

RHF 19

Bil Rhentu Cartrefi (Ffioedd etc.) (Cymru)

Renting Homes (Fees etc) (Wales) Bill

Ymateb gan: Cynllun gosod cymeradwy Cenedlaethol

Response from: The National Approved Letting Scheme

## 1. INTRODUCTION

1.1 NALS [www.nalscheme.co.uk](http://www.nalscheme.co.uk) is a licensing scheme for lettings and management agents operating in the Private Rented Sector (PRS). NALS agents are required to:

- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included under a Client Money Protection Scheme

1.2 Agents must provide evidence that they continue to meet NALS criteria on an annual basis, in order to retain their licence. The scheme operates UK wide and has 1500 firms with over 2800 offices.

1.3 NALS also administers the SAFEagent campaign [www.safeagents.co.uk](http://www.safeagents.co.uk) the purpose of which is to raise consumer awareness of the need to ensure that landlords and tenants should only use agents who are part of a Client Money Protection Scheme, which offers reimbursement in the event that an agent misappropriates their money. The campaign is recognised by Government and our logo appears in their How to Rent guide [How to Rent](#)

1.4 In Wales, NALS is an Authorised Provider of Approved Training under the Rent Smart Wales scheme. We have also become a co-regulation partner with Liverpool City Council.

## 2. ISSUES ARISING FROM THE CURRENT DRAFT BILL

2.1 It is important that the provisions of the fees Bill are workable and that they do not inadvertently undermine agents' ability to provide a good service to consumers. As a consumer facing organisation we are very concerned that there a number of issues which are not recognised by the Draft Bill and which we urge the Committee to take into account in its deliberations. These are highlighted below.

### ***Service provision by agents***

2.2 The Draft Bill does not recognise that agents do provide an important service to tenants and do not act just on behalf of landlords. Many assist tenants with issues such as amendments to the tenancy agreement, affordability considerations in light of their income (including benefits) act as an interlocutor on behalf of prospective tenants in discussions with landlords. They also provide general advice on maintaining a stable tenancy.

2.3 In light of this, NALS believes that, despite the fees ban, the charging of reasonable and specified fees for specific services should be allowed, within the context of wider regulation of agents and the PRS as a whole.

### ***Support for vulnerable tenants***

2.4 We are particularly concerned about agents' role in ensuring access to the PRS for the following groups:

- Low income families
- Benefits claimants
- Students
- Those who would face complex Right to Rent issues were there a statutory requirement in Wales for agents to carry out extensive documentation checks and liaise with the Home Office.

2.5 Agents spend considerable time helping these groups and have a wealth of specialised knowledge they bring to bear. Often this support is undertaken without landlord involvement and it is likely that most landlords would not have the specialist knowledge to undertake this service, nor perhaps the will to do so. Other sources of advice to tenants are quite limited, with Citizens Advice Bureau services, for example, is overstretched. Agents may cease to provide these services and this would be seriously detrimental to tenants.

### ***Competition***

2.6 We are concerned that abolishing letting agent fees to tenants will make the market less competitive. If agents are no longer able to cover their costs for some of the services described above, other than by a simple transfer of charges from tenants to landlords, it may reduce the range of services on offer to tenants and make it more difficult for tenants to access the PRS.

### ***Supply of housing***

2.7 Finally it is unclear as to how the proposed ban which assumes costs will be met by landlords will in any way increase the supply of the desperately needed increase of housing in the PRS.

## **WRITTEN EVIDENCE**

<p><b>Are the draft Bill's provisions clear and workable?</b></p>
---

3.1 In order to enable agents to continue to provide a good service to tenants, we feel that the bill could usefully be amended to allow for the following:

### ***Extension of permitted payments to include tenant referencing***

3.2 If agents are prevented from charging tenants, landlords will have to pay for all aspects of the referencing process. This will have a number of knock on effects:

- Cheaper and less thoroughgoing references are likely to be sought
- Tenants whose references are less likely to be straightforward (e.g. those on benefits) may be excluded from the sector
- Tenancies will become less sustainable, if poor practice in referencing results in less focus on the tenant's ability to pay.

3.3 A recent survey of referencing firms in England carried out by NALS suggests that a significant percentage of prospective tenants have disposable incomes that are extremely limited. They have to spend a significant proportion of their income on rent. In these cases, a full assessment of affordability is carried out, advice needs to be provided and guarantors (where appropriate) sought. In our view, it is reasonable that the prospective tenant should pay for this service. At the very least, they should have the option of purchasing such a service from the agent.

3.4 It may in any case be desirable to frame the legislation in such a way that it enables the tenant to source and pay for a reference should they choose to do so. They may want to source their own reference from:

- The agent they are dealing with
- From a third party recommended/signposted by the agent
- Entirely independently, perhaps by securing a "tenant passport" or one of the similar products currently being developed

3.5 It should be borne in mind that removing the prospective tenant's status as a paying customer in the referencing process has several drawbacks. For example, if they have no control over the process as a paying customer, there is a higher likelihood that, if they fail the referencing process, it will be for reasons unknown to them. This is likely to lead to more disputes about provision of information.

#### ***Extension of permitted payments to include guarantor referencing***

3.6 In many cases a tenant whose ability to pay their rent is assessed as limited, or whose referencing checks raise other issues, will require a guarantor. It does not seem reasonable to expect the landlord to pay the costs associated with obtaining references for the guarantor.

#### ***Clarification of circumstances in which deductions may be made from a holding deposit***

3.7 We note that the Bill requires agents and landlords to refund the holding deposit to tenants, except in circumstances where the tenant withdraws or does not take all reasonable steps to enter into the tenancy agreement or provides false or misleading information, which materially affects their suitability to rent the property.

3.8 We feel that the precise meaning of the clause “provides false or misleading information” needs to be clarified in this context. In our view, the issue is tied in with tenant referencing. It needs to be clarified that:

- If a prospective tenant provides *correct* information to the agent, but is not granted the tenancy because they are “failed” by whoever is commissioned to carry out the referencing process, there should be no deduction from their holding deposit
- If a prospective tenant provides *false or misleading* information to the agent and is not granted the tenancy because they are “failed” by whoever is commissioned to carry out the referencing process, they should lose (or incur a deduction from) their holding deposit.

3.9 The phrase “does not take all reasonable steps to enter into the tenancy” also requires clarification, in the legislation, regulations or guidance. For example, is an unforeseen change in the prospective tenant’s circumstances sufficient to ensure that they get a full refund if, as a result, they do not enter into the tenancy?

***Extension of permitted payments to include costs associated with changes of sharer***

3.10 It should be borne in mind that changes of sharers are a tenant instigated change to the existing tenancy agreement, to which all parties have signed up. The bill should allow for a payment to be made to the agent by the tenant in respect of the costs associated with this change. If the landlord has to bear the full costs, they may be much less likely to agree to a tenant instigated change in the tenancy agreement.

***Clarification of permitted tenant default fees***

3.11 We note that landlords will be able to charge fees related to a default by the tenant (such as a late payment or lost key)

3.12 In our view, a better solution would be to allow agents to charge for “specified additional services” over and above the core list of permitted payments. This would ensure that tenants are able to purchase services from agents should they choose to do so.

**Unintended consequences - the likely impact of the legislation on key stakeholders including tenants, letting agents and landlords**

***Impact on Tenants Generally***

3.13 More people than ever before live in the PRS and need help as tenants. However, in our view, the fees ban risks resulting in a number of serious disadvantages for tenants, including:

- In some cases and in some areas, rents may need to rise, if the cost of essential services provided to tenants are passed on to the landlord
- If rents rise, this could result in tenants paying more over the life of a tenancy than if fair and reasonable charges were levied in advance
- The service to some tenants may need to be reduced due to lack of funding
- Property standards may fall due to decreased investment in repairs/ refurbishment as a result of higher costs for landlords

3.14 We are also very concerned about the impact of the legislation on certain groups of tenants these include:

### ***Students***

3.15 The service that agents provide to students varies from the standard process in a number of respects. To a large extent, this is because students need to find a home well in advance of commencing their studies. They also need to be sure that they have secured a home before they move into the area. This means that:

- They need expert, honest, unbiased advice on the local student lettings market. It is highly likely they will experience problems if they deal with some landlords direct.
- Viewings will be organised well before the start of the academic year, at the student's convenience. This is particularly important as they will often be travelling some distance to view the property.
- Guarantor referencing is particularly important in the case of students, as many will not have a financial track record. Dealing with guarantors is, therefore, an integral part of the service provided to the prospective tenant and, in many cases, the student's family.

3.16 When moving in, agents dealing with students tend to provide much more support than is usual, as many will have no experience as tenants, except perhaps in halls of residence. This means that:

- Agents often need to advise the student on the basics of tenancy, being a good tenant and avoiding the potential pitfalls
- Agents often keep utilities in their name and act as a go-between for the student in dealings with the utility companies. Taking responsibility for utilities causes considerable work for the agent

- Extensive advice is given on living in the area, including waste disposal, parking, location of hospitals, GPs etc.

3.17 In our view, agents will in many cases be unable to provide such a full service if they are not allowed to charge the prospective tenant or their parent a reasonable fee.

### **Sharers**

3.18 It should be noted that the service that agents provide to sharers varies from the standard process in a number of respects. The extra work carried out primarily relates to the number of changes to the individuals accommodated that tend to take place during the tenancy period. Every time a sharer moves out and a new one moves in, agents are required to:

- Facilitate the outgoing tenant's exit from their fixed term tenancy
- Seek approval from the landlord to the changes being made
- Explain any liabilities and responsibilities to outgoing, current and incoming individuals
- Send a change of sharer form to the all tenants - outgoing and incoming - for them to complete
- Reference the incoming tenant and any guarantor
- Send a deposit waiver letter to the outgoing tenant, ensuring that they handle the transfer of the deposit and notify the agent
- Prepare a new tenancy agreement. This entails reviewing previous clauses and transferring any that are necessary. Incoming tenants can also have "wish lists" of changes to the detail of the agreement. These need to be brokered with the landlord

3.19 It should be stressed that this activity has to be carried out to implement changes to the tenancy that have been initiated by one or more of the tenants, **not** the landlord. If these services could not be provided and charged for by the agent, incoming, outgoing and remaining tenants would probably need to engage a solicitor. If only a minimal service could be provided, it is likely that changes to sharing arrangements would become protracted, time consuming, conflicted and expensive. The agent's role as facilitator and co-ordinator of the process could be seriously undermined.

### **Tenants Claiming Housing Benefit (HB) or Universal Credit (UC)**

3.20 Tenants claiming HB or UC often require a more intensive and time consuming service from agents. This is because, in many cases:

- Landlords need to be reassured that the tenant will be able to afford the rent from their benefits (or combination of wages and benefits)
- Prospective tenants need to be confident that they can afford the rent, on top of other immediate and longer term outgoings
- Claiming HB or UC, whilst strictly speaking a matter solely concerning the tenant themselves, is often a complex process. In the absence of advice from elsewhere, agents often find themselves dealing with HB and UC issues in depth, at sign up stage
- Tenants from the socio-economic groups most likely to be claiming benefits tend to be among the least likely to have consistent access to the internet, or to be fully IT literate. UC in particular requires the tenant to claim and communicate on-line
- Tenants from the socio-economic groups most likely to be claiming benefits tend to be among the most likely to have other vulnerabilities (for example, around their ability to communicate) For these prospective tenants, dealing with the bureaucracy surrounding HB or UC, on top of the other challenges around finding a new home, can be a serious problem.

3.21 These factors mean that agents can spend a considerable amount of time and effort in matching a prospective tenant to a suitable property owned by a landlord who is happy to accommodate benefit claimants. Background checks tend to be more extensive and guarantors are more likely to be involved. The guarantors themselves need to be checked to ensure they can meet any liabilities. This can involve considerable amounts of chasing up, with agents often incurring abortive costs.

3.22 Dealing with all the above can demonstrate a significant service being provided to the tenant. This service cannot reasonably be described purely as marketing and management carried out on behalf of the landlord. If, however, costs were to be passed on to the landlord and rents were to be raised to cover them, tenants would probably end up paying more in the long term.

### ***Impact on Agents***

3.23 As regards the agents themselves, we are concerned that the fees ban will remove income streams from these often small business causing hardship and loss of staff. With reduced income:

- agents will be unable to maintain investment in training and development at a time when Government is looking to introduce minimum training requirements as part of regulation
- Service standards are likely to fall, due to immediate staffing cuts and unavoidable de-skilling

- More complaints are likely to find their way to the redress schemes, deposit schemes and regulatory bodies
- Healthy competition amongst agents could decrease as smaller agents are forced to close or are acquired by larger chains.
- Loss of business due to landlords looking to self-manage due to increased financial pressures

3.24 Furthermore, the “customer/provider” relationship between the tenant and the agent will be broken. This diminishes the tenant’s ability to demand a good service from the agent.

3.25 In summary, it is clear that, in practice, agents provide a range of services to tenants. Many of these services cannot reasonably be viewed purely as part of the agent’s role in marketing, letting and managing a property on behalf of the landlord. If agents are prevented from charging tenants for services, the cost of providing them will have to be met from elsewhere. Alternatively, services will have to be withdrawn, leaving tenants to do without them, or source them wholly independently.

### ***Impact on Landlords***

3.26 In our view, the fees ban is likely to have the following impact on landlords:

- Some landlords will stop using agents. In our view, it is important that landlords do use reputable agents to ensure compliance and regulation requirements are met. This avoids the undesirable scenario where landlords have no idea what their obligations entail and tenants suffer as a result
- Some landlords will carry on using agents but increase their rents to ‘balance the books’. Few landlords will be sympathetic and keep the rent the same along with paying the extra fee to their agent

3.27 Some landlords are also likely to experience problems with Right to Rent checks, should these be introduced in Wales. In many cases, checking a prospective tenant’s Right to Rent is a fairly straightforward task. However, in cases where the checks raise issues, working with the prospective tenant can be very time consuming. It is much better if these checks are carried out by reputable agents whose staff are experienced in the field.