

Shelter Parliamentary Briefing: Second Reading of Tenant Fees Bill

Summary:

Shelter helps millions of people every year struggling with bad housing or homelessness – and we campaign to prevent it in the first place. We're here so no one has to fight bad housing or homelessness on their own.

Shelter supports the Tenant Fees Bill and the Government's ongoing commitment to making private renting fairer and more affordable. We are very pleased the Government has held firm on its promise to introduce an outright ban on upfront letting fees, as this will ease the significant financial pressures renters face when moving, whilst making the lettings market more competitive and transparent.

However, without more protections in the Bill, renters are still open to exploitation. The clause on 'default fees' specifically creates a backdoor through which spurious fees could still be charged. Some letting agents themselves have admitted the intention to misuse this new category of fees. We'd like to see more protections in the legislation, to guard against this behaviour.

Background to the Tenant Fees Bill

In Autumn 2016 the government announced it was banning letting fees to tenants, with the stated aim of 'a fairer, more competitive, and more affordable lettings market where tenants have greater clarity and control over what they will pay'. On average, tenants pay **more than £200** in letting agency fees each time they move, on top of rent in advance and deposits. Over the past 5 years, tenants have paid over **£678million** in unfair fees. Shelter research found that **one in seven** tenants have been charged **more than £500** in fees.

These charges are routinely exploited, with agents charging arbitrary amounts for various services. There is a lack of transparency about exactly what costs are being covered and how fees are set. Shelter research **found inexplicably wide variations** in pricing; fees for reference checks can range from **£30 to £220** and tenancy renewal can cost anything from **£35 to £150**.

The Tenant Fees Bill received pre-legislative scrutiny from the Housing, Communities and Local Government Select Committee where the government's approach of an upfront ban on fees received **cross-party support**.

Key proposals provided by this Bill

Ban on upfront fees to tenants: Currently, landlords and letting agents can charge tenants for a wide range of activities and services (including the administrative costs of setting up and renewing a tenancy, reference and credit checks, and inventory checks). This Bill bans landlords and letting agents from charging any upfront fees to tenants (**Clause 1 and 2**). Any charges or fees *not* enumerated in Schedule 1 of the Bill are considered 'prohibited payments'. Financial penalties for charging prohibited fees are outlined in the relevant section below.

Cap on tenancy deposits: Tenancy deposits are often taken at the start of a tenancy to cover any damages to the property. Paying a security deposit upfront can significantly add to the costs which tenants must budget for when moving home and for those on low incomes, without savings or the ability to borrow from family or friends, sometimes these costs can be an insurmountable barrier to securing a new home. There is currently no limit on the amount that can be taken as a security deposit, meaning there can be significant

variation and certain groups of tenants face higher deposits. This Bill **caps the amount that can be taken as a security deposit** at 6 weeks' rent ([Schedule 1, Clause 2 \(3\)](#)).

Cap on holding deposits: A holding deposit is paid by a tenant to a landlord or letting agent to reserve a property while references are checked - they are separate to tenancy deposits. This Bill introduces a one-week cap on holding deposits. ([Schedule 1, Clause 3 \(3\)](#)).

Enforcement of the legislation and penalties for offences: The measures introduced by this Bill will be enforced by local authorities' trading standards departments (local weights and measures authorities) ([Clause 6](#)). District Councils will have the power to enforce the Bill if they wish ([Clause 7](#)) and the Bill also enables the appointment of a **lead enforcement authority** to oversee the enforcement of letting agency legislation ([Clauses 22 - 24](#)).

Financial penalties for charging prohibited fees can be up to **£5,000** for an initial breach ([Clause 8](#)), with a **criminal offence** where a person has been fined or convicted of the **same offence within the last 5 years** ([Clause 12](#)). Financial penalties of up to **£30,000** can be issued as an alternative to prosecution ([Clause 8 \(3\)](#)). An offence under Clause 12 of this Bill will also constitute a **banning order offence** under the Housing and Planning Act 2016. Banning orders prevent landlords from making profit from a property for a minimum of 12 months.

Tenants will be able to recover unlawfully charged fees from the First-Tier Tribunal ([Clause 15 \(3\)](#)). The Bill also prevents landlords from regaining possession of their property via the **section 21** Housing Act 1988 procedure (also known as '**no-fault**' eviction) until they have repaid any unlawfully charged fees ([Clause 17 \(3\)](#)).

Funding: We warmly welcome the government's announcement that funding will be provided for the first year of the legislation, to support implementation and education to enforce the legislation.

Issues to be addressed

Default fees: The Bill allows landlords and agents to charge "default fees" and this creates a **potential loophole**, which can be exploited. Default fees are charged if an agent or landlord incurs a cost due to the actions of the tenant, like losing a key or paying rent late. Although these fees must be written into the tenancy agreement, it is likely to be difficult for a tenant to identify and challenge any unfair fees when negotiating a tenancy. Agents have already admitted, in their evidence to the Select Committee, they will try to charge disproportionate default fees, in order to make up revenue lost from other fees. The Government has since amended the definition of a default fee to say it should not exceed the loss suffered by the landlord and said they plan to issue guidance on the type and reasonableness of fees. However, guidance alone will not be enough to prevent agents from adding in unfair terms to tenancy agreements and claiming more than the actual loss. Therefore, there needs to be more protections in the legislation to limit what can be charged for and to ensure any loss is reasonable and evidenced to a tenant, so they can more easily challenge unfair fees.

Tenancy deposits: The government did not accept the Select Committee's recommendation to cap tenancy deposits at 5 weeks' rent, choosing instead to leave the cap at 6 weeks. We feel this is a missed opportunity and would like to see this cap reviewed. Capping deposits at 6 weeks will mean renters in England still have to find up to an average of over £1100 (£1800 in London) to put down a deposit. Given most landlords already ask for 6-weeks or less, the cap is likely to have little meaning in practice.

Holding deposits: There is currently a lack of clarity around the circumstances in which landlords or agents can and can't retain a holding deposit. A holding deposit can be retained if a tenant has provided false and misleading information which materially affects their ability to rent a property. However, it is unclear what

will be considered false and misleading information and this is therefore open to abuse. The government also rejected the Committee's recommendation to include a "knowingly" test for when a tenant has given false or misleading information. We believe there should be a requirement for landlords and agents to set out in writing to a tenant how they will treat a holding deposit and if not returning it, the reasons for this. Additionally, they should be required to include a link to the Government's holding deposit guidance in their correspondence so a tenant can use this to determine if their deposit is being fairly withheld.

Impact of the Bill

How much will tenants save? The banning of upfront letting fees will **immediately reduce the cost of moving for private renters**. Shelter's most recent private renters survey showed average total moving costs were around £1,400, with those who were charged letting fees paying an average of nearly £250 in fees. Banning fees will remove a key barrier to securing a new tenancy, particularly benefitting those on low incomes.

Will rents go up? It is often claimed the cost of banned fees will just get passed on to tenants through rent increases. However, evidence from Scotland suggests there was **not a significant spike in rents** after the ban on fees in 2012. Independent research commissioned by Shelter found landlords in Scotland were no more likely to have increased rents since 2012 than landlords in other parts of the UK. Of the 120 landlords interviewed for that research, only one noticed an increase in what they were charged by their letting agent and passed it on in higher rents. Renters themselves were no more likely to report a rent increase than those in other parts of the UK.

Additionally, data from the Office for National Statistics' index of private rental prices, the largest and most reliable source for rent inflation, shows that rents inflated at about the same rate in England and Scotland in the year after the legal change. Looking slightly longer term, between November 2012 and September 2016, rents increased 5% in Scotland compared to 9% in England.

What will be the impact for landlords and letting agents? This Bill will support the Government's objective of driving up standards in the lettings industry – a goal which is shared by responsible operators across the industry. It will result in landlords receiving a better and more transparent service from agents, as landlords will be clearly established as the primary consumer of agents and agents will need to compete to offer landlords services at a price which fairly reflects the quality of services provided.

Shelter does not think landlords will be adversely affected by the cap on security deposits. Our most recent private landlord survey highlighted the majority of landlords (55%) only ask for one month's rent as a deposit, with only 6% asking for more than six weeks.

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