

The impact of clarification on letting agent fees in Scotland

Research report prepared for:

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1. Aims, Summary & Conclusions

This independently compiled report, commissioned by Shelter, provides a research based impact assessment of November 2012's clarification of law around non-refundable fee charging by letting agents and landlords in Scotland.

Legislative awareness

- Around 6 in 10 letting agents were aware of fee clarification after prompting (4 in 10 spontaneously).
- Awareness is low across both Scottish landlord and tenant segments. Only just under a third (32%) of tenants are aware that agents or landlords are not allowed to charge fees and fewer than 1 in 5 (17%) of tenants recalled the clarification in the law in late 2012.
- Many landlords 'delegate' responsibility for regulatory knowledge and compliance to their letting agent.

Impact on fees charged to landlords and rental levels

- Less than one in five (17%) agencies surveyed claim to have increased fees to landlords as a result of law clarification.
- Minimal evidence of a link between fee clarification and any increase in rental levels.
- Landlords appear more likely to be incurring the costs of tenant referencing post-clarification.
- Stakeholders pointed to general market demand and expansion as the key driver of rent inflation, far more so than legislative changes.
- Landlords in Scotland no more likely to have increased rents than those in other areas of the UK during the last 2 years, and fees-related factors are very low in their list of reasons for increasing rents.

Impact on lettings agency business

- The majority (76%) of letting agencies said that the clarification in the law on fees had either 'no impact' (59%) or 'a positive impact' (17%) on their business. Less than a quarter (24%) said it had 'a negative impact', and all of these said this was a small rather than large negative impact.
- Letting agents describe an extremely positive PRS in Scotland, with all key business indicators showing very encouraging recent growth. This business context is being driven by increasing tenant demand and strong competition across the lettings sector.
- The agency sector is well positioned financially with almost a quarter of businesses claiming to make a 'large' profit.
- Just under half of letting agent managers (46%) report that they have had to make changes to the way they operate their business, as a consequence of the fees clarification. Increased administration (39%) and changing policy on credit checks (26%) were the most frequently cited changes, with increasing fees to landlords less common as detailed above.

Compliance with the law

- 4 in 10 letting agents felt that at least some businesses are still charging inappropriate fees to tenants.
- 1 in 3 agents feel that the market lacks a sufficiently robust enforcement process for non-compliant agencies.
- Tenants in Scotland are far less likely than those elsewhere in the UK to pay what they perceive to be fees to landlords or agents, but a significant minority (15%-20%) do, and this appears to be greater among those using letting agents.
- Evidence of low-level non-compliance by some agents from mystery shopping exercise, although only one in 12 appears to be in certain breach of the legislation.
- Market experts representing letting agents, landlords and the legal profession asserted that there is a high, but not universal, degree of legal compliance with the clarification.

Overall view

- Over a half (54%) of letting agents feel that the fee clarification legislation has been positive for the Scottish PRS, 30% felt it had had a negative impact.
- 46% letting agents claimed to have witnessed 'at least a few' businesses close branches or go out of business as a result of fee clarification.
- Fewer than 1 in 10 (8%) landlords in Scotland disagreed that 'banning fees improves the rental sector'.
- Market experts also concluded that the legislation had been a positive development. Any concerns tended to centre on the regulation being enforced in a consistent and visible fashion across the market.
- The pervading view was that some of the fees had been disproportionate and unjustifiable and their removal helped to enhance the credibility of the letting agency sector in the eyes of both tenants and landlords alike.

2. Overview and methods

The report draws on a range of primary survey sources which include:

1. Survey of private tenants by YouGov (quantitative, n=6,533, 1,387 of whom were renting in Scotland)
2. Survey of private landlords by YouGov (quantitative, n=1,064, 120 of whom were letting in Scotland, 115 with majority of properties in Scotland)
3. Survey of private landlords in Scotland by BDRC Continental (qualitative depth interviews)
4. Survey of Scottish Private Rental Sector experts by BDRC Continental (qualitative depth interviews)
5. Survey of letting agency managers in Scotland by BDRC Continental (quantitative)
6. Mystery shopping survey of Scottish letting agents by ESA Retail (BDRC Group) (qualitative)

3. Awareness of the law on fees and the clarification in 2012

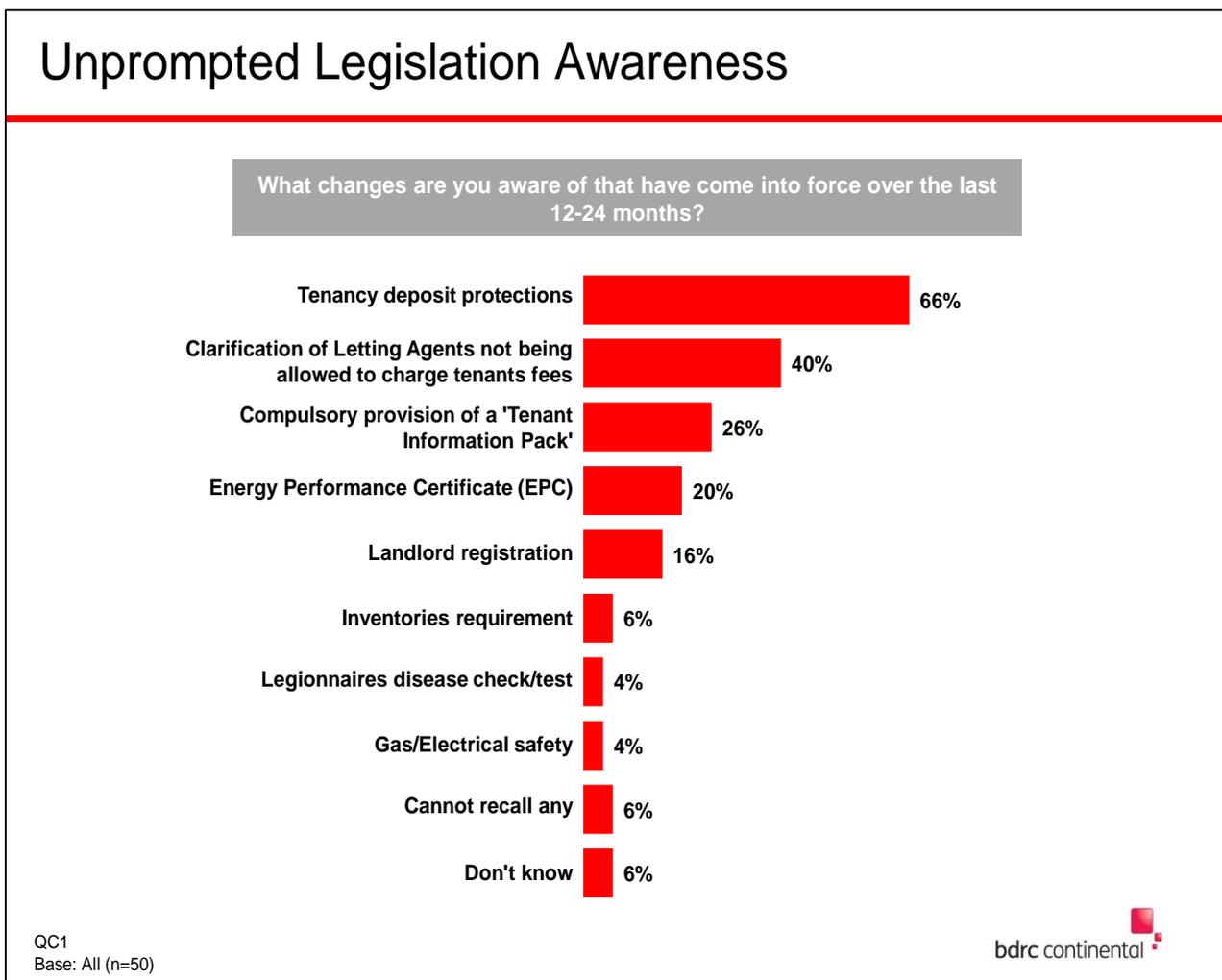
Headlines

- Around 6 in 10 letting agents were aware of fee clarification after prompting (4 in 10 spontaneously)
- Awareness is low across both Scottish landlord and tenant segments. Only just under a third (32%) are aware that agents or landlords are not allowed to charge fees and fewer than 1 in 5 (17%) of tenants recalled the clarification in the law in late 2012.
- Many landlords 'delegate' responsibility for regulatory knowledge and compliance to their letting agent

Letting Agency Managers

All interviewees were asked to list, without prompting, any regulatory changes, impacting letting agents, which may have come into force in the preceding 12-24 months, see chart No. 1 below.

Chart No. 1

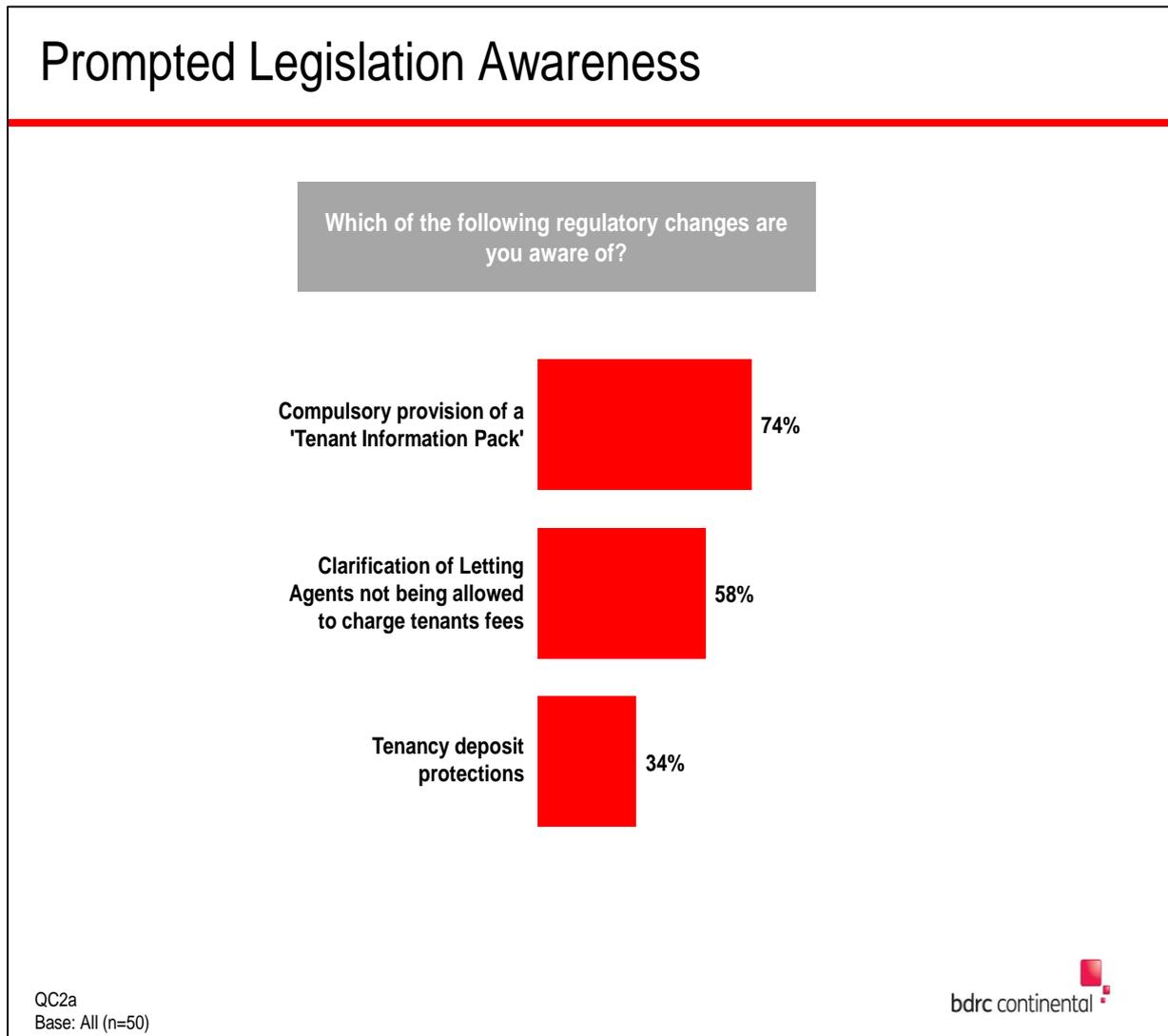


The vast majority of branch managers (88%) could nominate at least 1 piece of legislation that had been enacted during that time period. The most frequently recalled regulation was the introduction of tenancy deposit protection (66%), followed by letting agent fee clarification mentioned by 4 in 10 respondents.

Firms with the largest turnover (£300k+) were most likely to mention fee clarification (62%) vs 40% where income was lower, similarly the individuals who have been working in the sector for 5 or more years were much more likely to recall this piece of legislation (50%) vs 29% than the others.

All interviewees were then read a list of three recent regulatory changes (in rotated order) and asked which they were aware of, and for each they were aware of (see chart No. 2 below).

Chart No. 2



Implementation of the Tenant Information Pack was mentioned most frequently. After prompting, awareness of fee clarification rose by 18% to 58% overall. Chains were significantly more likely than independents to recall the clarification (68% vs 50%) and the agents who have been working for less than 5 years (71% vs 46% for those in the industry for over 5 years).

Landlords quantitative survey

A slight majority (55%) said they were aware of the law which does not allow any fees above rent and deposit to be charged to tenants in Scotland. This 55% was split evenly with 27% aware of the recent clarification in the law, and 28% aware of the law, but not the clarification. 45% were not aware of this law (39% explicitly said this, 6% answered 'don't know').

Landlords that were aware of the clarification (base size:32) in the law in late 2012, had heard from an agent (12 out of 32) or seen it in the media (13 out of 32).

Landlords depths

Most landlords were not very up-to-date with the Private Rental Sector focused legislation, and those who use a letting agent rely on them to keep them informed. The overall perception is that there have been a lot of legislative changes over the past couple of years, and that the Scottish PRS is heavily regulated. But when landlords mention legislative changes, they most often refer to the deposit scheme, the obligation for landlords to register with the Council, or gas safety certificates.

As the degree of engagement with their rental activity is often very low for those who use a letting agent, there is a limited awareness of the situation both pre and post-November 2012. For instance, some landlords were not even aware that tenants used to get charged for fees.

'That's unscrupulous landlords I would say. Why are they charging a tenant a fee? No no, that's a joke.'

Landlords mainly acknowledge fees that were charged for credit check when referring to the situation prior to the legislative clarification.

When asked what were the main changes in the Scottish Private Rental Sector since they became landlords, only one landlord mentioned 'the fees charged by landlords to tenants'. He had been told about it by his letting agent who sent an email to inform him.

When prompted, landlords who claim to be aware of the legislation have a fuzzy understanding of it but recognise that they are not allowed to charge tenants for anything. They tend to focus more on what it implies for them rather than on the impact it has on letting agents.

'There was an actual term they used I can't remember for the life of me what it was, but basically you can't charge them for anything whatsoever. You can't charge the tenants for anything.'

'I don't know the detail, but I am aware that there is something new in Scotland which doesn't apply to the rest of the UK. You're talking about fees on top of what? As far as I know, there are certain restrictions on what fees they can charge. This is something I'm aware of because I think in Scotland the letting agent isn't allowed to charge fees over a certain amount. I'm also conscious that us landlords shouldn't really charge fees except the rent and the deposit.'

'I asked my letting agent whether they charge additional fees and they said no. Well that they can't do what they do in England, which is charge you extra fees for letting you the flat before you even move in. Just to make money.'

Expert depths

As subject matter experts, all interviewees had a detailed understanding of the law and the process of clarification in 2012. They were often able to set this legislation in a broader historic context of PRS regulation in Scotland. Most 'experts' concluded that the evolution of and thrust of regulation in the Scottish PRS has been beneficial to the state and health of the rental sector. However, regardless of viewpoint, there was a consensus that, in many cases, the positive intent of some regulation has been undermined by a lack of consistent execution and visible enforcement activity for non-adherence, raising concerns amongst compliant individuals as to the value (financial and moral) and purpose of compliance.

"My sense is, I guess, my gut feeling is that it's a good thing. The fact that the law has been clarified is a good thing for tenants and for landlords. I'm, personally speaking, I'm in favour of it and as an organisation we were in favour of it and I think that's really for reasons of clarity. It didn't seem appropriate that tenants were getting hit with fees after they had fallen in love with a property or agreed to take a property, and then they're being stung in some other way and that left a bad feeling in the mouths of agents, of tenants and landlords and, yes, sometimes to the point where a landlord could lose out on a tenant or it gets the relationship off onto a bad footing." **Landlords Representative**

Both the Scottish Landlords Register and Tenancy Deposit scheme were held up as examples of laws which have been structured and implemented with some detriment to stakeholders in terms of participation and outcome. Several experts asserted that a significant minority (they estimated it to be around 15%) of Scottish landlords are still yet to officially register but there has been a lack of enforcement action at local authority level, largely attributed to a lack of the necessary finance and resources. The imminent Scottish housing bill was mentioned frequently as the key to bringing the letting agency channel into a regulated environment in terms of a register, fit and proper status and a code of practice.

Respondents representing landlords reported that members had been kept well informed of developments and the possible implications of the fee charging clarification on the business models of the estimated 50% landlords engaged with a letting agent.

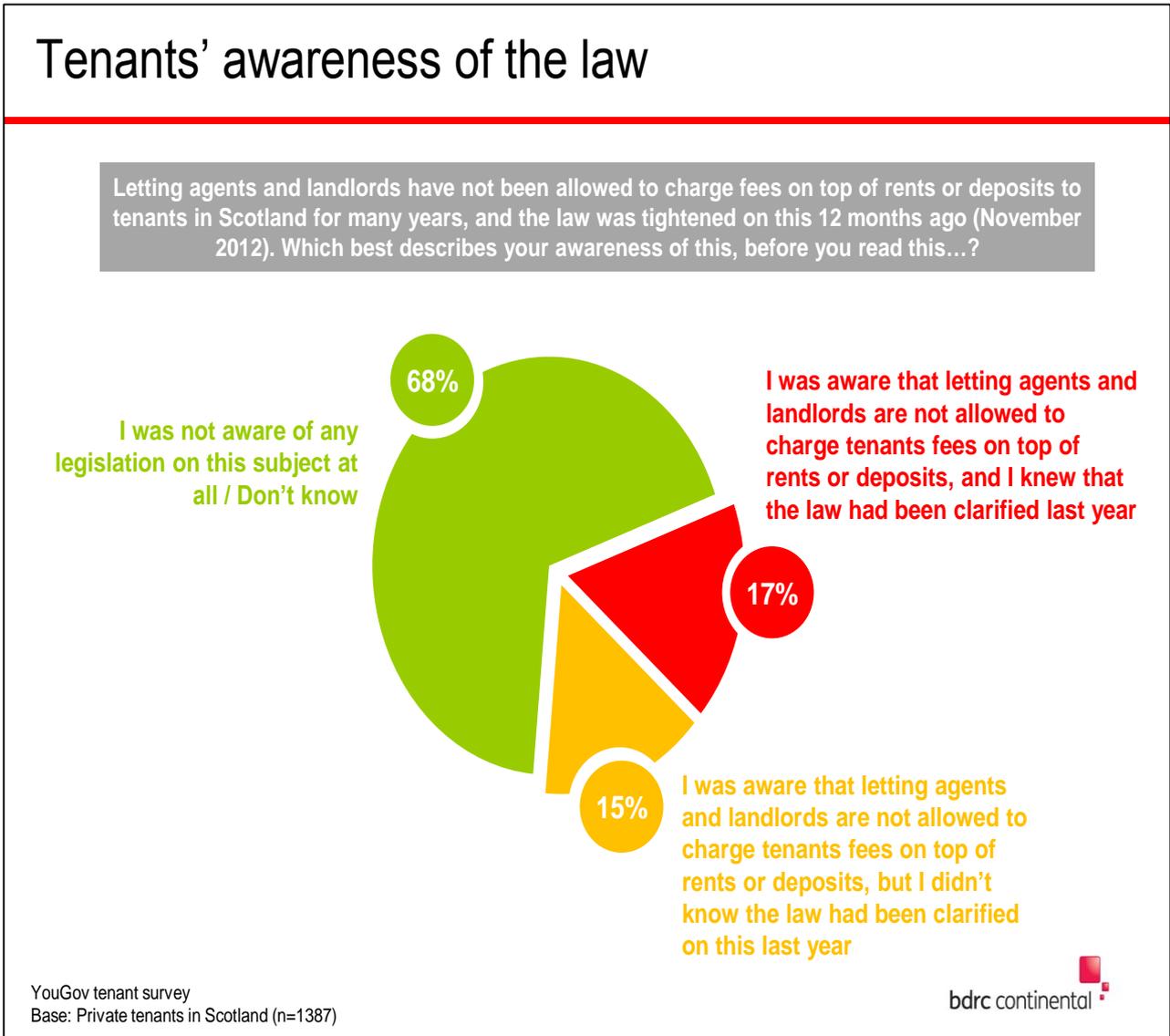
The feeling was that the vast majority of agents had moved to comply with the clarification, usually as a result of the initial act in 1984 but if not, then in anticipation of the November 2012 clarification ruling. However, landlord representatives did perceive that a number of letting agents were operating outside of the law by continuing to charge non-refundable fees.

No expert respondents felt able to hazard a guess at an actual number or proportion of agents continuing to operate under the radar.

Tenants survey

As shown in Chart No. 3 below, awareness of the law on fees is rather low among tenants in Scotland – nearly a third are aware fees are illegal, but just over two-thirds are not. Awareness seems slightly higher among young renters (46%, 18-24 year olds) and those whose current property is managed by an agent (41%).

Chart No. 3



4. Impact on fees charged to landlords and rent levels

Headlines

- 17% of agencies claim to have increased fees to landlords as a result of law clarification
- Minimal evidence of a link between fee clarification and any increase in rental levels
- Landlords appear more likely to be incurring the costs of tenant referencing post-clarification
- Stakeholders pointed to general market demand and expansion as a key driver of any rent inflation
- Landlords in Scotland no more likely to increase rents than those in other areas of the UK during the last 2 years, or next time they re-let
- Tenants in Scotland no more likely to report being asked to pay more rent than other areas of UK in last 2 years

Letting Agency Managers

Agency managers were asked about any changes that they made to business practices as a result of the legislative clarification (see chart No. 13).

In terms of the implications for landlords who engage the services of a letting agent, less than 1 in 5 agents (17%) reported that they have raised the management fees they charge. Those landlords employing agents on a full service basis are most likely to have experienced a rise in fees, with 23% of agents offering a full management service only, increasing the amount they charge landlords.

Amongst the minority of agents (14%) who stated that the legislative change has had a financial impact on their business, only 3 agencies spontaneously mentioned that they increased the fees that they charged landlords to recoup the money that they lost.

When asked whether they had increased the rate of commission charged to landlords as a result of the change in legislation, 18% (9 agencies) gave a positive answer. Typically they increased the rate of commission by just 1% to 2%. Only one agency claimed to have increased the rate by over 3%.

Rate rises are more common amongst agents only active in urban areas (25%) vs. 13% for those who operate in both rural and urban areas, as well as amongst the individuals who have been working in the industry longer (23% for those who have been working in the sector for 5 years or more against 13% for the others).

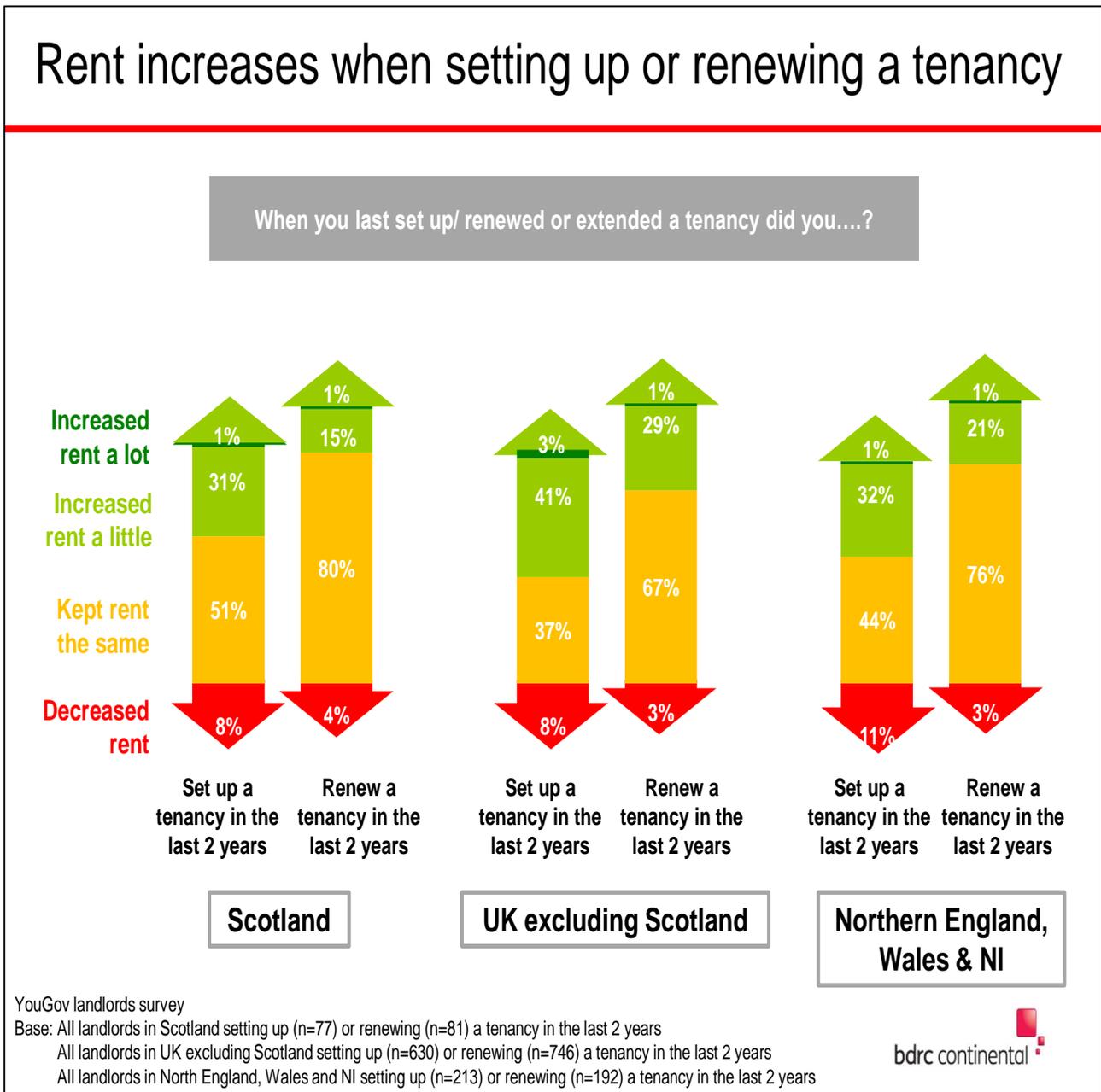
Overall 6 agents believe that landlords have raised the rent they charge as a result of increased commission rates caused by the change in legislation (12% of the whole sample).

Landlords survey

The chart below (chart No. 4) shows landlords setting up or renewing tenancies in the last two years in Scotland were less likely than those in the rest of the UK to increase rents, and more likely to keep them the same - despite low sample sizes, these differences are statistically significant.

Landlords in Scotland were no more likely to have increased rents in the last two years than those in North England, Wales and Northern Ireland – the results are similar and differences are not statistically significant.

Chart No.4



Landlords were also asked ‘What will you do next time the property becomes vacant?’ There were no statistically significant differences between landlords letting in Scotland and elsewhere on this question - 30% would re-let at a higher rent, compared to 31% of landlords in the UK outside of Scotland.

The table below shows the reasons landlords gave for increasing the rent in the past, and/ or the reasons behind their intention to do so the next time they have vacancy. Two of these reasons could be linked to changes in costs as a result of fees: 'Having to pay for things such as credit and inventory checks myself' and 'The fees/ commission I am being charged by letting agents have increased'.

The results below show that these are:

- Not mentioned by any landlords in Scotland as the one main reason for increasing rents, and far outweighed by market and general cost factors.
- No more likely to be a factor in Scotland than elsewhere.

When you last increased the rent/ increase rent in future, what was/ is the one main reason for this?									
Area		Market is going that way in the area	Costs in general up	To cover costs of renovation / redecc.	Letting agent advised me to	To cover the cost of license/ acc./ reg. schemes	Tenant demand is so high	Having to pay for things such as credit and inv. checks	The fees/ commission I am being charged by letting agents have increased
Scotland	Inc. rent in past and/ or will increase in future (71)	38%	18%	18%	10%	4%	3%	0%	0%
UK excl. Scotland	Inc. rent in past and/ or will increase in future (709)	34%	20%	11%	17%	2%	6%	1%	2%
North England, Wales and NI	Inc. rent in past and/ or will increase in future (178)	22%	28%	16%	17%	3%	6%	1%	2%

Base: Landlords who increased the rent last time they renewed or set up a new tenancy and/ or will increase the rent next time, YouGov survey of 1064 private landlords, December 2013.

Landlords in Scotland were asked whether they had noticed any increases in the fees charged by letting agents. Just under half (47%) of the landlords operating in Scotland had not used an agent in the last 18 months. While base sizes are small, the next most common answer by far was that the fees and commission **had remained about the same** (36%, or 67% of those who had used an agent in last 18 months). Only 13% reported an increase, most (10%) reporting a small rather than large increase.

This left 15 landlords in the sample of 120 landlords who said they had noticed an increase in letting agency fees. Of these, **only one landlord said they had passed all the increase onto their tenants in increased rents**, with most (10) saying they had not passed any of the increase at all onto tenants (the remaining four had passed some of it on).

Landlords depths

When asked about the potential impact of the new legislation, the majority of landlords would expect to bear the cost. As a consequence, some tend to consider that the whole Private Rental Sector is going to experience an increase in rent levels. However, in reality, this expectation has not been borne out by the reality of experience for the vast majority.

“I can understand why those with a large portfolio and letting agents as such would be annoyed by it, because obviously somebody's going to have to pay for it. So it's a cost now being born to the landlord instead of the tenant, and I think that all it's going to do is end up, they're going to put the rent up to cover the cost of it, so the tenant is going to end up paying it in any case.”

However, more than a year after the legislative change, the relationship between landlords and letting agents doesn't seem to have been affected and none of the landlords we spoke to have recently changed letting agent for a reason that can be attributable to the new law.

None of the landlords have experienced a recent increase in the fees that they were charged by letting agents either, although one was told that he would be charged additional fees if his/her tenant(s) were to leave.

“I vaguely remember now, something in an email from them about the next time it was a new tenant that I would be getting charged extra things. I get the general impression that it's somewhere in the region of £100. I'm not entirely sure. I think one of them is to do with investigating a person's credit rating, but I am vaguely aware that there are other fees and I'm not entirely sure what they might be. Probably less justifiable.”

For most however, it seems to be more of an unfounded fear at the moment:

“I suspect it means the prices or the income the landlords get has probably been less because the agencies still want the income that they had before. I haven't experienced that myself.”

In addition, although there is a common assumption that the new legislation would tend to lead to a rise in rents, in reality even if they were to bear the costs of the fees that used to be charged to the tenants, not all landlords would automatically increase rents.

“Probably not actually. The area that I'm letting in its quite stable from a house price point of view, and therefore, it's quite stable from a rental point of view. If I added that onto the rent it would just make it harder for me to find a tenant.”

Expert Depths

The 'expert' interviewees were broadly consensual that landlords who engaged the services of an agent would be picking up at least some of the impact of fee clarification, in particular taking on the job and cost of credit referencing for their potential tenants. There was less clarity around the extent to which landlords would absorb that cost, or choose to pass it on to tenants in the form of higher rents.

“Fees of £200 for drawing up a lease or for carrying out credit checks and so forth were not unusual, and often they were things that they said, 'Well the landlord insists that we have a credit check.' Credit checks is the one area where I think we disagreed with, and made clear in our consultation response that we disagreed with the plan. You do get situations where tenants who have very poor credit history will walk into a letting agent, tell the agent that everything's absolutely fine in their credit referencing, and hope that the agent won't check and then once they've got the keys to the property, obviously, if they stop paying their rent, the landlord's still left with a problem. If the landlord or, indeed, the agent has to pay for those credit referencing fees upfront on people who are unlikely to get a positive credit reference, then they've obviously incurred that cost, and also failed to secure a tenant for the property and it's a way of, you know, where the balance perhaps has got a little bit too far the other way.” **Landlord's Representative**

“I guess the only way to make it really clear is to do what the government's done and say, 'Well absolutely no premiums chargeable by a landlord or an agent to a tenant in connection with a tenancy', and that's where

we are, so at least it's clear, even if some landlords have seen their fees go up as a result and, undoubtedly, those fees are being passed on to tenants in their rents and that's probably not the intention of the legislation.” **Landlord’s Representative**

“The rationale I gave to my clients was that if this is how we are expected to operate, then what we need to be doing is on behalf of you, the landlord, we are going to test the appropriate and the financial ability of the tenant, so they pay for it and that leaves us free to make an assessment of the information that we get back regarding the tenant. In a funny kind of way for the tenant in the past to attain for a referencing service, at which point they may fail, was actually a slightly, when you look back on it, is perhaps a slightly weird state of affairs, so it's probably much clearer where we stand now.” **Letting Agents Representative**

Respondents found it very difficult to disentangle any specific impact of fee clarification from market-driven rental increases which would have occurred anyway as the result of competition and other non-fee related factors.

“The charges that we make to the landlord, the additional charges, we had to tinker with our business model a little bit in order to make sure that it was still affordable to them, and there are a lot of agents would have said well, all the rents went up. The reality is that I don't know if rents did, they did go up a little bit.” **Letting Agents Representative**

“Ultimately rents are a supply-and-demand issue, and we are seeing pressure on the sector, so therefore it kind of goes that rents would go up anyway; whether that's indicative of not being able to charge fees is another thing. We know that half of the stock is managed by letting agents, the others by landlords. Landlords were never in the habit of charging fees anyway, so it's only where tenants would have gone through agents. I think it certainly anecdotally has had an effect, and landlords will have included that, they have to factor all costs, basically, into the rent, and ultimately that will happen. If not now, it will happen next year or thereafter.” **Landlord’s Representative**

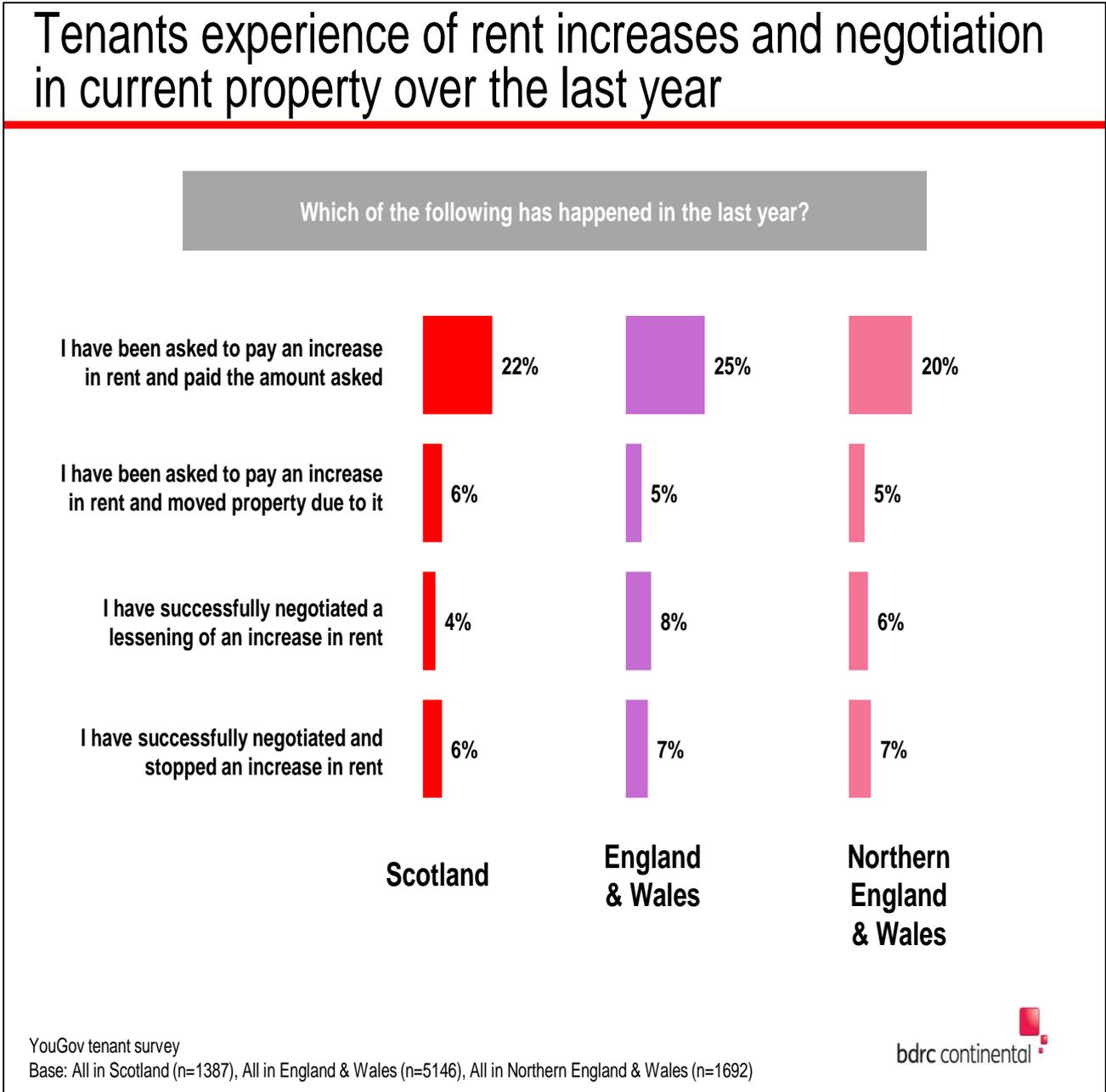
“People will say well, if you have a look at the statistics you'll see that actually the quoted rents all went up. Sure enough they did, but did they actually let for those particular rents that had been pushed up? My experience is that frequently you may have a flat that was £650, so you put it up to £700, the quoting rent was £700, but you ended up letting it at £660, so the actual increase was not, in my experience, as great as what some of the quoting figures stated. At the end of the day, the prevailing market it will dictate what it will pay.” **Letting Agents Representative**

“But it's the charges, when you look at it compared to an annual rent is fairly minimal so you're not really going to notice it in a rental charge necessarily. I don't know. I suspect that's more likely where it will appear rather than passed on to the landlord or from the agent. But I don't honestly know.” **Housing Lawyer**

Tenants survey

The chart below (chart No. 5) shows that tenants in Scotland were very similar to those elsewhere in the UK in terms of their likelihood to have been asked to pay more rent in their current property or in the last year. There was also no difference in the propensity of tenants in Scotland to successfully negotiate on their rent.

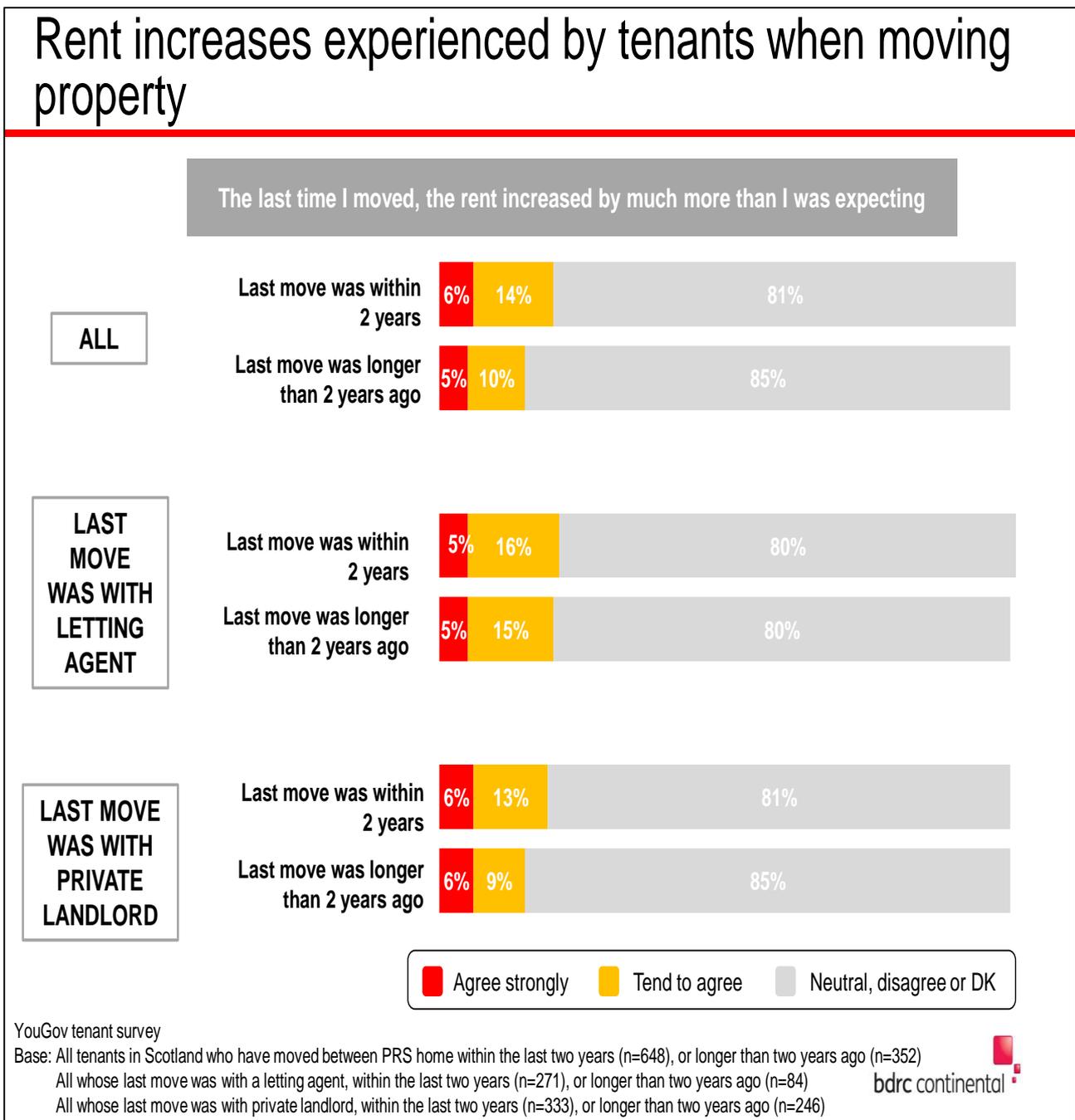
Chart No. 5



Tenants in Scotland were also asked whether they had noticed any unusual increases in their rent, the last time they moved rented properties. The chart below (chart No. 6) shows that one in five of those moving in the last two years had, but only 6% agreed strongly that this was the case.

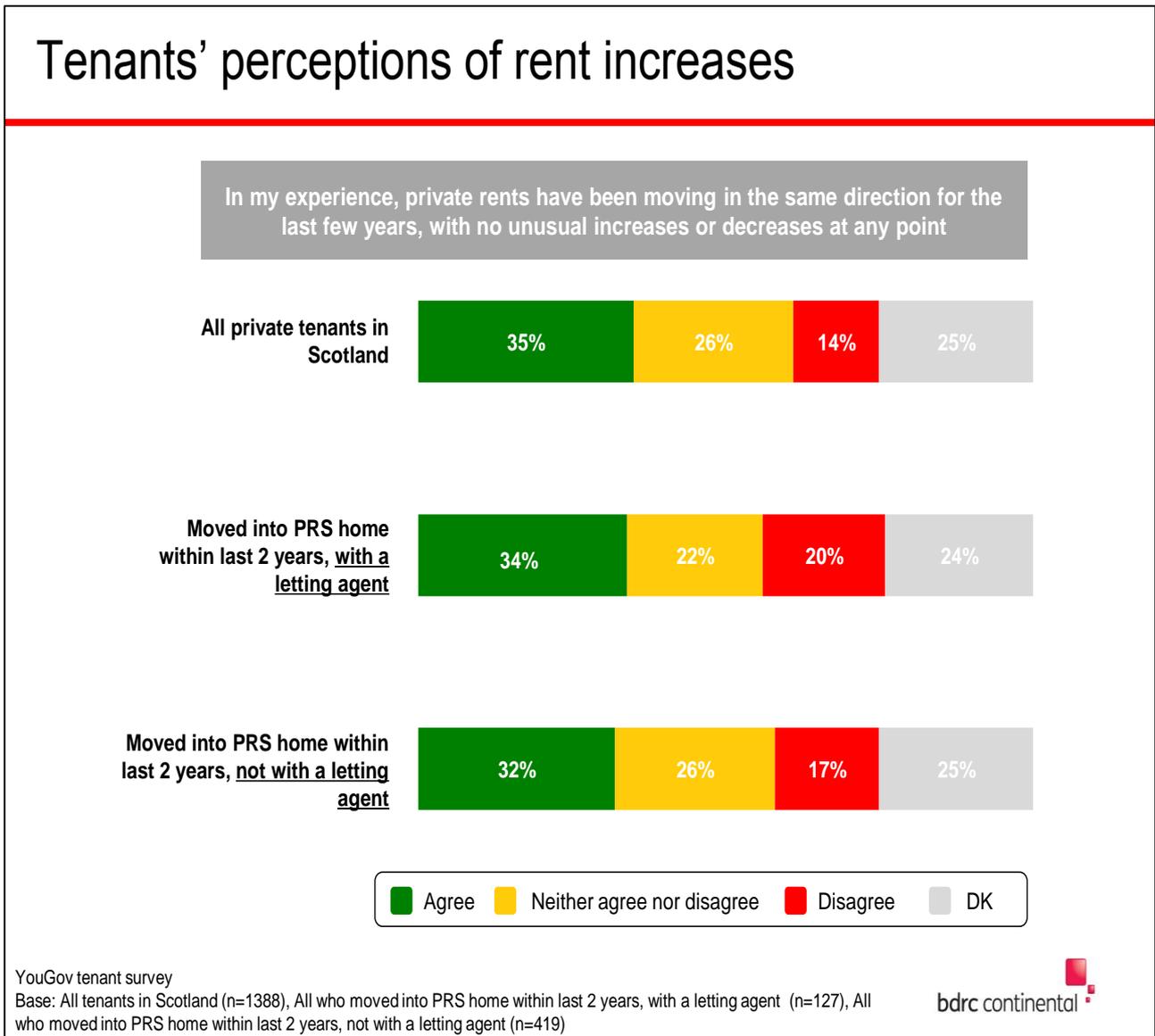
If the fees ban had driven rent increases in Scotland, we would expect to see higher agreement among those moving in the last two years, and especially among those moving with an agent in the last two years. However, the chart below (chart No. 6) shows that this is not the case – any differences are small and not statistically significant.

Chart No. 6



Tenants in Scotland were then asked to rate their agreement with a reversal of the question above – ‘In my experience, private rents have been moving in the same direction for the last few years, with no unusual increases or decreases at any point’. If tenants had noticed an increase to rents around the time of the clarification in the law on fees, we would expect high disagreement with this statement, and for disagreement to be significantly higher among those who had moved with a letting agent in the last two years. The chart below (chart No. 7) shows that this is not the case as any segment differences are small and not statistically significant.

Chart No. 7



5. Impact on lettings agency business including comparison to other law changes

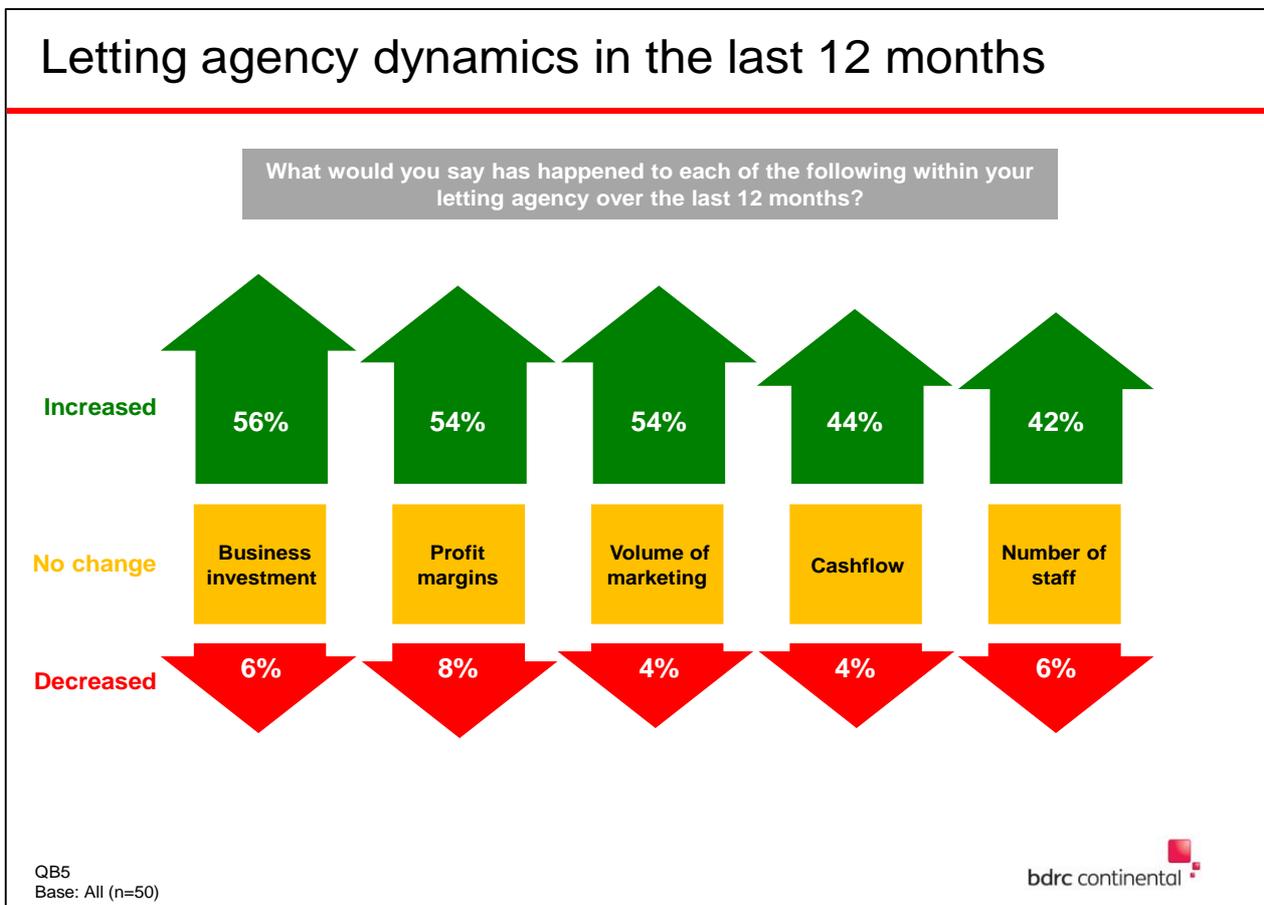
Headlines

- Letting agents describe an extremely positive PRS in Scotland, with all key business indicators showing very encouraging growth in the last 12 months
- This business context is being driven by increasing tenant demand and strong competition across the lettings sector
- The agency sector is well positioned financially with almost a quarter of businesses claiming to make a 'large' profit
- Just under half of letting agent managers (46%) report that they have had to make changes to the way they operate their business, as a consequence of the legislation clarification

Letting Agency Managers

Letting agents report a 'buoyant' private rental sector in Scotland (see chart No. 8 below). All key business indicators are showing a strong net positive situation based on business levels over the last 12 months.

Chart No. 8

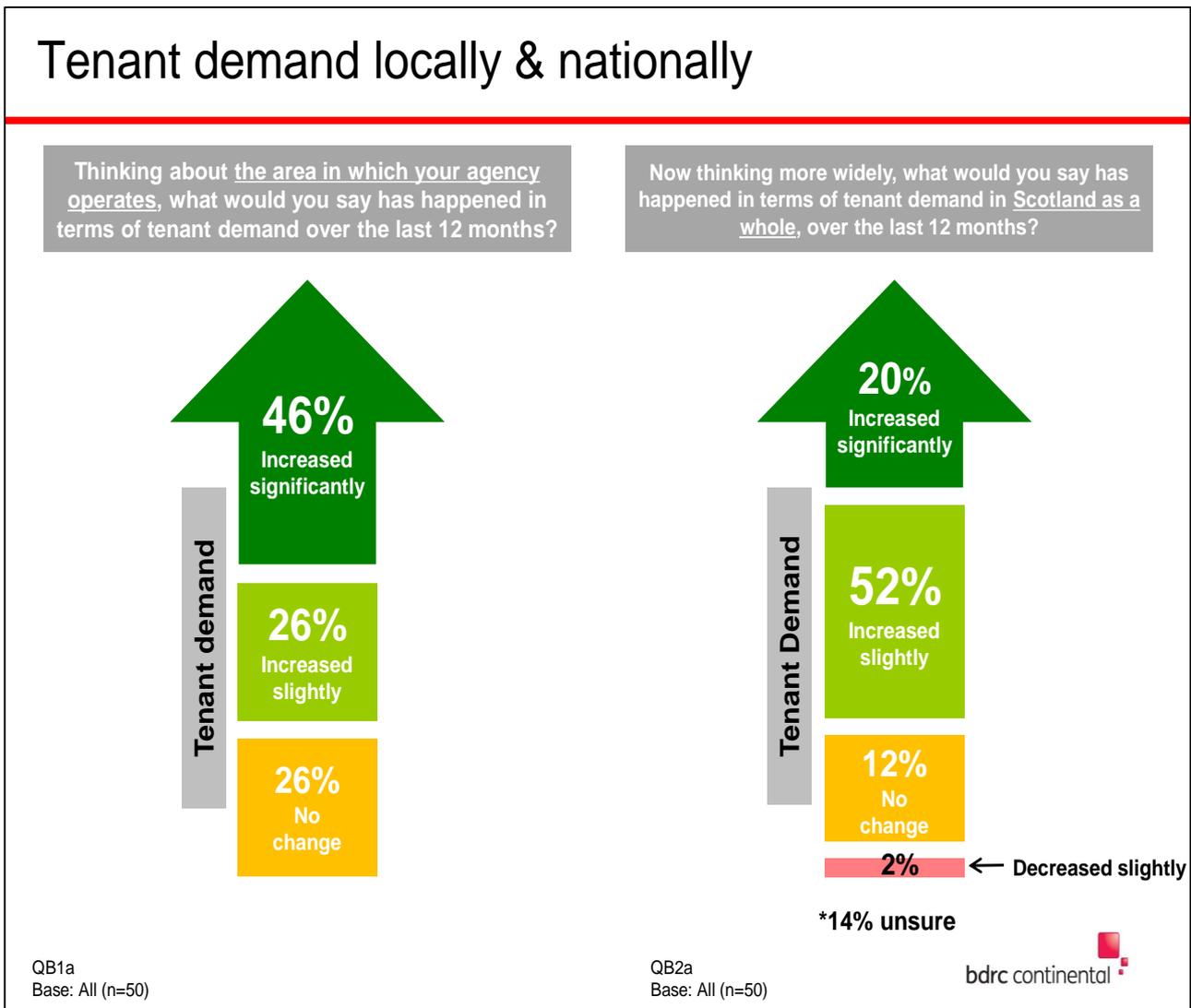


Larger firms (£300,000+ turnover) are more likely to have increased number of staff (69%), and also to have increased volume of marketing (62%) vs. lower turnover agencies (55% no change) and to have seen profit margins rise (62% increased vs. 45%). Profit margins are also more likely to have increased for those offering a combination of full management and let only (65%), full management only (44% increased).

44% of interviewees reported an increase in cashflow, just 4% a reduction. Chains were more likely to report an increased cashflow (50% increased), vs. independent (39% increased). Increasing cashflow is also more prevalent at letting agents with a smaller turnover (50%) vs higher turnover where no change situation is most common (69%). Promisingly, cashflow is also increasing amongst those agents newest to the industry (< 5 years) 50% vs 38%.

This set of positive business indicators is being driven by increasing tenant demand and strong competition across the sector. None of the 50 agency managers interviewed reported any decline in tenant demand in the areas within which they operate (see Chart No. 9 below), and only 2% of interviewees perceived any drop in demand at a national level. Almost three quarters of agencies (72%) reported an increase in demand locally in the preceding 12 months, almost a half (46%) felt that tenant demand had increased significantly in that time period.

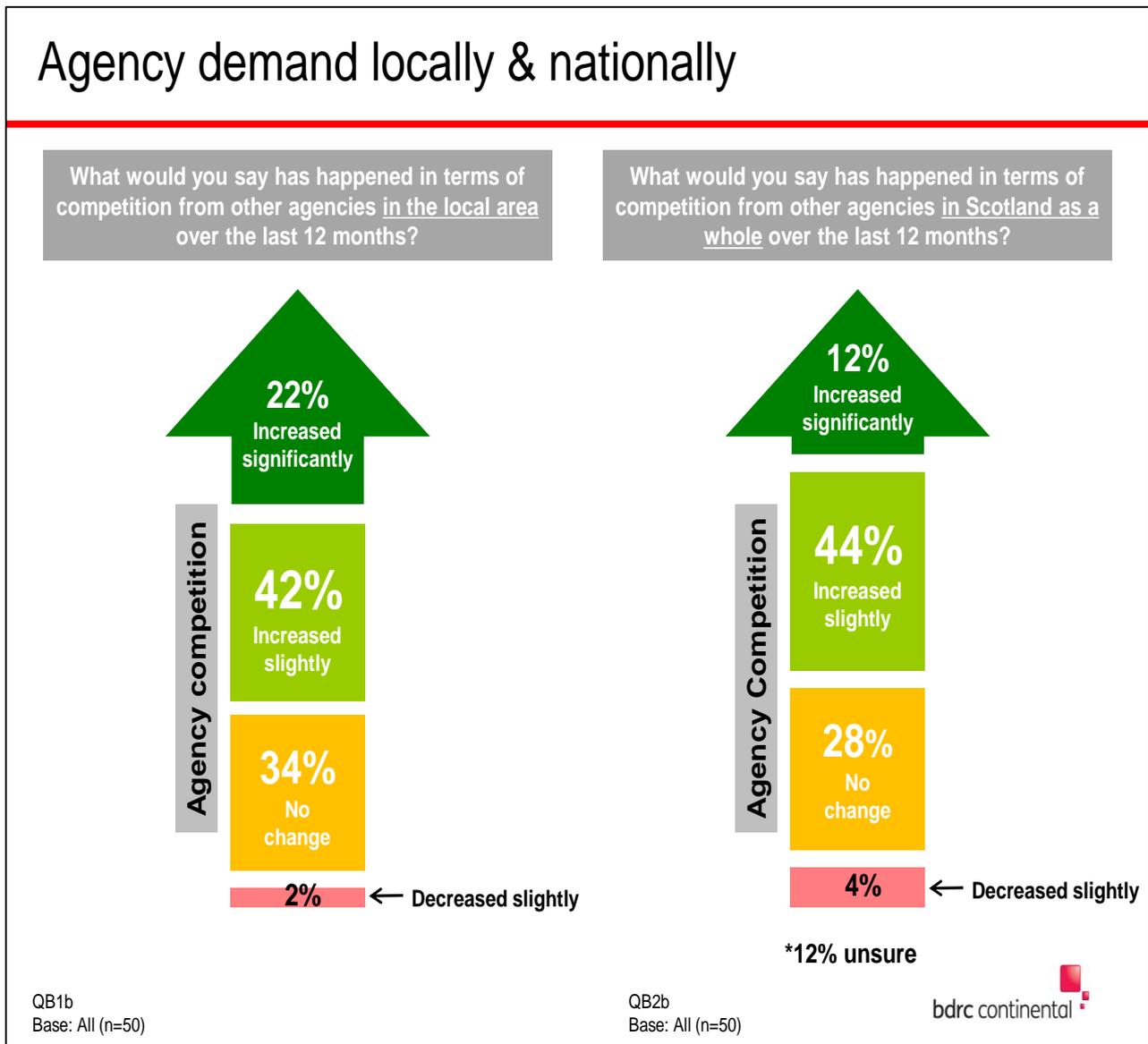
Chart No. 9



There was some discrimination in demand by agency location with offices based in an urban locations perceiving the strongest increase in demand (80% net increase in tenant demand) over those in a mixed or rural location (67% net increase in demand). Another indicator of the health of the letting agency sector is the

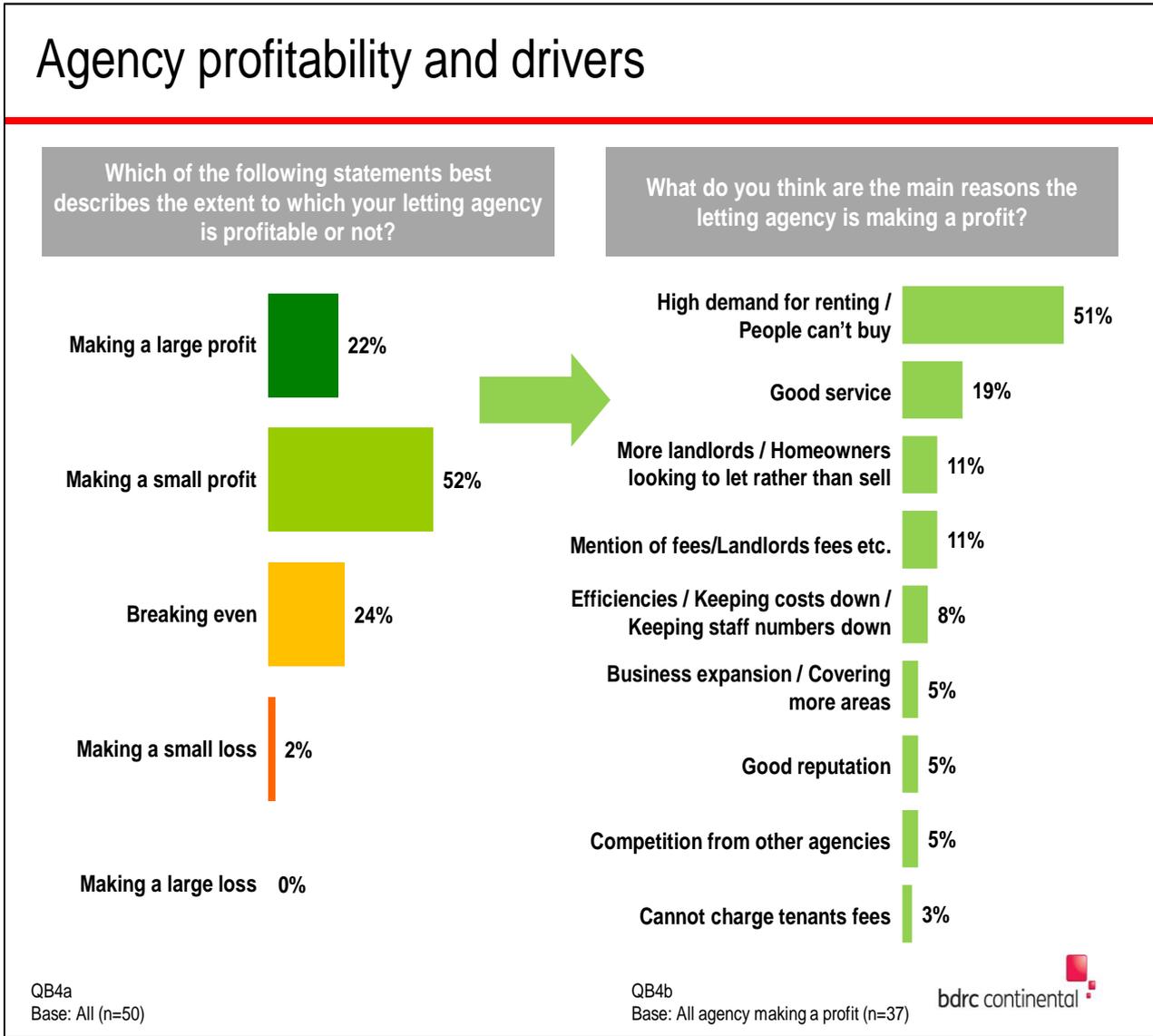
extent to which branch managers perceive that there is greater competition for their services from other firms (see chart No. 10 below)

Chart No. 10



Almost two thirds of agency managers (64%) perceive that competition for their services has increased locally in the last 12 months, and over a half (54%) sensed that was the case at a national level. There was less certainty at a national level for managers of the independent branches interviewed, 21% of whom were unsure about the competitive landscape across Scotland. Only a handful of respondents felt there had been any decrease in competition locally (2%) or across the country as a whole (4%).

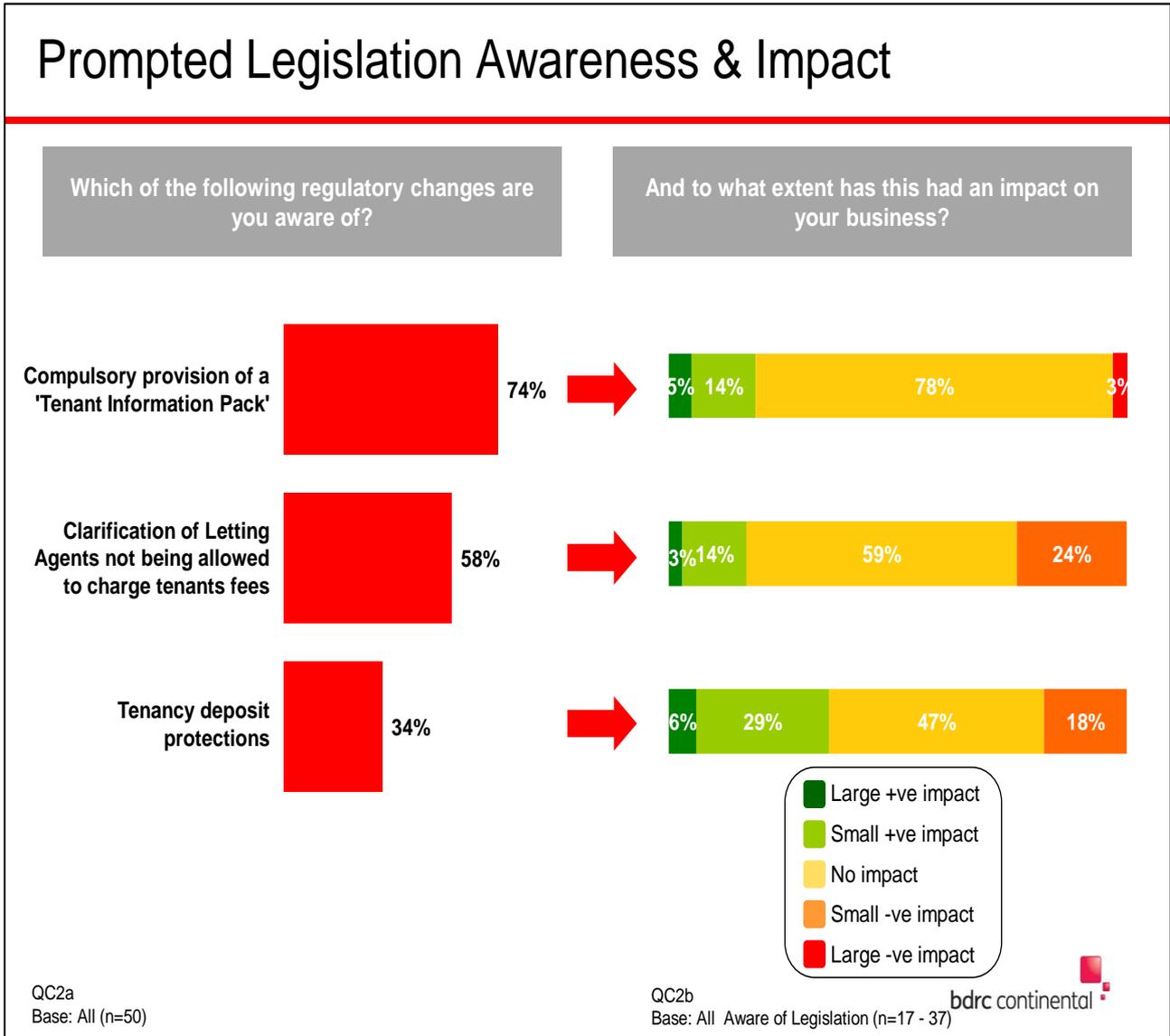
The letting agency sector is in a healthy state of profitability. Three quarters (74%) of managers interviewed reported that their agency was making either a large profit (22%) or a small profit (52%) (see chart No. 11 below). Chains are more likely to be making a large profit (36%) than independents (11%) where a small profit is most likely to be the norm. Interestingly, agencies based in a mixed urban/rural environment (27%) are more likely than purely urban agencies (15%) to make a large profit.



The standout driver of profitability is the demand for rental property, either as a tenure of choice or through tenant circumstance. Agency managers also mention the quality of service offered as helping to support their current levels of profitability.

Agency managers were asked to describe the impact of recent regulatory changes on their business (see chart No. 12 below).

Chart No. 12



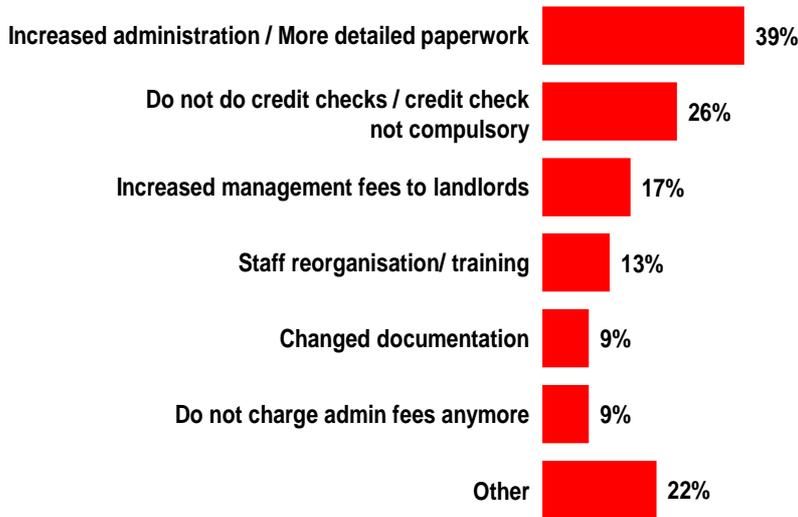
1 in 4 (24%) felt that the fee clarification has had a small negative impact on their business, but the majority (59%) reported that it has had 'no impact'. 1 in 5 felt that the legislation has actually had a positive business impact. The main reasons behind those saying it had a positive impact were that it had clarified the legal situation, and levelled the playing field.

Agency managers were then asked to detail the impact that the legislative clarification had on their business (see chart No. 13 below).

Impact of the clarification of legislation preventing letting agents from charging tenants fees

Have you needed to make any changes to the way your business operates as a result of this legislation? What changes have you made?

46% Made changes as a result of the legislation



QC3a / b
Base: All (n=50) / All who made a change as a result of the legislation (n=23)



Just under half of letting agent managers (46%) reported that they have had to make changes to the way they operate their business, as a consequence of the legislation clarification. This is particularly the case for those who have been in the industry for longer (i.e. over 5 years), where 58% have had to adapt their working practices in light of the clarification.

In most instances, the changes necessitated by the legislation clarification relate to administration, credit checks or fees. 1 in 4 agents indicate that there has been an increase in either the volume of administration or the level of detail required in the paperwork, with a further quarter saying they no longer undertake credit checks as standard.

Looking at the financial situation of the letting agencies, just under half (46%) said that there was no financial impact on their business, whereas 38% were unsure if there was any negative cost impact. 14% said it had some form of financial impact, although this tended to be relatively minor (4% up to £1,000, 6% between £1,001 and £5,000). Just 4% (i.e. two agents), reported a negative financial impact of over £20,000.

Urban areas more likely to report that it cost them something (25%), compared to those operating in both rural and urban locations (6%). Similarly, those offering a full management service only have experienced more consequences, with 22% reporting they have lost money, compared to just 4% of those offering a mix of service levels.

Expert Depths

Market experts agreed that the fee clarification has had at least a marginal impact on most agents operating in the Scottish PRS, though none felt it had a fundamental business changing influence. No agencies are believed to have had to close solely as a result of fee clarification. Respondents tended to think that non-refundable fees were not as important to an agency's cash flow or working capital as the law change around tenant deposits had been a couple of years earlier.

"At the moment, I'm not aware of any agent that's been put out of business as a result of that. There were agents who disappeared with deposit money at the time their deposit protection was brought in, rather than hand it over to a custodial scheme. I guess because those two things came in relatively close together, it's possible that the two had a cumulative effect and the two things together made agents pack up and say, 'I was using the deposit for working capital and I don't get the premiums anymore, so that's it', but I'm not aware of any specific agent that's gone out of business just because of the law on premiums." **Landlord Representative**

"I'm aware of at least one agent who I think ran off to southern Spain with all these tenants' deposits and all; the scheme therefore caught him, if you like. But nobody, no agents adversely suffering as a result of, you know, the change of the legislation. But, you know, I can imagine there will be a few that are hurting, that's me guessing to be honest." **Housing Lawyer**

"Fees are a significant income stream for any company, but it's not the major income stream, so they would just have to find other ways of actually recouping that money or indeed just charging it onto the landlords if they can manage to get that money from the landlords. Ultimately they're the end customer for an agent. So it's certainly been a very difficult time for many and we have seen many go by the wayside, but whether that's fees or not, we don't know." **Landlord Representative**

"Rule of thumb is that most agents that I have spoken to, and my agency is no different, is that very roughly the amount of cash flow that was coming in for referencing fees probably equalled or was somewhere in the region of the potential annual profit of any one of those businesses, so if you took that out basically the business was lucky if it was breaking even." **Letting Agents Representative**

6. Compliance with the law

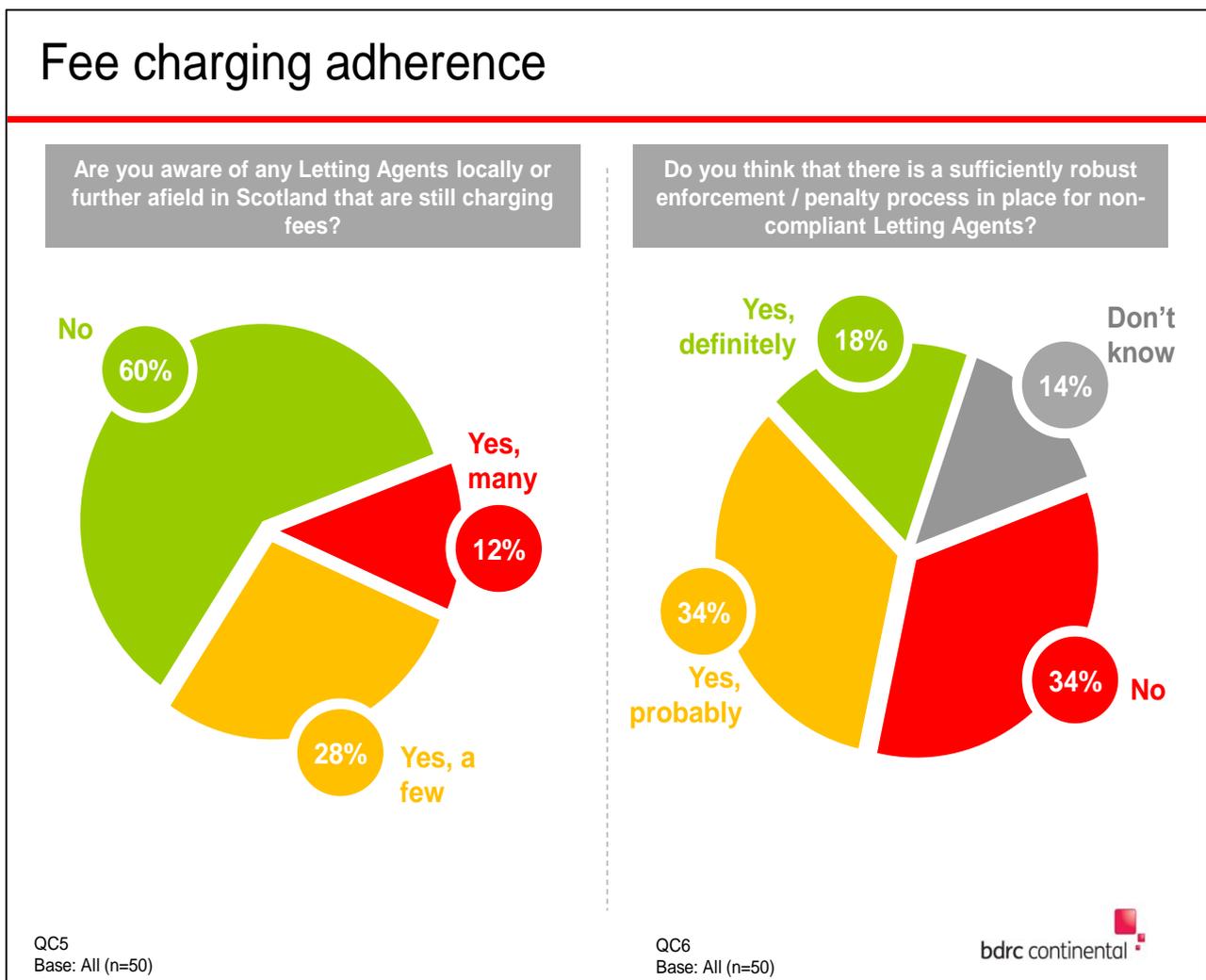
Headlines

- 4 in 10 letting agents felt that at least some businesses are still charging fees to tenants
- 1 in 3 agents feel that the market lacks a sufficiently robust enforcement process for non-compliant agencies
- Evidence of low-level non-compliance by agents from mystery shopping exercise
- Market experts representing letting agents, landlords and the legal profession asserted that there is a high, but not universal, degree of legal compliance with the clarification

Letting Agency Managers

Letting agency managers were asked if they were aware of any letting agent still charging fees in Scotland, and if they considered that the enforcement process to ensure compliance with the legislation was strong enough (see chart No. 14 below).

Chart No. 14



Awareness of non-compliance following the clarification of the legislation is mixed, with 40% of managers being aware of non-adherence to the legislation to some extent. Just under 3 in 10 managers indicate they are aware of 'a few' letting agents who continue to require tenants to pay fees, with around 1 in 10 being aware of 'many' agents in breach of the legislation.

Perceptions of the appropriateness of the enforcement / penalty process in place for non-compliant letting agents, indicates scope for a more structured and stringent approach. A third of agency managers do not believe that the current processes in place are sufficient, with a further third stating that they are 'probably' adequate. Just 1 in 5 are confident that the enforcement of the legislation and penalties in place for non-adherence are 'definitely' sufficient.

Mystery shopping

In the course of the 12 mystery shopping visits, where shoppers posed as would be tenants in different demographic scenarios, none of the letting agents spontaneously mentioned the recent fee legislation to the 'potential tenants', although one indicated that agencies are no longer allowed to charge fees. When prompted for any additional fees/charges charged, five mystery shoppers were told that they would only have to pay the rent and the deposit, in absolute compliance with the regulation.

However five letting agents indicated that they would charge a 'holding fee' to secure the property and take it off the market while the checks are being done. Holding fees ranged between £100 and £250. In all cases with the exception of one, this sum is refunded if the application is successful. In this case, the fee will be deducted from either the deposit or the first month rent. In one case however, a £200 holding fee was specified as non-refundable.

In three of the visits, letting agents told the shoppers that they would charge another type of fee in addition to the deposit and the rent. This was sometimes called 'holding fee' but in reality it seems to work as rental insurance and is only refundable at the end of the contract if all the payments have been made, and / or if the property is returned in a good condition. These fees amount to £100 or £200. One of these letting agents charges it in addition to a holding fee (as mentioned above).

Consequently, in more than half of the visits, letting agents told the shoppers that they would have to pay some kind of fee in addition to the deposit and the rent. These were justified either as a 'holding fee' to take the property off the market, or as a way to guarantee that the rent is paid and the property is returned in a good condition, although this is the role that the deposit is meant to play. The mystery shopping exercise therefore shows that some letting agents continue to generate fee charging scenarios. However only in one case was the fee non-refundable.

Landlords survey

A large majority of landlords letting in Scotland (74%) said that they had not personally experienced, or heard of any tenants being charged fees in Scotland in the last four years. 14% had only experienced or heard of fees being charged prior to the clarification in the law, but not since. 12% said they had experienced or heard of fees being charged in the last twelve months.

Landlords across the UK were asked whether they asked for/ charged for a range of things at the outset of the tenancy. A number of these charges would breach the law in Scotland – see table overleaf.

The table below indicates a small minority of landlords in Scotland (8%) are still charging fees, in apparent breach of the legislation. Although charging of these fees is less common in Scotland than in the rest of the UK (this difference is significant), it is noticeable that the majority of landlords acting without agents in the UK did not make any of these charges, despite it only being illegal in Scotland. London was the area where charging was most common, but even here, only 26% of landlords made one or more charge.

The figures for returnable holding deposits are not shown in the table, as these often turn into the damage deposit, and asking for them does not clearly breach the law in Scotland. Just over a quarter (26%) of landlords operating in Scotland said they got a returnable holding deposit from tenants, and this was similar to landlords operating elsewhere.

Landlord charging practices (over and above rent and returnable deposits), Scotland and rest of UK.			
Type of charge	% landlords letting in Scotland [n=118]	% landlords letting in rest of UK (exc. Scotland) [n=949]	% landlords letting in North England, Wales and NI [n=269]
I leave this to my letting agent	37%	50%	52%
Non-refundable Holding deposit	4%	4%	2%
Charge for issuing an AST	1%	6%	4%
Charge for issuing another type of tenancy	0%	1%	1%
Charge for guarantor admin	0%	1%	1%
Charge for credit check	3%	8%	4%
Charge for inventory	0%	4%	2%
Charge for checking employer references	0%	3%	1%
Any other charges in addition to rent and deposit	0%	3%	5%
At least one of the above charges	8%	18%	16%
Base: 1064 UK landlords, YouGov December 2013,			

Landlords depths

None of the landlords interviewed were aware of letting agents charging fees in violation of the legislation.

"I don't think the charging of additional fees goes on".

Expert Depths

Market experts representing letting agents, landlords and the legal profession asserted that there is a high, but not universal, degree of legal compliance with the clarification. Respondents could not point to any systematic and independent review of adherence but all felt that the 'vast majority' of agents were complying with the letter of the law, if not the spirit in a few cases.

When asked to reflect on the reasons for non-compliance, some experts pointed to a lack of visible regulatory enforcement as a potential driver.

"I couldn't honestly put figures on it. There is still lots of bad practice out there. It tends to be centred in low value stock and right-to-buy stock in, sort of, low value areas." **Housing Lawyer**

"You now have a proportion of landlords and letting agents who try to comply with all of these regulations and try and do it by the book, if you like, and another section which is undoubtedly smaller, but is significant, of particularly individual landlords, but also some letting agents who are still trying to fly by the seat of their pants and get around some of these regulations, and therefore make themselves cheaper or more attractive to a particular sector of the market it has to be said." **Landlord's Representative**

"I think it's tiny [the number of non-compliant letting agents]. I think probably the overall marketplace, which has got sort of, I don't know, 500 or 600 different agents, I think you are literally are talking about handfuls. I think the very fact that we've got to where we are, and the answer that I've just given to you about a handful out of 600, it wouldn't take a great deal more than what we are actually talking about in letting agent regulation just to make sure that we actually get those out the way as well." **Letting Agents Representative**

When considering the issue of fee charging compliance, a few respondents drew an analogy with the introduction of landlord registration in Scotland which again, whilst was felt to have captured the vast majority of landlords, left a sizeable minority (c.15%) of the target group operating outside of the legal framework.

"We don't know, to be honest. I wouldn't guess that. We know there's 200,000 registered out there; we know that there's many who aren't. But what proportion aren't, the very fact they're not registered means we can't put a figure on it, really, and we can't surmise. We know that there's many." **Landlord's Representative**

Tenants survey

Private renters in Scotland were asked whether they were charged fees on top of rent and deposit, and this was asked to those letting from agents and directly from private landlords. The table below shows that 1 in 5 Scottish tenants said they were charged fees on top of their rent and deposit the last time they moved. This rises to just under a third among those who used a letting agent. Again, it should be noted that this is based on the perceptions of tenants and the fees paid were not necessarily illegal.

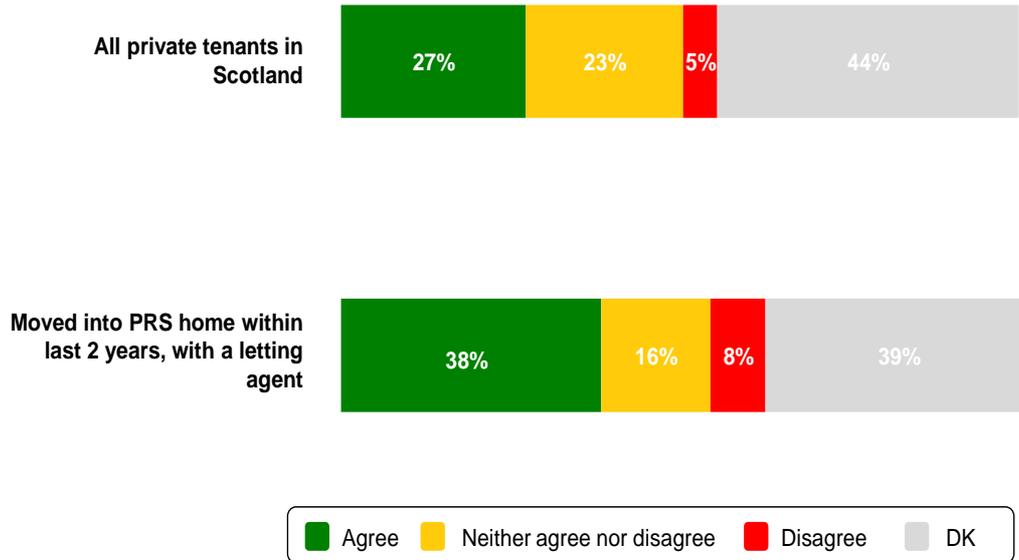
I was charged a fee on top of rent and deposits the last time I moved – Private renters in Scotland	All movers [1,000]	Managed by letting agent [355]	Private landlord direct [579]
Moved into home within last two years	20%	31%	11%
Moved into home 2 years or more ago	20%	32%	10%
All movers	18%	31%	10%
YouGov Tenant survey for Shelter, December – January 2013/14, carried out online. Base sizes on table, see methodology section for more details.			

Tenants in Scotland were asked if they felt that letting agents and landlords were finding ways of getting around the ban on fees by making other charges (see charts 15 & 16 below). These results show that:

- Overall, just over a quarter of renters in Scotland (27%) agreed that letting agents were finding loopholes and making other charges, but a large majority were neutral or did not know
- There is an indication that renters feel letting agents are more likely to find loopholes than landlords, but the differences are not statistically significant (not shown in chart).
- Those with recent experience of moving with a letting agent are more likely to report loophole charging (38%)

Tenants' perceptions of letting agents' compliance

Letting agents in Scotland are finding ways of getting around the ban on fees with other charges

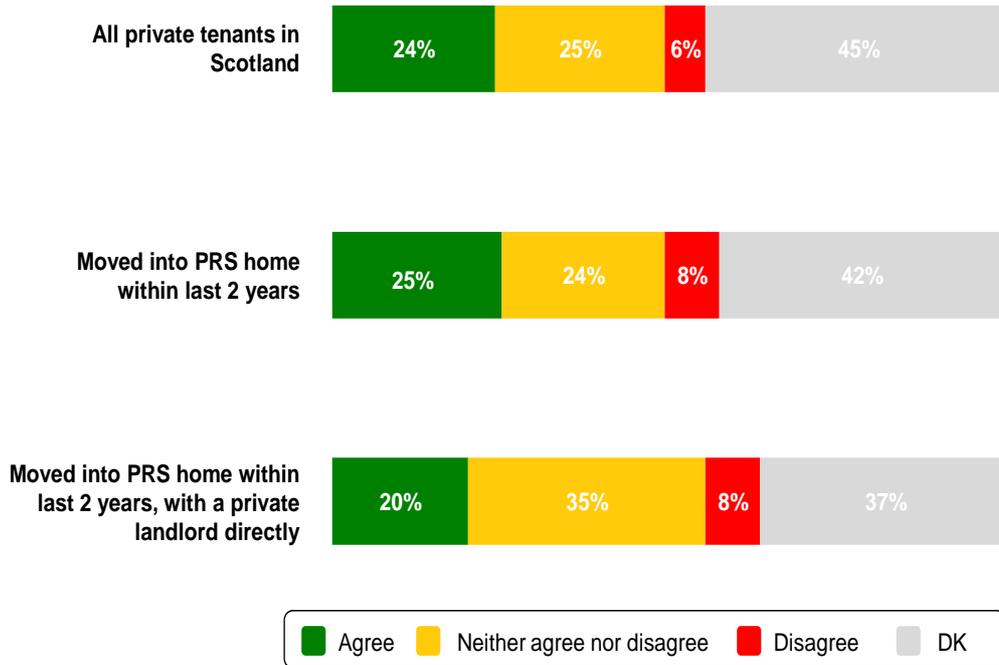


YouGov tenant survey
Base: All private tenants in Scotland (n=1387),
All who moved into PRS home within last 2 years with a letting agent (n=332)



Tenants' perceptions of landlords' compliance

Landlords in Scotland are finding ways of getting around the ban on fees with other charges



YouGov tenant survey

Base: All private tenants in Scotland (n=1385), All who moved into PRS home within last 2 years (n=544), All who moved into PRS home within last 2 years with a private landlord directly (n=65)



7. Overall positive or negative

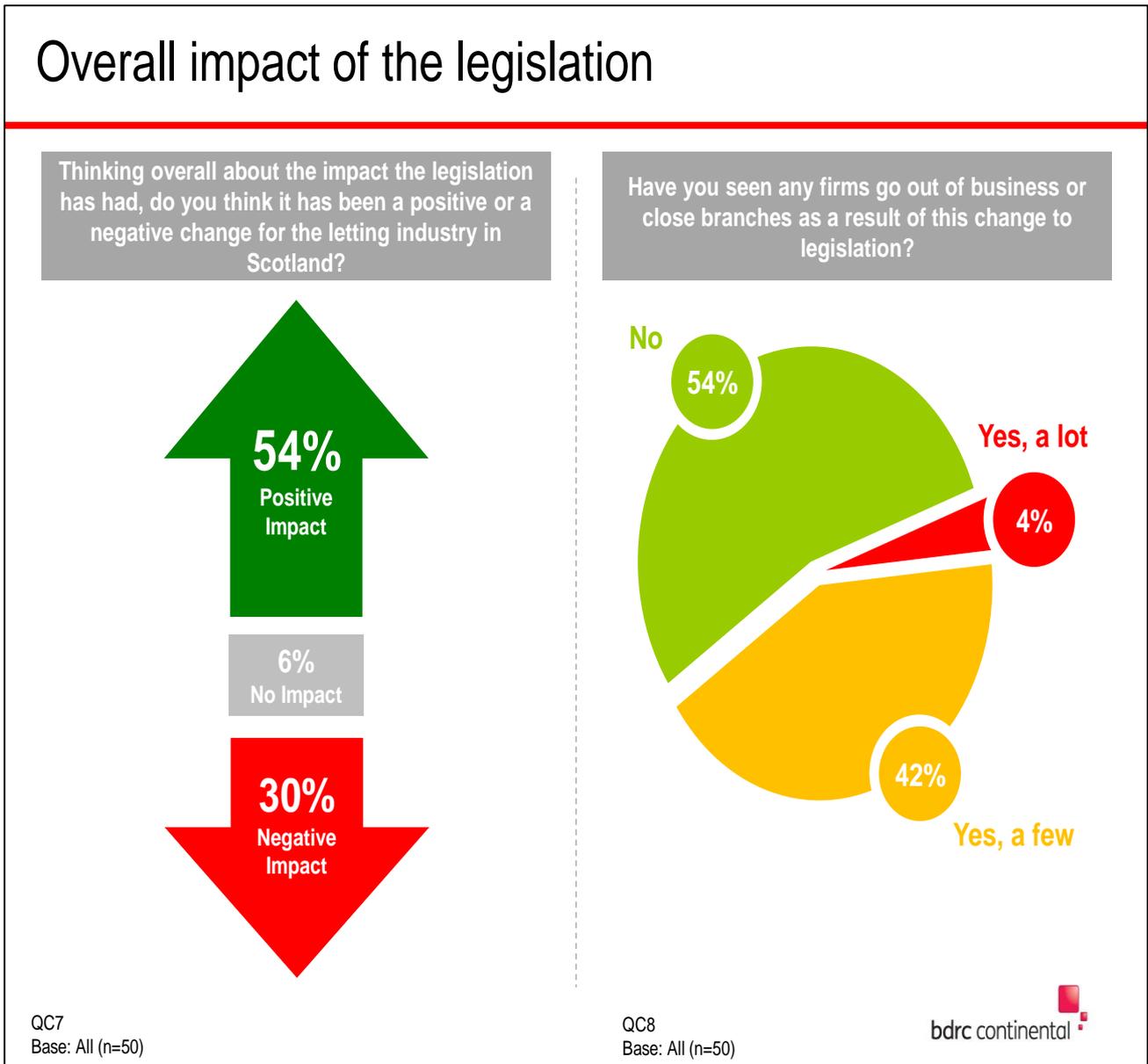
Headlines

- Over a half (54%) of letting agents feel that the fee clarification legislation has been positive for the Scottish PRS, 30% felt it had had a negative impact
- 46% letting agents claimed to have witnessed ‘at least a few’ businesses close branches or go out of business as a result
- Fewer than 1 in 10 landlords (8%) disagreed with the statement that banning fees ‘improves the rental sector’, and 38% agreed.
- Market experts also concluded that the legislation had been a positive development. Any concerns tended to centre on the regulation being enforced in a consistent and visible fashion across the market.
- The pervading view was that some of the fees had been disproportionate and unjustifiable and their removal helped to enhance the credibility of the letting agency sector in the eyes of both tenants and landlords alike

Letting Agency Managers

Letting agency managers were asked about their perceptions of the impact of the legislative change (see chart No. 17 below).

Chart No.17



Contrary to what may have been expected, over half of agent managers (54%) state that overall, the legislation has had a positive impact on the letting industry in Scotland, compared to just 3 in 10 who feel that the impact has been negative. However, smaller agents tend to be less positive about the change, with only 43% of those with 5 or fewer staff saying it has had a positive impact, compared to 70% who say it is positive amongst those who have 6 or more staff in their agency.

In terms of the broader implications, just under half claim to have seen firms go out of business or close branches as a result of the updated legislation (46%), although this is primarily made up of those who report seeing only 'a few' agents closing as a result.

Landlords survey

All 120 landlords letting in Scotland were then asked for their opinion on the statement: All things considered, letting agents and landlords not being able to charge fees on top of rents or deposits to tenants improves the rental sector. Whilst many (33%) were neutral on this, those agreeing (38%) outnumbered those disagreeing (8%) by nearly 5:1.

Landlords depths

Most of the feedback from landlords on this new legislation is positive. When they don't consider themselves as affected by it, they appreciate that this is going to benefit tenants and protect them against rogue landlords and letting agents. The overall view is that hidden charges for tenants are unfair, and that there should be more transparency and what tenants have to pay for.

'I don't think it's fair for a landlord to charge any fees apart from rent and deposit. I don't think they should charge a fee for doing an inventory, possibly at cost. I'm rather anti additional fees. You know, a lot of things should be covered in the rent. I don't charge my tenants for doing reference checks, even though it costs me money and I certainly don't, I don't think it's right for landlords to charge the fee for protecting the deposit to the tenant. I'm very keen on that. That's a landlord's overhead.'

'I think it's a good thing. I think it's unfair paying a deposit and a this and a that, and you also have to pay for the administration for the landlord who is making a profit from his rent.'

'I think it's a good idea. What is happening is they're charging one prospective tenant fees and saying the property is theirs, and then they're charging another prospective tenant fees and saying it's theirs and there's 2 or 3 of them all being charged and only one of them can get the property.'

Although they might consider it as a positive development, landlords are sceptical about the actual impact of the legislation as they believe that rogue landlords and letting agents will find a way to get around it

'It seems fair to me. Because it rules out rogue landlords. I suppose it makes it a level playing field in that everyone is paying a fairer rent than they would have otherwise have been, assuming of course that landlords are compliant with it.'

'It sort of makes sense in a way. At the end of the day it's not a question of how they can and they cannot because, if you have somebody crooked they're going to find a way.'

A minority of landlords expressed the opinion that tenants should be responsible for paying for their credit check as it is in their own interest to get the property.

'I think you should be allowed to ask people for a credit check, because it technically does cost money. But I don't think it should be an excessive fee.'

'The tenant is going to end up paying it in any case. It's just putting it another way that makes it legal. I think it would be much better if it was up front and clear so you knew what it was and that people were paying. I also don't think a tenant would mind paying a credit check fee themselves to know they were going to get the flat they wanted. I think it will likely lead to the rents going upwards because the landlords will seek to recover their costs.'

The telephone interviews showed that negative comments come from those who fear that letting agents are going to start charging landlords more to make up for the loss of income. This (so far unfounded) fear of bearing the cost of this change is the main obstacle to landlords' support. We can therefore infer that if landlords could be reassured that letting agents are not going to increase their fees and pass these costs onto them, they would not object to the legislation.

'I think it's a good thing. I remember when I was renting 15 years ago that there was all sorts of hidden extra charges. I think being more up front about the fee, the costs to the tenant is good and because of that we are in a better situation that tenants know what is being charged to them and nothing can be, sort of, sneaked under the wire. As a landlord, it probably costs me more because the fees are going elsewhere, the fees are being charged to me that wouldn't have been charged before. But if that's not the case, it probably

means that the agencies are being a bit more honest about where they're getting their income, which means it's more transparent it's more focused for the landlord and the tenant and we're not being stuffed for money on both sides.'

Expert Depths

The 'experts' interviewed as part of this project concluded, with some caveats, that the banning of fee charging by letting agents in Scotland has been a positive development for the rental sector. Any concerns tended to centre on the regulation being enforced in a consistent and visible fashion across the market. The pervading view was that some of the fees had been disproportionate and unjustifiable and their removal helped to enhance the credibility of the letting agency sector in the eyes of both tenants and landlords alike.

"My sense is, I guess, my gut feeling is that it's a good thing. The fact that the law has been clarified is a good thing for tenants and for landlords. I'm, personally speaking, I'm in favour of it and as an organisation we were in favour of it and I think that's really for reasons of clarity. It didn't seem appropriate that tenants were getting hit with fees after they had fallen in love with a property or agreed to take a property, and then they're being stung in some other way and that left a bad feeling in the mouths of agents, of tenants and landlords and, yes, sometimes to the point where a landlord could lose out on a tenant or it gets the relationship off onto a bad footing." **Landlord's Representative**

"In that the system which was in place before there was a clarification, you know, certain landlords were charging ridiculous non-returnable fees. Somebody could go in and say, 'I want a flat' and they'd put a deposit of £300, or pay a fee of £300, which they then didn't get for some reason, they probably weren't aware or they never got it back. There was all sorts of nonsense going on and that has been clamped down on." **Housing Lawyer**

"There is an abundance of regulation in the private rental sector, including the fee issue you've got other things as well. And I think I would prefer now to see a settling down: probably less or no more regulations, if that's the right phrase, but enforcement of what we already have. Because until that happens there's no confidence in the system from either landlords or tenants, and people just see it as a bloody nuisance." **Housing Lawyer**

For some though, a degree of ambiguity around fees still remains in the market

"I think there's still uncertainty, however, around what an agent or a landlord can legitimately charge a tenant beyond rent. And the classic example is this issue about reference fees, where a landlord really wants to take out, you know, take a reference that's going to cost them to do that; why should they pay that, I suppose, is the argument. And I have sympathy with that because I don't believe that the change to the premium legislation really was intended to address those sorts of issues but it's, sort of, pooled all in together. It was more really to deal with the ridiculous sums of money that tenants were being asked to pay that was non-returnable, whereas there are some legitimate costs which landlords are having to incur which are probably also being captured by this legislation, that landlords can't actually charge either, and it's possibly swung the pendulum a bit too far on it, just the way it's been framed." **Housing Lawyer**

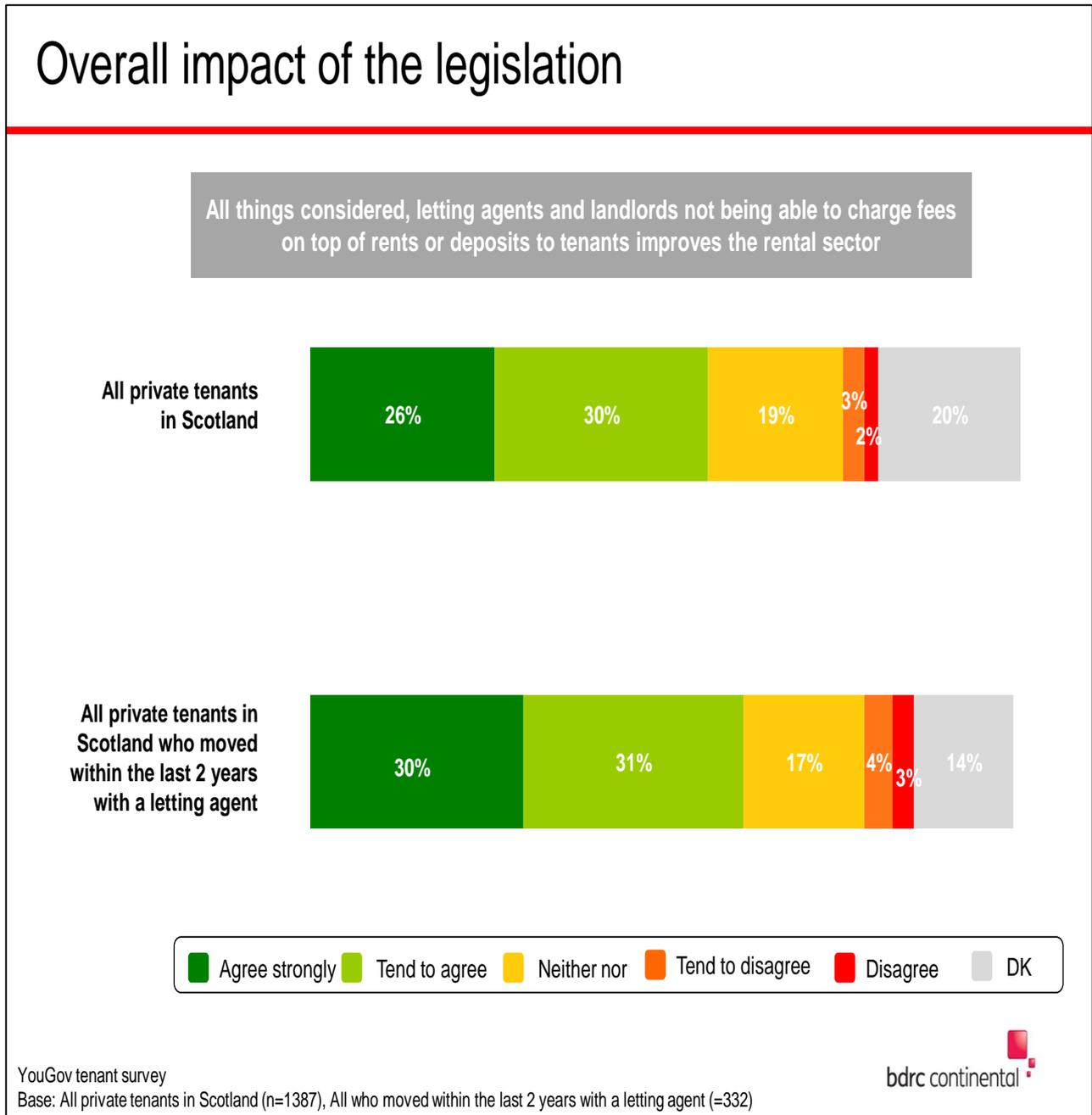
The letting agent representative interviewed wanted to see a line drawn under historic claims being made by tenants against fees incurred pre-clarification.

"I think the issue about clarification, a couple of things. One would be basically let's put the clarification of reclaiming of fees in the past, and all the rest of it, into the past so that we can actually build for the future." **Letting Agents Representative**

Tenants survey

The chart below (Chart No. 18) shows that Scottish renters overwhelmingly agree that a ban on fees is a good thing for the sector, with a tiny minority disagreeing. There is an indication that those renting through an agent are even more supportive, but this difference is not statistically significant.

Chart No. 18



8. Full methodological details

This report draws upon the following primary research surveys:-

Quantitative Letting Agents Survey

Methodology: This survey was conducted using a telephone survey administered by Perspective Research Services, a member of the BDRG Group. The sample for this survey was drawn from online desk research of Scottish letting agents and target quotas were set for 'Chains (n=22) vs Independent agents (n= 28)', and location Urban (n=20), Mixed (n=29) and Rural agents (n=1). The sample of size of 50 interviewees limits statistical robustness and means that results should be treated as directional only.

The letting agent survey data are unweighted. Fieldwork was undertaken between the 3rd of December 2013 and the 11th of February 2014.

Letting Agents Mystery Shopping Research

Methodology: This survey was conducted via mystery shoppers belonging to ESA Retail, a member of the BDRG Group. 12 x mystery shops were carried out across 3 geographical locations (Edinburgh, Aberdeen and Glasgow). 11 different letting agency firms were mystery shopped. A range of different tenant scenarios were used across the mystery shops whereby the mystery shopper presented as representing 'a family with children' or 'a group of younger people'. Within this we employed a blend of 'lower risk tenants' (working full time) and 'higher risk tenants' (LHA claimant, student etc).

The mystery shopping survey data are unweighted. Fieldwork was undertaken between 19th November and 19th December 2013.

Quantitative Landlord Survey

Methodology: This survey has been conducted using an online interview administered members of the YouGov Plc GB panel of 280,000+ individuals who have agreed to take part in surveys. An email was sent to panellists selected at random from the base sample according to the sample definition, inviting them to take part in the survey and providing a link to the survey. (The sample definition could be "GB adult population" or a subset such as "GB adult females"). YouGov Plc normally achieves a response rate of between 35% and 50% to surveys however this does vary dependent upon the subject matter, complexity and length of the questionnaire.

The landlord survey is not weighted as there is no robust profile of UK landlords exists to use, but the profile of landlords it produces is similar to other surveys, such as DCLG private landlord survey.

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,064 adults (115 letting majority of properties in Scotland. Fieldwork was undertaken between 11th December - 19th December 2013. The survey was carried out online.

Qualitative Landlords Survey

Methodology: 10 x 30 minute tele-depth interviews with landlords recruited from the YouGov quantitative survey who accepted to be contacted for further research. Fieldwork was undertaken by executives of the BDRG Group between the 23rd and the 31st of January 2014.

'Expert' Depth Interviews

Methodology: This survey was conducted via 4 x targeted tele-depth interviews with representatives of key stakeholder groups in the Scottish Private Rental Sector. Potential interviewees were identified by Shelter and invited to participate in the research by BDRG Continental. Each interview, lasting 30-45 minutes, was undertaken by Mark Long a director at BDRG Continental.

Quantitative Tenant Survey

Methodology: This survey has been conducted using an online interview administered members of the YouGov Plc GB panel of 280,000+ individuals who have agreed to take part in surveys. An email was sent to panellists selected at random from the base sample according to the sample definition, inviting them to take part in the survey and providing a link to the survey. (The sample definition could be "GB adult population" or a subset such as "GB adult females"). YouGov Plc normally achieves a response rate of between 35% and 50% to surveys however this does vary dependent upon the subject matter, complexity and length of the questionnaire. The responding sample is weighted to the profile of the sample definition to provide a representative reporting sample. The profile is normally derived from census data or, if not available from the census, from industry accepted data.

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 6,533 adults. Of which 1,387 are private renters in Scotland . Fieldwork was undertaken between 11th December 2013 - 16th January 2014. The survey was carried out online. The figures have been weighted to representative of all private renters in Scotland (aged 18+).

