

1. RICS in Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups.
2. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members
3. We welcome the opportunity to respond to the Bill, and look forward to providing further views and comments at the forthcoming oral evidence session.
4. However, given the compacted timescale between the tabling of this Bill, and the request for written evidence to support the oral evidence, this submission focusses on the general principles, potential impact and unintended consequences of the Bill.
5. RICS will be providing a supplementary submission, prior to the 7 September 2018, which will consider all provisions in more detail. If the Committee has any concerns with the Bill, RICS can explore these in our second submission.
6. It is important to note that the PRS is a fast-growing sector in Wales (as it is across the UK) with more and more people and families, across the demographics, choosing to stay in rented accommodation, or are dependent on it due to a combination of high (and increasing) house prices, coupled with high rents inhibiting potential to save for a deposit. In these latter cases, it is very much the case that the PRS is not regarded as the stop-gap on the housing ladder that it once was.
7. Considering our public interest remit, reducing costs for tenants should allow them access PRS more easily, and this should be welcomed.
8. However, the Committee needs to ensure that the right balance is struck as to what is fair for tenants, but what won't deter existing letting agents and landlords from investing in, or entering, the sector.

General Remarks

9. The Bill marks another step change in residential legislation in Wales. The Bill's provisions do not impose an outright ban on fees; they shift the responsibility of payment for services away from the tenant.
10. This monetary responsibility may culminate in additional costs to the landlord – either directly or via a letting agent; to the letting agent – through absorption of costs; or to the tenant - through increased rent.
11. Research undertaken prior to the Bill's drafting – as highlighted in the Explanatory Note – indicated that most, if not all, letting agents view the landlord as their client, and hold a duty of care to the tenant.

12. It also highlighted that as tenants cannot choose a landlord or letting agent, and thus have no option but to pay fees – of which there are great differences for the same levels of service.
13. This Bill, essentially, defines the landlord as the client of a letting agent, and therefore shifts the onus of payment responsibility onto the party which has a choice.
14. A key outcome from this Bill is that it reduces the financial burden at the start of a tenant's letting journey – thus increasing access affordability and transparency.
15. It is important to note, however, that letting agents do provide a professional service to tenants. The drafting of legal contracts or preparing a property for let are two such examples of professional services that letting agents provide, and request payment from the tenant.

Overview

16. RICS has welcomed many Welsh Government policies and legislatures that have had an impact on the residential sector over a number of years; most notably the Rent Smart Wales (RSW) scheme which should improve professional standards and, thus, the landlord and tenant experience of the Private Rented Sector (PRS).
17. Indeed, due to regularly changing rights and responsibilities through legislative and policy changes, the PRS in Wales – which has a noted ever-growing importance to the Welsh residential sector as a whole – is becoming increasingly complex to navigate.
18. The use, therefore, of a professional letting agent has become more a necessity than a luxury.
19. Indeed, we would urge the Welsh Government to highlight the benefits of a more professionalised PRS and the benefits of using a Rent Smart Wales compliant agent.
20. The professionalisation of the sector, however, has come at an additional financial burden for those who operate it; the stand out example being the registration costs for RSW. In addition to the initial registration fee, compliance with the scheme includes costs for the training of staff and obligation to meet the CPD requirement.
21. In wake of these additional costs, to maintain a professional level of service to clients, letting agents have had to re-examine how their business models and practices are delivered within the boundaries of the revenue generated through reasonable costs to landlords and tenants for their services.
22. At present, lettings agencies charge varying levels of administration fees to landlords and tenants to cover the time and cost implications that arise from the varying phases of the letting process, including: credit, reference and immigration checks, for an accompanied viewing, or the drafting of legal contracts.

23. The draft Bill, however, is not entirely clear on what payment for services will be seen as prohibited payment.
24. One of the key drivers behind this Bill, however, was the variation of charges applied to tenants by letting agents - this Bill removes the option to charge tenants for these services.
25. Whilst this removal will reduce upfront costs for tenants, there are a number of unintended consequences that this Committee will need to consider.

Costs and Impact

26. The key issue of this Bill that the Committee needs to consider what impact the transferal of costs to the landlord and, potentially, the letting agent could have on the service provision within sector
27. There are two fundamental consequences that that have similar outcomes:

Increase charges to the landlord

28. If letting agents cannot charge tenants for services, one change in approach would be to impose further charges on the landlord for their services instead.
29. This could impact on existing landlord-letting agent relationships, potentially leading to landlords moving their portfolios to maintain [what they deem as] adequate levels of income from their properties to let. As such, letting agents will need to balance charging landlords for services they provide to remain financially competitive. This could increase market competition and, with that, service delivery.
30. Whilst this outcome will be welcome in some sector participants, there will be some letting agents, or agencies, that will have to adapt their working practices and efficiency, or risk reductions in landlord's properties they manage, reduce staff, or cease to operate.
31. This market competition may improve service delivery through more efficient delivery of letting agency; but conversely it could also reduce the number of letting agents operating in the sector – reducing choice for landlords and letting agency services across Wales.
32. Additionally, any increase in landlord fees could also increase rents and, of course, the holding deposit which this Bill legislates to be one week's worth of rent. However, the one week rent deposit – as provisioned for in this Bill – is more affordable than existing fee structures; and a welcome provision for improving access affordability.
33. Both the above outcomes could mean that whilst tenants may be able to afford to apply and gain entry to a PRS property, they may be liable to higher rents over the longer term.

34. Whilst a short-term saving, could become a long-term financial burden – research suggests that it is preferable for tenants to reduce upfront costs.

Absorbing the costs:

35. In order to remain competitive in attracting landlords, some letting agents or agencies may choose to resist the transferal of costs from the tenant to the landlord, and absorb any loss of revenue of charging fees to tenants by operating through a slightly amended business model or practice.
36. However, it is likely that only larger firms, or those operating at the higher end of the rental market, can manage this approach.
37. This outcome could increase market competition within the letting sector – which could lead to more effective and efficient working practices.
38. However, this could have negative consequences as smaller firms, or individual practitioners, will not be able to compete with the fee structure of larger firms; leading them to reduce operational costs e.g. staff, or cease trading altogether.
39. Similarly, landlords may absorb the costs, which would lead to minimal change in the sector. However, we assume this approach by the landlords would be unlikely.
40. These two outcomes illustrate the concerns raised by RICS professionals who operate in the lettings market in Wales; concerns that the Committee should examine in closer detail.

Additional Landlord Costs

41. We also have to consider the additional financial burden for landlords.
42. As mentioned previously, the Bill's provisions could shift letting agent fees to landlords – which could increase costs and reduce income for the landlords.
43. Whilst the overall aim of this Bill is fairer to the tenant, these additional costs have to be considered in conjunction with other, pre-existing, costs for landlords, such as landlord registration fee, the additional 3% LTT for second properties, and step-reduction in buy-to-let mortgage relief.
44. RICS research in 2017 indicated since the introduction of the Stamp Duty Land Tax (SDLT) surcharge, small-scale landlords have either reduced, or sold, their portfolios. As a result of the mortgage rate relief cut, those that have remained in the sector had also seen their margins cut.
45. This has to be considered in conjunction with RICS' monthly Residential Market Surveys which regularly point to a lack of supply pushing up house prices and rents across the UK.
46. Further reductions in rental supply will only serve to increase rents.

Recommendations

Capped Fees

47. It is important that this Committee recognises that tenants receive professional services from letting agents (examples outlined in paragraphs in 15 and 22). As such, in the interests of fairness and balance, tenants should pay for these services – a practice that emulates commercial property leases, whereby the tenant and landlord share the legal fees.
48. With this in mind, we would recommend that this committee recommend a cap on fees for professional services provided to a tenant. The capped fees should cover prescribed professional services only.
49. A prescribed list of what “professional services” would encompass would strengthen this Bill, and we would urge the Committee to take forward this view.
50. These recommendations would ensure that any fees for professional services are not excessive, and paid for by those who acquire them.

Tenant Passports

51. RICS has previously explored the notion of “tenant passports”, which would negate the need for administrative checks being undertaken by a letting agent.
52. In short, tenants would provide a registration body with all the information sought by letting agents, receive a “passport”, and simply pass this information to letting agents or landlords for a property they wish to rent.
53. This could feasibly reduce, or bypass, tenant fees; however, it raises many issues around costs, cost effectiveness and registration body. RICS can explore this notion further with at the request of this Committee parliamentarians.

Concluding remarks

54. Ultimately, reducing costs for tenants will increase access affordability, but this bill needs to strike the right balance between access affordability, with any potential impact on market rent, and supply of PRS properties.
55. RICS in Wales will continue to monitor the impact of legislative and policy changes via our monthly Residential Market Surveys.