

RHF 14
Bil Rhentu Cartrefi (Ffioedd etc.) (Cymru)
Renting Homes (Fees etc) (Wales) Bill
Ymateb gan:Property Redress Scheme (PRS)
Response from:Property Redress Scheme (PRS)

Who are we?

The Property Redress Scheme (PRS) is an escalated complaint service for customers of agents providing lettings and property Management. The Scheme is approved in England to operate by the Ministry of Housing, Communities and Local Government for lettings and property management. Under provisions set out by Rent Smart Wales, agents are required to be a member of a redress scheme in order to successfully register.

How to contact us?

This submission is being submitted on behalf of the Property Redress Scheme.

The Committee should note it is not confidential. The Head of Redress is available to give oral evidence if required by the Committee.

The Committee should contact us via the Head of Redress:-

Responses to Consultation

Part 1 – Overview

Noted

Part 2 - Prohibition of Certain Payments etc.

It should be established where the landlord uses an agent, where vicarious liability ultimately rests. In the case where an agent charges an administration fee, which is payable to and retained in full by the agent, if the agent does not make the landlord party to the arrangement, is the landlord exempt from the offence?

However if the agent subsequently folds, defaults or avoids repaying said fee, either before, during or after a prosecution, will their landlord hold any responsibility for the prohibited fee or payment?

It should be clarified however that if a payment made to an agent is not directly apportioned to the landlord, but is used for services which otherwise a landlord would have been expected to pay for,

their liability should be equivalent to them receiving the payment directly. Examples of this are charges for referencing, protection of the deposit and insurances protecting the interest of the landlord but not their tenant.

The legislators should consider whether the concept of the landlord and their agent have joint and several liability for this offence or whether an action under each of the sections Part 2, 2 and 3 is required.

Part 3- Holding Deposits.

See comments under Schedule 2.

Part 4 - Enforcement.

No comments under this section.

Part 5 - Recovery of Amount by Contract-Holder.

No comments under this section

Part 6 - Publicising letting agents' fees.

See comments under Schedule 2

Part 7 - Final Provisions

No comments under this section.

Schedule 1 Permitted Payments

It needs to be considered under the provisions to protect against fees being incorporated in an initial higher rent period, whether a genuine rent reduction for a subsequent period by virtue of these provisions is always prohibited. The natural assumption that rents always rise or remain the same in all areas may not be the reality if a landlord wants to retain a tenant in an area of falling rents or low demand. Consideration should be given to whether the tenant is sufficiently empowered to negotiate a variation for a subsequent rental term.

It should be considered where a landlord or their agent forgoes the payment of security deposit, that if the tenant is required or offered the opportunity to purchase an insurance or an indemnity as a substitute for a conventional deposit, that due consideration is given for whether this is a permitted payment and that sufficient information in making such a purchase is given to the tenant and whether a variation to the rental rate or other conditions are disclosed in the transactional event.

There are concerns that if the sale of such products offered as no deposit or deposit alternatives are offered in a transparent and clear way and whether there is true choice and disclosure to tenants.

The issue with default fees is that they are subject to abuse by both sides. Charges for clear default of the tenancy conditions, such as lost keys, their replacement or requests for access to the property following the loss of keys, unsubstantiated call out fees for repairs, where tenants make a request to vary or amend the contract in terms of say a change of tenant and where this clearly would present

a cost to the landlord or agent, over and above the normal costs of a tenancy.

It should also be noted that even where a clear and robust tenancy term is included that meets the criteria of the act, in individual circumstances it may be deemed unfair by say a redress scheme in line with consumer protection law. The redress scheme could therefore award all or part of the payment back to the tenant. In these circumstances it does not necessary make the charge a prohibited payment because in general the clause may indeed be a permitted payment.

It should be also noted that under the Consumer Rights Act 2015 following the requirement to display all fees, that if a fee was charged to the tenant for a contract breach was not displayed correctly, how should a redress scheme treat these, it was concluded by the Schemes and National Trading Standards, in such cases that the tenant was awarded the full fee back, regardless of whether the agent or landlord had incurred a legitimate cost. In cases where the actual charge varied or was ambiguous as the loss could not be quantified this was problematic. In theory therefore the fee could be justifiable but still a breach of the law as it stands. For those who believe the obligation to display fees for tenants after fee ban legislation will be redundant, I refer you the definition of relevant fees in the 2015 Act. This includes as defined in section 84 penalties. The requirement therefore for such default fees to be displayed does have the risk of falling between the different legislation.

Schedule 2 Holding Deposits

Holding deposits have been widely abused by some agents, who take multiple sums of money from prospective tenants and fail to return them. However legitimate agents use them to ensure they attract serious tenants and to discourage poor behaviour that could leave the landlord in the lurch. Tenant gazumping is a real issue, as is playing one agent off against another. Holding deposits do discourage this and also prevent frivolous applications by tenants who cannot afford or meet the criteria. Holding deposits should only be taken with a clear holding deposit agreement, clearly stating the circumstances it will be forfeited in full or in part, the costs it will be used to compensate either the landlord or agent and also outline what the fee is for, i.e. exclusive option on the property subject to referencing and paying advanced rent. As a redress scheme we are very experienced in seeing the abuses and benefits of such deposits. Consideration on whether a cap of one week provides the benefit to the parties of a pre-contract and commitment or whether there is risk of abuse in terms of landlords and agents taking multiple low value holding deposits that they confidently predict tenants will not contest or that tenants do not see the value of a pre-contract commitment and are not discourage from entering into them frivolously. It should be considered whether any holding deposit should be taken before a serious commitment by both parties has been established such as a pre-qualifying affordability checks or referencing. This would reduce the instances of agent's in particular undertaking referencing at mark up prices and then retaining the holding deposit when the tenant fails.