



Banning letting agent fees paid by tenants consultation

Response by CIEH

June 2017

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and non-profit sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Department for
Communities and
Local Government

Banning letting agent fees paid by tenants

Consultation paper questions

Please indicate whether you are responding to this consultation as a:

1. Tenant
2. Landlord
3. Letting Agent
4. **Other interested party**

All respondents should answer the questions in [Part A](#).

Only those responding as tenants should respond to the additional questions in [Part B](#).

Those responding as landlords should respond to the additional questions in [Part C](#).

Letting agents should respond to the additional questions in [Part D](#).

Part A – Questions for all respondents

Question 1	Yes/No + Answer
Do you think that the transparency measures introduced in the Consumer Rights Act 2015 have helped to drive up standards and improve competition? Please include reasons.	No. Whilst many agents are now displaying their fees clearly, to the best of our knowledge, not all agents comply with the transparency measures and many are exploiting loopholes in the interpretation of the Act. For example, some agents only display fees on websites once rental properties are accessed in detail, some agents' websites do not display the full list of fees payable, and some agents' offices do not display fees in clear public view. We believe that this might be partly due to a shortage in enforcement resources available to many Trading Standards departments in England, as well as tenants' lack of

	knowledge about their rights and how they can raise a complaint about an estate agent.
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Question 2	Yes/No + Answer
Do you agree that the ban on letting fees should also include a ban on letting fees charged to tenants by landlords and third parties? Please include reasons.	<p>Yes. We would suggest that the ban should also cover any fees charged to tenants by landlords and any third parties. This would avoid any loopholes that may be created with the introduction of a ban, which only applies to letting agents. Including landlords' fees to tenants as part of the ban would also help to protect tenants from any rogue landlords who may try to charge tenants high fees in areas where demand for property is high.</p> <p>However, if this is enacted, it must be made clear that landlords' and agents' obligations remain. Particular examples are the Right to Rent requirements, Energy Efficiency, Electrical and Gas Safety certification and Deposit registration.</p>

Question 3	Yes/No + Answer
Do you agree that all letting fees, premiums and charges to tenants that meet the general definition of facilitating the granting, renewal or continuance of a tenancy should be banned with the exception of: <ul style="list-style-type: none"> • The rent; • A refundable deposit; • A holding deposit to take the property off the market whilst reference checks are undertaken; and • In-tenancy property management service charges 	<p>No. We agree that there should be exclusions to the ban for the rent, the refundable deposit and for in-tenancy property management services, where this is due to the tenants' action. The last exclusion should only be applicable when fees are specified in the tenancy agreement or, where prior to the tenancy commencement, the fees are suitably advertised.</p> <p>We strongly believe that a holding deposit (to take the property off the market) should also be banned. As the</p>

<p>that directly relate to an action or service carried out at the request of the tenant or as a result of the tenant's actions? If no, please list any fees, charges or premiums aside from those listed above that you think an agent, landlord or third party should be permitted to charge</p>	<p>environmental health profession, we want improvements in private rented sector (PRS) housing conditions. Encouraging the free movement of tenants from poor housing would ensure that the market drives up standards and quality. Tenants are typically asked to pay the deposit and several months' of rent in advance of moving into a property. This amount of money paid upfront already acts as a significant barrier to moving home, particularly for low income families. An additional holding deposit would increase their risk of tenants being trapped in poor conditions.</p> <p>Furthermore, we would not want to see any agents holding more than one tenant's holding deposit for the same property, in order to ensure that the property is rented even if one of the potential tenants fails the referencing checks. Tenants would have no knowledge of whether they are the only tenant 'holding' a property and it would be nearly impossible for outside parties to enforce this. In this case, holding a tenant's deposit might prevent them from securing another property until their deposit is returned to them and the tenant may ultimately end up without a home as a result.</p>
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Question 4	Yes/No + Answer
<p>Do you think that refundable deposits, payable at the outset of a tenancy, should be capped? If yes please indicate the level of the cap.</p>	<p>Yes. We would suggest that refundable deposits should be capped at 1.5 months of rent to ensure that moving home is not prohibitively expensive to the average tenant. This figure is a good balance between the high rents of properties in London and the protection that landlords would need elsewhere in the country, especially those letting furnished properties.</p>

Question 5	Answer
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<p>How can Government best support the sector to expand or develop new approaches to minimise the financial burden on a tenant at the outset of a tenancy? For example, enabling tenants to pay their deposit in instalments over the first few months of the tenancy or using a line of credit approach where an agreed deposit amount is blocked on a tenant's credit card.</p>	<p>Options to pay the deposit in instalments would be a good approach to help tenants to spread the high cost of moving home, thus removing the barriers to moving out of poor quality accommodation. However, this scheme also needs to be designed to offer some protection for the landlord, who would be relying on the deposit to protect the condition of their property.</p> <p>The Government could also consider capping the number of months' rent that new tenants might be asked to pay in advance of moving in. We would suggest this could be one month of rent, paid in advance. Assuming the refundable deposit is 1.5 times the rent, tenants would need to pay 2.5 months of rent in advance of moving in, which should be sufficient to protect the landlord.</p>
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Question 6	Yes/No + Answer
<p>Do you think holding deposits, to ensure that a property is taken off the market, should be capped? If yes please indicate the level of the cap.</p>	<p>Yes. We do not believe that holding deposits should be permitted. These might allow the agents loopholes to exploit tenants, such as holding more than one tenant's deposit for the same property. Holding deposits would also pose an additional barrier for tenants wishing to move home. Furthermore, as survey results show, some agents do not refund the deposit where the tenants fail checks. This should be considered a 'no-fault' situation where the tenants have not withdrawn. We would like to see barriers to moving home reduced to enable more tenants to move out of poor quality housing. See our answer to Q3 for more detail.</p> <p>If, for any reason, holding deposits are permitted, then they should be registered under a mandatory client money protection compensation scheme to avoid abuse.</p>

Question 7	Yes/No + Answer
<p>Agents may occasionally provide bespoke, non-standard services to tenants at the top end of the market, for example, when arranging a property for someone currently living abroad who is relocating to the UK. Do you think there are premium parts of the market where a different approach to handling letting fees may be warranted?</p>	<p>No. We would not want to see any potential loopholes created with the introduction of this exclusion to the legislation. For example, it is not clear whether this would allow agents to market certain properties as being bespoke or up-market to avoid the letting agents' fee ban. If so, tenants who wished to move in to a particular property may not have the option of not paying fees, because the property would only be let on a 'bespoke' basis. This could also have a serious impact on foreign students.</p> <p>If special bespoke services were required, these could be charged to the tenant as part of the exclusions described in Q3: 'In-tenancy property management service charges that directly relate to an action or service carried out at the request of the tenant or as a result of the tenant's actions'.</p>

Question 8	Answer
<p>What do you think will be the main impacts of the ban on letting fees paid by tenants? Please include any unintended consequences that you believe may arise.</p>	<p>We believe that the primary outcome of this legislation will be the removal of barriers to moving home for tenants, who currently pay high fees to rent a property. This legislation should also help to increase competition between letting agents, who will need to offer competitive deals for managing a property to the landlord, who is the customer of the letting agent services.</p> <p>Whilst we have heard from statements made by estate agents that a ban on the fees charged to tenants would lead to an increase in rents, we do not believe that this is necessarily the likely consequence in all parts of England.</p> <p>In the consultation document, we have heard that landlords managing their own properties typically face very low costs when it comes to referencing tenants. The cost of referencing new tenants is likely to be small in</p>

	<p>comparison to the costs of maintaining a property to a good standard, therefore we believe it is unlikely that this ban would lead to higher rents for landlords managing their own properties. In the case of landlords using letting agents, not all landlords are aware that fees are being charged to tenants to renew contracts, for example. Introducing this legislation is likely to increase transparency and increase competition for services between property agents, as landlords will be looking for the best value.</p> <p>We recognise that in areas where supply of housing for rent is very low and is exceeded by demand, higher rents could be imposed as the result of this ban, as tenants would have little power to choose between a landlord managing a property directly and a landlord who is using an agent. However, we believe that in most areas, the local market rent levels will decide the level of rent paid by tenants, not the costs to the landlord. Therefore, on balance, we believe that this legislation will have a positive impact on tenants.</p>
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Question 9	Yes/No + Answer
<p>Do you agree that the ban on letting fees should be enforced by Trading Standards? If not, how do you believe the ban should be enforced?</p>	<p>Yes, this function would sit well with Trading Standards. The Government may however wish to give some flexibility to local areas to decide how this is best enforced. With the current squeeze on local budgets, many local areas have taken on innovative approaches to managing their staff, for example by sharing capacity across teams. Given that Trading Standards teams are often under-resourced locally, giving local areas the option to decide on where enforcement should sit would ensure that this new law can be enforced more effectively.</p>

Question 10	Yes/No
Would you support greater data sharing on rogue agents and landlords across organisations in the letting sector?	Yes.

Question 11	Yes/No + Answer
Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information? Please include reasons.	Yes. There should be an unbiased central standard-setter, which leads on the development of advice and guidance for local enforcement teams. This approach would help to ensure that local approaches are consistent. This Authority should work with housing environmental health professionals and should be independent of the estate agent or landlord sector bodies.

Question 12	Answer a) b) c) and/or d)
<p>Do you think that the penalty for non-compliance with the ban on letting fees for tenants should be (please tick all that apply):</p> <ul style="list-style-type: none"> a) a civil penalty of up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015; b) a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence; c) a banning order offence under the Housing and Planning Act; or d) Other (please list)? 	<p>a) The civil penalty of £5,000 should be strengthened so that all non-compliance is more effectively enforced.</p> <p>b) We would suggest that a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence would be the appropriate level of fine. This would ensure that the biggest letting agents with a bigger property portfolio have a strong incentive to comply fully with the new ban.</p> <p>d) For those agents with the largest portfolios, a civil penalty may not be a sufficient disincentive. We would therefore suggest that there should be the possibility of corporate responsibility and the disqualification of directors at senior level, in cases of multiple offences across a group.</p>

Question 13	Yes/No + Answer
Do you think further action is needed to regulate the letting and management agent sector in addition to the ban on letting fees	Yes. The Government should conduct research on the fees charged to tenants for using the break clause in their contract and to see whether these are

<p>paid by tenants? What additional action do you think should be taken to regulate the sector?</p>	<p>always transparent at the outset of the tenancy. Many agents charge fees for tenancy breaks or renewals that are not justified by the work involved. Should the option of longer tenancy agreements be introduced nationally, this could become a way that tenants are locked in to poor quality properties without being able to move home.</p> <p>A national register for letting agents and landlords is also needed to ensure the fast growing privately rented sector is regulated properly and that better information is available to local enforcement teams to inform their work.</p> <p>Furthermore, accessible guidance and information should be provided to tenants on their rights and the obligations of letting and managing agents. Tenants do not always know how to lodge a complaint about an agent. For example, tenants should have greater awareness of redress schemes. This information should be provided in writing to the tenant when they sign the contract. This could be provided in the same way that the government has a model Assured Shorthold Tenancy agreement, and could be signposted in the "How to Rent" leaflet that all landlords have to provide to their tenants.</p>
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Part B – Additional questions for tenants

Question 14	Yes/No
Do you consider that letting agent fees are clearly and transparently displayed?	

Question 15	Yes/No
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Were you aware of letting fees at the outset of your interest in a rental property either through your own research or through your landlord or agent?	
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Question 16	Answer
What letting agent fees were you charged during your most recent rental? Where possible please include a breakdown of the fees charged.	

Question 17	Yes/No
Have letting agent fees ever affected (a) your ability to move to a new rented property or (b) your decision to use an agent?	

Part C – Additional questions for landlords

Question 18	Yes/No
Do you consider that letting agent fees charged to landlords are clearly and transparently displayed?	

Question 19	Answer
What fees does your agent (if you use one) charge you for letting or management services, in addition to commission charged?	

Question 20	Yes/No
Do you know how much your agent (if you use one) charges to your tenants in letting fees?	

Question 21	Answer
If you are a self-managing landlord, what letting fees do you charge to your tenants? Where possible, please give a breakdown of the fees charged.	
Question 22	Yes/No + Answer
Would increased letting agent fees affect your decision to use an agent in the future? Please include reasons.	

Part D – Additional questions for agents

Question 23	Answer
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What letting fees do you charge to tenants? Where possible please give a breakdown of the services and fees charged.	
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Question 24	Answer
What letting fees do you charge to landlords? Where possible please give a breakdown of the services and fees charged.	