

Consultation Response

Consultation on the Charging of Premiums in the Private Rented Sector

From the Shelter Scotland policy library

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Shelter
Scotland

Summary

- Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Charging of Premiums in the Private Rented Sector and believes it is important to clarify the confusion around this issue.
- Shelter Scotland believes that all up front charges for setting up and maintaining a tenancy should remain illegal, and that it is necessary to publicise the clarified definition of a premium in the 2011 Act.
- Pre-tenancy charges are unfair and damaging to tenants. In practice it is currently very difficult for tenants to avoid these charges and they may act as a barrier (particularly for those on a low income) to tenants starting a tenancy that would otherwise be affordable.
- Charges also damage the reputation of the letting industry by appearing to be arbitrary and inconsistent. Making them unambiguously unlawful will create a level playing field for all agents and make it easier for tenants to exercise consumer checks.
- We recognise that as a consequence of tenants not paying fees to letting agents the costs incurred in setting up a tenancy will be met by letting agents and passed onto landlords. We are aware of a number of letting agents in Scotland who do not charge fees to tenants and whose business models accommodate this.
- We do not agree that the Scottish Government should develop secondary legislation to set out permitted fees or a scale of charges that letting agents may levy on tenants.

Introduction

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Charging of Premiums in the Private Rented Sector.

Shelter Scotland believes that regulations under the Private Rented Housing (Scotland) Act 2011 should reinforce that **all** up front charges to tenants should remain illegal, and any costs incurred in setting up a tenancy should be met by the landlord or the letting agent. This is a clarification of the existing position under the Rent (Scotland) Act 1984.

Upfront charges are unfair and damaging to tenants and may prevent tenants (particularly those on low incomes) from entering into a tenancy in the private rented sector. This is

especially important in light of the large numbers of households on housing waiting lists and the growing pressure on socially rented housing.

Charges in various guises make the exercise of consumer choice more complex. Where an agent has genuine additional costs to meet, they are entitled to get those from the landlord, who can in return reflect those costs in the rent that is charged.

Shelter Scotland response

Option One: Embark on a consumer focused communications exercise to clarify that the definition of a premium in section 90 of the 1984 Act (once amended as set out in paragraph 2.5) is clear that any fine, sum or other pecuniary consideration (and this included any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent, **is a premium.**

Question 1a – Should the Scottish Government embark on a consumer focused communications exercise as set out in the ‘Option One’ box above?

Yes

Shelter Scotland believes that all premiums, i.e. any fine, sum or other pecuniary consideration (and this included any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent should remain illegal and this should be communicated widely to all tenant, landlord and letting agent groups to clarify any existing ambiguity.

Shelter Scotland carried out a mystery shopping exercise in 2011¹ and found that 26 out of the 30 letting agencies we contacted charged an upfront fee. These charges ranged from £16.80 to £180, with eleven agencies charging £120 per tenant or more. The majority of these fees were described as ‘administration fees’, with some specifically noted as for reference checks or credit checks. From this exercise we found that tenants have an initial outlay of between £820 and £1,650.60 to initiate a tenancy, when deposit and rent in advance are taken into account. One example was an initial outlay of £1,120 for a £450/month 1 bedroom flat in Stirling. This was initial cost was compromised of one month’s rent in advance (£450), £550 deposit and £120 administration fee. These charges

¹ Shelter Scotland (2011) *Premiums in the Private Rented Sector*

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/premiums_in_the_private_rented_sector

can be highly prohibitive to tenants wishing to start a tenancy, particularly those on a low income. With large numbers on social housing waiting lists, growing pressure on social housing and a subsequent increased demand for private rented housing it is increasingly important to make access to the private rented sector as straight forward as possible.

Due to the prevalence of these charges, tenants have little opportunity to 'shop around' for a better deal. Currently tenants have limited ability to dispute these charges or even to know that it is possible to do so. In most cases letting agents simply decide to find another tenant who will pay the charges. Clarification that these charges *are* illegal will help prevent this being the case.

Due to the current uncertainty amongst tenants and landlords and letting agents in relation to these charges, a full and wide reaching publicity campaign should take place, through mainstream media, social media and online, directly targeting letting agents and tenants. Shelter Scotland would be well placed to contribute to a campaign to inform tenants of the clarification around the law.

Question 1b – If you have answered 'yes' to question 1a, what assessment of the impact of the industry? If you are in a position to provide such information, please include indication of likely costs to businesses, where appropriate

Shelter Scotland believes it is quite possible for letting agents to operate successful business model without charging tenants a fee. There are existing letting agents operating in the market that do not charge any additional fees for starting or maintaining a tenancy. Clarification of the definition would enable all letting agents to operate from a level playing field and make it easier for landlords to select an agent based on genuine competition on rents.

Question 1c – If you have answered 'yes' to question 1a, can you provide examples of successful business models letting agents could adopt to ensure that the removal of such charges will not result in financial difficulties for the organisation?

Shelter Scotland are aware of letting agents that do not charge any fees for example; Boomerang Property Management, The Property Box and Macpherson Property. We would encourage the Scottish Government to engage in discussions with these agents to more fully understand how their business models operate.

Question 1d – If you have answered 'yes' to question 1a, how could we ensure that this amendment to the definition of premium is clearly and effectively communicated to the industry and that any charges which would fall within the definition of premium, as amended must stop?

Shelter Scotland would be willing to work with the Scottish Government to ensure all tenants, letting agents and landlords are aware of the clarification. We are well placed to inform tenants through social media, mainstream media and our campaign networks. We are also a respected source of information and advice to tenants and landlords alike. In addition, we would recommend targeted adverts to inform tenants on letting portals, through letting papers and facebook ads. It would be helpful to have a source of information for tenants and agents to consult to help them interpret and apply the legislation and to have a FAQs. The Scottish Government may also wish to suggest a course of action for a prospective tenant to take if an agent has broken the law by requiring a fee to be paid.

Option Two: Develop secondary legislation under the new section 89A of the 1984 Act, specifying **categories of sums that are permitted** to be charged when providing services to a tenant, **with maximum allowable amounts** set for each charge

Question 2a – Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to tenants and set maximum amounts for such charges?

No

Shelter Scotland believes that all charges should remain illegal. This is the clearest, simplest and fairest option. Any charges may be prohibitive to prospective private rented sector tenants, particularly those on a low income acting as a barrier to tenants entering the tenancy where it would otherwise be affordable.

Question 2b

Option Three: Develop secondary legislation under the new section 89A of the 1984 Act, specifying **categories of sums that are permitted** to be charged when providing services to a tenant, **without maximum amounts** being set for each charge.

Question 3a – Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to a tenant without setting maximum amounts for such charges?

No

Shelter Scotland believes that all charges should remain illegal. However this option would be particularly detrimental to tenants as fees could become even higher and more difficult for tenants to pay. Any costs incurred should reflect the cost involved. It costs £2 for a person to access their credit report. Credit reference agencies charge between £8

and £24.75 for full reference and credit checks while research carried out by Shelter Scotland shows letting agents are charging tenants as much as £88. Any costs incurred in setting up and maintaining a tenancy should be a fair reflection of market rates and incurred by the letting agent or landlord. We believe landlords are best placed to compare the charges that agents make and make a consumer choice about which agent they use.

Question 4 – What is your preferred option?

Option One: Embark on a consumer focused communications exercise to clarify that the definition of a premium in section 90 of the 1984 Act (once amended as set out in paragraph 2.5) is clear that any fine, sum or other pecuniary consideration (and this included any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent, **is a premium.**

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