

# DÁIL ÉIREANN

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## AN COISTE UM THITHÍOCHT AGUS EASPA DÍDINE

## COMMITTEE ON HOUSING AND HOMELESSNESS

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*Dé Máirt, 10 Bealtaine 2016*

*Tuesday, 10 May 2016*

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The Select Committee met at 10.30 a.m.

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### MEMBERS PRESENT:

Deputy Mary Butler,	Deputy Kathleen Funchion,
Deputy Catherine Byrne,	Deputy Michael Harty,
Deputy Seán Canney,	Deputy Fergus O'Dowd,
Deputy Joan Collins,*	Deputy Frank O'Rourke,+
Deputy Ruth Coppinger,	Deputy Eoin Ó Broin,
Deputy Barry Cowen,	Deputy Brendan Ryan,
Deputy Bernard J. Durkan,	Deputy Mick Wallace.

\* In the absence of Deputy Maureen O'Sullivan.

+ In the absence of Deputy Mary Butler for part of the meeting.

DEPUTY JOHN CURRAN IN THE CHAIR.

*The committee met in private session until 10.35 a.m.*

### **Master of the High Court**

**Chairman:** Before the meeting commences, I draw attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the Chairman to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable. The opening statements submitted to the committee will be published on the committee website after the meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I welcome Mr. Honohan. His full submission has been made available to members. I invite him to make a summary of the submission.

**Mr. Edmund Honohan:** I thank the Cathaoirleach. Undergraduates and, indeed, graduates always start with demand and supply. There are demand and supply curves in the housing market. The supply curve is flat at the moment with no additional houses coming on stream. The demand curve is hopping. In a situation like this, the market regulates by price and the prices we are being quoted in all parts of the market are well in excess of what can be afforded by the economy. We have to have regard to the fact that competitiveness is impacted by the price of housing and accommodation and that is a matter of importance to the public generally.

The housing market can be split into five portions and not three portions, starting with the homeless. There are two homeless groups. We have the group that was traditionally referred to as vagrants - people who live on the street. We know from previous studies that they have various problems. They even have problems feeling comfortable in accommodation that is provided for them but they, nevertheless, are a group that needs to be catered for and we cannot lose sight of that. I am not sure whether any proposal for regulating market prices will make a difference to them because they have no money. The second homeless cohort is people who have become homeless by virtue of some domestic problem or an increase in rent by a landlord. They find themselves unable to secure alternative accommodation because they are not on the housing list.

There are two groups at the other end of the spectrum - the private owner-occupier and buy-to-let investors - with which public policy does not concern itself. These are people who can afford to buy houses or to become landlords. The group we have traditionally dealt with as candidates for public housing is in the middle. The size of this group is almost impossible to predict. The first task of the committee should be to find out the views of local authorities in terms of how many people are looking for public housing, not just today but in five, ten or 15 years' time. We went through a rose tinted period when sub-prime mortgages swept up people who could not afford a full mortgage to buy a house. It is this group, primarily, which is falling back into the public housing subset. The market rations by price but when the market fails,

the State should regulate. That is a classic case for regulation and intervention by the State at all levels of the market and in whichever way is constitutionally permissible. What I am suggesting here seems to me to be quite obvious. It is the big bang approach. We need a big bang in finding property for the public housing and subsidised housing sector, which includes the affordable housing sector. That is a small group of people whose housing needs may be met by funding them with some State aid, perhaps part ownership arrangements, so they can part acquire a property. In general terms, subsidised housing is the part of the housing market which has been shrinking over the past 15 or 20 years. There is a reason for that. Government policy has shifted towards allowing the private market and private financiers to provide for our residential housing needs. We do not have to go back too far to remember the section 23s, section 27s and other tax expenditure mechanisms for providing for housing. In their time, they were a good idea and one wonders what the cities of Dublin or Cork would be like if they had not been in place at that time. Nevertheless, it was a conscious decision on the part of Governments and local governments at the time to invite on board the private sector and allow it to finance and take over the provision of housing. The Part V proposal, which was a slight attempt to row back on that, was watered down.

We have a language problem. There is an old joke about America and England being two societies that are not in agreement on the same language. I cannot remember the phrase. We have a problem that politicians and lawyers seem to have a difference in how they interpret things. It is understandable - lawyers tend to focus very clearly on the wording of a document or piece of paper and politicians tend to veer towards cliché. One example of that is Article 40.3, which refers to an unjust attack. It is not a political article but one that was drawn up at the time the Constitution was enacted. Politicians look at that and say it means any attack and therefore must be unjust. We all understand what an attack is - an interference or something aggressive and negative. The lawyers look at it in a different way. They say it means an attack which is unjust or one that is not capable of justification. The attack is, quite clearly, an interference and a delimiting of some right but there may be a justification for it. The word unjust means the lawyer will ask where the justice is. The lawyers also look at the question of reasonableness and ask what the reasonable approach to take is. I will give an example. When the NAMA legislation was challenged, the court was asked to rule on the constitutionality of the taking in by NAMA of all the bad loans from the private banks. The court said "It is only where the policy position adopted by the Oireachtas is one which could not reasonably be said to be required to achieve the end in question, that the legislation will be found to be inconsistent with the Constitution." A politician will read that and say that if it was not reasonable, the Supreme Court would tell us to take it away, shred it and do it again. That is not what it means. It means that the policy position adopted is one which could not reasonably be said to be required. That means "could not" on any basis of rationality and that there was no possible way in which one could see how the policy objective could be achieved by the measure that was being adopted. It is not that it was reasonable - that is not the phrase. It means it is capable of being reasoned and capable of having a rational basis.

Headnotes are quite useful for politicians who want to see what the law means. The headnote in the same case states that, in determining the limits of what might be constitutionally permissible - we are getting close to the nub here - the interpretation of legislation and how the legislation, properly interpreted, was to be applied to the facts of any individual case was a matter for the courts, which had a significant role. However, the headnote also states it was important to note the limitations of that role and that it was not the function of the court to consider whether measures were the best or even a good solution to the problem which such measures sought to address.

This essentially means that the decision by the Oireachtas as to how to tackle an area which requires being tackled in the public interest is a decision which will be respected by the Supreme Court. I know it can be difficult for people to understand how we can spend so much time in courts arguing about the minutiae of the legislation but, at the end of the day, what the Oireachtas does not seem to understand is that the courts spend most of this time trying to interpret what the Oireachtas meant to say. It is the intention of Parliament which is the paramount consideration in interpreting what the Oireachtas says.

Occasionally, one gets an insight into what the judges themselves think about policy. I will give the committee an insight into that through a quote from Professor Kenna's book, *Housing Law, Rights and Policy*, published in 2011. The foreword, written by Ms Justice Mary Laffoy of the Supreme Court, is quite interesting. She points out that, in chapter 17, the contemporary challenges are identified, such as stricter criteria for borrowers of housing loans, negative equity and so forth. She also makes the point that the author's observations at the end of paragraph 17-07, outlining the roles which the law can play in the housing arena, set out a useful marker as to the approach which might be adopted in relation to meeting these challenges. Therefore, we now have a judge actually crossing the line and saying this is the sort of policy area which we might find interesting.

Paragraph 17-07 of Professor Kenna's book states:

Law can play two roles within the housing arena. Firstly, it can reflect the market reality of housing as a commodity and support the contemporary housing system, such as it is, dominated by the market. Irish housing law has acted primarily, and in some areas exclusively, to underpin and bolster this housing market system. Secondly, law can be a source of autonomous values that can temper the market and structure it in different ways. It can draw on the reservoir of international jurisprudence, rights, and principles to inform and creatively expand the conceptual framework of housing law, rights and policy.

Far from the judges being anxious to stop everything and to say, "This is our area of expertise", they are in fact trying to breathe life into the often sterile or cliché-ridden documentation which emerges from the Oireachtas. One of the reasons that we often feel the courts have a firm grasp on this and will not let go of it is that the Oireachtas tends to enact legislation which gives the discretion to the courts. Oireachtas Members tend to feel, if they have a difficult area, that, on a case-by-case basis, they should give discretion to the courts to do something. I can tell the committee, from behind the scenes, that the judges tear their hair out and say: "How are we to tackle this? We have been given a discretion but no guidelines as to how to operate it." We have to try to fill in the gaps and work out what it is that may be of some use in providing, if one likes, guidelines for the judges in dealing with such matters.

With regard to judicialization, the 2009 Law Reform Commission report on debt said we should try to depart from the judicialization of insolvency. Here we are now, as I understand it, with a new proposal to interpose another layer of judges into the housing market and the area of mortgage arrears. The problem is not the law. The law is there. The problem is actually giving the judges the authority to change the law and apply a different set of guidelines. If a lawyer or judge gets an instruction from the Oireachtas that reads "consider in his discretion whether or not a person should be dispossessed of his property", he or she will say, "I can't make bricks without straw and the first piece of straw I have to use is the presumption of constitutionality, and I have to presume that I am not supposed to "unjustly attack" the owner's rights." Therefore, at that level, they are immediately told that they have the right to be sympathetic to the

home owner but do not have the right to actually afford him any rights.

Again, I am going on too long. However, it is of interest to note that, at the time, just before the Oireachtas made its decision, Mr. de Valera said:

In future, the Legislature will have to look after the public interest, as it is doing today. Are we going to shackle the Legislature in the future in a way in which it is not shackled today, and in which it would be most unwise to shackle it? We are providing for that freedom of action to work in the public interest and to safeguard the public interest in the future which the Legislature has today - that and no more ... I think the Legislature ought to be enabled in its own judgment to decide [what the public interest consists of] and not the courts.

It is clear to me that when the phrase “the public interest” is used in the Constitution, it was the intention of those who drafted it and those who adopted it - namely, the public - that the public interest was a matter for the public to determine via its representatives in the Oireachtas. I quoted a judgment - I think it was by Mrs. Justice Denham - that said it was quite clear that it was within the competence of the Oireachtas to make that decision - in other words, to decide what is in the public interest and what the objective is, in the public interest, which justifies the interference with property rights.

Then one comes back to the simple question, “What interference?” What interference might be legitimate and what interference might not be legitimate? Where is the dividing line? Oireachtas Members say, “We just don’t know where the dividing line is. If, therefore, somebody tells us there is a possibility we might stray across the dividing line, we better not go there at all.” That is not the way Dev intended it. He intended that the public interest be promoted and secured by proactive legislation. Of course, he is dead now, so I do not know. That general approach to human rights and the limitation of human rights is echoed today in the European Convention on Human Rights, which takes a very similar approach. It says that we must give the member state or the Government participating, the signatory Government, a considerable amount of latitude in how they operate their own jurisprudence or jurisdiction regarding matters of public interest.

Even in America the jurisprudence is the same, that is, what is called in America “eminent domain”, the idea that the state can step in and say, “Hold on a second, that area of property can now be taken into state ownership because there is a public interest in securing a better outcome for the public.” That is the objective which US federal and state governments have acknowledged since time immemorial, and yet we find people saying, “Gosh, the American vulture funds wouldn’t be too happy about this.” They are used to it. They have dealt with it before. They take the good and the bad. That is how it operates.

**Chairman:** One or two members have indicated they have been provoked by Mr. Honohan’s comments, which have led to a number of questions arising.

**Mr. Edmund Honohan:** Fair enough.

**Chairman:** If he does not mind, I will let one or two of them in as we go along.

**Mr. Edmund Honohan:** Of course.

**Deputy Eoin Ó Broin:** I thank Mr. Honohan, not only for his presentation but also for his interventions on this subject since last year. I think many of us have been following them with great interest, and they have been very helpful to our considerations.



He has made the position very clear. I would, however, be interested in him maybe applying his general observations to a couple of specific policy areas, of which there are four. In his interview with the newspapers last year, Mr. Honohan mentioned the use of compulsory purchase orders, whether for vacant units, land banks which could be used for social or market use or mortgage portfolios bought over by vulture funds. Will Mr. Honohan speak specifically on how his legal observations could apply to these sets of circumstances?

Given today's topic, I am particularly interested in the *Daft.ie* rent report published today. When rent certainty was discussed in the previous Oireachtas some politicians stated introducing rent certainty, for example, linking market rent reviews to the consumer price index, could fall foul of the Constitution and would be a so-called attack on property rights. I am interested in Mr. Honohan's observations on this issue.

**Mr. Edmund Honohan:** In the United States, there is no problem with rent control. The difficulty in the Blake case, which is the 1982 case which challenged controlled rents, was the proposal to impose controls which effectively would have taken money from one group in society and given it to another group in society. The Supreme Court, in a judgment given by Mr. Justice O'Higgins, decided it was too specific and unfair to other groups in society. In other words, the principles of equality did not apply. Funnily enough, the Attorney General at the time, Peter Sutherland, produced alternative legislation to try to shore up the system. He went before the Supreme Court and also lost. The idea that rent restrictions can be specific and focused on particular sectors of the market seems to run the risk of falling foul of the principle that where there is to be an interference with property rights it should apply generally to the group affected and not specifically to benefit a single group.

As a matter of fact, one of the arguments to be made in favour of buying out people is the very fact the Blake decision, the prevention of rent control, is on the books. If we cannot restrict rent, we might as well go and buy rental properties. This is the point. One would run no risk at that stage because the owners would be paid compensation for what they paid for the property. It would not be an unjust attack; *ipso facto* it is not unjust if they are paid compensation, let us say the market price they paid for the place.

With regard to land, the Housing Act 1966 has compulsory purchase mechanisms for local authorities which requires land for housing. I do not know whether the committee wants me to cite the section on this, but it is one of a number of compulsory purchase mechanisms that has been used. Part V of the 1966 Act states: "A housing authority acquiring land compulsorily for the purposes of this Act may be authorised to do so by means of a compulsory purchase order made by the authority and submitted to and confirmed by the Minister in accordance with the provisions." There was no bother about this and it was not even challenged. I brought with me an old copy of the Electricity (Supply) Act 1927 to show the committee. Back that far it was decided to have compulsory purchase orders for the ESB. Section 45 states that if and when the board thinks it proper to acquire compulsorily any land, the board may by special order declare its intention to so acquire it. There was never any problem. Compulsory purchase orders are standard. If there is demonstrable public interest, there should not be any difficulty with a challenge.

**Deputy Eoin Ó Broin:** To go back to the issue of rent certainty, what Mr. Honohan has stated is if, for example, legislation were introduced to apply rent certainty to the private rental market in general, there should not be a constitutional issue so long as it meets a general policy or social need. It is only if it were applied to specific categories-----

**Chairman:** Does the Deputy mean rent certainty or rent control?

**Deputy Eoin Ó Broin:** I mean rent certainty in terms of linking rent reviews to the consumer price index, for example, which is a form of rent control which provides rent certainty. My point is if it applied to the rental market in general, it probably would not fall foul of the law and it is only if it applied to specific sectors that it might do. Is this what Mr. Honohan is saying?

**Mr. Edmund Honohan:** To go back to the NAMA legislation, there was a hard fought case and the Supreme Court was happy to authorise very wide-ranging jurisdiction to the Minister and NAMA to acquire all sorts of loans, including rubbish loans, good loans and bad loans, and to allow the Minister to designate by statutory instrument what types of portfolios might be acquired. The objective was clear, namely, to prune the bad banks and hand over their bad portfolios. Once the objective is identified, and provided that the measure being proposed tallies with it and is not disproportionate, the court will be happy to deal with it.

There seems to be a distinction between rent control and rent certainty. Rent certainty is a measure that the landlord community has swallowed so far, but it is technically a limitation on their property rights, as are many other measures, for example, capital acquisitions tax, controls on interest rates, etc. All of these are in the nature of measures that, socially, society should adopt for the common good. It is difficult to see how there could be a challenge to rent certainty, which is simply a fixity of terms, to revert to the Land League. Having gone through the cauldron of the Supreme Court twice, it is difficult to envisage it turning around and saying that it will let rent control through this time. The courts generally have difficulty in rewriting old decisions. The legislation would have to be finely taut.

Regarding vacant units, in the executive summary the phraseology that I used carefully was “by compulsorily acquiring unoccupied and occupied homes about to be “repossessed””. If one reverts to the question of by how much will the public housing segment of the market expand, one must say that many people will lose their houses through repossession. How does one define the group of housing that it would be in the public interest to have in the public housing portfolio? It is “any housing that is likely to be of use”. Vacant housing is likely to be of use, as is housing where the owners unfortunately have been served with a notice to quit effectively or a demand for possession. Once their right to redeem has been extinguished, the title deeds vest permanently in the mortgagee. It is at that point that the State can say it will acquire all of those without exception. It is a big bang. We acquire them all, we pay off the previous owners and now we decide what to do with them. Then we are into a different area.

An important byproduct of this relates to people who are in mortgage arrears. If the State steps in and buys all of the properties that have been the subject of demands for possession or possession proceedings, we have an instant freeze on all dispossessions and evictions. When we sit back and ask what we will do with them then, the answer is to negotiate and put in place the mortgage-to-rent scheme that was proposed several years ago. We will have the option of taking that portion of the houses that we will acquire by compulsory purchase, flipping them over and renting them to the people living there.

**Deputy Ruth Coppinger:** I welcomed many of Mr. Honohan’s recent comments, in particular because I represent a constituency in which residents in Tyrrelstown are facing eviction by a vulture fund and where the housing crisis is probably the most acute.

I wish to refer to a couple of the legal issues that Mr. Honohan has raised. The tenor of his contribution is to the effect that compulsory acquisition of public housing is arguably now

for the common good and legally justified. If compulsory acquisition of distressed and vacant properties is legal and there is a major housing crisis, why has the State not done it? This is the question that Mr. Honohan is posing. Would he agree that we can deduce that it is because the State is putting the interests of private capital, be that capital foreign vulture funds or domestic banks, ahead of the public good and the interests of ordinary people? Would he agree that it must be ideological? I welcome that he used what is a dirty word around here, the “n” word, which is nationalisation. There is an idea that the State should just sit back and not do anything when people are threatened with the ruination of their lives. It is good the witness used that word and the State can nationalise these vulture fund or distressed properties.

In the statement the witness advocated that the State would probably have to pay the full market price for the properties. He also cites a European court ruling indicating that in exceptional circumstances, it would not have to do so. What are the exceptional circumstances under which these properties could be expropriated without compensation? For example, is the current housing crisis an exceptional crisis wherein the State would not necessarily have to pay the full market price but would be justified in paying lower than the market price or even not compensating these funds?

Does the witness know of any legal impediment to resuming local authority home building on the scale mentioned in the contribution? The witness mentioned that 200,000 dwellings were built by councils and urban housing developments between 1880 and 1960. Is there any legal reason the State could not do that again? Has a State order to mortgage write-down been considered as a cheaper alternative to the State buying these properties, as well as being in the common good? I welcome the witness mentioning children, indicating that enhanced rights were given in the Constitution to children by the recent referendum. Children are being really badly affected by the housing crisis. I attended a court scenario recently and a homeless woman made that point to the judge. What about the rights of children? She made a pithy contribution when the judge said nothing could be done. She asked about the rights of children and that has been raised again by the witness. Could the constitutional rights of the child be a way of blocking evictions, whether from rented or mortgaged accommodation? That would be in conjunction with the State compulsorily purchasing properties as a way of keeping children in their communities and where they attend school etc. I am particularly interested to hear the witness’s view on that.

**Mr. Edmund Honohan:** There are quite a few questions there. With respect to children’s rights, it seems there would be a problem in an individual case where a child wanted to claim a constitutional right to be protected against dislocation, if one likes. That is such an innovative approach and runs counter to the general understanding of the fundamental rights. It is an unexplored area. I do not know what we decided when we decided to pass the children’s referendum. I do not know what we decided should be the benefits for children. I am sure this was not taken into account. That is why the outright purchase is the better solution. It is in a broader context of an overall solution for an overall problem.

There is no legal impediment to local authorities pressing on with home building. There seems to be a difficulty in the reality of doing it because of the problems sourcing skills and materials. We are going back to the old Marxist system where one had to count the bricks to make sure there were enough. If everybody starts building at the same time, putting in new water pipes, the new Luas line and so on, there will be a massive collision of demand and supply with respect to labour costs. That is a major difficulty. It is far cheaper for local authorities to be handed properties already built but which are empty or occupied by people who are about to



be repossessed. Personally, I do not want to see a repeat of what happened in Ballymun. That is the difficulty for local authorities. They will ask how they can do this fast and the answer might occur of building what was in Ballymun again. Unfortunately, that is the way local authorities dealt with it in the old days. They have a different view now but they might revert to what they did in the old days if the pressure is put on them to build quickly.

In any event, the point about the CPO proposal is that we have a window of opportunity to argue in court that there is a crisis and that the response of society to it is to seize all the property, the roofed space, that is available and use it to best advantage. Once one states that in broad terms, the minutiae or nitty-gritty of how it works and who benefits and does not benefit will be left to the Oireachtas. As to whether one can do that without paying full market value, the European Court would be loath to approve that unless it was in a situation where the value paid or the value of the property which was being acquired compulsorily was enhanced by some State action or some unexpected economic event. In that situation the value would be regarded as being something of a net value. At present, however, we have the reverse. The price they paid for these properties in the past three years is well below what they should have been paying to NAMA and IBRC. It is well below that, so we pay them back all of that money and wave goodbye to them.

**Deputy Mick Wallace:** I thank Mr. Honohan for attending. His material is very good and definitely stimulates thought. His point about outright purchase certainly makes sense. We all know that if we start building, we will continue to have problems for at least three years anyway. The outright purchase would deal with it more quickly.

Does Mr. Honohan think the argument for the public good in the Constitution would override the property rights if it were challenged? Given the neoliberal position of the established parties in Ireland, whereby there is a tendency to prioritise the interests of the private sector over the public interest, how would the witness approach dealing with that ideology and their mental approach to that? This is also very much driven by the European Union. For example, we are not allowed to borrow money at less than 1% to invest in infrastructure because the European Union tells us we must go through the private sector and the public private partnership, PPP, process under which one pays between 15 and 20 times more for the money. The cost of money for a PPP can be anything up to 15%, whereas we boast that we can borrow for less than 1%. Given that this ideology is well established in our political parties and is being driven by Europe as well, how would the witness foresee overcoming that obstacle?

With regard to the vulture funds, it is obvious that they bought at fire sale prices. Often they were sold properties for less than half of what it cost to build them. It was irrational to do that. Let us suppose we had the will to purchase many of those compulsorily back from the vulture funds. Does the witness know if there is an international example of how much they would be paid above what they paid? Obviously they would like to get what they think the property is worth today, but is there an international example of how much we could get it back for above what they paid for it? For example, could it be linked to inflation? Could they be paid just what it cost them in the price of money since they bought the property, to compensate them and not leave them at a loss but creating a situation where they would not have a gain?

My last question is completely different and probably not directly linked to what we are discussing here. When Mr. Honohan was talking earlier about how courts deal with what comes down the tracks to them and very often the lack of responsibility on the part of the State, he talked about giving them challenges without guidelines. Regarding how the Commercial Court has behaved in the past few years, does he think it has behaved in a totally independent fashion

in how it has dealt with major loans?

**Mr. Edmund Honohan:** Again, a number of different questions arise. Private finance initiatives, PFIs, are the English equivalent of public private partnerships, PPPs, and they were John Major's idea. Deputy Wallace is saying that Europe says that if we want the 1% deal, we have to do it the PPP way. Somebody else described PPP as welfare for capitalists. There are huge profits to be made out of PPP and this country needs to turn its back on PPP. It needs to say that it was an interesting idea for the 1980s and now we want to take social control of what we are doing here. I do not feel Europe is entitled to refuse us the money at 1%. There may be EUROSTAT problems - there are EUROSTAT problems about everything nowadays - in terms of the fiscal rules, which most people are now breaking, but we need to assert the right of the Irish Government to attend to a national crisis in as economic and efficient a way as possible. The immediate seizure of the vacant properties is certainly an economic and efficient way.

There is an American proposal here, which I dug up:

It is a real estate crisis we are living with [...] The Plan grows from this simple fact. It is accordingly for municipalities, or joint powers authorities (JPAs) that they or their states establish to enable coordination among multiple municipalities, to discharge their legally appointed function by customary, legally familiar means.

This is American law. The terminology is different, but the concept is the same. It is the idea that in order to call a halt to the decimation of American states because of sub-prime lending and so forth, it was necessary, or it would be desirable, to acquire all the loans on a co-operative basis and then renegotiate all the terms on a restructured and sustainable basis. As regards the actual price that might be paid, it does not seem to me that there is any advantage in trying to work out a formula by which they get an extra 5% or something like that.

The official arbitrator is set up under the 1919 Act - it goes way back. He has all his little rules and actually I have been in several cases myself where I have been disappointed with the result from the official arbitrator where he has awarded less than I thought he was going to give for market value. In other words, it is very tight, and the official arbitrator would look very clearly at how much was actually paid for this property 18 months ago or two years ago and how much one could sell it for now as part of a portfolio.

I do not know whether Deputy Wallace has been following the controversy about the listing of properties in portfolio sales. There is some problem with the Property Registration Authority - it has 7,000 properties on a particular transfer and is now refusing to release that deed - but in each document it records the price for each property sold and the prices that are recorded are quite astonishing. I came across one case the other day where two apartments owned by an investor, one in Templeogue and one in Tallaght or somewhere like that, were being repossessed. The price for the one in Tallaght was €151,900 and the price for the one in Templeogue was €151,900. This is a completely artificial means of apportioning a huge, multimillion pound pay cheque. The figure is just plucked from the air; one cannot imagine the receiver and the American fund sitting down and one saying it will not pay more than €152,000 and the other saying it definitely has to receive €152,000 for the apartment in Templeogue. These are just figures that are plucked from the air and there is an element of artificiality about them. That is where there may be the possibility of the arbitrator saying, "Now, come off it lads, how much is this really worth? What kind of condition is it in? Did you have a valuation done?" and so on. There is definitely the possibility of prolonged argument about how much the properties are worth but what is interesting about a CPO is that once one serves the notice to treat, that is,

once one sends out the notice that one is going to acquire a property, one gets the keys but one does not have to pay until one has worked out the price and that could take two or three years.

**Deputy Mick Wallace:** I ask Mr. Honohan respond to my last question on the Commercial Court. Many people who have gone through the process do not feel that they have been treated fairly. Does Mr. Honohan think the Commercial Court has acted independently at all times in making its decisions?

**Mr. Edmund Honohan:** It is not really for me to comment but it seems to me that the summary judgment process, about which I have written, is one which puts the lay litigant at an extreme disadvantage. I have actually communicated with the Irish Human Rights and Equality Commission on this. I have written to the commission and told it that it needs to address the rules of court which render the lay litigant ineffective. Lay litigants cannot effectively participate. They appear before me at the earliest stages, not in the Commercial Court but for ordinary debts of less than €1 million and ask me what I mean by an affidavit. They ask what an affidavit is and I have to tell them what it is. Then they go away and produce an affidavit which is rubbish, containing stuff that somebody in a pub told them to include. Then I say, "Tell me now what your story is. How did this come to pass? What did you borrow the money for?". We go on at length and eventually I will say, "That is very interesting. Put that in an affidavit". I do not think that happens in the Commercial Court. I do not think there is a debtor-friendly or lay litigant-friendly approach taken. One of the difficulties with debtor-friendly or lay litigant-friendly approaches - I have heard comments on this from both sides - is that a judge will say, "I did my best. I explained what the nature of the procedure was. I explained to him how he might develop a point here, there and everywhere. Then I turned around and ruled against him and I was told I was a bastard but I was doing my job - to try and explain where he was at and what he needed to do. So, eventually, I give up". This is what one judge told me. The impression given in the Commercial Court and elsewhere, including the High Court, is that big money talks.

*Omnia praesumuntur* is a legal maxim we have whereby everything is presumed to have been correctly done. That is certainly a presumption which the courts applied to the banks' paperwork but I have found it not to be true.

**Deputy Fergus O'Dowd:** Mr. Honohan's points are very thought-provoking and worth examining in full.

I live in a predominantly rural constituency in County Louth, although we have two large towns, Drogheda and Dundalk. There are very few vacant properties in the county. In fact, the biggest problem is that people cannot get a place anywhere, no matter what they are willing to pay. All of the properties are occupied. The key issue, therefore, in the context of what Mr. Honohan said about the public interest, is that the local authority and others need to build more houses but the Planning Acts can cause delays. Properties can be purchased from reluctant sellers by way of a compulsory purchase order. Would there be a problem with making changes to the planning regulations, in the public interest, to address the time-related issues, in terms of constitutional challenges? One of the biggest issues is that one can have the land and be ready to build but there are enormous, unnecessary delays. Would it be possible, as in the case of significant industrial developments, to have a branch of An Bord Pleanála which would fast-track the planning process for houses? Would it be possible to set up a one-stop-shop, with a six-week period for consultation, for example, but only in the public interest and for a limited period of time? Would that make sense or would it pass muster?

**Mr. Edmund Honohan:** I cannot see any difficulty with that. The situation with planning

is that we could rewrite our planning laws overnight. We could introduce a derogation, for instance, for particular types of housing or particular sizes. Obviously, one would not be too keen on allowing a derogation from building regulations.

**Deputy Fergus O'Dowd:** No, not at all.

**Mr. Edmund Honohan:** From a planning point of view, in the pre-An Bord Pleanála days, the Minister would sign off on an appeal-----

**Deputy Fergus O'Dowd:** Yes. The former Minister, Jim Tully, was a famous case-----

**Mr. Edmund Honohan:** From a constitutional point of view, if there is a crisis, which there is-----

**Deputy Fergus O'Dowd:** Yes.

**Mr. Edmund Honohan:** Let us not play around with joke solutions like modular housing. Let us get in there and do what is needed.

**Deputy Fergus O'Dowd:** I think the big problem with Ballymun, which has been mentioned by Mr. Honohan, was that it was entirely inappropriate for families and particularly for children to be living in high-rise accommodation with no proper recreational areas. Is the import of what Mr. Honohan is saying that there is no constitutional barrier preventing the Government and the Oireachtas from deciding to fast-track social and affordable housing by significantly shortening and abridging the amount of time it takes to provide such housing?

**Mr. Edmund Honohan:** I can confirm that, yes.

**Deputy Barry Cowen:** I thank Mr. Honohan for his presentation. My question relates to buy-to-let properties and to those who are caught in the sandwich. Does Mr. Honohan believe there is any potential or possibility for legislation to safeguard the interests of tenants to allow them more time to find alternative forms of accommodation in the event of the properties they are living in being taken over?

**Mr. Edmund Honohan:** The position with regard to the appointment of a receiver who takes the keys and tells the tenants in a buy-to-let property to get out is that the owner for whom the receiver is acting is in the same shoes as the landlord and therefore has certain obligations under the PRTB arrangements. I refer to minimum terms, etc. I do not see any reason there should not be a rider attached to the sale of a buy-to-let property that would entitle the tenant to the first option, to the maximum amount of time within which to find suitable alternative accommodation or to an application to court if this does not prove possible. There does not seem to me to be any difficulty with such an approach other than the possibility that the purchaser of the buy-to-let property, or the bank that is selling it, might argue that the value of the property is going to decrease because they are stuck with a tenant and it might take them 15 or 18 months to shift him on. That is the difficulty. Compensation might be sought in such circumstances. Any legislation seeking to restrict what we call the fee simple - the unencumbered right to sell a property - would be diminished if there were an obligation to provide directly or indirectly for the accommodation of a person.

**Deputy Barry Cowen:** When Mr. Honohan spoke earlier about the public interest in the context of the emergency that currently exists, he suggested that forthcoming legislation which would not be judged to inhibit that right could be introduced on a temporary basis until this

crisis has passed.

**Mr. Edmund Honohan:** American case law in this area is very keen on the idea of a temporary abrogation:

Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present.

I have already cited this particular case - *Block v. Hirsch* - and I can tell the Deputy a long story about it another time. It continues:

Machinery is provided to secure to the landlord a reasonable rent. It may be assumed that the interpretation of "reasonable" will deprive him in part at least of the power of profiting by the sudden influx of people to Washington caused by the needs of Government and the war, and, thus, of a right usually incident to fortunately situated property.

That was approved. The bottom line is that social requirements, social demands and the common good override the right to property.

**Chairman:** We have four people presenting for questions. As time is pushing on, I might take two of them together. Deputy Canney will be followed by Deputy Durkan. I will allow two further Deputies to ask questions after that.

**Deputy Seán Canney:** I would like to refer briefly to an issue that arises with local authorities and the private sector in the construction of houses. The planning process is followed by a procurement process and a construction process. The easiest part of that is the construction process, because one can set deadlines when one is building. Deputy O'Dowd spoke about planning. We are also tied up in huge procurement rules and regulations, both from the EU and from our own office of public procurement. Would it be possible to use the current crisis to expedite the whole process by removing many of these regulations in the short term? For instance, Mr. Honohan referred to a six week period for planning. If the procurement process were to last for six weeks and the construction process a further 20 weeks, we would be producing the required units in approximately six months. Is there a legal impediment to setting aside the procurement rules or can this be done in an emergency?

**Deputy Bernard J. Durkan:** I thank Mr. Honohan for coming before the committee and giving his views.

I am becoming a little concerned and confused as time passes. While modular housing may not be the answer in many cases, in a crisis one must be guided and bound by the urgency of that crisis and the extent to which we can continue to have families forced out of their homes or living in unsuitable accommodation and sometimes split up to avail of accommodation. In some cases, two, three or four families are sharing one dwelling, with some sharing one room. Such circumstances are totally unacceptable and whatever action is needed to address them must be taken. If housing cannot be provided quickly and we are not allowed to build modular housing, nothing will be done to address the problem. I do not want intensive developments such as that which was built in Ballymun to be built elsewhere. Members discussed this issue the other day. However, a short-term solution to the current problems can be found and it is the direct building of modular housing. The rest could follow.

Part ownership, State ownership and private ownership were mentioned. The shared own-



ership-loan system, under which the rental part of the equity was the subject of an annual 4.4% increase, was a farce. This approach can only be described as imposing a penalty on those who had the temerity to provide a house for themselves because they happened to be in a particular income bracket.

On the control of land prices, we had the Kenny report, the McKinsey report and Myles Wright reports. Produced at different times, they all addressed the same issue, but for one reason or another, it was decided not to implement them, although one of them was partially implemented. Given the reluctance of the courts and the State to proceed in the direction advocated in the reports, what scope is available in this regard?

Mr. Honohan is correct that there has been a shift from the State to the private sector. At the time, some of us recognised that this shift which occurred ten or 12 years ago was patently wrong, but no one shouted “Stop”. Local authority housing requirements came to be provided for by private housing entities or approved bodies as they are known. The purpose of this approach was to shift responsibility from local authorities. However, I do not accept that local authorities should become directly involved in housing provision. They should employ builders to build immediately, rather than in two, three or four years time because we do not have the luxury of waiting for things to happen. We must make them happen soon.

**Chairman:** I ask Mr. Honohan to address the specific questions raised by Deputies Seán Canney and Berard J. Durkan, after which we will proceed to the remaining speakers.

**Mr. Edmund Honohan:** Public housing is the way forward. In 1932 a proposal was made for the establishment of a housing agency - not the local authorities - and it is recorded that Deputies had to prod the agency from time to time to get on with the job. Nevertheless, it was a housing agency rather like the Northern Ireland Housing Executive. If we are talking about cutting through the procurement mechanisms and getting shovel ready projects up and running, that seems to be the way to go. The history of local authorities is that they are, if one likes, unable to shift themselves from a mindset.

I referred to modular housing as a joke solution. It is not a joke solution, but it is when it costs €243,000 per unit. Let us build modular houses at €90,000 per unit. Before my time, we had stocks of coal in the Phoenix Park. These are emergency measures. When one builds modular housing, people understand these homes will be temporary. One does not build a proper house, describe it as modular and then tell the residents they will have to move on in six months.

The Kenny report was mentioned. What is the point about the Kenny report on building land? The proposal was not implemented. That is another judge who said let us go for this, let us be inventive and radical. I mentioned Miss Justice Laffoy and I mention Kenny. The judges are quite prepared to hear proposals and to go with them. In recent years they have been cutting back significantly on the degree to which they accept or wield any sort of authority on limiting the project in its nuts and bolts. That is what I have to say.

**Chairman:** I thank Mr. Honohan. I will take the remaining people together because we have other witnesses. I invite members to be as direct as possible with their questions.

**Deputy Catherine Byrne:** I am interested in what Mr. Honohan has said but much of it is out of my reach because it relates to the law. However, I will make my contribution on what I know as a public representative on the ground. I agree with Mr. Honohan about building Ballymun and St. Michael’s estate and so on, but the fault in building them did not lie only with the

residents. It was the way they were managed and abandoned by many of the councils and were not properly serviced. If we had them today as private rented accommodation, a person would probably not get one for €2,000 per month. They were spacious and well built and most of the facilities in them were really good. Unfortunately, for a number of reasons they failed to live up to the standards for which they were built. Mr. Honohan did not speak about the number of houses for sale in the different areas, although it was in his submission. The areas that are of interest to me are Drimnagh and Crumlin because that is the constituency in which I live. I am aware the local authority has bought many houses. It has de-tenanted areas such as St. Teresa's Gardens and Dolphin House and is continuing to buy units. Although it might acquire them for €180,000, clearing them out and refurbishing them can cost up to another €150,000. Therefore the cost is not €180,000 but a much higher figure.

I wish to ask two questions. What are Mr. Honohan's views on voluntary housing agencies? In regard to number of homeless people, we have a report from the Mercy Law Resource Centre, the Peter McVerry Trust and Circle Voluntary Housing Association. Mr. Honohan is correct in saying everybody has different figures. If we could get a clear indication from the councils on the exact figures, we might be able to find a proper solution. Why is Mr. Honohan so set against modular housing? Will he specify if it is because of the price? These modular houses are being built. We are talking about a life span of 60 years or more on them. How can he say that modular housing would be a transient unit? Many of the people who will go into modular houses would like to remain in them. I have spoken to many people on the issue of modular housing in my constituency who have said that if they had a roof over their heads for the next 30 or 40 years, they would be very happy. Is it down to the price or is there some other factor that makes Mr. Honohan - I will not say negative about them - reluctant to have them built?

**Chairman:** I thank Deputy Byrne. I ask Mr. Honohan to hold his replies for a couple of minutes. I call Deputy Collins.

**Deputy Joan Collins:** I welcome the views expressed by Mr. Honohan because they will clear the decks a little that as a State we can intervene and purchase property from vulture funds by means of compulsory purchase orders to get housing directly rather than building which would take a much longer period. There is also the issue of clearing the decks in terms of the planning laws to allow for six, 12 or 20 weeks for building in the longer term. That clears the decks and recognises that the committee can start playing a key role in trying to push the emergency element and then look at the longer-term issue.

My question relates to the European Convention on Human Rights in regard to housing. In the longer term does Mr. Honohan consider that having a housing right in the Constitution would benefit legislation into the future to help maintain a balance of public and private housing and impose a responsibility of the State to provide public housing? When selling commercial property, the State can sell the property with a tenant *in situ* whereas private landlords cannot do this in any shape or form. Would there be a problem if a regulation was introduced where a property could be sold with a tenant *in situ*? Can that be done or is there a problem with that?

**Deputy Michael Harty:** I have just one question in regard to compulsory purchase orders. Given that we have a housing emergency which brings the public interest and common good into play, do we have adequate legislation or is new legislation required to provide for compulsory purchase orders to override the property rights of owners? Is legislation strong enough or would new legislation have to be introduced?

**Deputy Frank O'Rourke:** I wish to make an observation first and then two quick points.

I share Mr. Honohan's concerns in regard to modular housing and having spoken to a number of professionals across the spectrum, they too share those concerns. One of these concerns is in regard to the significant cost of delivery of these units compared to conventional type property and there are also concerns in regard to the lifespan of these units.

I have two questions, the first of which relates to tenants. We have a number of people currently in HAP or RAS schemes or on rent supplement. Sometimes these tenants are living in difficult conditions and are concerned that if they raise the issues or seek to have them addressed, their landlord or landlady will serve them with an eviction notice because there is such a queue of people seeking accommodation. As Mr. Honohan mentioned in his presentation, demand well outstrips supply. What is his view in regard to strengthening tenants rights to ensure that we have some level or standard regarding for what tenants are paying?

Second, I agree with previous Deputies on the need to fast-track planning. What are Mr. Honohan's views on fast-tracking planning for the greater need and in the national interest in regard to the current housing crisis? Is this also necessary for the procurement process? We are bogged down and everything is far too slow because of these two issues. I believe a partnership approach is required between local authorities, government and bank funding and the private sector which will build and deliver the units. What is Mr. Honohan's view in regard to the successful tenderer being able to access funds from government at a much lower rate than from the banks? This would help deliver local authority or social housing at a much cheaper cost. In addition, this would also help provide starter homes. Currently, couples on middle incomes cannot afford to buy because of the negative impact of higher borrowing rates which are added on to the cost of a house. What is Mr. Honohan's view on making capital available at a much lower rate, perhaps at 12% less than currently, in order to help deliver housing and reduce cost?

**Chairman:** A number of issues have been raised in those questions, some of which Mr. Honohan has already touched on.

**Mr. Edmund Honohan:** I cannot deal with issues that stray beyond my particular topic today.

**Chairman:** A specific question was asked by Deputy Collins in regard to the European Convention on Human Rights and the possibility of a constitutional amendment to strengthen it.

**Mr. Edmund Honohan:** There is not an actual human right to housing. There is a human right to shelter, but amazingly one finds it is not very strong. Passing a referendum and providing a human right to housing is not a solution; it just shifts the cost burden. I do not believe it is necessary to have a constitutional referendum because the common good requirement is such that it can be argued - I have made the argument in regard to children - that society demands a paternal view of its role in regard to how to house people. It needs to accept it has failed in that role and that public housing is the way of the future and we may as well start now by acquiring a portfolio that is out there for grabs.

I should raise the issue of how this committee gets its legal advice, because while we are talking the same language here, there seem to be nuances about this issue that the committee does not understand and ones I do not understand about what members are saying. In order to get legal advice one needs to find out who is going to give the advice which will stand up to scrutiny. I am only an ordinary senior counsel who has a public service job so I feel at liberty to comment on these things. However, I am not sure whether the legal advice that has been floating around regarding articles of the Constitution is one which stands up to scrutiny, and I won-

der why that is. Perhaps there are forces at play that have shut down debate on these matters.

**Chairman:** I thank Mr. Honohan for his attendance and some of his responses will provoke further thought and discussion in this committee's deliberations. We will suspend the session for a few moments as we bring in the next witnesses.

**Mr. Edmund Honohan:** I thank the Chairman.

*Sitting suspended at 11.45 a.m. and resumed at 11.50 a.m.*

### **Law Society of Ireland**

**Chairman:** Good afternoon. Before we commence formally I remind members to switch off their mobile phones. I wish to draw witnesses' attention to the fact that by virtue of section 17(2)(1) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Their statements to the committee will be published on the committee website after the meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I welcome the two members of the Law Society of Ireland, Ms Clare Naughton of the society's human rights committee and Mr. Patrick Sweetman of the society's conveyancing committee, who will make presentations and take questions afterwards. Their submissions, as I said, will be published on the website. While members of the Law Society, the views being expressed by the two witnesses are their own rather than those of the Law Society. They are their personal views. I invite them to make an opening statement and we will then take questions.

**Mr. Patrick Sweetman:** I thank the Chairman, who got my disclaimer in before me. We are both here in a personal capacity because the Law Society is not a policy-making forum and does not create policies. Any views we express are very much our own views. I will address the question of compulsory acquisition, which the committee has had some debate about earlier on. The committee will be glad to hear I will not give it a dissertation on the law on compulsory acquisition because we would all be asleep in minutes. However, in the context of the previous discussion, I should preface my remarks by saying that I agree with the conclusions earlier on. There is no bar on using compulsory acquisition to acquire land for housing. The question, and my approach when looking at this issue, is whether it is a sensible approach. Is it value for money? Is it a cost-effective way of proceeding? I come to the conclusion that it is not. One can use the process which is a lengthy one. Mr. Honohan said earlier on that one could make the order now and only have to pay for it in two years' time. That is true. However, one pays interest in the meantime and at quite a high rate. Therefore, from an economic point of view, it is not something that is very attractive.

The process can be lengthy and open to challenge. It involves two teams of experts that will argue for the value of land on the basis of its current open market value. One then has an arbitrator who has to make that decision on foot of legislation that goes back almost 100 years. The process tends to lead to a higher open market value than one might otherwise think, if one were negotiating on the open market. In fact, I will touch on the Kenny report because it was suggested I might do so. It recognises, if one looks at the compulsory purchase order, CPO, procedures, that the outcomes are likely to lead to higher values than if one were to purchase property on the open market. On the basis that it is lengthy, technical, one has all the professional fees and the outcome will probably be greater than what one would get if one went to buy property privately, it does not seem a very attractive option. I will come back to that.

If one looks at the Kenny report, it actually dates back to 1974. The terms of reference date to 1971 and the report was issued in 1974. One might say it is a little out of date at this stage. If people want me to dwell on it, I am happy to do so in questions. However, I do not propose to dwell on it in this opening submission. There are many misconceptions around the Kenny report. The thinking around the Kenny report is that one could use a CPO to acquire development land at its current use value and that the windfall uplift that would fall to a landowner whose land happened to be zoned would, therefore, go to the benefit of the State rather than the individual. In fact, that is not what the Kenny report says at all. What the Kenny report concentrates on is what it calls betterment, that is, if the local authority provides services and those services enhance the value of the land, then in that situation the land owner should not get the benefit of it but that benefit should, through a fairly complicated procedure involving a High Court judge, go to the public good.

Interestingly, the Kenny report actually looked at the question of whether zoning should be a ground for compensation and whether one should discard or discount zoning and the windfall it might give and said one could not do that on constitutional grounds. Of course the committee that produced the Kenny report was chaired by Mr. Justice Kenny, an eminent judge who would have been very up on constitutional issues.

Why do people talk about compulsory purchase orders in the context of housing and homelessness? A fairly well-established myth or principle in political terms is that developers hoard land and in this way they inflate the value of development land because they do not release it to the market. I am not even going to touch on the truth or otherwise of that because I believe it is irrelevant now. That is because NAMA has all of the land that might have been with developers in the past. Even to the extent that it might have been true in the past, I am compelled to argue that it is not true now. Therefore, the argument about CPOs in that context is really not relevant.

Let us consider the current situation. There is a good deal of residential zoned land. Some developers still hold some of it, obviously. Those financial institutions which were not participating institutions under the NAMA Act still hold some of it, although a good deal of that land has been sold off at this stage. NAMA still retains a fair amount of it. Private equity funds - they are referred to around here as vulture funds, but I use the term private equity funds - have acquired quite a lot of it. However, they are all willing sellers. All of those backers of people are willing sellers. The idea that some authority would go along and decide to take the land of these groups by compulsory purchase is difficult to credit. The only rational explanation for doing that would be on the basis that the authority would get it cheaper. If some authority asked these funds to sell land, they would say "Yes". Normally, private equity funds want to turn profit on the assets they acquire within a three-year to five-year timescale. Therefore, if a fund is available to acquire land, there should be no difficulty in simply buying it through negotiation.



The CPO procedure is normally more appropriate where there is a specific piece of land of strategic relevance. The example I offer relates to motorways. In such cases the developers have to buy the land. They cannot have someone who holds a particular piece of land and who would stop the entire development going ahead because they hold a critical piece. In those situations, developers use a CPO to acquire the land.

CPOs can have relevance in the context of local authorities and acquiring strategic land as well, but they are going to pay for it. The reality is that if a local authority uses a CPO, it will be paying somewhere ahead of the current market value of that land. There is a danger for a local authority if it were to announce that it was looking at using the CPO process to acquire lands. What that would actually do, perversely, is stop or constrain the market in development land. This is because the relevant people may decide to hold on until they see the CPO process in case they get a better price. That would actually push any trading in development land out for a couple of years. Therefore, I would be wary about taking that route.

However, I believe certain things can be done and if the committee will indulge me I will go through some options. There are two alternatives. Either the State, through the local authorities or otherwise, provides all of housing or there is a mix between the State and private developers providing solutions. In the private sector, the funding is actually in place. Committee members will have seen newspaper reports of hundreds of millions being raised in the London market and elsewhere for the purposes of providing residential property in Ireland. Far more could be raised if people were persuaded that it was a good investment. What is not here at the moment is the market. The market is not here at the moment for a number of reasons. It is not here because, to a large extent, it is not feasible to build at the moment for many developers. It is not feasible for them to build because people cannot afford to buy. People cannot afford to buy because first, the price is too high, second, because of Central Bank restrictions and, third, they simply do not have the wherewithal to put together deposits even outside of those restrictions.

In fact, a site fine, which is relevant in the context of a CPO, is not the determining factor in the price, because a site fine will be determined by what a given property trades at. If I buy a piece of development land, I will look at what it would cost to build a house on it, the costs of putting the infrastructure in place and the cost of development contributions. Then, I will price what I am prepared to pay for the piece of land on the basis of all of that when I calculate what it is that I would be able to sell the land for. The way to free up the market is to make it profitable for the private sector to provide the housing. This can be done in several ways. I understand the Central Bank issue and the separation of powers and if it is felt inviolate that the Oireachtas cannot use the Central Bank, then it needs to find other ways of dealing with it. Home ownership is far too serious a social issue for the country to allow it be the hostage to fiscal responsibility. The Central Bank has other tools as well. There should be a national discussion on home ownership. It is the first and most important determining factor in breaking down existing class structures - it is the way for families to dramatically improve their financial circumstances. It allows them to support children in third level education and to look after themselves for nursing home care or somewhere to live when they retire. Ultimately, if people cannot buy houses and all houses are rented or are local authority housing, there is a huge pension time bomb. This is never recognised in the debates on economic and fiscal responsibility: if people do not buy their houses, those who rent all their lives will have to be looked after in their old age and their pensions will have to facilitate their having a house. Whereas if somebody buys a house now, or under the many local authority purchase schemes, such as the recently announced Dublin City Council tenant purchase scheme where people own the houses, while they will need a pension in old age, they will not need a house as well. That is never factored into this question.

We should have a national discussion on home ownership, as a very important policy and one which, if it is encouraged through the proper Government incentives, would be transformative. It would also have the knock-on effect that in times of financial difficulty, there would be a new source of taxation because people who have homes will have an asset that can be taxed.

**Ms Clare Naughton:** The Law Society invited me to come here but I am expressing my own views on this matter. I am a solicitor working in community law and mediation, primarily in the area of social housing law. Most of my clients would either be trying to access social housing support or deal with evictions.

The legislation is structured in such a way that now a person applies for social housing support rather than for local authority housing. That is one sea-change that has happened since the Housing Act 1966. It came in with the Housing Act 2009. An applicant for social housing support is a household, usually one or more persons who, in the opinion of the council, have a reasonable requirement to live together. The application process is the means by which the local authority assesses the eligibility for social housing support, identifies the person's need and makes the allocation.

There are a few issues we see when dealing with people in our service in the context of accessing the housing list. I am not dealing with the homeless or emergency list but with the social housing support list. I deal mainly with Dublin City Council and in my experience it operates two separate lists: the emergency list and the housing list. That is my experience of the local authorities through Dublin City Council.

I expect that the primary concern of this committee has to be the current emergency. Some of the measures I raise would, however, prevent future homelessness and assist applicants for social housing support. The first issue I would like to address which I did not raise in the presentation is the difficulty in accessing legal aid. It is a huge issue. We try to deal with the gaps in the legal aid system which is structured in such a way that a person cannot access legal aid in a dispute relating to a right or interest in land. Quite often the Legal Aid Board determines that an issue concerning access to social housing support or an eviction from a local authority home is the subject of such a dispute. That means that there is a huge number of people who do not have the resources to fund legal representation and are not accessing such representation.

There have certainly been recent attempts to deal with some of these barriers, one of which is the scheme available within the county courts where the Legal Aid Board has private solicitors to assist people in cases involving mortgage reposessions. However, in general, if it is a local authority issue, the person concerned will not have access to legal representation as a matter of course. He or she may qualify under an exclusion, namely, where they are subject to fraud, subject to undue influence or that they are subject to "an infirmity of mind or age". On the last condition, the legislation is archaic, but I imagine it means somebody with a capacity issue or who is older. In general, a family accessing our services will not receive legal aid.

When a person applies for social housing support, the first test involves the eligibility criteria. One of the difficulties with the criteria is that while the housing Acts do not require an applicant for social housing support to prove his or her nationality, local authorities are relying on a circular from the Department of the Environment, Community and Local Government - obviously, this will now be the responsibility of the Department of Housing, Planning and Local Government - which asks them to consider the nationality of an applicant. The regulations are extremely complicated and concern the free movement of persons. Quite often my experience is that the regulations are misinterpreted and people are refused access to basic social housing

support, as well as to the homeless priority application process owing to their nationality.

A second major concern, particularly in the context of the crisis, is the difficulty for those in mortgage arrears who want to surrender their homes. Generally, if a home has not been dealt with by the courts, the household is deemed to have alternative accommodation available. There have been a number of attempts to address this anomaly in legislation. The first was a statutory instrument in 2011 which stated that if a homeowner in arrears could prove that his or her mortgage was unsustainable, he or she should be able to access the social housing support list. The difficulty with this is that the appendix to the code of conduct on mortgage arrears includes a definition of “not co-operating” which is extremely broad. Quite often we find that mortgages are not being deemed unsustainable and instead people are being deemed not to have co-operated. This poses a major problem. It is not possible to deal with the application for social housing support until after the property has been dealt with.

There was a further attempt to solve the problem in the 2014 legislation. The Housing (Miscellaneous Provisions) Act 2014 contains an amendment to allow families or households in these circumstances to access limited social housing support, namely, through the housing assistance payment, HAP, and rental availability agreements, the statutory format of the RAS. These supports are, however, heavily reliant on the private rental market and not a real solution for the moment.

There are alternative options available for people in these circumstances. However, I imagine the first solution would be a personal insolvency arrangement. If this would apply, it would generally be in a situation where the personal insolvency practitioner, PIP, should be trying to keep the family within the home. It is really not an answer to the problem. Another option would be to await a court order for repossession. Once there is a determination on the property, the person concerned is allowed to access the social housing support list. It will then allow the person to access the social housing support list, but at that point, because the property is no longer within his or her possession, it is an emergency situation and he or she falls within the net of homelessness.

A further area with which we see problems are separating couples. This is all set out in legislation. If a final decision or court order regarding the family home has not been made, this can pose a barrier to the person who is leaving the family home and the arrangement to apply for social housing support. People accessing social housing support may be reliant on legal aid, and the Legal Aid Board is heavily oversubscribed and experiencing extensive delays. Quite often, family law proceedings can be delayed. If a property is not dealt with, the person cannot apply for social housing support and the greater range of services available.

The 2014 Act tries in some ways to address this problem in that, as I already mentioned, it allows local authorities to approve a household for certain types of social housing support. Those types of social housing support are the housing assistance payment, HAP, rental availability agreements or the rental accommodation scheme, RAS. They are not viable options in the current climate.

A potential solution to these barriers is a reconsideration of the definition of “homelessness”. If local authorities were required not only to assess the eligibility of persons who are homeless but also to consider the eligibility of persons who are at risk of homelessness, that could be a way to overcome this barrier. Homeless organisations have written about that.

Assuming a person has met the eligibility criteria, which also involves other requirements

such as financial income, his or her need for social housing support is then addressed. We regularly come across issues around separated parents. A separated parent who is heavily involved in his or her child's life and wants to co-parent him or her will have difficulty accessing accommodation of a suitable size for a family. Some local authorities have no difficulty addressing this problem, but others do.

A father of three teenage daughters, for example, may be approved for an allocation of a one-bedroom unit, which is not a viable option in terms of the make-up of the family. A local authority may deem that the children are already adequately housed and, therefore, will not allocate such a father a two-bedroom unit. A father may wish to have his children stay overnight with him for two, three or four nights a week, as the arrangement may be, but he cannot do so because he does not have suitable accommodation.

The determination of whether a person is entitled to a one-bedroom or two-bedroom allocation is much more significant now that we are moving into HAP because the scheme is administered by local authorities. If a local authority has determined that a person is entitled to a one-bedroom allocation, that is what he or she will get and how he or she will have to house his or her family. There are potential equal status issues. The decisions of local authorities on the administration of the housing stock are policy issues, but the implications are legal and it is for that reason I have addressed them.

A major concern and something I frequently see in community law mediation are issues around medical priority. Local authorities are given guidance on what they should consider in allocating medical priorities, that is, people who have a particular need, such as new accommodation or a change in their accommodation due to their medical situation. However, the only guidance they are given concerns cases where the management of the course of the illness can only be greatly improved by a change in housing.

I have dealt with a number of situations around this issue. My concern is that the decision on medical priority is generally made by a medical practitioner, which is very helpful and important, but such a person is not usually a staff member within the local authority. The service is quite often contracted out. Depending on the local authority concerned, more than one medical practitioner may perform the role.

There are no assessment criteria or guidelines from local authorities or the Department, and none have been prescribed in law. While some local authorities operate an *ad hoc* review process, there is no statutory appeals mechanisms. No information is provided to an applicant on why his or her application for medical priority has been refused. To put that in context, I apply for medical priority and I send in my medical reports. I am told I do not qualify because the management of the course of my illness cannot be greatly improved by a change in housing. However, I am not told on what basis that decision has been made. I could make that application to a different medical practitioner within the local authority who may have a different view. I could decide to appeal. I may be, and usually would be, given an appeal by the local authority. That would be dealt with by the same medical officer or a more senior one who has a contract with the local authority but I would not be told why my original application was refused. I would not be told whether I had not given enough medical evidence or whether it did not see how my situation could be improved. That is a huge anomaly in the legislation. It is a complete lack of fair procedure. There is an inequality of arms because I cannot deal with the issue at hand. There are also potential equal status issues.

On the one hand, all of this is really important. It may, and hopefully will, resolve the crisis

that we are in. However, unless these issues are addressed, they will become future problems for people dealing with the process.

**Chairman:** Thank you very much for your presentation. There are two separate issues and ranges of questions. Bearing in mind the time constraints, I ask members to keep questions direct and specific to either of the witnesses. We will just have one round.

**Deputy Eoin Ó Broin:** I thank Mr. Sweetman and Ms Naughton for their presentations. Regarding the CPOs, much of the discussion we have been having is less to do with land and more to do with the compulsory purchase of vacant units that are not on the market or the use of CPOs to buy packages of mortgages that have been sold on to funds, or whatever we call them, at a discount. There is a question of whether a CPO could be used to purchase them at that discount price rather than at the market value. I am interested to hear Mr. Sweetman's thoughts on that.

Many of Mr. Sweetman's comments were based on a number of assumptions. For example, he had some pretty clear assumptions of the non-existence of land hoarding. Are there data on that or is it anecdotal and professional experience that leads him to say that?

I ask the same question about it being too expensive to build. This is a hot topic in this committee and it is not clear. I am certainly not aware of anybody presenting data, although the Society of Chartered Surveyors Ireland is releasing a report tomorrow. Is Mr. Sweetman aware of data on that issue? The Central Bank restrictions only kick in for first-time buyers for prices over €220,000. Are there data that shows the restrictions are causing difficulties?

We have a higher percentage of private home owners than almost all of our EU counterparts. Many of those other EU member states have ways of managing the impact of private rental accommodation on pensioners when they reach pension age without having a pensions time bomb. I wonder if Mr. Sweetman has factored that into his considerations and whether he has thoughts on it.

I am familiar with most of the issues Ms Naughton spoke about. They are probably issues for the new Oireachtas housing committee because they relate to more broad-ranging reviews. I think any of us who will be on that committee will raise them there.

I have two questions for Ms Naughton. Is she saying people who are habitual residence condition, HRC, compliant are being refused access to social housing lists on nationality grounds? That is in regard to her opening statement. If that is the case, that is very concerning. I know there are issues around people who are not HRC compliant but I am interested in that.

I come from South Dublin County Council, which allows housing applicants on to the two-bedroom list when they have part custody of a child. The ministerial guidance on this is very clear. Is this a case of the allocations policy of, for example, Dublin City Council needing to be changed by the councillors or is Ms Naughton suggesting that there needs to be much firmer legal guidance from the Department or from the Oireachtas centrally?

**Chairman:** The witness may choose the order in which he wishes to answer the questions but I ask that he keeps his answers as direct as possible.

**Mr. Patrick Sweetman:** I thank Deputy Ó Broin for listening so intently to what I was saying. I think he picked up everything. I will be brief in trying to respond to the points. The same comments apply to the discounted price with regard to vacant houses. CPOs can be used and



vacant houses can be acquired but it would be far better to go to the owner of the building and negotiate a purchase than to use a CPO. They will be freely available if they are unproductive and sitting as vacant units because in most cases, there is no reason the person who currently owns them would not want to sell them and get a return.

**Deputy Eoin Ó Broin:** They are waiting for the property prices to appreciate to make up losses on investments made pre-2008. That is the problem.

**Mr. Patrick Sweetman:** That is absolutely right. On the question of data on land hoarding, I hesitate to go back to the Kenny report of 1971, which was published in 1974. Even then, while there was a sense of land hoarding, there was no actual evidence of it. I have worked with developers for 35 years and have heard on many occasions about land hoarding but whenever I question a developer on the point the answer is that the issues are infrastructure and planning and there are good reasons land is not developed. A developer's job is to make a profit but it would be a brave developer who says he might make a good profit today but a better one tomorrow so decides to wait. My experience is that, if there is a profit to be made today, they will make a profit today.

On the question as to whether it was too expensive to build, it is really down to volume. There are people buying houses at €200,000, €250,000, €300,000 and €350,000 but in order to kickstart a resurgence in the industry one needs volume and greater numbers of people who can afford to buy the houses. One does not want to build 20 houses in a development but 200, although the Society of Chartered Surveyors will be better able to deal with that question.

I was asked whether there was any data evidence on whether the Central Bank restrictions prevent people from buying. I would put it down to common sense - not many people can afford a €60,000 deposit to buy a house except through the bank of mum and dad, and this just perpetuates the inequalities because the people with assets are the ones who can afford to buy a house while others, without that support from their parents, are not in such a position. I do not have any specific data but there are plenty of data on the subject. There are plenty of studies which I can get for the committee.

Other countries are struggling with the pension timebomb. We have looked at providing a pension fund for pensions and different countries are dealing with it in different ways. We have one of the largest proportions of home ownership and that is a very good thing but other countries have older populations and smaller populations of young people than we have. We are building up problems for ourselves in 40 years time.

**Ms Clare Naughton:** In answer to the first question on HRC, the difficulty is in how it has been interpreted. Applicants for social housing support are often asked to prove they have 52 weeks of work but there may be other ways a person can qualify, such as where an adult child makes an application. Once it is addressed with the local authority, generally they will respond but the difficulty is with those people who do not have the skill set to address the issue. In my experience it is the way the regulations have been interpreted that is the problem.

The second question was on part custody. Many local authorities, particularly those in the greater Dublin area, can cope with responding to applications from separated parents or where there are co-parenting situations. South Dublin County Council certainly can but Dublin City Council does not seem to have this in its scheme of allocation. They will deal with it when it is put to them directly but I only deal with a small proportion of separated parents and the problem is with those who do not have somebody to argue their case.

**Deputy Bernard J. Durkan:** I thank our guests for coming before us and for imparting their wisdom. I would agree in general with Mr. Sweetman that the intervention can often create the opposite effect to the one desired in some of these cases. I know from experience the way the process works. One of the points that has been made repeatedly is that developers cannot build because it is not profitable. In other words, they cannot make a profit. The critical factor is that the cost of the end product will be too high. The cost of the end product, the house, is one of the reasons the country was in the position it was in during recent years. What is the major contributory factor in that respect? Is that a legacy from the inflation which was created during the boom and with which we are now trying to come to terms? Does that have an ongoing impact on property prices or have we resiled from it? What is likely to happen?

I agree with the Central Bank regarding its restrictions on loans because if those restrictions were lifted, we would return to where we were previously, we would have massive inflation overnight and we would be obliged to introduce benchmarking again in order to enable people to live. The simple fact of the matter is that the disposable income in a household is automatically affected by the level of mortgage required. The repayments relating to the latter can often be more than half of the level of disposable income in many instances.

I spent yesterday in the courts with various people who were under threat of having their houses repossessed. I believe that 90% of the people want to make their repayments and all they want is to be given time, understanding and some pathway whereby they can make the payments within the confines of their ability to pay and to do so continuously to best of that ability. There is another group, probably comprising 10% of people - I received an e-mail about this only a few minutes ago - who do not wish to pay at all and whose only ambition is to get a property that is considerably less expensive than that of their next door neighbour who has had to pay a mortgage in the normal way. To what extent is it possible to encourage lenders to show compassion and consideration to those who are making the effort? The situation, as the Chairman knows, is that householders are appearing in court in tears. They are desperate and know that they are between a rock and a hard place. We have to do something that recognises their particular plight.

I am not sure whether there is an issue with the hoarding of land. I am of the view that what is happening in this regard has something to do with the prices inherited from the boom, which do not seem to have decreased. I will relay to the committee something I was told and our guests may address it if they wish. A property valuer informed me that during the initial stages of National Asset Management Agency, NAMA, coming into operation, when properties were being bought at reduced prices - 46%, 48% or whatever the percentage was of the full price - those properties were actually only worth about 10% of the full price. The individual in question was in the business and I think he knew what he was doing.

On the question of voluntary surrender, Ms Naughton made an intervention. People are being encouraged to voluntarily surrender. However, what is involved is not voluntary surrender. They are given a list of options, none of which is acceptable. Again, this affects households with children. It is horrendous to see the effect it has on the families. Can we encourage the lending institutions again to be accommodating, given that they were accommodated compassionately by the Irish taxpayer, who will continue to accommodate them well into the future? I am not getting into the argument about burning bondholders or anything of that nature. I do not agree with such behaviour because it comes back to bite one. It is necessary to impress upon the lenders that they were accommodated by the Irish nation and that they should be in some way inclined to respond in a similar fashion.

**Chairman:** I do not know how many of the Deputy's questions fall within Mr. Sweetman's remit.

**Mr. Patrick Sweetman:** One or two of them do. I thank the Deputy for his questions. On the Central Bank, ultimately, I am just a private citizen and that is my personal, private view. Nobody wants to go back to the crisis or the difficulties we have had. The Central Bank has other tools at its disposal as to how it might control the market. I would like to see, in the decisions it makes on financial stability, that it factors in the long-term as well as the short-term view, but I never see that this is done. That is my net point. The long-term cost of preventing people being able to buy a house might be as a result of a much more significant issue than is currently factored in.

There are other measures available. Touching on another point the Deputy makes about costs being too high, and this is a private citizen's comment on the Government take, the proportion often mentioned is that the Government takes one third of the cost of the price of the house. If it reduced that by half and three times as many houses were built, on pure mathematics that would be a gain and no cost, so it is something that needs to be examined.

On the question as to why the costs have not come down, extraordinarily, building costs apparently have not come down even though the market is fundamentally different from what it was previously. I cannot explain that. That might be one for the representatives of the chartered surveyors tomorrow.

The final point I will make is on servicing a mortgage as opposed to paying a rent. What I often hear is that it is cheaper to get a mortgage than to pay a rent.

**Chairman:** I thank Mr. Sweetman. I call Deputy O'Rourke.

**Deputy Frank O'Rourke:** I thank Mr. Sweetman and Ms Naughton. What is Mr. Sweetman's view on repossessions? Home owners who are dealing with both local authorities and banks and who have fallen on hard times in terms of work because of the financial situation and who might be making a contribution of only half of what they should be making in terms of repayments are still brought to court for repossession. They are fighting against that repossession order, something which I have done for a number of my constituents. What is Mr. Sweetman's view on how their position could be strengthened to allow them pay what they can afford to pay on that basis? Although the arrears are accruing, surely that is not good enough a reason not to give them space to deal with that and see how they can improve their situation, rather than having a repossession order granted against them with the result that they are sent them back to the local authority, about which Ms Naughton spoke, which then does not have any asset to give them. What is Mr. Sweetman's view on how that can be dealt with because what is happening currently does not make any sense in terms of the courts and so on?

I agree with Mr. Honohan's position on acquiring land by way of CPO. I represent Kildare North where the local authority has quite a number of land banks. It may not have enough to deal with all the social or starter housing required but it has enough to get local authority housing construction started, which has not happened for years. Currently, local area plans and county development plans are being developed but there is a problem getting land zoned for people willing to go out tomorrow morning with a digger and build houses, if they get through the planning system, because the lands that are zoned have been left aside for 25 years accruing capital. If we do not intend to CPO them, what is the best way in Mr. Sweetman's view of trying to deal with that legally in terms of the people sitting on those land banks who are prevent-

ing other people having land zoned that will help to solve the problem?

In terms of what can be done, the second bullet point is very relevant. There is a need for the private sector and local authorities to come together in this regard. We are not reinventing the wheel. We just need to stop talking about it and do something. I have never heard so much talk but with nothing being done, and we still have people sleeping on footpaths.

My next question is to Ms Naughton. The housing assistance payment, the rental accommodation scheme and rent supplement are not ideal but they are better than nothing and without those supports many more people would be in a very difficult situation. They provide a temporary home, although it is very temporary. What is Ms Naughton's view on overcoming the barrier with regard to people who are separated but who do not have joint custody of their child or children? As she said, if they have joint custody they will be accommodated but those who do not have joint custody who may want to stay overnight cannot do that because the local authority will not allow them pay rent for accommodation in those circumstances. In most cases the father of the child or children never gets to spend any time with them except during daylight hours. Moreover, couples who have had repossession orders granted against them cannot get on the local authority social housing list to get supports to rent a property for their family. Although they are out of the property in question, their names are attached to it because it has not gone through the courts completely and they are not detached from that deed. This prevents and blocks them from getting on the social housing list. In Ms Naughton's view, what is the best way to deal with this issue? Is it through affidavit or is it through a change?

**Mr. Patrick Sweetman:** One question for me was on repossessions. While it is not specifically my area, I agree absolutely it makes no economic sense to go through the entire process and then put someone out on the street who must then be housed again. The dilemma is to have a procedure which distinguishes between those who cannot pay and those who will not pay. The former should be accommodated in every conceivable way and there may be issues such as attachment of earnings or social welfare payments or both or otherwise of whatever amount a court deems could be paid. Those who will not pay obviously must be dealt with.

As to what can be done regarding the landbanks, the first thing would be to make it more profitable or indeed profitable to bring such land to market. The second thing would be to remove some inhibitors. The committee heard earlier about planning and there are some serious inhibitors within the planning process that could be streamlined such as, for example, if An Bord Pleanála had a statutory guideline within which it must make decisions. I understand it is prioritising housing planning applications and a statutory timeframe within which it is obliged to make a decision would be a major move towards bringing through land for residential development.

**Ms Clare Naughton:** On the first issue in respect of rent supplement, the housing assistance payment, HAP, scheme and the rental accommodation scheme, RAS, they would be solutions were the property available. If they were solutions, we would not have so many people living in hotels and hostels and, consequently, they are not solutions at present. Obviously, these again are my views and not those of the Law Society, but it is a policy issue and it is a financial issue. The answer is yes, they would be fantastic options if they worked.

As for the second issue regarding the parental position, if one considers the allocation schemes of the various authorities within the greater Dublin area, many of them allow for a second bedroom allocation. They may allow for an allocation for two bedrooms in the case of a separated parent. However, my experience with Dublin City Council, for example, is it only al-

lows for one bedroom and an applicant must then try to get somebody to argue the position as to why the applicant should be entitled to a second bedroom, even though the applicant may have four children. I apologise but can Deputy O'Rourke remind me of what was his last question?

**Deputy Frank O'Rourke:** The last question pertains to a scenario in which repossession has been granted against a couple and because the name is still attached to the deed, it must go through a lengthy legal process that prohibits the couple from getting onto a local authority list to get assistance of the kind about which Ms Naughton spoke.

**Ms Clare Naughton:** As I mentioned, they cannot benefit from the full range of social housing support but they can benefit from the limited forms, which again are RAS, HAP and rent supplement. Again, they are not workable solutions at present. It is a resource issue.

**Deputy Frank O'Rourke:** In response to Ms Naughton - Deputy Durkan can correct me - in my constituency the position is that to avail of HAP or RAS, one must be on the social housing list. One barrier to getting on a social housing list, although I try to work around it with affidavits or whatever, is if a person is attached to a deed that is being repossessed and is going through a lengthy process. Consequently, that is a problem.

**Ms Clare Naughton:** The 2014 Act, I believe it might be section 49 of that Act, has a provision which allows for local authorities to discount the property in this situation in which it has not yet been dealt with. I have the definition to hand and if I may, I will read it out. It refers to where the local "authority is unable to establish for the time being whether alternative accommodation is available to a household that would meet the household's housing need" and consequently this is the position that must be argued. I argue this legislation is in place to deal with people in this scenario. There are one or two conditions associated with it in that I believe they must keep the local authority informed of any change in circumstance regarding the property and if the property becomes unavailable or available for whatever reason, there again is an obligation to go back to the local authority. I cannot remember the specific wording but that provision is in the legislation of 2014 and I imagine the local authority should be following it. As to whether the local authority interprets this to be a scenario that should benefit, I imagine it should be and if it is not, there is a greater gap in the legislation than I already thought.

**Deputy Frank O'Rourke:** It is a matter of interpretation.

**Ms Clare Naughton:** Yes.

**Chairman:** I will talk to Deputy O'Rourke about that separately.

**Deputy Frank O'Rourke:** But it is a problem on the ground.

**Chairman:** At this stage, I am conscious of the time. If it is okay with colleagues, I will take the three remaining contributions together.

**Deputy Ruth Coppinger:** On Mr. Sweetman's contribution, one of the reasons that we suggested this session was to look at legislation, including emergency legislation, that might be required to stop people from becoming homeless and to sort out the housing emergency. The issue of CPOs is an important one on which this committee needs to get views. In his presentation, Mr. Sweetman gave the impression that he did not like CPOs because they were cumbersome and unviable.

First, with regard to land, it is not always the case that local authorities have enough land



zoned that they can build on. It certainly is not the case in my local authority, where the information is compiled. In Dublin west - which, based on the figures, probably has the biggest housing crisis in the country - there is one patch of land that the local authority has left zoned. The land, extending to 15 acres, is all in one location. Of course, it happens to be the most deprived area. We cannot solve the housing crisis unless we are able to get privately owned land in Dublin west and in Dublin 15. The local authority has a lot of industrially zoned land, on which it has a deal with IDA Ireland. Some of it would not be suitable for housing because it would be in the middle of an industrial estate; other portions of it may be.

One of the other reasons we selected this as a topic was the question of vulture funds. I note that Mr. Sweetman does not like the use of the word, but it must be said that he has a connection and an interest in that he is a lead partner in the commercial property department at Matheson, which has connections with these vulture funds. Matheson has 125 US companies registered at its address on Sir John Rogerson's Quay and it gives tax minimisation advice to international clients, some of which are vulture funds. The chair of Matheson is the sole shareholder in European Property Fund. I was out this morning with residents from my area who are threatened with eviction by European Property Fund. I am merely stating that Mr. Sweetman may have an interest.

I wanted to take up Mr. Sweetman's idea that home ownership is this great equaliser of the classes. In fact, it is the opposite. Home ownership has become the way one climbs above people and a way for people to be blocked out. In Dublin, the ratio of those who own their homes and those who rent is 50:50, simply because of unaffordability. Of course, just because people buy their houses, it does not mean they are suddenly not working class.

Mr. Sweetman mentioned the pension time bomb. I would read it the opposite way to Mr. Sweetman, because one of the big spurs in the buy-to-let trend was the fact that building workers and others who were self-employed bought houses for their pensions. Now look at where these people are. They have these second or third houses that they bought because they were told to buy them, but they do not want to be landlords and the whole endeavour has fallen belly-up. Would it not be better to introduce proper pensions? Also, would Mr. Sweetman agree with the idea that people could have in their old age a publicly owned house, probably smaller than what they had previously, or even, in the case of some people as they get older, sheltered housing?

On the idea that private housing protects people, 30 or 40-year mortgages are now the norm, and many must remain working longer. Teachers are now working until all ages.

Lastly, not all the sellers are willing. Many are not willing to sell. With regard to the vulture funds, I am trying to encourage the Government or the local authority to buy Tyrrelstown to keep people in their homes. That is the only way I see for those people to avoid becoming homeless, particularly in our area. However, the talks have not gone well. Therefore, the issue of compulsory purchase comes into play.

**Deputy Michael Harty:** I have two questions for Ms Naughton. With regard to medical priority, patients come to my surgery quite often looking for medical evidence regarding either moving from a house, because the one they are in is in poor condition, damp or affecting their health, or the effect on themselves or their children. I give medical evidence in that regard. Is it passed on to the medical officer employed by the council for verification, checking or additional assessment?

The second question concerns nationality. Is Ms Naughton saying that an individual who is not an Irish national does not have the same right or status in obtaining a house?

**Deputy Catherine Byrne:** I thank the delegates for their presentations. I, too, wish to refer to medical applications, particularly when they come across the delegates' desks. Many of the applicants I come across are ineligible. One cannot even read some of the applications, to be honest. With the greatest of respect to general practitioners, I do not believe letters from general practitioners have any input into the granting of medical priority. If somebody is attending a doctor or consultant, one of the main issues is the length of time it takes to get a medical report, or a medical assessment of children with ADHD. That takes so long.

Mr. Sweetman spoke about local authorities, those who pay and those who just will not pay. This can be said also in respect of local authority housing. Mr. Dick Brady from Dublin City Council was before us three weeks ago. We learned that the amount of money owed in rent arrears to Dublin City Council amounts to millions of euro. This is a real issue that should be examined by the councils right across the country. Housing is being provided for people who just do not want to pay. There are people in arrears for other reasons, but there are many who just do not want to pay.

We can talk until the cows come home, as they say, but unless there is action and we have the land to build on, there will be no progress. As a member of the Government side, I note that a lot of money has been provided in my local area for building and buying houses, but we need a more urgent approach. That is why this committee has been set up.

What are the delegates' views, if any, on local authority housing and on local authorities building all housing for everybody? I really believe that the chance of a local authority tenant, public tenant or a member of a young couple in private accommodation who is working his or her back off ever owning his or her own property is slim. What does Mr. Sweetman feel about local authorities building and providing a rent-to-buy mortgage option for young couples, be they employed or unemployed? It is important and it is the way to go.

**Chairman:** There were a number of references to land hoarding and the question of whether land is being held or not. Mr. Sweetman's reply was very much on incentivisation and the freeing up of land for the market. Others might believe there should be a carrot-and-stick approach, whereby the stick side might be the taxation of land hoarding. Quite clearly, within the resources available there are only certain incentives that can be given. To address what is needed in the public good, is there another side that should be examined? Should it be dealt with in parallel, such that there would be a carrot and stick where the hoarding of land, particularly in areas where services are available and when we are facing a national emergency, would be addressed? Do we have to have the other side of the equation? Mr. Sweetman might address all those questions together.

**Mr. Patrick Sweetman:** A fair number of points were made. With regard to Deputy Copinger's point, I did not actually make any suggestion that local authorities had enough lands. Somebody else made that suggestion. What I was saying was that for local authorities to access the additional lands they require, it would be far cheaper, much more efficient and much quicker for them to buy them on the open market rather than using a CPO procedure, which would be slower and ultimately much more expensive.

I did not quite address Deputy O'Rourke's question on whether one could use a CPO to acquire land at a discounted price. That is probably the essence of what he was asking. There

has been discussion previously concerning constitutional issues and what is the actual constitutional position. We heard it earlier again today with reference to the Kenny report. Many other commentators have always suggested that if one is seeking to take in land at less than the current open market value, that is a constitutional issue. I cannot really put that one much further.

As regards the Chairman's comment on a carrot-and-stick approach, there is the vacant land tax which has just been brought in for people hoarding land or holding on to land and not bringing it forward to the market. That has been dealt with but on the question of limited resources, I would argue that in terms of pure maths or sums, by bringing in incentives which would encourage more building and encourage more people to be able to acquire property, that will pay for itself. Economically, it will be a much better way of going about it.

In that context, I might take Deputy Catherine Byrne's comment on building for everybody. The difficulty there is that there is a finite resource and if one is going to build for everybody, it would be an extraordinarily expensive process to try to do that. It would also be a real challenge trying to co-ordinate, through some central process, that 20,000 to 30,000 units were built by a single entity centrally every year. There would be real difficulties with that and the better way to go about it is the dual approach of local authorities being financed and encouraged to build and provide housing, and the private sector also playing its part.

I was going to take Deputy Coppinger's last point next, but I have lost it. I think the point was that not all are willing sellers. No, of course, not everybody is a willing seller. However, I would say that there are enough willing sellers if there was the resource. I am not conscious that any local authority or Government agency has actually sought to acquire any of these land banks, or has appointed agents with a view to acquiring them. They could of course have bought them at the same competitive rates had they wished to do so. We now have a crisis which must be addressed. They need to be resourced to do that and if the local authorities or State agency, whichever way it goes, are resourced to buy land, the land will be available.

**Deputy Ruth Coppinger:** Just to clarify, I was referring to the houses from which people are threatened with eviction by these vulture funds.

**Mr. Patrick Sweetman:** Yes.

**Deputy Ruth Coppinger:** The council has been in discussion for months with the EPF.

**Mr. Patrick Sweetman:** In the context of resolving a housing issue, the option of buying the house rather than having someone put out on the street is probably a much more cost-efficient way of going about it, absolutely. I would agree with Deputy Coppinger on the question of home ownership. In fact, I think she is making my point in a different way. It is the great equaliser and an opportunity for people. Instead of having people with two or three houses - or because they have one house can then afford to buy another house whether it be for their family or otherwise - if the family have bought their house, whether it be through a local authority or privately in the past, it gives them the resource to enable a family member to buy a house in the future because they have an asset which they can put towards doing that.

I stand over the comment that it is a great equaliser in allowing people to improve their financial circumstances dramatically. Earlier on, I mentioned the Dublin City Council tenant-purchase scheme being re-introduced. That is very much to be welcomed because it plays to that exact point.

Deputy Coppinger took issue with my question concerning vulture funds through private

equity funds. That is just where I have come from. Yes, Deputy Coppinger is right, I was a partner with Matheson. I am not a partner now and am not practising as a solicitor now. However, I think the use of the phrase “vulture fund” is disparaging and I simply prefer to use “private equity fund”.

**Deputy Ruth Coppinger:** I knew Mr. Sweetman would not like the term.

**Mr. Patrick Sweetman:** There was one other question on the pension time-bomb and where it will go in the future. I would like to see that there were sufficient numbers of people who could fend for themselves, which would then allow the limited State resources to be applied to those most in need. Therefore, one would allow some people or those who can afford it to fend for themselves - the more of them the better - which would then increase the State resources that are available to support those who actually need it, rather than having a blanket safety-net for everybody. I think that answers it.

**Chairman:** A couple of questions were directed to Ms Naughton.

**Ms Clare Naughton:** Deputy Harty, or perhaps it was Deputy Durkan, asked about non-Irish nationals or Irish nationals. There is no restriction in housing legislation as to who can apply or what nationalities can apply for social housing. That restriction comes in under our EU obligations. Certainly, the difficulty arises in particular for people who cannot, those who may be HRC compliant and may be able to prove a connection with the country, but the way in which the questions are posed by the local authority means they cannot meet those questions. For example, the big question that comes up a lot is, “Can you show 52 weeks of work?”. That does not apply to a child who has just come of age and is not in a position to show 52 weeks of work but who may have a good connection with the country. That would be an example.

With regard to the medical priority situation, the difficulty is that it varies from local authority to local authority. There is certainly in legislation a requirement - I am not sure if it is in the primary Act or the statutory instrument - for a consultant’s report. From a positive point of view, I know that Dublin City Council does not necessarily require as high a level as a consultant’s report. Apologies, I think the legislation looks for a report from a medical practitioner within the HSE. So, it varies from local authority to local authority. The legislation says something different to what the local authorities say. Even from that point of view, I cannot advise somebody without checking what they actually need to bring in or produce for the local authority. It is very unclear at the outset as to what they actually need. They have to either check their local authority to find out from it or check the legislation because both set down different requirements. Even with that, some local authorities will not be satisfied with just a GP report, but will want a report from a consultant, as Deputy Catherine Byrne mentioned. The difficulty can be, for example, that if one is waiting to see a urologist on a public appointment, one can be waiting a very long time. In order to prove one’s medical condition, even a request for medical priority can take a long time and even with that there are difficulties at the next stage.

**Chairman:** Thank you Ms Naughton.

**Deputy Bernard J. Durkan:** Chairman, just a quick query.

**Chairman:** Very quick, because we are pressed for time.

**Deputy Bernard J. Durkan:** Can we cut to the chase on this issue about repossessions and the sale of loan books to unregulated third parties? What is Mr. Sweetman’s opinion? Deputy Coppinger, correctly in my view, raised the issue as well. To give some degree of assurance to

the people in their houses who are under threat, is it not desirable to assume that a regime can prevail whereby the purchaser of the loan books should be obliged to enter into negotiations along the lines that were originally entered into by the original lender? There is no need to go any further. I should mention that the Minister for Finance, Deputy Michael Noonan, said he preferred the benefit of any arrangement to go directly to the borrower or home owner rather than to those providing the buildings in question.

**Chairman:** Deputy Durkan's question is clear.

**Deputy Bernard J. Durkan:** Sorry about that, Chairman.

**Chairman:** Mr. Sweetman, do you want to conclude on that point?

**Mr. Patrick Sweetman:** Unfortunately, the answer is "Not". I am afraid I am going to have to decline to even try to tease that one out because it becomes a legal problem. It becomes an issue as to the extent to which the original loan transaction with the original bank is binding on the bank's successor in title and that depends on all the individual circumstances and I would not even attempt at a general, broad generalisation. However, the view the Deputy expresses is clearly a reasonable one.

**Chairman:** I thank Ms Naughton and Mr. Sweetman for their presentations and their replies to the various questions here. They have been very helpful and informative to the committee. We will suspend the sitting until 2 p.m.

*Sitting suspended at 1 p.m. and resumed in private session at 2 p.m.*

### **Professor P. J. Drudy, Trinity College Dublin**

**Chairman:** I welcome Professor P. J. Drudy to this session. Before we commence, will people turn off their mobile telephones or turn them to flight mode as they interfere with the recording and broadcasting of the proceedings?

I draw Professor Drudy's attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the Chairman to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

The opening statements submitted to the committee will be published on the committee website after the meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

Professor Drudy has already submitted a paper which has been circulated to members. I invite Professor Drudy to make his opening statement and I will then invite colleagues to ask him questions.

**Professor P.J. Drudy:** I am delighted to have the opportunity to talk to the committee be-



cause I believe it can play a key role in changing matters. It is heartening to have a committee of this kind with members who have a broad spectrum of views and who are interested in housing. It gives me confidence for the future.

I was asked to make a submission on the private rented sector but I felt I needed to range a little broader because I see an important link between the three tenures, namely, owner-occupation, the private rented sector and social housing. For example, if we had a good private rented sector with regulated rents, good standards and security of tenure, then people would not be so desperate to get on this so-called “housing ladder”. Instead, they would be happy as Larry in the private rented sector with security of tenure, good standards and reasonable prices. Similarly, if we had more social housing, then there would not be such a desperate demand for private housing. I am not dismissing private housing but there is a clear link.

In table one, I show fairly clearly that we have almost exclusively commodified housing over the past 30 or 40 years where if one has money or can get access to it, one can buy a house; if one has sufficient money, one can rent a house; and if one does not have sufficient money, one does not get it. That is a real problem.

Under “non-market”, I have put down 465 homes that have been built. I am not suggesting that it is the only housing provided because the local authorities are acquiring housing. If one talks about provision in a wider sense, the total would be something close to 8,000. However, I would suggest that acquiring houses is not necessarily a good idea because the State is in competition with lots of young people who want to buy. The State is participating in the escalation of prices. I would argue that it is really important that the State builds more houses and a figure of 465 is quite shameful. There is no excuse for it that I can see. That is the first point I make. There is something radically wrong with the situation when the vulnerable, regardless of whether they have disabilities or are Travellers or ordinary people, have to live in cars or hotel rooms for weeks or months on end. I believe that for the first time in a very long time, this committee is a glimmer of hope for the likes of me.

In respect of buying a house, nothing has changed despite the crash. We have learned virtually nothing. I saw an interesting quote from Jeremy Grantham, an iconic investor, in today’s edition of *The Irish Times*. He was asked what lessons had been learned from the global turn-down in 2008. His answer was that we will learn an enormous amount in a very short time, a certain amount in the medium term and nothing in the long term. That is our position in this country. It seems that we have learned nothing from the 2008 crash because we have exactly the same problems now - escalating houses prices, escalating rents, bad standards and very few social housing units. These are the same problems I wrote about in 2005. The same three problems that were there ten years ago are with us today. I have a diagram showing that houses are overvalued. We can talk about the reasons later.

The private rented sector does not work and is not fit for purpose. Committee members will have read this morning that, on average, rents rose by 10%. This is completely out of line with inflationary tendencies. There is something wrong with that. I could discuss the case for regulation of the private rented sector in a few moments. Basically, the sector is unsatisfactory at the moment and it should not be because it could play a key role in helping us, as could all three sectors.

I have a set of recommendations. I hope I can persuade members that the key issue is that we need to change our philosophy and, as a result, our policies. If we do not do so, I promise members that we will be here in ten or 20 years time with the same problems. We must begin to

look at housing as a home and a human right rather as a commodity and something for speculation and wealth creation. People say, “I am sitting on a gold mine”. It is wrong. I own my own house, but it should not be the price it is now. I bought it for €40,000 in 1980 and it is now possibly worth between €500,000 and €700,000. Why should it be worth this amount? What did I do to deserve it? The answer is “Nothing”. I did a bit of painting here and there but really there is no excuse for that sort of escalation in prices. Members can see from my diagram that it came down for a while but it has gone up again. I see that as wrong.

I refer to cost rental. I will stop in a moment but the Chairman can stop me any time he likes. A cost rental model is very important. Social housing is critical but it is important to cater for a range of people who are finding it difficult, as well as those at the bottom of the tree who are on social welfare or whatever. Gardaí, teachers and nurses are struggling to buy and, therefore, I propose a cost-rental model where the State would build homes and rent them for the cost of the mortgage. The State would effectively regulate rents and the gardaí, teachers, nurses and so on who rent the homes would have security of tenure and standards would be good. It would be worthwhile to consider a cost-rental model. The NESC has agreed with me on this. I was on about this ten years ago - it is one way to travel. We must also cater for those in need of social housing, which is essential.

Providing 75,000 homes via the private rented sector is foolish and quite mad. Private landlords who want to make as much as possible in profit cannot be expected to provide for social needs. That is, therefore, the responsibility of the State. I will not go further as members will want to quiz me on my comments, put me down and so on.

**Chairman:** My colleagues are anxious to quiz Professor Drudy and I thank him for his opening comments.

**Deputy Eoin Ó Broin:** I thank Professor Drudy for his presentation. My questions will attempt to tease out different aspects. One of the points that is often lost in the debate is when those of us who advocate a return to large-scale social housing build relates to the fact that we are only advocating on behalf of those who will live in those houses as opposed to, as the professor said, reducing the pressure on the private rented and owner-occupier sectors. What are the overall benefits to the housing system of increasing the supply of social housing, including the benefit to the young professional private renter or the first-time buyer elsewhere in the system?

With regard to the 75,000 HAP units, under the strategy of the former Minister, Deputy Alan Kelly, more than 80% of the 100,000 units he proposed are private sector units. There are 75,000 HAP units but there are also long-term lease units, etc. People talk about the need to return to large-scale social housing construction but there seems to be a reluctance to return to the traditional single tenure council estates. Is there a way of combining cost-rental units with differential rent to create council estates that are mixed income but single tenure to improve large scale projects? Has Professor Drudy any thoughts on that?

What are his thoughts on rent regulation? We have discussed, including this morning, the merits, for example, of rent certainty in terms of linking rents to the CPI or rent controls? Does he have a preference on that?

Will he elaborate on how the cost-rental model would operate for those of us who do not know the detail of it?

There is a great deal of talk about house prices for owner-occupiers and how to increase access to purchasing and to credit. A more important policy objective is to find ways of reducing the cost of purchasing houses. What are the professor's thoughts on this dilemma of increasing the supply of credit or reducing the cost of the unit for the purchaser and how to do that?

**Professor P.J. Drudy:** There was a quite a lot there. Deputy mentioned social housing and I think he was getting at the reasons for social housing and the benefits from it. I see enormous benefits from the provision of social housing because almost 100,000 people are on waiting lists. Housing is closely related to good health and to productivity. People cannot be productive or healthy in any society unless they are properly housed. Ethics and morality come into this. How can we tolerate a situation where people are living on the streets? There are so many arguments for social housing that it is unbelievable that we have built so few houses. The way we have gone backwards is to do with philosophy. If we believe that housing is a fundamental requirement of any society, surely to goodness we have to believe in social housing on the traditional model. That means that local authorities should provide them and manage them properly. They have not been good at that and they have not been good at collecting rents. There are issues about social housing such as flogging them for example. I disapprove totally of flogging off social housing because all that does is reduce the stock. We are acquiring houses at market prices and flogging them off at a discount price. That makes no sense to me. We have to build up the stock of social housing to something like 30% of the total. It is now at a few per cent.

**Deputy Eoin Ó Broin:** What would that be in numerical terms? If there was to be 30%, how many social housing units would that be?

**Professor P.J. Drudy:** At the moment there are over 100,000, so it would probably be 400,000 but they would have to be managed properly. I do not know how that would be linked to cost rental because social housing normally has differential rents which would probably be very low, while in the cost rental situation, I am thinking of a viable repayment of the mortgage. For a garda or teacher it would not be a rent of perhaps €1,500 but it might be a rent of €1,000. It would be secure, in line with inflationary tendencies and of a good standard. There are slightly different categories but I still argue that the State could provide cost rental. No doubt people in the private sector will say that they will do it and they are coming out of the woodwork now to propose social housing. I will not name the people but there is one particular organisation now proposing to get in on social housing. There is also a multinational firm - a vulture fund of some sort - interested in social housing. They have all become interested overnight because they see profit in it, but it is not appropriate.

The Deputy mentioned 75,000 private rented sector houses being used for social housing. My answer to that is that it is not fit for purpose. We know that the private rented sector does not work when the rents are being put up in a dramatic way and the standards are poor. Something like 100% of private rented homes in County Louth do not conform to normal standards. I hope I am right in that - I think it is County Louth. The average is something like 48%. I mention 50% in my paper but it is actually 48%. That is scandalous. How could the private rented sector be appropriate for providing housing for either poor people or not so poor people? It does not add up.

I approve of housing for mixed income groups. I approve of integration of housing; the segregation has been wrong. We built large estates in all sorts of places around Dublin, Galway, Limerick and Cork. It is a pity and we need to integrate more and the State has to play a role in ensuring that it happens, if at all possible. It is not easy. Unfortunately, we are a segregated society. Sadly, people in private estates do not like the idea of social housing and that is wrong.

We need to move towards a model like that in Germany, France or the other European countries where there is much more integration, where a Dáil Deputy would live next door to an unemployed person, probably paying a different rent. They are next door to each other, they know each other and they get on very well together.

Does the committee want me to deal with rent regulation? I have set out the arguments in the summary, which is better than the other paper because it was a bit too long. It is very important to see the distinction between rent regulation and rent control. It is essential to do so. Even this morning I heard the term “rent control” used again on RTE. I heard Peter McVerry, who should know better, using the term last night on the Claire Byrne show. Rent control was something introduced during the First World War, I think all over the world, but certainly in Ireland. It lasted up to 1980. Rents were controlled; they were frozen at a certain level, often at a totally unreasonable level. Rent for a house that was frozen at £2 in 1914 was still £2 in 1970 or 1980. That was control and it was totally unreasonable. It was found to be unconstitutional in 1981.

Rent control is now non-existent. I plead with the members of the committee not to use the term “rent control” because it does not exist in Ireland, Europe or anywhere else. Rather what does exist is rent regulation where rents are changed in line with inflation or by some percentage, perhaps 2%, 3% or 5%, and in line with improvements to the premises. I believe that is entirely reasonable and that is the situation in a range of European countries. Germany is an obvious one; France, Belgium and Sweden are others. A whole range of European countries do this.

Ms McCormack and Mr. Faughnan from the Irish Property Owners Association probably regularly send members of the committee e-mails - they send them to me - advising that the world is about to fall in, there will be mass unemployment and a mass exit of landlords if we introduce rent regulation. They believe the world would end and yet it has not ended in Europe. Throughout Europe rent regulation is the norm. At the same time those countries insist on having good standards and tenants have security of tenure for long periods of time - indefinite in many cases. People are delighted with this situation.

The basic argument for rent regulation is because the so-called market is imperfect. It is a monopolistic-type market with a relatively small number of landlords and a large number of tenants. If that is the situation in producing any good or providing any service, the producer will charge what he or she wants. That is life, it is the logic of the situation and that is what landlords do. There is no way around it and we must accept it is monopolistic. It is not a perfect market as is sometimes argued and as was argued, incorrectly in my view, in a DKM report in 2014. Members may have seen that report which the landlords regularly use.

I do not want to be seen as anti-landlord. I respect that there are many good landlords, decent people who look after their properties and do not charge extortionate rents. However, many landlords do the opposite, including the vulture funds which are now in here in force and are charging outrageous rents. They are taking over a lot of developments and that is something that needs the committee’s attention.

Apart from the monopolistic situation, high rents are bad for the economy because a considerable amount of money is spent on rent which could be spent on other things, such as job creation activities. If people have no money to spend on food or whatever, the shops are suffering, so it is bad news.

Is it justifiable that rents are out of line with inflation? I do not think it is. I do not think it

is justifiable for either house prices or rents to go in the way I showed in the diagram. It makes no sense to me. Of all things, why should housing, which is such a fundamental need, out of the blue be different from any other product or service? It makes no sense and it is wrong and unethical. The rents being charged act as a deterrent to skilled workers coming to live in Dublin and yet people have no option.

Have I answered the Deputy's questions? The Deputy talked about how to deal with house purchase in a better way, which is an important point. It is important that we do not give tax incentives, give grants to first-time buyers or give help to buy because all those three things do increase house prices as they increase demand. Some committee members will remember that the first-time buyer's grant was written into the price of housing, particularly those members who are middle aged - I think I am the oldest in the room but I am still here. It is written into the price - that is the problem. We should not go in that direction but, rather, we should try to reduce house prices.

By the way, I should say I believe the Central Bank measure is correct because it is dampening down the demand for housing. I bought a house in Galway many years ago when I could not afford to buy it, and I had to get a 25% deposit. Of course, I got it illegitimately by borrowing it from a bank and I got the rest of the money from a building society. I eventually went to England and spent many years there, and I actually could not pay the mortgage. I was one of these sub-prime mortgage people and my unfortunate sister bailed me out and paid the mortgage for me. It was a misguided purchase. Nonetheless, I am making the point that, at the time, the deposit was 25% whereas people are now giving out hell about 20%. The Central Bank measure is designed to put manners on the banks and to put manners on people who make seriously wrong decisions. That is very important.

On house prices, the Government takes a big take. I am sure Mr. Parlon will have already told the committee this in detail, and he will have been giving out about the Government. I know that those in Leinster House need the money to keep the show on the road but, certainly, a big take is taken by the Government in VAT, levies and so on, which is an issue to be looked at.

The other issue to be looked at is land. Land prices feed into high house prices, which is an issue we have failed to deal with over a very long time. Some committee members will remember the famous Kenny report in 1973 where Kenny proposed that land should not escalate but that the State should purchase it at its existing use value plus 25% for compensation. The State should be purchasing land but not at ridiculously high prices. That, of course, was forgotten about and we have done nothing about land, which is an issue.

I am not sure if I have fully answered Deputy Ó Broin.

**Chairman:** Thank you, professor. I will now take further questions. I call Deputy Durkan.

**Deputy Bernard J. Durkan:** I thank Professor Drudy for attending. I agree with many of the things he has just stated because, as we all know, we have discussed this issue for the past couple of weeks. However, I do not agree in respect of changing over our system to a reliance on rental, whether private or public. The reason I do not is because when that idea was first mooted ten or 15 years ago, and there was a switch from the local authorities to the private rental system, although everybody said at the time, almost without contradiction, that this was the answer and we were going to be like the Europeans, it did not work, for a variety of reasons. The people in this country take personal pride in owning their own home; it is an investment for them. However, the most important thing is security, in that nobody can tell them to get out



or to move on. Nobody can say what was said at the time, namely, we want more movement in the housing population. We do not want that; we want security.

As the Chairman knows, many of us spent years on the local authorities and we have learned from unfortunate experiences. I remember that during the 1980s, the local authority of which I was a member produced almost 1,000 houses each year, 50% by way of direct build and 50% by way of the thing which has not been mentioned by anybody, the local authority loan. At the time, the local authority loan even covered loans for young gardaí, young nurses and other young professionals - everybody - and it applied within certain income limits. At some stage, we had to apply certificates of reasonable value to prevent speculation and racketeering in the whole house purchase and building business.

I remember intoning all of this to a well-known member of the charitable sector who will be before the committee later on. Twenty years ago I predicted that we would have this crisis - and wrote about it at the time - simply because we were relying on rental property. We shifted away completely from the local authority loans and we called it "social housing". Remember? It was never social housing before that. It was local authority housing: we spoke of county council houses and county council loans. I suggest that we go back - and I ask Professor Drudy to what extent he thinks it is possible to do so - to the system of reliance on direct build for a section of the market and, at the same time, the local authority loan system. We should also remember that, at the time to which I refer, people were borrowing from banks or building societies. The latter were mutual societies, they were not in competition with the banks. It was only when the banks entered the arena of lending for housing purposes - particularly one bank that came into this country and left again in a hurry - that the outrageous level of loan offers started. The Bank of Scotland, as everybody knows, was involved in this regard and then withdrew from the scene: gone, finished.

I will conclude with an example. A couple of years ago I was involved in a voluntary housing group. We formed a company, bought the sites from the local authority - the same sites which, as I have said, were available to the approved housing bodies for free; we paid €20,000 for them - and handed the finished houses over to the owners. They were owners, not tenants. At that time, the cost to them was exactly half what the houses were on the private market. Remember, we had to buy them. They were bought. The voluntary housing bodies that were all supposed to be the solution to all our problems got them for free, for €1 per site. They were serviced sites. That is all gone. They had to qualify on income grounds and so on. I strongly urge - and I ask Professor Drudy to consider as a solution - the reversion to the division between the direct build and local authority loans. I have no doubt that we would not be where we are now if we had retained the latter.

**Chairman:** We will come back to Professor Drudy in a moment. I will take one or two other comments.

**Deputy Kathleen Funchion:** I actually do not have a question. I just want to make a brief comment. I agree with what Professor Drudy says about seeing housing as a right and not a way to make profit. I am a tenant myself and have moved a lot in the past few years as a result of houses being sold and so on, but obviously I am in different circumstances from many people. We forget the impact this is having on children, not just the emergency or overcrowded accommodation but also that constant moving. It is not good for them. It is not good for their sense of identity and their school friends and other similar things. Professor Drudy's point about having to start with how we see housing and whether it is a right or whether we see it as something that serves to make a profit is an important one. That is where we must go from in the whole issue.

It is really good to see somebody who has come before the committee saying that because it is so true. I think in a number of years we will possibly have difficulty with some children having mental health issues after going through all of this, especially children who spend long periods either moving from house to house or staying in bed and breakfast emergency accommodation. We probably will not see the exact fallout of that right now but I think we will in a few years' time.

**Chairman:** Due to the fact that there were mainly statements rather than specific questions, I will take Deputy Coppinger at this point as well and then I will go back to Professor Drudy.

**Deputy Ruth Coppinger:** I welcome much of what Professor Drudy says about the massive increase in the private rented sector and the problems that it has caused. We should not get stuck on terminology. We have always used the term "rent controls". I have been calling for rent controls for a few years. Professor Drudy was objecting to it, but the term is used that way in Europe as well.

**Professor P.J. Drudy:** I understand.

**Deputy Ruth Coppinger:** I agree generally with his concept of what rent controls or regulations should be. They have to be in some way linked with inflation. If we froze rents it would not end the problem; we have to reduce them. In parts of Dublin, rents are between €1,400 and €2,000. I agree with those who said rents are having a massively negative impact on the economy and I cannot understand how this is not grasped by the Government. It is not just about people in social housing or on the social housing list. No matter how many times one says this, one is often accused of not caring about people who do not qualify for the social housing list. The latter probably constitute the biggest group. Even if people meet their payments, just think of a young family paying €1,400 in rent every month. This has an impact on the children because the family cannot spend money on them. I refer, for example, to paying for things such as dance lessons, sports and things other people take for granted. Many children suffer in the way outlined and there is a strain on families that are obliged to pay this amount every month.

I know many migrants who came to this country but who have since left. They have gone to Britain and other places because they simply cannot understand how nothing is being done about this situation. We have a very big migrant population in west Dublin. They are stuck in the private rental sector and are more prone to becoming homeless.

I have questions on a number of the issues raised by Professor Drudy. He mentioned the debate engaged in by the Government on rent controls or rent regulation, to use another term. He made the point that he believes this was down to pressure exerted by vested interests. He gave several examples, including that of a US company which now controls a huge part of the rental market. Will he expand on that? Is he stating that this was the main reason the previous Government did not introduce the type of rent controls that everybody who is suffering knows are needed, rather than the legal or constitutional obstacles cited? He gave credit to Deputy Kelly, and I am not arguing about this, but the latter came here and argued there were legal reasons and stated we need a grown-up conversation about Article 43 of the Constitution.

Professor Drudy made many points on house prices and rents. Some of the figures relating to the increase in house prices throughout the country are both shocking and very useful. I refer to the fact, for example, that in Dublin the ratio of house prices to average earnings is now 9.3:1, which is shocking. How can anyone afford to buy a house, even people with relatively good jobs and certainly those on the average industrial wage? So much for our great attachment to

homeownership. Will Professor Drudy expand on why house prices and rents have increased so much? How much of this is due to profiteering? The reason I raise this is that on foot of the committee's findings, I am sure some house-building will be commended. However, I am concerned. As others have alluded to, we need councils to directly build housing because much of the profiteering in the cost of a house is due to private developers. There would be no guarantee that such developers would provide affordable housing.

Professor Drudy stated that he welcomes the fact the Government will build 35,000 houses over five years, according to its Social Housing 2020 programme, but, unfortunately, it will not actually build 35,000 houses. It is important that people know this. Even if these new houses were being built, it would not be enough. During the boom, 80,000 houses were built each year. The idea we must do it at a piecemeal pace would mean people would wait ten years for a house. I am not saying that we should build the wrong estates, but we must have a sense of urgency. I will not go into the matter. However, most of the 35,000 houses are social housing units that have been acquired in recent years through, for example, HAP, RAS and so on.

**Chairman:** A number of general comments were made, but there were also a couple of specific questions. I will add to Deputy Coppinger's point on rent regulation and the vested interest about which Professor Drudy has written. Will he comment on it? He set out some recommendations, which are always useful to the committee. His last recommendation was that the right to housing should be enshrined in legislation and the Constitution. There are two parts to that. First, would that have had a different effect in terms of rent regulation and what the Minister was able to do? Second, the then Minister clearly told the committee a number of weeks ago that he felt restricted in what he could do about the vacant property site tax. Would he have had more scope had the right to housing been enshrined in the Constitution?

Professor Drudy made the point that a "substantial land tax or capital gains tax should be imposed on "unearned" price increases of land zoned and serviced for housing." I favour a land tax approach over a capital gains tax one, particularly as we are trying to encourage activity rather than waiting for something to occur and then charging a tax. Would these issues be more easily addressed under Professor Drudy's suggestion regarding the Constitution?

**Professor P.J. Drudy:** Yes. Having the right built in would not guarantee anything. However, it would compel or influence the Government to take the matter seriously. It would change the philosophy, which is the fundamental issue. As Deputy Coppinger mentioned, the Constitution has two items at Article 42 or 43 - I keep forgetting which and the wording is escaping me - under which the State would be entitled in the interests of the common good to take particular actions. The Constitution is not bad as it stands. The other key point is that the State can intervene in the interests of social justice. I believe that the phrase used is "for the exigencies of the common good". I disagree with the former Minister, Deputy Kelly, that we need a new Constitution to be written. As members know, constitutional change is difficult to achieve. Once there is a referendum, my God, all sorts of cans of worms are taken out and thrown around. Legislative change is much easier because you people are in charge. One could introduce legislation tomorrow morning that enshrined the right to housing in legislation. Therefore, if someone is on the streets for a long time, the State would be compelled to take action of one kind or another either by providing local authority housing as Deputy Durkan mentioned or by ensuring that the person had a private rented situation at the right price, standard and security of tenure. The State would be compelled, cajoled, encouraged or whatever the word is to do the right thing.

The constitutional red herring has been thrown about since the early 1980s. I became embroiled in planning issues and so on in 1981 or 1982 and the constitutional protection of private

property was thrown about constantly to the effect that “We must not interfere with private property.” However, there are already two articles in the Constitution. In a 1982 Supreme Court case, a judge specifically referred to the need to take those two articles into account. Therefore, the courts would be sympathetic to the right to housing in legislation. I do not believe that there would even need to be a constitutional change. I hope I have answered the Chairman’s question.

**Chairman:** Professor Drudy has done so. Perhaps he will respond to the other issues raised.

**Professor P.J. Drudy:** I happen to agree with practically everything said by Deputy Durkan. He is unhappy with the private rented sector and we are certainly in agreement with that, as it has not worked. The process was foolishly handed over to the private rented sector. I agree absolutely that the local authority loan was a great idea, with loans given at a reasonable mortgage level. The loans were repaid and people owned their homes. I have no difficulty with people owning their homes as it is an ideal in many ways. Unfortunately, some people cannot possibly afford it because of the way prices have gone. I would love it if everybody owned their houses and if every house cost less than €100,000. I do not care how elaborate they are and whether they are in Foxrock.

I completely agree with the Deputy’s comments on local authority builds. It is interesting that the certificate of reasonable value was raised as I agreed with that but it was eliminated. It was difficult to administer but nevertheless it was a good idea. The builder charging an outrageous price for a house would be under surveillance, told if it was unreasonable and be told if a profit of 50% or so was being asked for when it should be 10% or 15%. Deputy Wallace will tell me the right figure but 50% or anything like it would be ridiculous. Local authority housing is a good idea and the Deputy is correct to refer to it as such, as it was local authority housing. I agree with the comments on direct built and the loans from local authorities. Why should it not be reinstated? The banks might then have some manners, as they have no manners now.

It was mentioned that building societies were mutual, as they were, but suddenly Irish Permanent became whatever it became, with a gentleman in charge who got into some bother way back. Some of you will not remember that. He flogged it off, as the rest of them did. People were inveigled to agree with him by getting a few hundred quid or some sort of share offering. The mutual idea is gone and it should come back. I agree that voluntary housing should be providing much more. The Deputy suggested that sites should be made available, which is a good idea. Why not have co-operative housing?

Deputy Durkan’s contribution had a range of useful elements. I agree with Deputy Funchion’s comments about children being so badly treated, which is appalling. I agree with Deputy Coppinger’s comments regarding decreased rents, although it would be difficult to achieve. They are far too high, which is wrong. They have a negative impact on the economy, as the Deputy mentioned. She also spoke about children and families suffering, with migrants being in a particularly vulnerable position and suffering very badly. There is no excuse for it. The Deputy also mentioned the debate in the Government and pressure from the private rented interests, particularly Kennedy Wilson. A letter went to the Department of Finance - Deputies may be familiar with it - putting pressure on the Minister, Deputy Noonan, and his advisers. It indicated that the world would cave in and the market should not be interfered with. My point that the market is imperfect and monopolistic, was not accepted. It was a strong argument, and I understand the letter went to two or three pages, arguing that under no circumstances should the Government introduce rent regulation. The Minister, Deputy Noonan, and the Taoiseach, Deputy Kenny, were persuaded by it. I suppose it might be unfair to say that the philosophy of



Fine Gael and to some extent the Labour Party would preclude them from doing anything radical. Maybe I am wrong and Deputies may correct me if so. The past and what I say does not matter but it is important to get it right in future.

A compromise was reached and rents can be changed every two years. That is a joke.

**Deputy Ruth Coppinger:** Yes, totally.

**Professor P.J. Drudy:** Landlords can escalate the rent after two years, so that does not make any sense. There were a number of other aspects to the changes introduced that were useful, but the issue of rent regulation was the fundamental problem. It should be rent regulation that will continue. One might get rid of it five years hence, but certainly, at present, rent regulation of the type I am discussing is essential, with rents being tied to inflation, a small percentage or in accordance with improvements to the properties.

The Deputy raised the constitutional problem. I tried to deal with that and I hope I answered it. I do not believe or accept that there is a constitutional problem. The Constitution is good as it stands. Éamon de Valera, whatever his faults, got that fairly right. It is not as strong as I would like, but it is not bad.

On the question of why house prices have risen so much, there is a range of issues. One thing that would drive the Deputy's constituents probably completely mad would be to decide to impose a capital gains tax on the principal residence, so I will not suggest it. It would go down very badly with people, but it is a possibility. It would really dampen down prices. The property tax should have dampened down prices but does not appear to have done so. It is scary to look at the national newspapers each day. There appears to be little available under €1 million. I find it very depressing. I have a son who is paying a very high rent in the private rental sector in Dublin. He has avoided buying because he says he cannot afford to buy. I have a daughter who is renting in the private rental sector in London - imagine what is happening in London - so I am very familiar with the issue.

Why have house prices risen so much? I refer to the boom and the diagram I provided to the committee. I call part of the diagram super normal profits. I would call the difference between the consumer price index and the top line in that diagram very considerable profits. The cost of land is also a critical issue in why house prices have risen so much. Government policy also has something to do with it. As I said earlier, government policy undoubtedly imposes levies, VAT and so forth, so there is quite a big take by the Government. It is difficult for a Government to pull back from that because it needs the money to run the country. I do not dispute that. Certainly, one needs to look at land and super normal profits. Are developers asking too much? That is the question. I have heard figures such as €39,000 or €40,000 bandied about as the profit needed on a home costing €300,000. Is that reasonable? It might be. However, the figure of €300,000 is far too expensive for a home for most normal people.

The trick must be to bring down house prices. Obviously supply is one of the key issues. I accept what many people say, that it is "supply, supply, supply", but there is more to it than supply. There is also the Central Bank aspect to dampen down demand and stop people making crazy decisions to buy houses they cannot possibly afford. However, supply is important, so we must absolutely escalate the supply of both private and social housing. We only produced 12,000 private houses last year. That is a very small number. As the Deputy said, 80,000 or 90,000 were produced in 2006. We were capable of doing it in 2006, so why not now? If the private sector does not do it, the State should do it. That is my view.



On the social housing strategy, unfortunately the houses are not being built. I do not know what is going on but it is pathetic. The social housing strategy was produced in 2014. Apparently, the former Minister, Deputy Alan Kelly, had all sorts of problems getting the local authorities to build. I do not know what happened. They said they had the money. Only the Deputies can answer that.

**Chairman:** We are in the middle of investigating some of that.

**Professor P.J. Drudy:** That is important.

I have dealt with the constitutional situation. I take your point, Chairman, about a tax rather than a capital gain. That was a fair point and I do not have a problem with it.

**Chairman:** Thank you, professor. The time is limited so I will take the remaining contributions together, after which you might respond to them.

**Professor P.J. Drudy:** I have no problem with that.

**Deputy Mary Butler:** I thank Professor Drudy for his presentation and thoughts. I have two brief questions. We have had quite a lot of different groups and organisations coming into us and many of them are making different proposals and suggestions and we are trying to take them all on board and to see what would work and what would not. Three of the groups from the construction side that came before the committee have suggested a reduction in VAT from 13.5% to perhaps 9% and they are likening this to the boost the tourism industry got when something similar happened, although I know it is a completely different situation. What are Professor Drudy's thoughts on that - does he think it would be good or bad? I think I know his answer already.

I would also like to hear his opinion on bedsits. I visited a hostel in Waterford, my constituency, last Friday week. It is the St. Vincent de Paul hostel, where 43 men live. It is a fabulous hostel and has won an award for architecture. It was completed not long ago and is a fantastic building. I spoke in depth with a member of staff about how they could move people on from the hostel when they are stable enough to leave. His opinion is that bedsits need to be brought back into the mix and that they have a vital role to play because many of the people who live in the hostel would not have the facilities or the wherewithal to rent a two-bed or a three-bed home. He is of the view that if bedsits were provided in certain areas again, maybe some of these men might be able to move back out and live independently once more.

**Deputy Mick Wallace:** I thank Professor Drudy for his contribution. He is a breath of fresh air. He should be made housing Minister. It would be interesting to see how that would work. We are all in agreement that the manner in which we supply housing is dysfunctional and has failed. There are a few huge elephants in the room, one of which is land-banking and which successive Governments have refused to tax. Land-banking has played a major role in the cost of housing here. There are, however, many other factors. It costs a person less than half as much to buy a house in a city in Europe as it would in a city in Ireland.

The favoured approach of the Government for many years has been not to regulate and to allow things to ramble on. In other words, the philosophy has been dominated by a tendency to leave things to the markets. Professor Drudy raised the issue of the argument made about not interfering with the markets. I saw the letter Kennedy Wilson wrote to the Minister for Finance, Deputy Noonan, and Professor Drudy will be interested to hear that when it was getting permission to build 160 apartments at Clancy Barracks, it also wrote to the planning authority

and said the site was not suitable for social housing and - surprise, surprise - none will be built there. When the vulture funds are telling us where we should put social housing and where we should not put it, we have obviously got a serious problem. The planning department probably needs to look at itself too. There is a serious lack of regulation and a lack of political will to do things differently and to challenge the power and influence of vested interests, as this is directly linked to the lack of regulation. We do not regulate because we are under the thumb of serious power and influence in this area. How does the professor think we, as a committee, should challenge that?

On the professor's point about the selling of social housing being a brain dead idea, we do not carry out research of the same nature as they do in Britain. The authorities in Britain have examined what happened to the social housing stock that was sold over the past 30 years and they discovered that over 40% of it has ended up in the hands of big landlords. The latter are then renting it to people who are in receipt of rent supplement from the British state in order that they might live in such accommodation. It has been a completely failed policy, yet we have just introduced it again here. It is as if we did not know we had housing problems for the past five years. What does Professor Drudy think the committee needs to do to successfully challenge the neoliberal thinking that has been such a cancer in how we provide housing?

**Deputy Michael Harty:** On a slightly different tack, what is the Professor's view on the lopsided economic recovery and the lopsided development of our major cities *vis-à-vis* rural areas in the context of the housing problem? People are moving to cities because jobs and investment are concentrated there. The problem is most acute in Dublin and it is contributing to the current housing difficulties. Mr. John Moran, a former Secretary General at the Department of Finance, argued last week that if we wanted to use our resources to benefit the greatest number of people, we had to concentrate the population in cities where broadband, roads and public transport infrastructure, housing, schools and so forth could be provided more easily. He argued that investing in rural Ireland was not the way to go, that it was not economically viable to maintain rural Ireland. What is Professor Drudy's view?

**Professor P.J. Drudy:** Deputy Mary Butler made reference to the suggestion the Government should reduce the rate of VAT on construction to 9%. While I would not have a problem with that, I would worry that the same house prices would be sought. Any such reduction would have to be reflected in house prices. Anything done would have to lead to a reduction in house prices or at least maintain them; otherwise, it would be no of use.

Bedsits have been mentioned on many occasions. Reductions in standards have been proposed, but standards are very important. I would worry about the idea because I do not want to go backwards. I would prefer to have good standards for everybody. It was argued this morning that having bedsits with a bathroom out on the corridor would be fine and acceptable as single-occupancy units. However, I would prefer to maintain standards, get units at the right price, of course, and see regulated rents.

Deputy Mick Wallace spoke in detail about the lack of regulation and I agree with him. If one thinks back to the crash, it was due to a lack of regulation. The banks were not regulated. The builders were also not regulated in the prices they could charge. There was light-touch regulation. The Central Bank closed its eyes and the other gentleman who left with a large sum of money also closed his. I will not mention his name, but members know who I am referring to. It was tragic. The State closed its eyes to the lack of regulation. It would be fair to say the lack of regulation started with none other than Mr. Bill Clinton, former President of the United States, who changed the law in that country. The Banking Act, also known as the

Glass-Steagall Act, had been introduced in the 1930s, but Mr. Clinton, under the influence of a wide range of people, changed it and introduced deregulation and light-touch regulation and, of course, we followed suit. Maggie Thatcher and Ronald Reagan went for deregulation in a big way and we followed suit. Sadly, we tend to ape what others do. The lack of regulation is a fundamental problem; we must have regulation. We have regulation on the streets in the form of traffic lights. We cannot go through a red light. Surely to God, that makes sense. We cannot poison people with food. There are regulations in that area, too. Child labour is regulated in this country, but 100 years ago it was not. We must have regulation in the provision of housing.

Deputy Mick Wallace suggested there was a lack of political will and he is right, unfortunately. I think most Deputies mean well. Most of them really mean well. I understand why they say it is hard to achieve change. It is difficult for one to go against the grain when one has vested interests constantly on one's doorstep. I imagine Deputies work very hard and have people constantly coming to them trying to twist their arms. I am trying to twist their arms today.

**Deputy Fergus O'Dowd:** Professor Drudy is a different case.

**Professor P.J. Drudy:** I do not think they will pass much heed of me.

**Deputy Mick Wallace:** Professor Drudy has been invited.

**Professor P.J. Drudy:** At least I have been invited. I can imagine that vested interests are on the Deputies' case all the time. It must be very difficult for them. It would take great courage for political philosophy to change in this regard.

I fully agree with what Deputy Wallace said about selling local authority housing. In England, local authority houses that were sold have fallen into the hands of private landlords. It is really appalling. It is unthinkable. The British example is certainly not one to follow. When they were flogging off the social houses, at least they gave a good deal of housing to housing associations, but it is a very unsatisfactory situation. The private rental sector there is probably worse than it is here.

I also fully agree with what Deputy Harty said about lopsided development. Over many years, this country has failed miserably to have a serious urban and regional policy that spreads activity throughout the country in a reasonable way. I am sure the members of the committee are too young to remember the famous Buchanan report of 1969, which suggested nine growth centres. At the time, many Dáil Deputies said, "Oh my God, we cannot have just nine". They wanted growth centres in places like Westport, Ballygobackwards and the tiny village of Frenchpark, where I come from. That initiative died because everyone wanted a growth centre in his or her own place. Then we had the national spatial strategy, which suggested much the same thing.

We have not really implemented these plans. We need to have a policy that spreads economic activity throughout the country and persuades firms to locate in certain areas. Urban centres have to be built up outside Dublin. Rural development is critical. Agriculture is a fundamental operation in this country and cannot be ignored. Rural villages need attention because they are dying on their feet. I have written a paper on the matter, for what it is worth, and I can furnish it to the committee if it wishes. I agree with Deputy Harty about the unfair argument that is often made. I do not accept that rural areas are not viable. I think rural areas could be very viable.

**Chairman:** I thank Professor Drudy for his attendance this afternoon. His written submissions to the committee will be made available on our website. I thank him for his frank, direct

and forthright answers to a range of questions. We will suspend the meeting for a couple of moments as we bring in the next witness.

**Professor P.J. Drudy:** I thank the committee for having me. I thank members for their interesting and important questions and comments. I wish them well. The committee deserves to get on well with its important work. I will leave a copy of my paper here for anyone who has not seen it. I think Deputy O'Dowd knows of it. I met him years ago to discuss this matter.

*Sitting suspended at 3.18 p.m. and resumed at 3.23 p.m.*

### **Mercy Law Resource Centre**

**Chairman:** I welcome Ms Maeve Regan from the Mercy Law Resource Centre and thank her for her attendance. The centre has provided a full submission, copies of which have been circulated. The submission will also be published on the committee's website after the meeting. I invite Ms Regan to make her opening statement, after which I will invite members to ask questions.

**Ms Maeve Regan:** The Mercy Law Resource Centre thanks the committee for its invitation to make a presentation. The centre strongly welcomed the establishment of this important committee and believes a cross-party approach to housing and homelessness is crucial.

The Mercy Law Resource Centre is an independent law centre which provides free legal help for people who are homeless or facing homelessness. Since its establishment seven years ago, the centre has legally advised and represented more than 3,900 individuals and families who were facing homelessness.

The focus of this presentation is a report on the right to housing launched by the Mercy Law Resource Centre last week, on which we worked for approximately two years. I understand members have received copies of the report. I note Mr. Fintan Drury spoke briefly about the right to housing and we are glad he endorsed the idea of protecting the right to housing in a much more formal manner than is currently the case. Our report was launched in what is a desperate homelessness crisis. It discusses what we consider to be an important protection against a recurrence of this type of crisis.

We have not had a homelessness crisis comparable to the current crisis since the foundation of the State. I will briefly provide some context. The crisis in homelessness appears to have become evident in the early months of 2014 and has grown month on month since then. As a snapshot, between December 2014 and December 2015 there was a net increase in the number of people who were homeless of 1,700 people, an increase of 43%. According to the most recent figures, as noted in our report, in February 2016 some 5,811 people were homeless, 3,930 adults, 912 families and 1,881 children.

In a recent address about the crisis in homelessness, President Michael D. Higgins described it as the most pressing of all the manifestations of inequality in Ireland, nothing less than a fundamental challenge to the legitimacy of institutions and morality of the State. That is the context in which we launched the report and made this proposal in a very grounded way.

There is no right to housing in Irish law. Our report assessed the protection of the right to housing in Irish law and outlines the impact that a constitutional right to housing would have.

In watching the committee work we hear over and over again that the crisis is due to a failure of policy. In our view the protection of the right to housing would be a positive, strong step for the future to create enduring fundamental protection of the home for every adult and child. The Mercy Law Resource Centre calls for the protection of the right to housing in the Constitution to be a key priority of the new Dáil. The invitation to discuss and tease out this issue is welcome.

A right to housing in the Constitution would not mean the right to a key to a home for all. A constitutional right to housing would, however, put in place a basic floor of protection. It would require the State in its decisions and in its policies to protect the right to housing in balance with other rights. We are speaking here on behalf of the Mercy Law Resource Centre, an independent law centre providing free legal help for people who are homeless or facing homelessness. The centre has been established for the past seven years. Every week for the past two years we meet individuals and families who are homeless who are sleeping in their cars or who are every day looking for accommodation for that night. “Night to night” is the term used. Every day these people are looking for somewhere to sleep at night. They include families with infants and very young babies. The committee is aware of that. The families and people we are helping in this acutely distressing situation are cast adrift. We are helping them because they have been cast adrift, having been told by the local authority that there is no emergency accommodation available or that they do not qualify for emergency accommodation. There is a refusal to provide them with that basic protection.

We meet families who are being accommodated for prolonged and indefinite periods in one room in hotels and bed and breakfast accommodation. That is grossly inappropriate for their needs, their health and their dignity and they cannot cook for themselves. Often they are long distances from schools. For the children that journey to school may be one they simply cannot take. In recent months we have seen a further evolution of the problem. The families and children we represent are in that accommodation for long periods of nine to 18 months with no end in sight. The severe effects on their mental and physical health mean they are going downhill. That is a new evolving problem we will face.

In regard to private rented accommodation, Deputy Kathleen Funchion mentioned the difficulty for children having to move around. When that is translated into emergency accommodation and night-to-night accommodation, we still do not know the full effects that will have on families and children. There is no right to housing in Irish law. We provide legal help for people who are in this desperate situation. The real effect of the absence of the right to housing is that in these situations there is no clear right on which to rely. When we represent these families, it is the rights around the edges we must invoke. When we get to the stage of pleadings in the courts, we have to talk about bodily integrity, privacy and family life. We cannot directly challenge the fundamental failure to provide emergency accommodation. The gap in the law in that sense is very clear.

The right to housing would mean that the courts could look at the State decision or policy and consider whether it was proportionate by reference to the right. It would mean that government and State policies and actions would have to reasonably protect the right. For example, if the State decided to cut funding for homeless accommodation, the courts could review that. We cannot review such decisions directly now. The courts have no oversight over that issue. The failure of rent supplement to meet market rate could also be challenged by reference to the right. As mentioned by Ms Clare Naughton from the Law Society of Ireland earlier today, the fact there is no legal aid, particularly in the case of evictions, could be challenged. People are



evicted from their homes without any legal representation at court level. That could be challenged by reference to the right.

This is not simply about going to court, as cases are rare. The right to housing would mean that legislation and policy would have to be proofed to ensure they reasonably protect the right, in the same way as they are proofed in regard to other substantive rights. This would ensure that at that early stage a check would be in place to ensure the legislation or policy reasonably protect the right to housing. This would mean that policies on housing and homelessness could not be based on a political whim or simply based on the philosophy of the reigning government. Policy would instead be grounded in the basic obligation to respect the right. In that sense, it would be an enduring protection, a fundamental floor.

The right to housing is recognised in Europe in the constitutions of Belgium, Finland, Greece, the Netherlands, Portugal, Spain and Sweden and it is recognised and protected in the legislation of Austria, France, Germany, Luxembourg and the United Kingdom. Around the world, the right is recognised in 81 constitutions. The right is very evolved. It was first recognised in the Universal Declaration of Human Rights in 1948. It was recognised in that declaration as an international human right. This right was then made binding in the International Covenant on Economic, Social and Cultural Rights, which came into force in 1976 and it is also recognised and protected in the European Social Charter.

Another important point in regard to where this sits in regard to our position is that in 2014, the Constitutional Convention, which comprised citizens from across the country and was set up by the Government and tasked to consider changes that would be appropriate to our Constitution, considered this right. It considered economic, social and cultural rights and the right to housing, in particular. The convention voted overwhelmingly in favour of protecting the right to housing in the Constitution. Some 84% of participants voted in favour of it being protected. This was the same convention the marriage equality referendum came from. However, in this situation, the Government has not taken any further substantive action on the issue.

What we are putting forward in regard to the right to housing builds on what has gone before. We are at a time now where it is highly appropriate and necessary to look at this issue. The Mercy Law Resource Centre calls for the protection of the right to housing in the Constitution to be a key priority of the new Dáil. This call forms part of our broader policy work, including a call for legal aid for evictions and a rise in rent supplement levels to meet market rent. Both of these would be easier to achieve if we had a right to housing in the Constitution. The right to housing would help those now facing homelessness and would be a fundamental safeguard against the recurrence of the current unacceptable crisis. This right is really a recognition that a home is central to the dignity of every person.

The crisis is a call to us to ask ourselves what we consider an evolved, decent and humane society should protect for every person.

Including the right to housing in the Constitution would put in place a basic protection in recognition that a home is central to the dignity of each and every person and a foundation of every person's life. We consider that it would be a positive and enduring step and that now is the time for leadership in this area. Now is a prime opportunity to put in place that enduring protection. We thank the committee for the opportunity to discuss this issue.

**Chairman:** I thank Ms Regan. Before I allow members to contribute, I have one minor question. Ms Regan referred to the right to housing being included in a number of other consti-

tutions and protected by legislation in other countries. The previous speaker Professor Drudy suggested that legislation might be quicker and easier than a constitutional change. Perhaps Ms Regan would clarify which change would afford the better protection of the right and is there a significant difference from a legal point of view? This is based on our discussion with the previous witness.

**Ms Maeve Regan:** Yes. I heard Professor Drudy's point on that and it is very good to tease it out. The better protection and the more enduring protection is in the Constitution because the Constitution is the people's document. Once it is changed, it is not easy to change it back and that is its strength. Legislation can be changed by Governments. Successive Governments can change it and, therefore, it does not become an enduring protection. In the Constitution, it endures. While protection in legislation would be welcome also - if nothing else was possible it would be better to have that protection than none - within the Constitution is where the real protection lies because it is with reference to the Constitution that all policies and legislation would have to be made.

**Deputy Eoin Ó Broin:** I thank Ms Regan for her presentation. I warmly congratulate her for the report itself. A fair number of members were at the launch. It has been a long time since I have attended the launch of an NGO sector document in Buswells Hotel that was as well attended. That says much about both Mercy Law Resource Centre and this issue. I recommend that people read the report. It is a short document and very accessible and I would commend it to members. Sinn Féin published a constitutional amendment Bill on this very subject last week and it is something we are hoping to bring before the Dáil when it is up and running.

I have some practical questions for Ms Regan. People who argue against the constitutional right to housing make references to both the cost and the implications thereof. Even under the South African model, to which Ms Regan refers in the document, there are some caveats in South Africa's constitutional protection within available resources, etc. I would like to tease out that particular debate and hear her response to the argument put forward by opponents of the right to housing within the constitution. It is also interesting that Ms Regan uses two phrases in the document and again in the presentation, namely, "basic floor of protection" and "reasonably protect". Those phrases clearly have a meaning to her as a practising lawyer. They might mean something different to people outside of the legal sector. Perhaps Ms Regan could explain, in more practical terms, what the phrases mean and what tools would they provide to lawyers and to those who advocate for people with housing needs if they were included in the Constitution. Ms Regan talks a great deal about South Africa. However, I would have been more interested to know about a more comparable EU member state. Is there one EU member state she could pick that has a constitutional right to housing and could she tell us the benefits to that country? It would be a better comparison for us than South Africa.

**Ms Maeve Regan:** I thank Deputy Ó Broin. The argument used against any economic, social or cultural right is that it affects resources. The way the convention voted - and the way this right is defined in international human rights law in the convention - is that because it is an economic or social right the obligation is to progressively realise the right. It is not an absolute right and must be progressively realised to the maximum of available resources. There is always a caveat in respect of resources. How the right is understood - and it is built into how the right can be developed - is always in the resource choices the State has at a given time. That is the only realistic way that any of these rights could be interpreted. When we speak of resources it must be remembered that other rights which are fundamentally accepted in the State also cost money; civil and political rights, the right to a fair trial, the right to vote, the provision of

legal aid. These all cost money and the right to housing is no different in that sense. They are rights that we fundamentally accept here, and they cost money also. As I said, it is also to be progressively realised to the maximum of available resources and that wording would be most appropriate in a constitutional provision.

In terms of what “reasonably protect” means, this makes clear that this is not an absolute right but that there are choices and balances to be made. There is a reason we refer to South Africa in the report. I completely see the point that it would be interesting to look at an EU country and our next report - our follow-up report - will be on comparing EU countries, because people will be interested to see how that works. The reason we use South Africa is because the courts there have been very good at explaining how they interpret the right. In terms of what is “reasonable”, they will not get into the minutiae of the decision but they have to be able to see that there was a reasonable protection of the right by reference to what the State was doing with that particular policy, if that makes sense.

The EU member state point is a very good one. The country I would refer to is Portugal, which has a constitutional right to housing. However, we are developing that research because we want to bring it down and compare it to Ireland. We are currently working on that and would be happy to provide that when we have done it. In terms of what it does, in any European country, it provides a floor of protection. In Scotland, there has been a proactive approach to ending homelessness, basing it in law. It has been very effective in Scotland. The law, based on a constitutional right, which we would be calling for here, can be very effective.

**Deputy Ruth Coppinger:** I would not have a problem with having a constitutional right to housing. Similar to what has already been touched on, does Ms Regan believe legislation would not be enough? The reason I raise the question is that Britain does not have a constitution but it has a right to housing. I think most European countries do not really have constitutions. Would Ms Regan advocate for legislation to be introduced straight away to assert those rights?

The reason I raise the issue is that I have a problem with the Constitution being continually invoked as the only way one has rights in this country, if Ms Regan knows what I mean. It is very hard to change the Constitution, for example, to repeal the eighth amendment and so on. Sometimes it is overly invoked, but I would not have a problem with the premise.

At the launch last week, it was mentioned that families were being forced to stay in emergency accommodation for nine to 18 months. From what Ms Regan found, are these lengths of stay becoming normalised? Ms Regan mentioned the impact on families, parents and children. What is the longest she has come across of a family being in emergency accommodation?

The other reason I raised a question about the Constitution is that children are meant to have rights under the Constitution. However, we all know it means nothing. It is ignored daily. Women are not meant to have to leave the home to get a job but, obviously, that has been ignored for a long time. This morning, Edmund Honohan mentioned the possibility of compulsory purchase orders on the basis of children’s rights in the Constitution, that is, that homelessness is impacting on children and that one could use the law and the recent children’s referendum. Does Ms Regan think that is a possible basis for keeping families in their homes, be they in private rental accommodation or in mortgage arrears?

At the launch last week, Paul Sweeney from TASC questioned whether we can finance a major housing programme to deal with all the major housing problems. He said the answer was an unequivocal “Yes”. Would Ms Regan agree? Would she agree that the only way to provide

fully for the right to housing is by ensuring the State, in particular, builds public housing, or “local authority housing” as my comrade over here on the right was arguing for this morning? I agree the term “social housing” is now becoming a term of stigma. In the past, local authorities built roughly one third of housing. When I was a child, that was the way it was.

I imagine Ms Regan is not only advocating legal changes but she is simply highlighting this point in particular. Fundamentally, the only way we can guarantee people’s right to housing is if the State recognises that it should not be left to the private sector as a source of speculation. The State must intervene and build housing on a major scale.

**Ms Maeve Regan:** There is a good deal in what Deputy Coppinger said and I thank her for that. Her first point was on the question of whether legislation would be good enough instead of the constitutional change. Our point is that constitutional change would be best of all and would represent the most enduring and sound change. We would still need legislation. Court cases could evolve what is needed but the better thing would be to have legislation that protects it. There are two things about it. It would be quite helpful if we were to protect the right to housing in legislation. However, the concern is that legislation gets changed and amended. It can be quick but equally it can be changed quickly. That is our greatest concern in the case of legislation protecting this right. Since it is a fundamental right, we consider its home to be in the Constitution.

Some points were raised this morning by Clare Naughton from the Law Society of Ireland. There are areas where legislation would really help. I do not intend to go into those areas in detail now but a number of issues arise. One relates to priority. I have no wish to go off the point but let us consider what happens when a person is given homeless or medical priority. At the moment, if a person is given medical priority, it really does not mean much in terms of how quickly he or she is housed. There are certainly areas where legislation could assist. An obligation on local authorities to provide accommodation does not exist in legislation at the moment and certainly it would be helpful if there was legislation in that area. There is a real role for legislation, in particular, when it comes to getting into the detail of what is going on. However, the right is a fundamental one and it is best protected in the Constitution, although certainly legislation can help and alleviate the situation for people.

The question of length of stay and whether a nine to 18 month stay was becoming normal came up. Our organisation is working with people who are at the most desperate edge of homelessness. They need legal help to access basic entitlements. Organisations like Focus Ireland would be better placed to do a statistical overview of what is happening in terms of length of stay. However, we work with families regularly in accommodation from between eight to 18 months. The longest situation we might encounter might be nearly two years. In a recent case, the family was ultimately housed, which was good news, but it was only after a lengthy representation. That family with young children were almost two years in emergency accommodation.

Reference was made to children’s rights. I know the Master of the High Court adverted to compulsory purchase orders by reference to children’s rights. We are unable to speak to that with expertise. However, I can comment on children’s rights as an approach to alleviating the situation for people on an individual basis. We try to invoke children’s rights in respect of the family situation. However, the extent to which we can do that is limited. In fact, we are working on how we can use those rights in our cases but they are evolving. We know this is not going to be the direct route as such, although in certain cases it is helpful. I am unsure whether that answers the question about children’s rights.

Reference was made to Paul Sweeney. He is the chairman of the TASC Economists' Network and he spoke at our launch. His bottom line was that we have the money. We are not economists but it would appear we have it. When we were far poorer, social housing was built in the 1960s and 1970s. We were well able to do it then, so why can we not do it now?

One question was whether local authorities should be building. I am unsure whether that was Deputy Coppinger's question.

**Deputy Ruth Coppinger:** Yes.

**Ms Maeve Regan:** Deputy Coppinger asked whether local authorities should be directly building social housing and taking charge of it. I gather that was the point the Deputy was making. Is that correct?

**Deputy Ruth Coppinger:** Yes.

**Ms Maeve Regan:** We would not be experts on achieving a greater level of social housing. We would not be in a position to comment on that but we would endorse the need for it and would call for it to be built. The need is the major cause of homelessness. That is fundamental.

**Deputy Mary Butler:** I thank Ms Regan. I had not heard of Mercy Law until I received the invitation to Buswells Hotel. I was very impressed and did some research on it. I compliment the witnesses on the work they do. It is not something we have access to in the country. They are doing fantastic work. We are trying to come up with ideas to put forward some solutions quickly. Would it make any difference in the short term if this was enshrined in the Constitution?

Ms Regan mentioned that there is no legal aid for people being forced through the courts for evictions. I presume she meant there is no free legal aid.

**Ms Maeve Regan:** Yes.

**Deputy Mary Butler:** Could Ms Regan give us a little more detail on that? I was very surprised to hear that, because free legal aid is there for anyone. It was reported in the media recently.

Has any other group or organisation tried to have the Constitution changed in this regard? Is Mercy Law the first group ever to try to do this? If people tried before were they unsuccessful?

**Ms Maeve Regan:** I thank Deputy Butler. In response to the question about the short-term effect of enshrining this in the Constitution, when we meet a family with a child who has a severe disability which is not being given emergency accommodation or are given accommodation that is totally inadequate – and we see this often – we would be able to challenge that in court. Before we go to court, we get in touch with the council and try to find a solution. Sometimes the council will change the policy based on what we point out is the law. That is a very effective result. In that sense we could point out where there was not a reasonable protection of a person's right to housing. It would have an immediate effect where it is invoked and brought to book when people point out that a policy or legislation needs to change.

The entitlement to civil legal aid is limited and the Free Legal Advice Centres, FLAC, are the oracle on the entitlement – or lack thereof – to legal aid. They highlight that civil legal aid really applies to family cases and there are long waiting lists. In terms of other legal aid, Ms Clare Naughton pointed out this morning that there is no entitlement to legal aid for disputes



over rights to, and interests in, land. That has been interpreted as including housing. Not only does that apply to people being evicted from local authority accommodation but now it will be determined by the District Court under new legislation, which is to be welcomed. The District Court will decide whether this is a proportionate eviction but there is no entitlement to legal aid for that. The only circumstance in which, in theory, a person would be entitled to it and it is not an absolute entitlement but it may be allowed if a person has an infirmity or a disability. We have tried with no success to invoke that at the legal aid board that we refer people to. We, as solicitors, cannot represent the person who wants legal aid. They have been told there is no such entitlement. It is being worked on at a policy level to try to make that exception at least work. There is no entitlement and it is a big gap.

One other situation we have seen is that this affects not only people in social housing but also in private rented accommodation who are being evicted. We worked with a family who were evicted from private rented accommodation because it was acquired by a receiver. They were told in the Circuit Court just before Christmas that they had seven days to vacate. This person came to us in our clinic faced with this. She was now over-holding and had had no legal representation. On a basic level, if she had representation, a stay would certainly have been put on it. Even if it is not possible to do much more, it is possible to hold the situation and negotiate. It is a huge lack that there is no legal aid there. That is one of the things we are calling for and working on.

**Deputy Mary Butler:** Did anybody else ever try to bring forward this legislation?

**Ms Maeve Regan:** I do not want to speak for others but, as they have been vocal about it, we know that what we have been calling for is also supported by the Peter McVerry Trust, Focus Ireland, Threshold and the Dublin Simon Community. These organisations have all called for the protection of the right.

**Deputy Eoin Ó Broin:** As has the Constitutional Convention.

**Ms Maeve Regan:** Indeed. That is a very good point.

**Chairman:** I do not mean to cut Ms Regan short. I wish to indicate to Deputy Butler that the primary focus of Ms Regan's contribution was this constitutional change. The debate is open in respect of other affected issues. We have been conscious of some of those. Free Legal Advice Centres, FLAC, will be appearing here at some stage to follow up on exactly those points.

**Deputy Kathleen Funchion:** I agree completely on having the right to housing in the Constitution. I am also glad to see Ms Regan bringing up mental health in respect of children as it gets overlooked a lot.

There is a type of case which I often come across. The tenant is put on notice to quit and, although the landlord follows all the rules in terms of the number of days' notice depending on the length of the tenancy and so on, nobody can ever get to the reason for the notice. Generally the landlord is doing this to increase the rent or because he does not want to be in the rent allowance category. It is very difficult. The house is there and there is really no reason to be evicting tenants but once the landlord goes by the rules in terms of giving the tenants their letter and their right notice, there is very little scope to challenge it. Would constitutional change help in situation like that?

**Ms Maeve Regan:** It is a very good point. On one level, this is not the answer to every-

thing. It is just not. It is one aspect of a pathway through the crisis. The case Deputy Funchion raises is a thorny issue. Often, for people who are faced with that situation, we are trying to negotiate more time. Would a right to housing help? It would depend on the situation. Perhaps if there was a receiver - although this would be a difficult legal argument - and a family in a very severe situation with illness, disability or young children, it might create the ability to negotiate in some way. It would be difficult, to be honest.

Where a right to housing might assist would be in drafting legislation to provide greater protection in those situations, particularly where receivers are taking over property. The landlord may have a very valid reason for evicting a person. There is always going to be that balance of interests. Where a constitutional right to housing might help is in terms of making sure there is the right balance of protections in legislation.

**Deputy Kathleen Funchion:** We often see that there is no real reason given in these cases, although maybe landlords are not supposed to be doing that. Next thing, the property is up on *daft.ie* for an extra €200 or €300. While I know the constitutional right is not the answer to everything, I wonder if it would help in tackling that kind of stuff.

**Ms Maeve Regan:** If a landlord is doing that and there is not a valid reason - first of all he should have to give reasons - there are ways of challenging it through the Private Residential Tenancies Board, PRTB. It may not be a valid notice to quit, for starters. There is legislation there, although there may not be awareness of it. There are protections. We have been before the PRTB challenging notices to quit on the basis that they were not valid in that kind of situation.

**Deputy Fergus O'Dowd:** I was at the launch last week and was very impressed. I think a constitutional right would be effective in an extreme case. For example, Travellers are to be evicted from a so-called illegal site in Dundalk today. It would provide grounds for a legal appeal or place new or extra obligations on local authorities to ensure that if and when it comes to that stage, they must have exhausted all of the other possibilities. If there was a court case, they would be required to enumerate and outline what they had actually tried to do. Decisions in cases where there was no alternative to eviction would require those making the decision to evict to carry out due diligence and give all due consideration to the decision in terms of consultation with community welfare officers and local authorities. That is the strength I see in such a right.

At the same time, if it was clear that a person was having parties 24-7 and behaving in an antisocial fashion in housing estates, there would have to be a requirement that such people would behave reasonably. People could not behave unreasonably, such as selling drugs or whatever. There are issues which would mean that nothing would be absolute. The key point in selling this would be to enumerate the areas around it in order to clear up issues. A person with a reasonable income may refuse to pay rent. I am thinking in particular of antisocial behaviour, which is a major issue in my area.

Previous speakers referred to those with significant medical problems. If I, having had a stroke, lived in a house where the toilet and bathroom were upstairs, I would no longer be able to go upstairs. Yet, local authorities have a limit to the funding they can use for housing adaptation. A change in the rules would assist in those cases and would place a greater obligation on local authorities and the State to meet those very significant human needs by adjusting accommodation to suit disabilities. I do not know whether the witnesses have analysed the issue. We need to broaden the entitlement of individuals who are in very difficult situations.

I know of a woman who has to have a very serious operation. She will be in a wheelchair, unfortunately, and nothing can be done for her. The council has to find her another house, but she and I feel things are not happening quickly enough. Suitable homes are on the market. She should not have to chase a local authority to vindicate her rights. Rather, they should be vindicated by an amendment to the Constitution which would strengthen the case of such people.

**Ms Maeve Regan:** Deputy O'Dowd made a very good point. Generally, the cases involving rights are extreme. He said cases cannot be absolute because severe antisocial behaviour may be taking place. That example is a very good way of identifying that somebody else's right to housing is being interfered with by such behaviour. A balance must always be struck.

The Deputy referred to people with severe medical need and asked whether a right to housing would help them. Overall, it would because as the right has evolved and been defined under international human rights law, a number of different elements have developed. Adequacy is fundamental to the right.

One would hope a constitutional right would ensure that policy and legislation would come in to line with the right. For example, the scheme of letting priorities for transfer would better cater for that situation. It would filter through to the policies in place. This is not about a case-by-case situation. In the best case scenario, it would make policies and legislation more balanced and protective of the right.

**Chairman:** Deputy Durkan indicated that he had a question.

**Deputy Bernard J. Durkan:** This is a subject matter in which I have an interest. Ironically and surprisingly, I am not all that convinced that the placing of a constitutional right into the Constitution is of great assistance. If we, as legislators, are doing our job adequately and reflecting the needs of the communities we represent, it should not be necessary to place such a provision in the Constitution. I have had this argument before with many people, as the Chairman probably knows.

**Chairman:** I do.

**Deputy Bernard J. Durkan:** A constitution is supposed to lay down basic fundamentals or cornerstones which protect the rights of the people in all instances. I do not think it is preferable for it to be that way in this case. One tends to use the Constitution as a means of providing legislation. I do not think that is the right way to go about it. It is far better to produce the legislation in line with the ongoing requirements of the people we represent, while having due regard to the fundamentals laid down in the Constitution and the constitutions of various countries. I accept that the UK does not have a written constitution but it does have the Magna Carta, which it still operates and has regard for.

I must have the record on this committee because I know of more than one case of people being in emergency accommodation for three years or more in appalling circumstances despite numerous representations. Due to the scale of the housing need at the present time, all these people get squeezed in the crush and it causes a huge problem.

Ms Regan made reference to the suitability of meeting the requirements of adults and children with special needs. It is appalling to see the degree to which individual HAP families have to try to strive all the time to deal with the requirements arising from special needs, housing needs and the failure to adapt a house in line with the special needs of the people concerned. It is tear-jerking and horrifying to look at. There are many people in these circumstances at the

present time and that number is growing. It shows that there are other things we need to focus on. What I am afraid of is seeing a situation developing in which we have to go to court in order to grant somebody the right to a house. It should not be that way. We must either reflect what is a good and honest response or we must not do it at all.

I have always said that special needs housing is best dealt with by the voluntary agencies. The local authorities are not at all suited to meeting that requirement. They do not do it well and they do not do the things that are necessary. This is not by virtue of the fact that they are reticent, it is simply that their structures do not lend themselves easily to it.

The constitutional rights of one person should not override the constitutional rights of another. If we do not recognise that, we are missing something. By putting something in the Constitution specifically to guarantee the rights of one group, we might have a situation in which somebody is creating anti-social behaviour. He or she will go to court and will win the case on the basis that he or she is also protected under the Constitution.

My final point is with regard to Travellers' housing rights. We have a responsibility to deal compassionately with every case that comes before us, regardless of background, country of origin, race, creed, colour or whatever the case may be. If we are not doing this or if we are doing it in pretence, we are not doing our job. It follows that we should not have a situation in which Travellers, or any other body in society, are forced to live at a crossroads or in the middle of a roundabout in appalling conditions while we all stand around and wring our hands. That is not doing the job that we were given to do. There is already cover under the Constitution to deal with that, if we exercise ourselves.

**Chairman:** Usually I do not comment on witness contributions, but I wish to comment before Ms Regan responds. She mentioned the Constitution and discussed whether legislation would be necessary. Legislation has to be constitutionally sound. Among the issues about which we have spoken at this committee are access to land for house building and the question of hoarding. The former Minister, Deputy Alan Kelly, was explicit to the effect that he was restricted in what he was able to do with the vacant site tax because of the advice he received. The purpose of the vacant site tax was to front-load land and make development land more available, but he felt restricted because the existing property rights outweighed the right to housing. We need to have some regard to the constitutional position as that would lead to subsequent legislation. The Minister indicated that he would have liked to have been stronger in what he did but the tax was pushed out to 2019 and the rate was lower than he would have liked. We are asking whether a right to housing in the Constitution would be a balancing right. I do not expect an answer from the committee but I add it to Deputy Durkan's comments because to some extent it counterbalances what he said.

**Ms Maeve Regan:** If the job is being done adequately by the Government and by the Oireachtas, then there is no problem. However, a healthy society has separation of powers where each body keeps a check on the other. It is important, as a last resort, to have some oversight where the job is not being done properly. This notion is premised on the idea that the right to housing is a fundamental right. Professor Drudy said that housing was a fundamental need and the right to housing a fundamental right. Perhaps the homelessness crisis is making us see that this is not about money but shelter, home and security. This is recognised as a fundamental right in international human rights law, so it would sit as comfortably within the Constitution as the right to education.

Tomorrow, Ireland is undergoing its periodic UN review and the Minister for Justice and

Equality, Deputy Frances Fitzgerald, is in Geneva for it. One of the big issues being raised by the missions there is what is happening in Ireland in regard to homelessness. They want to hear what the State is doing because it is considered to be a breach of the right to housing as a fundamental right. It is recognised as fundamental in the human rights structure.

It is absolutely true that every right has to be balanced with other rights within society. There has been a lot of discussion in this committee on the right to property under Article 43.2 of the Constitution. The rights to property are very well enshrined in the Constitution but they relate to ownership of property and we have no counterbalancing right for any other form of home, but that is what the right to housing is about. It is about home, not simply property ownership, and in that sense it is exactly what the Chairman said about balancing rights.

**Deputy Bernard J. Durkan:** That is true. I will put a scenario to Ms Regan that illustrates practices that prevailed during the boom, which we all remember although not with so much fondness. A property is sold by an individual who traditionally owned it to a second party, who in turn transfers it to a third party, who in turn transfers it to a fourth party and that property is then transferred to a fifth party and subsequently to a sixth party, as happened on one occasion of which I am aware, escalating its value, in some instances, by up to ten times its original price. Where do we come down on that practice? What is the original price of such a property; what is its current price; and, to what extent does it reflect and impact on the cost of house prices now? My view is that huge speculation was involved in such cases. Not a sod was turned. It was based purely on speculation through the availability of funding from lending institutions and that effectively prevented housing from being worthwhile or available to a large number of people.

**Chairman:** Does Ms Regan wish to comment on that?

**Ms Maeve Regan:** That is absolutely true in terms of how house prices have escalated, as a separate point.

**Chairman:** That concludes our questions. I thank Ms Maeve Regan for attending this afternoon. Some of us attended the launch, which was impressive. As a result of the launch a number of colleagues asked if Ms Regan would be prepared to attend before the committee today. That is the context for her appearing before the committee. The documentation that was provided will be available on the website after the meeting.

That concludes today's meeting. We will next meet at 10.30 a.m. on Thursday, 12 May 2016 when representatives from the National Asset Management Agency, NAMA, will appear before the committee.

The committee adjourned at 4.15 p.m. until 10.30 a.m. on Thursday, 12 May 2016.