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Consultation Response – Banning letting agent fees paid by tenants

Please find below the response to the above consultation from the Residential Landlords Association (RLA).

The RLA represents the interests of landlords in the private rented sector (PRS) across England and Wales. Representing over 50,000 landlords managing over a quarter of a million properties, the RLA is the leading voice for the PRS.

The RLA provides support and advice to members, and seeks to raise standards in the PRS through its code of conduct, training and accreditation and the provision of guidance and updates on legislation affecting the sector. Many of the RLA's resources are available free to non-member landlords and tenants.

The Association campaigns to improve the PRS for both landlords and tenants, engaging with policymakers at all levels of Government, to support our mission of making renting better.

Part A – Questions for all respondents

Q1. The RLA does not believe that the Consumer Rights Act 2015 (CRA) transparency measures have had a substantial effect in standards improvement. Undoubtedly there has been an element of improvement in that many agents have complied and fees do appear to have moderated as a result. However, there has been very little enforcement activity with a small handful of Councils taking enforcement action, primarily in London.

In addition, the level of fine set in the legislation was unrealistically low and is an insufficient deterrent for unscrupulous agents. Councils have also sought to rely on commentary provided by the Department in the document Improving the Private Rented Sector and Tackling Bad Practice. This was written before the CRA was in force and is not a particularly good explanation of either the legislation or how it might be utilised. The Department has not produced more detailed guidance at any stage as to how fees should be set out or displayed.

Furthermore, the Department has not made use of any of the powers conferred by the CRA to make regulations. This would be a far more proportionate response to the situation which would allow for immediate improvements without the need for further primary legislation. For example, the Department could pass regulations authorised under s83 to allow for fees to be displayed more prominently and to specify in greater detail the descriptions of fees that are to be given to tenants.

The Department could also make use of regulatory powers under s87 to transfer enforcement to Environmental Health departments who have a better understanding of the Private Rented Sector and a greater appetite for its regulation which they would be able to do alongside their other duties. Environmental Health officers can, and often do, enforce the obligation to belong to an approved redress scheme and so the restriction on enforcing fees to Trading Standards officers in the CRA is something of an anomaly. The same regulatory powers could also be used to allow an increase of the fine to a more meaningful level, such as the £30,000 imposed by the Housing and Planning Act.

Therefore, a substantial element of the failings of the CRA could be cured by use of regulations.

Q2. No, we do not agree. There is very limited evidence that agency fees act to restrict tenants' choices in the market. There is no evidence at all that landlord fees do so. Fees charged by landlords are moderate and reflect genuine costs incurred by them in preparing to let property such as checks for credit worthiness. There is no basis on which to restrict these and doing so will discourage landlords from letting to more marginal tenants as they will seek to avoid the cost of credit checking and only let to tenants who can clearly show their ability to pay.

Q3. No, we do not agree. Tenants obtain a service package from a letting agent that goes beyond the property and includes assistance with their legal rights and obligations, checks to determine their credit worthiness, advice as to what properties may be suitable for them, accompanied viewings, inventory check ins and more. Some of this undoubtedly benefits the landlord but these services also benefit tenants. Landlords cannot be expected to shoulder the full cost for these services.

In addition, the Government has added more costs to the tenancy commencement process by requiring new Right to Rent checks for example. The current system spreads these costs between landlords and tenants. The ban as proposed will place all costs onto a landlord.

Tenants should continue to be asked to pay for an inventory check-in as they do now, the landlord normally pays for the check-out. This fairly balances the cost of a necessary service. Tenants should also continue to be asked to pay a contribution towards credit referencing and the Right to Rent checks. Without some contribution to these costs landlords will simply refuse to let to tenants who require extra referencing and Right to Rent checks which increase their costs. The amount paid by tenants could be limited under existing legislation as set out in our answer to A1 above.

Q4. No, we do not agree. This is a proposal that has not previously been proposed and has been included in this consultation without any previous discussion. It has no supporting evidence and there is no specific evidence that a tenancy deposit is a bar to tenants letting property.

A tenancy deposit is a vital element in giving small landlords confidence to let and in ensuring that tenants have some investment in maintaining the standard of a property. It also helps to limit the substantial losses incurred by landlords where they are forced to evict tenants which are made worse by the extended period of time it takes to progress an eviction through the courts.

In addition, a limit on a deposit reduce market flexibility. Higher deposits are often sought from those with pets, tenants who have come from overseas, and those with a more doubtful ability to pay the rent. Capping deposits will leave landlords with no ability to mitigate the risks associated with higher risk tenant groups and will inevitably mean that they will either be charged a higher rent, money that they will not recover at the end of the tenancy, or that landlords will decline to let to them altogether.

In setting a cap the Department is also doing the thing that the RLA has repeatedly cautioned against which is treating the entire PRS as if it was the same. Different deposit levels are sought in different areas and for different tenancy types to reflect the different pressures of those markets. A deposit cap ignores this fact and seeks to artificially make the entire market the same.

Q5. The Government has done a great deal to increase the financial burden on landlords. Increasing regulatory cost through increased licensing schemes and imposing higher taxes on landlords inevitably pushes rents upwards and increases the financial burden on tenants. The most obvious way to reduce the financial burden on tenants is to reduce unnecessary financial burdens on landlords.

A6. No, these should not be capped. A holding deposit, by its very nature, should vary according to the property value and the type of tenancy to reflect the variable risk taken by the landlord in removing it from the market. If holding deposits are overly restricted then landlords will respond by refusing to take any property off the market and allow tenants to bid for them and to outbid one another in exactly the same manner as happens in property purchases.

Q7. This is a question best addressed by agents who might provide such services. However, as the RLA has said many times it is clear that the PRS is diverse and an overly restrictive fees ban fails to respect this diversity.

Q8. Any ban on fees paid by tenants will be passed back to landlords. In certain markets, agents derive as much a 30% of their income from these fees and so will have no capacity to absorb the loss. Landlords will already face increased tax burdens this year and new costs associated with the upcoming limits on properties with lower EPC ratings as well as further extensions to licensing regimes. Therefore, any extra cost will be passed back in rent to tenants.

The Department suggests that landlords can shop around but this ignores that fact that in some areas, particularly outside larger towns and cities there are very few agents and the ability to pick and choose is extremely limited.

Q9. Trading Standards have a poor record for enforcing existing limits on agency fee transparency. They have little experience of the PRS and a low appetite to deal with it. This ban would be better enforced by Environmental Health officers who already often enforce the requirement to belong to Consumer Redress schemes.

Q10. Yes, the RLA would support this provided it leads to more effective enforcement without increasing costs.

Q11. Yes, the RLA would support this. Currently enforcement across the PRS is patchy and, in some cases, non-existent. In addition, local authorities take very different views to matters and a lead enforcement authority would supply some much needed consistency of standards.

Q12. If a ban is to be created, then enforcement must be meaningful. This should include a substantial fine at the £30,000 level and the potential to ban offending agents.

Q13. There is no evidence that further regulation of the PRS is required beyond that which has already been introduced and falls to be introduced under the Housing and Planning Act. Further study is required before such further regulation is introduced.

Part C – Additional questions for landlords

Q18. The RLA is aware that not all agents display their fees clearly as required by the CRA. Where they are displayed then we have no information that indicates that the display of such fees is unclear.

However, not enough is being done to deal with those agents who do not display fees clearly and we are concerned that this is an area which will be totally ignored after fees to tenants are banned.

Q19. This is not a question that the RLA maintains data on.

Q20. This is not a question that the RLA maintains data on.

Q21. This is not a question that the RLA maintains data on but we understand that most of our members either charge no fees to tenants or charge the cost of necessary checks which is usually in the order of £25 per person.

Q22. This is not a question that the RLA maintains data on.

David Smith
POLICY DIRECTOR