

Communities and Local Government Committee

Inquiry: Draft Tenants' Fees Bill

Generation Rent submission

Generation Rent represents the UK's 12 million private renters, and works towards a fair, secure, and decent private rented sector.

Executive Summary

1. Banning tenants' fees will ensure that the lettings market will be more affordable for tenants, ensuring renters are able to access homes with incurring debt, and meaning tenants can more easily move when they need to. It will also make the market more competitive by incentivising agents to work for their customers – landlords – rather than make money from captured consumers.

2. Other elements of the bill are flawed. Security deposits should be capped at three weeks' rent and holding deposits should be banned outright, or the system adjusted to make them refundable where a tenant needs to withdraw before signing a contract.

3. Enforcement requires considerable focus. At local authority level there remains a lack of resources for full, proactive enforcement, and tools should be developed to ensure renters can inform enforcement bodies about illegally-charged fees, without the system being onerous for tenants or are only reliant on their reporting.

4. Renters should be liable for greater compensation than simply being returned the illegal fee. One model would be that in practice in Scotland, where tenants are liable to up to three times a fee where they have been illegally charged.

1. The Government's stated objective is to deliver 'a fairer, more competitive, and more affordable lettings market where tenants have greater clarity and control over what they will pay and where the landlord is the primary customer of the letting agent.' Do the provisions of the draft Bill enable this objective to be achieved?

Currently letting fees make it more expensive for a tenant to find a new place to live and they discourage tenants from moving out of an unsuitable property. The nature of the rental market means that few tenants have any choice over which agent they use – they will very often select a property that meets their budget and needs, which means that it is easy for an agent to charge more in fees than the cost of the service.

Generation Rent found that the average fees for a two-adult household is £404 but this can range from £40 to £813.¹ The benefit to the agent of charging fees means that they have an incentive to

¹ <http://lettingfees.co.uk/stats/>

maximise the number of new tenancies they deal with, which can lead to raising the rent as much as possible, or even serving eviction notices on tenants who complain.

By banning all fees, it becomes easier for tenants to compare properties as there is only one cost to compare – the rent. By removing barriers to moving, the tenant has a stronger hand in negotiations, whether that is around rent increases or repairs.

We should therefore see a better service from landlords. A third benefit is that letting agents will rely solely on commission from the landlord and will therefore have an incentive to encourage renters to stay as long as possible.

However, although a ban on fees will support greater fairness, competition, and affordability, these same principles will be undermined by other proposals on tenancy security deposits. The draft bill caps these deposits at 6 weeks' rent, which is not affordable for many renters, and is unnecessarily high.

At Generation Rent, we have often heard that high deposits, as much as fees, have forced people into debt, stopped them from moving or generally caused financial difficulties. In a market where certain institutional landlords are no longer taking deposits,² it seems retrograde to cap them at such a high level.

Generation Rent recommends capping them at 3 weeks' rent, based on a calculation used by Shelter and Citizens Advice around what might be the maximum amount that a landlord may need to access in the case of a dispute.

2. Are the draft Bill's provisions necessary, clear and workable?

While the main direction and approach of the bill's provisions are workable and clear, key details still need to be addressed to ensure the legislation works as well as possible for tenants.

While they exist, it is right that holding deposits are capped at one week's rent; but to further make the lettings process more affordable for tenants, the legal framework under which holding deposits are taken needs to change. In its current formation it is one-sided and unfair to tenants.

This is because holding deposits commit tenants to a property (otherwise losing the deposit if they pull out), but do not set similar obligations for the lettings agent.

There is no legal obligation on the agent or landlord to restrict viewings once they have taken a holding deposit, and they could, for example, eventually take on a different tenant despite being in receipt of a holding deposit.

In other markets where tenants' fees are banned, such as Scotland, they have also outlawed holding deposits, because of their one-sided nature.

To make the system equitable, then, the bill should either follow the ban that has taken place in Scotland, or tenants should be able to pull out from a home with the security deposit still refundable, while actually securing the home for the tenant if they want it.

There is no evidence that tenants would want to (or be able to afford) to frivolously put holding

² <http://www.thisismoney.co.uk/money/buytolet/article-4540740/Olympic-village-landlord-scraps-fees-deposits.html>

deposits on homes they don't intend to take or are not sure about. The principle of a holding deposit should respect the fact that tenants will withdraw from properties for legitimate reasons, and shouldn't be financially penalised if they must pull out.

Another problem with the current bill is around how local authorities enforce against those agents who are flouting the fees ban. Tenants will be able to claim back illegal fees, with the support of Trading Standards.

Although trading standards will have a duty to enforce (where for example another agent complains about a competitor who is charging fees), it is not clear that there is a duty to proactively check compliance.

Given the lack of enforcement resources available at local authority level for recent legislation around fees transparency, mandatory redress, and retaliatory evictions, it seems unlikely under the current funding arrangements that local authorities would have the required resources to fully police the ban.

If tenants had the right to compensation worth, say, three times the value of the fees they paid, then they'd have more of an incentive to pursue the agent themselves through the courts, rather than relying on trading standards to do so. This would still require tenants to find upfront costs to pay for court fees, which will deter many renters.

To empower tenants in this area, government should be considering online tools to ensure they can raise issues of fees in a light-touch and timely manner. These tools could help a large number of tenants challenge the same agent or contact Trading Standards at the click of a button every time they're illegally charged. They should also allow renters to track the progress of action taken.

Tenants in Scotland can be awarded up to three times the illegally charged fee, and are supported in doing so by Shelter's Reclaim Your Fees website³. Government should consider creating a similar tool for England.

Some clarification is required on Schedule 1, Section 1.6 of the bill. It contains a potential loophole in terms of different levels of rent that can be charged. Although there is a prohibition on bundling fees into the first month's rent, it appears that this schedule allows different rents to be charged over short periods of time, meaning that the effect might be the same.

3. What are the resource implications for local authorities?

A duty to enforce means that trading standards will have to respond to complaints. Local authorities will be able to recoup the costs of enforcement through civil penalties, meaning they should be incentivised to enforce. However, once the legislation comes in, there remains a question of how quickly they can respond to complaints.

The government should also look to tenants themselves as playing a role in policing the ban. They are already eligible for compensation where the landlord has failed to protect the deposit to a sum up to three times the value of the deposit. The same principle should apply to fees.

³ <http://www.reclaimyourfees.com/>

It remains important for the authorities to have a duty to enforce as letting agents will want to ensure that their local competitors are playing by the rules.

4. What is the likely impact of the legislation on key stakeholders including tenants, letting agents and landlords?

Although the legislation will mean extra costs to letting agents, they will now have an incentive to encourage longer tenancies to maintain a good relationship with their landlord customers. As this will lead to a better private rented sector, with happier tenants, it should result in lower costs for the agent and in turn the landlord.

It is also possible that the legislation could lead to the development of more tenant-led services such as references in the form of tenant passports, providing more choice for tenants. This should hopefully reduce the time involved in agreeing a tenancy and thus the need for a holding deposit.

It is right that letting agents will be prohibited from requiring a tenant to pay a third party for a reference or inventory check. This is one area where the costs involved could be reduced through the use of tenant passports, which are managed by the tenants themselves. There may need to be standards for these so that tenants can be confident that their passport will be accepted by any given agent.

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