

# Renting Homes (Fees etc.) (Wales) Bill

October 2018



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the National Assembly website: [www.assembly.wales/SeneddCommunities](http://www.assembly.wales/SeneddCommunities)

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

**Equality, Local Government and Communities Committee**  
**National Assembly for Wales**  
**Cardiff Bay**  
**CF99 1NA**

Tel: **0300 200 6565**

Email: **[SeneddCommunities@assembly.wales](mailto:SeneddCommunities@assembly.wales)**

Twitter: **[@SeneddELGC](https://twitter.com/SeneddELGC)**

**© National Assembly for Wales Commission Copyright 2018**

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

# **Renting Homes (Fees etc.) (Wales) Bill**

October 2018



# About the Committee

The Committee was established on 28 June 2016. Its remit can be found at: [www.assembly.wales/SeneddELGC](http://www.assembly.wales/SeneddELGC)

---

## Committee Chair:



**John Griffiths AM**  
Welsh Labour  
Newport East

## Current Committee membership:



**Gareth Bennett AM**  
UKIP Wales  
South Wales Central



**Jayne Bryant AM**  
Welsh Labour  
Newport West



**Siân Gwenllïan AM**  
Plaid Cymru  
Arfon



**Mark Isherwood AM**  
Welsh Conservatives  
North Wales



**Jenny Rathbone AM**  
Welsh Labour  
Cardiff Central



**Jack Sargeant AM**  
Welsh Labour  
Alyn and Deeside



**Leanne Woodd AM**  
Plaid Cymru  
Rhondda

---

The following Members were also members of the Committee during this inquiry:



**Janet Finch-Saunders AM**  
Welsh Conservatives  
Aberconwy



**Rhianon Passmore AM**  
Welsh Labour  
Islwyn



**Bethan Sayed AM**  
Plaid Cymru  
South Wales West

The following Member attended as a substitute during this inquiry:



**David Melding AM**  
Welsh Conservatives  
South Wales Central

# Contents

<b>Recommendations .....</b>	<b>5</b>
<b>1. Background.....</b>	<b>7</b>
1. 1. Approach to scrutiny .....	7
1. 2. Other Committees’ consideration of the Bill.....	9
<b>2. General principles .....</b>	<b>10</b>
2. 1. Purpose and effect of the legislation.....	10
Our view on the purpose and effect of the legislation.....	13
2. 2. Impact of the Bill .....	13
Impact of the Bill on tenants.....	13
Impact of the Bill on landlords .....	18
Impact of the Bill on letting agents.....	19
Our view on the Impact of the Bill.....	22
2. 3. Communication.....	24
Our view on communication.....	25
2. 4. Should there be a single lead enforcement body?.....	26
Our view on whether there should be a single lead enforcement body.....	28
<b>3. Prohibition of certain payments.....</b>	<b>30</b>
3. 1. Default fees .....	30
Our view on default fees .....	34
3. 2. Permitted fees.....	35
Our view on permitted fees .....	36
3. 3. Security deposits.....	37
Our view on security deposits .....	39
3. 4. Exit fees.....	40
Our view on exit fees .....	41
<b>4. Treatment of holding deposits.....</b>	<b>42</b>
Our view on holding deposits.....	45
4. 1. Requirement to repay holding deposit.....	45

Our view on the requirement to repay holding deposits .....	48
<b>5. Enforcement.....</b>	<b>49</b>
5. 1. Resources for enforcement.....	50
Our view on resources for enforcement.....	51
5. 2. Restrictions on terminating occupation contracts .....	51
Our view on restrictions on terminating occupation contracts.....	53
5. 3. Fixed Penalty Notices .....	53
Our view on Fixed Penalty Notices.....	56
5. 4. Repayment of prohibited fees and compensation.....	57
Our view on repayment of prohibited fees and compensation .....	59
<b>6. Other issues .....</b>	<b>61</b>
6. 1. Publicising letting agents fees .....	61
Our view on publicising letting agents fees.....	62
6. 2. Interaction with other legislation.....	62
Our view on the interaction with other legislation.....	63
6. 3. Students .....	63
Our view on issues relating to students .....	64
<b>Annex 1: Schedule of Oral evidence .....</b>	<b>65</b>
<b>Annex 2: Schedule of written evidence.....</b>	<b>67</b>

---

## Recommendations

- Recommendation 1.** We recommend that the National Assembly for Wales agrees to the general principles of the Bill..... Page 13
- Recommendation 2.** We recommend that the Welsh Government brings forward amendments at Stage 2 to place requirements on Welsh Ministers, local authorities and Rent Smart Wales to take reasonable steps to inform tenants, landlords and lettings agents of the changes being introduced by the Bill.  
..... Page 26
- Recommendation 3.** We recommend that the Welsh Government brings forward amendments at Stage 2 that provide Rent Smart Wales with enforcement powers alongside local authorities. .... Page 29
- Recommendation 4.** We recommend that the Welsh Government brings forward amendments at Stage 2 to put on the face of the Bill that all default fees should be fair and reasonable. .... Page 34
- Recommendation 5.** We recommend that the Welsh Government brings forward amendments at Stage 2 to enable landlords or lettings agents to require a contract holder to enter into contracts for utilities, TV licenses; council tax or Green Deal payments..... Page 36
- Recommendation 6.** We recommend that the Welsh Government brings forward amendments at Stage 2 to state on the face of the Bill that exit fees for terminating an occupation contract at the end of the agreed contractual term are a prohibited payment. .... Page 41
- Recommendation 7.** We recommend that the Welsh Government brings forward amendments at Stage 2 to prohibit landlords or letting agents taking more than one holding deposit per property..... Page 45
- Recommendation 8.** We recommend that the Welsh Government brings forward amendments at Stage 2 to remove paragraph 7 of Schedule 2. David Melding AM and Gareth Bennett AM do not agree with this recommendation.  
..... Page 48
- Recommendation 9.** We recommend that the Welsh Government brings forward amendments at Stage 2 so that landlords are restricted from issuing Section 21 notices (or their equivalent under the Renting Homes (Wales) Act 2016) if they have charged prohibited fee and not yet refunded the tenant..... Page 53



**Recommendation 10.** We recommend that the Welsh Government brings forward amendments at Stage 2 to increase the levels of fixed penalties.....Page 56

**Recommendation 11.** We recommend that the Welsh Government gives further thought and consideration to taking a banded/tiered approach to the levels of penalty associated with FPNs.....Page 56

**Recommendation 12.** We recommend that the Welsh Government brings forward amendments at Stage 2 to place a requirement on local authorities to notify Rent Smart Wales when a Fixed Penalty Notice is paid.....Page 56

**Recommendation 13.** We recommend that the Welsh Government brings forward amendments at Stage 2 to match the provisions in the Tenant Fees Bill in England that enable the levying of higher financial penalties as an alternative to prosecution. ....Page 57

**Recommendation 14.** We recommend the Welsh Government brings forward amendments at Stage 2 to place a requirement for any prohibited fees to be repaid when a fixed penalty notice is paid, in line with the Tenant Fees Bill in England.....Page 60

**Recommendation 15.** We recommend that the Welsh Government keep under review the impact of this legislation on the student rental market. ....Page 64



# 1. Background

This Bill was introduced by the Welsh Government in June 2018. We have undertaken scrutiny through a written consultation, oral evidence sessions and outreach work both in person and online with tenants, landlords and letting agents.

**1.** On 11 June 2018, Rebecca Evans AM, Minister for Housing and Regeneration (the Minister) introduced the **Renting Homes (Fees etc.) (Wales) Bill** (the Bill) and accompanying **Explanatory Memorandum**. The Minister made a statement on the Bill in Plenary on 12 June.<sup>1</sup>

**2.** The National Assembly's Business Committee agreed to refer the Bill to our Committee, the Equality, Local Government and Communities Committee, for consideration of the general principles (Stage 1) in accordance with Standing Order 26.9. It also agreed that we should report to the Assembly by 26 October 2018.<sup>2</sup>

## 1.1. Approach to scrutiny

**3.** We considered our approach to scrutiny on 13 June 2018, and agreed the following terms of reference:

To consider:

- the general principles of the Renting Homes (Fees etc.) (Wales) Bill and the need for legislation to deliver the stated policy intention. In coming to a view on this you may wish to consider addressing the individual Parts of the Bill:
  - Part 2 – Prohibition of certain payments etc;
  - Part 3 – Treatment of holding deposits;
  - Part 4 – Enforcement;
  - Part 5 – Recovery of amount by contract-holder;

---

<sup>1</sup> [Plenary, 12 June 2018, Record of Proceedings \(RoP\) \[134 – 193\]](#)

<sup>2</sup> [Business Committee's report on the timetable for consideration of the Bill, 13 June 2018](#)

- Part 6 – Publicising letting agents fees;
  - Part 7 – Final Provisions;
  - Schedule 1 – Permitted payments;
  - Schedule 2 – Treatment of holding deposit.
- 
- any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them;
  - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 6 of Part 1 of the Explanatory Memorandum);
  - whether there are any unintended consequences arising from the Bill; and
  - the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

**4.** We issued a public call for written evidence on 15 June 2018,<sup>3</sup> and held a number of oral evidence sessions in June, July and September. Details of the witnesses and those who responded to the written consultation are detailed in Annex 1.

**5.** In addition to the oral and written evidence, we felt it was important to ensure that we heard from those that the Bill would have the most significant impact on; current and prospective tenants; landlords and letting agents. We set up an online Dialogue forum to facilitate this.<sup>4</sup> We received 28 ideas, views and suggestions, which generated a further 19 comments. People from Cardiff, Ceredigion, Conwy, Powys and Swansea contributed.

**6.** We also held a range of focus groups and meetings across Wales. These were facilitated by the Assembly’s Outreach team. They spoke to private tenants, private landlords, letting agents, people with experience of renting privately and those who wished to enter the private rented sector (the PRS). This included people on low incomes, homeless people, people in receipt of welfare benefits,

---

<sup>3</sup> [Consultation letter, 15 June 2018](#)

<sup>4</sup> [Summary of Dialogue responses](#)

university students, people both employed and unemployed, service users and frontline staff.<sup>5</sup>

**7.** These groups were held across Wales, with 58 participants. We heard from people and groups from Bridgend, Cardiff, Conwy, Gwynedd, Merthyr Tydfil, Powys, Swansea, Vale of Glamorgan and Wrexham.

**8.** We would like to thank everybody who contributed to our work.

## **1. 2. Other Committees' consideration of the Bill**

**9.** The National Assembly's Finance Committee took evidence from the Minister on the financial implications of the Bill on 3 October 2018, publishing its report on 24 October 2018.<sup>6</sup>

**10.** The National Assembly's Constitutional and Legislative Affairs Committee took evidence from the Minister on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 24 September 2018. Its report was published on 24 October 2018.<sup>7</sup>

---

<sup>5</sup> Summary of Focus Group Discussions

<sup>6</sup> Finance Committee, Renting Homes (Fees etc.) (Wales) Bill report

<sup>7</sup> Constitutional and Legislative Affairs Committee, Renting Homes (Fees etc.) (Wales) Bill

## 2. General principles

We support the general principles of the Bill. In coming to this view, we have considered: whether it will deliver the stated aims; the impact on tenants, landlords and letting agents; how the changes will be communicated; and whether there is a need for a single or lead enforcement body.

### 2.1. Purpose and effect of the legislation

**11.** In introducing the Bill to the Assembly, the Minister stated that she wished to see renting in the private sector as, “a positive choice that is widely accessible”. She went on to say, “...to that end, I believe any costs associated with renting must be reasonable, affordable and transparent”.<sup>8</sup>

**12.** The Explanatory Memorandum states that approximately 15% of the housing stock is privately rented, and that this has doubled in size since the start of the century. But it notes that accessing the PRS can be difficult because of increasing costs and fees.

“Unregulated fees being charged to tenants by letting agents and others have been highlighted as the main barrier to many people accessing the market and good quality rented housing.”<sup>9</sup>

**13.** It adds that without an effectively functioning PRS the levels of homelessness will rise and there will be an increased demand on social housing. It also states that tenants within the PRS spend a higher proportion of their incomes on housing costs than those in the social housing sector or owner occupiers. It states that action is therefore needed to ensure the PRS can be accessed by those who need to or who wish to.<sup>10</sup>

**14.** The Minister told us:

“...we’ve found no compelling evidence as to why it should be tenants who are paying the fees, when we know that, in fact, it is the landlord

---

<sup>8</sup> Plenary, 11 June 2018, RoP [135]

<sup>9</sup> [Explanatory Memorandum, paragraph 3.3](#)

<sup>10</sup> [Explanatory Memorandum, paragraph 3.4](#)

who instructs the letting agent to act on their behalf, and the services provided are very much for the benefit of the landlord. So, the purpose, really, of the legislation is to make the private rented sector an easier sector to move into and to move between properties within that sector.”<sup>11</sup>

**15.** We will explore the potential consequences from a ban on letting agents fees in the coming sections. However, broadly speaking there was a clear difference of opinion between stakeholders as to whether the Bill would deliver the stated aims of improving accessibility to the PRS. Those representing landlords and letting agents were sceptical while groups representing tenants believed the Bill would improve access to the sector.

**16.** The Residential Landlords Association (RLA) said:

“We believe that the current Bill as proposed will not meet the Welsh Government’s aims and objectives. That the transparency of the cost of the agency fees will not be clear for those who will still be paying for the service, essentially through increased rents.”<sup>12</sup>

**17.** They felt that the bigger barriers to the sector are the costs of security deposits combined with having to pay a month’s rent in advance. They said it would be more beneficial to look at reforming security deposit schemes.<sup>13</sup> We will look at this issue in more detail in Chapter 3.

**18.** Other organisations, such as the Association of Residential Letting Agents (ARLA) agreed that the Bill would not “increase accessibility and transparency for tenants”. They argued it would have a “profoundly negative impact” on the PRS.<sup>14</sup>

**19.** Yet others, including Let Down in Wales, Generation Rent, Shelter and Citizens Advice felt the Bill would improve accessibility to the PRS. Shelter Cymru, like the RLA, highlighted that while one of the barriers to accessing the PRS was the combination of the security deposit and advance rent there was often local authority support available for these payments. While we heard evidence from the WLGA that vulnerable people could receive assistance from local authorities with agents’ fees, it was not clear the extent to which this happened. Shelter Cymru

---

<sup>11</sup> ELGC Committee, 21 June 2018, RoP [5]

<sup>12</sup> RHF02 RLA, paragraph 2

<sup>13</sup> ELGC Committee, 5 July 2018, RoP [209]

<sup>14</sup> RHF08 ARLA, paragraph 11

told us that, in the case of agents' fees, "sometimes there's help, sometimes there isn't". They went on to comment:

"For our clients, it's the risk, really, of handing over a few hundred pounds, which is a big chunk of people's household budget. Very often, people are going into debt to get that money together, and there still isn't a guarantee either that you're going to get that money back or that you're going to get a roof over your head, because the agent might turn round and say that you didn't meet the credit checks or they give it to another tenant who was a better prospect, and so, as the tenant, you could be £100 or £200 out of pocket and still be at risk of homelessness. So, it's that financial risk that is going to be removed."<sup>15</sup>

**20.** Citizens Advice highlighted that fees also prevent movement within the sector. This is of particular concern when people need to move out of unsuitable or unsafe accommodation.<sup>16</sup> Generation Rent suggested the removal of fees would incentivise landlords to undertake repair works to avoid tenants leaving a property and therefore the landlord incurring costs of finding a new tenant.<sup>17</sup>

**21.** Let Down in Wales said that the Bill was needed because the market would not address the issue of unfair or high fees while there is a shortage of supply and high levels of demand.<sup>18</sup>

**22.** The WLGA told us that local authorities supported the need for legislation, because the PRS is becoming increasingly important in meeting housing need, and enabling local authorities "to discharge their duties in relation to homelessness and to access accommodation".<sup>19</sup> Carmarthenshire Council told us that the biggest barrier facing Housing Options teams in dealing with homelessness was "affordability", and that:

"...upfront costs for tenants is one of the biggest barriers to getting vulnerable tenants into decent, well-managed accommodation."<sup>20</sup>

---

<sup>15</sup> ELGC Committee, 11 July 2018, RoP [4]

<sup>16</sup> ELGC Committee, 11 July 2018, RoP [5]

<sup>17</sup> [RHF06.Generation Rent, page 2](#)

<sup>18</sup> [RHF05.Let Down in Wales, paragraph 1](#)

<sup>19</sup> ELGC Committee, 19 September 2018. RoP [3]

<sup>20</sup> ELGC Committee, 19 September 2018. RoP [5]

---

## Our view on the purpose and effect of the legislation

---

**23.** We agree with the general principles of the Bill, although there are areas where we believe the Bill could be strengthened, improved or merely clarified. We make a number of recommendations in this report on the changes we would like to see.

**24.** We believe the Bill will broadly deliver on the stated purpose and effect given by the Welsh Government. However, to ensure the Bill fully delivers on the policy objectives, there will need to be adequate enforcement, which we explore further in Chapter 5.

**25.** We are sympathetic to the issues raised by stakeholders that while up-front fees are a barrier to accessibility and the ability to move within the sector, they are not the only factors. It is clear that both the need to provide a substantial security deposit along with a month's rent in advance also contribute to difficulties accessing the sector. However, while making entering the PRS easier, we also believe the ban will help tenants move within the sector. This, we think, will help drive up standards within the sector.

**Recommendation 1.** We recommend that the National Assembly for Wales agrees to the general principles of the Bill.

## 2. 2. Impact of the Bill

---

### Impact of the Bill on tenants

---

**26.** As the Explanatory Memorandum states, the initial impact on tenants will be the ban itself.<sup>21</sup> It adds that an additional consequence may be rent increases.<sup>22</sup> The Explanatory Memorandum details modelling work, giving an indication of how different levels of rent increase could look like on a sample rent of £400 per month.<sup>23</sup> It also considers the impact of rent increases over time, and indicates that those tenants who move more frequently may save more than those who move less frequently.<sup>24</sup>

**27.** Before the Bill was introduced, the Welsh Government held a consultation on the proposals. 55% of respondents to the consultation thought that a ban would lead to an increase in rents, but the Explanatory Memorandum explains that

---

<sup>21</sup> Explanatory Memorandum, paragraph 8.109

<sup>22</sup> Explanatory Memorandum, paragraph 8.110

<sup>23</sup> Explanatory Memorandum, paragraph 8.128

<sup>24</sup> Explanatory Memorandum, paragraph 8.118-8.121



many of the respondents thought that such a rise would be negligible and was preferable to up-front fees.<sup>25</sup>

**28.** Neither Let Down in Wales<sup>26</sup> nor Generation Rent<sup>27</sup> expect there to be substantial rent increases, but both stated that a small increase was preferable to a large up-front fee.<sup>28</sup> Citizens Advice<sup>29</sup> and NUS Cymru<sup>30</sup> shared the view that a small increase in rents was preferable. Tenants in our focus groups and on the Dialogue forum agreed:

“I think that even if this Bill makes rent slightly higher each month, at least this is more manageable than having to pay everything up front and might avoid people getting into unnecessary debt.”<sup>31</sup>

**29.** Let Down in Wales said that absorbing these costs into the rent also better reflects that a letting agent continues to provide services throughout a tenancy. This is therefore something that agents can factor into their on-going business costs.<sup>32</sup>

**30.** ARLA said the direct impact of the Bill will be increased rents:

“As a consequence of a ban, these costs will be passed on to landlords, who will need to recoup the costs elsewhere; inevitably through higher rents. Independent research commissioned by ARLA PropertyMark and carried out by Capital Economics, predicts that because of a full ban on fees tenants will pay an increased rent of £103 per year.”<sup>33</sup>

**31.** Building on this in oral evidence, they highlighted that the likely annual rent increase of £103 was lower than the average fees currently charged (£202). They agreed with the assertion in the Explanatory Memorandum that tenants who move more often will see a saving. They added:

“It should also be noted that the people who move more often are younger, wealthier millennials who can afford the tenant fees more

---

<sup>25</sup> [Explanatory Memorandum, paragraph 4.3](#)

<sup>26</sup> [RHF04 Let Down in Wales, paragraphs 13-15](#)

<sup>27</sup> [RHF06 Generation Rent, page 2](#)

<sup>28</sup> ELGC Committee, 5 July 2018, RoP [354 and 355]

<sup>29</sup> ELGC Committee, 11 July, RoP [7]

<sup>30</sup> [RHF01 NUS Wales, page 2](#)

<sup>31</sup> [Summary of Dialogue responses](#)

<sup>32</sup> ELGC Committee, 5 July 2018, [354]

<sup>33</sup> [RHF08 ARLA, paragraph 14](#)

than low-income families who want longer term tenancies. Therefore, this Bill, based on Capital Economic's research, will actually adversely hit vulnerable and low-income families more than wealthier millennials, because they're the ones who want the longer term tenancies."<sup>34</sup>

**32.** In responding to this claim, Let Down in Wales called it “complete rubbish”, citing Shelter Cymru’s report Fit to Rent? Which stated that nearly half of renters are over 35. They said that while not every renter is on a low income, that there is a “massive burden in an area where they don’t have much consumer power or any rights or choice,...”<sup>35</sup>

**33.** Some witnesses pointed to the experience in Scotland, saying that rent increases had followed the introduction of a similar ban.<sup>36</sup> Others said that this was not the case.<sup>37</sup> In correspondence to us, the Minister stated that:

“The issue of rent rises was examined by a House of Commons inquiry into the banning of letting agents’ fees in Scotland in March 2015 which was unable to find strong evidence linking the increase to the 2011 Act. The experience of the 2011 Act in Scotland was also examined as part of research commissioned by the Welsh Government. Quantitative analysis referenced within the research indicated that there had been a small inflationary impact of 1-2%, at least for part of 2013, because of the ban on agents’ fees. However, the analysis concluded that this was likely to be a marginal and short-term response.”<sup>38</sup>

**34.** In oral evidence, the Minister also said that there was nothing in the Bill which would “automatically lead” to rent increases. She reiterated that the Welsh Government’s analysis had found that while rent increases could happen, that “on balance, tenants consider that it would be preferable to the existing situation”.<sup>39</sup> She also told us that this will be the first thing that they monitor as part of the evaluation of the Bill.<sup>40</sup>

---

<sup>34</sup> ELGC Committee, 5 July 2018, RoP [47]

<sup>35</sup> ELGC Committee, 5 July 2018, RoP [344]

<sup>36</sup> ELGC Committee, 5 July 2018, RoP [88]

<sup>37</sup> ELGC Committee, 5 July 2018, RoP [356]

<sup>38</sup> [Letter from the Minister for Housing and Regeneration to the ELGC Committee, 4 September 2018](#)

<sup>39</sup> ELGC Committee, 21 June 2018, RoP [58]

<sup>40</sup> ELGC Committee, 19 September 2018, RoP [153]

**35.** Landlords and letting agents representatives raised concerns that the Bill could have negative impact on vulnerable tenants. There were two elements to this; one that landlords and letting agents would be more likely to pre-select tenants who were “easier” thereby reducing accessibility to the market;<sup>41</sup> and secondly that letting agents often provide additional support and services to some tenants, which they will no longer be able to resource.<sup>42</sup>

**36.** In relation to pre-selection, ARLA told us:

“When we have a market that we have at the moment, where there are far more tenants than there are properties available, if agents can't charge for those services, they're going to go with, as I'm sure we can all appreciate, the option of least work. And therefore, if you've got two tenants, or two sets of tenants, ones that don't need guarantors, ones that do, they'll go with the ones that don't every time, because why would they do twice the work? They're not going to be paid for any of it, so they'll go with the easier one, and it is the vulnerable and the low-income people who need the benefit application who need the guarantors.”<sup>43</sup>

**37.** NALS told us that the additional services included advice on affordability of properties, as well as help negotiating the benefits system.<sup>44</sup>

**38.** From those representing landlords and letting agents there seemed to be a general acceptance that the ban on fees is likely to result in tenants on low incomes or more complex situations (e.g. needing a guarantor) being less likely to secure properties when other people were interested in the same property.

**39.** Although CIH Cymru suggested that because of high demand in the PRS there is already “an element of cherry-picking”.<sup>45</sup>

**40.** Moving onto the second element of the impact on vulnerable tenants. We heard that the ban would have a particular impact on those who, for whatever reason, may need more support in the process of securing and maintaining a tenancy. ARLA described the additional help that may be offered:

---

<sup>41</sup> ELGC Committee, 5 July 2018, RoP [60]

<sup>42</sup> RHF07.NALS, page 2

<sup>43</sup> ELGC Committee, 5 July 2018, RoP [222]

<sup>44</sup> ELGC Committee, 5 July 2018, RoP [60]

<sup>45</sup> ELGC Committee, 11 July 2018, RoP [173]

“Agents, if they specialise in that market, they live with it day-in, day-out, they are very well placed to assist tenants rather than just saying, 'Off you go to the local authority, off you go to the CAB.' They actually help tenants through it, they pull together the necessary evidence they need. And it's not just benefit tenants. It's also those low-income tenants who may not be on benefits, but do need guarantors.”<sup>46</sup>

**41.** However advice agencies questioned the level of support being offered by letting agents. Citizens Advice told us they had been “quite surprised” by the evidence we heard. They also said that some of the examples of financial support and benefits advice was “quite concerning” highlighting that there are a number of organisations that provide such support for free.<sup>47</sup>

**42.** Shelter Cymru acknowledged that while some agents, mainly in rural areas, may provide these services it was not commonplace. They also told us about research they had done which found that self-managing landlords were more likely to rent to tenants receiving welfare benefits than letting agents.<sup>48</sup>

**43.** They also highlighted that if there is a move to tenants having to organise their own reference checks, further thought may be needed as to support available to vulnerable tenants. They were particularly concerned about this in the context of local authorities discharging their duties to prevent homelessness.

“I think Welsh Government needs to produce some guidance for housing options so that people have got access to proper tenancy support to help them with that if they need it, or proper accredited money advice, but certainly not unofficial advice by an agent who is actually being paid by the landlord and doesn't have a clear responsibility for that tenant.”<sup>49</sup>

**44.** We heard from the WLGA that local authorities are already resourcing additional support for tenants in the PRS. They explained that providing tenants with pre-tenancy support is beneficial for all parties, because it is more likely tenancies will be sustained, with landlords not incurring rent arrears or void periods when properties are empty.<sup>50</sup>

---

<sup>46</sup> ELGC Committee, 5 July 2018, RoP [63]

<sup>47</sup> ELGC Committee, 11 July 2018, RoP [13]

<sup>48</sup> ELGC Committee, 11 July 2018, RoP [14]

<sup>49</sup> ELGC Committee, 11 July 2018, RoP [16]

<sup>50</sup> ELGC Committee 19 September 2018, RoP [44]

**45.** They also said that the removal of up-front fees would free up local authorities to use their homelessness prevention budgets more creatively, in ways that will enable them to help sustain tenancies in the longer term.<sup>51</sup>

**46.** Let Down in Wales argued that the increasing use of the PRS meant that more vulnerable people are entering into the sector as it is “increasingly the only option” and this was why the ban was important.<sup>52</sup>

### Impact of the Bill on landlords

---

**47.** The Explanatory Memorandum highlights research that suggests self-managing landlords are much less likely than agents to charge tenants’ fees.<sup>53</sup> We received anecdotal evidence that seemed to support this claim, with some witnesses and respondents telling us that self-managing landlords do not tend to charge fees.

**48.** There was a general consensus that one of the most significant impacts will be for those landlords who use letting agents, with letting agents likely to pass on the costs from the ban onto landlords. The Explanatory Memorandum states that research commissioned by the Welsh Government suggests that if letting agents increased their fees by £200, 35% of landlords would be very or quite likely to pay the additional charge and absorb the costs.<sup>54</sup> We have discussed the potential impact on rents in the previous section.

**49.** RLA told us that they expect that fees worth over a month’s rent are likely to be charged to a landlord by a letting agent, just to cover the costs of the rental process. They said this was a “real concern” for their members who use agents:

“They’re not necessarily as well versed in exactly what the agent should be doing for them, so it’s quite easy for the agent to maybe start to reduce the level of service that they’ve got, or that they’re giving to the landlord as a result of this in [a] kind of a stealth way.”<sup>55</sup>

**50.** This view was supported by the Royal Institution of Chartered Surveyors (RICS) who said that the amount of legislation governing the PRS makes it more difficult to navigate and that the use of agents is becoming “more a necessity than

---

<sup>51</sup> ELGC Committee 19 September 2018, RoP [38]

<sup>52</sup> RHF04 Let Down in Wales, paragraph 3

<sup>53</sup> Explanatory Memorandum, paragraph 8.2

<sup>54</sup> Explanatory Memorandum, paragraph 8.99

<sup>55</sup> ELGC Committee, 5 July 2018, RoP [205 and 207]

a luxury”.<sup>56</sup> They added that this Bill needs to be considered in light of other regulatory and financial changes (such as the additional 3% Land Transaction Tax and reduction in buy-to-let mortgages) which are affecting landlords. They highlighted that some small scale landlords are reducing or selling their portfolios.<sup>57</sup>

**51.** The possibility of landlords moving away from the PRS, was also raised by the Country Land and Business Association (CLA) who said they are already seeing landlords move away from long term rentals to short term holiday lets.<sup>58</sup>

**52.** We asked the Minister whether consideration had been given to using this Bill as an opportunity to legislate on the relationship between landlord and letting agent. She said that this relationship did not have the same “power imbalance” as that between tenants and letting agents / landlords. She also said that landlords were in a position to “shop around” and find the best agent for their needs.<sup>59</sup>

### Impact of the Bill on letting agents

---

**53.** We explored during this inquiry what the fees charged by letting agents covered. This is also considered in detail in the Regulatory Impact Assessment within the Explanatory Memorandum that accompanies the Bill.

**54.** Landlord and letting agents representatives were clear in their evidence, that the fees charged reflected the costs incurred by letting agents. They were also clear that as well as providing services to landlords, they provide services to tenants. RICS said:

“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.”<sup>60</sup>

**55.** NALS agreed with this.<sup>61</sup>

---

<sup>56</sup> RHF05 RICS, paragraphs 17-18

<sup>57</sup> RHF05 RICS, paragraphs 41-46

<sup>58</sup> RHF15 CLA, paragraph 10

<sup>59</sup> ELGC Committee, 19 September 2018, RoP [150]

<sup>60</sup> RHF05 RICS, paragraph 15

<sup>61</sup> RHF07 NALS, page 2

**56.** ARLA told the Committee that it takes around 8 hours to set-up a tenancy. They broke this down into three main areas: tenant referencing; contract negotiation; and the inventory. They compared these services to equivalent services during a property sale.<sup>62</sup> NALS told us that their research was in line with the Welsh Government's. They estimated the average fee being around £172. (The Welsh Government estimate it at £178).<sup>63</sup>

**57.** However, we heard from landlords in the Dialogue discussion and focus groups that it is not always clear what services are being charged for, and whether a landlord or tenant is paying for specific services.<sup>64</sup>

**58.** Clearly, the Bill is going to have an impact on letting agents. The Explanatory Memorandum suggests that letting agents are likely to lose income in the region of £7.3 million per year by 2023-24. It states that it will be for letting agents to decide how to cope with the loss of income.<sup>65</sup>

**59.** It also suggests that competition in the sector may not allow letting agents to pass on higher fees to landlords and that the impact may include “a loss of profits, reduction in staffing, and reduction in services”.<sup>66</sup>

**60.** According to ARLA, the property letting and sales sector provides approximately 6,500 jobs in Wales. They were clear that the ban will “reduce the services that letting agents provide and cost the sector jobs”.<sup>67</sup> Both ARLA<sup>68</sup> and NALS<sup>69</sup> highlighted that it would be the smaller agents who would be at most risk from closure or reduction of staff.

**61.** Carmarthenshire Council told us that fees charged to tenants comprise about one-fifth of letting agents income.<sup>70</sup> They suggested that the Bill may result in, “creating a better, more competitive sector” which “will only help tenants”.<sup>71</sup>

**62.** There were also concerns raised by NALS that landlords may be more reluctant to use a letting agent, which could lead to a reduction in standards in

---

<sup>62</sup> ELGC Committee, 5 July 2018, RoP [4]

<sup>63</sup> ELGC Committee, 5 July 2018, RoP [10]

<sup>64</sup> [Summary of Dialogue responses and Summary of Focus Group discussions](#)

<sup>65</sup> [Explanatory Memorandum, paragraph 8.87](#)

<sup>66</sup> [Explanatory Memorandum, paragraph 8.93-8.94](#)

<sup>67</sup> [RHF08 ARLA paragraphs 32 and 11](#)

<sup>68</sup> [RHF08 ARLA paragraphs 13](#)

<sup>69</sup> [RHF19 NALS, paragraph 3.23](#)

<sup>70</sup> ELGC Committee, 19 September 2018, RoP [5]

<sup>71</sup> ELGC Committee, 19 September 2018, RoP [14]



the PRS as landlords may be less likely than agents to be aware of relevant rules and regulations.<sup>72</sup>

**63.** RICS told us about the cumulative impact of a number of legislative impacts on agents, and in particular the introduction of Rent Smart Wales:

“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 meet the CPD requirement.”<sup>73</sup>

**64.** Tai Pawb highlighted that an unintended consequence of the Bill could be a move from high street agents to more online services, which could have a negative impact on those with poor digital literacy or no internet access.<sup>74</sup>

**65.** The Minister told us that following the introduction of a similar ban in Scotland the number of letting agents “actually increased”. She highlighted that all businesses will at some point need to adapt to changes in the operating and legislative circumstances in which they work.<sup>75</sup>

**66.** NALS,<sup>76</sup> RICS<sup>77</sup> and RLA<sup>78</sup> all stated that they would prefer to see a voluntary approach with a cap on fees rather than an outright ban. RICS said a cap should “cover prescribed professional services only”.<sup>79</sup> RLA<sup>80</sup> felt that there needed to be greater enforcement of the *Consumer Rights Act 2015*.<sup>81</sup>

**67.** Stakeholders also highlighted that in Wales, Rent Smart Wales (RSW) provides another layer of regulation which could be used to address fees without the need for a complete ban. NALS felt that this provided an opportunity to try

---

<sup>72</sup> RHF.07.NALS, page 2

<sup>73</sup> RHF05.RICS, paragraph 20

<sup>69</sup> RHF16.Tai.Pawb, paragraph 5.1

<sup>75</sup> ELGC Committee, 21 June 2018, RoP [74]

<sup>76</sup> ELGC Committee, 5 July 2018, RoP [86]

<sup>77</sup> RHF05.RICS, paragraphs 47-50

<sup>78</sup> ELGC Committee, 5 July 2018, RoP [229]

<sup>79</sup> RHF05.RICS, paragraphs 47-50

<sup>80</sup> ELGC Committee, 5 July 2018, RoP [229]

<sup>81</sup> The Consumer Rights Act 2015 requires all letting agents in England and Wales to publish full details of their fees and charges.

the voluntary approach, before moving to a complete ban if the voluntary approach was not successful.<sup>82</sup>

**68.** There was also some support during our focus groups and on our Dialogue forum for a voluntary approach. One of the respondents to our Dialogue page outlined suggested caps with figures of £30 proposed for referencing; an inventory at £70; and checkout fees capped at £25. They said that:

“...costs for entering into a formal tenancy should be shared between two tenants and landlords as it benefits both parties. However it should be recognised that there is a limit to these costs, and therefore a cap on the fees charged should be implemented.”<sup>83</sup>

**69.** But Citizens Advice; Shelter Cymru<sup>84</sup> and CIH Cymru<sup>85</sup> did not support a voluntary approach, with Citizens Advice telling us:

“...a non-legislative approach just simply won't work and I've seen some of the previous evidence sessions where I think nearly everyone's agreed on that, even some of the landlords, so I think it's essential that it is very clear, a very tight piece of legislation, to prevent it happening. It's just simply not going to happen.”<sup>86</sup>

**70.** CIH Cymru told us that the *Consumer Rights Act 2015*, while creating more transparency about the fees that are being charged, does not address the issue of fees acting as a barrier to the accessibility of the PRS.<sup>87</sup>

**71.** The Explanatory Memorandum sets out why the voluntary option was disregarded. It was assessed that take up of a voluntary scheme would be “very low” and that those who would sign up would be those who were already acting responsibly, and therefore the impact would “likely be very limited”.<sup>88</sup>

## Our view on the Impact of the Bill

---

**72.** Having considered the evidence, we do not feel we are in a position to comment as to whether the Bill will automatically lead to rent increases or what

---

<sup>82</sup> ELGC Committee, 5 July 2018, RoP [86]

<sup>83</sup> [Summary of Dialogue responses](#)

<sup>84</sup> ELGC Committee, 11 July 2018, RoP [30]

<sup>85</sup> ELGC Committee, 11 July 2018, RoP [179]

<sup>86</sup> ELGC Committee, 11 July 2018, RoP [29]

<sup>87</sup> ELGC Committee, 11 July 2018, RoP [179]

<sup>88</sup> [Explanatory Memorandum, paragraphs 7.7-7.12](#)

these levels would be. We note that such analysis is included in the Explanatory Memorandum, which suggests that any increases would be reasonably small and hopefully manageable for most tenants.

**73.** It was clear in the evidence though that the majority of tenants would prefer a small increase in rent rather than having to pay up front fees. It is important that as part of the on-going evaluation of the implementation of the Bill that the Welsh Government monitors the impact of the Bill on rent levels. We welcome the commitment by the Minister to monitor rent levels following the ban.

**74.** We believe that this Bill will remove one of the barriers to accessing the PRS for the most vulnerable. We acknowledge both sides of the evidence about whether there is likely to be an increase in cherry-picking of tenants. However, we believe this already happens in the sector, and the Bill is unlikely to lead to a significant increase in this practice.

**75.** We note the experience in Scotland which has led to tenants undertaking more themselves, such as securing referencing checks.. We are aware that this could be more difficult for vulnerable tenants. It was reassuring to hear from the WLGA that this is an area where local authorities are already putting additional capacity in place. But we would not want to see an unintended consequence of this Bill being vulnerable tenants finding it harder to access the sector. It is therefore important that vulnerable people have support from both local authorities and advice agencies.

**76.** We are not convinced that a letting agent is in the best place to provide benefits and related advice. There seems to be a clear conflict of interest, as the letting agent works for the landlord. It is evident that on occasions the best interests of the tenant and the landlord will differ, and in these circumstances, the letting agent, rightly, has a duty to the landlord not the prospective tenant. We are also concerned at the quality of advice that may be offered by letting agents who may not have had the relevant training or knowledge to provide the best or most up to date advice.

**77.** We hope that as part of the evaluation of the impact of this Bill, if enacted, the Welsh Government looks at the impact this Bill has on vulnerable tenants, and in particular in relation to how local authorities are able to discharge their duties to prevent homelessness.

**78.** We note the evidence we heard about the impact on landlords, and in particular whether action should be taken to ensure landlords are not charged unreasonable fees by letting agents. We accept the Minister's evidence on this. A

landlord is in a very different position to a prospective tenant: they can shop around and get the best deal. A tenant is unable to do so, as they choose a property not a letting agent. They have to accept the fees if they want the property.

**79.** We are not convinced by the arguments made for a voluntary scheme with caps on fees. In particular we are concerned that the rogue operators, the ones whose practices need to change, are the least likely to engage with such a voluntary scheme. We support the Welsh Government taking a legislative approach. We believe that the approach proposed is the most likely to create a fairer PRS, and in particular, ensure the most vulnerable are protected.

**80.** We acknowledge that the ban may lead to some changes within the letting agents' sector, but we believe that businesses in any sector have to respond to changes in the marketplace. We note that this Bill is part of a broader shift within the regulatory framework underpinning the PRS, which will hopefully lead to improvements within the sector.

### 2. 3. Communication

**81.** There was a broad consensus from stakeholders that it was important that the introduction of the ban must be clearly communicated.<sup>89</sup>

**82.** CIH Cymru said:

“There must be a comprehensive and clear programme of supported communication activity to ensure the public are aware of what ‘fees’ incorporate and therefore what enacting this legislation could mean for those renting in the future.”<sup>90</sup>

**83.** They made the comparison with the provisions in the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018*, which placed duties on Welsh Ministers and local authorities to make tenants aware of the forthcoming changes. In oral evidence they highlighted that, in Scotland, Shelter had a big communications campaign to make letting agents and tenants aware of the changes.<sup>91</sup>

---

<sup>89</sup> ELGC Committee, 11 July 2018, RoP [181]

<sup>90</sup> [RHF10.CIH.paragraph.1](#)

<sup>91</sup> ELGC Committee, 11 July 2018, RoP [181]

**84.** Witnesses, including the Minister,<sup>92</sup> indicated that RSW is a good vehicle to ensure that landlords and letting agents, as well as tenants, are aware of the changes. Citizens Advice also highlighted that the introduction of standard occupation contracts was another opportunity to ensure that tenants were aware of their rights. They called for a tenants' rights handbook.<sup>93</sup>

**85.** The WLGA acknowledged that local authorities would play a “very important role” in communication.<sup>94</sup> Carmarthenshire Council suggested that the communication around RSW, provided a “tried and tested” model. They highlighted that tenants in the PRS can be difficult to reach because of the often transient nature of the sector. They acknowledged that where tenants access local authority homelessness services, then if prohibited fees were being charged, it would be possible to notify enforcement teams and RSW. But they were concerned that there will be groups of tenants, for example students, who would not be likely to need local authority support, so it would be more difficult to communicate with those groups and make them aware of their rights.<sup>95</sup>

**86.** The Minister stated that guidance in relation to default payments is being prepared, and that she expected to be in a position to provide further detail during Stage 2 proceedings.<sup>96</sup>

### Our view on communication

---

**87.** The Bill makes no specific provision for communicating the changes it will make. This contrasts with the provisions in the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018*. The provision of guidance and information was a key element of our scrutiny of that Bill.

**88.** We know that certain groups of tenants, for example students, who are active on social media, are likely to find out quickly about the changes. However, we are concerned about more vulnerable tenants and the smaller agents and landlords being aware of the changes. In particular, it is important that tenants are made aware, as they will be the people who have to identify landlords and letting agents charging illegal fees.

**89.** We acknowledge that there is a clear vehicle for communicating to landlords and letting agents through Rent Smart Wales. This should make communicating

---

<sup>92</sup> ELGC Committee, 21 June 2018, RoP [38]

<sup>93</sup> ELGC Committee, 11 July 2018, RoP 33-34

<sup>94</sup> ELGC Committee, 19 September 2018, RoP [22]

<sup>95</sup> ELGC Committee, 19 September 2018, RoP [24-26]

<sup>96</sup> [Letter from Minister for Housing and Regeneration, 28 September 2018](#)

to these groups reasonably straightforward, but we believe more thought needs to be given as to how tenants will be made aware of the changes.

**90.** We are also aware that the content of the model contracts (under the Renting Homes (Wales) Act 2016) will play an important part in ensuring compliance, and that they will make it easier for local authorities and advice agencies to advise vulnerable tenants if a contract has unfair clauses. It is difficult for us to assess how this part of the jigsaw will fit, as they are not yet available.

**91.** To ensure compliance with the legislation, we believe the Welsh Government needs a clear communications strategy. This is a Bill that will change the law, and introduce new criminal offences, with attached penalties and consequences. It is important that people are aware of the changes. We do not believe this needs to be onerous, but believe the Bill should be strengthened in this area.

**Recommendation 2.** We recommend that the Welsh Government brings forward amendments at Stage 2 to place requirements on Welsh Ministers, local authorities and Rent Smart Wales to take reasonable steps to inform tenants, landlords and lettings agents of the changes being introduced by the Bill.

**92.** We welcome the commitment by the Minister to provide us with more information on proposed guidance, however, we note that in the letter to us the commitment only seems to refer to guidance on default payments. We wish to have more detail on all the guidance that the Welsh Government is providing. We do not believe that guidance solely on default payments only will be sufficient.

## 2. 4. Should there be a single lead enforcement body?

**93.** While there is an expectation of high compliance with this Bill, enforcement is clearly going to be an important factor in delivering its intended purpose.

**94.** While we will explore some of the detail around enforcement in chapter 5, as part of our consideration of the general principles we explored whether there was a need for a lead enforcement body. The *Housing (Wales) Act 2014* established a single lead enforcement body for the purposes of licensing landlords and letting agents.

**95.** The Minister told us why they had not followed this model:

“Well, we looked at the way in which local authorities are already undertaking their enforcement powers, and they're very well used to working in this kind of field. We don't imagine that the work is going to be particularly onerous. We don't imagine that a large number of

people will be found to be in breach of the law. So, it feels the right fit, really, for local authorities to be the enforcement bodies, given their existing enforcement roles and the relatively small amount of work.”<sup>97</sup>

**96.** Officials added that the two pieces of legislation are very different in their aims and objectives. A key driver behind the *Housing (Wales) Act 2014*, was the requirement to have a pan-Wales register, as opposed to 22 separate registers.<sup>98</sup>

**97.** When we explored this issue, a range of witnesses could see the benefit of establishing a lead enforcement agency. This included NALS<sup>99</sup> and ARLA.<sup>100</sup> ARLA, cited the experience of Powys County Council acting as the lead authority for regulation of the property sales market, which works very effectively. RLA suggested that establishing a lead authority allows expertise to develop.<sup>101</sup>

**98.** Let Down in Wales,<sup>102</sup> Citizens Advice<sup>103</sup> and Shelter Cymru<sup>104</sup> all thought that a lead enforcement body would be beneficial. They all suggested that RSW would be in a good position to undertake such a role. Similar reasons were cited, such as the increased likelihood of a co-ordinated approach, and development of expertise. CIH Cymru also said that “Rent Smart Wales gives us an example that perhaps a lead authority may be the way to go”.<sup>105</sup>

**99.** We explored with local authorities, whether resourcing enforcement would be more effective if there was a single enforcement body, as opposed to the enforcement work being done by local authorities. Carmarthenshire Council highlighted that according to the Explanatory Memorandum there would not be much difference in the costs regardless of who was enforcing it.<sup>106</sup>

**100.** RSW told us that the duty to enforce “should lie with the local authorities”.<sup>107</sup> They added however, that it would be beneficial for RSW to have powers to enforce where appropriate. They described how the process currently works and the arrangements currently in place to issue fixed penalty notices or take forward

---

<sup>97</sup> ELGC Committee, 21 June 2018, RoP [161]

<sup>98</sup> ELGC Committee, 21 June 2018, RoP [162]

<sup>99</sup> ELGC Committee, 5 July 2018, RoP [167]

<sup>100</sup> ELGC Committee, 5 July 2018, RoP [168-170]

<sup>101</sup> ELGC Committee, 5 July 2018, RoP [299]

<sup>102</sup> ELGC Committee, 5 July 2018, RoP [367-368]

<sup>103</sup> ELGC Committee, 11 July 2018, RoP [126]

<sup>104</sup> ELGC Committee, 11 July 2018, RoP [127]

<sup>105</sup> ELGC Committee, 11 July 2018, RoP [240]

<sup>106</sup> ELGC Committee, 19 September 2018, RoP [99]

<sup>107</sup> ELGC Committee, 11 July 2018, RoP [261]



prosecutions. Generally, it is RSW that takes forward enforcement action. However, where a local authority is already involved with a property or landlord, it may take the enforcement action rather than RSW. RSW suggested a similar approach in enforcing the provisions under this Bill, with the local authority generally taking the lead, but provision for RSW to take enforcement action where appropriate. RSW commented:

“It will be a missed opportunity if RSW cannot also deal with these offences, as we are currently doing audits of agents and it would be an appropriate time to deal with the offences as they arise or are identified. The consequence of not being able to do so is that a referral will be made to a local authority who may/may not be able to prioritise the activity in a timely manner. If this were to change, power to require information for this purpose would also need to be amended.”<sup>108</sup>

**101.** RSW highlighted that there are operational factors that would need further consideration. In particular, resourcing, as the fees they currently receive can only be used to pay for the licensing scheme and no other activities.<sup>109</sup>

**102.** The WLGA also supported giving RSW additional enforcement powers, who said such amendments to the Bill would reflect “the reality of working on the ground”.<sup>110</sup>

**103.** The Minister said that after reflecting on the evidence she felt there was “a potentially supporting role” for RSW, but what this looked like needed further thought.<sup>111</sup> She was very clear though that she wanted to avoid a situation where any local authority or RSW was considered the lead enforcement body.

“For me, it’s really important that this enforcement is locally led.”<sup>112</sup>

#### Our view on whether there should be a single lead enforcement body

---

**104.** We agree with the Welsh Government, RSW and the WLGA. We do not believe there is a need for a single lead enforcement body. It is clear that this Bill has a different purpose and will operate differently to the *Housing (Wales) Act 2014*.

---

<sup>108</sup> [ELGC\(5\)-22-18 Paper 4 - Evidence from Rent Smart Wales](#)

<sup>109</sup> ELGC Committee, 11 July 2018, RoP [268]

<sup>110</sup> ELGC Committee, 19 September 2018, RoP [114]

<sup>111</sup> ELGC Committee, 19 September 2018, RoP [239]

<sup>112</sup> ELGC Committee, 19 September 2018, RoP [241]

**105.** However, we do believe that there is a need to give RSW additional powers, to strengthen the legislation and reduce the opportunities for those flouting the law to go unpunished. We would not want to see a position where RSW discover that an agent is charging prohibited fees as part of its work under Part 1 of the Housing (Wales) Act 2014, but is then required to pass the enforcement role onto a local authority. In these circumstances, RSW should be able to either issue a fixed penalty notice or take forward prosecution. This will make the system more efficient.

**Recommendation 3.** We recommend that the Welsh Government brings forward amendments at Stage 2 that provide Rent Smart Wales with enforcement powers alongside local authorities.

## 3. Prohibition of certain payments

We call for some changes to the Bill to improve clarity on the issue of prohibited payments. We also want to see exit fees explicitly banned in the Bill.

**106.** Section 4 defines prohibited payments. Any payment will be a prohibited payment unless it fits into one of two categories:

- It is a payment by a landlord to a letting agent in respect of “letting agency work” or “property management work”; or
- It is a permitted payment set out in Schedule 1 (Rent, security deposit, holding deposits and payments in the event of a default).

**107.** Any payment not listed in Schedule 1 is prohibited if it is required as a condition of the grant, renewal or continuance of a standard occupation contract.

**108.** There are also a number of other offences created by Sections 2 and 3 of the Bill. Should a Fixed Penalty Notice be issued as an alternative to prosecution, the financial penalty is £500. Fixed penalty notices are discussed in Section 5.3 of this report.

**109.** We note that should a landlord or agent be prosecuted for requiring a person to make a prohibited payment they may be subject to an unlimited fine. In considering provisions around enforcement, witnesses focused on the level of FPN, rather than the ability of the courts to impose an unlimited fine.

### 3. 1. Default fees

**110.** Schedule 1 permits default fees. A payment in default is one required under an occupation contract (also known as a tenancy agreement) as a result of the contract-holder’s (commonly known as a tenant) “default”. “Default” includes failure to make a payment by the due date to the landlord and a breach by the contract-holder of a term of the contract. This could include charges relating to the late payment of rent, charges to replace lost keys and charges relating to the failure of the tenant to rectify damage they caused to the premises. Any charges would have to be permitted by the occupation contract.

**111.** The issue of default fees was one of significant concern for tenant groups and advice agencies. A number were concerned that the Bill did not include a list of

permitted default fees. Generation Rent saw it as a “loophole”, and called for them to be defined in regulations.<sup>113</sup> This was a view shared by Let Down in Wales<sup>114</sup> who were concerned that any guidance on default payments would not have the right “weight”, and that tenants would not be confident to challenge fees which could be prohibited. They felt that defining default fees in regulations would “provide a clearer, legal definition of default fees which would prevent abuse and protect tenants....”.<sup>115</sup> Citizens Advice called for default payments to be clearly itemised on the face of the Bill to avoid “creative interpretations” of the legislation.<sup>116</sup>

**112.** Shelter Cymru challenged the view that including default fees in contracts would help. They said this already happens, and tenants often do not understand the terms. They highlighted evidence from their helpline, which suggested that of those calls about letting agents fees, half of them were about default fees.<sup>117</sup> Both they and NUS Wales<sup>118</sup> highlighted this as being a particular problem for the most vulnerable tenants.

**113.** Welsh Government officials told us that they would have to look very carefully “if we were in the territory of mandating what could or couldn’t be included as default payments”.<sup>119</sup>

**114.** Shelter proposed a different approach, calling for only two default payments to be allowed: late payment of rent and lost keys. All other fees should be recovered from the security deposit. They also wanted to see other safeguards put in place in relation to late payment default fees, such as no more than one fee per month, default fees only being charged if the rent is 14 days late.<sup>120</sup> These suggestions were supported by Carmarthenshire Council.<sup>121</sup> They echoed the concerns about default payments being levied for late rent, and how this can cause a tenant to get further into arrears, which can ultimately result in a tenant being evicted.<sup>122</sup>

---

<sup>113</sup> [RHF06 Generation Rent, page 1](#)

<sup>114</sup> [RHF04 Let Down in Wales, paragraph 6](#)

<sup>115</sup> [RHF06 Generation Rent, pages 2-3](#)

<sup>116</sup> ELGC Committee, 11 July 2018, RoP [52]

<sup>117</sup> [RHF09 Shelter Cymru, pages 2-4](#)

<sup>118</sup> ELGC Committee, 5 July 2018, RoP [382]

<sup>119</sup> ELGC Committee, 21 June 2018, RoP [139]

<sup>120</sup> [RHF09 Shelter Cymru, pages 2-4](#)

<sup>121</sup> ELGC Committee, 19 September 2018, RoP [60]

<sup>122</sup> ELGC Committee, 19 September 2018, RoP [56]

**115.** Citizens Advice’s starting point is that all default fees should be banned initially.<sup>123</sup> Notwithstanding that, they believe that tenants should not be charged for “matters outside of their control”, and called for fees to be “reasonable and fair”.<sup>124</sup> Shelter Cymru highlighted that the Bill as currently drafted does not require fees to be reasonable and fair.<sup>125</sup> NUS Wales also called for the Bill to be amended to see default fees as “being reasonable and fair”.<sup>126</sup>

**116.** When we questioned the Minister on this issue she told us:

“All of the default fees will be set out in the contract that's agreed between the landlord or the agent on their behalf and the contract holder. So, there should be no confusion as to what a default fee is, however we do think that there is certainly some merit in issuing some guidance for landlords and agents and also the tenants themselves in terms of what is an appropriate default payment and also to help tenants understand default payments as well. Because, although it should be clear there in the contract, we know that actually having things in very clear, plain English—a special piece of information relating to default payments—will be useful. So, we're happy to issue and prepare some guidance on that, and also I think make sure that we have an appropriate communications plan for that in terms of getting that information out to both landlord or agent and the contract holder themselves. But there should be no confusion about what the default payment is because it will be clear on the face of the contract.”<sup>127</sup>

**117.** We explored this further with the Minister and her officials, and they stated that the introduction of model contracts would standardise matters around default fees as well:

“The supplementary terms will be applied to all occupation contracts and there'll be some that apply to fixed-term contracts. So, all those will be set out in regulations, as will model contracts, and they will set out default fees of what fees will be permitted. So, all of that will be standardised.”<sup>128</sup>

---

<sup>123</sup> ELGC Committee, 11 July 2018, RoP [48]

<sup>124</sup> [RHF11 Citizens Advice, paragraph 7](#)

<sup>125</sup> [RHF09 Shelter Cymru, pages 2-4](#)

<sup>126</sup> ELGC Committee, 5 July 2018, RoP [382]

<sup>127</sup> ELGC Committee, 19 September 2018, RoP [168]

<sup>128</sup> ELGC Committee, 19 September 2018, RoP [174]

**118.** There was concern that default fees would be used to replace income previously generated from administration fees. Generation Rent said that letting agents in England have “explicitly said” they would increase the use and cost of default payments to do this.<sup>129</sup> Shelter Cymru also said that without amendments to the Bill there would be “more creative use of default fees”.<sup>130</sup>

**119.** But landlords and letting agents did not believe this would happen. NLA were “sceptical”, because there are other ways to recoup income, such as increasing rent:

“If they are determined that they can't make efficiency improvements and they have to carry on charging that fee somehow, it's much easier to put 3 per cent on the rent or 4 per cent on the rent than to think, 'I'm going to wait until they lose their keys and then triple the fee for that' or 'I'm going to wait until they're late a day or two and then charge them.' We've got to be cautious and we've got to be vigilant, but I think it's far more likely that if people try to find other ways around this, to circumvent it, they'll do something more straightforward.”<sup>131</sup>

**120.** Addressing the issue as to whether the Bill itself was clear on what was a default payment, both the NLA<sup>132</sup> and ARLA<sup>133</sup> felt it was. NLA said they welcomed the Bill as drafted, and that default payments can be specified in the contract. They noted that any guidance would need to be carefully drafted as it could be interpreted as “de facto standards”.<sup>134</sup>

**121.** In correspondence, the Minister made a commitment to drawing up guidance on default payments which would:

“...provide the most common examples of such circumstances and to set out best practice. Such guidance would be non-statutory to reflect practice in the sector.”<sup>135</sup>

---

<sup>129</sup> [RHF06 Generation Rent, page 2](#)

<sup>130</sup> ELGC Committee, 11 July 2018, RoP [44]

<sup>131</sup> ELGC Committee, 5 July 2018, RoP [24]

<sup>132</sup> ELGC Committee, 5 July 2018, RoP [24]

<sup>133</sup> ELGC Committee, 5 July 2018, RoP [91]

<sup>134</sup> [RHF03 NLA, paragraph 17](#)

<sup>135</sup> [Letter from Minister for Housing and Regeneration, 28 September 2018](#)

## Our view on default fees

---

**122.** We understand the concerns that default fees will be used as a vehicle for unscrupulous landlords and letting agents to recoup income lost resulting from the ban. Even taking these concerns into account, we do not believe that the Bill should list permitted default payments. But we do support the calls for the Bill to be amended to ensure that default fees are “fair and reasonable”. We believe this best balances the need to protect tenants from unreasonable fees, while ensuring landlords and agents are able to charge default fees where the actions of a tenant causes them to be out of pocket.

**Recommendation 4.** We recommend that the Welsh Government brings forward amendments at Stage 2 to put on the face of the Bill that all default fees should be fair and reasonable.

**123.** The guidance which the Government has committed to produce is essential in this area. We welcome the fact that this guidance will detail what “fair and reasonable” charges are. As we believe that this guidance will be essential to the effective operation of the Bill, and because of the concerns raised by stakeholders about certain current practices in the sector, we want to see more details of the guidance before the scrutiny of this Bill has been completed. (In line with the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018*, when we saw draft guidance during our scrutiny process). We therefore welcome the Minister’s commitments to provide more information during the scrutiny process about the guidance. Although as noted in paragraph 92, we need further clarification as to whether this guidance will cover all aspects of the Bill.

**124.** This guidance must be clear, easy to understand and help tenants challenge unreasonable fees. The Welsh Government must also ensure that this guidance is communicated widely. We appreciate that some tenants in the private rented sector can be difficult to identify and reach, but as they are the front line in the effective implementation of the Bill, it is essential that this guidance is widely shared and communicated.

**125.** In terms of the guidance, we welcome the commitment by the Minister to work with advice agencies and support organisations such as Shelter Cymru, the NUS and Citizens Advice in drawing up this guidance.

**126.** We would also call for the guidance to be subject to the legislative process, and that this should be through an enhanced process.



## 3. 2. Permitted fees

**127.** Schedule 1 lists the following permitted payments:

- Rent;
- Security deposit;
- Holding deposit; and
- Default payments.

**128.** The Bill as currently drafted does not allow any other payments. We heard about a number of possible omissions from this list.

**129.** ARLA and NALS called for changes to the Bill to enable letting agents to charge for surrender of tenancy and change of sharer:

"Under the default fees clauses, surrender of tenancy and change of sharer do appear as though they will be acceptable, in exactly the same way as it appeared in the draft Bill in England that they would be acceptable. However, it's not clear on this Bill, and again, to avoid a PPI moment, we would ask that this Bill follows what they did in England and clarifies that change of sharer and surrender of tenancy either are in or are out."<sup>136</sup>

**130.** The Bill as currently drafted also would not allow a landlord or letting agent to require a tenant to secure and pay for utilities; council tax, a TV license or Green Deal payments.

**131.** ARLA called for the Bill to be amended, in line with the Tenant Fees Bill in England to allow this requirement to be placed upon a tenant. As with the change of sharer issues outlined above, they were particularly concerned that it could result in a "PPI moment", where tenancies continue as they are, and a number of years later a court rules that this would be a prohibited payment. They called for "legislative certainty".<sup>137</sup>

**132.** When we questioned the Minister on this absence in the Bill, she told us:

"I do think that this is an area where Welsh Government should reconsider our approach, and I'd certainly be interested in bringing

---

<sup>136</sup> ELGC Committee, 5 July 2018, RoP [101]

<sup>137</sup> ELGC Committee, 5 July 2018, RoP [99-100]

forward an amendment to the legislation to allow payments for tv, council tax, utilities and communication services, because, again, this is about making things as simple and straightforward as we possibly can for tenants, and those contracts that do charge fairly for these things are very useful for tenants. So, it is an area where I would intend bringing forward an amendment.”<sup>138</sup>

**133.** There was also a call from RLA<sup>139</sup> and ARLA for credit and reference checks to be permitted payments:

“To ensure that a tenant takes on manageable levels of financial commitment and help to ensure that they are not subsequently made homeless, reference checks should be exempt from legislation banning letting agent fees to tenants.”<sup>140</sup>

### Our view on permitted fees

---

**134.** We were not convinced by the arguments made about amending the Bill to specifically permit payments for a change of sharer or surrender of tenancy. We believe this will already be covered in a contract between a landlord / letting agent and a tenant.

**135.** We also did not believe that a case was made for allowing charges for references and credit checks. This would go against the spirit of the legislation. The reality is that credit and reference checks can be made very cheaply, therefore there is no need for letting agents to charge tenants for this.

**136.** On the issue around placing a requirement on a tenant to enter into a contract for items such as utilities, TV licence, council tax or Green Deal payments we are far more sympathetic. We very much welcome the Minister’s commitment to bring forward an amendment to rectify this omission.

**Recommendation 5.** We recommend that the Welsh Government brings forward amendments at Stage 2 to enable landlords or lettings agents to require a contract holder to enter into contracts for utilities, TV licenses; council tax or Green Deal payments.

---

<sup>138</sup> ELGC Committee, 19 September 2018, RoP [187]

<sup>139</sup> [RHF18 RLA evidence, paragraph 2.4.8](#)

<sup>140</sup> [RHF08 ARLA, paragraph 22](#)

### 3. 3. Security deposits

**137.** Security deposits are permitted payments. These must be dealt with in accordance with an authorised deposit scheme. Paragraph 2(4) of Schedule 1 allows Welsh Ministers to make regulations to specify a limit to any security deposit. The Explanatory Memorandum states that:

“Evidence for capping security deposits in Wales is unclear and did not feature in responses to the consultation. However there is a risk that such deposits could rise and therefore become unaffordable. Powers for the Welsh Ministers to set a lower cap have therefore been included within the Bill as a necessary safeguard.”<sup>141</sup>

**138.** This issue generated a lot of discussion. As mentioned in Chapter 2, it can often be the combination of security deposit, along with advance rent and letting agents fees that can act as a barrier to accessing the sector.

**139.** There were calls from all stakeholders; representatives of letting agents, landlords and tenants, for an innovative approach to be taken in relation to security deposits. We heard about deposit insurance schemes and the idea of “passporting” deposits across tenancies and properties.

**140.** The RLA suggested an approach that combined both of these suggestions:

“...development of a new insurance-based scheme that would enable a tenant to transfer a deposit from one rental property to another while protecting the new landlord from a reduced deposit caused by deductions for the previous tenancy. 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 for 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 between tenancies.”<sup>142</sup>

**141.** The idea of passporting deposits between tenancies was popular amongst stakeholders<sup>143</sup> and those who contributed to our focus groups and Dialogue

---

<sup>141</sup> [Explanatory Memorandum, paragraph 3.28](#)

<sup>142</sup> [RHF02 RLA, paragraph 1.2](#)

<sup>143</sup> Stakeholders who supported passporting included [Citizen's Advice, Let Down in Wales](#), [Generation Rent](#) and [CIH Cymru](#)

discussion<sup>144</sup>. Citizens Advice suggested that if the purpose of this Bill is to increase accessibility to the PRS, passporting deposits is a way of improving access.<sup>145</sup>

**142.** ARLA were concerned that the Bill as drafted would not allow alternatives such as deposit replacement insurance to be a permitted payment.<sup>146</sup> We heard from tenants on Dialogue that some tenants are now required to have tenants liability insurance as a condition of their tenancy.<sup>147</sup> Generation Rent however raised concerns about insurance based deposit schemes. While acknowledging there may be some good schemes, they said some:

“...actually cost renters more without them getting much security and getting any money back at the end and still leaving them liable for damages at the end. So, I would be wary about which insurance deposit schemes.”<sup>148</sup>

**143.** The Minister acknowledged that pulling together the money for a deposit can be “a real issue”, and that some of the alternatives to security deposit “are attractive”. She told us that officials were currently looking at these ideas, and are working with the UK Government, but that they were not in a position to introduce a specific scheme during the passage of this Bill.<sup>149</sup>

**144.** The Minister reassured us that the Bill would not prevent the offering of some form of passported deposit scheme, provided such a scheme did not have any payments attached to it. She felt that this was an area which is “ripe for activity”.<sup>150</sup>

**145.** Another significant issue around security deposits, was the issue of a potential cap. ARLA<sup>151</sup> called for any proposed cap to be set out in the Bill, and if not, to be subject to the affirmative procedure, rather than as currently drafted, subject to the negative procedure. CLA also raised concerns that by setting any cap by regulations “removes the opportunity for all stakeholders to comment” on “an important piece of this change in the law”.<sup>152</sup>

---

<sup>144</sup> [Summary of Dialogue responses and Summary of Focus Group discussions](#)

<sup>145</sup> ELGC Committee, 11 July 2018, RoP [70]

<sup>146</sup> [RHF08 RLA, paragraph 6](#)

<sup>147</sup> [Summary of Dialogue responses](#)

<sup>148</sup> ELGC Committee, 5 July 2018, RoP [388]

<sup>149</sup> ELGC Committee, 19 July 2018, RoP [183]

<sup>150</sup> ELGC Committee, 19 July 2018, RoP [185]

<sup>151</sup> [RHF08 ARLA, paragraph 24](#)

<sup>152</sup> [RHF15 CLA, paragraph 5](#)

**146.** There was a difference of opinion as to what the level of cap should be. Citizens Advice argued that the cap should be set at three weeks rent or below. They cited research which suggests that when there has been a dispute about the deposit, on average only 75% of the deposit is claimed back.<sup>153</sup> Shelter Cymru called for a cap of 1 month being put on the face of the Bill.<sup>154</sup>

**147.** There was some concern<sup>155</sup> that a cap could create unintended consequences for tenants with pets or children; or for unusual properties, which may necessitate a higher security deposit<sup>156</sup>. RLA called for the Bill to be amended to take account of this:

“..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.”

**148.** Generation Rent also said there was a need for “flexibility” for pets, and for a wider review of the security deposit scheme.<sup>157</sup>

### Our view on security deposits

---

**149.** We acknowledge that finding the security deposit can be difficult for tenants, especially if they are moving from one rented property to another. They will not get back the deposit on their current home until they have left but are required to provide a further deposit on their new home. We are therefore sympathetic to the calls for changes to how security deposits operate.

**150.** We note that the Welsh Government is already engaged in looking at different ideas including passporting deposits. While this is welcome, it is disappointing that this work had not been undertaken earlier, and that this Bill could have helped facilitate the passporting of deposits. Security deposits will continue to act as a barrier to accessibility within the sector, and we would like to see this work progressed as a matter of urgency. We were reassured by the Government’s assertion that the Bill as drafted would not prohibit local authorities

---

<sup>153</sup> ELGC Committee, 11 July 2018, RoP [60]

<sup>154</sup> RHF09 Shelter Cymru, page 7.

<sup>155</sup> RHF18 RLA, paragraph 2.4.3

<sup>156</sup> ELGC Committee, 5 July 2018, RoP [467]

<sup>157</sup> RHF06 Generation Rent, page 3.

or other organisations drawing up their own schemes. We note that any such schemes could not be founded on the basis of any payments being received, as these would be prohibited payments.

**151.** This is a matter that we will continue to take a particular interest in, and will keep a watching brief on.

**152.** On the matter of whether a cap should be set for security deposits, we acknowledge that the Bill as drafted provides the Welsh Government with flexibility to address this, if it is believed security deposit levels are too high or are acting as a barrier to accessing the PRS. We do not have a view on what level the cap should be set at. However, we welcome our colleagues on the Constitutional and Legislative Affairs Committee's view that any introduction of a cap should be subject to Assembly debate, and therefore the affirmative procedure.

### 3. 4. Exit fees

**153.** Shelter Cymru had particular concerns about exit fees, where a tenant is charged fees for terminating a tenancy at the end of a fixed term, or after having given the appropriate period of notice. Shelter Cymru said they can be “very high”, telling us that their mystery shopping exercise found charges of £89 just to hand keys in at the end of the tenancy. They wanted to see an explicit ban on exit fees in the Bill, although they were content with a “reasonable” fee being charged if a tenant wished to terminate a contract early.<sup>158</sup>

**154.** The Minister was categorical in her assertion that the Bill as currently drafted prohibited exit fees being charged when a tenancy comes to the end of the agreed period:

“I can confirm that exit fees aren't permitted under the Bill. The only permitted payments are the default payments—the security deposit, the holding deposit and rent. So, exit fees categorically cannot be charged under this legislation. Actually, it's one of the areas that did prompt this legislation, in the sense that it is completely nonsensical and unfair to charge a tenant an exit fee when they've been paying their rent and there's nothing to charge for. So, this is one of those kinds of fees that did prompt the legislation.”<sup>159</sup>

---

<sup>158</sup> RHF 09 Shelter Cymru, pages 7-8

<sup>159</sup> ELGC Committee, 19 September 2018, RoP [190]

## Our view on exit fees

---

**155.** We do not believe there is a legitimate reason for any exit fees for terminating a tenancy, if this is at the end of the contract. We accept that if a tenant wishes to terminate a contract early, or does not give the required period of notice, there will be legitimate reasons for a landlord or letting agent to charge some form of fee.

**156.** While welcoming the Minister's clear statement that exit fees are prohibited by the Bill, to avoid any doubt, we believe the Bill should follow the example in the Tenant Fees Bill in England and explicitly prohibit fees in connection with the termination of an occupation contract, (other than in circumstances outlined in paragraph 155) on the face of the Bill... This will strengthen the Bill and will ensure that if there was ever a change in policy, primary legislation would be needed to allow exit fees to be charged. This will provide greater certainty, and clarity and makes a strong statement that this sort of charge is illegal.

**Recommendation 6.** We recommend that the Welsh Government brings forward amendments at Stage 2 to state on the face of the Bill that exit fees for terminating an occupation contract at the end of the agreed contractual term are a prohibited payment.

## 4. Treatment of holding deposits

Holding deposits are usually only used in high demand areas and certain parts of the rental market. The Bill sets a cap of one week's rent for any holding deposit. We believe a holding deposit can play a role in the PRS, but want to see some changes made to the Bill.

**157.** Section 9 requires that holding deposits are treated as having been made on the terms set out in Schedule 2. A holding deposit is defined in Schedule 1 as being money paid to the landlord or a person acting on their behalf to reserve the right of first refusal on a property, subject to suitability checks being carried out, and agreement being made by both parties to enter into a contract. A holding deposit should not be more than one week's rent.

**158.** Holding deposits must be repaid within a prescribed time frame unless an exception applies. Exceptions are:

- Where the deposit is applied towards the first payment of rent;
- Where it is applied towards the security deposit;
- In certain circumstances, where the landlord is prohibited from letting the premises because of the prospective contract-holder's immigration status (Right to Rent checks are not currently in force in Wales – this is a non-devolved area);
- In certain circumstances, where the prospective contract holder has provided false or misleading information to the landlord;
- Where the contract holder decides not to enter a contract, or fails to take reasonable steps to enter into a contract.

**159.** There was some mixed evidence as to how widespread holding deposits are used. ARLA told us that they were “pretty standard across the board” but that they may not always be called holding deposits<sup>160</sup>. But they highlighted the Welsh Government's research which suggested that only 34% of agents charge holding deposits.<sup>161</sup> Let Down in Wales said that they did not think they were that

---

<sup>160</sup> ELGC Committee, 5 July 2018, RoP [125]

<sup>161</sup> ELGC Committee, 5 July 2018, RoP [128]



common, but were more likely in the student sector, where there is high demand.<sup>162</sup> Generation Rent also confirmed that they are used in areas of high-demand including city centres and in student accommodation.<sup>163</sup>

**160.** NLA highlighted that with the removal of other fees holding deposits may play an increasing role in the sector,<sup>164</sup> a view supported by Let Down in Wales<sup>165</sup>.

**161.** The WLGA confirmed that they had been unable to uncover any examples of holding deposits being used in the supported accommodation sector.<sup>166</sup>

**162.** The WLGA was supportive of the provisions in relation to holding deposits, and felt they struck the right “balance”.<sup>167</sup>

**163.** Generation Rent wanted to see changes to the Bill so that the holding deposit reflected “the true cost” of reference checks. They suggested that when credit checks can be done for £20-30, a week’s rent was “somewhat high”.<sup>168</sup> Let Down in Wales also argued that credit checks were an area where the sector could become more efficient, saying if a landlord or letting agent’s referencing service takes a week “they haven’t got a very good” service.<sup>169</sup>

**164.** We also heard that, in Scotland, referencing has become more efficient and the use of holding deposits has decreased.<sup>170</sup> Generation Rent said in their written evidence that if referencing was more efficient holding deposits would not be required. They also shared experience from supporters who told them about:

“Only getting the tenancy agreement the day before or the day of moving in, at which point it is very difficult to object to unfair terms. The tenancy agreement should therefore be provided upon payment of the holding deposit.”<sup>171</sup>

**165.** The Minister believed that holding deposits served “an important purpose” and played a role in ensuring the accessibility of the PRS, by preventing

---

<sup>162</sup> ELGC Committee, 5 July 2018, RoP [403]

<sup>163</sup> ELGC Committee, 5 July 2018, RoP [402]

<sup>164</sup> ELGC Committee, 5 July 2018, RoP [268]

<sup>165</sup> ELGC Committee, 5 July 2018, RoP [403]

<sup>166</sup> ELGC Committee, 19 September 2018, RoP [70]

<sup>167</sup> ELGC Committee, 19 September 2018, RoP [79]

<sup>168</sup> ELGC Committee, 5 July 2018, RoP [411]

<sup>169</sup> ELGC Committee, 5 July 2018, RoP [414]

<sup>170</sup> ELGC Committee, 11 July 2018, RoP [15]

<sup>171</sup> [RHF06 Generation Rent, page 3](#)

prospective tenants taking several properties off the market while deciding which one to choose. She said that these were “relatively small amounts of money...for a relatively small amount of time”.<sup>172</sup>

**166.** Let Down in Wales told us of concerns about landlords or letting agents taking multiple holding deposits.<sup>173</sup> Generation Rent<sup>174</sup> and Shelter Cymru<sup>175</sup> supported the calls for the Bill to be amended to prohibit a landlord or letting agent taking more than one holding deposit per property. ARLA said that for practical reasons, a landlord or letting agent would not undertake the same work multiple times, knowing they would lose all but one of the holding deposits.<sup>176</sup>

**167.** The Minister told the Committee that this was an important issue, and that she would give further consideration as to whether this should be covered in the Bill or in future guidance.<sup>177</sup>

**168.** Shelter Cymru wanted to see the Bill amended to provide for a cooling off period during which the full holding deposit could be refunded for any reason, because “we do see some quite forceful sales tactics sometimes”.<sup>178</sup> NUS Wales supported this suggestion.<sup>179</sup>

**169.** Citizens Advice argued for all holding deposits to be fully refundable. They argued that because it still involved having to put money down, tenants would not be holding numerous properties. They wanted to mitigate for when people’s circumstances change or when they have been pressured into a property.<sup>180</sup> A call supported by Cardiff University Student’s Union, although they did accept it could be retained in “exceptional circumstances”.<sup>181</sup>

**170.** The Minister felt that a cooling off period would “almost defeat the purpose” and felt that it would encourage speculative approaches on properties which holding deposits are seeking to reduce.<sup>182</sup>

---

<sup>172</sup> ELGC Committee, 19 September 2018, RoP [201]

<sup>173</sup> ELGC Committee, 5 July 2018, RoP [403]

<sup>174</sup> ELGC Committee, 5 July 2018, RoP [4021]

<sup>175</sup> ELGC Committee 11 July 2018, RoP [97]

<sup>176</sup> ELGC Committee, 5 July 2018, RoP [148]

<sup>177</sup> ELGC Committee, 19 September 2018, RoP [224]

<sup>178</sup> ELGC Committee 11 July 2018, RoP [95]

<sup>179</sup> ELGC Committee, 5 July 2018, RoP [404]

<sup>180</sup> ELGC Committee, 11 July 2018, RoP [102]

<sup>181</sup> [RHF17 Cardiff University Student's Union, paragraph 10](#)

<sup>182</sup> ELGC Committee, 19 September 2018, RoP [210]

---

## Our view on holding deposits

---

**171.** We believe that a small holding deposit, as set in the Bill at one week’s rent is a reasonable permitted payment. In certain high-demand markets, it plays a role in ensuring that the PRS remains accessible to all who wish to access it.

**172.** While we understand why some would like to see a cooling off period of 48 hours, we agree with the Minister that this would defeat the purpose of a holding deposit. We therefore do not believe the Bill should be amended to provide for this.

**173.** However, we do believe the Bill could be strengthened to prevent a landlord or letting agent taking more than one holding deposit per property. We would not want to see a situation where a landlord or letting agent takes multiple deposits and then plays-off the prospective tenants against each other to drive up rent.

**Recommendation 7.** We recommend that the Welsh Government brings forward amendments at Stage 2 to prohibit landlords or letting agents taking more than one holding deposit per property.

### 4. 1. Requirement to repay holding deposits

**174.** There were calls for the Bill to be amended or clarified in relation to the circumstances where a holding deposit can be returned. In particular Shelter called for clarification on the reference in Schedule 2 (8) to “false and misleading information” which they said was not clear enough. They were concerned that:

“...minor, unintentional errors by tenants or normal fluctuations in income could be interpreted as false and misleading.”<sup>183</sup>

**175.** The RLA also felt that there was a need for greater clarity on the definition of “reasonable steps” in Schedule 2, (10), and in particular what would be defined as the tenant’s reasonable steps. They felt that a landlord’s reasonable steps were clear.<sup>184</sup>

**176.** The Minister stated that reasonableness is a matter for the courts to determine. Government lawyers also highlighted that this matched similar

---

<sup>183</sup> RHF09 Shelter Cymru, page 4

<sup>184</sup> RHF18 RLA, paragraphs 2.2.4-2.2.5

provisions within the Tenant Fees Bill in England and was in line with provisions in the *Renting Homes (Wales) Act 2016*.<sup>185</sup>

**177.** The RLA also called for greater clarity on when the holding deposit could be retained by the landlord or letting agent. They had concerns that the lack of clarity, would lead letting agents to avoid using holding deposits and instead “operating a tournament-style approach” which they wanted to avoid. They argued that landlords and letting agents are selling time in a property, and that:

“...if it's empty and you're waiting on a tenant to bring all the documents and things like that, and the landlord loses time as a result of that, I think that's something to genuinely consider about how you might recover money from the holding deposit. Ultimately, a week's not a long time to try and recover that money from this.”<sup>186</sup>

**178.** Paragraph 7 of Schedule 2 provides that a holding deposit does not have to be repaid if the landlord is prohibited by section 22 of the Immigration Act to let the property to the prospective tenant, because they are disqualified from renting due to their immigration status. (This is commonly known as the “Right to Rent” checks).

**179.** We received a letter signed jointly by:

- CIH Cymru;
- Tai Pawb;
- Equality and Human Rights Commission;
- Dr Simon Hoffman,
- Shelter Cymru;
- Community Housing Cymru.

**180.** In this letter they stated:

“As a general principle we feel that unless prospective tenants have deliberately misrepresented their circumstances they should not be left substantially out of pocket. Also given the lack of understanding around

---

<sup>185</sup> ELGC Committee, 19 September 2018, RoP [228; 229 and 231]

<sup>186</sup> ELGC Committee, 5 July 2018, RoP [271]

the scheme there is considerable danger that right to rent decisions may be incorrect.”<sup>187</sup>

**181.** The Right to Rent checks have not yet been enacted in Wales, and Shelter Cymru argued that, even if they were to be enacted, there is no reason for the Welsh legislation to match the provisions in the Tenant Fees Bill in England.<sup>188</sup> Tai Pawb “strongly advise” for this provision to be removed. They were concerned that unscrupulous landlords would target applicants who they knew would not pass these checks to retain the holding deposit.<sup>189</sup>

**182.** Stakeholders were also concerned that prospective tenants may not be aware that they are unable to rent a property,<sup>190</sup> or that the checks may be failed as a result of Home Office errors.

**183.** When we questioned the Minister on the right to rent provisions, she told us that this provision “simply reflects what is already on the statute book”. A Welsh Government lawyer explained that the provision was “to ensure parity between what is an England-and-Wales statute” and would ensure contract holders in Wales were not disadvantaged in comparison to tenants in England.

**184.** Further clarity was provided in correspondence from the Minister to the Committee which emphasised that it was to ensure parity between landlords in Wales and England, rather than tenants. In this letter, the Minister stated:

The Immigration Act 2014 relates to a non-devolved area and the 2014 Act extends to the UK in its entirety. Reference to the 2014 Act in paragraph 7 of Schedule 2 to the Bill does not commence section 22 of the 2014 Act, nor sanction the right to rent in Wales, it reflects legislation that is already on the statute book . This cannot be ignored.

To remove this provision from Schedule 2 would put landlords in Wales at a disadvantage in comparison to their English counterparts. A landlord in Wales would be required to return a holding deposit notwithstanding the prospective tenant had provided false or misleading information, while a landlord in England would not.

The deposit would have to be repaid in Wales despite the landlord being prohibited from granting a contract to the contract-holder when

---

<sup>187</sup> [RHF12 Joint letter from various organisations](#)

<sup>188</sup> [RHF09 Shelter Cymru, pages 4-5](#)

<sup>189</sup> [RHF16 Tai Pawb, paragraphs 3.3 – 3.5](#)

<sup>190</sup> [RHF09 Shelter Cymru, pages 4-5](#)

the landlord did not and could not reasonably have been expected to know the position before accepting it and subsequently the parties fail to enter into the contract before the deadline for agreement.

During this time there would be a right of first refusal in relation to granting the contract, subject to suitability checks being undertaken by the landlord. This would place a landlord in Wales at a clear disadvantage over a landlord in England, as a result of legislation which applies UK-wide. We consider this provision should remain in the Bill not least to ensure equal treatment for landlords in England and Wales reflecting the current legislation.”<sup>191</sup>

### Our view on the requirement to repay holding deposits

---

**185.** We do not support the calls for holding deposits to be fully refunded in all or most circumstances. If all holding deposits were fully refundable then holding deposits would not serve their purpose, and tenants could put multiple holding deposits down leading to wasted time and financial losses for landlords.

**186.** We want to see the reference to Right to Rent removed from this Bill. We do not believe that failing a Right to Rent check (if the provisions are commenced in Wales) should be the basis for a landlord or letting agent to retain the holding deposit. In these circumstances the holding deposit should be repaid in full, immediately to the prospective tenant. David Melding AM and Gareth Bennett AM do not agree with this conclusion.

**Recommendation 8.** We recommend that the Welsh Government brings forward amendments at Stage 2 to remove paragraph 7 of Schedule 2. David Melding AM and Gareth Bennett AM do not agree with this recommendation.

**187.** We note that Right to Rent checks are subject to a judicial review, which will be heard in December.

---

<sup>191</sup> [Letter from Minister for Housing and Regeneration, 28 September 2018](#)

## 5. Enforcement

There is an expectation of high compliance with the Bill; enforcement will be critical to delivering its purpose. We believe there is a need to strengthen the enforcement provisions.

**188.** Sections 10 to 16 deal with enforcement of the Bill's provisions.

**189.** Section 10 provides local authorities with powers to authorise officers to require documents or information in relation to the Bill.

**190.** Sections 11 and 12 create a number of offences to ensure the provisions in the Bill can be effectively enforced.

**191.** Under Section 11 of the Bill, it is an offence for a person to fail to provide documents (as set out in a notice under Section 10) or information as required by a local housing authority, unless they have a reasonable excuse. A person who commits this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500). A person who intentionally alters, suppresses or destroys any document they have been required to produce commits an offence which is subject to an unlimited fine.

**192.** Section 12 creates two offences which are subject to unlimited fines. Providing false or misleading information either knowingly or recklessly is an offence. An offence is also committed if any person provides false or misleading information (again, either knowingly or recklessly) to another person who they know is going to provide it in reply to a Section 10 notice.

**193.** Under Section 13 of the Bill, where an authorised officer of a local housing authority believes that an individual has committed an offence under Section 2 or 3 (requiring a prohibited payment to be made to a landlord or letting agent) the officer may give that individual a fixed penalty notice, which allows that individual to discharge any liability to conviction for the offence on payment of a £500 penalty. The Explanatory Memorandum notes that should a landlord or letting agent choose not to pay the fixed penalty notice, court proceedings may be commenced. Also, as the licensing arrangements for letting agents and landlords under the *Housing (Wales) Act 2014* requires a landlord or letting agent to pass the "fit and proper" person test, an offence resulting from a breach of the ban could put their licence in jeopardy.

**194.** Receipts from these notices can only be used for the functions of the local authority in relation to this Bill.

**195.** Section 14 states that if a person has been convicted of an offence under the Bill, the licensing authority (Cardiff Council using the Rent Smart Wales brand) for Part 1 of the *Housing (Wales) Act 2014* must be informed. The licensing authority will then take the conviction into consideration and determine whether the person is a fit and proper person to hold a landlord or agent licence. As a condition of their licence, landlords and agents must also comply with the Code of Practice issued by Rent Smart Wales which will be updated to reflect the provisions of the Bill.

**196.** Section 15 provides powers for Welsh Ministers to issue guidance in relation to Part 4 of the Bill and that local authorities must have regard to it.

**197.** Section 16 defines an authorised officer.

## 5. 1. Resources for enforcement

**198.** While we heard evidence from local authorities, RSW and the Minister that there is an expectation of high compliance with the legislation, the enforcement provisions are essential to the Bill delivering on the Welsh Government's stated aims and purpose.

**199.** We heard from a number of witnesses that there is concern about previous housing legislation not being effectively enforced. Landlords and letting agents representatives were of the view that previous housing legislation should be enforced more robustly before the introduction of this Bill. ARLA told us:

“History tells us that you pass laws, they don't get enforced, more laws get passed, they don't get enforced. This law is being passed because the Consumer Rights Act was not enforced. The problem we have is law after law after law after law is being passed here, in Westminster, in Holyrood, but none of it is being enforced. One local authority in England represents more than half of all the prosecutions against landlords in the country, every year. And they only do 250. The problem is not a lack of law, it's a lack of resources in local authorities to go out and enforce them, and that is what we are very worried about. NALS members, ARLA members, RICS members—we'll stop charging fees the day that ban comes into force. Those that aren't [members], won't.”<sup>192</sup>

---

<sup>192</sup> ELGC Committee, 5 July 2018, RoP [182]



**200.** The WLGA told us that the assumptions around enforcement within the Explanatory Memorandum had been drawn up in conjunction with local authorities. Drawing on the recent experience with the introduction of RSW, they envisage there will be a high level of compliance with this legislation.<sup>193</sup>

**201.** Carmarthenshire Council welcomed the link this Bill makes between fees, and the impact fees can have on homelessness services and accessibility of the PRS. They felt that as the enforcement will sit with Housing rather than Trading Standards, this link will be clearer and lead to greater enforcement.<sup>194</sup> Welsh Government officials said that the Bill had been developed in the context of local housing authorities being best placed to undertake this type of action:

“This enforcement will sit rightly, we think, with the local housing authority who are engaged in those housing issues and have a more pertinent, direct relationship and interest in enforcing this matter.”<sup>195</sup>

**202.** The Minister told us that they had considered the experience following the implementation of RSW, and that £500 (the level of the fixed penalty notice) had been adequate to cover enforcement costs.<sup>196</sup>

### Our view on resources for enforcement

---

**203.** We note the concerns raised by stakeholders about resourcing for enforcement. We share their concerns that enforcement of housing legislation has not been widespread enough to ensure that the legislation effectively delivers on the policy intentions. We want to see this Bill enforced effectively and consistently across Wales. In particular the concerns about the apparently limited enforcement of the *Consumer Rights Act 2015*. However, we do not think the Consumer Rights Act is the right comparator with this Bill. The *Housing (Wales) Act 2014* is a more appropriate comparison. We are reassured by evidence from local authorities that the costs in the RIA are realistic and that they will have adequate resources to enforce this Bill.

## 5. 2. Restrictions on terminating occupation contracts

**204.** There are some circumstances set out in other housing legislation when a landlord is prevented from terminating a tenancy because they have not complied with the law. For example, where a landlord has not registered with

---

<sup>193</sup> ELGC Committee, 19 September 2018, RoP [88]

<sup>194</sup> ELGC Committee, 19 September 2018, RoP [34 and 100]

<sup>195</sup> ELGC Committee, 19 September 2018, RoP [159]

<sup>196</sup> ELGC Committee, 19 September 2018, RoP [158]

RSW or not complied with tenancy deposit protection legislation. These restrictions prevent a “no-fault” Section 21 notice being served on assured shorthold tenants. This Bill does not have/include such restrictions.

**205.** Carmarthenshire Council indicated that amending the Bill to have a similar restriction would ensure consistency with other pieces of legislation. They said that this has been “a really handy tool for [housing] options teams across the country”. They highlighted that restrictions on the issuing of a section 21 notice, while not necessarily preventing eviction, often provides sufficient time for local authorities to support the tenant in finding other housing.<sup>197</sup>

**206.** Shelter Cymru<sup>198</sup> and Generation Rent<sup>199</sup> both called for the Bill to be amended to enable a restriction on recovering possession when prohibited payments had been received by the landlord or agent and not repaid.

**207.** We heard that such restrictions on possession have been a very effective part of the Rent Smart Wales licensing scheme.<sup>200</sup>

**208.** The NLA on the other hand had concerns about such restrictions, saying that it was important that a genuine mistake made by a landlord or letting agent should not then provide:

“...indefinite security forever, frankly, which is what we're witnessing at the moment with some of the recent changes to the assured shorthold tenancy, for instance, where issues of evidence have not been properly recorded.”<sup>201</sup>

**209.** They called for a moratorium or restriction that could be discharged to ensure that this did not happen.<sup>202</sup>

**210.** The Minister advised us that the Welsh Government has been “doing some thinking” and that it “would send a strong message in terms of our approach to bad landlords...and...about the inappropriate, often, use of section 21 notices”.<sup>203</sup>

---

<sup>197</sup> ELGC Committee, 19 September 2018, RoP [119]

<sup>198</sup> [RHF09 Shelter Cymru, page 6](#)

<sup>199</sup> [RHF06 Generation Rent, page 4](#)

<sup>200</sup> ELGC Committee, 11 July 2018, RoP [133]

<sup>201</sup> ELGC Committee, 5 July 2018, RoP [305]

<sup>202</sup> ELGC Committee, 5 July 2018, RoP [305]

<sup>203</sup> ELGC Committee, 19 September 2018, RoP [254 and 256]

---

## Our view on restrictions on terminating occupation contracts

---

**211.** We agree with stakeholders that this is an omission in the Bill. We believe that placing restrictions on terminating an occupation contract on the basis of prohibited payments should be included in the Bill. This will strengthen the Bill, help improve tenants' rights and send a very clear and strong message to landlords and letting agents about the seriousness of breaching the legislation.

**Recommendation 9.** We recommend that the Welsh Government brings forward amendments at Stage 2 so that landlords are restricted from issuing Section 21 notices (or their equivalent under the Renting Homes (Wales) Act 2016) if they have charged prohibited fee and not yet refunded the tenant.

### 5. 3. Fixed Penalty Notices

**212.** There were two main issues highlighted about FPNs during our scrutiny of the Bill as it related to the Fixed Penalty Notice regime: the level of the fixed penalty and the more technical issue about how RSW may be made aware of FPNs being issued and paid.

**213.** On the issue of the levels of fixed penalty, the evidence was mixed. Representatives from landlords; letting agents and tenants all felt that the level of fixed penalty should be increased. Yet local authorities felt that the fixed penalty levels were appropriate.

**214.** ARLA told us:

“England has taken quite a hard-line approach with the level of fines—unlimited fines of criminal prosecution. I think the fines that exist in this Bill at the moment, whilst Wales is a different market—rents are lower than in certain parts of England—they're not high enough. You need to make it a deterrent to the chancers, and there will be chancers, and the last thing you want, the last thing anybody wants, is to create a two-tier market where some continue charging fees with, pretty much, impunity.”<sup>204</sup>

**215.** They suggested that with average fees at £200; and the average number of properties per agent 200; that you would need to issue 162 FPN for the agent to be out of pocket. They said that the key to this Bill's success is acting as a

---

<sup>204</sup> ELGC Committee, 5 July 2018, RoP [176]

deterrent to the “bottom end of the market” who are the ones charging the excessive fees. They supported financial penalties between £5,000 and £30,000.<sup>205</sup>

**216.** Others who wanted to see an increase in the level of financial penalty included Citizens Advice,<sup>206</sup> Generation Rent,<sup>207</sup> Shelter Cymru,<sup>208</sup> NLA<sup>209</sup> and RLA<sup>210</sup>.

**217.** In discussing the levels of fixed penalty, witnesses including RLA<sup>211</sup> and CIH Cymru<sup>212</sup> made the distinction between what may act as a deterrent for a self-managing landlord with only one property and that of a letting agent who may manage many properties. It was suggested that a banded/tiered approach could be taken, as is currently done by RSW where agents with larger portfolios pay higher penalties.<sup>213</sup>

**218.** Carmarthenshire Council told us that financial penalties “should be proportionate to the offence”. They also highlighted that local authorities could use the *Proceeds of Crime Act 2002* to retrieve monies if necessary.<sup>214</sup>

**219.** Carmarthenshire Council told us that they, and the housing technical panel were satisfied that the FPN penalty was set at the right level, and that they would cover the costs for enforcement.<sup>215</sup> In responding to the suggestion of a tiered approach to financial penalties, they said:

“I think a flat rate is more appropriate for local authorities. Like I alluded to earlier, the penalty should fit the crime. Well, the crime is the crime; the crime is that they're charging prohibited fees, so it's the amount of enforcement activity it takes for the local authority to pursue that enforcement action. So, that doesn't change whether the agent has got a portfolio of 1,000 properties or 10 properties. So, that's—. The fine should be set at a flat rate. The prosecution, however, and the

---

<sup>205</sup> ELGC Committee, 5 July 2018, RoP [161-162]

<sup>206</sup> [RHF11.Citizens Advice, paragraph 9](#)

<sup>207</sup> [RHF06.Generation Rent, page 4](#)

<sup>208</sup> [RHF09.Shelter Cymru, page 6](#)

<sup>209</sup> ELGC Committee, 5 July 2018, RoP [290]

<sup>210</sup> ELGC Committee, 5 July 2018, RoP [292]

<sup>211</sup> ELGC Committee, 5 July 2018, RoP [292]

<sup>212</sup> ELGC Committee, 11 July 2018, RoP [231]

<sup>213</sup> ELGC Committee 11 July 2018, RoP [289]

<sup>214</sup> ELGC Committee, 19 September 2018, RoP [64-66]

<sup>215</sup> ELGC Committee, 19 September 2018, RoP [104-106]

punishment under the prosecution, for each offence, may need to reflect the size of that agent's portfolio.”<sup>216</sup>

**220.** The WLGA highlighted that there is always the potential for a licence to be revoked, in serious cases, and said the approach to FPNs in the Bill had “an elegance in its simplicity”.<sup>217</sup>

**221.** In terms of the levels of fixed penalty, the Minister said that the ultimate deterrent is the potential loss of a licence from RSW to operate. However she was not “completely wedded” to the current levels. While she wanted to keep the enforcement regime as “simple and transparent” as possible, she indicated she would consider a banded/tiered system for fixed penalty notices if it “would do the job better”.<sup>218</sup> The Minister told us that fines issued by a court “would be relevant to the severity of the offence” and they would be able to take a different approach to a landlord with one property and a letting agent with a large portfolio.<sup>219</sup>

**222.** A Welsh Government lawyer highlighted that there will be the opportunity to amend the level of fixed penalty notice by regulations if evidence suggests the level currently set is not sufficient.<sup>220</sup>

**223.** The Minister also cited the ultimate backstop of the potential loss of licence as to why she did not feel the need to follow the approach in the Tenant Fees Bill in England, where local authorities are able to discharge a criminal prosecution for a financial penalty of up to £30,000.<sup>221</sup>

**224.** A more technical, but still important, issue is around the notification of RSW. RSW told us that when a FPN was issued or paid, they should be notified as such intelligence helps improve the robustness of their systems.<sup>222</sup> Currently there are no such provisions within the Bill.

**225.** We explored this with the Minister. Officials highlighted some of the issues that needed further consideration, including the fact that the purpose of a FPN is that when it is paid “that’s the end of the matter”, and therefore no further action

---

<sup>216</sup> ELGC Committee, 19 September 2018, RoP [108]

<sup>217</sup> ELGC Committee, 19 September 2018, RoP [112]

<sup>218</sup> ELGC Committee, 19 September 2018, RoP [261]

<sup>219</sup> ELGC Committee, 21 June 2018, RoP [79]

<sup>220</sup> ELGC Committee, 19 September 2018, RoP [160]

<sup>221</sup> ELGC Committee, 19 September 2018, RoP [263]

<sup>222</sup> ELGC Committee, 11 July 2018, RoP [295]

should be taken. They also highlighted that local authorities have the option of going straight to prosecution if the landlord or agent is of concern.<sup>223</sup>

### Our view on Fixed Penalty Notices

---

**226.** There was clear evidence from across the sector that the proposed levels of fixed penalties are not high enough. Landlords, letting agents and tenants representatives all raised concerns that the penalties attached to FPNs would not act as a sufficient deterrent to rogue landlords and letting agents. While we acknowledge the evidence that there is likely to be high compliance with the legislation, it is likely that the disreputable operators, and the ones who are already charging high fees, are the least likely to comply. Therefore, the Bill should be strengthened in this respect, to ensure that the deterrents are sufficient to minimise the risk of landlords or letting agents trying to charge prohibited fees.

**Recommendation 10.** We recommend that the Welsh Government brings forward amendments at Stage 2 to increase the levels of fixed penalties.

**227.** We can see that some form of tiered or banded system has its merits, but we understand that this has to be balanced with the potential for making the enforcement regime more complicated. We are sympathetic to the Minister's desire to keep the regime simple. We therefore believe that further work should be done to look at the merits of such an approach and how it could work in practice.

**Recommendation 11.** We recommend that the Welsh Government gives further thought and consideration to taking a banded/tiered approach to the levels of penalty associated with FPNs.

**228.** We agree with RSW that the process needs to be tightened to ensure that when a fixed penalty notice penalty is paid, that RSW is informed of this. This will help with their intelligence gathering, and make the system more robust.

**Recommendation 12.** We recommend that the Welsh Government brings forward amendments at Stage 2 to place a requirement on local authorities to notify Rent Smart Wales when a Fixed Penalty Notice is paid.

**229.** Having considered the enforcement regime in the Tenant Fees Bill, we think that notwithstanding the additional backstop of licensing in Wales, there is an increased flexibility in the English system. Having higher financial penalties makes

---

<sup>223</sup> ELGC Committee, 19 September 2018, RoP [243-248]

the enforcement regime more of a deterrent and as previously noted, will hopefully ensure higher levels of compliance in the first instance.

**Recommendation 13.** We recommend that the Welsh Government brings forward amendments at Stage 2 to match the provisions in the Tenant Fees Bill in England that enable the levying of higher financial penalties as an alternative to prosecution.

## 5. 4. Repayment of prohibited fees and compensation

**230.** There are no provisions in the Bill to ensure automatic repayment of prohibited fees on the issuing of a FPN. However, the court may order the fees to be repaid where there is a successful prosecution. Where there is no prosecution, if a prohibited fee is not repaid by a landlord or letting agent, a tenant will have to pursue that payment through the civil courts.

**231.** There are also no provisions for any form of compensation when a prohibited fee is charged.

**232.** There was a consensus amongst all stakeholders that any prohibited fees should be repaid automatically. But not everyone agreed about compensation.

**233.** There was concern from a range of stakeholders about the barriers that the lack of automatic repayment could cause, in particular for the most vulnerable tenants. Citizens Advice argued that an “accessible method of redress” is key for tenants, and that courts are not “necessarily the place for them”.<sup>224</sup>

**234.** Carmarthenshire Council highlighted that it would depend on the tenants involved, as to whether they would have the confidence to take court action to recover prohibited payments. They felt that there was a role for local authorities to support vulnerable tenants in that process.<sup>225</sup> They also said that the Bill needed to be amended to make it clear that the local authority has a function in supporting these tenants in the process.<sup>226</sup> This would be in-line with provisions in the Tenant Fees Bill in England. Shelter Cymru supported this proposal.<sup>227</sup>

---

<sup>224</sup> ELGC Committee, 11 July 2018, RoP [285]

<sup>225</sup> ELGC Committee, 19 September 2018, RoP [127]

<sup>226</sup> ELGC Committee, 19 September 2018, RoP [131]

<sup>227</sup> RHF09 Shelter Cymru, page 7.



**235.** RSW told us that including a mechanism where the FPN also included provision for repayment to the tenant could be “a quicker and easier way” for the tenant.<sup>228</sup>

**236.** Welsh Government officials told us that local authorities did not have the experience or skill to appropriately enforce the repayment of any prohibited fees and that the county courts did. They said that while it may be clear if a prohibited fee has been made:

“...arguments that could follow about whether that prohibited payment had been refunded, had been refunded in part or had been utilised in another way could take them into an area that would be much more complicated to unpick. So, for that reason, we feel that the county court is the place that is best placed to arbitrate on that and to be able to enforce.”<sup>229</sup>

**237.** A Welsh Government lawyer suggest that it would be “rather labour intensive” for local authorities to take forward this work on behalf of a tenant.<sup>230</sup> The Minister said they did not want a scenario where local authorities did not take enforcement action because the work would be too onerous.<sup>231</sup>

**238.** In further correspondence on this issue, the Minister said:

“For claimants not at risk of homelessness, but who are nonetheless seeking help from the local authority to make a claim, local authorities will direct them to an advice body such as Citizens Advice Shelter Cymru and NUS Cymru, who already specialise in supporting individuals facing financial disputes or difficulties. As such, I consider them to be better placed to offer this kind of assistance given their existing expertise and experience. In addition, giving powers to local authorities to assist contract-holders in recovering prohibited payments creates a risk that those authorities will be drawn into ongoing and often protracted disputes over financial claims. As well as creating duplication, this may result in resources being diverted from wider public service duties, including those that would be necessary for the successful enforcement of the Bill.”<sup>232</sup>

---

<sup>228</sup> ELGC Committee, 11 July 2018, RoP [295]

<sup>229</sup> ELGC Committee, 19 September 2018, RoP [279]

<sup>230</sup> ELGC Committee, 19 September 2018, RoP [281]

<sup>231</sup> ELGC Committee, 19 September 2018, RoP [283]

<sup>232</sup> [Letter from Minister for Housing and Regeneration, 28 September 2018](#)



**239.** Generation Rent<sup>233</sup> argued for compensation suggesting it should be up to three times the amount of the prohibited fees. This would be in line with the rules for tenancy deposit protection schemes. ARLA told us that they did not object in principle, although they had concerns about how it would actually operate.<sup>234</sup>

**240.** NLA felt that there would be very limited occasions where compensation would be appropriate, saying that there must be a demonstration of harm, and that there would be very limited circumstances in these instances where harm could be shown, and that they would have to be specified very clearly.<sup>235</sup>

**241.** In evidence, the Welsh Government clarified that there was no need to place provisions in the Bill around compensation, as courts could attach interest payments to any prohibited payments that had been taken.<sup>236</sup> The Minister also said that for compensation to be awarded there must be a demonstration to the court that harm had been caused, and this would be difficult to evidence. A Welsh Government lawyer said it would merely add an extra tier in terms of providing evidence of further loss incurred by the tenant.<sup>237</sup>

### Our view on repayment of prohibited fees and compensation

---

**242.** It is important that tenants should be able to recover fees that have been charged illegally in the easiest possible way. Otherwise there is a risk that tenants will not see the full benefits of this legislation. We therefore want to see the Bill amended so that there is a requirement for any prohibited payments to be repaid when a FPN is paid.

**243.** We were not convinced by the evidence from the Minister and her officials on this issue. Expecting tenants to go through a legal process to recover fees that were charged illegally is unreasonable and unfair. It is a significant omission within the legislation, and one that we believe needs to be rectified.

**244.** We note with interest that section 10 of the Tenant Fees Bill (as introduced) provides the enforcement authority with the powers to require repayment of the prohibited fee. Without a similar amendment being introduced, tenants in Wales would be at a significant disadvantage to tenants in England.

---

<sup>233</sup> [RHF06 Generation Rent, page 1](#)

<sup>234</sup> ELGC Committee, 5 July 2018, RoP [165]

<sup>235</sup> ELGC Committee, 5 July 2018, RoP [318]

<sup>236</sup> ELGC Committee, 19 September 2018, RoP [297]

<sup>237</sup> ELGC Committee, 19 September 2018, RoP [302-303]

**Recommendation 14.** We recommend the Welsh Government brings forward amendments at Stage 2 to place a requirement for any prohibited fees to be repaid when a fixed penalty notice is paid, in line with the Tenant Fees Bill in England.

**245.** While being sympathetic to the calls for compensation, we do not believe this can be built into the FPN system. Local authorities are not best placed to make these sorts of judgements. We believe that decisions on compensation should be made by the courts.

## 6. Other issues

We considered a range of other issues, including the Consumer Rights Act 2015, how this Bill will interact with other housing legislation and how the Bill will affect students.

### 6. 1. Publicising letting agents fees

**246.** Section 18 of the Bill allows Welsh Ministers to amend the *Consumer Rights Act 2015* so that an agent's fees must be publicised by any online advertiser (such as Zoopla or Rightmove) it uses. In the Tenant Fees Bill in England these changes are made on the face of the Bill, rather than providing regulation making powers for Government Ministers. It also allows Welsh Ministers to amend the 2015 Act so that multiple penalties can be imposed in relation to the same breach of a duty in Chapter 3 of Part 3 of the 2015 Act. The Explanatory Memorandum notes that this means more than one penalty can be imposed when a continuing breach has not been remedied.

**247.** ARLA told us that there is currently very little enforcement of the provisions in the *Consumer Rights Act 2015*, saying that “tenants and landlords are not getting the control and clarity they need to make informed decisions”.<sup>238</sup> The NLA said that they felt the provisions were “easily enforceable proactively”.<sup>239</sup> Yet, Let Down in Wales told us that only one local authority had enforced the provisions.<sup>240</sup>

**248.** Let Down in Wales also raised concerns that while upfront fees may be detailed on sites such as Zoopla and Rightmove, they did not detail renewal fees, exit fees or additional fees.<sup>241</sup>

**249.** The Minister said the concerns raised by stakeholders in our scrutiny about the enforcement of the *Consumer Rights Act 2015* in relation to letting agents fees was “fair”. Government officials also highlighted that the provisions in the *Consumer Rights Act 2015* will continue to be important because the Act covers fees charged to landlords as well as tenants, and they want to ensure these remain transparent.<sup>242</sup>

---

<sup>238</sup> [RHF08 ARLA, paragraph 15](#)

<sup>239</sup> ELGC Committee, 5 July 2018, RoP [286]

<sup>240</sup> ELGC Committee, 5 July 2018, RoP [457]

<sup>241</sup> ELGC Committee, 5 July 2018, RoP [457]

<sup>242</sup> ELGC Committee, 21 June 2018, RoP [216]

**250.** When we asked the Government why the changes were not being made on the face of the Bill, officials explained that:

“I think it's a bit of a futureproofing for the passage of the Bill. If something came up as a result of scrutiny of this Bill that then needed those amendments to be amended, it could be a bit confusing. We thought it would be better just to wait to see what the final picture is under this Bill and then deal with it by means of regulation-making powers.”<sup>243</sup>

### Our view on publicising letting agents fees

---

**251.** We are disappointed that the *Consumer Rights Act 2015* has not been enforced. The evidence we have heard indicates that there has been minimal, if any, enforcement of these important provisions. We are disappointed that local authorities have not been in a position to resource this important enforcement activity.

**252.** We note that in the Tenant Fees Bill in England, the changes to the *Consumer Rights Act 2015* are placed on the face of the Bill, where as in this Bill changes will be made by regulation.

**253.** We support the recommendation made by the Constitutional and Legislative Affairs Committee that the affirmative procedure should be used for these regulations. We agree that any changes to primary legislation, as in this case, should be done by the affirmative procedure to ensure a sufficient level of scrutiny.

## 6. 2. Interaction with other legislation

**254.** This Bill is written on the assumption that the Renting Homes (Wales) Act 2016 will be fully commenced. Should the relevant sections of the 2016 Act not be in force when this Bill is commenced, Section 19 allows transitional provisions to be made that will apply to assured shorthold tenancies, as defined in the Housing Act 1988.

**255.** We explored with the Welsh Government why the Renting Homes (Wales) Act 2016 had not yet been fully implemented. They explained this was due to on-going discussions with the Ministry of Justice:

---

<sup>243</sup> ELGC Committee, 21 June 2018, RoP [213]

“The implementation of the Act is planned for April 2019. Any delays will be as a result of delays caused at the end of the Ministry of Justice.... That really relates to the need to make changes to the court IT system and the civil procedure rules. So, we are aiming for April 2019. But the implementation of this Act isn't dependent on the implementation date for the renting homes Act. But we were hoping, or we intend to have everything come into place at the same time, alongside the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018, because we realise that we're making major changes to the sector, so it's important that we do it in a way that causes least disruption, and in a way that is as simple as it possibly can be.”<sup>244</sup>

**256.** Officials highlighted that the Bill will work “equally well regardless of whether that [the Act] has been implemented”.<sup>245</sup>

### Our view on the interaction with other legislation

---

**257.** We note the Welsh Government’s explanation that the delays in commencing the *Renting Homes (Wales) Act 2016* are the result of on-going negotiations with the Ministry of Justice.

## 6. 3. Students

**258.** During our consideration of the Bill, we heard of a number of issues that were particular to the student market. These included concerns about the charging of half-rent over the summer:

“Students very often arrange their accommodation during the first half of the calendar year in advance of September. Perhaps you will be aware of the common practice of charging half rent or even full rent during the summer break, but not allowing access to the property during that time.

As far as we see, this would not represent a permitted payment. If our understanding is correct, then we welcome that strongly.”<sup>246</sup>

**259.** There were also concerns that students can be vulnerable and more susceptible to the more unscrupulous landlord or letting agent because of a lack

---

<sup>244</sup> ELGC Committee, 21 June 2018, RoP [27]

<sup>245</sup> ELGC Committee, 21 June 2018, RoP [28]

<sup>246</sup> [RHF01.NUS, pages 2-3](#)

of experience in the market. Additionally, overseas students will often need guarantors.

### Our view on issues relating to students

---

**260.** We acknowledge that the student market is open to exploitation often exploiting tenants with little experience of the PRS or exerting their consumer rights more generally. We acknowledge the work that is often done by advice agencies, including the NUS in supporting students, when they encounter difficulties.

**261.** We feel that many of the issues relating to students are covered by our other recommendations, in particular around communication and support for tenants in enforcing their rights. However, we believe that as part of the Welsh Government's evaluation of this legislation, there should be specific consideration of the impact on students. We will be revisiting the impact this legislation has on students once it has been implemented.

**Recommendation 15.** We recommend that the Welsh Government keep under review the impact of this legislation on the student rental market.

## Annex 1: List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below.

<b>21 June 2018</b>	<b>Organisation</b>
Rebecca Evans AM, Minister for Housing and Regeneration	Welsh Government
Emma Williams, Deputy Director Housing Policy Division	Welsh Government
Neil Buffin, Senior Lawyer	Welsh Government
Huw Charles, Bill Manager	Welsh Government
<b>5 July 2018</b>	<b>Organisation</b>
David Cox, Chief Executive	Association of Residential Letting Agents / Propertymark
Isobel Thomson, Chief Executive	National Approved Letting Scheme
Charlotte Burles Corbett, Managing Director	Royal Institute of Chartered Surveyors / Parkmans
Douglas Haig, Vice-Chairman and Director for Wales,	Residential Landlords Association
Chris Norris, Director of Policy & Practice	National Landlords Association
Liz Silversmith, Campaign Director	Let Down in Wales
Cerith D. Rhys Jones, External Affairs Manager	National Union of Students
Hannah Slater, Policy and Public Affairs Manager	Generation Rent
<b>11 July 2018</b>	<b>Organisation</b>
Jennie Bibbings, Campaigns Manager	Shelter Cymru
Alun Evans, Senior Campaigns and Advocacy Officer	Citizens Advice
Jamie Matthews, Senior Policy Officer	Citizens Advice
Matt Dicks, Director	Chartered Institute of Housing Cymru
Matthew Kennedy, Policy and Public Affairs Manager	Chartered Institute of Housing Cymru
Bethan Jones, Operational Manager	Rent Smart Wales

19 September 2018	
Rebecca Evans AM, Minister for Housing and Regeneration	Welsh Government
Emma Williams, Deputy Director, Housing Policy Division	Welsh Government
Helen Kellaway, Lawyer	Welsh Government
Huw Charles, Bill Manager	Welsh Government



## Annex 2: Schedule of written evidence

The following provided written evidence to the Committee:

Reference	Organisation
RHF01	National Union of Students
RHF02	Residential Landlords Association
RHF03	National Landlords Association
RHF04	Let Down in Wales
RHF05	Royal Institute of Chartered Surveyors Wales
RHF06	Generation Rent
RHF07	The National Approved Letting Scheme
RHF08	Association of Residential Letting Agents
RHF09	Shelter Cymru
RHF10	Chartered Institute of Housing
RHF11	Citizens Advice
RHF12	Joint letter from CIH EHRC CHC Tai Pawb and Shelter
RHF13	J. Dix. private sector landlord
RHF14	Property Redress Scheme
RHF15	Country Land & Business Association
RHF16	Tai Pawb
RHF17	Cardiff University Students Union
RHF18	Residential Landlords Association
RHF19	The National Approved Letting Scheme