

## Consultation Response Form

Your name: Emily Carter

Organisation (if applicable): ARLA Propertymark

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**Question 1:** Are you a:

Tenant	<input type="checkbox"/>
Landlord	<input type="checkbox"/>
Letting / Management Agent	<input type="checkbox"/>
Representative Body	<input checked="" type="checkbox"/>
Local Authority	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>

## **Default Payments**

**Question 2:** If you are a **tenant**, which of the following breaches of contract **have you been charged for in the past** or are you aware could **currently** be charged under your tenancy agreement? Please also state how much you were/could be charged.

Please skip if not a tenant or tenant representative

<b>Default reason</b>	<b>Have been charged / could be charged</b>	<b>Amount £</b>
Lost / replacement keys (including key cards etc.)		
Late rent		
Emergency / out-of-hours call-out		
Repairs arising from damage by the tenant		
Missed appointment		
Bounced cheque		
Other (please specify)		

**Question 3:** If you are a **landlord or agent** please state which of the following fees you **currently charge, or reserve the right to charge for**, when a tenant breaches under your tenancy agreement. Please also state your charge in each instance.

Please skip this question if not a landlord, agent or representative body.

<b>Default reason</b>	<b>Currently charge / reserve right to charge</b>	<b>Amount £</b>
Lost / replacement keys (including key cards etc.)	✓	
Late rent	✓	
Emergency / out-of-hours call-out	✓	
Repairs arising from damage by the tenant	✓	
Missed appointment	✓	
Bounced cheque	✓	
<b>Other (please specify)</b>		
Surrender of Tenancy	✓	
Novation and Assignment of Tenancy (Change of Sharer)	✓	

Variation of Tenancy	✓	
Contractual Damages	✓	
<b>Comments</b> We do not hold data on the average charges for the above default reasons. This is because ARLA PropertyMark represents hundreds of letting agents in Wales, and the fee charged often depends on circumstances. For example, a lost key may amount to locks needing to be changed and multiple keys being cut which costs significantly more than just having one key cut.		

**Question 4:** What additional payments, if any, do you think tenants **should make** if they breach their tenancy agreement in the future? (Choose all that apply)

<b>Default reason</b>	
Lost / replacement keys (including key cards etc.)	✓
Late rent	✓
Bounced cheque	✓
Repairs arising from damage by the tenant	✓
Missed appointment	✓
Emergency / out-of-hours call-out	✓
<b>Other (please specify)</b>	
Surrender of Tenancy	✓
Novation and Assignment of Tenancy (Change of Sharer)	✓
Variation of Tenancy	✓
Contractual Damages	✓
<b>Comments</b>	
<u>Lost / replacement keys</u> Lost or replacement keys and other respective security devices must be included as a default payment. This is because, the loss has arisen from a fault of the tenant. The Welsh Government will need to take consideration where keys need replacing in Houses in Multiple Occupation (HMOs). In these instances, where locks need changing due to a loss of keys, this will mean that keys will need replacing for all occupiers. The cost incurred to do this must be reflected in the legislation and not limited to the cost of the loss of one key. Furthermore, replacement of locks should be encompassed within this default fee, as a lock replacement and locksmith costs substantially more than having one key cut. We also believe that consideration must be made for the price differentiations where the lost/replacement key is a key card or fob. The process of replacing key cards and fobs is often less straightforward than replacing a key. Conclusively, this default fee must reflect the reasonable costs incurred to replace keys and security devices.	
<u>Late rent / Bounced cheque</u> Fees for late payment of rent and bounced transactions (including cheques and standing orders) must be included as a default payment. This is because tenants are required to make these payments and failing to do so is breaching the contract between the tenant and either the landlord or agent. Including these instances as a	

default fee reflects other areas of business. For example, a failed payment with TalkTalk incurs a £12.50 administration fee.<sup>1</sup> Barclays charges an Unpaid Transaction Fee of £8 per day where money is not available to cover a charge.<sup>2</sup> We believe that instead of stipulating a 'bounced cheque' as a default fee, the Welsh Government should instead state 'bounced transaction.' This is because cheques are rarely used to pay for goods and services in 2019, and letting agents are more likely to have issues with a failed electronic payment, Standing Order or Direct Debit. Letting agents and landlords will have to dedicate time to chase late and failed payments, therefore, charges for bounced transactions should be set at a static fee outlined in regulations plus an administration fee. We discuss payment for late rent fees in more detail in our response to Q6c.

#### Repairs arising from damage by the tenant

Repairs arising from damage by the tenant must be an allowable fee. This is because, the damage has been a result of the tenant's actions. Furthermore, where the repair is needed due to the tenant not behaving in a 'tenant-like manner', this is a breach of the tenant's contractual agreement. Certain issues would need to be addressed immediately. For example, it is the landlord's responsibility to ensure that the tenant has basic amenities. If the tenant blocked a toilet due to flushing nappies down it, although it is the tenant's fault the landlord would be required to get this fixed. For this reason, where a tenant has caused damage to the landlord's property, they should be liable for the reasonable costs incurred at the time when it is occurred to put the landlord back in the position they would have been if the tenant had not breached their contractual duty. Furthermore, these situations cost agents significant amounts of time to rectify and therefore, agents should be permitted to charge a reasonable administration fee for their work.

#### Missed appointment

Missed contractual appointments must incur a default fee, where the appointment is a requirement of the tenancy agreement. This is because, tenants are given notice of appointments (at least 24 hours) and they must be mutually agreed at a reasonable time. Being aware of the appointment and purposely not attending or blocking access would be a breach of contract. An example of a contractual appointment would be a Gas Safe Engineer conducting the annual gas safety check. Where a third-party is involved, the letting agent or landlord is likely to be charged a fee for the contractor's attendance even though the appointment did not occur. For this reason, the agent or landlord should be able to charge the tenant the actual fees incurred for not abiding by the terms of their tenancy agreement to attend appointments.

#### Emergency / out of hours call-out

Emergency or out of hours call-outs must be included as a default fee. We are concerned that if this isn't included as an allowable charge, this service will not be offered which will come at a disadvantage to the tenant. It is right that should an agent need to come and let a tenant back into their property after locking themselves out at an unsociable time outside of office hours that the tenant should incur a flat fee for this. We think that it is important that during an emergency and out of hours, agents can charge for their time to attend the property. It would be unreasonable to expect

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<sup>1</sup> <https://community.talktalk.co.uk/t5/Articles/Late-payments/ta-p/2263379>

<sup>2</sup> <https://www.barclays.co.uk/help/accounts/account-services/fees-charges/>

an agent or contractors to take time outside of their work hours to deal with issues caused by the tenant and for this not to come at a charge to the tenant.

### Surrender of Tenancy

A Surrender of Tenancy must be an allowable fee in the legislation where it has been instigated by the tenant who wishes to terminate their tenancy agreement early. This is a breach of their tenancy agreement, and as with other service providers (e.g. mobile phone contracts) it should come with a payment for early termination. By enshrining this into law it will give agents the certainty needed and will not create a “PPI moment” for the industry. A significant amount of time and resources are involved during the process of an early termination of tenancy, which is only ever done at the tenant’s request. Agents will need to remarket the property, source new prospective tenants, undertake reference checks, prepare a new inventory and sign new tenancy agreements. Our research shows that on average it takes an agent: Eight hours to fully conduct references and credit searches; Five hours to finalise tenancy agreements; and six hours to conduct full inventory checks.<sup>3</sup> For this reason, tenants should be liable for the rent remaining either in their tenancy, or up to the point when a new tenant takes over the agreement (whichever is soonest) plus tenancy set-up costs as outlined in the agent’s landlord fee schedule.

### Change of Sharer

A Change of Sharer must be an allowable fee under the regulations. Like a Surrender of Tenancy, a Change of Sharer occurs only at the tenant’s request, and should therefore incur a fee. Colloquially known as a ‘Change of Sharer’ an assignment or novation of tenancy involves an existing tenant leaving the tenancy agreement in place of another taking over the agreement or a new tenancy agreement being drafted to accommodate for the new tenant. As a break of the original tenant’s contract, a Change of Sharer involves as much work as a Surrender of Tenancy. The agent will be required to draft a new tenancy agreement, protect a new deposit, new guarantor agreements and reference the incoming tenant as well as undertake new inventories. Due to the work involved, if agents cannot charge for this, they will not offer this service. An unintended consequence of this is that there will be an increased risk of unauthorised tenant changeovers and illegal subletting. Therefore, the identity of the tenant may be difficult to determine. For this reason, a Change of Sharer must be included as a default payment and charged as a flat fee set in regulations.

### Variation of Tenancy

A Variation of Tenancy at the tenant’s request must be an allowable fee under the regulations. A Variation of Tenancy is where a tenant requests to make a change to their tenancy agreement once it has already been entered into. Examples of this are: permission to sublet, permission to operate a business from the property or permission to keep a pet in the property. At the request of the tenant, the tenancy agreement will have to be amended and the agent will need to negotiate with the landlord. Only once a variation is accepted with the landlord, a tenant should then be charged a flat fee set out in regulations for each agreed change to the tenancy agreement.

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<sup>3</sup> <https://www.arla.co.uk/media/1046238/fees-charged-to-tenants-in-the-private-rented-sector-wales-consultation-response-arla-property-mark.pdf>

Contractual Damages

The Welsh Government must include a contractual damages provision to put the landlord back in the position that they would have been had the tenant not breached the terms of their tenancy agreement. This covers all matters not expressly considered as a default reason. Claims for damages must be based on evidence where incurred costs to the landlord have arisen from the tenant breaking a term of their tenancy agreement. The charge should reflect the reasonable cost incurred by the landlord in order to remedy the issue.

**Question 5:** Where payments are required in the future, on what basis do you think it would be most reasonable to calculate the payments?

*If you think actual losses would be reasonable please provide your views on what information should be provided as evidence of the costs incurred.*

Actual losses for the landlord / agent	
Landlords agents should be able to set the charge	
Set limits for all payments (please state suggested charges)	
Set limits for certain payments (please list fees and charge)	
<b>Other (please state)</b>	
Actual losses plus an administration fee for most default fees	✓
<b>Comments</b> ARLA Propertymark would recommend that the Welsh Government considers the set limits used in similar legislation that affects England (Tenant Fees Act 2019) for default fees with a capped charge. Further consideration must be taken to ensure that where other reasonable costs occur exceeding the capped amount, agents and landlords should be able to charge for this where the additional cost can be evidenced. For the specified fees for which we think default charges should incur please refer to our response to Q3.  We would suggest that to evidence actual losses incurred, agents would need to provide receipts of cost, contractor invoices and timestamped correspondence. An example of this could be a copy of correspondence between the tenant and agent where they have been locked out of their property out of office hours.	

**Question 6a:** With regards to late rent specifically, if you are a **tenant**, please tell us how much you can or have been charged when rent is late and how many times you can or have been required to pay for a single instance of late rent in the period the rent was due.

It is not applicable for ARLA Propertymark to respond to this question.

**Question 6b:** If you are an **agent or landlord**, please tell us how much you charge for late rent, how this is calculated and how many times in a period the rent was due the charge can be made.

As a representative organisation for letting agents, ARLA Propertymark does not have an average figure for what our members in Wales charge as a late rent fee.

**Question 6c:** What in your opinion would be a fair and reasonable way to calculate and charge for late rent?

ARLA Propertymark believes that the Welsh Government should allow agents to charge interest on late rent payments at three per cent above the Bank of England Base Rate plus an administration fee. The interest should be charged daily from the date the rent was due and was not paid. Charging for late payment for a service is a standard across all forms of providers. For example, Vodafone charges a flat rate of £5 plus a daily interest rate.<sup>4</sup> Barclaycard charges a flat fee of £12 for a late payment.<sup>5</sup> EE charge £7.20 for each late payment, and when the bill has not been paid the service will be suspended until the outstanding amount has been settled.<sup>6</sup> If a tenant has failed to pay their rent, this service cannot be suspended, however, it would be reasonable for them to incur a fee where they have not kept to their contractual agreement to pay their rent in full and on time.

In addition to this, letting agents should have the ability to include an administration fee, as lenders do with late repayment of mortgages. This additional fee covers the administrative cost of supervising a tenant that has gone into arrears. This will involve corresponding with the tenant, drafting and sending letters, and providing guidance for tenants should they need social security help with housing costs. The fee should be reasonable and should reflect the actual cost incurred as a result of monitoring and actioning the tenancy arrears. This reflects measures in place to prohibit excessive and unfair charges for mortgage arrear administration fees.<sup>7</sup>

### **Information to be provided before taking a holding deposit**

**Question 7:** What information should a prospective tenant be provided with before a landlord or agent takes a holding deposit?  
(Choose all that apply)

Basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details	✓
Length and type of tenancy to be entered into, including moving in date.	✓
Amount of rent	✓
Amount of security deposit	✓
Requirements for a guarantor	✓
Details of the circumstances under which the holding deposit is refundable	✓
Details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected.	✓
Details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent.	✓
<b>Other (please state):</b> In addition to the above, ARLA Propertymark believes that tenants should also be provided with a draft tenancy agreement before the agent takes a Holding Deposit. The agreement must be clearly watermarked to state that it is a draft copy. This will allow the prospective	

<sup>4</sup> <https://support.vodafone.co.uk/Account-bill-and-top-up/My-bill/Paying-my-bill/1291516012/How-much-will-I-be-charged-for-a-late-payment.htm>

<sup>5</sup> <https://www.barclaycard.co.uk/personal/credit-cards/card-fees>

<sup>6</sup> <https://ee.co.uk/help/help-new/billing-usage-and-top-up/paying-my-bill/what-should-i-do-if-i-cant-pay-my-bill>

<sup>7</sup> <https://www.moneyadviceservice.org.uk/en/articles/mortgage-related-fees-and-costs-at-a-glance>

tenant to make an informed decision about entering a tenancy agreement and what terms they will have to adhere to should the contract be entered into. This will also give the tenant the opportunity to liaise with the landlord in negotiating possible changes to the tenancy agreement such as allowing pets or running a business from the property.

**Question 8:** How do you think this information should be provided (e.g. hard copy, electronic link, made available to review at agent's office)?

ARLA Propertymark believes that this information should be provided in hard copy, digitally and also made available to review at the agent's office. We think that providing digital copies will leave a more secure and timestamped paper trail, but we also recognise that not all tenants will use email or may prefer having hard copies of documentation. For this reason, tenants should be given the choice as to how they will receive their information, but it should be given digitally by default unless requested otherwise.

Providing information digitally by default is beneficial for two reasons. Firstly, in a move to undertake more environmentally friendly practices, letting agents and landlords will be using less paper and will therefore decrease their environmental footprint. Secondly, providing digital documents will be more cost effective for letting agents and landlords.

Sending documentation digitally is more sustainable as paper and print attributes to around one per cent of the carbon footprint.<sup>8</sup> Encouraging agents and landlords to print documents by default goes against the Welsh Government's endeavours to an overall reduction of 80 per cent from carbon emission levels in 1990 by 2050.<sup>9</sup>

Producing hard copies of documentation and posting them is costly for letting agents and landlords. Considering that the ban on fees is set to impact the sector by around 20 per cent of revenue, agents and landlords will need to look at simple changes to make their business more cost effective. For this reason, documentation should be sent digitally by default, with hard copies on request and available to view in branch.

## **General Questions**

**Question 9:** We would like to know your views on the effects that either setting default payments, or the information that must be provided before taking a holding deposit would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How positive effects could be increased, or negative effects be mitigated?

ARLA Propertymark does not have enough relevant information to answer this question.

**Question 10:** Please also explain how you believe the proposed policy in either setting default payments, or the information that must be provided before taking a holding deposit, could be formulated or changed so as to have positive effects or increased

<sup>8</sup> <https://twosidesna.org/US/our-carbon-footprint-how-do-paper-products-fit-in/>

<sup>9</sup> <https://www.bbc.co.uk/news/uk-wales-46426447>

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 no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

ARLA Propertymark does not have enough relevant information to answer this question.

**Question 11:** 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:

#### **Work of letting agents and time spent**

Fees charged to tenants by letting agents reflect genuine work involved. 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).<sup>10</sup>

Responses also demonstrated that making adjustments to tenancy agreements are very time consuming, with the need to get both the landlord and the tenant to agree upon any changes. For all the reasons stated above, the Welsh Government must consider the time letting agents spend when dealing with tenancy set up costs, management and administrative tasks when setting default fees in regulations.

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<sup>10</sup> <https://www.arla.co.uk/media/1046238/fees-charged-to-tenants-in-the-private-rented-sector-wales-consultation-response-arla-propertymark.pdf>

**Tenants will not be better off**

ARLA Propertymark does not support banning tenant fees in Wales. It will not have its desired effect as lost income will be recouped through rents and tenants will not be any better off as a result. Although renters will benefit from a reduction in upfront fees, most of this will be passed back to them through increased rents.

In 2016, ARLA Propertymark commissioned research with Capital Economics, that found as a result of banning tenant fees, tenants would see rent increases of £103 on average each year.<sup>11</sup> Those tenants who move more frequently such as young professionals and students will enjoy a saving on overall costs, but those who do so less frequently (which are likely to be lower income families) will see a loss. Tenants will need to move on average every 2.5 years to reap any benefit from the ban on fees.

Similar legislation came into force in England on 1 June 2019 and as we predicted, we are already seeing rents increasing across the border. In ARLA Propertymark's May 2019 Private Rented Sector Report, 33 per cent of agents witnessed landlords increasing rents.<sup>12</sup> The Welsh Government must be prepared for a similar outcome ahead of the Renting Homes (Fees etc.) (Wales) Act<sup>13</sup> coming into force as the sector adjusts to the changes.

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:

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<sup>11</sup> <https://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

<sup>12</sup> <https://www.arla.co.uk/media/1048068/prs-report-may-2019.pdf>

<sup>13</sup> <http://www.legislation.gov.uk/anaw/2019/2/contents/enacted>