

Fees charged to tenants in the private rented sector - Consultation Response Form

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General Questions

1. Please choose which of these best represent you:

Letting Agent

Tenant

Landlord

Local Authority

Representative Body (please state)

ARLA Propertymark (Association of Residential Letting Agents) is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected and their money is safe.

Other (please state):

2. Do you agree that Welsh Government should legislate to prevent agents and landlords from charging fees, other than rent in advance and a refundable deposit, to tenants when entering into a new, or renewing an existing tenancy?

ARLA PropertyMark does not agree that the Welsh Government should legislate to prevent agents and landlords from charging fees, other than rent in advance and a refundable deposit, to tenants when entering into a new, or renewing an existing tenancy.

3. If no, please explain why:

We believe fees should be open, transparent and reasonable. They represent legitimate costs to business that need to be covered.

When renting a property, a tenant is taking a legal interest in land for the duration of their tenancy and the fees charged to tenants are broadly similar to those charged when purchasing a property (referencing checks equate to mortgage application fees, contract negotiation charges are akin to conveyancing, and inventory costs are similar to a survey).

In terms of fees, the only difference between renting a home and buying a property is that when purchasing a property, the fees are paid to three different parties and generally cost the purchaser much more, whereas when renting a property, the letting agent acts in a quasi-legal capacity, undertaking these tasks on behalf of the tenant.

4. Which fees, aside from rent in advance and refundable deposits, do you think an agent, landlord or third party should be permitted to charge? Why?

Referencing checks lay the foundations for a strong tenancy and we believe that an agent, landlord or third party should be permitted to charge for them. These checks ensure that the tenant is who they say they are and does not take on a financial commitment that is unsustainable.

Furthermore, referencing reduces the risk of tenants falling into rent arrears which often results in them being evicted and subsequently subject to County Court Judgments (CCJs). A CCJ often means that the tenant's credit rating drops which could lead to them having difficulty sourcing other rental properties or making successful mortgage applications when they attempt to take their first step onto the housing ladder.

A poor credit history also leads to difficulties in accessing low cost credit from main stream suppliers (such as high street banks or major credit card providers). Ensuring that a tenant takes on manageable levels of financial commitments also helps to ensure that they are not subsequently made homeless.

With such a chronic shortage of rental housing, allowing an exemption to the ban on letting fees for tenant referencing will make securing a

rental home easier for those on low incomes or those who have a poor credit rating. By exempting referencing, agents will be able to maintain their current referencing services and will not be forced to take shortcuts or take the tenant who appears to be most likely to be able to pay the rent. Agents will also be able to continue their current practice of assisting tenants with completing benefit paperwork and Universal Credit applications to ensure they receive any State benefits to which they are entitled.

Tenant referencing is time consuming for letting agents and often involves significant time spent chasing all of the parties involved to complete the referencing process. Checks are frequently complex procedures and under the Phase Three roll out of the Immigration Act 2014, Right to Rent checks will soon be required by law in Wales.¹

Referencing is not simply a case of forwarding a prospective tenant's details to a third party. It involves ensuring forms are completed properly, making requests to referees and guarantors, checking a tenant's credit history, liaising with an external referencing company, collecting employment information, liaising with the tenant's previous landlord, checking passports or other visa documents and storing copies securely in order to comply with Right to Rent checks, plus scheduling and carrying out any Follow-up Checks legally required.

In particular, the Welsh Government must not underestimate the risks and business impact of additional work involved in doing Right to Rent checks. Checks on tenants with Time Limited documentation which have to be carried out within 28 days of the start of the tenancy and follow up checks (potentially on an ongoing basis) for those using Time Limited identification are two examples of additional work that is introduced by this legislation. Agents will have to understand the implications of additional occupiers being introduced to the property as prior to Right to Rent checks being rolled out only named tenants have required referencing.

Familiarity and legibility of the full range of accepted ID documents will be a significant concern for agents in Wales as it has been for agents in England. ARLA PropertyMark have repeatedly called on the UK Government for improvements in the 'Right to Rent Document Checks: A user guide.' The guide needs better visual examples, there are too many repeated stock images and these should be replaced with images of genuine redacted documents. There are also issues with the legibility of visa dates where visas show too many stamps on a page and the Time-Limit period has become unrecognisable. The information for List B on Page 26 of the 'Right to Rent document checks: user guide' does not state what to do if stamps are unrecognisable.

¹ <http://www.arla.co.uk/media/1045722/immigration-act-2016-phase-3-response.pdf>

Furthermore, ARLA Propertymark has concerns about the impact in Wales on landlords and agents dealing with large numbers of international students. We have called on the Home Office to engage with the Education sector, specifically universities, in order to make Right to Rent checks less arduous for landlords and agents providing accommodation to international students in the country on a Time Limited basis. Currently, international students have to be checked when they organise accommodation (frequently a full year in advance) and then to comply with the Code another check must be done within 28 days before the student moves in. Agents who deal with a lot of student lets cannot practically accommodate repeating face to face checks at volume within a condensed period of 28 days. This is because of volumes of lettings happening simultaneously. A letter provided from an institution listed on the "Register of Licensed sponsors: students" confirming the student's status would corroborate the first check carried out by the landlord or agent and negate the need for a second check. A system like this would be comparable with letters provided on behalf of US Air Force personnel.

These are issues that the Welsh Government need to take into consideration before preventing letting agents from charging for reference checks, including Right to Rent checks that they will soon be legally required to carry out.

5. Some agents may charge a refundable holding deposit to take the property off the market whilst reference checks are undertaken. Do you think this is a fair charge? Please explain your answer:

Yes, we do think that a refundable holding deposit to take a property off the market whilst reference checks are undertaken is a fair charge and should be exempt from the ban. Without such an exemption the result would likely be chaos in the market as tenants make offers on multiple properties and then choose which property to take after significant work has already been undertaken by letting agents.

In addition, we would highlight that when using the term holding deposit it is important that the legislation which the Welsh Government introduce clearly states that any monies paid as a holding deposit should not be construed as monies requiring protection under the tenancy deposit protection regulations contained within Part Six, Chapter Four of the Housing Act 2004.

If a holding deposit requires protection, this will create significant administrative burdens for agents and could result in situations where tenants who have failed to uphold their side of the agreement and had their holding deposit forfeited take disputes to the tenancy deposit protection schemes.

The legislation needs to be very explicit on this point as there have been examples in the past where judicial precedent has reversed the spirit of legislation and we are concerned that subsequent case law may determine that agents have to protect these holding deposits. Most notably *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669 which resulted in the Government having to correct the Judgment through primary legislation in the Deregulation Act 2015.

We also believe that holding deposits should be forfeited if the applicant has failed to uphold their side of the agreement to let, for example by providing false documentation or withdrawing from the tenancy; this is a key safeguard for agents.

Furthermore, to ensure that there is a commitment from the tenant, we recommend that holding deposits should be capped and set at a level where they act as a meaningful deterrent to tenants making offers on multiple properties. We believe the holding deposit should be the value of two weeks rent. This is for two reasons:

Firstly, any arbitrary financial cap (£200 for example) stipulated in legislation will not change with inflation and therefore, what might be a reasonable cap today is unlikely to stand the test of time and will become entirely ineffective in achieving its aims as the economy grows. An example of where such an arbitrary figure did not work was the Rent a Room allowance which, when set at £4,250 in 1992, was entirely reasonable but this arbitrary figure, written into legislation, did not keep pace with inflation and therefore required additional legislation to bring it in line with its original policy intent; increasing by over 75% to £7,500 on 6 April 2016. Having a cap based on weekly rent levels will always maintain pace with house prices, rent levels and inflation and thus not require either future-proofing or additional legislative intervention in the future.

Secondly, an arbitrary cap does not take into account the regional variances in rent levels. With the April 2017 Local Housing Allowance (LHA) rate for a two-bedroom flat in Cardiff Broad Rental Market Area (BRMA) standing at £126.92 per week or £551.50 per calendar month, an arbitrary cap of £200 for example is the equivalent of 11 days rent.

This is in contrast to the Valleys where the LHA rate is £86.30 per week or £374.99 per calendar month for an equivalent property in the Taff Rhondda BRMA; thus making an arbitrary £200 cap equivalent to 16 days rent. Placing an arbitrary figure as a cap will therefore either be so high as to unfairly penalise tenants in lower-income parts of Wales or so low that it will fail to achieve its stated aims in areas with higher rent levels.²

² <http://gov.wales/topics/housing-and-regeneration/welfare-reform/rentofficers/publications/local-housing-allowance-2017/?lang=en>

We also think that holding deposits will be refunded in the case of landlords or agents failing to proceed with the tenancy. This produces a natural balance between the rights of tenants and landlords. However, we would ask that agents can retain a small part of the holding deposit from the tenant(s) who proceed with the tenancy to cover the cost of their referencing.

6. Some agents may charge for in-tenancy property management actions that directly relate to an action or service carried out at the request of the tenant, or as a result of the tenant's actions (such as out-of-hours contact, or replacing lost keys). Do you feel that such charges are fair? Please explain your answer:

We do think that agents charging for in-tenancy property management actions that directly relate to an action or service carried out at the request of the tenant, or as a result of the tenant's actions, are fair and should be excluded from the ban.

This should include when a tenant wants to leave their tenancy early (Surrender the Tenancy) or where there is a change of tenant / sharer. A significant amount of time and resources is involved in either a Surrender of Tenancy or change of tenant / sharers. New tenants have to be found and referenced, including Right to Rent checks carried out, as well as a new inventory has to be prepared and a new tenancy agreement signed.

Such a situation will only ever occur at the request of the tenant or due to the tenant's actions. It will never be instigated by either a landlord or letting agent and therefore, we would argue that these should be included within this exemption.

In relation to replacing lost keys the Welsh Government need to clarify what agents can charge for. For instance, it should be for the replacement of the keys plus the time taken to resolve the matter.

7. Agents may occasionally provide bespoke, non-standard services to tenants, for example, when arranging a property for someone currently living abroad who is relocating to Wales. Do you think there are parts of the market where a different approach to handling letting agents' fees may be allowable?

Most agents offer a property-finding service to tenants with services includes sourcing suitable properties, undertaking initial property viewings and negotiating the contract with the landlord or letting agent on the tenant's behalf.

Often known as relocation agents, they are used throughout the market but particularly at the top end of the market. Such services are often used by senior executives where their time is at a premium and they are happy to pay for a service which takes the hassle out of finding a new home, possibly in a new country. People in the public eye also

often use such services as they provide a level of privacy during the property search as their identity is not revealed until contract signing.

Therefore, ARLA Propertymark would argue that as these services are only provided at a tenant's request and the agent only acts on the tenant's behalf, they should fall outside the definition of tenant fees. Should such services not be excluded from the ban, the Welsh Government would be banning the entire relocation industry.

8. What do you think the main impacts of a ban on charging fees to tenants might be? Please include any unintended consequences that you believe may arise:

We think that there are three main impacts that a ban on charging fees to tenants would have. These are that firstly, rent prices will increase, secondly the quality of properties will decline and finally, staff numbers will reduce.

If fees to tenants are banned outright landlords are likely to pass on higher agents' fees to tenants in the form of higher rent. An outright ban on fees is also unlikely to result in tenants being asked for less money at the start of the tenancy. If rents increase as a result of the ban, the subsequent costs associated with providing the first month's rent and deposit will likely result in broadly the same figure as the deposit, rent and fees do at present: To use an analogy, the pie will remain the same – it will merely be sliced differently.

The quality of properties will decline because private landlords are an important source of investment in housing stock and a worsening of their financial position will likely result in less investment. The recent raft of legislative changes mean that many landlords are feeling the squeeze with higher taxes and increased compliance costs. This means that their only way to offset increased taxation and compliance costs that landlords incur through increased legislation is likely to be passed on through rent rises.

Furthermore, some would-be landlords are likely to be put off by the increased costs that may be demanded by letting agents, and together with the withdrawal of mortgage interest rate relief and additional stamp duty, this will likely reduce the number of new entrants. As a result this will also put upward pressure on rents.

The cost of running a letting agency – an office, staff, travel expenses, advertising properties and administration costs all mount up. Fees charged to tenants generate around £700 million per year or approximately 20% of the industry's turnover. Our research with Capital Economics shows that the impact of a ban on revenue from residential lettings activity will be a reduction of around one fifth. In turn, this will

have an impact on employment levels as letting agents will need to cut costs to maintain business viability.³

42% of ARLA Propertymark members in England and Wales think that a ban on letting agent's fees to tenants will mean staff numbers will reduce in the medium to long term.⁴ We are concerned that some letting agents may not be able to absorb the loss of income from tenant fees and will close. Others will have to cut staff and costs.

Total turnover in the residential lettings sector in England and Wales is around £4 billion and it employs around 58,000 workers. Official statistics show that real estate activities (both sales and lettings) in England and Wales provided employment for 241,000 people in 2015 (6,500 in Wales, 19,000 in the South West and 19,000 in the North West).

Furthermore, estate agents who provide lettings within the wider housing market will be impacted. For every job lost in the lettings sector we can assume that 0.5 jobs will be lost in other activities these agencies undertake because of their impact on profit margins. It will also result in the reduction of new roles being created in the industry as it will reduce the ability for small businesses to grow, train their existing staff and take on properly-trained apprentices who will become the next generation of professional, qualified letting agents.

Please answer the section(s) relevant to you:

Tenants

9. Have you ever been charged fees before entering into a tenancy agreement? If yes, please detail your most recent pre-tenancy charges, and if possible a breakdown of the charges, here:

N/A

10. Have you ever been charged fees during a tenancy, or for renewal of a tenancy agreement? If yes, please detail the most recent amounts charged to you during the tenancy or renewal of the tenancy, and if possible, a breakdown of the amounts, here:

N/A

³ <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

⁴ <http://www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf>

11. Have you ever been charged fees after a tenancy has ended? If yes, please enter the most recent amounts charged to you after a tenancy has ended, and what the charges were for here:

N/A

12. Were any fees made clear to you before any agreement had taken place? If so, how?

N/A

13. Have tenancy fees ever affected:

- a. your ability to move to a new rented property?
- b. your decision to use an agent?
- c. your overall finances?

N/A

Letting agents

14. What fees do you charge to tenants? Please detail, with a breakdown of services provided for the charges below:

In December 2016, ARLA Propertymark surveyed its members asking what services they charge tenants for, what work is involved and how many hours it took to complete the tasks. 1,008 agencies responded and the report highlighted that on average it took:

a. Eight hours to fully conduct references, credit searches and Right to Rent checks. Agents indicated that collecting references was one of the most time consuming parts of their job, with them needing to chase prospective tenants and referees over several weeks. Many agents use an external credit checking company and therefore the completion time is dependent upon the third party company.

b. Five hours to finalise tenancy agreements. Agents stated that drafting the agreement and chasing the tenant's and landlord's signature was the most time consuming aspect.

c. Six hours to conduct full inventory checks. Agents indicated that chasing tenants for a signed copy of the inventory report was one of the most time consuming aspects of undertaking inventory checks.

d. Five hours to complete checking in/out procedures. Agents stated that adding/removing a tenant before the end of the tenancy was particularly time consuming, as it required the agreement to be redrafted and new references to be collected.

e. Eight hours to undertake their administrative work. Agents suggested that preparing, processing and distributing paperwork was the most time consuming aspect.

f. Four hours to complete amendments, six hours for dealing with deposits and eight hours for viewings (although the report notes that these services are, on average, conducted less often).

The report also demonstrates that making adjustments to tenancy agreements is very time consuming, with the need to get both the landlord and the tenant to agree upon any changes.

In addition to the research we undertook with members, we also commissioned an economic impact of the letting fees ban from leading research consultancy, Capital Economics, which highlighted that there are a number of estimates of the average fees charged by letting agents to tenants:

a. ARLA Propertymark finds that the average fee charged by its members is £202 per tenant.

b. The Department for Communities and Local Government estimates that the mean fee paid by tenants on entering their accommodation was £223 in 2014-15 and the median fee was £200. This included a non-returnable fee for finding the property, a fee for references, contracts and inventories (administration fee), a holding fee to ensure no-one else viewed or rented the property and/or a returnable version of the last fee as well as 'other' fees.

c. Shelter argues average fees are higher and that one in seven tenants have been charged more than £500.

d. Meanwhile, www.lettingfees.co.uk, a site operated by Generation Rent, which looks at fees quoted by 902 letting agents across the United Kingdom on their website finds that for a simple contract for two tenants, average fees total £412 or £206 per person.

Capital Economics used this estimate of average fees in their analysis as it is the one based on the widest sample across the market.

The analysis also looked at international comparisons where it found that letting fees in England are lower than in many other developed economies. For example, in France, fees are capped at €12 per square metre which equates to approximately €480 or £416 for a 40 square metre Parisian apartment while in the USA tenant fees are generally one-months' rent; an average of \$1,404 or £1,132.

In addition, fees paid by tenants to arrange a tenancy are lower than those spent on buying a house. Capital Economics note that average fees in the rental sector are just under 3% of the tenant's total annual

rent. This is lower than the 3.7% in fees due by buyers compared with their annual mortgage payments.

Further, the analysis also states that when looking at other industries we find similar fees to those charged in the lettings sector. For example, car sales companies offer a myriad of services which, similar to those in the letting industry, make purchasing the item simpler for the client. Car dealers charge administrative fees for paperwork, transferring ownership of the car if the car was pre-owned, or, if the car is brand new, for paperwork related to its registration. Airlines also charge fees for services such as changes on the name of a ticket if this was originally misspelt. This is akin to fees for changing the names on a tenancy agreement within the context of lettings.

Finally, the analysis highlights that as rents will increase by less than the average tenant fees this will be positive for tenants. However, those that move property less often will not reap the same benefits in savings. Typically, these are likely to be lower income families who will probably move less often than younger, wealthier millennials. For savings to accrue to tenants from the change in policy they would need to move as often as every two-and-a-half to three years.

15. What fees do you charge to landlords? Please detail, with a breakdown of services provided for the charges below:

ARLA Propertymark has not surveyed its members on the fees they charge to landlords. Therefore, we are unable provide any empirical or anecdotal evidence in response to this question. However, we run monthly member surveys and therefore, should the Welsh Government wish to gain such data from our members, we would be happy to include mutually agreed questions in any monthly survey.

16. Do you make use of third parties as part of your activities who charge fees to tenants or landlords. If so, please detail, with a breakdown of services provided for the charges below:

In addition to the answer we gave in response to Question 14, on average it takes agents eight hours to fully conduct credit and Right to Rent checks. This includes collecting employment information, liaising with the tenant's previous landlord, checking passport or other Visa documents and checking credit history. Many agents, use an external credit checking company and completion time is dependent upon the third party company. Should the Welsh Government wish to gain further information about the use of third parties, we would be happy to include mutually agreed questions in any of our monthly surveys.

17. How do you make information about fees chargeable at any point in the tenancy, or after the tenancy, available to any tenants or landlords?

Since 23 November 2015 all letting agents in Wales must publicise their fees. Letting agents must openly display a list of all fees, charges or penalties which may be incurred by a landlord or tenant. Fees should be displayed including Value Added Tax (VAT). Agents must display fees at each of their premises and on their websites. To assist our members ARLA Propertymark has produced a fees template and got Primary Authority advice on how to display fees in their offices.⁵

18. What would be the impact of a ban on these fees?

In addition to the information we have provided in response to Question Eight, Capital Economics' analysis of the impact of the ban on fees indicates that the most plausible outcome for the market is that letting agents across England and Wales stand to lose £200 million in turnover, landlords will lose £300 million in income and tenants will pay an increased rent of £103 per year.

Importantly, Capital Economics conclude that as rents will increase by less than the average tenant fees, those tenants who move more frequently will enjoy savings on overall costs but those who don't move so often, which are likely to be lower-income families, will see a loss. For tenants to make a saving from this policy, they would have to stay in their home for less than two and a half years.

In relation to Welfare Support, tenant fees are not currently covered under the Local Housing Allowance (LHA) or housing element of Universal Credit. If rents do increase as a result of an outright ban, this will in turn increase the LHA rates requiring an increase in the Housing Benefit budget.

An outright ban on letting fees will likely mean that letting agents become unable to continue offering a full service to tenants; particularly Local Housing Allowance tenants who often require the assistance of their agent to fill in increasingly complex benefit applications.

If agents withdraw the services they currently provide, the Department for Work and Pensions will likely see an increase in the number of failed Housing Benefit and Universal Credit applications because tenants have been unable to complete the forms on their own. Exempting referencing, as we suggest in response to Question Four, should effectively mitigate against this eventuality as letting agents will be able to retain current service levels to tenants.

⁵ <http://www.arla.co.uk/news/november-2015/primary-authority-guidance-on-how-to-publicise-fees/>

It is also important that the UK and Welsh Government's recognise that Value Added Tax (VAT) is currently charged on letting fees. Capital Economics estimate that the sector provides the Exchequer with annual tax revenues of around £1 billion, from VAT, business rates and employee taxes. Therefore, banning letting fees outright will result in a significant loss of income to the Exchequer.

Landlords

19. What fees, if any, do you charge to tenants? Please detail, with a breakdown of services provided for the charges below:

N/A

20. How do you make information about fees chargeable at any point in the tenancy, or after the tenancy, available to any potential tenants or tenants?

N/A

21. What would be the impact of a ban on these charges?

N/A

22. What fees does your agent (if you use one) charge you for letting or management services, in addition to commission charged?

N/A

23. Do you know how much your agent (if you use one) charges to your tenants in letting fees?

N/A

24. How does your agent make information about fees chargeable before, during or after the tenancy, available to any potential tenants or tenants?

N/A

25. If you use an agent who charges you fees, were these fees made clear to you before any agreement had taken place, and if so, how?

N/A

26. Would increased letting agent fees affect your decision to use an agent in the future? Please include reasons:

N/A

27. Do you or your agent make use of third parties as part of your activities who charge fees to tenants or landlords? If so, please detail, with a breakdown of services provided for the charges below:

N/A

Further questions

28. We would like to know your views on the effects that banning fees charged to tenants would have on the Welsh language, specifically on:

- i. opportunities for people to use Welsh and
- ii. on treating the Welsh language no less favorably than English.

Letting agents need to cut costs so will be unwilling to go to additional expense of making everything bi-lingual. Therefore banning fees charged to tenants will have a negative impact of the Welsh language as agents will only deal in English.

29. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Banning fees will have a negative consequence unless the Welsh Government provides a free translation service.

30. Please also explain how you believe the banning of fees charged to tenants could be formulated or changed so as to have

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language.

See responses to the two previous questions.

31. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

We believe that enforcement of any ban on fees will be an issue. Trading Standards departments are the logical enforcing body, but they need to be adequately resourced. Unless specific funding is set aside

for the sole purpose of enforcing any new laws, then we expect the same lack of effective enforcement on a ban on letting fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015. This will result in professional agencies complying with the ban and rogue operators continuing to charge fees with impunity; thus creating a two-tier market. In addition, we recommend that whichever prosecuting authority becomes the statutory enforcement body, any fines imposed must be returned to that body and ring-fenced for further enforcement activities.

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: