

RHF 18

Bil Rhentu Cartrefi (Ffioedd etc.) (Cymru)

Renting Homes (Fees etc) (Wales) Bill

Ymateb gan: Cymdeithas y landlordiaid preswyl

Response from: The Residential Landlords Association

1. The Residential Landlords Association

1.1 The Residential Landlords Association (RLA) represents the interests of landlords in the private rented sector (PRS) across England and Wales. With over 30,000 subscribing members and an additional 20,000 registered guests who engage regularly with the Association, the RLA is the leading voice of private landlords. Combined, the RLA members manage over a quarter of a million properties.

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

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

2. General Principles of the Bill

2.1. Prohibition of Certain Payments

~~2.1.1~~ The RLA strongly disagrees with the Welsh Government's approach of prohibiting the charge of agency fees under ss 2 and 3 of the Bill. In the memorandum accompanying the Bill, the Welsh Government states that 'The Prohibiting of charging fees to tenants reflects a further step in improving the PRS by increasing accessibility and transparency for tenants and prospective tenants.' In our view, a prohibition of fees is the wrong approach to fulfil the Welsh Government's objectives, the RLA continues to advocate for Welsh Government to utilize statutory powers already available to meet its objectives.

2.1.2 With lack of enforcement of provisions under the *Consumer Rights Act 2015* (CRA) for the transparency of fees and no attempt made to first, trial out a universal cap of agency fees, the RLA advocates that 'Option 3', the 'Non- Legislative Approach' (as detailed in the memorandum) should be taken to address the Welsh Government's concerns.¹

2.1.3 The CRA made it a legal requirement for letting agents in England & Wales to publicise details of their fees. Providing additional funding to enforce the legislation may increase compliance and help to increase transparency in the sector.

2.1.4 Current fines for non-compliance are much higher than the current provisions of Fixed Penalty Fines (FPN) proposed under s13 of the Bill.² Where fines for noncompliance can be as much as £5,000.

¹ Renting Homes (Fees etc.) (Wales) Bill explanatory memorandum page 23.

² Renting Homes (Fees etc.) (Wales) Bill, page 6.

The NALS survey based on freedom of information requests, found an alarming 93% of councils have failed to issue a single financial penalty for non-compliance.³

2.1.5 Agency fees cover legitimate costs and account for the time spent with tenants in setting up their tenancies. The RLA recognises that some agencies and landlords have charged exorbitant fees in the past and therefore argues for a 'Voluntary Fees Code' which would standardise the charges permitted and place a cap on the amounts that can be charged.

2.1.6 The RLA believes that the complete ban on tenancy fees will simply place further pressure on landlords to review increases to the amount that they charge in rent, to cover the costs transferred by letting agents and will undoubtedly reduce the transparency of the actual cost of letting to the tenant.

2.2 Treatment of Holding Deposits (Schedule 2 - Treatment of Holding Deposits)

2.2.1 The RLA believes that holding deposits shouldn't be legislated and that the provision of granting 15 days to hold a property may not be conducive for an equitable business style for the landlord/agent.⁴

2.2.2 Currently, the trend is to charge a fee to the tenant which ordinarily sits with their agency fee to guarantee the property and secure their future tenancy. With agency fees being a prohibited payment, there will naturally be a reduction in services offered to the tenant and thus collation of paperwork will fall primarily on the tenant to give to the landlord/agent.

2.2.3 Schedule 2 as introduced under s9 of the Bill, Paragraph (para) 3(b) states that if the 'parties fail to enter into a contract before deadline agreement' then the landlord must repay the holding deposit.

2.2.4 We have concerns regarding the legitimate retention of holding deposits by landlords/agents. We seek clarity, under para 10 (b), as to the measure of 'reasonable steps' if the contract holder fails to enter a contract before the end of the holding deposit retention date.

2.2.5 We are clear that the landlord/agent's reasonable steps would be to ensure that all relevant documents and checks are completed and obtained to complete an agreement. However other than complying with the agent/landlord's request, we would find the tenant's 'reasonable steps' a hard test to measure, primarily if; the contract-holder claims that the retention of the holding deposit is a prohibitive payment and that instead, it was the agent/landlord that hasn't taken the 'reasonable steps' to complete the contract.

2.2.6 With current housing supply concerns, we are fearful that a prospective tenant may take advantage of the proposed reform and reserve several properties all at once.⁵ Our concern would be in the last few days of their holding deposit(s) when they decide which property to occupy and then only comply with requests of that corresponding landlord/agent. Later expecting to receive holding deposits of the other properties in return, within the holding deposit retention date under para 4(a). Subsequently leaving several properties off the market causing problems for both landlords and future prospective contract holders.

2.2.7 The RLA has further concerns that some landlords/agents, with fears of charging a prohibited payment, may opt to reduce that risk by not retaining a holding deposit at all. Instead encourage a more, 'free for all' approach like the current model of property purchases. Preference might be given to the tenant who provides the required information first and most accurately placing those without certain documents at a disadvantage (such as applications from international citizens). We also hold a concern that on top of this, tenants might try to 'outcompete' each other by offering to pay higher rents when negotiating a tenancy contract to obtain certain properties. This would artificially drive up rental prices and place another barrier for prospective tenants who have limited disposable income. Such models

³ <https://www.nalscheme.co.uk/enforcement-regime-displaying-agent-fees-failing/>

⁴ Schedule 2, Paragraph 2(1), Renting Homes (Fees etc.) (Wales) Bill

⁵ S13(2) Renting Homes (Fees etc.) Wales Bill.

will allow agencies and landlords to fully maximize their businesses to ensure that the property is let, with limited adverse costs from taking the property off the market and limit any possible challenge to deposit holding retention.

2.2.8 Instead, the RLA proposes to amend para 10 to reduce a possible challenge and encourage holding deposits to be taken:

'Paragraph 3(b) does not apply if:

- (a) the contract holder and landlord fail to enter into a contract before the deadline for the agreement; or*
- (b) the contract holder, after entering into an agreement to enter a contract, within 7 days of signing the agreement, withdraws their application'.*

2.2.9 With possible adverse costs for landlord/letting agents when tenant applications are delayed and prospective tenants seeking a place of their choice to reside, both parties would ordinarily ensure that they reach an agreement as soon as possible. However, the RLA believes that if one is not reached, the landlord/agent's time (engaging in the creation of a possible future contract and time that the property is away from the market) should be compensated. One week's rent, permitted under schedule 1, para 4(c) would be sufficient compensation for this loss of time.

2.3 Enforcement

2.3.1 Section 13(1) of the Bill provides an authorised officer to grant an FPN (Fixed penalty notice) in lieu of prosecution. The RLA believes that to deter non-compliance that the amount of £500 as provisioned under section 13(2), would be an insufficient deterrent for agencies.

2.3.2 The RLA recommends increasing the provision of the FPN amount for agencies to that of similar fines in the Consumer Rights Act 2015.⁶ Our concerns lay that since our average member ordinarily only holds a few properties to let, a letting agency may risk a small fine such as £500 for the opportunity to raise larger profits by charging prohibited payments. We, therefore, recommend setting 2 thresholds for FPN(s), a smaller amount for landlords, such as £500 and then a larger amount for agencies.

2.3.3 Further, since the contract holder has been inappropriately charged, we see it fit that s13(2) be edited to include:

'...relates to paying a penalty of £500 if the person is a sole landlord and £xxxx if an agent, including the original amount of the prohibited payment'.

With a further amendment to s5 adding sub-section (a):

'All attempts should be made by the local housing authority to return the original amount of the prohibited payment received to the original contract-holder'.

2.3.4 However as alluded before, there has been few to no prosecutions under the Consumer Rights Act (2015).⁷ The RLA would seek to edit s13(1) to instead provision for a central authority rather than the local housing authority.

2.3.5 A central authority would have a more uniformed application of FPN(s) and prosecutions. The RLA note that Rent Smart Wales (RSW) could lead as the central authority on this matter. There will be an ability by a central authority to note as to how many FPN's have been granted against a particular person, their suitability for another FPN or prosecution under this Bill can then be properly evaluated.

2.3.6 However, a current review by Welsh Government into RSW concluded that there has been a lack of capacity at the local and national level to enforce RSW, with there being a lack of planning, a clear

⁶ S83 of the Consumer Rights Act 2015.

⁷ <https://www.nalscheme.co.uk/enforcement-regime-displaying-agent-fees-failing/>

set of responsibilities and insufficient resources.⁸ The RLA would recommend increasing resources to RSW than that currently provisioned in the memorandum in order to be effective in implementing the Bill. The use of FPN payments may provide a main source to finance those resources.

2.4 Schedule 1 - Permitted Payments

2.4.1 We agree with comments made in the memorandum by the Welsh Government that, maintaining the option of charging higher security deposits will provide flexibility for landlords, to adapt to the conditions of the property and to cover possible higher cleaning costs.⁹

2.4.2 The RLA further welcomes in Schedule 1, para 2(3) of the Bill, that there is no prescribed limit set. However, the RLA holds concerns that in the future under para 2(4) this can be determined in accordance with the regulations. With severe penalties in place for those charging prohibited payments, the RLA is concerned that there is insufficient clarity within this Bill for consultation when seeking to set, increase or decrease the 'prohibited amount' for security deposits.

2.4.3 The RLA believes that any future cap should not simply be determined by further regulations by the Minister without further consultation with key stakeholders in the sector. With the memorandum mentioning a possibility of a similar 6-week cap being introduced in later regulations, the RLA is concerned that such restrictions would limit the options for landlords to let to tenants that provision for a higher deposit to cover further conditions, such as those with domestic pets.

2.4.4 To address this concern the RLA proposes that there is an amendment to the Bill, that where security deposits are set to a 'prescribed limit' that the landlord can request for a higher deposit in justified situations of specific extenuating circumstances. Such examples could be listed, such as tenants with pets, tenants with uncertain or unprovable income or properties with unique masonry. This would allow landlords to balance the risk posed by tenants whilst retaining the core objectives of the limitation.

2.4.5 However, the RLA recognises that one of the biggest upfront costs tenants face is the deposit. This is exacerbated by a system that means that when a tenant moves to a new rental property they need to raise funds for a new deposit, often before being repaid the deposit for their last property. A recent 'Which?' report found that 43% of renters borrow money for their deposit when moving tenancy.¹⁰ The RLA believes that this Bill restricts and reduces innovation on deposits, which could help remove this barrier to renting in the PRS.

2.4.6 Although stated during the oral evidence stage, that such a provision explained below is not within the scope of this bill.¹¹ The RLA is calling specifically to amend the permitted payments under Schedule 1 for the development of a new insurance-based scheme that would enable a tenant to transfer a deposit from one rental property to another, whilst protecting the new landlord from a reduced deposit caused by deductions for the previous tenancy.

2.4.7 This would include provisions for a tenant to be able to top up a deposit being transferred where the new one is higher or claim some of the deposit back where it is lower than the previous property. This will allow tenants to save a larger deposit as they move and reduce financial barriers when moving in the private rented sector. Further landlords will have the assurance that under such a scheme that a deposit would be available in full if the tenant could not top it up in-between tenancies. Increasing the likelihood of landlords permitting contract holders with more varying conditions to be granted tenancies.

2.4.8 Lastly, the RLA seeks a further amendment to Schedule 1 of the Bill to allow credit and reference checks to be a permitted payment. Such checks are required by landlords and agents to evaluate the

⁸ <https://gov.wales/docs/caecd/research/2018/180607-evaluation-rent-smart-implementation-delivery-summary-en.pdf>

⁹ Renting Homes (Fees etc.) (Wales) Bill explanatory memorandum page 9

¹⁰ <https://www.which.co.uk/news/2018/08/renters-battling-through-broken-deposit-system-says-which-report/>

¹¹ 05/07/2018 10:50:09 / Bethan Sayed AM: "But, we are told that this type of thing, the passporting, would be outside of the scope of the Bill. I mean, I dispute that, because I think

financial stability of a prospective tenant. The RLA doesn't envisage a change to the current sector requirement and seeks to allow landlords/agents to undertake these checks on behalf of a tenant to streamline the process of forming a tenancy contract.

3. Unintended Consequences Arising from the Bill

3.1 The RLA stresses that enacting this Bill in Wales will add to the negative cumulative effect on the sector due to the current measures (such as Licensing, Mortgage Interest Relief, Rent Smart Wales etc) already in place. With our research indicating that 7% of landlords are moving from long-term to short-term lets due to increased financial costs in the buy to let market, further measures will only expedite this change as further landlords review their current business positions.¹²

3.2 As alluded to earlier, most of our members are 'accidental landlords'; those who have found themselves renting a property in the market due to ordinary but unexpected circumstance. With studies suggesting that out of the two options available to agents after passing of this Bill will be to pass their costs to landlords.¹³ The resulting effect will lead landlords to increase their rents to cover their costs. Currently, the Office for National Statistics indicates that the private rental market has only increased rent by 1% per annum in Wales.¹⁴ Whilst predictions in the memorandum of annual rent increases after enactment of this Bill are set to be 3% on top of the annual increase.¹⁵

3.3 The RLA fears that rural communities across Wales will suffer the most with increases in rents, that salaries cannot meet, compared to larger metropolitan areas such as Cardiff and Swansea. Further, in areas (for example like the Rhondda Valley) where there are only one or two agencies, a ban on fees may eliminate competition as some may be forced to close or landlords leaving the sector unable to absorb further costs passed to them.

3.4 Reducing the overall housing supply available to rent in Wales, increasing demand in the Private Sector and reducing access to housing in rural communities.

4. Final Comments

4.1 We thank you for the opportunity to provide evidence to the committee in relation to this Bill. Our comments echo concerns of our members who will bear the biggest burden of its implementation. With the sector facing numerous changes, we wish to mitigate the adverse effects that we are seeing due to recent reforms in the PRS, which affect both landlords and tenants. We hope you consider our comments and continue to invite our input.

Regards,



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¹² Dr Tim Simcock, RLA PEARL | From Long-Term Lets to Short-Term Lets: Is Airbnb becoming the new Buy-to-Let? Can be found here: <https://research.rla.org.uk/report/long-term-lets-short-term-lets-airbnb-new-buy-to-let/>

¹³ Capital Economics for the Association of Residential Letting Agents, Letting the market down?: A report for ARLA PropertyMark (Association of Residential Letting Agents), March 2017, available at: <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>.

¹⁴<https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/indexofprivatehousingrentalprices/july2018>.

¹⁵Renting Homes (Fees etc.) (Wales) Bill explanatory memorandum page 52.