities.gov.uk/documents/statistics/pdf/1133551.pdf>

Department of the Environment, Transport and the Regions (2004) *Housing Act 2004*. London: DETR.

Government of New Zealand (1986) *Residential Tenancies Act 1986*. Available to download from: <http://www.dbh.govt.nz/UserFiles/File/Tenancy/what-we-do/rta/pdf/residential-tenancies-act.pdf>

Northern Ireland Assembly (2009). *The Private Rented Sector in Northern Ireland: Profile and Key Issues- Briefing Note 50/09*. Research and Library Services.

Northern Ireland Housing Executive (2006) *House Conditions Survey*. Available to download from: http://www.nihe.gov.uk/housing_conditions_survey_2006.pdf

Northern Ireland Housing Executive (2009) *Northern Ireland Housing Market: Review and Perspectives 2009-2012*. Available to download from: http://www.nihe.gov.uk/housing_market_review_and_perspectives_2009-12.pdf

Office of the Deputy Prime Minister (2005) *Survey of English local authorities about homelessness – policy briefing 13*,

Office of the Deputy Prime Minister Tenancy money: probity and protection A consultation paper, November 2002,

Rental Bond Board, Annual Report 2007-2008, New South Wales

Shelter (2005a) *Safe and Secure? The Private Rented Sector and Security of Tenure*. Available to download from: http://england.shelter.org.uk/_data/assets/pdf_file/0017/48041/Safe_and_Secure.pdf

Shelter (2005b) *A rent deposit protection service for Scotland*. Available to download from: http://scotland.shelter.org.uk/_data/assets/pdf_file/0005/48308/rent_deposit_protection.pdf

The Dispute Service (2007) *Tenancy Deposit Scheme*

<http://www.thedisputeservice.co.uk/resources/files/TDSA-Rules-of-Membership-Edition-4.pdf>

The Dispute Service (2008) *Annual Report 2007-2008*. Available to download from: www.thedisputeservice.co.uk

The Scottish Government (2009) *Scottish Government Review of the Private Rented Sector: Volume 1- Key findings and policy implications*. Edinburgh: Queens Printers of Scotland.

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Additional resources:

www.depositprotection.com - DPS Terms and Conditions

www.mydeposits.co.uk

www.disputeservice.co.uk

www.huntsdc.gov.uk- Huntingdonshire District Council 'Rent in Advance/Rent Deposit Loan Scheme'

(www.nz-immigration.co.nz)

Appendix 1 List of Key Informants and Organisations Interviewed

Ireland

Stephen Faughnan IPOA
Kersten Mehl Irish Auctioneers and Valuers Institute
Fintan McNamara IPAV
Kathrina Cahill Homelocators
Bob Jordon Aideen Hayden Threshold
Ciaran Fitzpatrick Students Union of Ireland
Michael Culloty MABS
Joan O'Dowd Department of Social and Family Affairs
Frank Gallagher PRTB
Brendan Whelan Adviser to Threshold
Ciaran Lynch, T.D. Labour Party

Internationally

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Jessie Henderson	Department of Building and Housing, New Zealand
Julia Gristwood,	Department of Communities and Local Government, London
Pritha Venkatachalam	Cambridge Economic Policy Associates, London
Jeff Firth	The Deposit Protection Service
Lawrence Greenberg	The Dispute Resolution Service, London
Simon Gordon	mydeposits.co
Denise Holmes	Housing Markets & Supply Division, Scotland

