

## Let down

# CAB evidence on letting agents and their charges

### Summary

For many people looking for somewhere to live, the private rented sector is their first and, for an increasing number, their only option: home ownership is financially out of reach and the demand for social housing far outstrips supply. As the recession bites, even more people are finding themselves in this situation as repossessed home owners are forced to rent instead, would-be first time buyers are unable to get mortgages, and Government plans to expand the social housing stock are hit by the collapse in the house building programme.

Around three million households live in the private rented sector and the majority (60 per cent) of private rented homes are now let via an agent rather than directly from the landlord. The recession is likely to make this more common as home owners who cannot afford their mortgage or who need to move and are unable to sell, become 'reluctant landlords' who then choose to engage an agent to let and manage their property rather than do it themselves.

Letting agencies are becoming more powerful in the market for private rented accommodation but are not subject to positive statutory regulation governing their prices or service quality. Anyone can set themselves up as a letting agency, without the need for professional expertise or experience, any requirements about how they hold and manage the steady stream of money they handle between tenants and landlords, or any redress scheme for when things go wrong.

This report details how tenants are let down from this lack of regulation. It also focuses on the widespread practice of imposing often substantial additional charges on tenants for services which are simply part of the routine process of letting and managing a property and should therefore be covered by the rent the tenant pays.

It calls for urgent action by Government to introduce statutory regulation of letting agents, to protect the interests of both tenants and landlords. This must include measures to prevent agents from imposing charges on tenants in addition to the rent.

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**Key points:**

- The absence of any statutory regulation of letting agents means that using an agent can be a costly and risky business for tenants.
- An online survey of 1,289 tenants who visited the Citizens Advice website over a three month period, found that 73 per cent were dissatisfied with the service provided by their letting agent.
- Common concerns included difficulties in contacting the agent, serious delays in getting repairs carried out, inadequacies in the protection of clients' money and the imposition of additional charges.
- A survey of 424 letting agents found that 94 per cent imposed additional charges on tenants on top of the tenancy deposit and rent/rent in advance. There was huge variation in the size of these charges. The charge for checking references ranged from £10 to £275 and the charge for renewing a tenancy ranged from £12 to £220. In some cases additional charges for a tenancy amounted to over £600.
- Less than a third of agents willingly provided full written details of their charges to CAB workers when asked.
- Sixty one per cent of the tenants in the survey said that paying these charges was a problem. Some had to borrow the money, others had difficulty paying other bills or went into debt.
- Almost a quarter of the agents said they did not let to tenants in receipt of housing benefit – a figure which rose to 48 per cent in the South East.
- This report calls for the statutory regulation of letting agents. In order to obtain a licence, agents should be required to demonstrate professional competence, have adequate client money protection arrangements and operate a system for handling complaints and redress.
- Regulations should also specify that no additional charges should be made to tenants for activities which are part of the routine letting and management process. The cost of this work should be included in the rent paid by the tenant and/or the management fee paid by the landlord.
- The regulator must take a pro-active approach to compliance and should have an appropriate range of regulatory tools to enforce this. The ultimate sanction should be the withdrawal of an agent's licence to operate.
- The Departments of Work and Pensions (DWP) and Communities and Local Government (CLG) should consider how housing benefit reform can address the reluctance of letting agents and landlords to let to tenants in receipt of housing benefit.

**Introduction**

A CAB in Berkshire advised a young couple who had moved into their rented accommodation in November 2008. They paid £329 in administration charges to the agent, as well as a deposit of £850. Almost immediately they had problems with things going wrong in the house but were unable to get the agent to do anything to remedy the matter. Problems included an insecure front door, only very hot water to the shower and bath, no smoke alarm, water penetration, mould and rats. When in frustration they contacted the landlord, they found that he had also written to complain about the service he was receiving from the agent. Whenever the clients contacted the agent, they were told that the relevant

person was on holiday and no one else could make decisions.

Around three million households live in private rented accommodation in England. In recent years there has been a slow but steady increase in the size of the private rented sector – from a low of 9 per cent of dwellings in 1992 to 13.9 per cent by 2007/08.<sup>1</sup> The size of the sector varies around the country, rising to 20 per cent in London.<sup>2</sup> The sector has also increased in Wales in recent years and now accounts for 10 per cent of the stock.<sup>3</sup>

At the same time there has been a significant increase in the use of letting agents by landlords, from 37 per cent of dwellings in the sector in 1993/94 in England to 60 per cent by 2006.<sup>4</sup> It has been estimated that there are some 10,000 -12,000 letting agents in the UK.<sup>5</sup> However this figure will fluctuate as estate agents move between selling and letting in response to market conditions.

A key feature of the private rented sector in this country is the extent to which properties are owned by individual landlords rather than by companies or institutions, a trend that has increased in recent years. Moreover average portfolio sizes are small, with 58 per cent of landlords owning fewer than five properties.<sup>6</sup> The 'cottage industry' nature of the sector, together with the minimal security of tenure which most private tenants experience, makes choosing who to rent from a risky business.

For the prospective tenant therefore, renting through an agent may appear to be a safer option, providing greater assurance that they will receive a professional and reliable service in return for their rental payment. Similarly, the property owner who chooses to let through an agent will expect that, in return for a management fee of typically 15 per cent

of rental income for a full letting and management service, their property will be looked after, the tenancy will be professionally managed and their rental income safeguarded.

Regrettably however, as demonstrated in this report, this is often not the case. Indeed Government statistics indicate that tenants whose property was being managed by an agent were less satisfied (71 per cent) than those who rented directly from a landlord (81 per cent).<sup>7</sup> This is despite extensive self regulation by the industry: Government statistics indicate that 71 per cent of agents are members of professional and accreditation membership bodies, such as the Association of Residential Letting Agents (ARLA), the National Association of Estate Agents (NAEA), Royal Institute of Chartered Surveyors (RICS) and the National Approved Lettings Scheme (NALS).<sup>8</sup>

There has therefore been growing pressure, not least from the industry itself, for the statutory regulation of all lettings agents. This pressure intensified during the passage of the Consumers, Estate Agents and Redress Act 2007 which strengthened the existing *negative* licensing regime for estate agents when conducting their property selling functions, and provided the requirement for a statutory redress scheme. However the Act did not provide for any regulation of the letting and management of rented properties. As many of these agents also deal with lettings, we therefore have the unsatisfactory situation where an agent has one part of his/her work subject to statutory regulation and not the other. Moreover the case for the regulation of agents' lettings function is in some ways stronger than for sales. Letting agents are responsible for handling significant sums of money over the length of the tenancy in the

1 Communities and Local Government (CLG), *Survey of English Housing Preliminary Report: 2007/08*, January 2009

2 CLG, *Housing in England 2006/07*, Table 1.2

3 Welsh Assembly Government, *Housing Strategy 2009*

4 Rugg J and Rhodes D, *The private rented sector: its contribution and potential*, University of York, 2008, Table 3.8

5 Jones C, *Government review of regulation and redress in the UK housing market*, The Department for Business, Enterprise and Regulatory Reform (BERR), 2009

6 Rugg and Rhodes op cit, Table 2.5

7 Rugg and Rhodes op cit, Table 3.7

8 CLG, *2006 English House Conditions Survey*, 2008

form of deposits, service charges and rents. As well as this, they are responsible for compliance with health and safety regulations which are vital to the well being of the tenants, and ensuring the proper upkeep and maintenance of the landlord's property. Also, due to the ongoing nature of the lettings relationship, there is greater need for tenants to have access to a redress scheme in order to avoid disputes ending up in court action which can then easily lead to possession proceedings.

Three significant reports were published in 2008 – by the Law Commission,<sup>9</sup> by the industry<sup>10</sup> and by the Government commissioned independent review of the private rented sector<sup>11</sup> – all of which have called for the regulation of letting agents.

These were followed in January 2009 by the report of research undertaken by Professor Colin Jones, which was commissioned by CLG and Department of Business, Enterprise and Regulatory Reform (BERR) following debate during the passage of the Consumers, Estate Agents and Redress (CEAR) Bill. Jones's research, which examined regulation and redress across the UK housing market, recommended the extension of the provision of the CEAR legislation (which includes a requirement for membership of an ombudsman scheme) to letting and managing agents, and that at least the principal professional in a branch should have an accredited advanced qualification. Jones also argued that "there is a strong case for consumer redress schemes in the housing market to be available on a universal basis" whilst also recognising that, to be effective, this would require assured shorthold tenants to have protection from retaliatory eviction when they seek redress.<sup>12</sup>

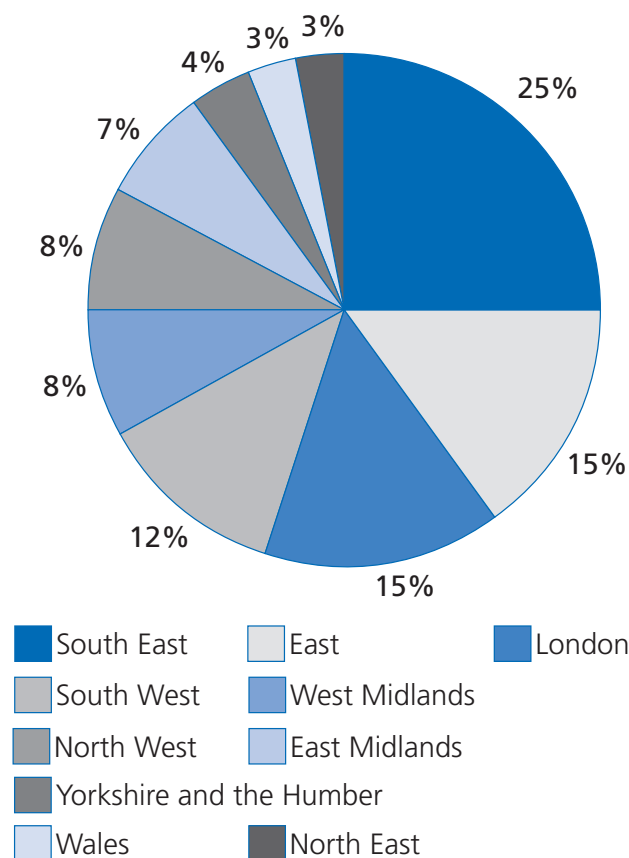
Citizens Advice welcomes this consensus on the need for the statutory regulation of letting agents. Evidence from bureaux across England

and Wales shows very clearly the tenant detriment which has resulted from the current lack of regulation of letting agents. The priority now is to ensure that regulation is developed which will effectively tackle the problems which tenants as well as landlords currently experience in their dealings with letting agents.

## Methodology

In 2008/09 bureaux in England and Wales dealt with 6,460 problems concerning letting agents. As Figure 1 shows, these problems were particularly common in the South East (25 per cent), East (15 per cent), London (15 per cent) and South West (12 per cent) regions.

Figure 1: CAB problems by region



<sup>9</sup> The Law Commission, *Housing: Encouraging responsible letting*, 2008  
<sup>10</sup> Carsberg B., *Carsberg review of residential property*, RICS/ARLA/NAEA, 2008  
<sup>11</sup> Rugg and Rhodes, *op cit*  
<sup>12</sup> Jones C, *op cit*

This report is based on evidence submitted by bureaux as a result of dealing with these enquiries, along with the results of an online survey of tenants who had rented through an agent. In addition, 50 bureaux completed questionnaires with letting agents in their local communities, in order to collect more detailed information about the range and scale of the charges made to tenants.

In order to explore the experience of tenants renting through letting agents, Citizens Advice carried out an online survey on its website for three months between August and November 2008. Visitors to the Citizens Advice website who had rented through an agent in the last two years were invited to complete a short survey about their experience. There were 1,289 respondents to the survey from across England and Wales. Although the survey was particularly aimed at tenants, a few landlords also responded with their views of their agent.

The second strand of the research involved a survey of letting agents. Fifty one bureaux across England and Wales visited 424 letting agents in their local area and asked a series of questions about whether additional charges were made, whether the agent accepted people on housing benefit and whether they were members of a trade body. Ninety six per cent of the agents responded positively to the latter question, indicating that there is a bias in the survey towards the more self-regulated end of the sector which is committed to better standards.

Bureaux were also asked to evaluate how willing the letting agent was to disclose the information requested, and to request written details of the charges made. They also checked whether rents on offer were within the local housing allowance rate and thus affordable to housing benefit claimants.

**Table 1: Geographical distribution of responses**

	Percentage of tenant survey responses <sup>13</sup>	Percentage of letting agent survey responses	Distribution of private rented sector households in England <sup>14</sup>
North East	4%	5%	4%
North West	10%	12%	11%
Yorkshire and the Humber	7%	7%	9%
East Midlands	5%	11%	7%
West Midlands	7%	3%	8%
East	7%	9%	10%
South East	21%	14%	17%
South West	12%	14%	11%
London	22%	18%	22%
Wales	6%	6%	

<sup>13</sup> Percentages are based on those respondents who specified a region.

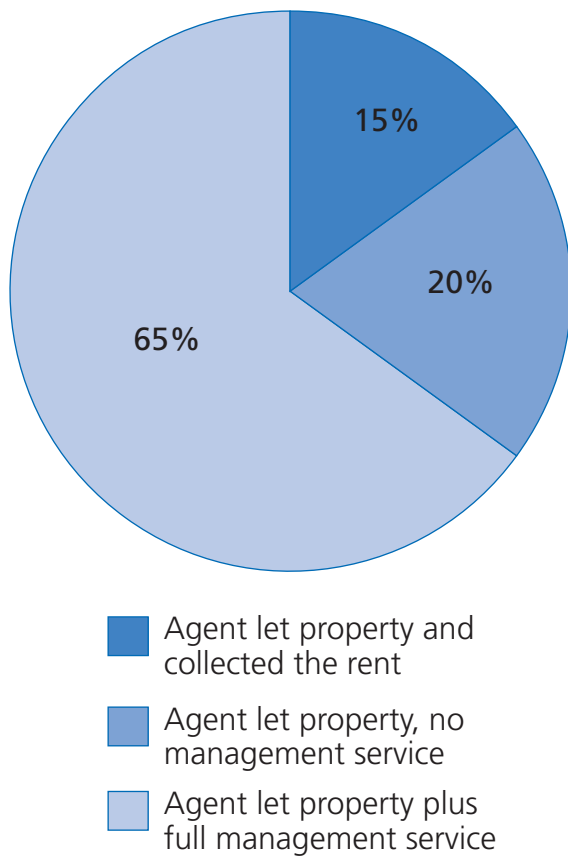
<sup>14</sup> CLG, Housing in England, 2006/07, Table 1.2

Table 1 shows the geographical spread of responses from both the tenants and the letting agents' surveys. A comparison with the 2006/07 Survey of English housing figures shows the extent to which the surveys are representative of the geographical distribution of the sector in England.

## Service failure

The majority of tenants (65 per cent) were involved with an agent for the full process, from signing up to the tenancy through to ongoing management. The remaining respondents received management services from their landlord rather than an agent – 20 per cent had only used an agent for sign up and a further 15 per cent signed up and also paid their rent to the agent (Figure 2).

Figure 2: Role of the letting agent



A high percentage (73 per cent) of respondents said they were dissatisfied with the service provided by their letting agent,

whilst a further 19 per cent said they were 'fairly satisfied'. Only eight per cent reported being satisfied. There is always likely to be a bias towards dissatisfaction in a self selecting survey, as people who have had a bad experience will be more motivated to respond in the hope that this may result in change. However, as with CAB case evidence, it is from an examination of negative experiences that it becomes possible to build up a picture of where practices are failing and reform is needed.

From the comments made by respondents and from CAB case evidence it is clear that there is considerable variation between letting agents in terms of the standards of service provided.

On the one hand, a number of respondents commented positively on the service they received from their letting agents.

"Agent was highly recommended to me and lives up to his strong local reputation." (Tenant, East Midlands)

"The agency has been fantastic, providing a professional service and making no problems carrying out repairs. For example the vacuum broke and I was advised I could choose a new one for the value of £80 and charge it and delivery to the agency. As the agency manages several properties they have a team of companies to carry out repairs promptly." (Tenant, West Midlands)

However, others who had been renting over a long period commented on the wide variability in standards of service. A common theme was that whilst the agents came across as very helpful during the signing up process, the relationship deteriorated sharply thereafter:

"It's a total lottery. Some agents are fine, others come across very professionally at first but once you have signed for the property and taken up residence they don't want to know. If they manage the property they are fully aware that you

cannot take your business elsewhere so they don't care about providing a service." (Tenant, Greater London)

"They were fine and friendly until we were in the property... but when things needed to be repaired they became a nightmare to deal with." (Tenant, South West)

"Our letting agent was helpful whilst trying to view the property but is almost impossible to reach since. When you can speak to him he rushes you off the phone and fobs you off. He makes my blood boil!" (Tenant, North West)

"Quick to take money but not so eager to do repairs and sort out problems. Three monthly inspections but they still didn't do the repairs needed. I did the repairs myself eventually but never received the cost of materials even though it was promised by the agent." (Tenant, Greater London)

## Unresponsive

Being accessible and responsive goes to the heart of good customer care. However, difficulties in getting through to letting agents was a repeated source of complaint from tenants, with many commenting that when they eventually managed to do so, they were faced with an unprofessional and un-cooperative response.

"They do not answer calls, constantly putting us through to answer machine. When you do get through to someone they have been quite rude...They promise call backs that never materialise." (Tenant, North West)

"Unprofessional, disorganised, hard to deal with. No replies to emails, no response to phone calls. Had to chase constantly..." (Tenant, Greater London)

"...hardly ever answered the phone. When they did they would promise to call back but never would." (Tenant, region not specified)

"...charged for an inventory check which never took place. This became a major issue when we moved out...Ridiculously difficult to speak to anyone as the staff turnover is incredibly high. Spoke to owner yesterday who threatened to 'take me to the cleaners' and keep all my deposit. Will never use an agent again for as long as I live." (Tenant, Greater London)

## Inaction on repairs

The most common frustration related to problems in getting repairs dealt with, with many tenants forced to cope for long periods in unacceptable, unhealthy and even dangerous conditions as a result of lack of action by agents. Agents can face difficulties in responding promptly if they have to get authorisation from the landlord before carrying out any works. However where they are managing the property, agents are responsible for ensuring compliance with health and safety legislation. They should therefore ensure that the property meets the required standards before it is let, and that their agreement with the landlord enables them to fulfil statutory maintenance and repairing obligations, as well as provide the tenant with a reasonable standard of service. Some agents achieve this by requiring a float of say £250 from the landlord to enable them to meet day to day expenditure, and by agreeing that prior permission from the landlord is only required if the work exceeds that figure.

"The agent did not do any repairs to the property as needed since before we moved in. We have no heating, hardly any hot water, the back door fell apart when I opened it, tiles are missing from the side of the bath and the taps fall off in our hands." (Tenant, South West)

"If there was ever a problem it would take them at least a month to come round and fix it, I had to go without hot water for six weeks." (Tenant, South East)

“Fire doors didn’t shut, outdated fire alarm system, fire extinguishers past date of service, windows stuck shut, mould in bathroom due to lack of ventilation, sewage smell from toilets, no insulation in loft, unsuitable heaters – all ongoing issues reported on a weekly basis for the last six months.” (Tenant, South East)

A CAB in Hertfordshire reported a couple with two children who had been renting a property for four months. During this time they had repeatedly complained to the agents about the washing machine which had to be kicked to start, the TV which had no aerial connection, that only three burners worked on the cooker hob, that the sink leaked, that there was only sporadic hot water in the shower and that the electric wall heater emitted smoke so could not be used. The only action had been one person who called to attend to the washing machine but failed to mend it. The client had continually chased agents for repairs to be carried out but to no avail.

In many cases tenants have been left living in dangerous conditions as a result of inaction over gas and electrical faults:

“We have never been as unhappy in a property as we have in this one. Not only were we nearly killed when the agents refused to send someone out to mend a boiler that was known to be leaking carbon monoxide, but they refused to carry out repairs, lied to us continually and promised us a long term tenancy when in fact from before we moved in they were involved in the sale of the house... When we eventually went to the authorities, [the agents] advised the landlord to evict us. They seemed to have no awareness of the law, our deposit was not protected and they were incredibly rude. Letting agents like this

should NOT exist and should be prosecuted.” (Tenant, Greater London)

A CAB in Essex reported a client who had recently moved into a house and found a number of problems with the electrical fittings. He had complained to the letting agency which sent an electrician who said the property was unsafe. The client had spoken to the letting agency which appeared not to see the matter as urgent. He and his wife had not been able to use the cooker since moving in and were having to buy take away, which was stretching their finances.

A CAB in the West Midlands reported a couple with three small children who were concerned that some plug sockets were not working. Despite the agents claiming to have carried out a safety inspection before letting, a subsequent visit by an electrician noted 20 faults in the property, six so serious he labelled them as deadly if used. The client was very unhappy that the property was let in such a state.

A CAB in South London reported a client who paid a deposit of over £1,000 plus rent in advance to an agent. When she moved in she found there was no heating, gas or cooker but a strong smell of gas. She called the Fire Brigade who told her to call her fuel company who came and found a leak. She reported this to the agency who took no action and told her to pay the £200 repairs bill and the Fire Brigade charge. She moved out because of safety issues but the agent refused to refund any of the money she had paid. She was left having to live with friends and effectively homeless as she could not afford a deposit for new accommodation.



In some cases tenants were told that the delays were due to the agents requiring landlord approval before any work was done. This appears to cause particular problems where the landlord is based abroad:

“They said the landlord has to approve everything (including getting me a working smoke alarm) and the landlord lives in Turkey, and does not answer emails – the only way they have of contacting her.”

“...had to get permission from the landlady who lived in Australia, for every single repair.”

In some cases, tenants and landlords had mutually agreed to bypass the agent altogether and communicate directly, in order to get problems sorted.

“...they are unreliable, they are rude, and it’s almost as if I have no rights. As I know my landlords... we deal directly with each other now although officially the property is still with the agent.”

### **No system for complaints and redress**

Several respondents who had suffered poor services from their agent commented on the fact that there was nobody responsible for regulating agents and there was no one to whom they could make a complaint about poor practice.

In fact tenants renting from a voluntary self-regulating body such as ARLA or NAEA or NALS will have access to a complaints procedure and, increasingly, to an ombudsman scheme, as both ARLA and NALS are now signed up to the Ombudsman for Estate Agents (OEA). However this still leaves many tenants without any means of redress. Colin Jones estimated in his report<sup>15</sup> that whilst the OEA now covers about 40 per cent of the market, at least 40 per cent of agents appear to have no redress scheme whatsoever.

### **Lack of money protection arrangements**

Some of the most serious detriment related to inadequacies in the way agents handled money, resulting in both landlords and tenants losing out:

“I am a widow who was unfortunate enough to let an agent manage my property. He collects the rent from the tenant but does not give it to me.”

“...the owner of our flat visited to tell us they had not received any rent from the agent for three months. Now we cannot get in touch with him and he has our deposit.”

“[The agent] offered me a property knowing he was being declared bankrupt and now has my deposit.”

A CAB in North London reported a single parent with two young children who was tricked into signing two agreements with two different rents. The contract given to the client showed £1,820 monthly rent but the one given to the landlord showed £1,733.33. The agent also collected six weeks deposit from the client (£2,520) but told the landlord the tenant had paid only four weeks deposit. In addition the agent did not protect the deposit in one of the statutory schemes as required.

A CAB in Hertfordshire reported a client who had been given a final notice for council tax arrears, or court action would be taken. She had been paying her council tax to the letting agent but it appeared they had not passed the money on. She felt she would have to pay the money again as she worked in banking and was scared this would jeopardise her job.

“We were offered the house at the end of August, being told we had to wait till 20 September before we could move in. The 20th came and we were told the refurbishments were not complete, but

then four days later we were told we no longer had the house. Later we learned from the landlord that we never actually had the house, that other tenants had signed contracts before we were even shown it. We have asked for our £500 holding deposit back but they have not given it to us.”

In some cases, tenants and landlords have been left significantly out of pocket as the agent simply disappears:

A CAB in North London reported the case of an Italian family who viewed a flat and then paid £780 as a holding deposit to the agent. The client then paid £600 as part payment towards rent in advance, security deposit and ‘agency fees’ and was due to pay a further £500 a week later. However when she rang to arrange this she was told that it was now too late and she had lost her deposit and the flat. The client complained that she had not been told this and the agent agreed to repay the money. When the client did not receive this she went to the police. They phoned the agent who said that money was being credited to the client’s bank account. However the money didn’t arrive so she went to the office address, only to be told by the porter that the company were no longer operating at that address.

A CAB in Hertfordshire reported a client who had paid a £700 deposit to an estate agency at the start of his tenancy. His landlord had now informed him that the agency had gone bust, taking with them the deposit and several months rent. The client had receipts for all the money paid to the agency but his landlord was refusing to reimburse the client or credit him with rent having been paid.

A CAB in Buckinghamshire reported a couple who owned a property that they rented through a letting agency which was well known to the bureau for causing problems for landlords and tenants alike in the local area. The agents had been taking the rent from their tenants but not passing it on to the landlords so that as a result landlords were getting into debt for non payment of their mortgages. The agents were no longer trading. The clients had received correspondence from solicitors representing their tenants asking for the return of their deposit. They had also advised the clients that they were liable for compensating the tenants as the agent should have ensured the deposit was placed in a tenancy deposit protection scheme. This amounted to £3,450 in total. The clients had paid their letting agency in good faith to deal with all the tenancy and deposit issues and believed the agency were responsible for giving their tenants all monies owed. They felt very let down by the poor service but had no way of claiming compensation.

It cannot be acceptable for letting agents to be able to handle large sums of money on behalf of tenants and landlords, without any regulation over how the money is held. The growing consensus on this is graphically demonstrated by the recent decision of the insurance-based tenancy deposit protection scheme (TDS) that, at the insistence of their insurers, from April 2009 they will only provide deposit protection to self-regulated agents with client money protection arrangements. This will remove the risk to the insurer of facing significant costs relating to protected deposits in the event that an agency ceases to trade.

## Additional charges

*“Generally, tenants under short term or periodic tenancies expect that rent will cover costs associated with taking on a tenancy other than those whose amount is determined by the tenant (such as heating, phone bills and so on), and council tax...”<sup>16</sup>*

An issue of further significant concern to both tenants and landlords is letting agents’ practice of imposing a variety of additional charges on tenants and landlords *on top of* the landlord’s management fee and the tenant’s rent, for services which are no more than part of the routine letting and management of the property. This has been a longstanding source of client complaints to Citizens Advice Bureaux and is an issue which Citizens Advice believes must be addressed as part of any regulatory reform. Under the Accommodation Agencies Act 1953, it is illegal for an agency to ask for money for registering a prospective tenant and then simply provide her/him with a list of properties. However there are no limits on the fees an agency can charge once a tenant has signed a contract to accept the tenancy of a property.

The CAB service believes there is a strong case for regulating the extent to which additional charges can be made, as they hamper the fair and open operation of the market:

- They are not transparent – tenants shopping around for somewhere to live will focus on the location of the property and the rent/deposit required. They are unlikely to be given details of any additional charges until they have invested considerable time and energy in viewing and deciding on a property to rent, and are about to sign the contract. As a result, such charges are not exposed to effective market pressures.<sup>17</sup>

- In other areas of the agency market, such as employment agencies and estate agency property sales, it is the party on whose behalf the agent is operating (i.e. the employer/house seller) who pays for the agent’s services, not the potential employee or house purchaser. Consumers therefore assume similar principles operate in the letting market, and expect that the rent charged will cover the costs associated with setting up and managing the tenancy.
- There is significant scope for double charging, as the agent will have already negotiated a charge with the landlord – typically 10-15 per cent of the rental income – for letting and/or managing the property. However if double charging occurs, this is likely to go unchallenged by either the landlord or the tenant, as there will be minimal contact between them.
- When a tenant rents direct from a landlord, it is rare for any additional charges to be imposed. It is unclear therefore why agents make additional charges for functions which landlords undertake within the rent charged.
- Charges can present a significant barrier for people on low incomes seeking to rent via an agent. Whilst housing benefit provides means-tested help with the cost of rent, there is no equivalent help available with the cost of agent charges.
- The only means of challenging such charges is by reference to the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). However the UTCCRs do not provide a remedy which is easy or effective for the individual consumer to use in order to obtain redress, as she/he would need to take court action in order to get a decision that a term was unfair.<sup>18</sup> OFT has produced detailed guidance on how the regulations

<sup>16</sup> Office of Fair Trading (OFT), *Guidance on unfair terms in tenancy agreements*, 2005 para 5.13

<sup>17</sup> Moreover it seems likely that this practice will not comply with the draft Consumer Rights Directive from the European parliament which would require contract terms to be “made available to the consumer in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract”. (Article 31 (2))

<sup>18</sup> Nor does the draft Consumer Rights Directive provide an easier remedy for the consumer.

apply to tenancy agreements<sup>19</sup>, but this is aimed at Trading Standards officers rather than at tenants. We suspect that very few tenants are even aware of the existence of

these regulations and OFT officials have confirmed to Citizens Advice that individual tenants rarely raise such issues with Trading Standards officers.

**Table 2: Extent and size of charges/deposits**

Type of charge/deposit	Percentage of tenants paying a charge	Percentage of agents making charges	Average charge as reported by tenant	Average charge as reported by agent	Range of charges reported by agents
Tenancy deposit (returnable)	91%	97%	N/A	£808.18	£108-£4,200
Non returnable holding deposit	60%	48%	£220	£231.14	£12-£1137.88
Combined charge <sup>20</sup>	5%	42%	£244	£140.62	£25-£335.34
Deposit administration charge <sup>21</sup>	14%	13%	£101 <sup>22</sup>	£30.92	£23.50-£50
Reference check	70%	69%	£99	£70.20	£10-£275
Administration fee	75%	75%	£121	£118.26	£8-£341.25
Check in inventory	13%	22%	£80	£71.18	£25-£99
Check out inventory	14%	23%	£78	£66.11	£25-£160
Tenancy renewal fee	35%	42%	£78	£59.88	£12-£220
<b>Total charge (excluding deposits)<sup>23</sup></b>			<b>£201</b>	<b>£180.11</b>	<b>£25-£693.27</b>

19 OFT, *Guidance on unfair terms in tenancy agreements*, 2005

20 In their responses, some agents said they charged a combined fee. This usually included administration and credit referencing.

21 Some agents now charge for the cost of complying with the tenancy deposit protection legislation.

22 This figure is probably unreliable as a result of some respondents confusing the deposit itself with the deposit administration charge.

23 The total charge was calculated by adding up all of the charges except for the holding deposit and security deposit. Agents which asked for a holding deposit as part of a combined charge were excluded, as there was no way to distinguish what proportion of the combined charge made up other charges. Also excluded were those agents who did not provide a figure for any one of the charges they made (as the total would exclude this charge and therefore be artificially low).

- Moreover given the minimal security of tenure which most private tenants experience, they would in any event be wary of challenging a charge for fear of precipitating a notice to quit in retaliation.

Both surveys revealed the significant extent of agent charges: 84 per cent of the tenant respondents said that they had to pay charges in addition to the rent and 94 per cent of lettings agents said that they imposed additional charges (not counting deposits) on their tenants. Table 2 provides details from both surveys about the nature of these charges/deposits and the amount of money involved. Whilst inevitably the figures differ, there is a reasonable amount of concurrence between the two data sets.

It is striking how much variation there is in the agents' survey in the size of individual charges. For example, the charge for carrying out a reference check ranged from £10 to £275 and for renewing a tenancy from £12 to £220. Yet it seems unlikely that the work involved in carrying out these activities could vary to such an extent. Both data sets also showed considerable variation between regions with, in the case of the tenants' survey, the size of charges varying roughly in line with the rent (Table 3). This could suggest that the charges may not reflect the amount of work undertaken but rather the agents' perception of what the market will bear.

**Table 3: Average rent and charge by region/country**

Region	Average monthly rent for 2 bed property	Average charge reported by tenant	Average charge reported by agent
Greater London	£1081.69	£236	£224.98
South East	£843.28	£248	£221.19
East of England	£757.66	£217	£164.40
South West	£637.58	£198	£194.27
Wales	£532.69	£126	£125.73
East Midlands	£492.33	£158	£145.68
West Midlands	£487.50	£495	£125.00
North East	£480.96	£195	£272.06
Yorkshire and the Humber	£410.61	£129	£155.69
<b>All areas</b>	<b>£702.00</b>	<b>£201</b>	<b>£180.11</b>

### Accessibility of information on charges

Under the requirements of the UTCC regulations, information about charges must be transparent and clearly presented to the tenant/consumer prior to contract.

As part of the agents' survey, bureau workers specifically asked for written details of any charges made, and subsequently evaluated how willing the agent had been to disclose this information. As Table 4 shows, even when the agent was specifically asked, less than a third willingly provided full written details of their charges. In a further 57 per cent of cases, the agent did not provide a written handout but was happy to provide verbal information on charges, and three per cent gave details over the phone. In seven per cent of cases, the bureau reported a reluctance, inability or refusal to provide this information.

**Table 4: Willingness of agent to provide information on all charges made**

Full written details willingly provided	31% (112)
Full written details provided after some prompting	2% (8)
Nothing in writing but respondent was helpful	57% (203)
Respondent was reluctant/ unable to provide information	5% (17)
Respondents refused to provide the information	2% (5)
Information provided over the phone	3% (12)
<b>Total</b>	<b>100% (359)</b>

If this was the response to a bureau worker asking a direct question, it is perhaps not surprising that only 50 per cent of respondents to the tenants' survey agreed that

their letting agent had provided them with "full written information about all the charges that would be made before you signed the tenancy agreement".

An examination of the written details of charges which bureau workers were given revealed wide variation in tone, content and format. Some agents produced a one page notice of charges and others provided the information as part of a more detailed initial application form.

Some were very short and simply set out the charges, some read more like a promotional leaflet whilst others were written in more legalistic and less accessible language. The clearest notices listed all the charges on the first page, explained what they were for and the total amount payable at each stage of the application process. Lists or tables made charges more explicit than embedding them in the text. Some agents highlighted in bold or capitals that the holding deposit was non refundable.

However many of the documents failed to explain what charges were for, focussing on what the applicant must pay rather than what they should expect from letting agents in return.

### Tenancy deposits

As Table 2 demonstrates, the most common 'charge' made was for a tenancy or security deposit. It is common practice amongst both landlords and agents to require a tenancy deposit, in order to provide some protection against financial loss due to damage to the property by the tenant or rent arrears. The deposit is not really a charge as it should be returned at the end of the tenancy as long as the tenant has not breached the terms on which it was charged. However it was included in the questionnaire for completeness and because it is usually the largest and the most common sum which tenants will have to pay up front to rent a property.

In the past, issues around the non return of deposits were amongst the most common problems which tenants faced. Given the scale of the problem and amount of money involved, there was significant pressure for the introduction of legislation to protect deposits and establish free and independent alternative dispute resolution. Legislation on this was finally introduced in April 2007, requiring any landlord or agent who charges a deposit to protect it in one of the three Government approved schemes<sup>24</sup> within 14 days of receiving the money.

The agents surveyed were asked, if they charged a deposit, which of the three schemes they belonged to. Not surprisingly, the majority (55 per cent) said they belonged to the Tenancy Deposit Scheme – the insurance-based scheme which is specifically targeted at agents. However 31 per cent belonged to the Deposit Protection Scheme – the custodial scheme – and 10 per cent to the insurance-based mydeposits.co.uk which is more targeted at landlords. The remainder either did not know or did not respond. The average size of the deposit charged was £808. This varied across England and Wales in line with the variation in rent levels, from a high of £1,154 in London to £470 in Yorkshire and the Humber.

According to CLG, over 1.5 million deposits were protected in the first two years of the legislation, totalling £1.4 billion. Despite this success however, bureaux have continued to report many instances where landlords and agents had failed to protect the deposit, and the tenant was left empty handed at the end of the tenancy.

[A CAB in Sussex reported a client whose daughter had paid a deposit of £550 to a letting agent in September 2007. This company went into liquidation eight months later. His daughter then discovered that her deposit had not been protected, and that she may now have lost the whole £550. She would need to](#)

[take action against the landlord through the court in order to try and recover the money.](#)

A weakness of the tenancy deposit protection legislation is that there is nobody whose job it is to promote the tenancy deposit protection legislation and monitor and enforce compliance by agents and landlords. It is left up to the tenant to face the cost and inconvenience of taking action through the courts when they find out that things have gone wrong. One advantage of introducing statutory regulation of letting agents is that the regulator would then be able to oversee compliance in this sector, thus reducing the burden on tenants.

### **Deposit administration charge**

When the tenancy deposit protection legislation was introduced, the Government was always clear that both the protection and the dispute resolution would be at no cost to the tenant. Moreover the custodial Deposit Protection Scheme is also free to landlords and agents, and interest may be paid along with the returned deposit at the end of the tenancy. However if the agent or landlord chooses instead to use one of the two insurance-based schemes (the Tenancy Deposit Scheme or mydeposits.co.uk) then a fee is charged to the landlord or agent who then benefits from being able to retain the deposit during the length of the tenancy.

However bureau evidence indicates that some agents are charging for the administration associated with protecting the deposit or are choosing an insurance-based scheme and then passing on the cost of the fee to the tenant in the form of a 'deposit protection charge'. Although not unlawful, this practice undermines the Government's intention that deposit protection should be free to the tenant. Fourteen per cent of survey respondents said that they had been charged such a fee.

A CAB in East Sussex reported a client who was charged £35 by their letting agency for protecting their deposit using the free Deposit Protection Scheme. This was in addition to £100 for checking references (which they did not actually do) and further fees for keys and for checking the inventory.

A CAB in Hertfordshire reported a client and three friends who had been asked to pay a total of £35.25 for their deposit to be registered with the Tenancy Deposit Scheme (TDS). However when the tenancy came to an end they were told by TDS that they had no evidence that the letting agency had protected the deposit with them.

### Holding deposits

Sixty per cent of tenants said they were charged a non-returnable pre-contract 'holding' deposit. Typically this charge is then offset against the rent or other charges should the tenancy proceed. However holding deposits can give rise to unfairness if the tenancy is not granted for reasons beyond the prospective tenant's control and the money is not then refunded.

The OFT Guidance on unfair terms in tenancy agreements indicates that the non-return of a holding deposit may be unfair if the sum involved was 'substantial' and/or the terms precluded refunds under any circumstance (paragraph 3.41–3.43). It also states that it may be unfair to refuse to return a deposit on the grounds that a tenant's reference is unsatisfactory (paragraph 3.68). Bureau evidence indicates that agents are not complying with this guidance even when the holding deposit charged is far from being just a token amount.

A CAB in Wales reported a young Polish woman who was charged a fee of £352.75 by a letting agent as an 'application fee'. She was told that as

long as she did not refuse the accommodation then the fee would be refundable. The letting agency then informed the client that they were unable to offer her the tenancy, so she asked for her money back. She was then told that the money was non refundable and that she had signed a declaration stating that the money was non-refundable if she refused the tenancy or if the agency declined to grant the tenancy. The client claimed this was not what she was told. She was also given no reason why they decided not to grant her the tenancy. She was left seriously out of pocket and with nowhere to live.

A CAB in central London reported a client in low paid work who paid a holding deposit of £500 having previously informed the agent of her income. The agent subsequently rejected the client after carrying out credit checks, saying her income was insufficient to pay the rent, but refused to refund any of the deposit. The bureau commented that the client appeared to have no redress apart from court action.

A CAB in East Sussex reported a Polish client with imperfect command of English who agreed a rent and paid a holding deposit to the agents. However when he returned to the agent after a few days the agent said that the rent had increased. The client did not want the flat at the increased rent, but the agent refused to return his deposit.

The qualitative analysis of the written information provided by agents showed that only a minority fully explained what would happen after the holding deposit was paid, and that the deposit might be refunded should the references not prove to be satisfactory. Indeed in some cases the information provided appeared to be in direct breach of the OFT Guidance by explicitly stating that the holding deposit would NOT



be returned if the references proved unsatisfactory. The following extract from one agent's tenancy guide demonstrates this:

**"Holding deposit.** In addition to the application fee, you will need to pay £100 per person to hold the property. This holds the property for 10 days from the date we apply for references... After this time, if the references have not come back satisfactorily, then the landlord is within their rights to put the property back on the market and to look for new tenants. *In this scenario any fees you have paid will not be refunded.*" (our italics).

More commonly, analysis of the documents collected from agents showed that the reference fee was subsumed within an 'administration' or 'application' charge, which is then described as non-refundable should the tenancy not proceed. This might then be less likely to be deemed an unfair term, although the financial impact on the prospective tenant would be identical.

### Administration charges

Seventy five per cent of the agents said they charged an administration fee. Often this was in addition to more specific charges as detailed below. Moreover, if deposits are excluded then this was the most significant charge made, averaging around £120 and over £300 in some cases. However there was rarely any detail about precisely what this charge covered and, as one bureau worker undertaking the agent survey commented:

"...although agents were able to tell me how much their handling fee was, few were able to tell me how this figure was arrived at or break it down."

This view was supported by the analysis of the written information provided, which rarely explained what the administration fee (also called an 'agreement' or 'reservation' fee) was for. In a few cases this was described as being a fee for setting up the tenancy, in other cases

it was described as being for taking references. One document stated explicitly that:

"...in the event of the tenancy not proceeding for any reason, this administration charge will not be refunded."

Whilst transparent, it is not clear that such a statement complies with the unfair terms regulations. The OFT Guidance states that:

"...we are likely to consider a term that deprives the tenant of everything paid in advance, regardless of the actual costs or losses caused by the cancellation, to be an unfair penalty." (paragraph 3.40)

and

"We would expect there to be a full refund of all pre-payments where there has been no breach of the agreement by the tenant and the landlord chooses not to proceed with the tenancy." (paragraph 3.69)

It also seems likely that the scope for double charging in relation to administration charges is high, as the agent will also be charging the landlord for the administrative work involved in setting up a tenancy. The agent typically specifies in the terms and conditions of the agreement with the landlord that, in return for the management charge, the agent will find a suitable tenant, obtain references and set up an assured shorthold tenancy agreement. It is therefore difficult to see the justification for also including these elements in an administration fee charged to the tenant.

### Reference checks

Sixty nine per cent of the agents said they charged the tenant a fee for obtaining references, despite the fact, as outlined above, that this is commonly specified in the work that the agents will carry out in return for the landlord's management charge.

It was also unclear whether charges were fair with reference to the costs involved. The average fee charged by agents in the survey was £70.20 and yet Experian Ltd, one of the three credit reference agencies in the UK, provides a comprehensive checking service for agents for an annual fee per agent of £152 +VAT, plus £21.70 +VAT for each report provided. These reports include employment history and previous tenancy checks as well as indicators regarding identity, fraud and adverse data and ability to afford the rent. Bureaux report cases where significantly higher charges are made:

A CAB in Staffordshire reported a couple with a small child who have some outstanding debts and are both in low paid work. They were charged £250 each for credit reference checks, and were told that they would have to pay a further £250 each if they wanted to remain in the tenancy beyond the six months fixed term.

A CAB in Dorset reported a client who was considering renting a three bedroom property. He was shocked to find a term in the tenancy agreement that required him to pay a fee of £94 every six months for 'search fees'.

### Renewal charges

Tenants often feel aggrieved at the imposition of renewal charges, which can be as frequent as every six months. There is no legislative necessity to renew an assured shorthold tenancy at the end of a fixed term as it can run on as a periodic tenancy. Nor is it likely to involve any work on the part of the agent beyond printing off a new standard agreement and getting the tenant to sign it.

A CAB in Hertfordshire reported a client who was being charged £88 each time her agreement was renewed. This was the same amount as she was charged to draw up the original agreement and she

considered the charge excessive as all that was involved was photocopying the original document.

A CAB in West Sussex reported a client who was told that her rent would rise from £600 to £625 per month at the end of the year, and that this constituted a new tenancy agreement from which there would be a charge of £82 as well as a further £75 to pay on her security deposit.

A CAB in Buckinghamshire reported a couple on a low income who had lived in a privately rented property since 2001 under a series of assured shorthold tenancies with the same landlord. There had been no problem with the tenancy until a new letting agent took over the business. On renewal of the tenancy in June 2008 the letting agent levied a charge of £60 as an administration fee as well as increasing the rent. The client felt this charge to be unfair and excessive. They would have been happy with a periodic tenancy and it was the landlord who wanted the renewal of the six monthly assured shorthold tenancy agreements. Following CAB advice, the client challenged the charge and the agent agreed to waive it in his case. The client was incensed that a renewal fee was imposed on them as tenants rather than being paid by the landlord.

Very few agents in the survey commented that the renewal fee was optional and only applied if the tenant chose not to move onto a periodic tenancy.

The charging of a fee to renew a tenancy agreement has been a long standing concern of landlords as well as tenants. Indeed the National Landlords Association published a report on its members' experiences of this fee, which is often charged on top of the existing percentage-based management or letting only fee.<sup>25</sup>

A CAB in East Sussex reported a client who was a landlord and had signed an agreement with a letting agent to find tenants for the property, for a fee of £1,200. At the end of the one year fixed term the client drew up a new agreement with her tenants. However she was then informed by the letting agents that the 'continuous clause' in her agreement with them meant that she must pay them £1,200 every year that the tenants remained in the property, although no additional work whatsoever was required by the agents.<sup>26</sup>

Again, double charging may well be occurring where tenants are also charged a renewal fee.

Forty two percent of agents in the survey said they charged tenants renewal fees, at an average cost of £59.88. Fees were highest in the South East where they averaged £86.92. There was also a significant range in the amount charged – from £12 to £220 for this operation.

### **Check-in/check-out charges**

Separate charges for check-in and check-out costs (including the taking of inventories), are also commonly imposed on both landlords and tenants. These may well be in addition to the administration charge. The agents' survey indicated that around one in five imposed such charges, at an average cost of around £70. The provision of inventories have taken on new significance since the introduction of the tenancy deposit protection legislation, as the agent and landlord may have to justify any deduction made from the deposit in the alternative dispute resolution process. Again it is unclear why this activity is not seen as part of the routine management process and therefore reflected in the management charge negotiated between the landlord and agent.

A CAB in Cambridgeshire reported a tenant who decided to leave a property when he was notified of a 10 per cent rent increase at the end of the first year. Three weeks after leaving, he received a letter from the agents demanding a £55 administration fee and a £37.50 check out fee. His deposit of £650 had not been returned. Neither fee was mentioned in the tenancy agreement.

### **The overall burden of charges**

Taken together, these additional charges, payable on top of rent in advance and a security deposit, undoubtedly create an additional barrier for many people seeking to rent in the private rented sector.

A CAB in Staffordshire reported the case of a couple with two children who had to rent privately following the loss of their owner occupied home. Due to a delay in securing the accommodation, the letting agent had charged them a second credit check fee on the grounds that six weeks had elapsed since the previous check. The clients felt that they were being exploited but had no other option. When they were later served notice to quit, they faced the probability of having to pay credit check fees again to obtain another property to let.

Additional charges also make it more difficult to compare overall costs between different properties and between agents, as information on charges is usually presented late in the process, after the tenant has been informed about the rent and has invested time in viewing the property.

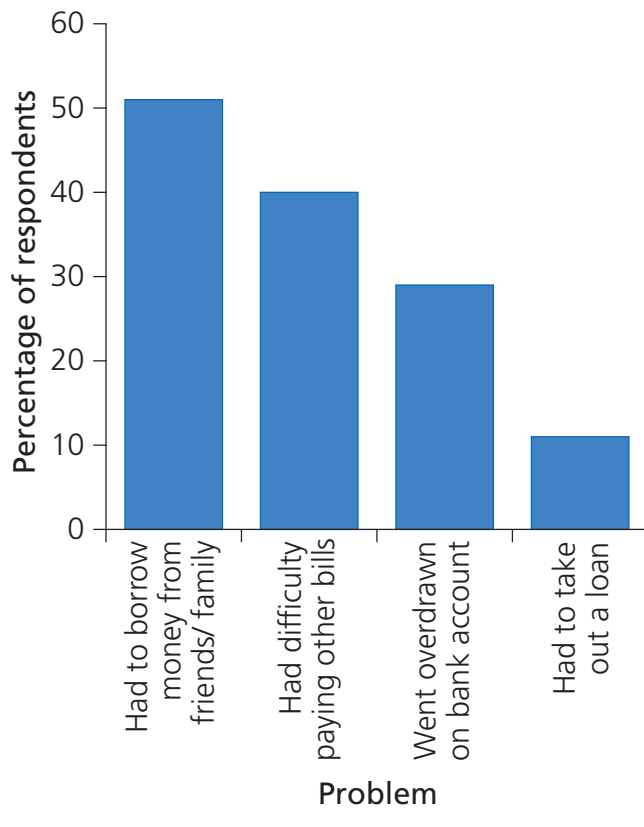
Moreover there is no help available through the benefits scheme with these charges, unlike that provided through housing benefit for the rent. The agents' survey indicated that the average total charge was around £180.11,

<sup>26</sup> At the time of writing, the outcome was awaited of High Court proceedings issued by the OFT against Foxtons Ltd, seeking an injunction under the UTCCR's preventing the agency using similar terms in lettings agreements with landlords.

and within this figure there was very wide variation between agents with, in some cases, additional charges mounting to over £600.

In the tenants' survey, respondents were asked whether paying these additional charges had caused them problems. A majority (61 per cent) said that it had: of these, 51 per cent had to borrow from family or friends, 40 per cent had difficulty paying other bills, 29 per cent went overdrawn on their bank account and 11 per cent had to take out a loan. (Figure 3)

**Figure 3: Consequences for respondents who had difficulty paying additional charges**



Even where prospective tenants are able to afford the rent, the additional charges imposed can prove to be an overwhelming financial barrier, effectively preventing anyone who does not have a significant amount of ready cash from renting a property through an agent.

A CAB in Surrey reported a couple and adult son who had been landlords of a local pub. They had been declared bankrupt and had therefore had to leave their accommodation. They had found a property to rent and had obtained help from a bond scheme with the deposit and had a crisis loan to help with rent in advance. However they then found that they also had to find the money for an administration fee of £325, credit reference fees totalling £90 and a check-in fee of £70. As they were in receipt of jobseeker's allowance they could not afford these costs and so would probably lose the property.

A CAB in Nottinghamshire reported a client who is registered blind, who applied to rent a property conveniently located close to shops and buses. Although he could afford the rent, he didn't realise that he and his guarantor would also have to pay £86.25 each for credit checks plus a further £86 administration fee. This was on top of the £450 bond plus £350 rent in advance. He didn't know how he would be able to raise the money for these extra charges, which he had not taken into consideration when giving notice to his current landlord, leaving him at risk of homelessness.

### **Agents' willingness to rent to people in receipt of housing benefit/local housing allowance**

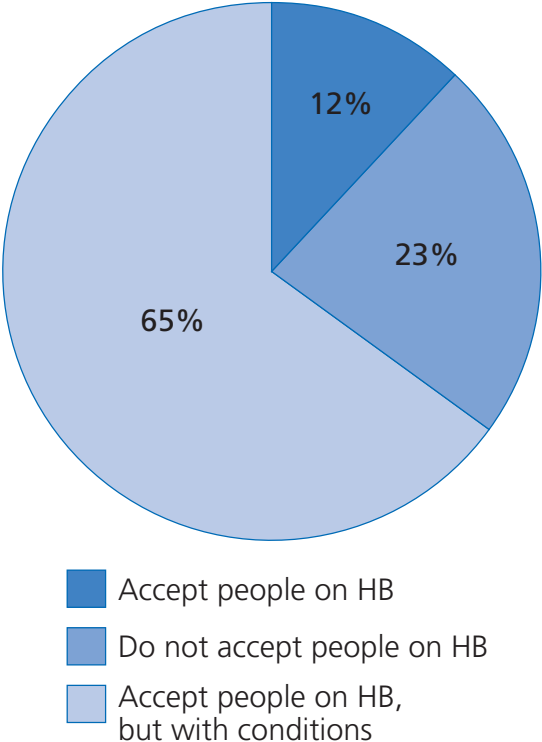
A very common concern raised in bureaux evidence is that letting agents are unwilling to let to people in receipt of housing benefit (HB). Given the large and growing proportion of the private rented sector which is let via agents, this can significantly restrict the ability of people on low incomes to access private rented housing.

A CAB in Wales reported a woman with two children who was looking for private rented accommodation. She contacted every estate agent in the town acting as letting agents but they all refused to let to her because she was in receipt of HB.

The letting agent research explored the extent of this reluctance to let, and the reasons given for it. Agents were asked for the average rent of a two bedroom property on their books, and the bureaux then checked whether this rent was within local housing allowance rates. This revealed that 82 per cent of agents were offering some properties potentially affordable to HB claimants.

However, when asked 'do you take tenants who are in receipt of housing benefit?', only 12 per cent of these agents gave an unqualified 'yes', whilst a further 65 per cent said that they did but with conditions attached. Twenty three per cent simply said that they did not accept claimants (Figure 4).

**Figure 4: Letting agents' willingness to take people in receipt of housing benefit**



The proportion of agents refusing housing benefit claimants varied between areas, with the largest proportion of agents saying no to HB claimants being in the South East (48 per cent).

Of those who said they imposed conditions, 15 per cent said that they would only take housing benefit claimants if they could provide a guarantor. Other conditions imposed by some agents were:

- that they would only take people on HB if they were working
- that HB claimants must pay three months in advance, because the local council can often take this long to process an HB application
- that if the claimant could not satisfy the credit check, they instead would be asked for six months rent in advance.

In practice these conditions are likely to be impossible for claimants to meet.

A CAB in Northamptonshire reported a client who had rented accommodation with her partner and child for the last four years from a letting agency. Her partner had recently left and she was then living on means tested benefits. The letting agency was evicting her, giving the reason that they do not rent to people on income support unless they can provide six months rent in advance. She had tried other letting agencies but they also refused to take people on income support.

The agents who qualified their responses were asked for their reasons for imposing additional conditions on HB claimants. By far the most common response, given by 57 per cent, was that their decision was dependent on landlords, who often did not want to rent to people on housing benefit. Seventeen per cent commented that people on HB were not good rent payers, got into arrears or that they had had bad experiences in the past with

them. One agent said that they had lost several landlords because their tenants (who were on housing benefit) got into arrears with their rent. However most did not attempt to justify their decision not to let to claimants.

Another common response was that the problem lay with the structure and delivery of housing benefit rather than with the claimant themselves. In terms of delivery, 10 per cent of agents who were reluctant to or did not take people on housing benefit, said this was because the local council took too long to process housing benefit applications or there were other problems with administration. One agent dealt with prospective tenants from two different local authorities but only accepted those from the authority which processed their applications in a reasonable time.

[A CAB in Oxfordshire reported a woman in low paid work whose son was moving out. As a result she could no longer afford the rent and so was looking for new accommodation. When she visited local letting agents they told her they would no longer deal with housing benefit claimants because the local council was too far in arrears with payments.](#)

There were also a number of criticisms of the way the HB system operated. These included the fact that housing benefit is paid in arrears whereas landlords require rent paid in advance, shortfalls between housing benefit and the rent owed, and the fact that housing benefit is paid four-weekly whilst rent is due on a calendar monthly basis.

Finally seven per cent said that mortgage restrictions meant that landlords were not able to take people on housing benefit.

In contrast, only two agents expressed positive sentiments about letting to housing benefit claimants, commenting that they represented a guaranteed income stream. One agent said

that they encouraged landlords to take them on as they were a 'safe bet' and less likely to get into arrears.

### Local housing allowance

Agents were asked whether the introduction of the local housing allowance (LHA) in April 2008 had made a difference to whether they would let to people on housing benefit. Under LHA, housing benefit is calculated using a flat rate allowance depending on the size of the household and the area, and is normally paid direct to the tenant rather than to the landlord. The LHA rates are publicly available on local authority websites.

Of the 348 agents who answered this question, the majority (79 per cent) said it had made no difference.

However, 16 per cent said that it had made them less likely to rent to people on LHA. The main reason given for this was the fact that it is paid directly to the tenant instead of the landlord, and one agent said that problems with the payment of rent had become more frequent since the change. Other agents expressed dissatisfaction with the detail of the new system, rather than with the principle of making payments direct to the tenant. Four agents mentioned that they did not like the fact that the tenant had to be eight weeks in arrears before the landlord could ask to be paid directly and another commented that getting the payments switched to be paid directly to them was time consuming and involved a lot of paperwork. One agent commented that the LHA did not reflect market rents in the area.

Only five per cent of the agents said they were more likely to rent to people in receipt of LHA as a result of the change. Five agents said that they were not aware of the introduction of LHA or were not aware of what the change meant in practice.

Taken as a whole, these findings do not suggest that the introduction of LHA has done anything to encourage more agents to let to tenants on housing benefit.<sup>27</sup> One of the original DWP objectives for the LHA was that it would make it easier for tenants on benefit to 'shop around'. However this will not be achieved if letting agents, which increasingly dominate the market, are not prepared to let to people in receipt of housing benefit.

## Conclusions and recommendations – the case for regulation

The evidence presented in this report has clearly demonstrated how renting through a letting agent can be a risky business for tenants. Whilst many tenants undoubtedly receive a good service, others are not so lucky, finding they are paying rent – and often additional charges on top – for an unprofessional and unresponsive service, and at worst, forced to live in dangerous conditions and/or losing large sums of money if the agent goes out of business.<sup>28</sup> Whilst not the specific focus of this report, it is clear that landlords can be similarly affected.

The majority of private tenants now rent through a letting agent – a figure that has grown sharply in recent years. It is not acceptable to leave so many tenants unprotected, with even the self regulating schemes providing only around 71 per cent coverage. **Citizens Advice therefore recommends that, as part of its plans for private rented sector reform in response to the Rugg review, CLG should bring forward legislative proposals to provide for the positive regulation of all letting and management agents as a matter of urgency.** The recently proposed cross departmental Consumer White Paper which is

aimed at providing practical help for consumers in the current recession, could provide one means of achieving this.

We believe that such regulation is central to the Government's broader aim to drive up standards in the private rented sector. Those landlords who fail to manage their properties professionally could then be required to use a regulated letting agent to undertake these tasks.

**Regulations should set out the entry criteria which prospective agents would have to meet in order to obtain an operating licence. These should include being able to demonstrate a level of professional knowledge and competence which is adequate to deliver a service which complies with legal requirements, adequate client money protection arrangements, and internal complaints handling arrangements along with membership of an ombudsman scheme to deal with complaints and provide redress.**

This would have the effect of bringing the regulatory requirements for lettings agents more in line with those required of estate agents.

However regulation must go further. In order to ensure that it genuinely addresses the concerns of consumers/tenants, and in the light of the evidence presented in this report, **Citizens Advice recommends that the regulation of letting agents should include provision that no charges may be made to tenants for functions which are part of the routine letting and management process.** Such functions include setting up the tenancy agreement, checking references, carrying out inventories and renewing fixed term agreements, and it is clear from this report that the imposition of additional charges for this work is widespread. These charges hamper the effective and

<sup>27</sup> A recent report by the National Landlords Association indicates that the LHA has also made landlords less likely to rent to claimants. (NLA, *Local housing allowance*, 2009)

<sup>28</sup> To some extent tenants can mitigate these risks by renting through an agent that is a member of a professional body requiring client money protection arrangements and membership of an ombudsman scheme. However they may still face problems with property standards and the quality of service on repairs, whilst also having to pay additional charges.

transparent operation of the market as they make it more difficult for the prospective tenant to make comparisons between the overall costs of different properties available to rent. They also add to the barriers faced by low income households seeking to rent, as there is no help through the benefit system with such costs.

Moreover the only recourse for consumers seeking to challenge such charges is via the Unfair Terms in Consumer Contracts (UTCC) legislation, which is not an easy remedy for the individual tenant to use. Whilst an unfair term is unenforceable against the consumer/tenant, she/he will first have to go to court to prove that it is unfair. In addition, the evidence presented in this report indicates that the UTCC regulations have been of limited effect in preventing the use of unfair terms in relation to charges in tenancy agreements.

For these reasons we consider that all such routine costs should be reflected in the management charge paid by the landlord and in the rent paid by the tenant. Separate additional charges should only be made for exceptional, non-routine tasks and must then be fair and open to challenge in terms of the amount of work involved and costs incurred.

As part of the regulatory process, **all agents should be required to comply with rules of conduct regarding the day to day operation of their business with both their landlord clients and with their tenants.** In drawing up the rules of conduct, it would be important to work with professional bodies such as ARLA and NALS who already have detailed codes in operation, as well as with organisations representing the interests of tenants, in order to ensure that the Rules fully reflect the concerns of all parties. In terms of defining an appropriate level for service standards, it would also be useful to consider the regulatory requirements

which the former Housing Corporation (now the Tenant Services Authority) sets for its members.

The rules of conduct would be an important mechanism for driving up standards of management. CAB evidence indicates that the following elements must be priorities for inclusion in the rules:

- **The rules must require that, prior to letting, the agent ensures that the property meets basic statutory requirements regarding health and safety, particularly with regard to gas and electrical safety and fire prevention.**
- **The rules must also set clear standards regarding speedy and effective communication arrangements between all parties regarding the authorisation of repairs work, along with clear timescales for carrying out repairs depending on the risk to health and safety involved.**
- A longstanding concern of the CAB service is that private tenants' lack of security leaves them vulnerable to the threat of retaliatory eviction should they seek to enforce their statutory rights by complaining to the landlord/agent or to the local authority.<sup>29</sup> This problem goes to the heart of private tenants' disempowerment, and also acts as a significant brake on strategies to improve the quality of private rented housing. In order to tackle such unprofessional practices, **the rules of conduct must make it explicit that a tenant may not be threatened with eviction because they have made a complaint or sought to exercise a statutory right.** Without this, there will be little merit in regulation which requires complaints and redress procedures, as tenants will fear retaliation if they make use of them.



■ A further issue which is of growing concern in the current economic climate is the absence of rights for private tenants when their landlord is repossessed. Citizens Advice, along with others, has called for legislative reform to address this problem.<sup>30</sup> However in the interim, it would be important **that the rules of conduct require agents to ensure that landlords have the permission of any lender with a charge on their property to rent out that property, in order that tenants do not lose their basic rights to a notice period and court action where a property is repossessed.** This would go some way to correct the current imbalance between landlords and tenants, whereby tenants are commonly subject to extensive reference checks (for which they often have to pay), but are not provided with any information about their landlord despite the fact that his/her financial situation could undermine their tenancy rights.

**It would be necessary to establish an independent regulator to oversee the regulatory process and to monitor compliance with the statutory requirements and the rules of conduct.**

A pro-active approach to compliance will be essential, with a regular programme of risk-based spot checks being carried out to ensure tenant and landlord confidence in the process. Reliance on complaints data to act as early warning of problems will not be adequate, as tenants' lack of security means they will be wary of raising concerns. Inevitably such an approach will increase the cost of regulation, but by pricing the licence in relation to the risk of non-compliance, it should be possible to incentivise good practice.

The regulator should have an appropriate range of regulatory tools to enforce compliance. The ultimate sanction should be the withdrawal of an agent's licence to operate, and procedures would be needed to ensure that landlords were able to make

alternative arrangements in such circumstances, with minimal disruption to the tenants concerned. In addition, in line with current trends in consumer protection enforcement, an escalating system of warnings and regulatory action should be developed. The regulator should have the power to impose undertakings on licence holders and levy civil penalties. The greater powers given to the Office of Fair Trading under the Consumer Credit Act 2006 could be a model for this. These measures should be combined with advice and support on remedial action needed, in order to minimise the necessity to remove an agent's authorisation to operate.

**Finally there is a need to tackle the reluctance on the part of so many agents to let to tenants in receipt of housing benefit, even where the rent is affordable in terms of the local housing allowance.**

If action is not taken to address this problem, then low income tenants will be excluded from the benefits which the regulation of letting agents will bring. This would clearly be unacceptable. Obviously agents need to be satisfied, through credit and other reference checks, that the tenant is reliable and able to afford the rent charged, but **it cannot be acceptable to impose blanket bans on housing benefit claimants or to impose conditions such as payment of six months rent in advance which are clearly impossible for claimants to meet. It would be important that this is addressed in the rules of conduct.**

On the other hand it is also important that DWP does not set the parameters of the housing benefit scheme in such a way that tenants are unable to meet the reasonable requirements of agents and landlords. Citizens Advice believes there is an urgent need for more joined up policy making between the Departments of Communities and Local Government (CLG) and Work and Pensions (DWP) with regard to the structure of housing benefit, to ensure that it does not act as a

barrier to claimants seeking to find good quality accommodation to rent. **We therefore recommend that, as part of the current housing benefit review, DWP in conjunction with CLG establishes a standing committee of representatives from organisations representing private landlords, agents and tenants, in order to consider how future reforms can address the longstanding concerns of these bodies which have resulted in a reluctance to let to tenants in receipt of housing benefit.**





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