

Local Government Association briefing

Tenant Fees Bill

Second Reading, House of Commons
21 May 2018



Key messages

- We welcome the Tenant Fees Bill and the Government's intention to make private rented accommodation more accessible. Excessive letting agent fees are a concern for many tenants and councils, hampering access to the market, which in turn places pressure on housing of other tenures, including social housing.ⁱ
- The proposed ban on letting agent fees for tenants will bring clarity to a sector that has a powerful influence on the cost of renting. The current legal and regulatory system is out of date, and we welcome the ongoing reforms to reflect the changing reality of the private rented market.
- Local authorities will have responsibility for enforcing the ban in their areas. In order for councils to enforce the ban, it is vital that the Government provides sufficient resources and funding. This includes up-front funding to support activity on this issue, and a national, Government-led information campaign to make tenants and landlords aware of the new rules.
- Councils will want to take a proactive approach to compliance and enforcement, but local trading standards teams are under severe financial pressure. Since 2009, the number of trading standards officers has reduced by 56 per cent.ⁱⁱ We are therefore concerned about councils' ability to undertake upfront work on this issue.
- We welcome the pre-legislative scrutiny report of the Housing, Communities and Local Government Committee. The report recognises the current funding model as offering a 'perverse disincentive' for councils to engage proactively and cooperatively with landlords and tenants.ⁱⁱⁱ
- Councils will require clear and timely guidance from the Government in order to enforce the ban. This will help local authorities to bring about a consistent level of enforcement across the country, ensuring that there is a level playing field for tenants and letting agents throughout different areas.

Briefing

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Background information

The Bill

The Tenant Fees Bill will abolish most upfront fees for tenants in England and cap security deposits at the equivalent of six weeks' rent.^{iv} There is currently no cap on the level of fees that letting agents can charge in England although consumer protection legislation might apply in certain circumstances. We welcome the Bill and the Government's intention to make private rented accommodation more accessible.

The private rented sector in England is home to 4.7 million households. Letting fees and high deposits are seen as adding to the affordability challenge for tenants seeking to access rented accommodation.^v During the Queen's Speech 2017, the Government announced an intention to bring forward a Draft Tenants' Fees Bill to tackle 'unfair fees on tenants'.

Councils' role in enforcing the ban

In order for councils to enforce the ban, it is vital that the Government provides sufficient resources and funding. This includes up-front funding to support activity on this issue. Councils will want to take a proactive approach to compliance work, but local trading standards teams are under severe financial pressure. Since 2009, the number of trading standards officers has reduced by 56 per cent.^{vi} We are therefore concerned about councils' ability to undertake upfront work on this issue.

This trend must be reversed in order to facilitate proactive compliance work, whereby trading standards can work with local businesses to prevent the need for reactive enforcement. We are concerned with councils' ability to fund enforcement through the proceeds of civil penalties.

Although the Government has acknowledged this pressure on trading standards budgets, its proposed solution for funding this work through civil penalties will not sufficiently address the funding pressures. For example, it would not fund any up-front or proactive work that does not lead to any civil penalties being issued.

We welcome the pre-legislative scrutiny report of the Housing, Communities and Local Government (HCLG) Committee. The report recognises the current funding model as offering a 'perverse disincentive' for councils to engage proactively and cooperatively with landlords and tenants.

It is unsustainable for the Government to continue to create additional responsibilities for trading standards, given the reduction in capacity across a high number of authorities. This has meant that trading standards services are often only able to actively enforce issues that are key local priorities, which inevitably leads to varying levels of enforcement depending on available resources and local priorities.

While it is right that local authorities should be responsible for enforcing the ban, there should be flexibility for local areas to decide whether enforcement is led by trading standards or private sector housing teams. It is disappointing that the Government has not made provision for this flexibility in the Bill.

The use of lead enforcement authorities is a helpful way of ensuring that funding is appropriately targeted at the organisations enforcing specific areas of activity. National Trading Standards (NTS) already provides lead authority expertise on a range of issues, including estate agents, and we would therefore support NTS providing the lead enforcement role in relation to this issue.

Councils will require clear and timely guidance from the Government in order to enforce the ban. This will help local authorities to bring about a consistent level of enforcement across the country, ensuring that there is a level playing field for tenants and letting agents throughout different areas.

We would welcome the opportunity to work with the Government on the implementation of financial penalties, to ensure that fines are an effective deterrent. Magistrates should have clear sentencing guidelines to ensure that the level of fines are consistent, and reflect the seriousness of the offence and impact on tenants.

Raising awareness of the ban

Enforcement must be supported by a national, Government-led information campaign to make tenants and landlords aware of the new rules. Ensuring that tenants and landlords are aware of the ban will reduce the potential for non-compliance, so it is important that central government undertakes a national awareness-raising campaign, backed with both funding and non-financial resources.

Reforming the private rented sector

Excessive letting agent fees are a concern for many tenants and councils, hampering access to the market, which in turn places pressure on housing of other tenures, including social housing. The proposed ban on letting agent fees for tenants will bring welcome clarity to a sector that has a powerful influence on the cost of renting.

The current legal and regulatory system is out of date, and we welcome the ongoing reforms to reflect the changing reality of the private rented market. The sheer volume and complexity of regulations governing the sector can be confusing for landlords, tenants and councils. The Government should review and modernise the framework to support councils' ability to meet the expectations of their residents. The HCLG Committee has agreed that a review is necessary.^{vii}

Landlord licensing schemes can have significant benefits for landlords and tenants in setting clear expectations and standards of management. While discretionary licensing schemes will not be appropriate in every area, councils should have local control over implementation, and greater flexibility to set up licensing schemes. Councils also need magistrate courts to set fines at levels that are high enough to act as an effective deterrent to rogue operators.

Our proposals to improve the private rented sector have been supported by the HCLG Committee. In its recent report on the private rented sector, the committee recommended that the Government remove the 20 percent cap above which local authorities must seek permission from the Secretary of State to implement selective licensing schemes.

We welcome the committee's calls for councils to have the power to levy stronger fines to deter the worst perpetrators of poor standards in the private housing market. The committee also echoed our view that the courts should require offenders to pay costs that reflect the true enforcement liabilities to councils.^{viii}

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- ⁱ LGA, Queen's Speech 2017: On the day briefing, June 2017 (https://www.local.gov.uk/sites/default/files/documents/Queen%27s%20Speech%20On%20the%20Day%20Briefing%20-%2021%20June%202017_0.pdf)
- ⁱⁱ National Audit Office, Protecting consumers from scams, unfair trading and unsafe goods, December 2016 (<https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods/>)
- ⁱⁱⁱ Housing, Communities and Local Government Committee, Pre-legislative scrutiny of the draft Tenant Fees Bill, March 2018 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>)
- ^{iv} Tenant Fees Bill (HC Bill 203), May 2018 (https://publications.parliament.uk/pa/bills/cbill/2017-2019/0203/cbill_2017-20190203_en_1.htm)
- ^v House of Commons Briefing Paper, Tenant Fees Bill 2017-19, May 2018 (<http://researchbriefings.files.parliament.uk/documents/CBP-7955/CBP-7955.pdf>)
- ^{vi} National Audit Office, Protecting consumers from scams, unfair trading and unsafe goods, December 2016 (<https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods/>)
- ^{vii} Housing, Communities and Local Government Committee, Pre-legislative scrutiny of the draft Tenant Fees Bill, March 2018 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>)
- ^{viii} Housing, Communities and Local Government Committee, Pre-legislative scrutiny of the draft Tenant Fees Bill, March 2018 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/583/583.pdf>)