

CIH written evidence on the Tenant Fees Bill

About CIH

1.1 The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

1.2 Further information is available at: www.cih.org

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Summary of our key positions

- 2.1 CIH strongly supports the government's decision to ban letting agents from charging fees to tenants. Many tenants currently face extremely high up front costs when beginning a tenancy and this often acts as a barrier which prevents households from accessing decent accommodation. There is also a body of evidence which suggests that agents' fees are often opaque, are frequently charged at a level that is above actual costs and are sometimes 'double charged'.
- 2.2 We strongly support the introduction of a cap on security deposits. However we consider that the proposed limit of six-weeks' rent remains too high and would recommend that this is reduced to four-weeks' rent, in order to further reduce upfront costs for tenants.
- 2.3 We also support the proposal to place a cap of one-week's rent on holding deposits. However we are concerned about the decision to allow agents to retain this deposit where a tenant fails a check on their immigration status (the 'right to rent' scheme). It is our view that this is unfair and, more generally, that the evidence shows that right to rent scheme is not working and should be abandoned.
- 2.4 We accept that there will be circumstances in which it is reasonable for an agent to charge a default fee but remain concerned that this is potentially open to abuse by less scrupulous agents. We welcome the clarification that fees should not exceed the actual costs incurred by the landlord/agent and the government's intention to publish further guidance on this issue. The detail of this guidance will be critical.
- 2.5 The arrangements for enforcing the ban seem broadly sensible. However there is a wider question as to who is best placed to carry out private rented sector enforcement work. The current picture is complex, with several different council departments and other agencies each having responsibility for enforcing various requirements. We consider that the sector would benefit from the creation of a simple set of minimum standards for landlords and for managing agents, as well as some rationalising of enforcement responsibilities.

The ban on tenant fees

- 3.1 CIH strongly supports the government's decision to ban letting agents from charging fees to tenants.
- 3.2 Evidence suggests that the level of fees currently being charged is highly variable. For example the government's own research suggests an average of between £200 and £300 per tenancy, but with individual tenants paying anything up to £747, while [Generation Rent estimates](#) an average of £404 and a maximum of £813.
- 3.3 Taken together with the requirement to also pay the first month's rent in advance and to provide a security deposit, these fees mean that tenants face extremely high up front costs when beginning a tenancy. This often acts as a barrier which prevents households from accessing decent accommodation.
- 3.4 There is also a body of evidence which suggests that, despite the recently introduced requirement that letting agents publish a tariff of fees, these remain opaque, are frequently charged at a level that is above actual costs and are sometimes 'double charged' (i.e. both tenants and landlords are charged fees for the same thing).
- 3.5 We understand that there are concerns that a ban on fees could simply result in tenants being charged higher rents instead. Evidence from Scotland, where a ban has been in effect since 2012, is inconclusive on this point as it is difficult to directly attribute any change in rents to a specific policy change.
- 3.6 However where attempts have been made to evaluate the impact of the ban, these have generally concluded that any rent increases have been relatively modest. For example, [Shelter's 2013 analysis](#) suggested that landlords in Scotland were no more likely to have increased rents than those operating elsewhere in the UK while a [Council of Letting Agents \(CLA\) survey of members](#) showed that just 20 per cent reported rents being increased as a result of the ban.
- 3.7 It is certainly not clear from the evidence available that the proposed ban will lead to substantial increases in rents. Furthermore even if these were to increase slightly, we consider that a ban would still help to improve both transparency over costs and affordability, as a result of more of the cost of renting being spread across the lifetime of the tenancy.

The cap on security deposits

- 4.1 We also strongly support the introduction of a cap on security deposits. However we consider that the proposed limit of six-weeks' rent remains too high.
- 4.2 The [latest Valuation Office Agency statistics](#) show that the median monthly rent in England is £675 per month, meaning that a six-week security deposit would be £935. In London these figures increase to £1,433 and £1,984.
- 4.3 We recognise that landlords/agents have a legitimate need to collect a deposit and that government's previous decision to require these to be registered with a deposit protection scheme has greatly improved the way that disputes are handled. However we still consider that, at the level currently being proposed, deposits are likely to remain unaffordable for many households. In order to ensure that everyone is able to access a home that meets their needs, we recommend reducing the level of the cap from six to four-weeks' rent.
- 4.4 We note that the Housing Communities and Local Government Select Committee also recommended a reduction to five-weeks' rent, in order to improve levels of affordability for tenants.

The treatment of holding deposits

- 5.1 We support the proposal to place a cap of one-week's rent on holding deposits. However we are concerned about the decision to allow agents to retain this deposit where a tenant fails a check on their immigration status (the 'right to rent' scheme).
- 5.2 We consider that this is likely to be unfair as prospective tenants may well have applied in good faith. As a general principle we feel that unless prospective tenants have deliberately misrepresented their circumstances, they should not be left substantially out of pocket. There is also a significant danger that in some cases right to rent decisions may be incorrect, given the lack of understanding around the scheme (see paragraph 5.3). We are therefore concerned that some prospective tenants are likely to be left out of pocket as a result of incorrect decision making.
- 5.3 More generally, we have serious concerns about the right to rent scheme. An independent assessment has revealed a number of problems, including that:
 - it has led to a rise in discriminatory lettings practices. 51 per cent of landlords say that they are now less likely to rent to a non-EU national, while 42 per cent are less likely to rent to anyone without a British passport

- it is not widely understood by landlords. 27 per cent of landlords are either unaware of the scheme or feel that they don't understand their obligations
- levels of enforcement are low. Only 654 individuals have come to the Home Office's attention as a result of the scheme and only 31 of these have since been removed from the country.

5.4 Although we recognise that the future of the right to rent scheme is not entirely within the scope of this discussion, it is our view that the evidence shows that it is not working and should be abandoned.

Default fees

6.1 We accept that there will be circumstances in which it is reasonable for an agent to charge a default fee but remain concerned that this is potentially open to abuse by less scrupulous agents.

6.2 We welcome the clarification that fees should not exceed the actual costs incurred by the landlord/agent and the government's intention to publish further guidance on this issue. The detail of this guidance will be critical and we would encourage government to carefully consider how this can be used to set clear expectations of agents to ensure that default fees are:

- only charged in reasonable circumstances, and not used by unscrupulous agents as a means of circumnavigating the overall ban on tenant fees
- only ever set at a level that reflects actual costs.

6.3 More generally, we note that the Tenant Fees Bill forms part of a wider package of reform intended to professionalise the letting agency sector and to crack-down on rogue operators. We welcome both the government's intention to regulate agents and the introduction of banning orders.

6.4 Over the longer term we hope that these reforms will help to remove unscrupulous agents from the market, reducing the likelihood of poor practice in areas such as this. We are keen to work with government as it further develops its plans for regulation.

Enforcement

7.1 We welcome the maximum penalties of £30,000 for a breach of the provisions relating to tenant fees and security deposits, and of £5,000 for a breach of those relating to holding deposits. It is essential that those responsible for enforcing the ban are given the powers to issue meaningful penalties, and we consider that the Bill would give them this in its current form.

- 7.2 The process by which penalties will be issued by local authorities, with the agent retaining a right to appeal to a First Tier Tribunal, is also sensible and workable.
- 7.3 We are however concerned about whether in practice local authorities all have sufficient resources to properly and proactively enforce the ban. In recent years authorities have faced substantial funding cuts and many have made cuts to their trading standards teams.
- 7.4 We note that councils will be able to retain the proceeds from any fines issued. This will help to fund enforcement work but there remains some danger of a funding gap, as well as a risk that councils will need to invest in additional resources without being able to guarantee a particular level of financial return.
- 7.5 There is also a question as to who is best placed to carry out enforcement work. At present a number of separate departments within councils (e.g. trading standards and environmental health) each have responsibilities to ensure that the same landlords/agents are complying with different regulations. The addition of a new regulator in the near future, while welcome, could further add to this complexity.
- 7.6 Although it is not entirely within the scope of this discussion, we consider that the private rented sector would benefit from the creation of a simple set of minimum standards for landlords and for managing agents, as well as some rationalising of enforcement responsibilities.