

House of Commons Public Bill Committee
Views on the Tenant Fees Bill
Written evidence submitted by ARLA Propertymark
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Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. 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.

Executive summary

- Holding Deposits should remain permitted payments under the ban and capped at one week.
- Security deposits should remain capped at six weeks rent.
- Default fees constitute a legitimate cost to businesses and should remain permitted payments.
- Fees charged for a surrender of tenancy or change of sharer when the tenant has requested it must remain permitted payments under the Bill.
- The Government must ensure that once agents have provided the relevant information to the property portals it will be the legal responsibility of the portals to ensure that the fees are showing correctly.
- Mandatory Client Money Protection (CMP) should be introduced before the ban on fees to stop letting agents misappropriating rents and deposits if they start going out of business because of the ban.

Overview

3. The private rented sector is now the largest housing tenure outside of owner-occupation, accounting for 4.7 million households (or 20%) in 2016-17.¹ It is set to grow and with an increasing number of families and longer-term tenants. The professional services that letting agents provide will become even more important as a growing percentage of the population, from increasingly diverse demographics, rent their homes within an ever more complex legislative framework. Up to June 2015, there were 145 laws with over 400 regulations that

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705821/2016-17_EHS_Headline_Report.pdf

landlords need to abide by to legally let a property in England and Wales.² However, after successive Governments have effectively focused on increasing property standards for those living in the private rented sector, policies such as this ban could see the good work of the last two decades undermined as landlords struggle, with some failing, to make ends meet. The result will be a reduction in property conditions and an increase in poor management practices with the use of the professional services provided by letting agents reserved for only those who can afford it; leaving the most vulnerable tenants in the hands of inexperienced and/or unscrupulous landlords and agents.

4. The average fee charged by ARLA Propertymark agents is £202 per tenant,³ which we think is fair, reasonable and far from exploitative for the service tenants receive. Our research shows that letting agents spend over eight hours on credit checks; over seven hours spent on application and set-up; nearly eight hours spent on viewings and references as separate tasks; seven and half hours spent on administration.⁴

General comments

5. A ban will not make the market fairer for tenants - If letting agents leave the sector, landlords will likely be unaware of new (and existing) legal requirements, potentially causing widespread non-compliance and putting tenants in danger. This will likely cause added pressure on local authorities as tenants look for assistance.
6. A ban will not make the sector more competitive - Banning fees will reduce competition in the market by driving some agents out of business. Those agents that remain in the sector will become more selective about the tenants they choose.⁵
7. A ban will not bring clarity and control to tenants and the sector because existing laws are not being enforced. Unless specific funding is set aside for the sole purpose of enforcing these new laws, we will see the same lack of effective enforcement of the ban on tenant fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015.

Views on the aims of the Bill

The Tenant Fees Bill makes provision to prohibit landlords and letting agents from requiring certain payments to be made

² http://www.propertychecklists.co.uk/downloads/20170508_1

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>

⁵ ARLA Propertymark has surveyed letting agents to ask what the impact of a ban on fees would be: 90% think that the ban will lead to a rise in rents; 60% think that the quality of properties will decline; 40% think it will result in a fall in employment in the medium to long term.

8. ARLA Propertymark does not believe that the provisions of the Tenant Fees Bill will enable any of the Government's objectives to be delivered. A ban on letting agent fees will have a profoundly negative impact on the rental market and not deliver either a fairer, or a more competitive, or a more affordable lettings market and will not give tenants greater clarity and control over what they will pay. Currently, tenants know and understand what they are committing to at the start of the tenancy. A ban will reduce the services that letting agents provide and cost the sector jobs. It will make buy-to-let investment even less attractive and ultimately result in the extra costs borne by landlords being passed on to tenants.

9. The Bill will not make the market fairer for tenants. If less-professional and part-time landlords turn away from agents due to increasing costs, they will likely be unaware of new (and existing) legal requirements, causing widespread non-compliance and putting tenants in danger. This could well result in more tenants having to seek assistance from their local authority. In the current fiscal climate, many local authorities are dispensing with their Tenancy Relations Officers and their Housing, Environmental Health and Trading Standards teams, which are already over-stretched and under resourced, will struggle to enforce the laws. This will leave tenants, particularly vulnerable tenants, living in substandard conditions with nowhere to turn.

10. The Government has provided no evidence to support their view that a ban on fees will make the private rented sector more competitive. We fundamentally believe that the Government is misguided in its approach for two reasons. Firstly, banning fees will reduce competition in the market by driving some agents out of business. Smaller agents will struggle, their turnover will decline, and some will either be driven out of business or taken over by larger agencies; creating corporate monopolies rather than increasing competition in the sector. Secondly, those agents that remain in the sector will become more selective about the tenants they choose. As the ban shifts the focus of the agent from the tenant to the landlord this will lead to agents selecting the best tenant for the landlord; ultimately leading to some tenants finding it almost impossible to find property to rent.

11. The ban will not make the sector more affordable to tenants. Fees charged by letting agents represent legitimate business costs that need to be covered. As a result of a ban these costs will be passed on to landlords, who will need to recoup the costs elsewhere; inevitably through higher rents. The Ministry of Housing, Communities and Local Government estimates that the mean fee paid by tenants on entering their accommodation was £223 in 2014-15.⁶ Independent research commissioned by ARLA Propertymark and carried out by Capital Economics predicts that because of a full ban on fees, tenants will pay an increased rent of £103 per year.⁷ Their analysis shows that as rents will increase by less than the average tenant

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/704295/Tenant_Fees_Bill_Impact_Assessment.pdf

⁷ <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

fees, those tenants who move more frequently will enjoy savings on overall costs. 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. Consequently, those tenants in long term tenancies will end up worse off. Rather than creating a system which is more affordable and encourages long-term tenancies, the proposed ban will financially disadvantage tenants unless they move on a regular basis.

12. The Government's approach will not bring clarity and control to tenants and the sector because current laws are not being enforced. Letting agent fees should be open, transparent and reasonable. No review has taken place and we are very disappointed that no action was taken after the Parliamentary Under Secretary of State for Communities and Local Government stated in the House of Commons on 3 May 2016, "when the requirement on letting agents to publicise fees was introduced in October 2015, we said we would review how well the scheme was working after 12 months."⁸ Furthermore, the Minister added, "The review will be carried out later this year. In the meantime, the Government's position is that a ban or cap on letting agent fees would be disproportionate, probably pushing up rents without benefiting either landlords or tenants."⁹ Instead of working with the industry and looking at the evidence, the Government announced unexpectedly that it would ban letting agent fees to tenants at the Autumn Statement on 23 November 2016. Under the Consumer Rights Act all letting agents in England must openly display a list of all fees, charges or penalties which may be incurred by a landlord or tenant.¹⁰ However, there has been very little enforcement of these rules meaning that tenants and landlords are not getting the control and clarity they need to make informed decisions. Rather than pressing ahead with plans for more legislation in the sector to ban letting agent fees, the Government could provide greater control and clarity by using the powers they already have to improve transparency and introduce tougher penalties for agents found to be breaching the law.

The Tenant Fees Bill makes provision to cap Holding Deposits and Tenancy Deposits

13. The Holding Deposit, Tenancy Deposit and obligation to pay default fees must be set at a level that ensures that tenants have a meaningful stake in paying the rent and maintaining the condition of the property. Where they are not set at an appropriate level, landlords and letting agents will inevitably have to work out how to manage the risk involved and recover the difference in costs. Furthermore, where the tenant has requested it Surrender of Tenancy or change of sharer should remain permitted payments.

⁸ The requirement for letting agents to display fees was introduced on 27 May 2015.

⁹ <https://hansard.parliament.uk/Commons/2016-05-03/debates/1605041000002/LettingAgentFeesAndDepositsPrivateRentedSector>

¹⁰ <http://www.arla.co.uk/news/april-2015/consumer-rights-act-2015-publicising-fees/>

14. Holding Deposits should remain permitted payments under the ban and capped at one week. Without this, the result would likely be problems 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. If Holding Deposits are overly restricted, then landlords will respond by refusing to take any property off the market and allow tenants to bid for them and to outbid one another in the same manner as happens in property purchases.
15. Arbitrary caps on Tenancy Deposits will negatively impact lower income tenants. The sector is made up of regional housing markets and deposit levels are different in different areas. The aim of the refundable deposit is to mitigate the risk of a tenant failing to comply with the terms of their tenancy; either by not paying rent or by damaging the property, its fixtures or furnishings. Capping Tenancy Deposits will leave landlords with no ability to mitigate the risks associated with higher risk tenant groups and will inevitably mean that such tenants will either be charged a higher rent (money which, unlike a larger deposit, they will not recover at the end of the tenancy) or that landlords will decline to let to them altogether. Furthermore, it is common for a larger Tenancy Deposit to be taken (usually an extra two weeks rent) to mitigate the additional risk of damage to a property from pets. Capping Tenancy Deposits under the Bill means that this will no longer be an option and many landlords and agents will become unwilling to take tenants with pets.
16. Default fees represent legitimate costs for tenant breaches. Due to existing legislation¹¹ these fees are not and cannot be abused. Default fees are important because, if, for example a tenant locks themselves out at two o'clock in the morning the agent will charge them a fee to come and let them in. That is a reasonable charge if somebody must get out of bed at two o'clock in the morning, drive to the office, pick up the keys, drive to the property, let the tenant in, drive back to the office, drop the keys off, drive back home and go to bed. If default fees are not allowed, the agent is unlikely to provide an out of hours service and the tenant will be left having to find somewhere to sleep for the night.
17. Letting agents should be able to charge tenants for dealing with changes of sharer / tenant or where a tenant wants to leave their tenancy early (Surrender of Tenancy). This is a breach of their tenancy agreement and almost every service provider (e.g. mobile phone contracts) comes with a default payment for early termination. By enshrining this into law it will give agents ultimate certainty and not create a "PPI" moment for the industry. Furthermore, a significant amount of time and resources is involved by agents in either a Surrender of Tenancy or change of tenant / sharer as effectively both the entire tenancy end and tenancy start processes need to be undertaken. 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 should remain a permitted payment under the Bill. Additionally, if they

¹¹ Unfair Contract Terms Act 1977; Unfair Terms in Consumer Contracts Regulations 1999; Consumer Protection from Unfair Trading Regulations 2008; The Consumer Protection (Amendment) Regulations 2014; Part 2 of the Consumer Rights Act 2015

are not classed as a permitted payment we are concerned that this service may not be provided at all, restricting tenants ability to move and reducing choice.

To make provision about enforcement and about the lead enforcement authority

18. We agree that enforcement of the ban on fees should be primarily carried out at Trading Standards. By enforcing the ban through Trading Standards this would mean that enforcement responsibility is in line with other lettings law. However, Trading Standards need to be adequately resourced to ensure that the new requirements are complied with by the whole market and all consumers are protected. Unless specific funding is set aside for the sole purpose of enforcing these new laws, then we expect the same lack of effective enforcement on the ban on lettings 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 where professional landlords and agents will comply, and the criminal element will continue operating under the radar.

To amend the provisions of the Consumer Rights Act 2015 about information to be provided by letting agents and the provisions of the Housing and Planning Act 2016 about client money protection schemes

19. It is sensible that the Tenant Fees Bill extends the requirement for agents to display the name of their Client Money Protection (CMP) scheme as well as all fees, charges and penalties under the Consumer Rights Act on property portals and any third-party websites or provide a link to those details on the agent's own website and in their office. To guarantee that these provisions are enacted properly the Government must ensure two things. Firstly, that the portals and third-party websites are responsible for displaying information correctly once agents have provided it to them. Secondly, mandatory CMP should come into force before the fee ban to prevent agents misappropriating rents and deposits if they start going out of business because of the ban.
20. Most tenants now search for rental accommodation by using the portals and will not visit the letting agent's own website or go into a branch until later in their property search. However, the Government must ensure that once agents have provided the relevant information to the portals it will be the legal responsibility of the portals to ensure that the fees are showing correctly. Agents pay to advertise on portals and by ensuring that liability is with them it will guarantee that every agent provides this information in a unified way; reducing the risk of agents opting out from using some portals and not others. It is also very difficult to display fees if properties are being advertised on third party websites like Twitter that require users to provide information in 280 characters or less.

21. We have long believed that all letting agents should belong to a CMP scheme because the many agents who do not sign up represent a greater risk to landlords and tenants.¹² Furthermore, the reputation of the sector is undermined by the small minority of bad agents who steal from their clients and from tenants. Under the Tenant Fees Bill, the Holding Deposit will be client funds until it is either forfeited or is returned as part of either the Tenancy Deposit or first month's rent. Therefore, any agent taking a holding deposit after the ban comes into force will be handling client funds. Consequently, it is imperative that CMP comes into force before the fee ban to ensure that consumers have a route to compensation should an agent go out of business or misappropriate client funds.

¹² <http://www.arla.co.uk/lobbying/client-money-protection/>