The McDonald Report

September 2024

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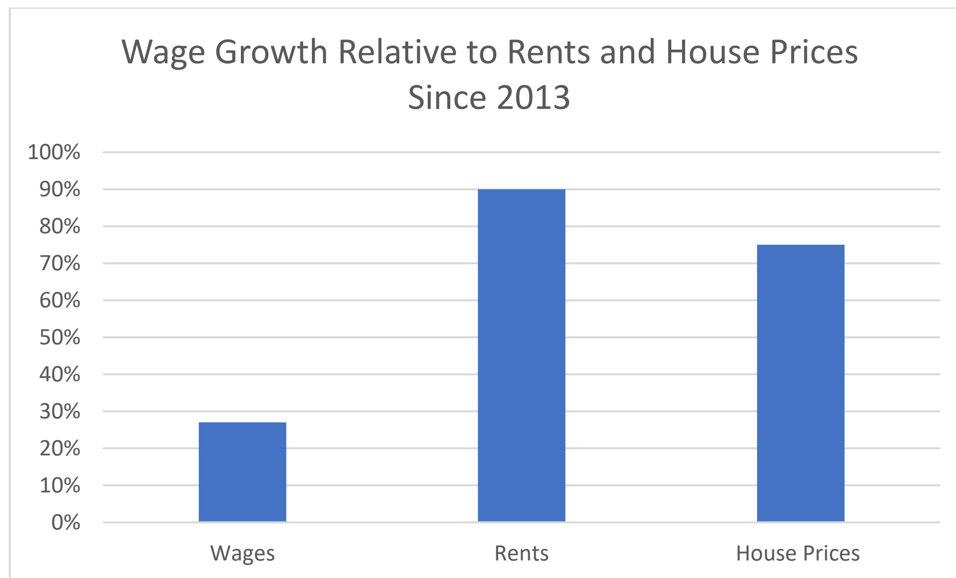
1. Introduction:

The latter Millennial and almost entire Zoomer generation have been confined to the status of ‘Generation Rent.’

An entire generation who may never realise home ownership; who are toiling day in and day out to afford sky-high rents for a property they will never own; and thus, forced into a socially regressive milieu in which adulthood, defined by elevating up the social scale, is delayed amid an inaccessible housing market.

The figures speak for themselves: In 1993, 70 per cent of 25-34-year-olds owned their own home, the majority with a mortgage. In 2016 that figure fell to less than a third. As home ownership has plummeted for young people the proportion of young renters has skyrocketed: In the early 90s, a mere 15 per cent of 25-34-year-olds were renting. In 2016, that figure increased to 60 per cent. According to the 2022 census, over 2/3 of 18-34-year-olds still live at home with their parents. Relative to average

wages, Irish rents are some of the highest in the world. Since 2013, wages have risen by 27 per cent while rents have risen by 90 per cent with property prices concurrently rising by 75 per cent (Below).



How has this happened?

Why have an entire generation bucked the trend of being owner occupiers and opted instead for excessive rents.

In this report, I will outline how a series of policy measures undertaken following the financial crash of 2008 to raise property values following the crash contributed to an overvaluation of property and inflated rental prices.

These policies include, but are not limited to, the delegation of the provision of social housing to the private market, the selling of property assets to private equity and hedge funds, and, following the disempowering of pillar banks' ability to lend post-crash, tapping into international money markets to provide finance for housing supply. These measures helped to further the commodification of homes turning them into a financial asset rather than a social good.

The proliferation of non-banks in supposedly owning mortgages and providing capital has created a class of faceless absentee landlords whose sole motive is the accumulation of profit. This, I will argue in the report, is an unhealthy development, which incentivises excessive house and rental prices.

I have been writing about the oft-noted housing crisis for the better part of two years. Having expounded on the topic on my personal blog, I recently transitioned into national broadsheets, most notably *The Sunday Independent,* to provide a youthful perspective on the biggest issue/challenge facing this country.

What spurred my interest initially in this highly complex and intricate topic was my own plight and that of my generation often called 'Generation Rent'. Initially I had written solely about the issue from a social perspective specifically highlighting the predicament of an entire generation locked out of the housing market, still living at home in their mid to late 20s and early 30s. Eventually, upon engaging in further research and analysis, I delved into the wider topic a bit deeper and found

that what I was being told was a lie. The only solution to the housing dilemma, we're told, is more supply. But if the housing supply comes from sources whose main motive is profit accumulation surely this will not address the crux of the issue which is affordability and costs.

As such, I wrote a series of articles on the activities of private-equity and hedge funds, often termed pejoratively as vulture funds, on account of their 'swooping' in on distressed properties, and their pernicious role in the housing market. This is when Right2Homes, a mortgage advocacy group, Founder Brian Reilly and former Master of the High Court and 'debtors champion' Edmund Honohan approached me to discuss our mutual interest in this topic. What began as a series of conversations evolved into this comprehensive independent report on the topic.

What I hope to achieve with this report is to outline how Ireland got to the stage where home ownership has become a pipe dream and a life of renting the norm. I hope to influence policymakers to take decisive action to address the plight of young people desperate to climb onto the property ladder and to advocate for homeowners whose mortgages were sold off to international financiers without their knowledge or consent. Indeed, by examining other options to private equity hedge funds' involvement in the housing market I will explore alternative house supply financing sources, asset recovery mechanisms, and potential reforms to the way repossessions are litigated before the courts. Overall, I hope to inform the wider public on the history of the housing crisis and where things currently stand with an incisive, informative and legible report from the perspective of a journalist with an interest in the topic.

2. *The Irish Struggle for Land and Property Rights*

“History doesn’t repeat itself, but it often rhymes,” the renowned US writer Mark Twain said.

There are historical parallels between the current plight of ‘Generation Rent’ as well as homeowners left to the mercy of vulture funds and the historical injustice suffered by Irish Catholics and their landholding rights by the mercantilist British Empire.

A level of awareness of the past can help to inform the present and offer a wider contextualisation of current realities.

In fact, this historical nexus provides useful insights into what measures could be taken to correct contemporary issues such as helping those in mortgage arrears or losing ownership of their land and/or property.

Indeed, measures deployed and enacted to address injustice in the past could help to inform and offer sufficient instructions on how to correct current inequities.

If you want to understand Irish history, it boils down to two words - land and religion. The synthesis of the fight for land rights and religious freedom has defined the Irish people’s struggle for autonomy and the rationale for the creation of an Irish Free State and later/current Republic.

Incrementally, Irish Catholics were left largely landless through a series of land dispossessions by the Kingdom of England, the English Republic and the United Kingdom.

Beginning in the 16th century in the aftermath of the reformation and England's schism from Rome, Irish Catholicism was viewed with suspicion and considered heretical within the British Isles. Continuing throughout the 17th century land that belonged to Ireland's Catholic majority was plundered and handed over to the co-religionists of the British Crown, leading eventually to the cementing of a powerful and wealthier minority Protestant Ascendancy with much of their wealth, and with that power, tied up in stolen land, creating huge inequalities and sectarian divisions on the island of Ireland for years to come.

The successive Plantations of Ireland which began under Catholic Queen Mary saw Irish land planted with loyal English subjects to replace rebellious Irish landholders. The O'Moore and O'Connor clans of Laois and Offaly saw their vast estates substituted with Englishmen with the two counties thereafter named King's and Queen's counties, respectively. Mary's successor and sister Queen Elizabeth I continued this policy with a plantation of the province of Munster following a rebellion led by the ruling family in that region, the Earldom of Desmond, led by James Fitzmaurice FitzGerald. About 300,000 acres of land was conquered and sold cheaply to loyal English subjects on hitherto Irish land. Settlers cultivated large swathes of land to increase their wealth. This included individuals such as Walter Raleigh who bought over 40,000 acres of land utilising it to trade tobacco and, it is alleged, introduced the potato crop to Ireland, which would have implications for years to come.

The most effective and consequential plantation involved the settling of lowland Scottish and English people to replace the Gaelic clans in the most heavily Gaelicised province of Ireland. Following the Nine Years War waged by the Earl of Tyrone, Hugh O'Neil, King James I underwent a process from 1608 until the 1630s that saw Irish land confiscated by private forces within Britain. The most profound legacy of this latter plantation is the county of Derry, often termed Londonderry by those loyal to the United Kingdom due to its plantation being financed by guilds in the City of London. A brief plantation, following the declaration of the English Republic by Oliver Cromwell, saw further land confiscated to help pay back his New Model Army. By the mid-1650s not a single Catholic landowner remained in the area east of the River Shannon; 20 years earlier 80 per cent had been owned by Irish Catholics.

Overtime, this confiscation of land ushered in a new, largely absentee landlord class, with the original owners becoming tenants who suffered impoverished and dire conditions. The Penal Laws, enacted following the Williamite wars in 1695, saw Irish Catholics further stripped of their land. The laws allowed for:

- The son of a Catholic landowner to dispossess his father if he converted to Protestantism.
- If the eldest son converted, he was entitled to all the land of his Catholic father following his death.
- No Catholic could lease land for any longer than 31 years.

As a result of these moves by 1778 the land owned by Irish Catholics was less than 10 per cent.

As such, tenants were paying excessively high rents due to Ireland being primarily an agriculturally based economy meaning land was in high demand with landlords taking advantage of this, knowing they could replace current tenants with new ones. Many tenants were in a vulnerable position as few held leases on the property and where instead subject to yearly tenancy which could be terminated at six months' notice. Failure to pay high rents resulted in eviction.

Following the imposition of the Act of Union in 1801, the number of absentee landlords increased dramatically with the figure reaching 10,000. Many of these landlords were now based in London, where Parliament with 100 serving Irish MPs, was located.

Eventually, the calls for reform abounded which culminated in the Ulster Custom confined primarily to the Northern Eastern Province. The reforms within the de facto arrangement included:

- Security of tenure on the basis that rent was paid and good behaviour was adhered to.
- Free sale to any tenant with landlord approval.
- Fair rent for both the tenant and landlord.

These aims became known as the 'three f's' - Fair rent, Fixity of tenure and Free sale. Before the potato famine struck (1845-51) evictions peaked in Ireland with a resultant upsurge in agrarian unrest. When the potato crop did fail many smallholders of land suffered the brunt of the evictions. Moves such as the Quarter Acre Clause saw landowners with more than a quarter acre of land not considered destitute and thus not entitled to relief meaning they were forced to give up their holding. The population

dropped considerably from about 8 million when the famine struck to 6.5 million when it ended.

The famine was, in many ways, the straw that broke the camel’s back with calls for reform accelerating. Groups such as the Irish Tenant Right League ran candidates for parliament to advocate for landholders’ rights.

The first major piece of reform was the 1870 Land Act passed by prime minister William Ewart Gladstone. This act sought to place the Ulster Custom on a statutory footing that would apply to the entire island. The legislation was quite progressive for its day and sought to right many of the wrongs that tenants suffered including providing compensation for being unfairly evicted. Unfortunately, the act had many shortfalls, among them a failure to enforce or fix fair rent.

In 1879 the Land League was founded by the son of an evicted farmer Michael Davitt and Charles Stewart Parnell with the latter eventually taking over from Isaac Butt’s leadership of the Home Rule Association. The League took decisive action to address the plight of tenants including shunning absentee landlords who evicted tenants such as Captain Boycott whose namesake is where the term emerges and urged tenants to withhold pay for rents.

Gladstone introduced another bill in 1881 satisfying the three f’s. This Bill allowed for:

- A secure 15-year lease for a tenant at fair rent.
- The establishment of a Land Commission which, over time, had the power to, among other things, purchase entire estates and resell

them to tenants and cancel the arrears of rent owed at less than £30 which saw approximately £2 million cancelled.

Parnell opposed the Act as it was not radical enough, which led to his subsequent arrest in Kilmainham Jail.

Ultimately, the legislation failed as only over 700 purchases took place due to the repayment annuity for the loan granted being higher than rents. Parnell called for a far more radical proposal that would involve the state providing the entire price of the land which the tenant would have just over 50 years to pay. This ambition was eventually achieved in 1885 under the terms of the Ashbourne Act which saw a reduction in annuities. This saw over 25,000 tenants purchase land holdings. Further land purchase schemes, including the Balfour Land Act, named after Chief Secretary Arthur Balfour, culminated in Wyndham's Land Act in 1903 which saw the British administration agreeing to buy out landlords while tenants were given their land and now considered independent proprietors. These purchasers were provided with long-term loans from the British Treasury with repayments spaced out in increments over a period of 35 years at a lower rate than previous rents.

In 1906 the Labourers Act, the precursor to the massive State-led social house building schemes, saw over 40,000 rural cottages built, housing a quarter million rural families, who were provided with low-rate annual annuities. However, this set in train a perception of a rural focused policy which neglected the squalor and decrepit conditions in urban areas, particularly Dublin.

When the Free State was formed in 1922 the Land Act of 1923 was introduced which saw all remaining land purchased along with a radical reduction in rents before 1911 by 35 and later 30 per cent. All arrears up to 1920 would be forgiven and future arrears were reduced by 25 per cent. A subsequent 1933 Act forgave all arrears up to 1930 and funded future arrears.

When the economic war with Britain kicked off in the 1930s Taoiseach Eamon de Valera refused to pay the agreed land annuities. To resolve the issue a massive lump sum of £25 million was paid to the British exchequer resolving the dispute.

These efforts to ameliorate the historic plight of indebted smallholders and tenants prove what can be achieved with grassroots action and political will.

3. ***State-led Home Building***

With many of the historic land injustices overturned and the power imbalance between landlord and tenant largely resolved, the Irish State proceeded to construct and provide homes for its relatively small populace.

However, many of the home building schemes that followed the Land Acts benefitted mainly rural areas as most rural landholders were the ones impacted by historic colonial land seizures.

To avoid a rural-centric housing policy the government sought to expand loans and other supports to urban areas, particularly Dublin.

A pre-independence report presented before the British Parliament in 1914 by the Local Government Board for Ireland found that 20,000 families in Dublin lived in one-room tenements – constituting more than a fifth of the population. As people moved away from rural areas and to the cities post-famine landlords purchased Georgian houses at scale across Dublin converting them into tenements to house tenants at high rents (Henritta Street).

This impoverishment persisted post-independence.

To alleviate the dire conditions facing the inhabitants of Dublin, the Irish State underwent a massive house-building campaign that saw the mass delivery of homes through local authorities.

The Million Pound Scheme in 1922 enabled the construction of over 2,000 homes nationally by providing grants to local authorities to cover two-thirds of the cost of construction with the remainder covered by a special housing tax (RIA).

This period also saw the utilisation of cooperative public utility companies which focused on building housing for sale.

But it was really in the 1930s under the Fianna Fáil led government that home building accelerated. The Housing Acts of 1931 and 1932 saw local authorities provided with the necessary funding to kickstart house building (Norris, 2018).

This also included clearing the slums and rapid building of social housing.

Local authorities were central in the provision of housing for the nascent Irish State with tradespeople and financing coming directly from various county corporations. The State's role included grants and **low-cost loans to builders,** and **tax relief and low-cost mortgages to home purchasers** (Hearne, Gaffs).

From the early 1930s up until the mid-1950s 112,144 social homes were built (Weber, 2022).

Housing estates financed by the Dublin Corporation started to house working-class communities throughout the capital.

Among them was the **Marino** housing estate completed in 1926 which housed social tenants. Many of these homes included three bedrooms, a hot press, a bathroom and a garden to grow fruit and vegetables, which inspired a further housing estate development in **Drumcondra**.

The corporation's chief architect Herbert Simms is lauded for helping build and design close to 20,000 homes from 1932-48 with the housing estates of **Cabra** and **Crumlin** a testament to his legacy (Kelly, 2018).

From the 1960s up until the 1980s the National Building Agency (NBA), the precursor to today's Land Development Agency (LDA), acted as a semi-state body to clear sums and provide social housing with estates such as **Ballymun** and **Darndale** constructed (Kelly, 2019). However, in their rush to provide much-needed homes, many of the designs prioritised by councils such as amenities and playgrounds were disregarded by the NBA (O'Connor 2019).

As the State prioritised creating a class of owner-occupiers, successive Irish governments would set about actively discouraging social housing and encouraging private mortgages instead. In time, two-thirds of all council housing would be privately owned without being replaced (Kelly, 2018).

It's often asserted that the Irish have a love affair with owning their own home. A confluence of historic housing and land insecurity as well as a lack of an indigenous banking sector set in motion the Irish love affair with owning a home.

Post-independence, Ireland was faced with a ruling class whose loyalties primarily lay with imperial Anglo institutions and not the Free State.

As such, Irish banks were left dry as Irish deposits lay in British financial institutions. This led Minister for Finance Michael Collins to comment in 1922 that, "Millions of Irish money are lying idle in banks" (Collins, 1922).

According to the Historian Raymond Crotty, "Over half of the Irish bank's total deposits were on loan to the London money market."

The failure to reform Ireland's banking system to ensure Irish money would be deposited in domestic lending institutions meant the State had to turn to international money markets for investment. This approach was championed by Taoiseach Seán Lemass and T.K Whitaker at the Department of Finance.

According to the authors Brian O'Boyle and Kieran Allen in *Tax Haven Ireland*, instead of using this capital to invest in industries, such as science or technology construction, investment was opted for instead:

"As part of a dual strategy to support accumulation, the state set about attracting foreign investment and expanding opportunities for domestic capital, with construction often deemed the sector of choice."

As such, "Fianna Fáil spent the 1950s and 1960s winding down the provision of social housing, while giving tax breaks for private mortgages" and "also passed a Housing Act in 1966 that allowed local authority tenants to purchase their own houses".

By 1971, home ownership reached 68 per cent compared to 35 per cent in Sweden and above Ireland's old imperial peer the U.K. at 50 per cent.

4. ***The Privatisation and Commodification of Property***

The late 1970s and early 1980s saw the Western economies shift from being primarily based on the economics as espoused by John Maynard Keynes, known as Keynesianism, which advocates government intervention in the economy, towards Monetarism or neoliberalism through interconnected global markets which saw governments play a more backseat role in the economy relying mainly on private forces to stimulate economic growth.

The twin elections of Margaret Thatcher in 1979 and Ronald Reagan in 1981 saw this new economic model adopted in the two standard bearer economies.

In Britain, Thatcher pioneered the ‘big bang’ in financial services in 1986 which saw the City of London grow as a financial behemoth with the London Stock Exchange (LSE) turned into a private limited company. Fixed commissions were eliminated, and foreign firms were able to trade in the LSE. Thatcher articulated this new age of economic thought, and the role government would play in it by asking: “Who is society? There is no such thing! There are individual men and women and there are families, and no government can do anything except through people and people look to themselves first.”

In America, Reagan adopted a similar approach by reducing taxes, decreasing government revenue towards social services and deregulating financial markets. The ambition was that the increased wealth of corporations and top earners would “trickle down” to the rest of society. “Government is not the solution to our problem, government is the problem,” President Reagan would proclaim.

This new economic mindset was reflected in their respective approaches to housing.

Under her tenure in Downing Street, Thatcher championed ‘Right to Buy’ which saw five million tenants purchase their own home.

While in office, President Reagan would halve the budget for public housing with assistance to local government cut by 60 per cent (Dreier, 2004).

Similarly, moves towards greater globalisation saw capital controls between international financial institutions loosened.

But how did the general shift from State-led intervention in the economy towards a laissez-faire approach with more reliance on privatisation contribute to the housing problems we now find ourselves in?

By allowing *private* forces to become the main providers of *public goods* such as housing, health, and other services, these sectors were now vulnerable to the boom-and-bust cycle that defines most private transactions and business cycles.

5. ***Irish Deregulatory Dimension***

Ireland was no different in adopting such deregulatory reforms.

This period was associated with economic malaise for the Irish State. Preceding the 1980 budget Taoiseach Charles Haughey announced that the Irish public had been living “way beyond our means.”

The oil crisis severely dented Ireland’s economic prospects with unemployment reaching a staggering 17 per cent. As a result, the State embarked on austerity measures defined by economic cuts which impacted subsidies towards home building.

During this period the government began the long incremental process of transferring the power of local authorities in providing housing to lending institutions instead. In 1987, the Fianna Fáil government cut funding to local authorities with several housing grants abolished including the

Builders' grant. As a result, commercial lending and building societal entities were deregulated. In time, the building societies would be dismantled.

In the early 1980s, local government accounted for a quarter of mortgages but by the end of the decade this accounted for 2 per cent and has not recovered since; most mortgages would now be provided by banks; these mortgages were in turn heavily deregulated and privatised. Irish deregulation involved the removal of capital reserve requirement ratios and unlimited credit growth for the banks and building societies (Norris, 2013).

Eventually, international cross-border borrowing meant that Irish banks were no longer reliant on customer deposits to lend known as fractional reserve lending, but rather could borrow short-term - one year maturity - from international money markets to lend long-term to customers.

In 1987, Ireland established a special economic zone known as the International Financial Services Centre (IFSC) which sought to attract international financial services to the country. Ireland achieved this by implementing light-touch regulation and low taxes, most notably low corporation taxes and other loopholes for firms established in the IFSC. The IFSC would see the creation of 14,000 high-value jobs in various sectors, especially accounting and legal.

These deregulatory moves would in time cause a credit spiral and thus fuel a property bubble that would eventually pop and severely impact the Irish housing market for years to come.

6. ***The Irish Housing Bubble***

The Irish economy eventually recovered in the late 1980s but it was really in the 1990s that employment levels increased concurrently with house price inflation.

This period became known as the Celtic Tiger, coined after the economic buoyancy of the East Asian Nations known as the four tigers I.e Taiwan, Hong Kong, Singapore and South Korea.

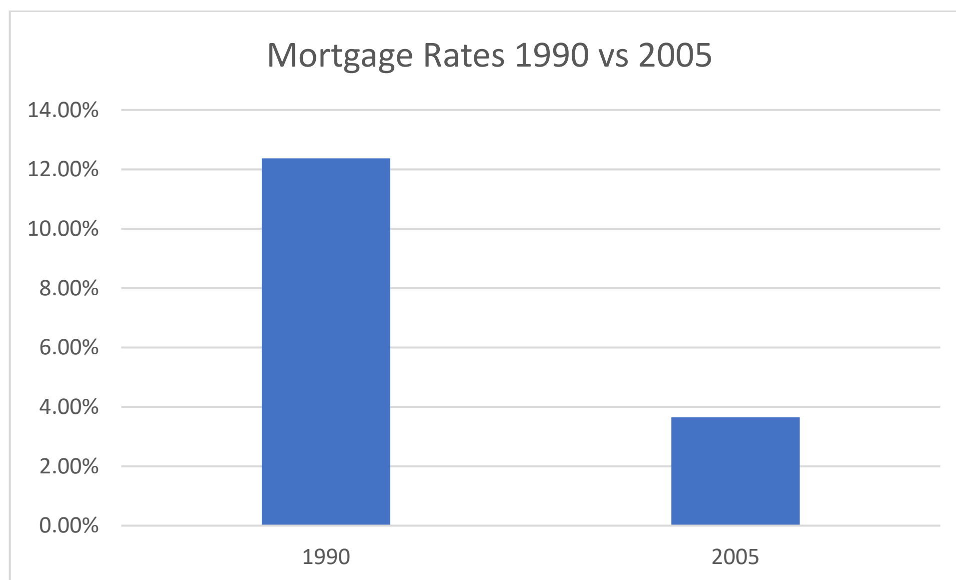
Initially this growth was achieved by harnessing and encouraging foreign manufacturing companies to set up in Ireland. This led to export led economic growth in industries such as pharmaceuticals and computer IT. Companies such as Intel, Microsoft and Dell located in Ireland encouraged by incentives such as low corporate taxes. By the end of the 1990s Ireland was the second largest exporter of computer software in the world (Donovan and Murphy 2013).

But by the 2000s Ireland had replaced a manufacturing export led economic growth with an absentee property boom.

House prices rose rapidly by 7.9 per cent per annum from 2001 until the housing crash in 2007 (Lyons, 2022).

But what caused such a massive increase in house prices?

On 1 January 1999 Ireland joined the Eurozone. Following years of high interest rates customers could now borrow at much lower rates (Chart Below).



Source: The Irish Central Bank

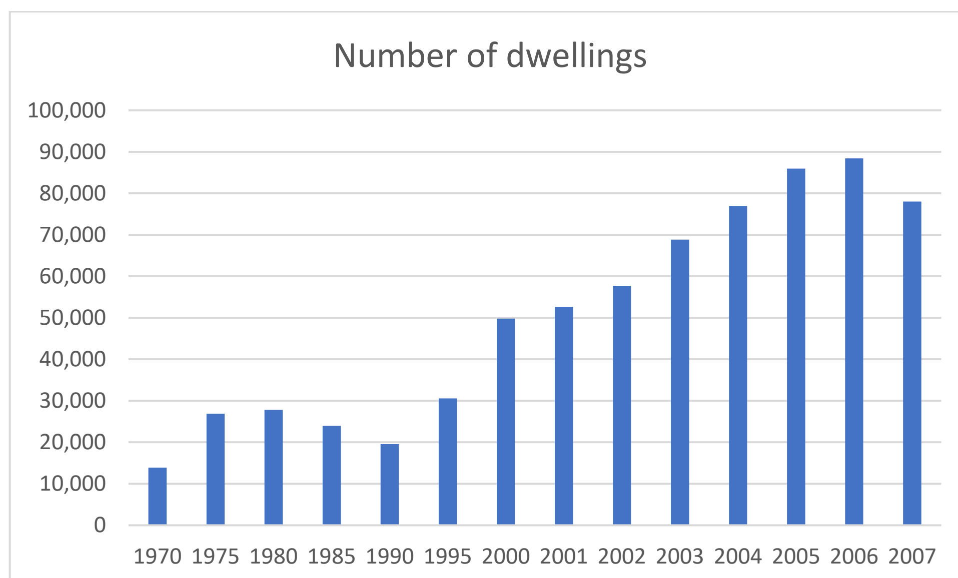
In the early 90s mortgage rates averaged 10 per cent but a decade later this plunged dramatically down to 5 per cent with loose lending by banks offering households mortgagers almost 20 times their income.

The access to cheap credit and the elimination of exchange controls between fellow Eurozone countries allowed commercial banks easier access to international wholesale money markets. Indeed, given the Eurozone's foundations as a monetary project, without a fiscal base, this led to a false sense of security on the part of previously impoverished and less fiscally prudent countries such as the periphery Euro states including Spain, Greece and Ireland.

Bank lending rose from 60 per cent of GNP in 1997 to 200 per cent in 2008 (Kelly, 2010).

Cheap loans saw a surge in private landlords purchasing property to let. Many of these landlords used the increased equity of their primary residence to purchase a rental investment. The number of mortgages held by private landlords jumped rapidly from 16 per cent in 2003 to over a quarter in 2008 (Hearne, Gaffs).

To facilitate this surge in borrowing from customers and buy-to-let landlords the State underwent a massive home building campaign. In 1995, over 30,000 units were built but by 2006 close to 90,000 units were constructed (Below).



Source: Department of the Environment, Heritage and Local Government

Just 6 per cent of homes constructed during the Tiger were social homes with the vast majority - over 90 per cent - provided by the private market (Hearne, Gaffs).

This was a period in which housing supply was at its zenith. However, this supply was merely enabling the further financialization of housing through the expansion of credit by global hedge funds to banks who in turn lent

private mortgages to householders which were then securitised in the form of mortgage-backed securities - essentially homes traded on the stock market (Hearne, Gaffs).

While not immune to the securitised mortgage phenomenon loose lending practices by banks was the primary driver of the Irish property bubble (Norris, Boom and Bust, 2000).

It was in fact ordinary people who engaged in or were merely pawns in this scheme as the government encouraged the asset-based function of a home which could be used to fund a person's pension among other things. Half of new homes built between 2006-07 were bought by investor purchasers (Hearne, Gaffs).

This is why, even as supply increased, home prices concurrently rose given the asset function it performed. House prices were kept at high levels due to a constant stream of cheap credit provided by banks and the monopolised control of land by speculators.

Before the Tiger the cost of land was less than 15 per cent of a new build but subsequently rose to between 40-50 per cent; decision making on land saw developers accruing large payouts from re-zoning land from agricultural to residential, making substantial profits as a result, and when you add the ancillary infrastructure around a residential development such as roads, water drains etc, this increases the valuation (O'Boyle and Allen 2021). As the Irish State abrogated its once held role in providing housing, private forces had almost absolute control over supply thus inflating prices for developers. The government also played a more direct role in inflating land values through tax incentives/breaks for developers. One such

scheme was The Special Incentive Tax Rate. This allowed any landholder to sell land for development and only pay 20 per cent when they were paying 42 per cent income tax. This tax break was used more than 10,000 times according to the Revenue Commission. According to then Labour's finance spokesperson and later Tanaiste Joan Burton, "It incentivised anyone who had two or three fields, or hundreds of acres, outside any town or city in Ireland, to get involved in the property development business and to ramp up the price of land.

"It drove up the price of land and many of the people who bought houses at high prices are sitting on very large mortgages which they are finding difficult to pay."

To address land price inflation the State implemented Part V planning regulations in 2000 to 'capture a portion of the increase in land value resulting from the granting of planning permission for residential development' (Housing Agency). This rule enabled local authorities to purchase 20 per cent of zoned land for social or affordable housing development at its existing value as opposed to development or market value to prevent land price inflation and thus reduce house prices.

In 2002, the Fianna Fáil-PD government relaxed this requirement and allowed for developers to provide a payment in lieu of the 20 per cent rule. In time, the various scandals involving payouts to secure re-zoning of land was attributed to this amendment (Kenna 2021).

As housing became so ingrained in Irish society the economy became overly reliant on this asset for tax revenue and economic growth. Stamp duty from property accrued around €1 billion for the exchequer annually

peaking to €1.3 billion in 2006. Total tax intake related to property was 15 per cent at its peak making the government finances particularly exposed to a fiscal deficit if this stream of income ceased. According to the economist Morgan Kelly, who predicted the housing crash, construction accounted for 20 per cent of total employment with the industry representing a concurrent 20 per cent of GNP, way above the OECD average of 10 per cent (Kelly 2010).

The failure of the Irish State to get a handle on rapidly increasing house prices, inflated by a confluence of monetary decisions by the European Central Bank (ECB), the price of land and commodification of homes would eventually lead to a bust as the underlying assets (houses) underpinning that growth, which was a bubble, depreciated in value.

7. *The Housing Crash and Subsequent Banking Crisis*

The housing crash of 2007-08 and the response to that crisis contextualises the current dilemma of an entire generation priced out of the housing market along with **mortgage holders beholden to vulture funds and non-bank entities**. The steps taken by the Irish government to revalue property prices after the sudden plunge in residential values simply continued the policy of financialising the housing market with little regard to the systemic issues that caused the crisis in the first place. The invitation to vulture funds, the gifting of public land to private entities, the cessation of domestic bank lending and selling of property assets to private equity firms via NAMA all contributed to unaffordable housing and the creation of a new class of absentee **so-called credit servicers masquerading as mortgage owners**.

In March 2007 Irish home prices started to fall for the first time in five years, presaging a major correction that would have severe repercussions. Nationally, prices fell by 7.3 per cent in the first sign that Ireland's economic gamble with housing was starting to wane.

By 2008 the Western world started to realise that the fundamentals of the economy, despite what the consensus was, were not as resilient with the tide going out and the advanced economies swimming naked.

On September 15 of that year the fourth largest investment bank in the United States, Lehman Brothers, filed for Chapter 11 bankruptcy following the collapse of the U.S. subprime mortgage market. The investment bank had an unhealthy exposure to now illiquid assets in the form of these mortgages which were lent to homeowners who now couldn't afford them.

While Ireland had little direct exposure to Lehman the wider contagion effects across the world saw a shutdown in interbank lending making it harder to access cash in wholesale money markets with a resultant credit crunch. The 1980s deregulatory regime was put on hold amid growing volatility. To make matters worse the US did not step in to bail out the embattled investment bank. The banking dilemma led to international fears of a flight on customer deposits, but with banks' access to cash scarce this meant governments would be forced to step in and insure bank deposits to maintain financial stability.

The wider financial contagion from the collapse of Lehman would reverberate to other jurisdictions heavily reliant on property with Ireland the first country in the Eurozone to experience a recession directly related to slumping property prices.

But how did Ireland not avoid this economic catastrophe? While international factors such as Eurozone membership and interbank lending played a significant role, domestic financial regulators also bear some blame. The man at the helm of the financial regulator, Patrick Neary, spoke on RTÉ shortly after the collapse of Lehman expressing confidence that Ireland had "limited exposure" to the U.S. subprime mortgage crisis affirming it would not lead to a contagion within Irish banks which were "resilient and have good shock absorption capacity to cope with the current situation" (Neary, 2008). 70 days later the Irish banks required a capitalisation of €10 billion.

In a subsequent hearing before the Oireachtas Finance Committee Neary admitted to several regulatory failures that occurred during the property bubble. These included, but were not limited to:

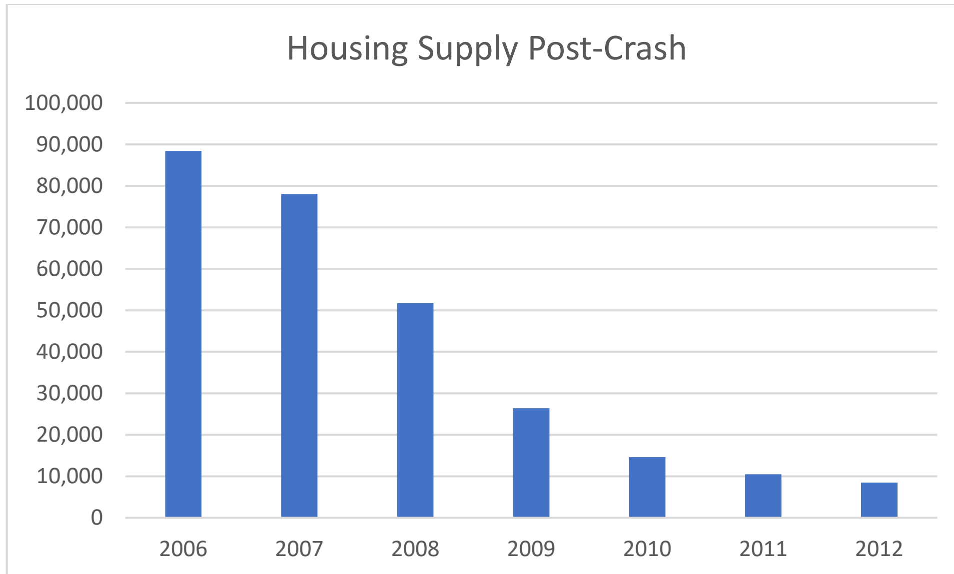
- No curbs on bank lending.
- Failure to recruit six extra bank supervision staff.
- Zero loan impairments on banks despite lending €440 billion in an economy worth €160 billion.
- Delegating assessments of the Irish economy to international organisations such as the OECD who erroneously predicted a 'soft-landing'.
- Adopting a principles-based approach that allowed banks to regulate themselves.
- Conducting less than 50 bank inspections between 2003 and 2008.

Fearing a domestic flight on customer deposits on September 29, 2008, the Irish Government agreed to guarantee the deposits of the Irish banks

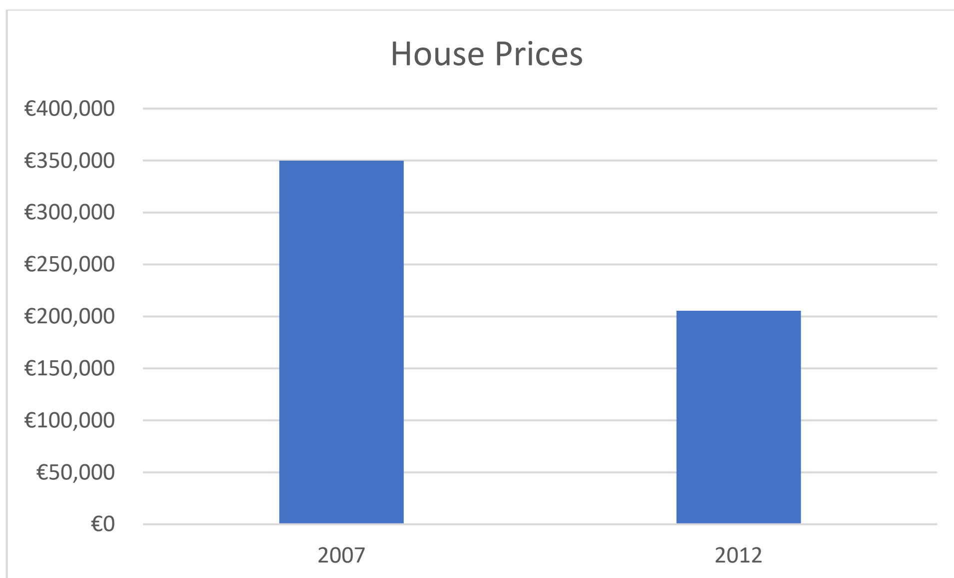
to the tune of €400 billion. This measure was announced by Fianna Fáil Finance Minister Brian Lenihan in the Dáil on the basis that it would recapitalise the banks. However, unbeknownst to government ministers the banks were already teetering on the edge of insolvency with their illiquidity woes a smokescreen for a deeper systemic problem given the sheer scale of exposure to property loans with their liabilities now exceeding these loans. This led former U.S. Secretary Treasury Timothy Geithner to comment in his book 'Stress Test: Reflections on Financial Crises' that, "Ireland, most people view in retrospect, was stupid to guarantee all their banks" (Geithner, 2014). According to Geithner the Irish banks "were eight times the size of their economy."

Geithner's retrospective analysis of the guarantee was shared at the time by the Minister who signed off on the proposal. According to the former Irish Central Bank Governor, Patrick Honohan, Minister Lenihan felt that the pillar banks such as AIB and BOI should have been nationalised while Anglo Irish Bank should have been allowed to fail (Honohan 2015).

To pay for the gargantuan guarantee, the Irish government imposed massive fiscal austerity on the public reducing investment in public services. This further reduced the State's role in the provision of housing presaging evermore reliance on the private sector increasing prices as a result. Cuts to social services including social and affordable housing schemes saw a massive reduction in housing supply. Housing supply slumped dramatically (below) while house prices fell by more than one half between 2008 until 2012 (below) (Cronin and McQuinn 2021).



Source: Department of the Environment, Heritage and Local Government

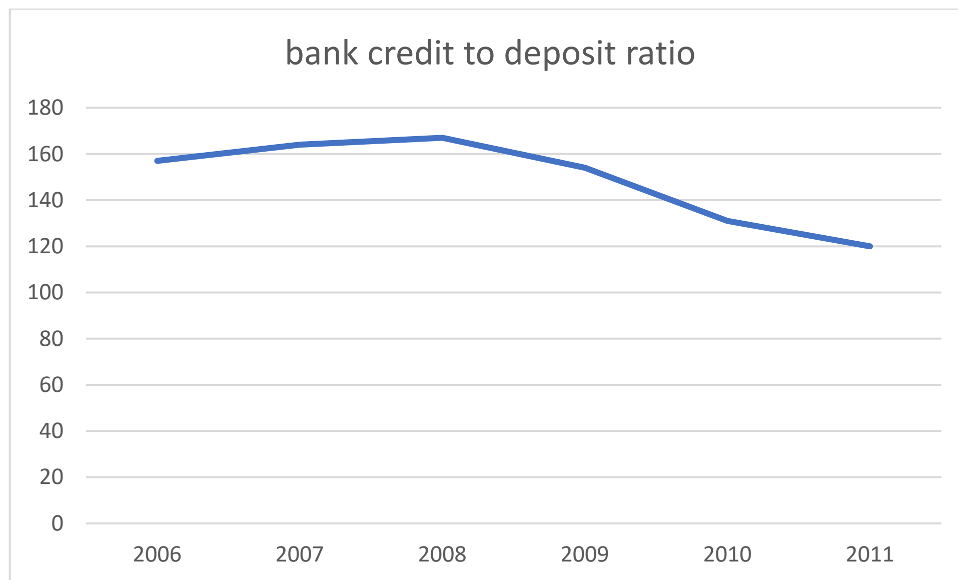


Source: CSO

8. ***NAMA***

A large part of the reason why housing supply fell the way it did post-crash was because Irish banks were unable and unwilling to lend to developers and other construction activities. According to Peter Ryan of *Ryan Research* banking credit to construction "cratered" following the housing

bubble bursting, seeing it drop by over 80 per cent from its peak and over half from 2003 levels (Ryan 2023).



Credit: Ryan Research

This was caused due to a confluence of issues including, as mentioned earlier, lack of access to cash on the wholesale money markets, the implementation of capital reserve requirements and the excess of liabilities on banks' balance sheets from loans now considered non-performing due to debtors (homeowners) facing mortgage repayment difficulties.

Another crucial factor in the cessation of home building post-crash was the loss of many large firms that hired apprentices (Doyle 2024) and the emigration of many construction workers that came from countries primarily in Eastern Europe, including Poland.

To try and get the banks to lend again and make house prices rise the Irish government set about creating a so-called 'bad bank' that would take the non-performing loans off the balance sheets of the main banks.

This was to be achieved through the establishment of the National Asset Management Agency (NAMA). The banks sold property assets worth over €70 billion on their loan books to NAMA at a 58 per cent discount. Property and construction-based loans accounted for 80 per cent of these asset loans. NAMA purchased those loans by borrowing just over €30 billion from the government with a commercial mandate to turn that into a profit (O'Boyle and Allen 2021).

Minister Brian Lenihan stated that the agency, "Will ensure that we avoid the Japanese outcome of zombie banks that are just ticking over and not making a vibrant contribution to economic growth" (Lenihan, 2009).

Essentially, this meant the taxpayer was on the hook for these loans with the property developers who recklessly borrowed and the banks who recklessly lent being bailed out. NAMA took on the debts of large property owners whose loans exceeded €5 million with most homeowners on a €300-400k mortgage not covered (O'Boyle and Allen 2021).

In time, NAMA would hire property developers and builders on its payroll, with some earning over €200,000. Indeed, developers were paid a whopping €11 billion by the agency to help provide information on their extensive property portfolios (Percival, 2011).

9. The Bank Bailout

By the end of 2010, Ireland was forced to borrow €67 billion from the troika of the European Central Bank (ECB), the International Monetary Fund (IMF) and the European Commission to pay for the bailout of the banking

system. A further €17.5 billion was raided from the National Pension Fund in a cumulative bailout of €85 billion.

According to the economics journalist Diarmuid O'Flynn Ireland did not get bailed out, rather Ireland bailed out the Eurozone:

"*All those interventions by the ECB weren't to save Irish banks – it was to save the megabanks in the bigger EU countries. A Bloomberg article from May 2012 quotes a Bank of International Settlements report which outlines how 'German banks had amassed claims of $704 billion on Greece, Ireland, Italy, Portugal and Spain, much more than the German banks' aggregate capital. In other words, they lent more than they could afford. When the European Union and the European Central Bank stepped in to bail out the struggling countries, they made it possible for German banks to bring their money home. As a result, they bailed out Germany's banks as well as the (German) taxpayers who might otherwise have had to support those banks if the loans weren't repaid. Unlike much of the aid provided to Greece, the support to Germany's banks happened automatically, as a function of the currency union's structure*" (O'Flynn 2018).

10. ***NAMA's SPVs and Luring of Private Equity***

In October 2012, NAMA's first Chief Executive Brendan McDonagh spoke before a joint Oireachtas Committee on Finance, Public Expenditure and Reform to highlight the ambitions and policy objectives for the agency.

McDonagh acknowledged that "Irish banks and other banks in the Irish market have little appetite for lending" (McDonagh, 2012). To alleviate this

dilemma NAMA sought to, in the words of McDonagh, "facilitate the investment of funds from abroad into the Irish property market". Among the recommendations to facilitate this foreign investment McDonagh suggested two options:

- The establishment of Qualifying Investor Funds (QIFs)
- Concessions on Stamp Duty and Capital Gains Tax

Most significantly, McDonagh recommended the introduction of REITs otherwise known as Real Estate Investment Trusts, into the Irish market as a potential "monetisation channel for the Irish commercial and residential markets."

With an arsenal of around 10,000 apartments on an 'annual rent roll' of around €100 million NAMA sought to facilitate the "sale of entire blocks of apartments to equity firms which have teamed with property management specialists, and which are interested in purchasing apartments on a bulk basis" (McDonagh 2012).

In December 2012 the State began to adhere to the recommendations of NAMA and share its vision of enticing foreign investment funds to prop up Irish house prices. The budget of that year flagged that the upcoming Finance Bill in 2013 would enable the creation of the REIT structure. The REITs would be Irish companies registered under the Irish Companies Act and be exempted from several taxes including 'corporation tax (CT) on income from its property rental business and capital gains tax (CGT) accruing on the disposal of assets of its property rental business' (Revenue). A REIT is essentially an investment structure that invests in rental properties relying on high rents to extract a high yield. The State

established them to ‘assist NAMA in de-leveraging its portfolio and allow it to bring more sustainable activity to the residential property market’ as stated by then Finance Minister Michael Noonan. This allowed REITs to purchase Irish homes tax free and profit from the resultant rise in price. Minor regulations or requirements were placed on the REITs including:

- 75 per cent of their income had to come from property
- They agreed to distribute 85 per cent of their income to shareholders
- Keep their loan-to-value ratio less than 50 per cent.

Providing details on the REIT structure in the Dáil in response to a parliamentary question last year, former finance minister Michael McGrath said that “REITs are obliged to operate Dividend Withholding Tax (DWT), at the standard rate of 25%, on distributions to shareholders” (McGrath 2023). As such, REITs would not pay tax on corporate profits as shareholders would pay a withholding tax on dividends.

The confluence of low property prices for funds to ‘swoop’ in on incentivised with generous tax incentives was a combustible mix that would have major repercussions for the future housing market. In time, NAMA would sell these assets at low prices to investment funds who in turn would evict tenants and raise the value of these homes.

By 2013, rents started to rise by over 7 per cent. House prices also rose by over 6 per cent. The end of the year also saw the State exit the Troika bailout. But just as conditions started to improve - the so-called ‘recovery’ - the greatest transfer of Irish assets would just begin.

11. *The Transfer of Assets*

With the right conditions in place by 2014 the REITs started to appear. The first REIT established was the Irish Residential Properties Real Estate Trust (IRES REIT) funded by the Canadian Apartment Property REIT (CAPREIT). With these structures in place, NAMA would sell the assets it acquired to these REITs. Beginning in 2014, NAMA became one of the largest sellers of distressed loans in Europe (O'Donovan 2013).

From 2014-16 NAMA sold over €50 billion worth of distressed loans to investment funds. Irish loans accounted for over one-third of all distressed loan sales in Europe in both 2013 and 2014 with Dublin at the epicentre of these transactions. According to the United Nations, over 90 per cent of these loans were **sold to US hedge funds, private equity and/or vulture funds**.

As their name implies vulture funds are investment funds who prey on assets, in this case homes, typically at low prices before flipping the land and properties. This scheme would be facilitated by NAMA who sold the assets or 'loan portfolios' to these funds. Meanwhile, private equity firms are private companies that gather investors' money to look for something to invest in that is usually not publicly traded. The company gathers all these little sums of money into a giant lump sum called an investment fund - a bank containing a massive amount of money. Hedge Funds are funds that manage their own money without the need for investors. Once the asset they invest in has been sold a steady stream of income and profits flow as a result.

Many of these funds would set up what are known as Special Purpose Vehicles or SPVs, allowing them to claim charitable status and avoid Irish taxes, VAT or duties. SPVs were established under the Irish Tax and Consolidation Act 1997 as vehicles set up by companies that hold non-Irish assets and declare themselves ‘tax neutral’ (Kelly 2023). In 2012 investment funds used these pre-existing structural arrangements to warehouse their Irish property assets in the IFSC. Any private fund could register a Section 110 company if it was resident in Ireland and had qualifying assets of at least €10 million. These assets could be anything from shares to bonds. This enabled funds to invest almost €60 billion in equity and debt and avoid €20 billion in Irish taxes (O’Boyle and Allen 2021).

Brian O’Boyle and Kieran Allen, in *Tax Haven Ireland* mention that SPVs would “create artificial loans from a subsidiary of the parent company to the SPV that was buying up the Irish property… known as Profit Participation Notes (PPNs) and they allowed the Irish SPV to pay interest out of the profits they were making on their Irish assets.

“From the outside it looked like the Irish-registered SPV was paying substantial interest to a third party, when in fact the money was going back to the parent company. And for good measure, the interest rates were always high enough to eat up all the domestic profit.”

These funds were encouraged by the Irish government at the time to invest in the Irish property market.

The appointment of John Moran as Secretary General at the Department of Finance was crucial in this arrangement. As noted by O’Boyle and Allen

prior to his appointment to the Department, Moran was CEO of Zurich when the firm was fined $16 million by the US Securities and Exchange Commission for aiding and abetting hedge funds in illegal activity. While on the board he was actively involved in 'lobbying for, and achieving, a significant change to Irish banking rules, which for the first time allowed a bank… to engage in very lucrative hedge fund lending in Dublin'. Following his appointment, the finance department's contact with the vulture funds increased with then Minister Michael Noonan holding meetings with the Texas vulture fund Lone Star Capital three times and Apollo Global Management twice from 2013-2014. Lone Star would become the largest buyer of loans from the successor to the defunct Anglo Irish, Bank the Irish Bank Resolution Corporation (IBRC) (Walsh 2014). Overall, officials from the finance department met with representatives of private equity funds more than 60 times within this period, compared to only five meetings with mortgage advocacy groups (Hall, 2015).

Leading financial firms bought these properties when they were cheap, taking advantage of the tax-free incentives offered by the Irish State.

NAMA's role was to package these distressed loans into multimillion-dollar portfolios containing a mixture of commercial, residential and retail, to sell to investors.

One such portfolio was the Orange portfolio which contained over 700 residential apartments in Charlestown, Lansdowne Gate, Beacon South Quarter and Bakers Yard, in the Greater Dublin area which was sold to IRES REIT for over €200 million. In a statement announcing the

transaction IRES mentioned ‘that it anticipates significant rental growth over the near and longer term’.

The CEO of IRES, David Ehrlich, heralded the deal as beneficial to their portfolio: “With the closing of this transaction, our property portfolio will grow to a total of 1,202 apartment suites, transforming I-RES into Ireland’s largest non-governmental residential landlord.”

The CEO also mentioned the benefits to the company’s “cash flow” because of the sale. This essentially meant that the investment firm would benefit from the high rents they would squeeze from the tenants of these residential properties. In an interview with *The Irish Times* in 2016 Ehrlich said that ‘We’ve never seen rental increases like this in any jurisdiction that we’re aware of’, before adding, ‘I truly feel badly for the Irish people.’ Ehrlich personally made close to €10 million from 2014 onwards due to rent increases (O’Boyle and Allen 2021).

Another portfolio sold by NAMA to an investment fund was Project Cherry. This transaction involved the selling of a 166-hectare site in Cherrywood, south county Dublin by NAMA to the US real estate investment management fund Hines and King Street Capital Management for €270 million. Along with the Dutch pension fund APG Asset Management, Hines developed plans for 1,221 build-to-rent apartments on the site. The firms then sold close to 50 hectares of the land to the US vulture fund Lone Star for €140 million.

Lone Star epitomised the fine line between vulture funds and NAMA. Based in Texas but spanning the globe, Lone Star acquired trillions in Irish

assets including an over €1 billion portfolio of 4,000 non-performing Irish mortgage loans from U.K. lender Lloyds in 2014.

In 2015, NAMA sold its Plum portfolio to Marathon Asset Management for €120 million, which included almost 600 apartments in Dublin. Marathon would go on to sell over 800 homes to IRES REIT for €285m.

Reporting on the latter transaction, the *Irish Independent's* Richard Curran mentioned that tenants would be the ones to suffer as a result of rent increases on the properties: "The portfolio includes 101 apartments at Beechwood Court in Dublin where Marathon has increased the rent roll from €1.5m to just over €2m in the last four years, representing a hike of 30pc.

"Overall, the portfolio takes in €14.2m a year in rent and Ires sees scope for that to increase by around 20pc in the years ahead, which would see €3.5m a year more paid in rent."

12. ***IRES REIT***

By 2016, the government announced measures to address the tax avoidance schemes used by mainly overseas investors.

This included the establishment of The Irish Real Estate Fund (IREF) in the Finance Act of that year to address concerns associated with SPVs.

To qualify as an IREF, 25 per cent of the value of the assets held by the fund must be derived from Irish real estate assets.

While they are still exempt from taxes on income and gains, an exit tax would be applied instead (Murray and Lawless 2016).

Nevertheless, IRES REIT would acquire over 2,000 apartments increasing rents by 16 per cent.

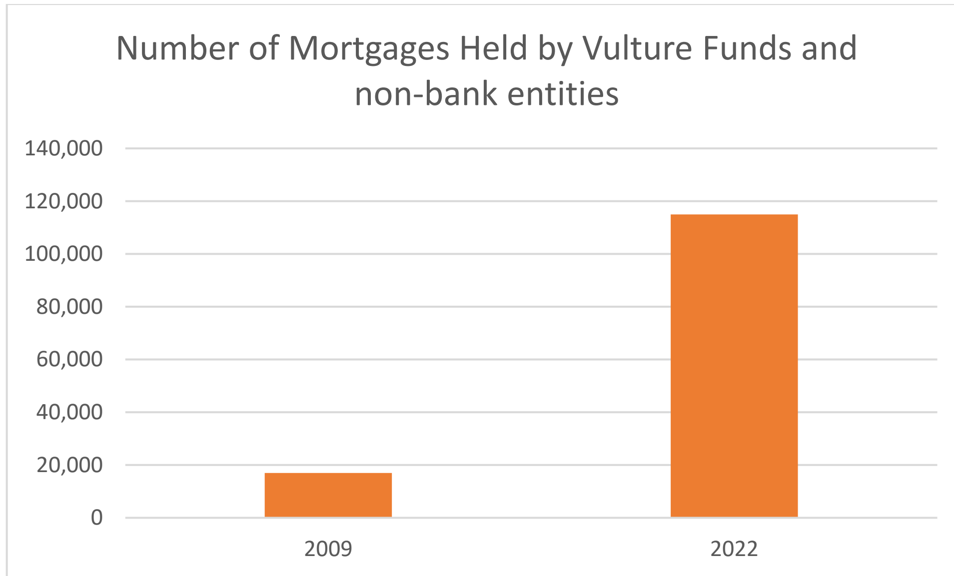
13. *Accelerated Asset Disposal*

In 2016, NAMA sold its Project Ruby and Emerald portfolio worth €4.7 billion to US private equity firm Oaktree Capital Management which included almost 1,000 apartments in Dublin.

With banks leaving the Irish market at a record pace due to profitability and regulatory issues, many exited institutions are disposing of loans. In 2018, following the exit of Ulster Bank from the Irish market the bank sold over €1 billion worth of its loans to the US vulture fund Cerebus Capital Management including over 2,000 residential loans.

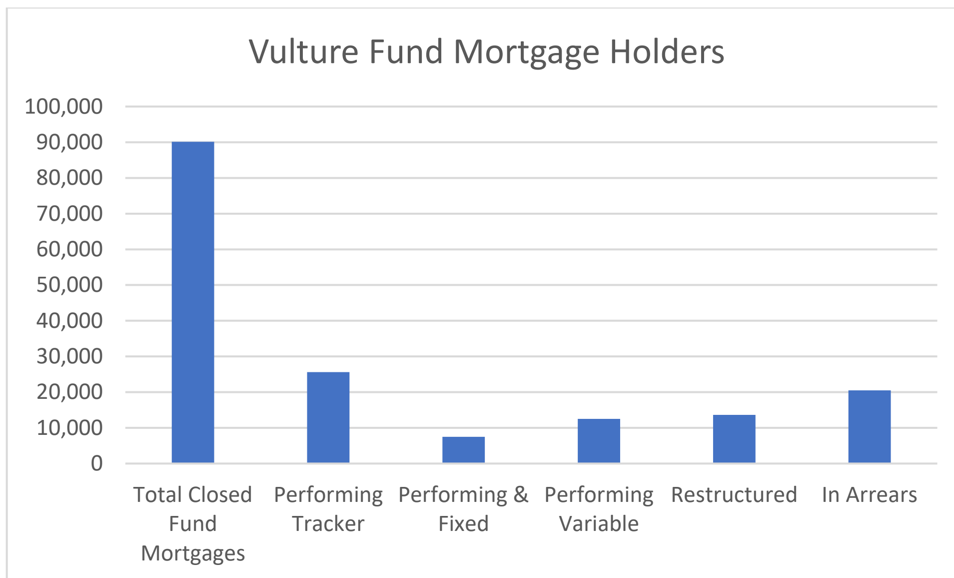
That same year saw 10,000 loans, including 1,000 performing loans, from the bank Permanent TSB, sold to Start Mortgages which is linked to the Lone Star vulture fund.

According to the Central Bank, at the end of 2022, some 115,000 mortgages were held by vulture funds and other non-bank entities – 16 per cent of the overall market compared to less than 20,000 in 2009 – then 2 per cent of the market (below).



Source: Central Bank of Ireland

Over 10,000 mortgages owned by vulture funds are on variable rates meaning they are vulnerable to interest rate hikes (below).



Source: Moneysherpa

According to the Irish Central Bank, there are 28,767 loans in arrears for over 90 days with 19 per cent of these loans held by vulture funds making them equally vulnerable to repossession and/or eviction.

The latest estimates show that there are around 130,000 mortgages held by credit servicing firms that act of behalf of vulture funds – 17 per cent of the overall market.

14. ***Land Monopoly***

Along with the purchasing of mortgages, investment funds are also heavily involved in indirectly purchasing land. The main players are two Irish housebuilding and development firms Cairn Homes and Glenveagh.

Cairn Homes was set up in 2014 by brothers Michael and Kevin Stanley along with Alan McIntosh who all received a share allocation valued at over €60 million in 2017. According to the *Irish Independent,* the Stanley family's wealth stems from Shannon Homes, founded by the previous generation of the family in 1970 who were heavily involved in the Dublin housing market in the 1990s and 2000s. Michael Stanley and Alan McIntosh in 2014 floated Cairn on the London stock exchange and raised over €400 million in equity. According to real estate services company Cushman and Wakefield, Cairn was the biggest purchaser of development land in 2015, and this allowed them to gift large amounts of land to private speculators thus controlling the building process and hoarding large amounts of land (O'Boyle and Allen 2021).

That same year saw Cairn partner up with Lone Star in buying the Project Clear portfolio off from Ulster Bank. This included 1,700 acres of prime residential land from west Dublin with potential for 20,000 homes. According to Cushman and Wakefield they "acted for Lone Star Funds on its joint acquisition with Cairn Homes of Project Clear from Ulster Bank for

€503 million… Project Clear had a par value of circa €2 billion and comprised of approximately 20% of the available residentially zoned land in the Greater Dublin Area.”

Meanwhile, Glenveagh Properties was founded by private equity firm Oaktree’s Justin Bickle, developer Stephen Garvey and former Jones Lang LaSalle chief executive and chairman John Mulcahy in 2017. According to the *Irish Times*, Mulcahy’s salary is now €300,000 per annum. Glenveagh similarly tapped into the growing build-to-rent market which promised high returns via high rents.

In 2019, Glenveagh sold the Herbert Hill development of over 80 apartments near Dundrum to a German investor for €55 million. According to a report by the *Irish Independent* Dún Laoghaire-Rathdown County Council *had signalled its interest in securing the entire 90-unit development for use as social housing* but Glenveagh stopped this in its tracks. Eventually, Realis property entered a 25-year lease with DLRCC to rent properties at €3,000 p/m for social housing.

15. ***QIAIFs***

The use of Qualified Investor Alternative Investment Funds (QIAIFs) has also contributed to more speculative development across the country.

Established in 2013 by the Irish Central Bank, as advised by NAMA’s Brendan McDonagh, QIAIFs are part of five tax free legal structures for holding assets, with the Irish Collective Asset-management Vehicle the most popular option.

According to Mason Hayes and Curran, QIAIFs is an investment fund that allows for the pooling of assets, and are not subject to limiting investment restrictions, and the range of eligible assets that a QIAIF may acquire is not restricted meaning they can be established as hedge funds, real estate funds, private equity funds, master-feeder funds etc.

QIAIFs are not subject to Irish corporation tax and are not liable for capital gains taxes on profits or gains.

According to Healy Consultants, through "the use of a QIAIF regulated fund, foreign investors can legally eliminate all Irish taxes including capital gains tax, income tax and stamp duty.

"QIAIF income distributions are remitted overseas free of Irish withholding tax. If a foreign investor wishes to sell his shares in a QIAIF, there are no Irish tax implications."

The same law firm also highlighted the implications of Irish taxes on Irish investment funds such as capital gains tax of 33 percent 'on the sale of Irish land and buildings' alongside a 'withholding tax of 20 per cent on rental income earned, regardless of if remitted overseas or not', and stamp duty of 2 per cent.

Some of these QIAIFs have bragged about Ireland's attractiveness as a place to invest due to its high rents. One such entity Vanke, which is based in China, mentions on their website that, "the [Irish] population is growing fast and the new land available for development are also very limited" meaning "property prices in Ireland are set to continue rising" before adding that "investment property in Ireland is certainly an attractive option"

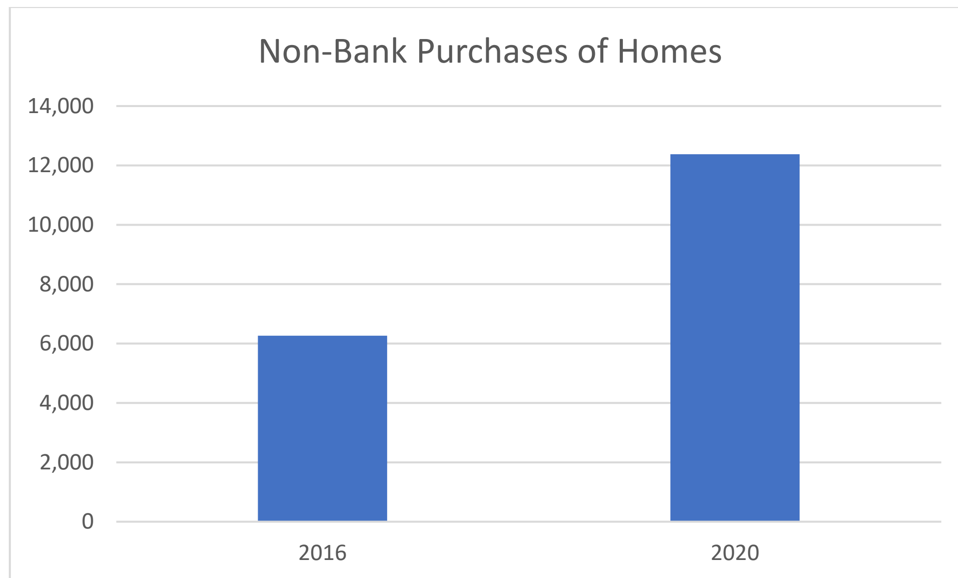
with “small apartments located in Dublin earning gross yield of 7-10 percent.”

The firm also mentions that “funds are hugely important to the Irish economy, and Ireland is now the largest alternative investment fund centre in the world” with “Ireland administering 40 per cent of the world’s alternative funds.”

“It’s a major fund jurisdiction for U.S. managers wanting easy access to European assets and investors, and a centre of excellence for the administration of funds, even when they are domiciled elsewhere,” the website states.

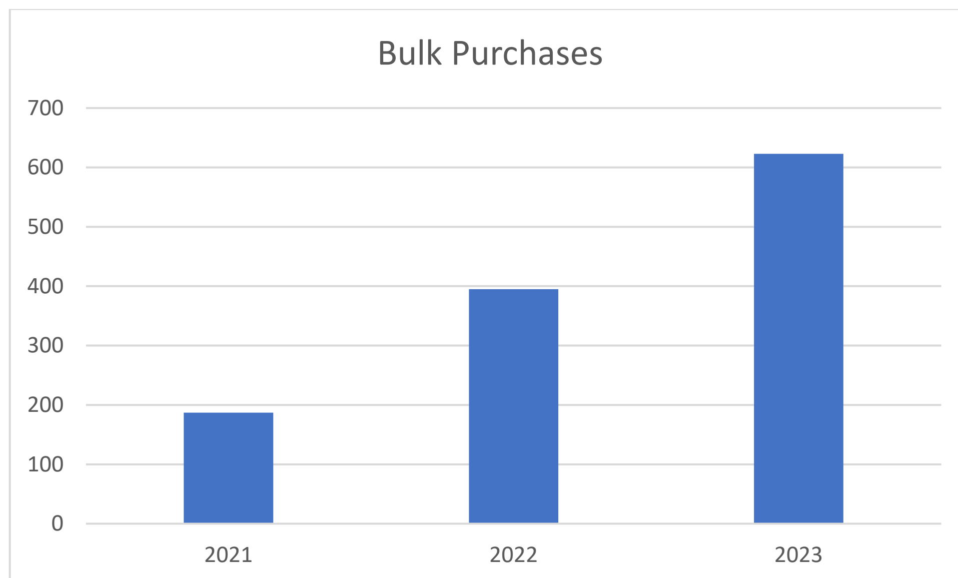
16. ***Bulk Purchases***

After 2016 the rate at which non-bank entities were acquiring properties reached astronomical levels. Since that year Irish and international investors have spent €7 billion on buying property (Hearne, Gaffs). In 2016 the figure was 6,266 homes but by 2020 it reached 12,378 - a third of all homes (below).



Source: Rory Hearne

In 2021, 4,000 newly built homes were purchased by investment funds representing 27 per cent of all new supply in the country with all non-household buyers, buying half of new homes which includes Affordable Housing Bodies (AHBs). That same year saw the government implement an increased Stamp Duty of 10 per cent on investment funds that bulk purchase 10 or more properties with exceptions for homes leased back to the State for social housing and apartments. However, these moves have proven wholly insufficient as the rate of bulk purchase has only increased since then from 187 in 2021 to 395 in 2022 and 623 in 2023 according to Revenue (below).



Source: Revenue

According to DNG, last year 40 per cent of new builds were sold to bulk purchasers. In Dublin the situation is more profound with 3,528 out of 5,727 homes purchased by block purchasers representing over 60 per cent of housing stock.

17. Generation Rent

The preponderance of build-to-rent investors has created an underclass of perennial renters who will never understand the value of owning their own home.

According to the EU's statistical agency Eurostat, **over two-thirds of Irish adults aged between 25-29 still live at home with their parents**. Ireland is an outlier in this regard with the figures in Denmark, Finland and Sweden at 4.4, 5.7, and 6.3 per cent respectively. The EU average is just over 40 per cent.

With the rise of institutional investors whose main priority is to invest in build-to-rent properties as part of their portfolios, assisted by government-backed tax dodging speculative schemes, many of these renters are stuck paying high rents to satisfy these cash-strapped funds.

According to the Central Bank of Ireland, from 2007-2019 homes ‘owned’ by institutional investors increased the level of rents by 4.1 percentage points more than other landlords with comparable properties following purchase. The study also found that landlords within 100 metres of an institutional investor raised monthly rents by 2.3 percentage points more than landlords who are further away, after an institutional investor moved in.

Indeed**, vulture funds now own more student accommodation in Dublin than the three main universities** - DCU, Trinity and UCD - combined at over 7,500.

Last year in Dublin City over 90 per cent of new housing was apartments with the overwhelming majority build-to-rent while only 75 homes were for buyers (Sirr, 2024).

As mentioned at the outset of this report, since 2013 rents have risen by 90 per cent with wages rising by a measly 27 per cent.

The psychological impact this is having on an entire generation is profound which will have implications for years to come.

According to the National Youth Council close to half of young people in Ireland are unhappy with their current housing situation with over 20 per cent having to skip meals due to the cost.

A quote from a young person in the NYCI survey mentioned that: “The housing situation is so bad here I have had a lot of friends leave. I didn’t think we would be next, but unfortunately we are.”

I wrote about the phenomenon of Generation Rent for the *Sunday Independent* following Social Democrat’s leader Holly Cairns’ maiden speech to Dáil Éireann where she highlighted the topic:

My generation has been confined to the status of “Generation Rent” — those of us who don’t own a home and either live with our parents or are forced to pay exorbitant rents. In his novel A Tale of Two Cities, set during and after the French Revolution, Charles Dickens wrote of deception and how everything may not be as it seemed.

Right now, Ireland’s story is A Tale of Two Economies: where Irish GDP has skyrocketed, reaching sixth in the world per capita, but the prospect of owning a home for young adults has plummeted.

In her maiden speech to the Dáil, on securing the position as Social Democrats leader, Holly Cairns spoke for millennials and my generation — Gen Z — when she said: “I’m a member of the first ever generation who will be worse off than my parents.”

The 33-year-old spoke of "a fairer Ireland where it's easier for people to get by" and "where keeping a roof over your head… isn't such a struggle for so many people."

Following her speech, support for the Social Democrats skyrocketed with the party reaching 9pc in the Sunday Independent/Ireland Thinks opinion poll, up five percentage points from the previous month, while Cairns's approval rating was 43pc, the second highest of any leader, behind only Micheál Martin.

Some were quick to dismiss the Social Democrats' rise with the usual excuse that the emotions of young people were eclipsing their rationality; that voters are somehow more enthralled with her youthful, idealistic demeanour than specific policies. There may be some truth to this; my mother recently remarked: "Holly Cairns is very cute, isn't she?"

While that youthful energy is certainly a pull factor, it would be naive to dismiss this surge as mere short-term popularity based on Cairns's zeal for millennial justice.

The point is she touched on an aspiration that many in my generation are longing for: a place to call our own.

But does this mean I'm worse off than my parents?

Not necessarily.

I remember stories my mother told of her having to speak to friends on the dial telephone fixed to the wall of the living room with all the gossip and

her “private” conversations made within earshot of the household’s inhabitants — a nightmare for any Snapchat or Instagram user.

Yet despite the dearth of social media then, she was able to achieve social mobility by moving out at the tender age of 22 and starting a family before the age of 30 — a pipe dream for those of us born at or near the turn of the millennium. Our generation is left with a Dickensian “epoch of incredulity” wondering when the recovery will actually arrive for us.

In 1993, two-thirds of 25- to 34-year-olds owned a home, according to the Central Statistics Office (CSO). By 2016 this figure had plummeted to less than a third.

More than half of 25- to 34-year-olds are forced to rent, compared to only 15pc in the 1990s.

Generation Rent is the first to pay such a high stipend for accommodation that we don’t even own.

These stark figures contextualise recent analysis which suggests more than 70pc of young people in Ireland are contemplating emigration.

Friends of mine have already absconded, and I know many others who are planning on fleeing the country once they’ve obtained a degree. To be quite honest, it’s not beyond the realm of possibility for this writer.

Not only is this precarious dilemma impacting my generation’s purse strings, but it is also affecting our ability to achieve long-lasting

relationships. How are those in their prime marriage years — late 20s or early 30s — expected to wed when locked out of the property market?

In the 1990s the average age of marriage remained below 30, only reaching that age by 1996. In 2021, the average age reached 38 for both same-sex and opposite-sex couples.

There is a direct link between home ownership and marriage.

In the opening of A Tale of Two Cities, Dickens writes: "We had everything before us, we had nothing before us." The Cairns generation knows all too well how that feels.

18. **Distressed Debtors**

With the transfer of such large tranches of loans over a period many of those whose mortgages switched from a bank to a non-bank entity or vulture fund without their consent or in some cases knowledge found they had little to no security.

Hundreds of thousands of households now found that the bank they thought their mortgage was tied to had been allegedly purchased by a so-called service provider acting on behalf of a vulture fund.

Let's take one example of a vulture fund this report has frequently referenced - Lone Star.

Lone Star is a vulture fund that 'purchases' loans from a bank. In the most recent example of a transfer provided (above) from 2018, the fund

purchased several loans from Ulster Bank. When these loans are purchased Lone Star, or any fund, will hire a ‘credit servicer’ that will act on behalf of the fund. In the case of Lone Star, the credit-servicer is Start Mortgages.

Start was formed by four former GE Capital employees David Ingram, Paul Murphy, Dermot Nutley and Niall Corish in 2004.

In 2010, the Anglo-South African wealth management company Investec acquired Start through its U.K. subsidiary Kensington Group having taken a 65 per cent stake in 2007.

In 2014 Investec sold Start’s portfolio to Lone Star at an undisclosed sum.

A recent case highlighted the vulnerability of those whose mortgages are snatched by funds with the enabling credit servicers.

In the north Dublin housing suburb of Cabra a widow faced eviction after Start took over her mortgage in 2006. Having purchased the property in 1995 with her husband through a mortgage from First National Building Society the couple soon got into difficulties paying off their loan. The widow’s husband died in 2012 and the eviction came before the courts in 2017 with a possession order granted in November 2018.

Thankfully, mortgage rights activist David Hall secured a purchase of the property through iCare Housing, the approved housing body he leads.

In another case a Cork couple whose mortgage was sold from Permanent TSB to Pepper Finance saw their mortgage rate spike to 8.5 per cent with

an annual hike of over €7,000. Had their loan stayed with the originating bank they would have been offered a much lower rate of 4.3 per cent.

The couple Darren Hennessy and Emer Barrett claimed the hike was “unfair” and “out of proportion”. Having taken out the 35-year mortgage in 2005 the loan was transferred to the credit servicer in 2019 with a variable rate kicking soon thereafter.

Currently, no vulture fund offers a fixed rate (Weston, 2024).

The couple claimed the high rate was done in order to obtain “the maximum amount it can extract from its consumer base with a view to making a profit”.

Indeed, **in 2022 Pepper was responsible for 10 per cent of repossessions with ‘ownership’ of 80,000 private mortgages in the State**.

Pepper’s foundations speak to the very risky nature of these credit servicers bearing all the hallmarks of the last property bubble. Founded in Australia in 2000 the servicer was originally operated by Merrill Lynch a key player in the US subprime mortgage market.

The impact these loans transfers has had on rural Ireland is immense.

Recent figures from the Irish Farmers Association (IFA) indicates that between 2,500 to 3,000 family farms may be seized by vulture funds of land up to 150,000 acres.

The heavy-handed tactics deployed by these funds reveals what farmers may face if or when push comes to shove.

In December 2018, the McGann family were evicted from their farms in Strokestown Co Roscommon after KBC Bank hired a British security firm GS Agencies to evict the tenants on behalf of the US Vulture Fund Cabot. The security firm, which included a former British soldier who served with the Ulster Defence Regiment (UDR), punched, pulled and kicked the family during the raid.

19. ***Repossession Court Cases***

In June 2017 the former Master of the Irish High Court Edmund Honohan spoke before the Oireachtas finance committee to warn of the risk of mass evictions due to the level of mortgages sold to vulture funds.

Noting the “flattish level” of orders for repossessions at 150 per quarter until the beginning of 2014, Honohan said this figure “doubled overnight” to more than 300; if you recall it was 2014 when the REITs structure commenced and the transfer of loans by NAMA to investment funds began.

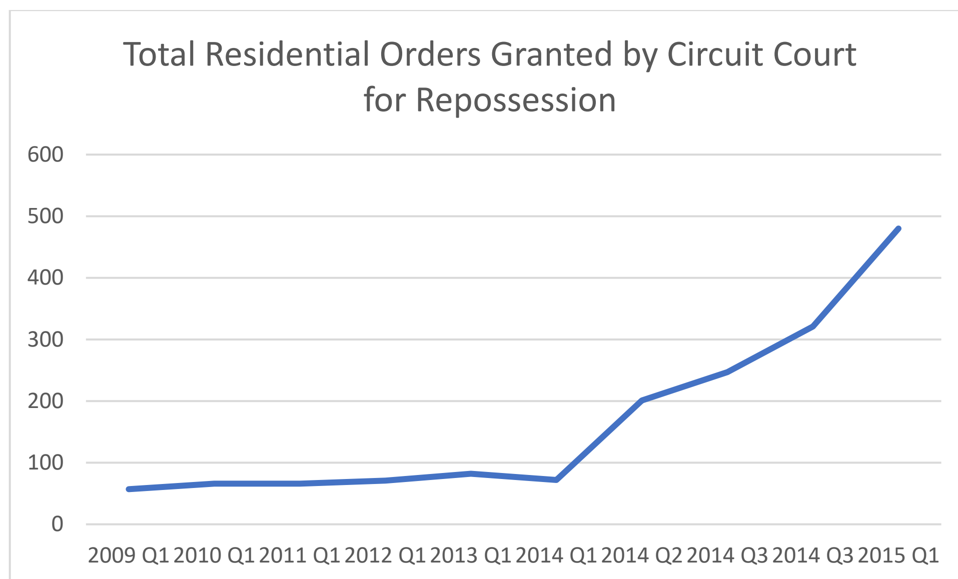
“I can think of no significant factor which might account for this sudden change other than the sudden arrival of vulture funds into our distressed mortgage mess.

“If that is so, you must presume that if the banks are now proposing to finally sell off their huge numbers of deeply indebted loans to the private

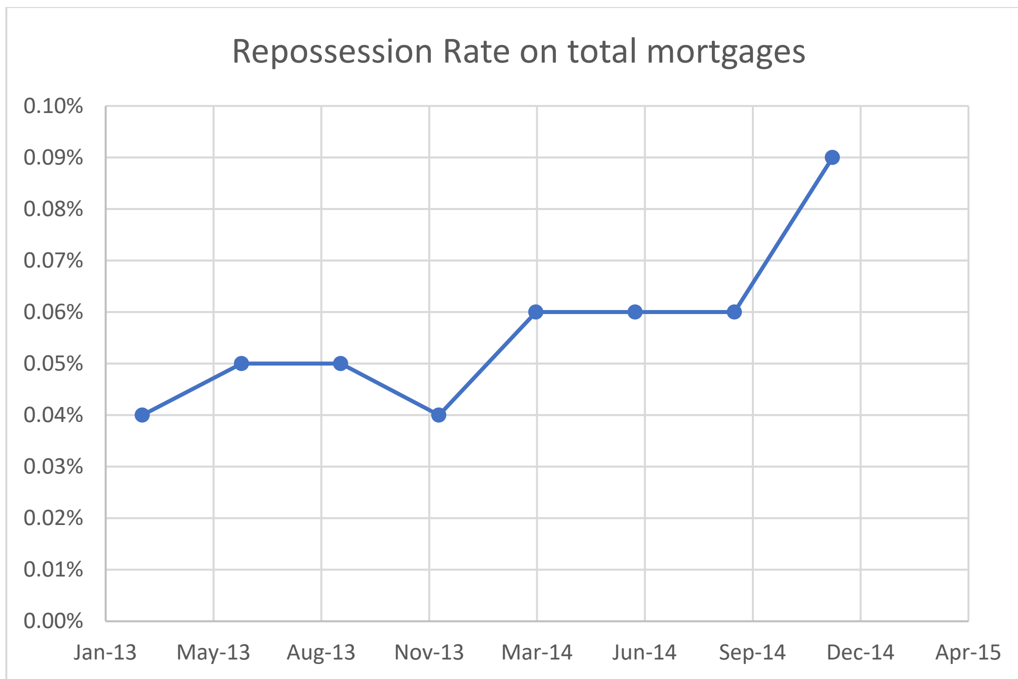
sector, perhaps increasing the non-bank proportion of non-performing housing loans fivefold from less than 10 per cent to over 50 per cent, we can expect a further significant jump in possession cases," he said.

That year - Q1 of 2017 - Irish courts granted repossession or sale orders for 278 "principal dwelling houses."

In 2015 1,284 orders for possession of property were made in the Circuit Court – an over 20 per cent increase on 2014.



Source: Court Service of Ireland



Source: Central Bank of Ireland

The way in which these evictions are carried out before the courts shows the opacity and perniciousness of the funds' practices.

Research from *Bank Confidential* shows that law firms who represent investment funds seeking to evict mortgage holders often produce affidavits in court with redacted evidence 'proving' they are the owner of the mortgage.

This is a form of deception played before the courts which goes to the very heart of the transactions and asset transfers themselves.

As mentioned, when a bank wishes to dispose of toxic loans off their balance sheet they will turn to US private equity companies who in turn will set up an SPV.

The sale of the loans will normally be done via a true sale.

A true sale involves a transaction in which ownership and all interest in an asset is completely transferred from the original owner, in this case the bank, to another party, in this case the vulture fund. The buyer (vulture fund) assumes all risks and benefits associated with the asset, and the seller (the bank) no longer has any rights or control over the asset.

This is in contrast to a synthetic-type securitisation which, according to the European Parliament, involves 'the ownership of the securitised exposures remaining with the originator (that is, the exposures remain on the balance sheet) and the credit risk is transferred with the use of credit derivatives or financial guarantees.'

Usually, these funds fraudulently acquire a property via Tailte Éireann by acquiring what is known as a Folio. According to Tailte Éireann's website, a folio consists of a 'property registered in the Land Registry with its own distinct number with the details of the registered property'.

They do this through what is known as form 56 - the transfer of charge - and once they are registered on the folio, they sell the mortgage portfolio to the SPV which is described legally as a charity and as highlighted pays no tax in Ireland. The SPV then turns the portfolio of mortgages into a loan and, because neither the SPV nor the vulture fund can service the mortgage, they transfer the legal rights of that loan over to a credit servicer - Mars, Start, Pepper - allowing them to initiate a court hearing **even though the courts are left in the dark regarding the true sale**.

According to Edmond Honohan this allows the credit servicer to deceive the courts:

“These companies are little more than cash collectors. The banks / vulture funds sell the portfolio to an SPV, the vulture fund then goes bankruptcy remote, they have sold the assets, the SPV having securitised the loans gives the collecting agent (Vulture Fund) the legal title to manage the mortgage account and sue where necessary.

“Land Registry is allowing the vulture funds onto the folio given they have ‘legal title’ and the Central Bank of Ireland makes no inquiries as to the true owner of the Mortgage Portfolio.

“The SPV has charity status and pays no tax in Ireland.”

“When the likes of Mars Capital take you to court, they do so as the owners of the loan; they conceal the fact that they are not the owners; just the collection agent for the true owner. Likewise, if there is already litigation by the likes of the EBS, Mars buys the litigation and applies to the Court to have the paperwork changed to their name”.

A recent case involving the repossession of land highlighted the vagueness of their practices, which, in this case, was exposed by the presiding Judge.

I wrote about this case for my SubStack:

The business model of vulture funds is coming under major scrutiny after a revealing court ruling indicated that credit servicing firms - who act on behalf of such funds - may not be the legal owners of debt (allegedly) sold to them. The Irish Independent has reported that credit servicer Start

Mortgages was not granted possession of land in Kildare by High Court Judge Garrett Simons. According to the report: 'A loan to the couple was originally issued by Bank of Scotland (Ireland), but Start Mortgage claimed it now owns the charges and that the debts secured on them is owed to it.' Judge Simons said that Start, "failed to establish the first essential proof for the application, namely, that they are the registered owner of the charge.

"It is simply not possible for this court to determine, from reading these heavily redacted documents, whether Start Mortgages has, in fact, taken a valid transfer of the debt outstanding in respect of the loan originally advanced by the governor and company of the Bank of Scotland." The Irish Times previously reported that Start Mortgages, the loan-servicing company owned by US private-equity giant Lone Star, had completed the transfer of €2 billion of mortgages - over 10,000 customers - that had been on its books to rival Mars Capital Ireland, after it left the market last year, increasing its portfolio to more than €10 billion. Pepper Advantage, the largest loan-servicing player on the Irish market, manages over €20 billion of loan assets on behalf of clients, including mortgages allegedly owned by foreign investment funds to active non-bank lenders and mainstream banks. The refusal was ruled after Start provided heavily redacted documentation 'proving' they are the legal owners of the land in question. This ruling is very significant. For years, activists, politicians and journalists have repeated what the dogs in the street know - these firms have no right to take indebted mortgage holders to court as they are mere 'servicer providers' and not legal owners of such portfolios. One such advocate is former Master of the High Court and "debtors' champion" Edmund Honohan, who afforded leniency to homeowners' whose mortgages were sold to foreign vulture funds. Master Honohan grabbed

national attention when the President of the High Court Peter Kelly transferred the final judgment of debt enforcement hearings from the Master Honohan to judges of the High Court in January 2019. His tireless work on behalf of homeowners who have been left to the mercy of these faceless vulture funds is slowly but surely being vindicated following this court ruling. According to the Irish Independent article Honohan repeated his claim that service providers such as Start, Mars and Pepper are engaging in "legal fiction" as they affirm before the courts 'to be the beneficial and legal owners of charges on homeowners' land folios.' Speaking to Theo's Newsletter an experienced SC mentioned that, "The bottom line is that all of this uncertainty stems from the fact that the mortgages in question, tens of billions worth of them, had been securitised and the ***true ownership*** *now rests with a* ***US Bondholder*** *(mortgage-backed securities) which means, in plain English, neither the Loan Originator (bank), the alleged Loan Purchaser (vulture fund) nor the Loan Servicer (Pepper, Start, Mars etc) are in fact the Legal & Beneficial owners of the Charges (as registered at Tailte Éireann) which are being wrongly accepted as* ***"conclusive evidence****" in our Courts*.

20. **Conclusions:**

The measures taken following the financial crash of 2008 to revalue house prices following their sharp fall were taken in good faith. The lagging and sluggish economy, which was almost wholly reliant on increasing property values, required swift and decisive measures to recover. Steps to recapitalise domestic lending institutions with liquidity when the issue at its core was a solvency one, and recurrent measures to invite and lure foreign capital to fulfil the role previously held by domestic lending institution were part of several steps to recover the economy. The

establishment of a bad bank in the form of a National Asset Management Agency (NAMA) to relinquish the toxic and non-performing loans off the banks' balance sheets in order to relieve banks of liabilities and get them to begin lending again while in theory was a logical and necessary step, backfired in that those whose loans or mortgages were transferred to non-bank entities and/or investment funds found this arrangement made them vulnerable to interest rate hikes, due to the funding strategies of these structures, and potential repossession as investment funds usually buy distressed assets at a lower price than the original loan with the hope of eviction and thus flipping the property. The various structures and means by which private equity vehicles, hedge funds and other non-bank institutions acquired these loans has made Ireland a global hub for the shady and volatile shadow banking industry with ordinary consumers caught in the crosshairs. Many if not all these funds regard homes as assets as opposed to social goods. With the State failing to directly involve itself in the provision of housing no amount of supply within current market conditions will lower prices or rents. Indeed, the preponderance of speculative funds with a keen interest in high-yielding rental properties has incentivised increasing the stock of build-to-rent properties at unaffordable prices creating a generation of renters. Understanding how these entities operate is crucial when assessing measures and steps to enact regulation to avoid any systemic issues that may arise and to safeguard consumer protections. Throughout this report I sought to investigate the broader topic of property and land in Ireland, both historically and contemporarily, from both a macro and micro perspective; the conditions which led to the banking crash in 2008; the steps taken to recover the economy; and the current operational strategies undertaken by investment funds who have profited and continue to profit off the massive transfer of loans by the Irish State. The latter of these

examinations is the most crucial and significant in assessing the current terrain as it pertains to adopting the necessary steps to combat the preponderance of investment funds.

Proposals

Remittance Tax on Foreign Domiciled Investment Funds

Currently, the Central Bank has in place a series of macroprudential rules that regulate Irish investment funds. Funds must maintain a leverage limit of 60 per cent on the ratio of the property funds' total debt to total assets. These apply to Alternative Investment Fund Managers who are domiciled in Ireland, authorised under domestic legislation and invest 50 per cent or more directly or indirectly in Irish property assets. Funds that invest at least 80 per cent in social housing are exempt.

However, a distinction must be made between Irish domiciled funds approved by the CBI and registered as companies by the Companies Registration Office (CRO) and investment funds based abroad that invest in Irish property.

Currently, the regulator, in this case the CBI, has their hands tied and is unable to directly regulate the latter legal entities.

However, legislative changes to clip the wings of the vulture funds and their methods could be implemented by the government through legislation.

I am calling for the implementation of a higher tax bracket for property funds that remit proceeds from the sale of, or income from, Irish property to investors abroad. This additional taxation would serve as a disincentive for speculative buying and help stabilise the property market, making investment in Irish property less about capital gains from large volume holdings.

Ban on Foreign Purchasers

Introduce legislation that prohibits non-resident buyers from the bulk purchase of existing residential property. Currently, investment funds that engage in bulk purchases of 10 or more properties face a Stamp Duty hike of 10 per cent. The tax was implemented in 2021 following the bulk purchase by Round Hill Capital of 170 units of social and affordable homes in a Maynooth housing estate. However, these measures are provably wholly insufficient.

- In the two-year period following the implementation of the tax 4,200 homes were bought by investment funds.
- Bulk purchasing has increased by 233 per cent since 2021.
- In 2023, 4 in 10 new homes bought were purchased by bulk buyers.
- The tax only applies to homes not apartments, and homes leased back to the State for social housing are exempt from the tax.

What is required is an outright ban on bulk purchasing by funds domiciled abroad. While some may argue the State may be constrained by EU legislation, the former EU commissioner for financial services Mairéad McGuinness has said outright bans are justified and permitted in the

“general interest” and “provided that they are not discriminatory and are proportionate to the aim pursued.”

By implementing this ban Ireland would be following several other English-speaking common law jurisdictions including Canada, Australia and New Zealand. Canada recently announced a two-year extension to their ban on foreign purchase on the basis that ‘for years, foreign money has been coming into Canada to buy up residential real estate, increasing housing affordability concerns in cities across the country, and particularly in major urban centres… foreign ownership has also fuelled worries about Canadians being priced out of housing markets in cities and towns across the country.’

Decentralise the Provision of Housing

In the early 20th century, the State was the main provider of homes with local authorities central in the provision of affordable and social dwellings. This was achieved through the decentralised allocation via county councils or local authorities of **low-cost loans to builders, and tax relief and low-cost mortgages to home purchasers.** From the early 1930s up until the mid-1950s 112,144 social homes were built. Strong tenant-purchase was met with more social housing allocation. Housing estates throughout the capital financed by the Dublin Corporation remain to this day including Cabra and Crumlin. However, in the 1980s amid a wave of deregulatory momentum throughout the West, the Irish State actively discouraged social and affordable housing and centralised the provision of private mortgages. In 1987, the Irish government cut funding to local authorities with several housing grants abolished including the builders’

grant. As a result, commercial lending and building societal entities were deregulated. In time, the building societies would be dismantled. In the early 1980s, local government accounted for a quarter of mortgages but by the end of the decade this accounted for 2 per cent and has not recovered since. As a result, Ireland has one of the most centralised systems of government in Europe. According to Eurostat, 93 per cent of public spending is conducted by central government with local government responsible for less than 10 per cent. Instead of directly building social and affordable housing, the State is **paying €1 billion per year in rent supplement** to private landlords offering various rental supplement schemes such as the Housing Assistance Payment (HAP) and the Rental Accommodation Scheme (RAS). This is clearly unsustainable particularly as government surpluses are not guaranteed into the future. By reversing course and going back to methods that work such as empowering councils to provide social and affordable homes the government would address the current deficit in this form of housing and save money for the exchequer.

Increase the Provision of Construction Credit by Domestic Pillar Banks

A major reason why investment funds have been incentivised and invited into the country to reflate property prices and provide much needed credit into the housing market is due to the void in domestic credit lent by domestic pillar banks. Recent research carried out by Peter Ryan of Ryan Research has indicated that Irish banks' credit to deposit ratio has declined dramatically from 77 per cent in 2008 to 38 per cent in 2021. This is the second lowest ratio in Europe. Indeed, bank credit advanced by domestic lending institutions is down by 87 per cent from its peak while

credit by banks in other countries has recovered including America and other Eurozone countries. Several reports from the Construction Industry Federation of Ireland, including in 2017 and 2021, have indicated that the industry is finding it difficult to access finance for the delivery of homes. As we know nature abhors a vacuum with investment funds filling the void left by domestic credit. While too much credit was lent during the crash having dealt with the systemic issues regarding banks with post-crash regulations, by strangling the pillar banks' ability to lend, the State is creating another bubble this time in the unregulated private credit industry. **The whole point of NAMA was so banks would start lending again**. Currently, the government is taking at face value the advice from the Department of Housing and Irish Institutional Property that 'Ireland needs to attract more international development capital'. This will only exacerbate affordability issues. Instead, the Irish government should urge a relaxation on lending restrictions and capital requirement ratios and set strict credit targets for the well-capitalised domestic pillar banks to lend to construction development.

Re-Examination of Land Registry and An End to True Sale of Securitised Loan

Ireland's Land Registry, Tailte Éireann, is **currently facilitating fraudulent misrepresentations** before the courts whereby credit servicers - who act on behalf of investment funds - present folios indicating they are the owners of mortgages when applying for repossession which is presented as 'conclusive' evidence. When credit servicers appear before the courts requesting evictions, they usually present heavily redacted documentation 'proving' they are the mortgage holders when in fact they are **mere servicers or 'legal title servicers'**. The credit

servicers are not in fact the owners of these mortgages but have **mere contracts for services**. But how does this happen? When a bank wishes to dispose of a so-called ‘toxic’ loan off their balance sheet they will sell those loans to a credit vehicle - private equity, hedge funds etc - who will in turn set up a Special Purpose Vehicle (SPV) to securitise and store the loan in the IFSC and avoid paying Irish taxes via Section 110 of the Finance Act 1997 which declares SPVs as a ‘charity’. However, neither SPVs nor investment funds can ‘service’ these mortgages so credit servicers such as Mars, Start, Pepper etc engage in a servicing agreement back with the originating bank that originally serviced the mortgage such as Bank of Ireland, Permanent TSB etc via a true sale in **which the originator loses all control of the asset with the homeowner beholden to a vulture fund**. To ameliorate this injustice Tailte Éireann must be required to ensure no credit servicer gains access to a folio. Indeed, all sales of loans must be conducted through synthetic sale as opposed to true sale whereby the originator (the bank) still retains ownership of the securitised loan.

Ensure judges enforce the EU Forbearance Directive and apply the Directive to mortgages before implementation

The pace and scale of sale of non-performing loans to credit servicers acting on behalf of vulture funds, has led to various pieces of legislation aimed at rectifying the plight of homeowners facing eviction or high mortgage rates. One such piece of legislation is the various Codes of Conduct in dealing with those in mortgage arrears. The first Code passed in 2009 offers leniency to borrowers facing arrears. The Code stipulates that lenders can only initiate a formal demand for repayment after the third repayment has been missed and must wait, at the very least, six months

from the time arrears first appear before applying to the courts to start legal proceedings for repossession of a borrower's primary residence. Lenders are obliged to create a distinction between borrowers who are unable to pay and those who can pay but refuse to do so for whatever reason. The Code states: "All genuine cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations." In the latter case the Code offers a range of options in lieu of eviction such as a payment deferral, term extension, payment holiday and capitalising of arrears. On repossession the Code mentions that: "The lender must not seek repossession of the property until every reasonable effort has been made to agree an alternative repayment schedule with the borrower or his/her nominated representative."

An updated Code in 2013 offered similar protections.

In 2014 the EU began legislating for **forbearance** to be shown in repossession cases before the courts. Initially the wording 'encouraged' creditors to show **forbearance** to debtors, but updated legislation '**required**' such action.

In March 2016 a directive titled The Mortgage Credit Directive was passed by the EU council which came into force in December 2021.

The directive sought to, inter alia, mandate so-called forbearance guarantees for those in mortgage arrears before facing eviction. This would be achieved through a series of guidelines such as 'requirements for verifying consumers' income, documenting and retaining information, identifying and preventing misrepresented information, assessing

consumers' ability to meet their obligations under the credit agreement, considering allowances for consumers' committed and other non-discretionary expenditures, as well as allowances for potential future negative scenarios'. These measures, in theory, would place a spanner in the works for some of the vague practices carried out by law firms representing credit servicers seeking to prove they are owed outstanding debt before the courts. The Directive also offered certain concessions to consumers including: the extension of the loan term, a change of the type of credit agreement, a deferral of payment of all or part of the instalment repayment for a period, a change of interest rate, an offer of a payment holiday, partial repayments, currency conversions and partial forgiveness and debt consolidation.

The directive was transposed into Irish law in late December 2023 - two years after it came into force - with the Central Bank acting as the enforcer.

How courts interpret and, indeed, whether they understand this legislation has yet to be fully realised.

To address some of the shortfalls in the current directive and how repossessions are litigated in the courts more generally the following should be considered:

- *Entitlement of **free legal aid** to litigants in repossession cases which they are currently not granted*

- *Ensure consumers are familiar with the directive before entering legal proceedings*

- *Apply the Forbearance Directive to non-performing loans sold before the transposition of the Directive in 2023, and to performing loans. Currently the Directive does not apply to 'performing loans originated by credit institutions, or to the sale of non-performing loans originated by credit institutions which take place before 30 December 2023'.*

- *Ensure that the Central Bank of Ireland (CBI) in its capacity as the enforcer and/or regulator of this Directive is equipped with the necessary regulatory tools and sanctions to ensure that: A. Judges abide by Directive and B. Credit Servicers do not misrepresent ownership of mortgages. Right now, the CBI seems to be relying on enforcing the directive on a 'case by case' basis. This is unreliable and will not provide sufficient safeguards for consumers.*

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