

Generation Rent response to Tenancy Deposit Reform Call for Evidence – September 2019

Introduction

Generation Rent welcomes the opportunity to contribute to this call for evidence. Deposits are the source of the most common problems renters face, whether it is finding a deposit for a new home before they get the current one back, or the struggle to get the deposit back at the end of the tenancy.

In preparing this submission, we sought the input of our supporters in the form of a survey in an effort to quantify, as best we could with the resources we have, the types of problems renters face, and capture the complexity of the problems in renters' own words. Over the course of a week in August, 358 private renters took part in our survey and we present the findings in the course of this submission.

We have also encouraged supporters to respond directly to the Ministry's survey.

Our recommendations to the government are as follows:

1. Tenants to have the option to passport their deposit to the next tenancy, subject to meeting certain conditions such as being up to date with rent. (Explored on pp10, 28 & 29)
2. Tenant accounts with deposit protection schemes – i.e. the tenant would have the relationship with the scheme and the landlord would apply to register their interest with the tenant's cash when the tenancy is agreed. (pp16, 23 & 29)
3. Investing tenants' money and ensuring the net interest benefits tenants – either by funding the passporting system and other services such as legal advice, or paying directly to the tenant. (p11)
4. The ability of tenants to pay their deposit in instalments. (p23)
5. All deposit schemes dispute processes to allow tenants to respond to the claims and evidence submitted by the landlord, to ensure landlords don't add false claims at the end of a dispute that tenants cannot challenge. There would ideally be a standardised dispute process that could be reflected in a standardised tenancy agreement. Deposit protection should also be extended to renters on licences to occupy who currently have little ability to recover their deposit or challenge deductions. (pp19 & 27)
6. Deposit schemes to report outcomes of adjudications and the nature of the claims involved to the Ministry of Housing for publication to aid understanding of the deposits system and how tenants and landlords can avoid deductions and disputes. (p19)
7. All deposit schemes to make clear their complaints process, and report the outcomes of complaints to the Ministry of Housing. (p19)
8. A penalty for landlords who are awarded less than half of what they claim, to discourage spurious claims. (p22)
9. A landlord's deposit claim record – particularly any history of unsuccessful claims – to be part of the information that any future redress or registration scheme holds on them. This would create transparency for tenants and discourage spurious claims. (p22)
10. Landlords should not be able to decline to use the alternative dispute resolution system if the tenant wishes to use it. (p23)

Please address any queries to Dan Wilson Crow on danwilsoncrow@generationrent.org

Contents

1. About you.....	2
2. Costs of providing a second deposit	2
3. Existing affordability initiatives.....	7
4. Improving existing affordability initiatives and speed of deposit return	9
5. Exploring new initiatives	27
6. Wider deposit protection reform	30
Appendices.....	31

1. About you

1. In which capacity are you completing these questions?

3) Other- organisation

11. If you are replying on behalf of an organisation, which of the following best describes you?

Sector representative body

2. Costs of providing a second deposit

17. To what extent do you agree that tenants find it difficult affording a second deposit when moving within the private rented sector?

a. Strongly agree

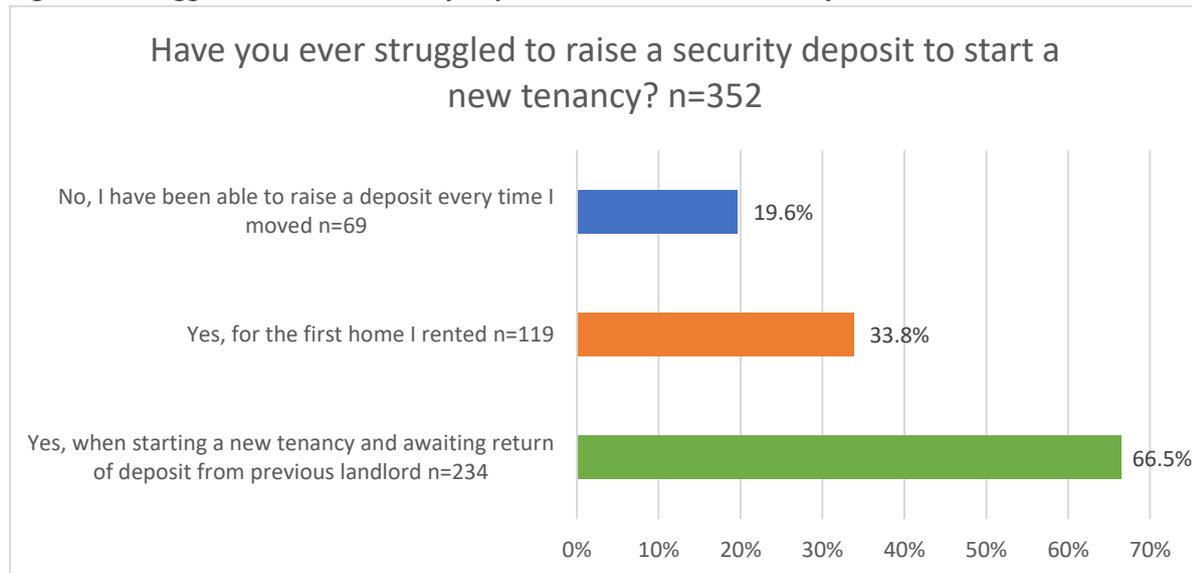
18. Do you have any further evidence about the scale of the problem which you would like us to consider?

We have recently conducted a survey of private renters to understand their experience of tenancy deposits¹. As part of this, we asked respondents to share any difficulty they had had in affording either a first-time deposit or a further deposit when taking on a new tenancy. Overall, 80.4 per cent of respondents who had paid a deposit reported that they had struggled to afford it at some time or another – around a third (33.8 per cent) had struggled with a first-time deposit, while almost two thirds (66.5 per cent) had struggled with a further deposit (n=352, see Figure 1)². This suggests that issues around affordability are significantly heightened by the need to provide a new deposit before the previous deposit (often representing the bulk of tenants’ savings) has been returned.

¹ This survey was open from the 8th to the 15th of August 2019 and was completed by 358 respondents. Responses were sought via the Generation Rent email list and the social media accounts of Generation Rent and the National Union of Students. Respondents were self-selecting though communication around the survey did not encourage particular perspectives.

² Note that some respondents selected multiple options resulting in the figures totalling more than 100 per cent. It should also be noted that the concept of struggling is subjective – 36 respondents reported having struggled despite using savings and no other method of meeting the cost (perhaps with the resultant lack of savings causing difficulty), while a further 9 respondents reported not having struggled despite relying on borrowed money or not moving due to difficulty affording a deposit elsewhere in the survey.

Figure 1. Struggles to raise a security deposit to start a new tenancy



Some respondents expanded on this difficulty in the open responses:

“Only wish the deposit would come back to us before we need it for new rental as difficult to get new deposit. We have inspections every 6 months and our landlord comes to see us anyway to do repairs so knows how we keep the house.”

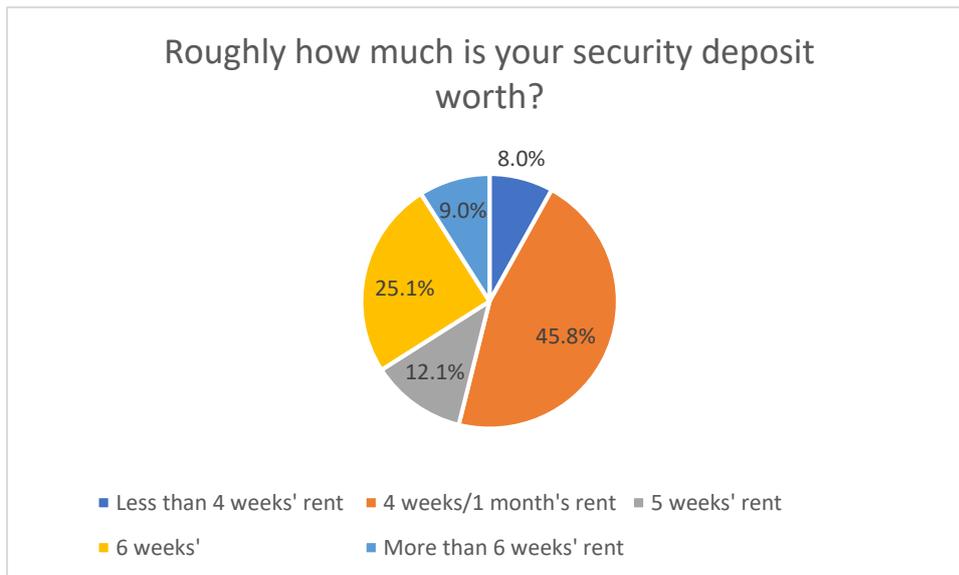
“When you are on a low income having the deposit for a new place whilst you wait for the deposit on the old place is a nightmare. It means you have to borrow money.”

“It's difficult to stump this cash up when you've not received the last deposited [sic] back. Can really derail people's finances and send them in to debt and make them homeless.”

There is some indication that the level of the deposit may be a factor in this, with 82.6 per cent of those reporting paying a deposit of more than a month's rent having faced challenges paying compared to 79.9 per cent of those paying one month or less³. Overall, as shown in Figure 2 below, just over one third (34.1 per cent) of respondents reported paying more than 5 weeks' rent as a security deposit, so affordability should be improved by recent changes in legislation around this, as well as the letting fee ban. However, it should be noted that the proportion of those paying a lower deposit and struggling is still very high and so these changes alone are unlikely to fully solve the affordability issues faced by renters.

³ Note that it is not possible to determine whether the deposit they struggled with was their current one so these figures should be taken with caution.

Figure 2. Security deposit value based on equivalent amount of rent

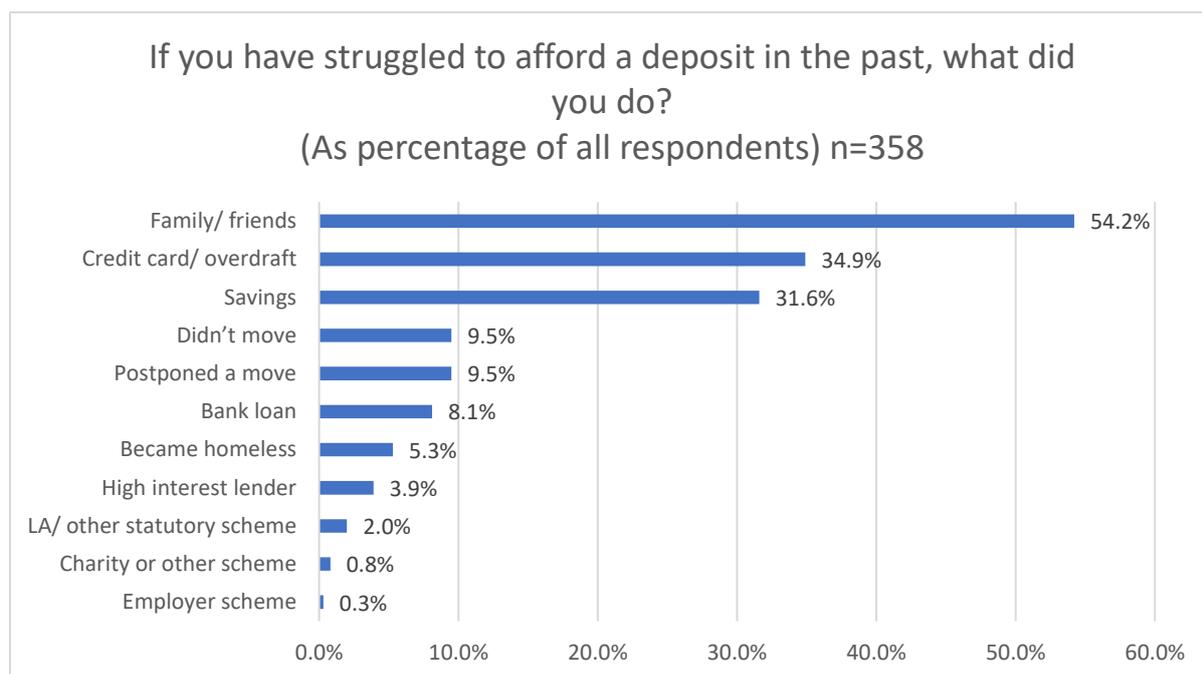


There is a strong indication that beyond simply the level of the deposit, those with higher rent to income ratios (and therefore likely higher deposit to income ratios) were more likely to struggle; of those who reported spending over 50 per cent of their monthly income on rent (n=105), 87.6 per cent struggled to raise a deposit at some stage, while this reduced to 82.1 per cent of those who spend between 31 and 50 per cent (n=140) and 72.3 per cent of those spending 30 per cent or under (n=101).

There are also some regional differences with 83.6 per cent of those in London and the South East reporting having struggled at some stage compared to 77.8 per cent of those elsewhere in the UK (n=351) - again, suggesting that higher deposit costs may be linked with increased challenges around affordability.

Our survey also explored the strategies utilised by tenants to meet the cost of their deposits (see Figure 3). Most commonly, respondents reported borrowing from family and friends; this was a strategy utilised by more than half of the sample (54.2 per cent). Although this is clearly in some ways preferable to borrowing with interest, it can expose tenants to risks including at best social awkwardness and at worst relationship breakdown due to failure or delays in repaying. Furthermore, reliance on social contacts for financial flexibility may put some tenants at risk of falling prey to loan sharks who present themselves as friends or 'kindly neighbours'.

Figure 3. Strategies for affording deposits



The second most commonly used strategy was to rely on the use of a credit card and/or overdraft facility in order to afford the additional outlay – just over a third of respondents reported doing this (34.9 per cent). This may lead to significant interest charges, particularly if it takes tenants a prolonged period to recoup this money or if they find themselves unable to do so.

Utilising existing savings was the third most commonly used approach – again this was used by around a third of respondents (31.6 per cent). It may be that others in the sample also used savings but did not respond to this question, as the question focussed on those who perceived themselves to have struggled with a deposit. However, given that just 19.6 per cent reported never having struggled to afford a deposit and only 17.3 per cent gave no answer to this question, it is certainly under 50 per cent of the sample who were able to utilise any savings towards their deposit. This is reflective of the English Housing Survey 2017-18's finding that 62.6 per cent of private renters have no savings. Even for those who are able to utilise savings, the deposit may represent a significant proportion of what they have and mean they are left with little to no safety net to use for other purposes – this may be the reason for the number of people who reported having struggled with affordability despite being able to rely on savings.

A small proportion of the survey sample (8.1 per cent) were able to access a bank loan. It is likely that many private tenants would struggle to do this due to the lack of an asset (i.e. a property) to secure the loan. A small but significant number of respondents (3.9 per cent) reported relying on high interest lenders such as payday lenders, guarantor loan schemes and pawnbrokers which are more likely to be available to those with limited assets. These options would be likely to lead to significantly inflated costs and longer-term financial hardship if money cannot be repaid rapidly.

A very small number of people were able to access support through interest-free deposit schemes or similar – 2 per cent used a statutory scheme such as a local authority deposit loan or bond scheme, or a DWP budgeting loan, 0.8 per cent were able to access support through a charity or hostel and just one respondent (0.3 per cent) reported having had access to a deposit loan through their employer.

There was also a significant group who had changed their plans due to the difficulties they faced in raising a deposit – either deciding that they were not able to move (9.5 per cent) or postponing a move, perhaps to stay with family, friends or in supported accommodation for a longer period in order to save (9.5 per cent). Some survey respondents specifically linked this to low income:

“Very difficult to move house when you can’t afford the deposit. When you are reliant on disability benefits and pension.”

Sadly, a significant number (5.3 per cent) reported having become homeless due to their inability to afford a deposit. One further respondent reported being coerced into sex in order to be able to remain where they were as they were unable to afford a deposit to move.

Many respondents reported that particularly where they have had to move at short notice e.g. due to the landlord seeking possession or to move to take up a new job opportunity, they have faced particular difficulty in raising funds in a short time period while their previous deposit is still being held:

“We nearly didn't get our current place because the landlady asked for 2 months deposit at the last minute. She backed down but if she hadn't we'd have been homeless with 2 children. It was the equivalent of £900 that she just wanted us to raise in 1 week. We also didn't get our old deposit back until a few weeks after we left our old place but we had to pay the new deposit a couple of weeks in advance. We had to borrow from various family members which felt like a risk because we weren't sure we'd get our old deposit back.”

“This one was £600 and manageable but we are moving to Oxford for work and it's a struggle to find 5 weeks (should be amended to 4) when it amounts to over £1450.”

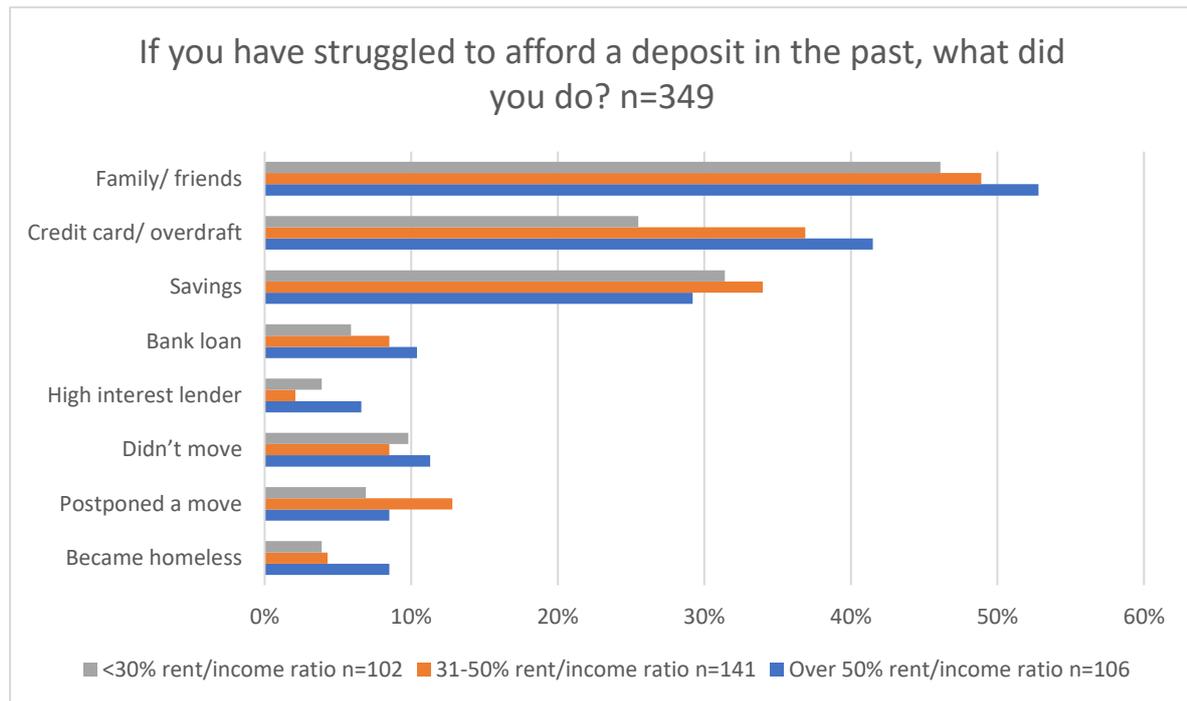
Others reported that their borrowing for deposit costs had led to longer term financial issues:

“The extremely high deposits coupled with first month's rent in advance are just too much when rent is already so high. I am still in debt because of needing to borrow money for my last deposit. I think it puts people in debt and keeps people in debt.”

Utilising our survey data, we were also able to look at strategies used to afford a deposit according to the rent to income ratio of the tenant’s current property (see Figure 4 below)⁴. This analysis found that those whose rent represented a greater proportion of their take home pay (50 per cent or more) were more likely to borrow from friends and family or use their credit card or overdraft to cope with paying for their deposit than those whose rent (and therefore deposit) represents a lower proportion of their earnings. Conversely, they were less likely to be able to rely on savings than other groups – perhaps due to the difficulties in accumulating savings where rent takes up such a significant proportion of income. Although numbers were small, there appeared to be a slightly elevated risk of becoming homeless due to inability to raise a deposit.

⁴ Note that we are not able to identify the specific tenancy for which respondents had reported using particular strategies to meet deposit costs. Therefore the rent-to-income ratio of their current property is being used as a proxy for rent-to-income ratios of the property relevant to this question. Further research would be needed to assess the impact of deposit size on payment strategies more accurately.

Figure 4. Strategies to afford deposit by rent to income ratio

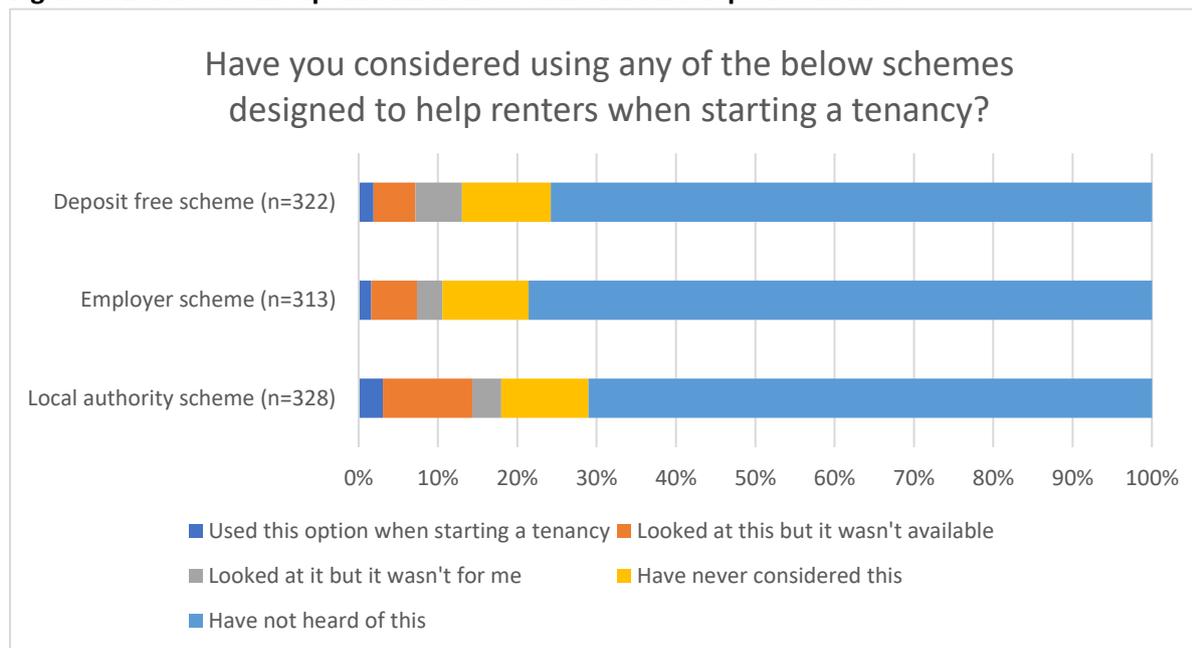


3. Existing affordability initiatives

22. If you used a scheme, did you experience any problems with it?

We have had a small number of reports from tenants of their experiences of using existing affordability initiatives, however it appears that availability and take up remains very low. Figure 5 shows responses to our survey which suggest that renters largely remain unaware of such schemes with less than 30 per cent being aware of each one. Local authority schemes had the greatest awareness levels (29 per cent in total) but were also most likely to be unavailable to those who explored the option (11.3 per cent and 38.9 per cent of those who were aware of its existence). This reflects what has been reported to us about difficulty in accessing local authority support, with coverage being patchy and eligibility often being based on very tightly defined criteria.

Figure 5. Levels of take up and awareness of alternative deposit schemes



Although “deposit-free” schemes, based on paying an insurance-style “premium”, had the lowest levels of awareness (24.2 per cent), they were also the option most likely to have been examined by tenants who then decided it was not for them (5.9 per cent representing 24.4 per cent of those who were aware of it as an option). We believe that largely these products are not in tenants’ best interests due to the impact they have on tenants’ net wealth. While a deposit is a refundable asset with the potential to offer interest, insurance products are a definite outlay regardless of whether there is damage to the property.

They could also be considered a poverty premium on those who are less able to find a larger lump sum for a deposit; while they address a cashflow problem, they do not deal with the root causes of a lack of affordability. We have seen cases where insurance products have been advertised as a means of having more money, for example, for furniture for the new property or for holidays, while in the long run they are in fact likely to result in tenants having less money. The use of monthly fees by some schemes appears designed to make costs appear artificially low, when in fact they are likely to be much higher in the long run (particularly if there are additional costs at the end of a tenancy)⁵.

Furthermore, we are concerned that tenants often don’t have enough information about what they’re signing up for and may not realise that despite paying for the product at the outset of the tenancy they may still be chased for further moneys after moving out. Most deposit-free schemes are clear that tenants remain liable for any deductions.

In addition to this, unlike with deposit protection schemes, there may be no facility to appeal a deduction decision via a neutral third-party process and often products are not covered by FCA regulation as they are not sold directly to tenants. We have already heard of a tenant who faced damage claims upon moving out and had to pay a further fee to challenge them through an opaque

⁵ See Generation Rent comparison table of comparative costs of scheme as of March 2019 including costs with landlord claim. Available at: https://d3n8a8pro7vhmx.cloudfront.net/npto/pages/7081/attachments/original/1554916407/Comparison_table_of_deposit_replacement_products.pdf?1554916407

process. There is therefore a risk that this lack of accountability could lead to these products being of benefit only to landlords and agents. While industry groups such as the Association for Residential Letting Agents (ARLA) advise members against using such schemes, we are concerned that some less scrupulous agencies will put pressure on prospective tenants to agree to use them. While tenants cannot be forced into taking out a policy, there could be significant pressure on them to do so, particularly in a fast-paced and competitive rental market.

For these reasons, we would prefer alternative options to such schemes which help tenants with affordability of deposits rather than replacing deposits with something which is in the long term more expensive even than the potential costs of a loan and less accountable than deposit protection schemes when it comes to disputes. If these schemes are to exist, it is our view that there should be proper regulation in place to protect tenants.

4. Improving existing affordability initiatives and speed of deposit return

23. What could be done to improve awareness of employer-backed (rental deposit) loans?

As demonstrated in the previous question, there is a very low level of awareness and availability of employer-backed deposit loans amongst our survey group. It is our belief that this will remain the case unless it becomes a standard expectation for employers to offer such benefits to employees. In our experience, it is down to the individual employer to find the capital to make loans to employees, and then promote this internally.

Awareness levels of employer-backed loans are currently entirely dependent on individual employers and their efforts to promote schemes. It is our perception that the majority of those offering such a benefit would be likely to make this clear to employees, so the gap is more in the realm of availability than awareness.

However, more could certainly be done at an employer engagement level to increase awareness amongst employers of such loans as something which can be hugely beneficial to their workforce and help to make them an employer of choice.

24. What could be done to improve the availability of employer-backed (rental deposit) loans?

There is certainly more that could be done in terms of engaging with sector bodies and HR representative groups to promote deposit loan schemes and encourage a growth in their availability. Working alongside accreditation bodies such as Investors in People to encourage increased use of such schemes may also be beneficial.

However, our concern is that the likelihood is that those employers who will opt to offer such a benefit are more likely to be those which more generally offer a higher level of employee benefits, and likely also higher remuneration. To have the most impact, such schemes would need to be rolled out at the largest employers which have higher numbers of lower paid staff.

For these reasons, although we are supportive of the expansion of such schemes, we believe that in order to reach all those who face challenges to afford a deposit, there would need to be consideration as to how low interest or interest-free loans may be made available to all. One possible option to explore would be the interest-free government-backed loans proposed in 2018. We believe that making such loans available would be hugely beneficial to avoid problem debt and barriers to moving, as well as having wider benefits in a range of scenarios which present short term cashflow challenges to those on low incomes.

25. What could be done to improve the availability of local authority schemes? (deposit loans, deposit bonds, local authority-backed insurance policy)

It is our perception that the limited availability of local authority deposit schemes is largely due to funding cuts to budgets in recent years and while there has been enthusiasm from the government for this there has not been the scale of designated funding needed to give the schemes the capacity they need. Without this, it will be challenging for many authorities to increase availability. It may be that with the increasing focus on homelessness prevention some local authorities may view deposit schemes as a low-cost way of preventing homelessness. However, we are aware that availability tends to be restricted to only the most vulnerable, and many are also unaware of the existence of such schemes and struggle to navigate the system in order to access them. We also hear anecdotally that the coverage of local authority schemes is often insufficient to give landlords and letting agents the confidence to accept tenants who use them. For example, the loans have to be paid back after a set period and tenants will often not have the means to do this.

Perhaps close working with the Local Government Association and organisations such as the Child Poverty Action Group, Crisis and Shelter may help to understand some of the reasons behind the limited scope of such schemes and establish a way forward. Close working with the advice sector and other statutory agencies would also be important in order to ensure access is maximised.

26. What could be done to improve the awareness and availability of alternative financial products designed to bridge the gap in the payment of deposits?

As specified in previous responses, we are concerned about the rise of insurance-based deposit replacement products for a number of reasons. This includes the fact that costs are incurred regardless of damage to the property, representing a poverty premium for those who cannot afford a deposit. We are also concerned about the fairness of such schemes, with tenants potentially not realising they may still incur further costs at the end of the tenancy, and often having limited scope to challenge these. As schemes are often sold through letting agents, they can escape FCA regulation meaning limited protection for tenants who are not considered the customer.

We prefer passporting as a solution to the cashflow issue between deposits, but where there is a need to quickly accumulate funds for a deposit, either due to it being a first deposit or due to deductions from the previous deposit, we would favour products which limit interest charges and guaranteed costs to tenants (as are present in deposit replacement products). One option would be if the government were to introduce interest free loans which could be used for deposit costs. Other avenues which could be explored are monthly payment options which would help to spread the cost while ensuring that the full deposit is present in time for any deductions to be made. These could potentially be made directly to the deposit scheme and be either interest-free or low-interest to ensure affordability.

27. Are there any other actions that could be taken to make it easier for tenants to pay for a new deposit when moving home?

We have thoughts on a number of different areas where action can be taken for this purpose.

Passporting

We are very positive about the potential of a passporting system to improve affordability for tenants moving between rented properties and a number of our survey respondents expressed keenness for this to be introduced as an option for tenants:

“A scheme that allows you to passport your deposit would help massively. It's so hard to find that money, especially when you end up moving unexpectedly.”

If possible, we would be keen to see a system explored whereby tenants could ‘commit’ their deposit to their next landlord within the deposit protection system so that the full amount could be transferred at the end of the tenancy with any shortfall due to a difference in cost or deductions from the first tenancy being made up by the tenant. This could be secured through the payment of a small insurance premium to give the new landlord the confidence to accept the tenant. This would ideally be covered by the interest on the existing deposit rather than a direct payment by the tenant. Otherwise, if a substantial amount e.g. one month’s rent, could be withdrawn from the previous deposit prior to the end of the tenancy, this would significantly alleviate the upfront costs incurred. We will discuss our views on this in more detail later in this response.

Enabling tenants to access interest on deposits

We would also like to see changes made to ensure that tenants are able to benefit from any interest accumulating on their deposit during a tenancy. As this money remains the property of the tenant until such a point as deductions are made, it seems fair that tenants should be able to benefit from the funds, which may represent a significant proportion of their assets for a long period of their lives. Where tenancies last longer than the initial 12-month term market rents will likely increase significantly, while as it stands deposits will remain the same leaving an affordability gap – even more so for tenants who have longer tenancies:

“There is no interest paid on it and mine has been with Landlord for more than 20 years!”

It is our belief, as set out in our 2018 paper, *Rethinking Tenancy Deposits*⁶, that deposits could operate as a fairly static asset for investment as, although there is turnover, this happens at most on an annual basis, and will often simply be a case of transferring a deposit from one property to another unless a tenant exits the rental market. If passporting were to be introduced, with deposits held in accounts in the tenant’s name, deposits could begin to act almost as a savings account for the tenant which is topped up as required. This should mean that more substantial returns will be possible on these funds, of which a significant portion could be returned to the tenant. At a rate of 1.5 per cent AER, a £1,000 deposit being held for 4 years would raise over £60 – though some of this would fund the operation of custodial schemes. Alternatively, the net interest, worth tens of millions of pounds annually, could fund deposit passporting, and also services for private tenants such as legal advice.

At present, it appears that many landlords and letting agents are making use of insurance-backed deposit protection schemes in order to access low-cost working capital. According to a Generation Rent Freedom of Information request, as of March 2019, the average deposit held in insured schemes were much higher than in their custodial equivalent (£1,285.90 compared to £885) and the deposits held by these schemes represented nearly double what was held in custodial schemes.⁷ With costs as low as £9.50 to insure a deposit, even holding the funds in an account attracting a rate below 1 per cent AER would more than cover the costs of the fee based on an average deposit level. In theory, new Client Money Protection regulations place restrictions on what letting agents can do with cash in their control, and there is less scope to put tenants’ money in interest-bearing accounts. But the unproductive nature of tenants’ cash remains unfair, particularly as landlords will already

⁶ Rethinking Tenancy Deposits report available at: https://www.generationrent.org/making_deposits_work_for_tenants

⁷ Available here: https://www.generationrent.org/tenants_in_line_for_117_90_when_renewing

likely be accruing wealth based on the increasing value of their property, where tenants are unable to do the same from their more limited assets.

In addition, we are concerned that insurance-backed schemes can lead to increased risks of tenants losing their deposit if their landlord is ejected from a scheme e.g. due to non-payment of fees or if there are complications due to transfer of property ownership:

“Most recently I was asked to leave the property I was renting with three other tenants after the letting agency went in to administration. When I requested my deposit back through MyDeposits - a scheme which I later found out is literally owned by the National Landlords Association - the letting agency who had listed themselves as the landlord refused to respond to my request. After fourteen days passed without any response from the letting agency, MyDeposits got in touch to say that I would have to hire a solicitor to pursue the repayment of the £745 deposit. This raised questions for me about why this scheme even exists in the first place, whose interests it serves given how needlessly slow, complicated and bureaucratic the processes are for simply requesting my own money back, and what the point of it all is. I will probably never see that £745 again because I cannot afford a solicitor to fight the landlord or the now-defunct letting agency.”

“I had to pay 2 months rent as a security deposit, to my landlords letting agent who later defrauded him of 6 months rent, luckily I pay my rent by Standing Order, and was able to prove I had paid it all. But the security deposit was supposed to be with TDS, and there is no trace of it. I do not think I will ever see it again.”

“I paid a deposit via a letting agency to the first landlord of my property. While I lived at the property, the first landlord sold the property to a second landlord. When I moved out, the second landlord kept promising that he'd return my deposit 'in a few weeks' as he had yet to collect the funds from the first landlord. This went on for many months. Eventually, I filed a claim against him, the first landlord, and the letting agency. The courts found that the first landlord and the agency were not liable, but the second landlord was and should return my deposit in full plus interest. The second landlord dodged responsibility for additional months (he was a solicitor, so he knew how to stay on the "right" side of the law", until eventually I brought his other businesses into the claim. By this time, my initial deposit amount had trebled with interest and other associated fines for not returning my deposit in a timely manner. After nearly three years, I received my money back through a settlement for slightly less than what I was legally owed--which I didn't have to accept, but did as an undeserved favour to the landlord to finally put this behind us.”

This can be something that tenants have a heightened awareness of throughout their tenancy, particularly if they are aware that their landlord is in financial difficulty or has not been abiding by legal requirements:

“My current landlord has put my deposit into a scheme whereby the money is not in a bank safe for me, they put it into one where they can keep the money until I move out. They often have not paid the mortgage and I have had debt collectors for the money they owe on the mortgage knock on my door. I do not think it will be easy getting the deposit back when we move out.”

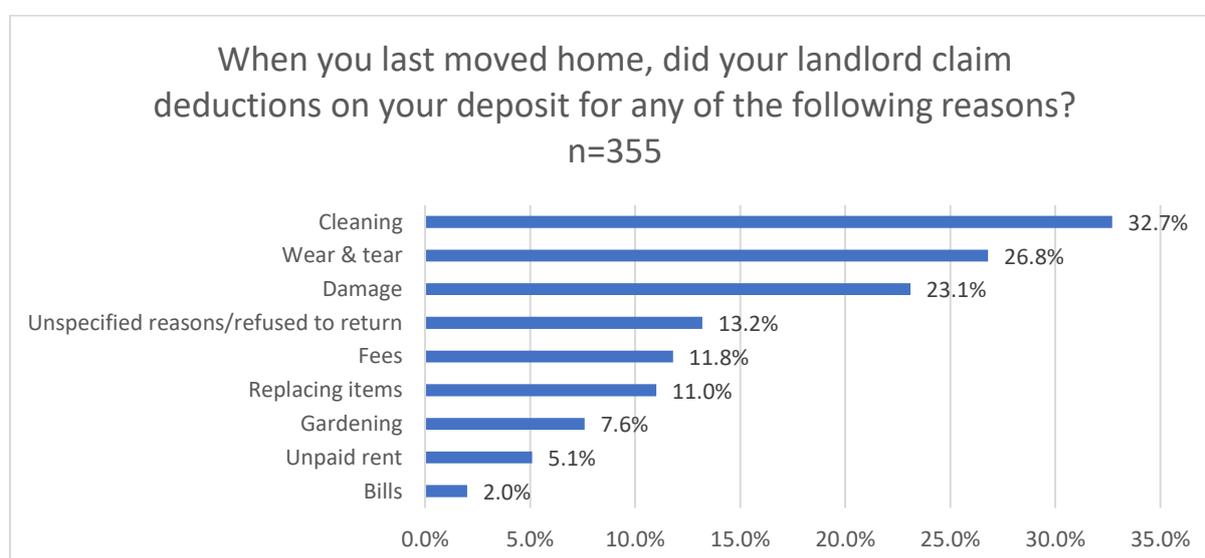
For these reasons, as well as the potential for landlords to delay releasing deposits, we are in favour of a full switch to custodial schemes as is already the case in Scotland. We believe that this will allow for a fairer balance of power and increased financial security for tenants, enabling an improvement in their ability to afford a new deposit.

Improving tenants' ability to effectively challenge deposit deductions

We are also concerned about the number of tenants who currently experience deductions from their deposits, but for a range of reasons are unable to challenge these adequately meaning that they cannot recoup all of the funds to which they feel they should be entitled. We will discuss here in some detail a selection of our survey findings around tenants' experiences of deductions and challenging them as we believe this can have a significant impact on the affordability of subsequent deposits.

In our sample, 66.8 per cent of respondents (n=298) had experienced one or more attempted deductions from their last deposit. This is higher than the average indicated by the Deposit Protection Scheme of 49% (based on paragraph 5.4 of the consultation document) – but we expect that our sample, being self-selecting, contains more tenants who have experienced deductions, who would have been more inclined to take part. On average, respondents reported 2.4 categories of deduction. The prevalence of different types of deduction is shown in Figure 6.

Figure 6. Categories of deposit deduction



The most common deductions were for cleaning (32.7 per cent), wear and tear (26.8 per cent) and damage (23.1 per cent). It is particularly interesting that wear and tear features so highly as it is not intended to be a legitimate reason to claim. More than one in eight tenants (13.2 per cent) said that deductions had been made for unspecified reasons or that their landlord had simply refused to return all or part of their deposit – it is not possible to tell the proportion of these tenants that had their deposit within a protection scheme, but some certainly report having to use the scheme in order to push their landlord to either make a legitimate claim to their deposit or to simply return it:

“I had to use them [the deposit protection scheme] because the landlord wouldn't release the deposit even though there were no deductions. They were helpful in moving things along.”

Overall, more than three quarters (76.6 per cent, n=197) of those who experienced proposals of deductions made some sort of attempt to challenge them. Of these (n=154), 71.4 per cent went through the landlord or agent directly, 25.3 per cent went through the deposit protection scheme and 3.2 per cent went through the courts. Going through the landlord or agent produced only limited success compared to what may have been possible through a protection scheme, with less

than a third of those who tried (32.7 per cent, n=110) having been able to reach an agreement in this way.

Respondents were also asked if they had given up or not challenged the deductions, what the main reason for this was. Responses are shown in Figure 7. The most common reason given was that respondents did not have the time or energy to dispute the deductions (29.5 per cent). This was borne out in a number of comments given in this and previous surveys, and appears to particularly be the case for those facing additional difficulties e.g. health, finances, family situation:

"I did not have the energy to fight him on this"

"I didn't have the time to challenge it (trying to arrange cancer treatment + full time work)"

"I had a young baby and couldn't fight for the full deposit. I needed as much as I could get quickly to put towards the next deposit."

Others reported feeling intimidated into accepting deductions (19.4 per cent) or that their deposit hadn't been protected (15.5 per cent). In the latter case, respondents may not have realised that there were still legal avenues to challenge the deductions and failure to protect the deposit, or may not have felt able to do this. Lack of available evidence was also a factor for a significant number (14 per cent) particularly as, having already left the property, there was limited scope to obtain evidence or to prove when photos in their possession were taken:

"I was charged £150 for a missing bathroom plug and another £150 for a missing baton in the kitchen that was never there in the first place. I sent in evidence of the missing baton and how it wasn't in the photo relating to the check in report and they just said that the photo was inconclusive, if that was the case then as such neither party can prove anything one way or the other so why not just halve the money. In relation to the missing plug I sent them an email stating that there was no plug there in the first place and apart from this I cannot see that the replacement cost quoted was reasonable and no proof was provided by them to substantiate this."

"Landlords deliberately complicate evidence, claiming unpaid rent and other false accusations, it's difficult and or time consuming to get evidence in this paperless world to prove rents were paid in full, I was told I was in arrears, this was untrue, but it was up to me to gather evidence, the landlord just kept throwing mud."

A small proportion reported being specifically put off by what they perceived as the complicated nature of the dispute process (7 per cent) while the same percentage experienced cashflow issues meaning they felt they had to accept whatever part of their deposit was available:

"They [the deductions] were not reasonable but the agent refused to release the rest of the amount before I agreed to it so had no choice but accept it."

"In the past our Landlord has speciously [sic] kept money from our deposit. It was hard to challenge as we desperately needed at least some of the deposit money for living expenses."

"Although it didn't go through the disputes process, I have had difficulty getting a deposit back as they claimed I did not fulfil the end of tenancy agreement even though I believed I did. However as I needed the money and couldn't afford to wait for the deposit I agreed with the deductions to release the money."

Figure 7. Reasons for not challenging deductions or giving up, overall sample and challenging with landlord or agent

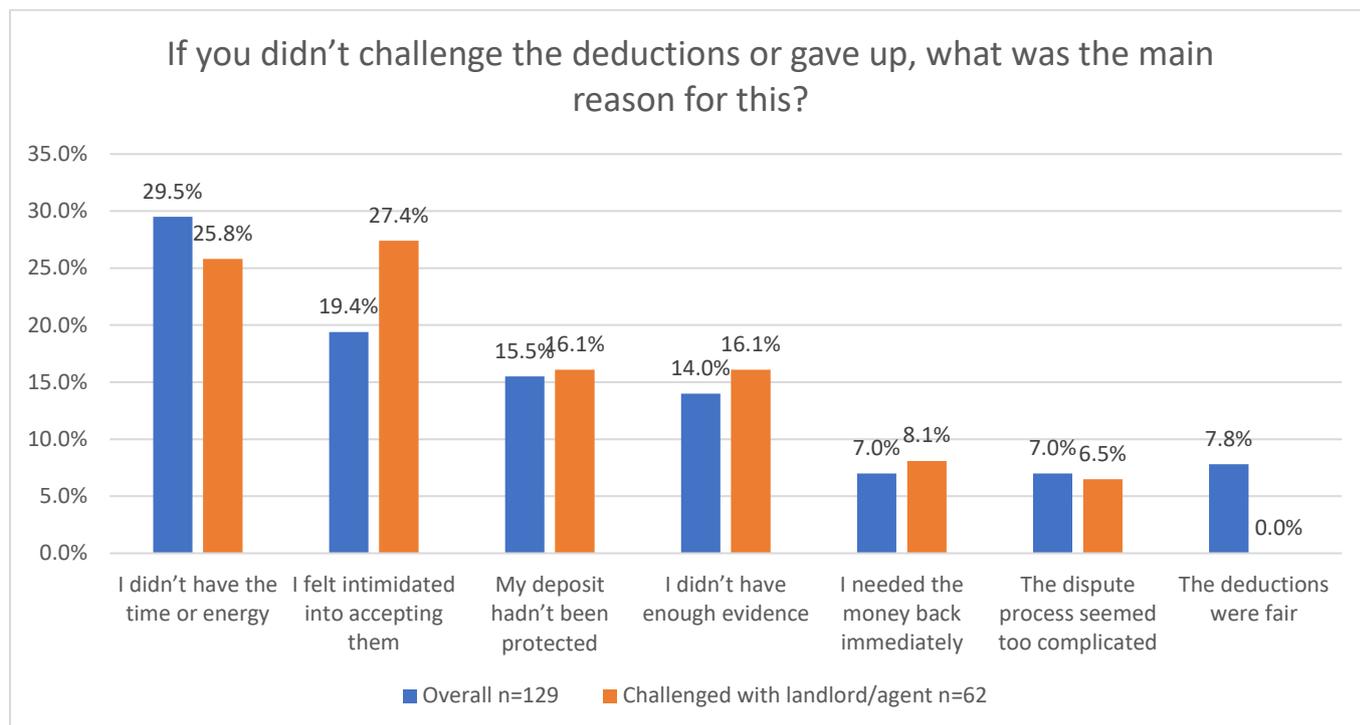


Figure 7 also shows comparative figures for those who reported that they had attempted to challenge deductions with their landlord or letting agent but had subsequently given up. Within this sample, intimidation is much more likely to be a factor (27.4 per cent compared to 19.4 per cent in the wider sample). We are concerned that in some cases tenants are being put off going through the deposit protection scheme or not being reminded that they have the option to go through the dispute process. Some survey respondents reported actually being warned off the process by landlords or agents:

“The last time I challenged my landlord about deduction claims, I decided to let the landlord take the deduction rather than go through the dispute process because I was told by the landlords agent that the process is long and will not get any money in reasonable time and that I can even lose more than the deduction being claimed.”

Some tenants may also be fearful that if they need to use their landlord as a reference for a new tenancy, challenging deductions may cause issues which extend into their future renting lives:

“Landlords do not spend money maintaining the property but try to keep as much of the deposit as they can get away with. As they are rich and powerful, tenants are often powerless as they want to move on and can't muster the energy to argue with their former landlord who is expected to give them a reference.”

From the open comments, it was also clear that some respondents were unaware of the fact that they would not have to go through the courts or incur costs in order to challenge deductions or landlords unreasonably withholding a deposit:

“I was aware that my previous landlord had broken the rules on deposit (current landlord told me) as it either wasn't in a deposit protection scheme or he could not 'remember' and had not given me information. I sent a letter asking for return of deposit, even with reductions, saying I would take

further legal action, and have not received an answer 2 years later. I did not go to court as this was too intimidating and I think it costs about £300 which I did not have (because the landlord still owed me £700!).”

“It was several years ago in an apartment I rented with friends as a student. Essentially the letting agent found absurd ways of claiming for missing forks etc. We were quite young and my two friends from other countries so we didn't really know exactly how to challenge it. It was clearly them looking for ways of keeping as much of the deposit as possible rather than any genuine claim for damages”

Others who had already been through a deposit dispute previously had concerns about the fairness of the process which may affect their willingness to challenge a deposit again:

“I felt they [the deposit protection scheme] were on the side of the landlord and so was the agency.”

“My deposits is on the LL side as this is there bread n butter [sic]....bad experience as with many others with this scheme.”

It is clear that even though most of our sample believed the proposed deductions from their deposit to be unjustified, only a minority were successful in challenging them directly with the landlord or agent, and only a small proportion took the dispute further, to their protection scheme's dispute process or the courts. From these results, we believe that there are likely to be several key reasons for this:

- Lack of awareness of the deposit schemes and their dispute processes
- A perception that the process will take too much time
- Limited evidence available to them, combined with a limited ability to gather evidence after leaving the property
- Cashflow issues, potentially related to having paid a subsequent deposit prior to receiving the previous one back
- Lack of confidence in the process and a sense that it is geared towards landlords' interests

It is our view that some simple reforms would help to alleviate some of these barriers. Firstly, currently tenants receive prescribed information about the deposit protection scheme at the start of their tenancy. This is a very busy time for tenants as they settle into a new home and can mean that this information gets lost, particularly as it is not likely to be relevant for at least 12 months. We therefore believe that having further communication about deposit protection later in the tenancy, perhaps around one month before its termination, would be hugely beneficial to ensure that the protections available are at the front of tenants' minds at this time.

If tenants were to have personal accounts directly with the scheme, this could enable them to set a preferred method of communication and allow schemes to send automated contact at this point to ensure that tenants receive relevant information. This could also help to alleviate some of the negative perceptions about the dispute process and remind tenants to check their inventory and take photos of the property before they return the keys to prevent a lack of evidence acting as a deterrent from challenging deductions.

However, although we do believe that challenging perceptions of and raising awareness of the dispute process is vitally important, we do feel that there are some injustices within the schemes themselves which can lead to justified conceptions that it is not equally fair to all parties. Our survey also asked tenants who had used the dispute process for their feedback on the experience. Overall, 99 respondents had experience of using a deposit scheme's dispute process, with mixed results – just under a third (32.7 per cent) had received the full disputed amount, while a similar number (30

per cent) had received none. Others reported having received most (17.3 per cent) or some (20.4 per cent) of the amount they had challenged (n=98).

Despite this spread of outcomes, respondents reported experiencing a range of issues while going through the dispute process and overall more than two thirds (68.7 per cent, n=99) experienced one or more issue. The breakdown is shown in Figure 8 below⁸. The most common issues, each representing just under a third of cases (31.3 per cent) were the landlord submitting false evidence and the dispute process being perceived as taking too long (the latter of which will be discussed in question 34). Some tenants who have utilised the dispute process have expressed a sense that when landlords provided false evidence, it was up to them to disprove their claim more so than for the landlord to prove their claim:

“The burden of proof was on the tenant to justify why money should NOT be taken off the deposit, instead of on the landlord to justify why it should. In my case, the landlord just took off 20% saying the bathroom sink was damaged, but did not provide photos or proof. I had to provide proof that the bathroom sink was NOT damaged--but I had moved out by this point and could not take pictures!”

“When I have wanted to dispute a deduction from a deposit the onus was on me to prove the landlord was being unfair. They didn't have to prove the deduction was reasonable. The assumption should be that the deposit is returned unless there is proof of damage etc.”

“The initial deposit often does not take into account the state of repair of the property. This is then reflected in the amount returned at the end of the tenancy. The potential tenant often feels that to point out faults when they are negotiating a tenancy could prejudice them being offered that tenancy. The burden of proof is not equably split between landlord and tenant.”

More than a quarter (27.3 per cent) reported the landlord claiming deductions they were not given the opportunity to challenge.

Cases have been reported by tenants to Generation Rent, reported in the media and raised in Parliament where landlords claim additional deductions or provide additional evidence after the tenant has had their only opportunity to submit evidence. In some cases, tenants have reported that they were not able to even find out what the deductions related to in order to challenge them.

It appears that at least within one scheme, there is a reliance on prior discussions between tenants and landlords around the claims, after which point either both parties submit evidence simultaneously, or in some cases the tenant submits first and while the landlord is able to respond to their evidence, the tenant is not able to view or respond to the landlord's evidence. It appears that some landlords are taking advantage of this process to make claims their tenants are unable to dispute. We are of the belief that given the deductions are proposed by the landlord, these should be submitted first with a subsequent opportunity for rebuttal for tenants once in receipt of information.

MyDeposits' dispute process explicitly allows this to happen by asking the tenant to submit evidence when raising the dispute, asking the landlord to submit their case after viewing the tenant's

⁸ Tenants who experienced issues includes those who reported one or more of: landlord submitted false evidence, dispute process took too long, landlord claimed deductions I was not given the opportunity to challenge and I wanted to complain/appeal but was unable to do so.

evidence, and proceeding to adjudication without giving tenants the opportunity to review the landlord's evidence.⁹

In March 2019, Lloyd Russell-Moyle MP raised the case of a constituent, Andy Smith. Upon moving out, Andy was told by his landlord, Baron Homes, that there was damage to the property – in an adjudication, MyDeposits ruled that there was not. However, it did accept the landlord's claim that the tenant had broken the tenancy early so awarded the landlord unpaid rent. Andy had not produced the evidence of the agreement for this because he was not aware the landlord would attempt to make this claim.¹⁰ Two more examples follow:

"The agent refused to discuss anything about the deposit or why it was withheld. And they didn't give us the exit inventory. They kept saying that they were waiting for the invoices for cleaning and gardening, but couldn't give us any details as to what had been done or why - let alone cost. MyDeposits also refused to discuss anything about the case with me - which I just couldn't understand."

BBC Radio 4 You & Yours, January 2019¹¹

"After the decision came in we discovered that although all those original claims had been dismissed, the Landlord had put in a new claim after our evidence, and had been awarded everything! The new claim was £2,963.00 for the cost of decorating and making good scuffs and marks, screws in the wall and blu-tack marks. MyDeposits thought this was wildly too much, so awarded him £1,481.50, which they deemed proportionate! Since we'd only given them £640 they kept all of that. "

Tenant who contacted Generation Rent

However, all schemes had at least some respondents who reported not having an opportunity to challenge so it would appear that this is not an issue isolated to one scheme. Respondents who had gone through the TDS dispute process were most likely to report their landlord submitting claims or evidence they were unable to challenge (32.3%, n=31). We do not have details of what happened in these cases, but TDS does state in its dispute process that tenants have an opportunity to comment on landlords' evidence before adjudication.¹²

"What the landlord/ letting agent submitted as evidence wasn't permitted and we didn't agree with their points. Not having an opportunity to counter their claims (alongside our submitted evidence) did not seem fair."

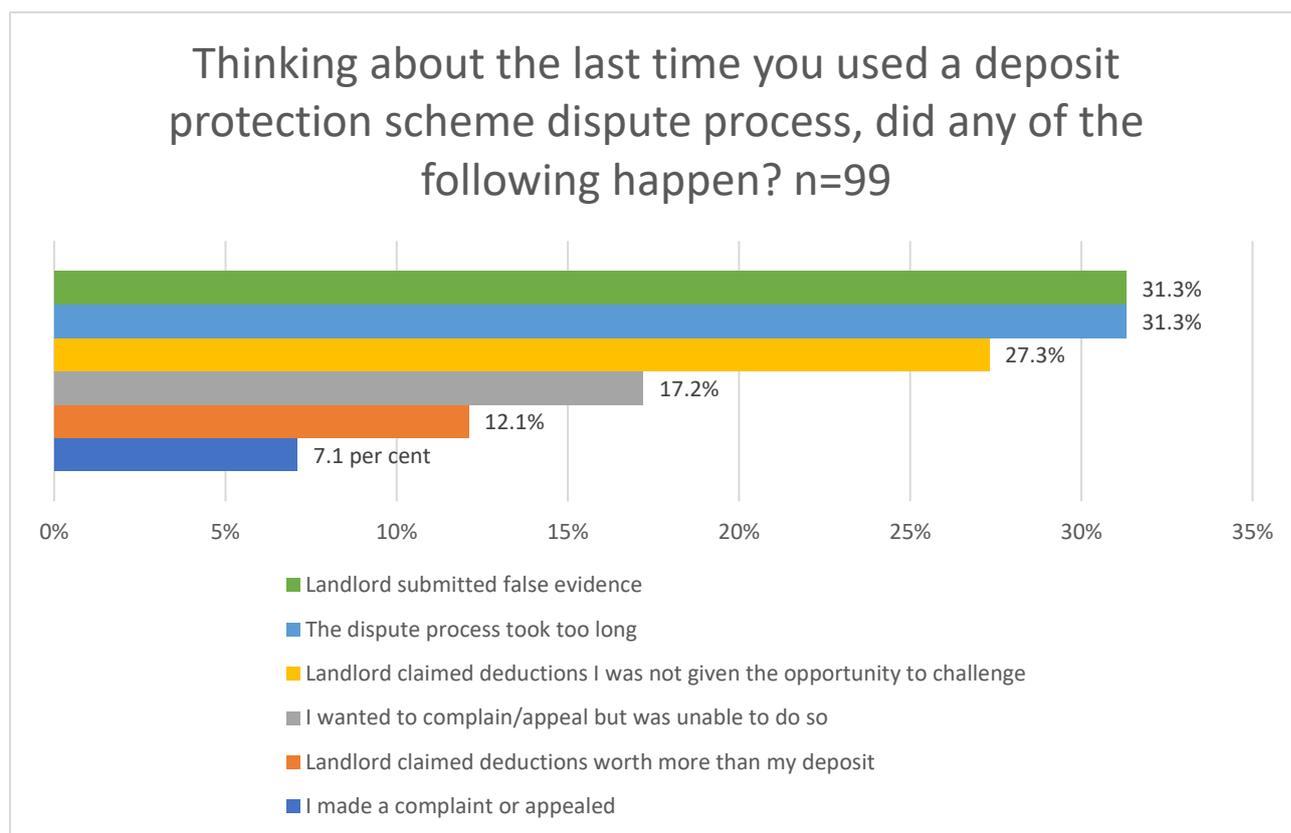
⁹ <https://www.mydeposits.co.uk/tenants/about-disputes/>

¹⁰ <https://www.theyworkforyou.com/debates/?id=2019-03-13b.379.3#g380.1>

¹¹ <https://www.bbc.co.uk/sounds/play/m0001yg5>

¹² <https://www.tenancydepositscheme.com/resources/files/The-progress-of-a-dispute.pdf> (p4)

Figure 8. Issues and occurrences during dispute process



Further to this, there were clear issues in relation to the transparency and availability of appeal and complaint processes where tenants feel that there has been an injustice in the process. More than one in six (17.2 per cent) reported that they had wanted to make a complaint or submit an appeal, but had been unable to do so, compared to just 7.1 per cent who had done so.

Although the survey only received responses from 9 tenants who had experience of going through MyDeposits' dispute process, it is notable that of these none had reported submitting a complaint and two had wanted to. In the cases mentioned above, where MyDeposits had ruled in favour of landlords on the basis of dubious evidence, tenants were told that the decision could only be challenged in court. While MyDeposits has a complaints process, it is not clear that tenants are made aware of this.

In light of the fact that deposits are the tenants' money and that landlords must be able to prove their claims to it, the government should review the schemes' dispute processes to ensure that landlords are asked to make their case for deductions before giving tenants sight of their case and an opportunity to respond.

Then, where there a party feels hard done by following a decision, there should be a clear complaints process through which flaws within the scheme can be identified and rectified. This would ideally be an appeals process – though we recognise that there may be an added cost of this. A transparent complaints system with oversight by the Ministry of Housing would help to monitor the performance of the adjudication process, identify common problems, and encourage improvement in practices. This, in turn, would help to improve confidence in the system, by tenants and landlords alike.

Some also reported challenges with the accessibility of the dispute processes, with the default being for the process to be online:

“Everything has to be done online, I found this very complicated and difficult, I almost gave up. For anyone who doesn’t have the internet and the know how it is just too hard and many people suffering with mental health, or indeed any health issues, the elderly or those who cannot read or have learning disability it is just almost insurmountable and many will give up..I almost did”

“I was Too ‘Severely Mentally Impaired’ to carry on the process...”

The challenges explored above appear to have resulted in a sense of injustice for many respondents. A third (33.3 per cent) felt that the process was unfair, while nearly an eighth (12.1 per cent) reported they had found it fair. Not only does this reflect on these tenants’ experiences and affect their likelihood of going through the dispute process again, but it may also put others off through word of mouth suggestions that the process is not as fair and well-functioning as it could be:

“I would never use them again as they are [in] favour of the landlord”

Our research also indicated specific categories of deductions which may be more likely to be disputed than others. Although numbers are low (n=42), we were able to disaggregate the proportion of disputes respondents reported taking through the deposit protection scheme which relate to different categories, compared to the proportion of overall deduction cases (disputed or not) where this category is present (see Figure 9). Some categories were significantly more likely to appear in dispute cases than they were in general across all tenancies where deposit deductions were proposed – in particular, damage, gardening, wear and tear and cleaning.

Cleaning was often remarked on as being considered unreasonable, with tenants claiming deductions being attempted despite going to significant lengths to ensure the property was left in a good condition:

“The landlord charged excess amounts for things such as cleaning, even though we paid to have the property professionally cleaned after we moved out.”

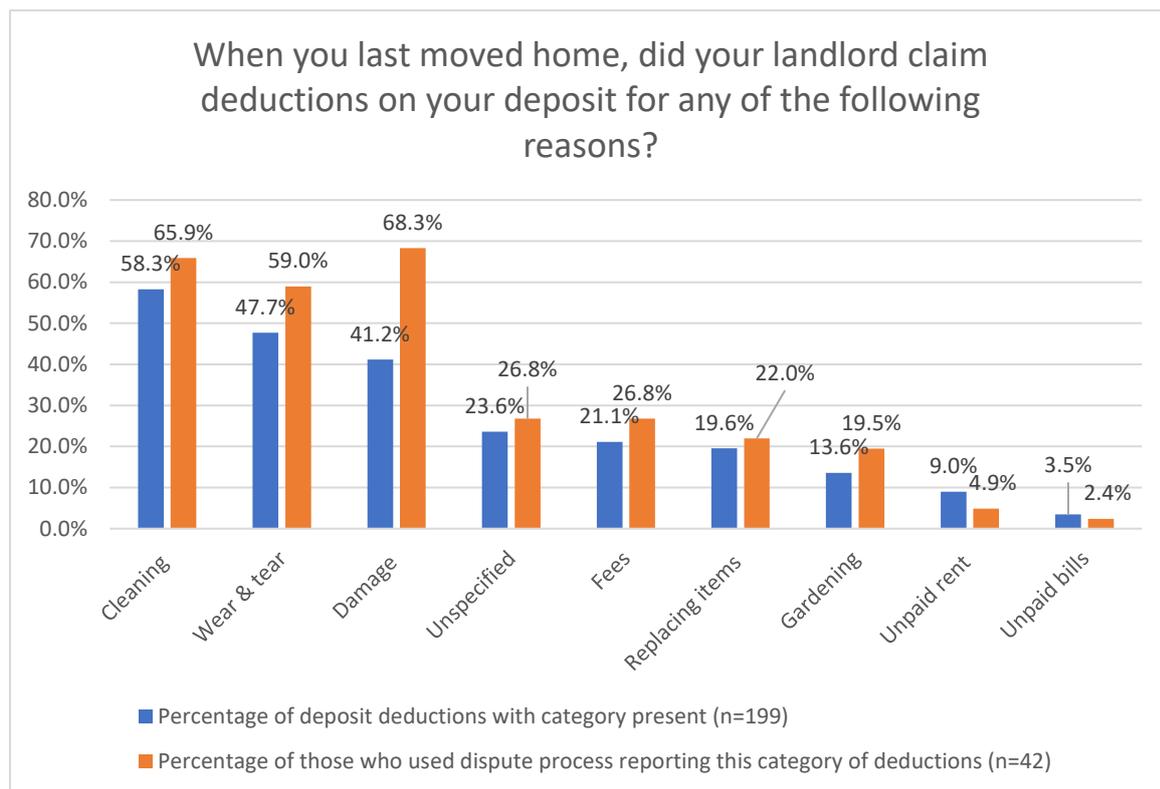
“Deductions taken for exorbitant cleaning when we had left the property spotless due to our previous experience of being professional contract cleaners.”

“They claimed for cleaning a property cleaned to a high standard (I am a cleaner myself). The property was left in a better decorative order and cleaner than when I moved in.”

“...they charged me extra for leaving the flat professionally cleaned even though I paid for that when I left but when I arrived to the flat at the start of the tenancy the flat was really dirty.”

The experience of moving into a dirty house, cleaning it upon moving out – and still having deductions for cleaning – could merit its own chapter.

Figure 9. Categories of deductions as proportion of overall cases compared to disputed cases



There was also particular consternation as to the definition of wear and tear and what should be considered damage that would reasonably be expected, particularly over longer tenancies:

“There is no formal clarity regarding “normal wear and tear” and landlords/agents are able to use and abuse this to their advantage and ensure the remit is impossible to meet given the shocking quality of materials used to decorate and maintain the property.”

“I rented the same house for 21 years with 3 months notice the stress made me very ill and I was my mum’s carer who was in and out of hospital I was going to be billed if I went over the date. They claimed wear and tear and yellowing gloss and wanted the carpets professionally cleaned they couldn’t be cleaned as the underlay had rotted with old age.”

Many respondents felt that landlords were attempting to use their deposit to profit or fund home improvements rather than make good the damage caused, with some feeling that costs were not legitimate or overinflated:

“I have been charged through the nose for tiny issues such as £50 for 2 missing lightbulbs for example. Another landlord charged me £50 for some dust in the cupboard under the stairs and a slightly dirty washing machine seal I had missed. The house had been cleaned carefully. Another wanted to charge for a new shed that was rotting when we moved in. Unfortunately many of these people think tenancy deposits are free money for them.”

“I’ve never moved into a house that is spotless. But I’ve always been charged for a professional deep clean after moving out. I suspect landlords just pocket the money.”

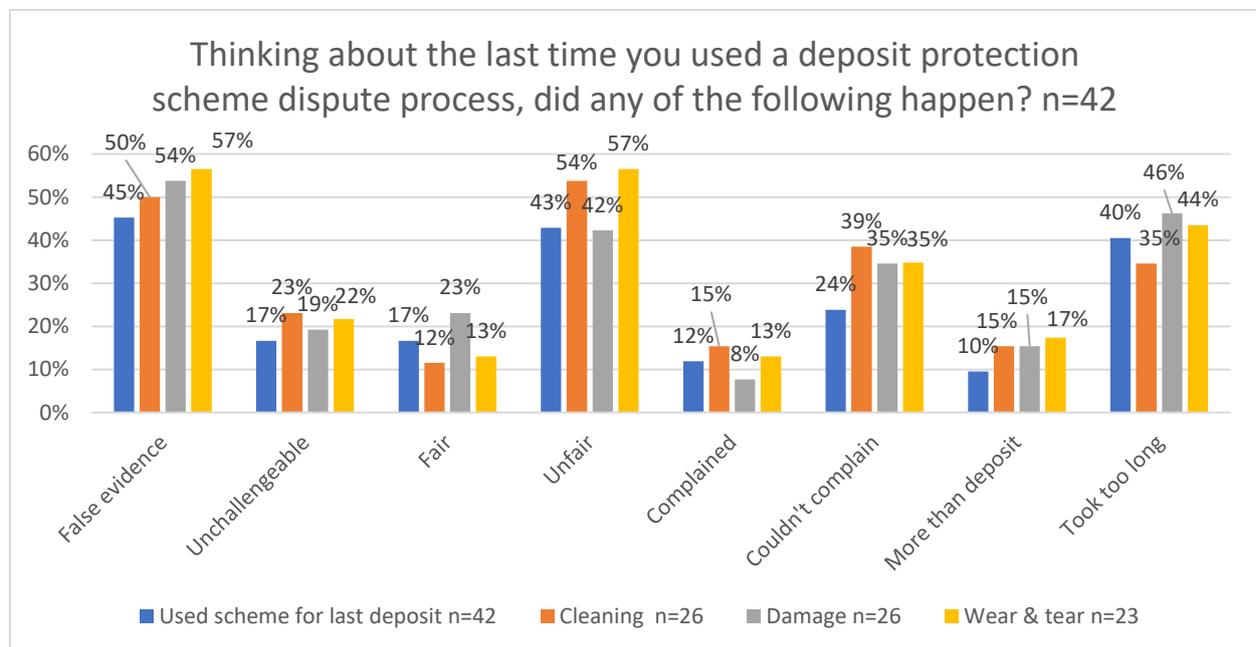
“Landlords tried to claim most of our deposit so they could buy a new kitchen counter. Tried to claim we were responsible for a lot of stuff that was already an issue when we moved in. I had sent e-mails during tenancy asking them to fix these problems and had said at the bottom of each e-mail that I

knew what they were doing - that they were refusing to fix things which were very costly so that they could take the money out of our deposit instead. And this is what they did."

An extreme example of a landlord inflating their deduction claim was related in an article on City Metric earlier this year, whose author fought a claim for £10,000 over four months before the scheme found in his favour.¹³ There is currently nothing to discourage this practice by landlords who may win simply by wearing down the tenant. The successful tenant in this situation undergoes a stressful and unnecessary ordeal and gets only their own money back.

Respondents also suggested they were more likely to experience challenges with the dispute process if they were disputing certain issues as shown in Figure 10. Although again numbers are low, deductions relating to cleaning and wear and tear appear to be particularly associated with negative associations such as believing evidence to have been false, wishing to make complaints and feeling that the process was unfair.

Figure 10. Occurrences and opinions in relation to dispute process by deduction category



It is therefore important for tenant confidence and to ensure that appropriate levels of deposits are returned, that dispute processes take a robust approach to assessing the merits of landlord claims, particularly in those areas where tenants clearly often disagree with proposed deductions.

To discourage landlords from making vexatious claims against tenants, there should be a cost associated with claims, perhaps above a certain amount, that result in the tenant being awarded more than half the disputed amount. This cost would be awarded to the tenant to compensate for the trouble involved in defending the vexatious claim.

To hold landlords to account for their deductions, protection schemes could inform tenants moving into a property of any successful claims on cleaning and damage. The new tenant would be aware of any money the landlord had been awarded and this could aid any negotiations they have with the landlord – or future claims. New tenants could also be made aware of any significant rejected claims.

¹³ <https://www.citymetric.com/fabric/when-we-left-our-shared-house-our-landlord-demanded-10000-invented-damages-4608>

This could easily be part of any information that the scheme takes responsibility for providing to the tenant (alongside information about how their deposit is protected).

Finally, we would like the loophole whereby both parties must agree to alternative dispute resolution to be closed. Although our sample was limited, five respondents had been through the courts to recover their deposit. Tenants should not be expected to pay court costs to challenge a withheld a protected deposit.

First time deposits

Most of our answer above discusses issues for tenants moving between tenancies in terms of cashflow and affordability. However, it should be noted that first-time tenants or those returning to the private rented sector also face very significant challenges in raising a deposit and as discussed previously in this response may rely on high interest or high-risk sources of credit in order to meet these costs.

We would like to see the Ministry exploring options to reduce these challenges through avenues including monthly payment of deposits and interest-free or low-interest deposit loans. If the government were to follow through on its previous announcement of its intention to introduce interest-free loans we believe this would be of significant benefit for low income households seeking to move into the private rented sector.

If monthly payment schemes are to be offered, they may also offer a possible means of encouraging increased financial capability and savings behaviours amongst tenants. For example, if, as proposed above, tenants have a direct account with the deposit protection scheme, this could enable them to make monthly payments for the initial 12-month tenancy period. If the tenancy continues beyond this period, or even if the deposit is passported over to a new property, there could be an option for tenants to continue making payments, but for the funds over and above their deposit to be made available to them should they need to make a withdrawal. The government could also consider offering savings bonuses to tenants through these accounts as has been done within Help to Save accounts and Lifetime ISAs or enabling tenants to access these bonuses through one deposit account rather than having to open multiple accounts to benefit. This could help to increase uptake of these initiatives and build increased financial security amongst some of society's most vulnerable people.

33. To what extent do you agree that the process for returning the deposit is too slow?

a. Strongly agree

34. Do you think that a definitive deadline for returning deposits could help improve the process?

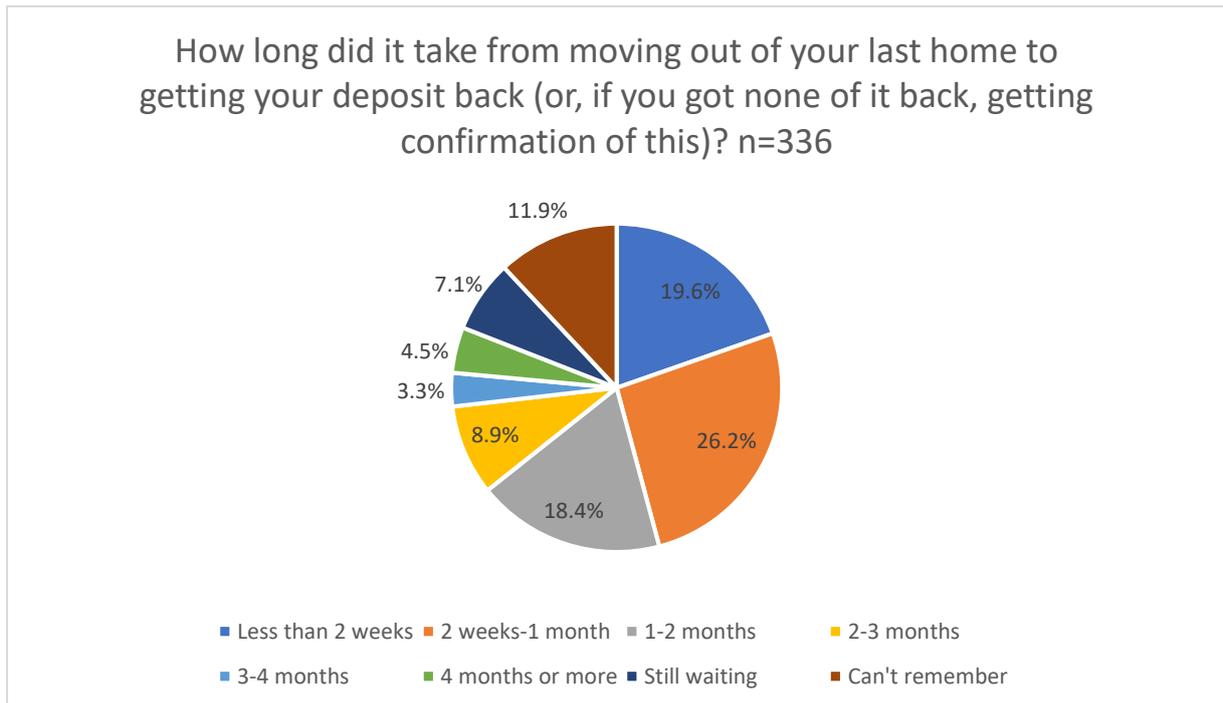
It is our belief that although in some cases there are legitimate reasons why disputes would extend the time taken for a deposit to be returned, there are a number of avoidable delays currently within the process. For example, currently a landlord can delay a deposit being returned by not communicating with a custodial scheme, or withholding a deposit held within an insurance scheme forcing the tenant to have to take action to trigger the start of the deposit return process. This can cause significant stress to the tenant:

"My last landlord was very good, but the two before that... they simply didn't do their part of the process. Not at all in one case. Simply did nothing and forced me to get a statutory declaration. The other required multiple phone calls and visits to the letting agent."

“Letting agent delayed and then did nothing as they had no proof but didn't want to give in. This should have meant my deposit was returned but instead I had to pay a solicitor to observe me countersign a statutory declaration and then wait until a given timeframe agent fails to challenge.”

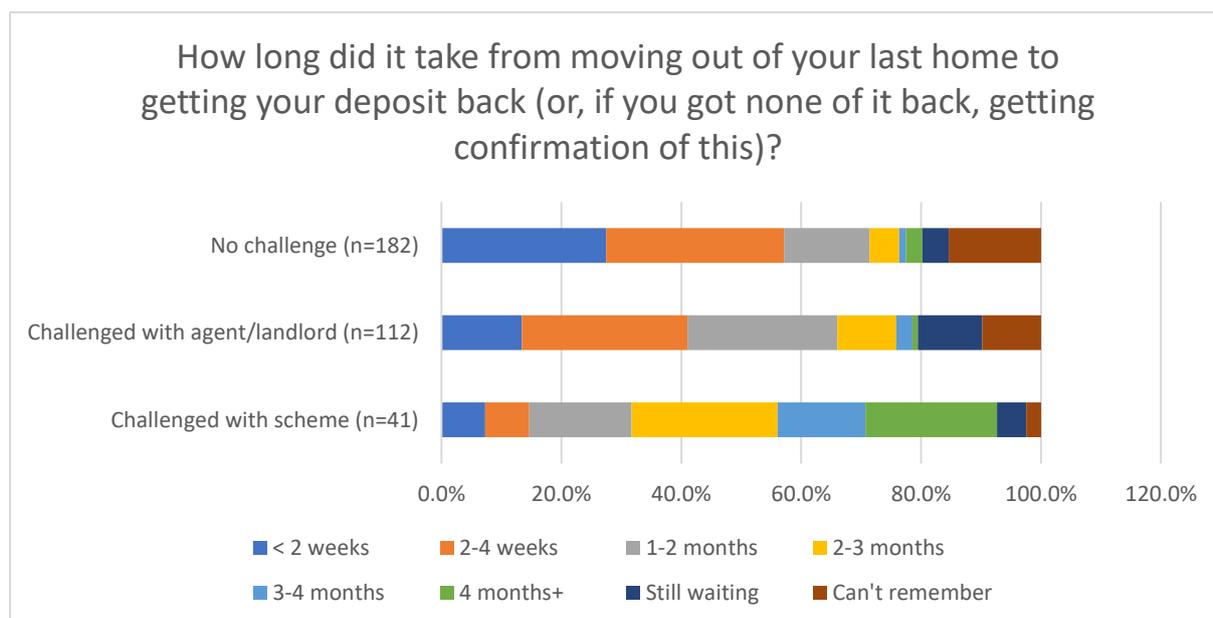
Figure 11 shows the average time respondents took to either receive their deposit or confirmation that it would be retained for their last tenancy. Just under half of respondents (45.8 per cent) had received this within 1 month with the most common waiting time being between two weeks and one month (26.2 per cent). However, more than a third (35.1 per cent) reported it having taken more than one month, potentially causing significant cashflow issues.

Figure 11. Deposit return time



To understand these figures better, we analysed them according to whether respondents had reported challenging deposit deductions and if so, how. This comparison is shown in Figure 12 which shows a clear correlation between challenging deposit deductions, particularly through a deposit protection scheme, and delays in receiving the deposit.

Figure 12. Deposit return waiting time according to whether deductions were challenged and how



Those who made no challenge to their deposit deductions (or had no deductions to dispute) were significantly more likely to receive their deposit back within one month (57.1 per cent) than those who challenged via their landlord or agent (41.1 per cent) and particularly those who went through the dispute process (14.6 per cent). We have concerns in two areas here. Firstly, we are concerned that almost a quarter (23.1 per cent) of those whose deposit was not subject to disputed claims still waited over a month to have it returned to them. These figures may be even higher as this represents 28.8 per cent of those who gave a definitive answer as to timeframe (excluding those who were still waiting or couldn't remember). This suggests that a significant number of tenants are experiencing avoidable delays in receiving their deposits which could be improved using deadlines for deposit return.

Secondly, we are concerned that challenging deductions does appear to significantly affect the timeframe within which tenants can expect to receive their deposit. The majority of those who reported challenging deductions did so directly with their landlord or agent and this seems to lead to delays for many with 38.7 per cent taking longer than one month to receive their deposit (or 48.3 per cent when those who were still waiting or can't remember are excluded). We are concerned that landlords and agents operating outside of the official dispute process may be able to frustrate the process for tenants.

However, delays become much more pronounced when disagreements progress to a dispute service. The vast majority (79.5 per cent or 86.1 per cent of those who specified a timeframe) of those who had gone through the dispute process reported it having taken longer than one month and more than one third (35.9 per cent or 38.9 per cent of those who specified) waited more than three months. Although clearly it is to be expected that a dispute going through a third party will increase the time it takes to resolve, we are concerned at the length of time disputes appear to be taking and the impact this can have on tenants. This has been expressed to Generation Rent through our recent surveys:

“The result for me was a fair one but it took nearly 3 months before I got any deposit back. This was a horrible time when I had to go into debt and we have 2 children with additional needs.”

A number of tenants have also reported landlords frustrating the process by failing to reply, causing disputes to take longer to resolve:

“Last landlord took eight months after I first requested the deposit back, just ignored the request for ages, DPS claimed there was nothing that could be done”

“3 months wait and landlord just wasn’t replying.”

“The letting agent didn't respond in a timely fashion releasing or disputing the deposit.”

“The landlord I had a deposit dispute with was a chancer - he'd only lodged the deposit with a deposit scheme three-quarters of the way through the tenancy and only after significant chasing. He was appallingly bad at doing anything like maintenance and general upkeep of the flat, even when we would repeatedly raise issue. Always promising to fix stuff, rarely getting round to it. But he was on it like a hawk when the flat wasn't "clean enough" to withhold money from the deposit, without us having been present during the exit check. The dispute system was slow, and when he failed to submit evidence, they chased him and gave him more time. In the end, the adjudicator awarded only 20% of the disputed amount to landlord and it then took the landlord a good month and a half to send us a cheque for the amount he needed to return to us. I found it frustrating that the law specified the landlord needs to protect the deposit within a set period of time but that this was not taken into account during the dispute (when the law has clear penalties in place for those landlords who fail to do so). It allows chancers like my landlord to get away with treating the system with contempt.”

We are concerned that issues around cashflow and the level of stress involved in going through the dispute process is at risk of putting many people off from disputing deposit deductions – particularly recalling that most commonly tenants reported not disputing deductions due to a lack of time or energy. In some cases those who had been through the process reported that despite reaching the outcome they were seeking, they would not dispute a deposit again due to the time taken to resolve the matter:

“I've used it once (Deposit Protection Service) and got my full deposit back, however the whole process took over 4 months and was exhausting. I wouldn't do it a second time.”

The onus is on the landlord to make a claim and provide evidence for this. The existing ten-day window gives the landlord plenty of time to identify deductions and get repairs done – or at least quotes prepared – and then notify the tenant of any claims. The protection schemes encourage tenants and landlords to negotiate first – and if the landlord does inform the tenant of their claim within the ten days, then this process allows both parties to prepare their case. Once the tenant has raised a dispute, the landlord should have their claim and evidence ready to submit. As it appears that many landlords fail to respond to the schemes, we believe that if they fail to submit their evidence after a week of the scheme’s request, the deposit should be automatically refunded to the tenant.

Where the landlord submits their claim to the scheme in a timely manner, this is often the first time the tenant has seen the official case against them. The tenant should therefore have a longer period to respond. There should still be a deadline for the tenant to respond, but in most cases the tenant would be eager to recover their money and would respond as quickly as possible.

If tenants had a direct relationship with the scheme, it would be possible to notify the scheme of the end of the tenancy (backed up if needs be by the notice served) and for a failure to pay to be triggered automatically.

We would welcome some clear guidelines to ensure that disputes can be resolved within a set timeframe and for changes to be made to prevent delayed responses from unreasonably prolonging the process. The adjudication process takes 20.1 days on average (11.6 for TDS and 26.2 for DPS), so standards of service should be based on this so that tenants can know what to expect when they start a dispute.¹⁴

If there were a standardised dispute process, then this could be incorporated into model tenancy agreements so that tenants and landlords would both be clear about how to communicate effectively, what to expect at the end of the tenancy, and how the protection schemes will treat claims for wear and tear.

35. What do you think would be the consequences of imposing a deadline for deposit returns?

We believe that setting clear deadlines for parties to respond would bring an increased sense of urgency to the entire deposit return process and avoid tenants having to wait longer than necessary. It may also help to make things easier for protection schemes as it could help to avoid prolonged waits for parties to respond.

The only reason for a delay is if the landlord can make a claim, and because they should have all the details of any claim shortly after the tenant moves out then there is no excuse to allow them to drag out the process. A tighter set of deadlines would reduce wilful delays and reunite more tenants with their money quicker.

A fixed time period would enable tenants to have clarity on their financial situation. This is particularly helpful when moving into a new property as there are likely to be a number of costs associated with this, so being able to access the funds (if they haven't been passported) or at least having a clear understanding of what is to be deducted soon after moving means that tenants will be more able to take financial decisions at the start of a new tenancy on an informed basis.

We also believe that with a reduced timeframe, it would be less likely that tenants would settle rather than dispute deductions if they disagree as they may be less anxious about the amount of time it would take and how much it would delay them receiving their deposit.

It should also be noted that tighter timeframes may present some challenges with providing evidence for both tenants and landlords so perhaps there could be some legitimate exceptions e.g. where one party is experiencing a health issue or did not receive a communication.

5. Exploring new initiatives

36. What would encourage financial services providers to create a deposit loan product that is affordable for tenants?

Our preference would be for the government to offer interest-free loans as was suggested in 2018 in order to avoid any kind of poverty premium on those who do not have access to funds for a deposit.¹⁵ If this is not pursued, we believe that a simple model with a low enough rate of interest to be fair to tenants, but with enough return to be viable for providers would work best.

¹⁴ https://www.tenancydepositscheme.com/resources/files/StatisticalBriefingEN_FINAL.pdf

¹⁵ Paragraph 5.57 in Budget 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752202/Budget_2018_red_web.pdf

The possibility of the deposit protection schemes themselves providing these sorts of loans or perhaps monthly deposit payment models could also be explored. In these circumstances, the financial arrangement could more closely resemble that of a savings account than of a loan and considering that tenants are likely to retain their money within the scheme for a long period of time, this could become attractive to deposit protection schemes while enabling tenants to avoid paying interest.

37. Do you think the Government should continue to explore the viability of a passporting system?

a. Yes

As was set out in previous parts of our response, we believe that a passporting system could significantly reduce the cashflow and affordability issues that many tenants face when moving between properties. This could help tenants to avoid getting into debt and jeopardising their financial stability due to interest payments.

Issues around deposits can also create barriers to moving and prevent people from being able to easily relocate. This can make it difficult for private renters to access new job opportunities and leave some facing high transport costs and prolonged travel times if they change jobs but are unable to move. Tenants can also become trapped if they are in a property which is unaffordable for them and want to move in order to reduce their rental obligations as it will inevitably be extremely challenging to save for a new deposit in this situation:

“A friend of mine couldn't even move out of a flat (which she couldn't afford to pay rent anymore and eat as she'd lost her job) because she couldn't save up a deposit for a cheaper place; anything she'd save was sucked up by the old rent.”

“I live alone and am renting privately. Last year my rent was increased by £100 p.c.m. Even if I wanted to move and could find somewhere suitable and affordable, raising a deposit, together with removal costs, would consume what savings I have. I am 64 and one of the 1950s women subjected to 2 rises in SPA with inadequate notice. I still work full time and am worried that I shall never be able to retire because of housing costs.”

“How are you meant to move when it takes so long to get your current deposit back, saving for another large deposit whilst private renting in over inflated rented rent cost is near on impossible. What are families meant to do, apart from become homeless, which has happened to me and my family.”

Where tenancies are ended by a landlord, there is also a risk of homelessness for tenants who may have limited warning meaning they are unable to save enough for a new deposit in the time available. For some on low incomes this can be exacerbated by demands for rent in advance:

“The last time I needed to move I couldn't find a landlord/agent willing to take me on without a guarantor as I had a low income, despite having great references. So on top of a months deposit they all insisted I paid 3-4 months rent in advance and then continue paying monthly. So in effect I had to pay a 5 months deposit, but it was not classified as that or put into any deposit protection scheme. This was EXTREMELY hard to find and I was almost made homeless with my children. No alternative deposit or guarantor schemes would meet these needs either. I was lucky that my university gave me some hardship bursaries and a family member lent me some money. However My current landlord now has 4 months rent, plus one month of deposit and none of it is adequately protected. So I dread the day I have to move again as I'm pretty much at his mercy, but I was left with no choice but to accept these conditions or be on the street.”

We also believe that a passporting system would increase tenants' engagement with the deposit protection schemes which could bring added benefits around awareness of legal protections available to them and the dispute process. It could also help to flush out landlords who are still evading their legal responsibilities to protect their tenants' deposits as they would not be able to receive a passported deposit without committing to protecting the funds.

There are two options: a system whereby tenants are able to commit their existing deposit to their new landlord within their account with the protection scheme and top up any shortfall to secure the tenancy. They would then pay a top up if their previous landlords made any deductions on the original deposit. This would mean that tenants would be able to benefit from passporting the full deposit and that landlords would still have access to the full deposit to claim any relevant deductions. It would also be helpful in situations where tenants sign for their subsequent tenancies more than a month before the end of their previous one – this is particularly often the case for students where the main house-hunting period may be many months before tenancy changeover.

Because the new landlord would need a guarantee that they would get the deposit they asked for, there would need to be a payment. A survey conducted by Generation Rent earlier in 2019 indicated that more than half of respondents (59.1%, n=901) would be interested in a passporting scheme and would be willing to pay a small fee for this service. As suggested above, the potential interest on the £4.4bn of tenants' money currently protected could fund this system.

The other option, which we proposed in our report in 2018 would see tenants applying to passport a certain amount of the deposit following on from a pre-end of tenancy inspection and payment of the final month's rent. As this option would not involve more than one landlord having a claim over the same sum of money, there would be no requirement for a guarantee, so it would be cheaper to manage than the first option.

38. Do you think that passporting could lead to a change in landlord and tenant behaviour?

a. Yes

Tenants would still need some "skin in the game" to ensure that they returned their old home to their landlord in good condition. With the guarantee option they would be liable to pay the deposit once it is returned – or the equivalent of any deductions – to the protection scheme. With the option that sees a portion of the deposit transfer over, tenants would still have a significant portion of their deposit held with the old property, and would have an incentive to clean the home appropriately when leaving.

If deposits were taken out of landlords' control with tenant-facing accounts then it would be harder for the less scrupulous ones to make spurious claims, and there would be no opportunity for them to "disappear with the money".

It is possible that tenants take for granted that their deposit will be passported which could they don't save money when they can and if there are deductions they won't be able to cover the costs of the new deposit. However, we still believe that this is preferable due to the way our survey results show the extent to which many tenants struggle with a second deposit currently. It is also an argument in favour of using tenancy deposit accounts as savings accounts.

39. What measures could be put in place to tackle or prevent negative behavioural changes in a potential passporting system?

If schemes were to communicate more with tenants during their tenancy as we have suggested, there could be some possibilities of reminding tenants of the need to ensure they have some funds together in case their next deposit is higher or there are deductions from their current tenancy.

In relation to top-up payments, there is normally at least a full year of the tenancy to ensure that the full amount is paid in time so we are confident that it would be possible to come up with an approach that would be robust and fair.

40. What other action could be taken to make it easier for tenants to pay for a new deposit when moving home?

As specified in our response to question 27, we believe there are several steps that could be taken in order to improve affordability for tenants. These include:

- Interest free government loans
- Monthly payment deposit initiatives
- Interest payments on deposits
- Improvements to tenants' ability to dispute deposit deductions from previous tenancies

6. Wider deposit protection reform

There are no questions for us to answer within this section, however we would ask that you refer to our answers in other parts of this response and particularly question 27 for our views and the evidence from our survey regarding alternative dispute resolution services.

Appendices

Appendix 1. Survey Questions

Did you pay a security deposit on your current home, and did your landlord protect it in a scheme?

- Yes, it is protected
- Yes, but it is not protected
- Yes, but I don't know if it's protected
- No, I did not pay a deposit

Roughly how much is your security deposit worth?

- Less than 4 weeks' rent
- 4 weeks'/1 month's rent
- 5 weeks' rent
- 6 weeks' rent
- More than 6 weeks' rent

The government wants to understand how big a problem affording a deposit is in different situations. Have you ever struggled to raise a security deposit to start a new tenancy? Please select all that apply

- Yes, for the first home I rented
- Yes, when starting a new tenancy and awaiting return of deposit from previous landlord
- No, I have been able to raise a deposit every time I moved

If you have struggled to afford a deposit in the past, what did you do? Please select all that apply

- I took money out of savings
- I relied on my overdraft/credit card
- I borrowed money from friends/family
- I borrowed money from a bank (e.g. loan)
- I borrowed money from a payday lender/pawnbroker
- I postponed a move in order to save up
- I stayed where I was and didn't move
- I became homeless
- n/a
- Other

Some schemes exist to help renters without savings to start new tenancies, including local councils, employers and "deposit-free" schemes (e.g. Canopy, Reposit and Zero Deposit). Have you considered using any of these?

- Local council deposit loan scheme
- Employer's deposit loan scheme

- Deposit-free scheme involving non-refundable payment

Options for each:

- Used this option when starting a tenancy
- Looked at it but it wasn't available
- Looked at it but it wasn't for me
- Have never considered this
- Have not heard of this

When you last moved home, did your landlord claim deductions on your deposit for any of the following reasons? Please select all that apply

- The landlord claimed no deductions
- Cleaning costs
- Damage
- Replacing items
- Maintenance/wear and tear
- Gardening
- Check out/other fees
- Final month's rent/arrears
- Unpaid bills
- Unspecified reasons/refused to return it
- Not applicable

Did you challenge your landlord's deductions?

- No
- Yes, directly with the landlord/agent and we reached an agreement
- Yes, directly with the landlord/agent, but I gave up
- Yes, and I went through the protection scheme's dispute process
- Yes, and I went through the courts
- n/a

If you didn't challenge the deductions or gave up, what was the main reason for this?

- The deductions were fair
- I needed the money back immediately
- I didn't have the time or energy
- I felt intimidated into accepting them
- I didn't have enough evidence
- The protection scheme's dispute resolution process seemed too complicated
- The landlord hadn't protected the deposit
- Other/not applicable

How long did it take from moving out of your last home to getting your deposit back (or, if you got none of it back, getting confirmation of this)?

- Less than 2 weeks
- Between 2 weeks and 1 month
- 1-2 months
- 2-3 months
- 3-4 months
- 4 months or more
- I'm still waiting
- Can't remember

The last time you used a deposit protection scheme's dispute process, which scheme was it?

- Tenancy Deposit Scheme (TDS)
- MyDeposits
- Deposit Protection Scheme (DPS)
- Letting Protection Service (Scotland/Northern Ireland)
- Safe Deposits Scotland
- I have never used a deposit scheme dispute process
- Can't remember

Thinking about the last time you used a deposit protection scheme's dispute process, what was the outcome?

- I received all of the disputed part of the deposit
- I received most of the disputed part of the deposit
- I received some of the disputed part of the deposit
- I received none of the disputed part of the deposit
- I have never used a deposit scheme dispute process

Thinking about the last time you used a deposit protection scheme's dispute process, did any of the following happen? Please select all that apply

- The landlord claimed deductions that I was not given the opportunity to challenge
- The landlord claimed deductions worth more than my deposit
- The landlord submitted false evidence
- I thought the dispute process was fair
- I thought the dispute process was unfair
- I complained about/appealed against the scheme's decision
- I wanted to complain about/appeal against the scheme's decision but was unable to do so
- The dispute process took too long
- n/a

Is there anything else you would like to tell us about your experience of tenancy deposits?

Appendix 2. Survey Demographics

Age group (n=354)

Age group	Number	Percentage
16-24	7	2.0%
25-34	63	17.8%
35-44	84	23.7%
45-54	67	18.9%
55-64	71	20.1%
65+	62	17.5%

Region (n=357)

Region	Number	Percentage
East Midlands	23	6.4%
East of England (including Hertfordshire)	19	5.3%
London	106	29.7%
North East	10	2.8%
North West	30	8.4%
South East (including Hampshire)	68	19.0%
South West	49	13.7%
Scotland	4	1.1%
Wales	2	0.6%
West Midlands	20	5.6%
Yorkshire & Humber	26	7.3%

Roughly what proportion of your net income (after tax) is spent on rent? (n=349)

Rent to income ratio	Number	Percentage
10% or less	12	3.4%
11-20%	21	6.0%
21-30%	69	19.8%
31-40%	68	19.5%
41-50%	73	20.9%
51-60%	53	15.2%
61% or more	53	15.2%

Self-identification (n=358) – Question: “Do any of the following characteristics apply to you? (Tick all that apply)”

Gender identity	Number	Percentage
Female	201	56.1%
Gender non-binary	3	0.8%
Transgender	5	1.4%
Intersex	2	0.6%

Ethnicity	Number	Percentage
African/Caribbean/ Black British	11	3.1%
Asian	9	2.5%
Mixed race	13	3.6%
Other non-white British ethnicity	6	1.7%

Sexuality	Number	Percentage
Gay/Lesbian	13	3.6%
Bisexual	16	4.5%
Other non-heterosexual	10	2.8%

Disability	Number	Percentage
Disabled	50	14.0%

Housing Benefit status	Number	Percentage
Housing Benefit recipient	62	17.3%

Caring responsibilities	Number	Percentage
Carer	19	5.3%
Parent with dependent children	46	12.8%

Nationality	Number	Percentage
Non-UK National	24	6.7%

Appendix 3. Strategy to deal with struggling to pay deposit (past or present) according to rent to income ratio of current property

Strategy	Percentage of all respondents (n=358)	Over 50% rent/income ratio (n=106)	31-50% rent/income ratio (n=141)	<30% rent/income ratio (n=102)
Savings	31.6% (113)	29.2% (31)	34% (48)	31.4% (32)
Credit card/ overdraft	34.9% (125)	41.5% (44)	36.9% (52)	25.5% (26)
Bank loan	8.1% (29)	10.4% (11)	8.5% (12)	5.9% (6)
High interest lender	3.9% (14)	6.6% (7)	2.1% (3)	3.9% (4)
Family/ friends	54.20%	52.8% (56)	48.9% (69)	46.1% (47)
LA/ other statutory scheme	2% (7)	0	2.8% (4)	2.9% (3)
Employer scheme	0.3% (1)	0	0.7% (1)	0
Charity or other scheme	0.8% (3)	1.9% (2)	0.7% (1)	0

Postponed a move	9.5% (34)	8.5% (9)	12.8% (18)	6.9% (7)
Didn't move	9.5% (34)	11.3% (12)	8.5% (12)	9.8% (10)
Became homeless	5.3% (19)	8.5% (9)	4.3% (6)	3.9% (4)
Coerced into sex in lieu of rent money	0.3% (1)	1% (1)	0	0

Appendix 4. Awareness and use of alternative deposit schemes

Response	Local authority scheme (n=328)		Employer scheme (n=313)		Deposit-free scheme (n=322)	
	Number	Percentage	Number	Percentage	Number	Percentage
Used this option when starting a tenancy	10	3.0%	5	1.6%	6	1.9%
Looked at this but it wasn't available	37	11.3%	18	5.8%	17	5.3%
Looked at it but it wasn't for me	12	3.7%	10	3.2%	19	5.9%
Have never considered this	36	11.0%	34	10.9%	36	11.2%
Have not heard of this	233	71.0%	246	78.6%	244	75.8%

Appendix 5. Issues with dispute process by scheme

Scheme name	False evidence	Unchallengeable	Fair	Unfair	Complained	Couldn't complain	Landlord requested more than deposit	Took too long
Deposit Protection Scheme (DPS) (n=41)	17	8	6	15	5	7	4	15
Percentage	41.5%	19.5%	14.6%	36.6%	12.2%	17.1%	9.8%	36.6%
MyDeposits (n=9)	2	2	4	3	0	2	1	6
Percentage	22.2%	22.2%	44.4%	33.3%	0.0%	22.2%	11.1%	66.7%
Tenancy Deposit Scheme (TDS) (n=31)	8	10	2	10	2	5	6	6
Percentage	25.8%	32.3%	6.5%	32.3%	6.5%	16.1%	19.4%	19.4%

Appendix 6. Comparative prevalence of deduction categories in deposits as a whole and in disputed cases

Deduction category	Percentage of deposit deductions with category present (n=199)	Percentage of those who used dispute process reporting this category of deductions (n=42)	Percentage Difference
Cleaning	58.3%	65.9%	13%
Wear & tear	47.7%	59.0%	24%

Damage	41.2%	68.3%	66%
Unspecified reasons/refused to return it	23.6%	26.8%	14%
Fees	21.1%	26.8%	27%
Replacing items	19.6%	22.0%	12%
Gardening	13.6%	19.5%	43%
Unpaid rent	9.0%	4.9%	-46%
Unpaid bills	3.5%	2.4%	-31%

Appendix 7. Deposit return time by whether challenged and how

Length of wait	No challenge (n=182)	Percentage	Challenged with agent/landlord (n=112)	Percentage	Challenged with scheme (n=39)	Percentage
< 2 wks	50	27.5%	15	13.4%	2	5.1%
2-4 wks	54	29.7%	31	27.7%	3	7.7%
1-2 mths	26	14.3%	28	25.0%	8	20.5%
2-3 mths	9	4.9%	11	9.8%	9	23.1%
3-4 mths	2	1.1%	3	2.7%	5	12.8%
4 mths+	5	2.7%	1	0.9%	9	23.1%
Still waiting	8	4.4%	12	10.7%	2	5.1%
Can't remember	28	15.4%	11	9.8%	1	2.6%