

Housing Rights

www.housingrights.org.uk
@housingrightsNI

Consultation Response

A Response to the Consumer Council's Draft Corporate Plan, 2016-2021; and Draft Forward Work Programme, 2016-17

March 2016

when everyone has a home

Housing Rights has over 50 years' experience of delivering free, independent housing advice across Northern Ireland. We welcome the opportunity to respond to the draft Corporate Plan 2016-2021, and draft Forward Work Programme 2016-2017, of the Consumer Council.

We support the Council's 5 objectives of empowering consumers; protecting consumers; representing consumers; understanding the needs of future consumers and sustainable consumption; and providing value for money and good governance.

Further to this, we welcome the Council's commitment to addressing fuel poverty and improving energy efficiency. These are significant concerns for our clients, particularly low-income households, and tackling these issues will continue to be vital in sustaining homes and tenancies across Northern Ireland; the most recent House Conditions Survey found that 42% of all NI households were in fuel poverty¹; for low-income households, this proportion rose to 79%.

Letting Fees

We would suggest that the Consumer Council, in addition to the projects identified in their draft Forward Work Programme and Corporate Plan, consider the issue of fee-charging by letting agents in Northern Ireland, particularly in respect of the following Council objectives:

- 1.1 – 'Providing consumers with relevant information/advice/education so that they can make informed choices on how to shop safely and save money'²; and
- 3.4 – 'Working to protect consumers through developing or enforcing statute or regulation.'³

In their recent discussion paper on the 'Review of the Role and Regulation of the Private Rented Sector', the Department for Social Development has acknowledged the 'serious concern' of fee- and premium-charging by letting agents in Northern

¹ Northern Ireland Housing Executive (2011) 'NI House Condition Survey, 2011', p20

² Consumer Council (2016) 'Draft Corporate Plan 2016-2021', p55

³ Ibid., p59

Ireland.⁴ In 2013, the Private Tenants' Forum and Housing Rights conducted research into the practice of letting fees. This research found the practice of fee-charging was widespread; the majority of the 40 letting agents contacted charged fees ranging from £25 to £100, with the typical fee being £47.69. These fees are generally intended to cover routine services such as credit checks or administration, and generally were not advertised on agents' websites.⁵

Such charges add significant affordability barriers to prospective tenants, who already face rising rents and correspondingly increasing deposit requirements when attempting to initially secure a tenancy.⁶ Housing Rights believes that the practice of charging letting fees may actually be illegal, under Article 3 of the Commission on Disposals of Land (Northern Ireland) Order 1986:

“any stipulation which has the effect, on a disposal of land, of obliging the person acquiring the land to pay commission (including fees, charges, disbursements, expenses and remuneration) due to an agent acting for the person disposing of the land, is void by virtue of this Order. In addition, in relation to lettings of land, any stipulation which has the effect of obliging the tenant to pay commission due to an agent acting for the landlord in connection with rent reviews or rent renewals/extensions is void by virtue of this Order. Money paid by a person under a stipulation which is void by virtue of this Order, is recoverable by that person.”⁷

Housing Rights would therefore encourage the Consumer Council, in their work on behalf of consumers in Northern Ireland, to consider appropriate and effective action to combat the practice of fee-charging by letting agents in Northern Ireland in their Corporate Plan and Forward Work Programme.

⁴ Department for Social Development (2015) 'Review of the Role and Regulation of the Private Rented Sector', p18

⁵ Housing Rights Service & Private Tenants' Forum (2013) 'The Hidden Costs of Private Renting in Northern Ireland: An Investigation into the Practice of Letting Charges', p2

⁶ Housing Rights (2015) 'Letting Fees in Northern Ireland', p2

⁷ 'The Commission on Disposals of Land (Northern Ireland) Order 1986', pp1-2

Housing Rights has included a copy of research into the practice of letting charges carried out by the Private Tenants Forum in 2013, and a copy of Housing Rights' Briefing Paper on Letting Fees, as appendices to this submission.

For further information on this response please contact
Stephen Orme,
Policy & Public Affairs Officer,
Housing Rights,
(t): 028 9064 5640, (e): stepheno@housingrights.org.uk

Letting Fees in Northern Ireland: an update on investigation of the practice of charging letting fees.

November 2015

The Minister for Social Development launched a fundamental review of the private rented sector on 12 November 2015. The review is wide-ranging and aims to make the private rented sector better able to meet the growing demands put on it. Between 1991 and 2011, there was a five-fold increase in the number of people living in the private rented sector. Latest housing figures show that 21% of households in NI now live in the private rented sector.¹

It is about 10 years since the private rented sector was last examined in such detail. One area which Housing Rights hopes will be addressed is the issue of 'letting fees'. This briefing reflects Housing Rights current position regarding the levying of such charges in Northern Ireland and updates two earlier policy papers produced in 2013 ["The Hidden Costs of Private Renting in Northern Ireland", May 2013, and Housing Rights policy response on the OFT draft guidance for letting professionals, Dec 2013.]

What are letting fees?

Letting fees are additional charges imposed for services included in the routine letting and management of a property. Article 3 of the Commission on Disposals of Land (Northern Ireland) Order 1986, which governs the levying of such fees, states that

"any stipulation which has the effect, on a disposal of land, of obliging the person acquiring the land to pay commission (including fees, charges, disbursements, expenses and remuneration) due to an agent acting for the person disposing of the land, is void by virtue of this Order. In addition, in relation to lettings of land, any stipulation which has the effect of obliging the tenant to pay commission due to an agent acting for the landlord in connection with rent reviews or rent renewals/extensions is void by virtue of this Order. Money paid by a person under a stipulation which is void by virtue of this Order, is recoverable by that person".²

Housing Rights believes the practice of charging letting fees may be illegal under this Article.

Letting fees and the private rented sector

Letting fee charges affect tenants [and landlords] in the private rented sector, a sector growing in size largely due to substantial waiting lists for social housing and affordability issues for first time buyers. According to the latest publication of Northern Ireland Housing Market and Perspectives 2015-2020³:

- the private rented sector accounts for almost a fifth of all housing stock and is now the second largest tenure type in Northern Ireland after home ownership;
- young people, families, and those on low income are becoming increasingly reliant on privately rented accommodation;
- reliance on the sector to meet housing need is likely to continue in the longer term.

¹ <https://www.dsdni.gov.uk/publications/family-resources-survey-report-2013-2014>

² <http://www.legislation.gov.uk/nisi/1986/767/contents>

³ http://www.nihe.gov.uk/northern_ireland_housing_market_perspectives_2015-2018.pdf

On foot of analysis of private rented sector casework queries, Housing Rights and the Private Tenants Forum⁴ undertook a 'mystery shopper'⁵ exercise in March 2013 and of the 40 letting agencies contacted, found that:

- the majority charged additional fees;
- most did not advertise these costs;
- in addition to a deposit and one month's rent in advance, private rent sector tenants were charged a further £47.69 on average in letting fees to set up a tenancy;
- charges imposed were referred to as 'administration fees' to cover routine administrative services such as reference and credit checks, and were often much higher than the actual costs incurred by letting agents to undertake such procedures;
- costs for 'administration fees' had often already been incurred by the landlord [and as such, raises the issue of potential for 'double charging' by agents to both landlords and tenants].

The exercise also revealed wide variation in fees with charges in urban areas notably higher than in rural locations, and disparity in the level of charges imposed by different agents for the same service[s].⁶

Impact of letting fees on private rented sector affordability in Northern Ireland

Over a third of Housing Rights casework queries relate to affordability in the private rented sector: issues associated with deposits and rent in advance are compounded by the charging of miscellaneous letting fees, the combined impact of which further increases the financial burden facing prospective tenants. In real terms, this not only compromises affordability but potentially access to available private sector housing/accommodation.

Research undertaken by the University of Ulster⁷ also identified the increase in affordability problems for private tenants noting that inter alia:

- the average deposit in 2012 was £415, much higher than in 2006 when the comparable figure was £348;
- the average monthly rent in 2014 for Northern Ireland as a whole was £549 although this varied significantly by location;
- average rents in Belfast were £595;
- figures from the 2014 Northern Ireland Rental Index⁸ indicate ongoing healthy demand for rental properties, with approximately 23,400 new lettings throughout Northern Ireland (Belfast accounted for 41% of the total new lettings).

⁴ <http://www.housingrights.org.uk/private-tenants-forum>

⁵ https://en.wikipedia.org/wiki/Mystery_shopping

⁶ <http://housingrights.org.uk/sites/default/files/policydocs/HRS%20Mystery%20Shopping%20Exercise%20on%20Upfront%20Fees%20in%20the%20PRS%20May%202013.pdf>

⁷ http://www.nihe.gov.uk/living_in_the_private_rented_sector.pdf

⁸ http://www.nihe.gov.uk/performance_of_the_private_rental_market_in_northern_ireland_jan_june_2014.pdf

Housing Benefit continues to support the private rented sector with more than 60,000 private tenants in receipt of payments in 2013/14⁹. However private tenants on low income face increasing difficulty in meeting the shortfall between Housing Benefit and market rent e.g. in 2012 the average shortfall between Housing Benefit and market rent was on average £29 per week, compared with an average of £20 in 2006. Furthermore changes under the Local Housing Allowance scheme have now made the shortfall ever greater for private tenants.

Letting fees in other jurisdictions

Problems with letting fees are not unique to Northern Ireland although unlike the position here where neither tenants nor landlords have any protection or redress, other jurisdictions have already taken action. This has ranged from an outright ban [as in Scotland], establishment of mechanisms for dealing with complaints [in England and Wales] and requirements for letting agents to be licenced and follow a code of practice [as in the Republic of Ireland].

Scotland

Letting fees were made illegal in Scotland in 2012. Whilst the Scottish Landlords Association and the Council of Letting Agents felt the ban on fees would result in higher rents, research commissioned by Shelter¹⁰ found landlords in Scotland were no more likely to have increased rents since 2012 than landlords elsewhere in the UK. Generation Rent¹¹ also concluded there had been no compelling research showing a causal link, either way, between ending lettings agents' fees for tenants and increased rents.

England and Wales

Chapter 3, part 3 of the Consumer Rights Act 2015 imposes a duty on letting agents in England and Wales to publicise details of their relevant fees. In England (but not Wales) lettings agents are also required to publicise both their membership of the Redress scheme registration for estate agencies¹² and any client money protection scheme in place (if applicable).¹³ [To date the introduction of the scheme in England appears to have had a positive impact, with the Property Ombudsman¹⁴ reporting that two-thirds of complaints in relation to letting agents and fees had been upheld since the introduction of the legislation.]

Republic of Ireland

Section 90 of the Property Services (Regulation) Act 2011 infers that charging a tenant an administration fee is prohibited in that “..... *any provision (whether express or implied) in an agreement in respect of the sale or letting of land whereby the purchaser or tenant, as the case may be, is required to pay or otherwise bear the cost of the licensee's fees or expenses in respect of the sale or letting, as the case may be, shall be void, and any moneys paid pursuant to such a provision shall be recoverable as a simple contract debt in a court of competent jurisdiction.*”¹⁵ Letting agents in the Republic are also required under law to be licenced with the

⁹ http://www.nihe.gov.uk/northern_ireland_housing_market_perspectives_2015-2018.pdf

¹⁰ http://www.england.shelter.org.uk/.../6636_Scottish_letting_fees_report_v9.pdf

¹¹ <http://www.generationrent.org/>

¹² <https://www.gov.uk/redress-scheme-estate-agencies>

¹³ <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

¹⁴ <http://www.ombudsman-services.org/property.html>

¹⁵ <http://www.irishstatutebook.ie/eli/2011/act/40/section/90/enacted/en/html#sec90>

Property Services Regulatory Authority¹⁶ and abide by a code of practice. Those who are members of a professional body, such as the Institute of Professional Auctioneers and Valuers¹⁷ or the Society of Chartered Surveyors Ireland¹⁸ are obliged, under the terms of their membership, to hold a current licence and they too must abide by a code of practice.¹⁹

Need for improved regulation

The charging of letting fees highlights the broader concern, shared by both Housing Rights and the Landlords Association for Northern Ireland²⁰ regarding the lack of regulation in the letting sector with the chair of the organisation stating that: *“LANI as a rule are against Double Charging by agents to both Tenants and Landlords. They should not be made to pay for all manner of transactions as previously discussed. LANI supports anything that shows greater clarity in agents’ fees. LANI and its members are aware tenants are being charged for a raft of fees before they even see a property and this should not be the case. However, we know there are plenty of good agents who do show this and are happy to disclose whatever is requested.”*

Removal of financial barriers limiting prospective tenant access to the sector, such as high upfront fees²¹, is also one of the key objectives of the Private Tenants’ Forum’s [PTF] Agenda for Action. The Forum, along with Housing Rights, believe action is required to tackle poor practice within the sector and an end to unfair charges associated with renting privately.

The way forward

The mystery shopping exercise identified lack of transparency and consistency with respect to letting fees charged in Northern Ireland. Despite the Committee of Advertising Practice subsequently putting in place a requirement for letting fees to be disclosed in rental property advertisements (since 2013), problems remain – particularly with respect to the legality or otherwise of the practice. As such Housing Rights feels the forthcoming review of the private rented sector offers the ideal opportunity to remove any such ambiguity by way of legislation to ban such charges outright, thereby affording prospective private sector tenants the protections enjoyed by similar tenants in Scotland.

An outright ban notwithstanding, standards in the sector require urgent and immediate attention by, at the very least, introduction of a regulatory code of practice for letting agents and a requirement to belong to an approved redress scheme.

¹⁶ <http://psr.ie/website/npsra/npsraweb.nsf/page/index-en>

¹⁷ www.ipav.ie

¹⁸ <https://www.scsi.ie>

¹⁹ <http://www.threshold.ie/download/pdf/thresholdseekingprivaterentedaccommodation.pdf>

²⁰ <http://www.lani.org.uk/>

²¹ <http://housingrights.org.uk/sites/default/files/Agenda%20for%20action.pdf>

The Hidden Costs of Private Renting in Northern Ireland

An Investigation into the Practice of Letting Charges



May 2013

1. Summary

- Housing Rights Service and members of the Northern Ireland (NI) Private Tenants' Forum¹ carried out a mystery shopping exercise of 40 letting agents operating in the private rented sector (PRS) across NI in March 2013.
- The majority of letting agencies contacted in the survey charge additional fees which include charges for general administration costs; tenancy deposit protection costs; credit checking fees (for tenants and guarantors); tenancy renewal fees or check in inventory charges.
- There is wide variation both in the level of additional fees being levied on tenants and in the services being charged.
- These charges range from £25 to £100 with the average upfront fee being £47.69.
- Most letting agents do not advertise these costs on their websites.
- The additional fees charged to tenants appear to be much higher than the costs that would be incurred by letting agents to carry out routine administration services, such as reference and credit checks.
- Some letting agents could be 'double charging' i.e. charging tenants for services which they are also providing for landlords.
- We are concerned that upfront fees are acting as a barrier preventing people on low incomes from finding a home in the PRS.
- We believe there should be a requirement for letting agents to present landlord and tenant fees on their websites, in adverts and in all promotional material in a way that is easily comparable across agents.
- We also believe there is a need for the greater regulation of letting agents' practices.

2. Background

Housing Rights Service has identified through its casework many difficulties and issues relating to the practice by letting agencies of charging upfront fees or premiums in the PRS. Following the publication of a number of recent reports in Britain, Housing Rights Service (HRS) decided to investigate this practice by conducting a mystery shopping exercise of the fees charged by letting agencies. Members of the NI Private Tenants' Forum helped carry out the phone survey and thanks are due for their assistance in this regard.

A sample of 40 letting agents across Northern Ireland was telephoned in March 2013 and asked for details of a 2 bedroom property. All letting agents were chosen at random through an internet search. They had not been highlighted as agents who had been previously identified as making high charges. The following specific information was sought:

¹ The NI Private Tenants' Forum involves tenants based in specific localities and communities of interest across Northern Ireland. Membership is drawn from private tenants whom, by choice or necessity, have found themselves in rented accommodation and wish to see an improvement in standards. The main aim of the forum is to encourage tenant participation in shaping relevant legislation, policy and practice in the private rented sector (PRS).

- The rent per month for the property.
- The amount payable for the deposit.
- Details of any upfront fees such as administration and/or credit reference charges.
- Any other charges/fees to pay.

We also examined the websites of the sampled agents (where available) to see if they contained information on additional fees and membership of professional bodies. Members of the NI Private Tenants' Forum conducted the majority of the short interviews.

3. Findings

The majority of letting agencies (60%) contacted in the survey charge upfront fees with a wide variation both in the level of additional fees levied by agents and the services that are being charged for. These charges range from £25 to £100 with the average fee being £47.69. The majority of Belfast agents charge an upfront fee – the average being £49.23. The average upfront fee charged by agents outside Belfast is £46.16. Most agents that don't charge fees are based in rural locations.

The types of upfront fees included charges for general administration costs; tenancy deposit protection costs; credit checking fees (for tenants and guarantors); tenancy renewal fees and check in inventory charges.

The average charge for administration costs in our sample is £40.36 with the average fee for tenant credit reference checks being £39.23 and credit checks for guarantors costing on average £33. We found that two agents are considering charging a fee in association with their costs under new tenancy deposit protection arrangements and one agent charging £25 for check in inventory costs with another charging £25 as a tenancy renewal fee. One agent charges a standard £25 for each letter sent informing tenants of rent arrears.

Table 1: Average upfront fees

Average upfront fee – all charges	£47.69
Average administration charge	£40.36
Average credit checking fee for tenants	£39.23
Average credit checking fee for guarantors	£33.00
Average upfront fee charged by Belfast agents	£49.23
Average upfront fee charged by agents outside Belfast	£46.15

Most charges are not advertised on agents' websites – only 4 agents (10% of the sample) made references to these costs. On a number of occasions probing questions had to be asked by our volunteers before the information on fees was provided over the phone.

All agents surveyed charge a deposit (normally equivalent to one month's rent) and also request a month's rent in advance. The average rent for a 2 bedroom property we found was £484.37 with the average deposit amounting to £479.87. The highest rent we found for an advertised 2 bedroom property was £675 per month. The largest deposit was also £675 for a letting in Belfast.

In regard to the largest financial outlay expected from tenants taking on a PRS letting, we found one Belfast agent charging a non-returnable fee of £40 for both a tenant and guarantor credit reference check, on top of a deposit and rent in advance (both £675), therefore requiring an initial upfront payment of £1,430 for the tenant to move in.

Only 15 (37.5%) of the 40 lettings agents surveyed advertised their membership of professional bodies such as RICS, ARLA, the Property Ombudsman, IPAV and NAEA. The majority of these (7) are members of the Property Ombudsman.

4. Case Studies

HRS also collected a number of recent case studies from our clients regarding tenancy fees and charges. A selection of these is provided below:

1. Two separate clients reported being charged £150 by a letting agent, in Belfast, for amending names on a tenancy agreement. No explanation or breakdown of this fee was provided by the letting agent. The clients felt this was unfair as the initial agreement was drawn up on the advice of the agent. They believe landlords should cover these fees as part of their arrangement for management services with the letting agent.

2. A client reported that a letting agent in Larne, as standard practice, charges a £100 administration fee per tenancy allocated.

3. A client reported that a letting agent in Belfast was charging foreign nationals who have been in the UK for less than six months, a non-refundable credit reference fee of £95, while charging £40 for all other applicants. This difference in practice was felt to be a possible breach of the Race Relations (Northern (Ireland) Order 1997. This issue was referred to the Equality Commission NI for follow up and we understand this differential practice has now ceased.

4. A client reported that a letting agency in Belfast charges £40 to check the reference of every guarantor provided as a condition of taking on a tenancy. If the reference check fails, the fee is non-refundable and the applicants have to provide another contact and pay the fee again. The policy is described on the agent's website as follows: "There will be a small administration charge of £40 for each guarantor's reference and, without this, it is

impossible for the application to proceed.”

5. Conclusions

HRS believes that the evidence from this survey supports the call for regulation of the letting agent industry and that no charges should be imposed on tenants for functions which are part of the routine letting and landlord management process.

This issue has been the subject of recent policy attention.² For example, the Advertising Standards Authority (ASA) in March 2013 ruled against an estate agent for not being upfront about administration fees and now expects all letting agents to make clear what compulsory fees are charged when letting a property and to include these in the price quoted.³

More recently, the UK Government has confirmed it will consult on making letting and management agents join a redress scheme, following amendments made to the Enterprise and Regulatory Reform Act which allow the Secretary of State to make an order requiring letting and managing agents of privately rented and residential leasehold homes in England and Wales to belong to a redress scheme.⁴

HRS believes both the Department for Social Development (DSD) and Department of Enterprise, Trade and Investment (DETI) should jointly examine these developments and their implementation in Northern Ireland. We also believe the following proposals should be considered:

- Letting agents in Northern Ireland to be brought under the Estate Agents Act (1979), thereby giving the Office of Fair Trading (OFT) powers to ban agents who act improperly.
- All letting agents in Northern Ireland to be required to become members of an ombudsman service, giving tenants the opportunity to pursue redress in cases of poor practice.
- Letting agents to be required to present landlord and tenant fees on their websites, in adverts and in all promotional material in a way that is easily comparable across agents.
- Government to clarify the scope and effectiveness of existing legislation as contained in the Commission on Disposals of Land (Northern Ireland) Order 1986 which relates

² See for instance CAB (2009). *Let down. CAB evidence on letting agents and their charges*, CAB Briefing, London: Citizens Advice Bureau; Shelter Scotland Research Report (October 2011). *Premiums in the Private Rented Sector*; Resolution Foundation (December 2011). *Renting in the Dark: Creating a lettings market that works for tenants*; Which? (November 2012). *Renting Roulette. Consumer experience of the lettings market*.

³ See <http://asa.org.uk/News-resources/Media-Centre/2013/ASA-clamps-down-on-hidden-letting-agent-fees.aspx>

⁴ See <http://www.legislation.gov.uk/ukpga/2013/24/part/6/crossheading/redress-schemes-lettings-and-property-management-agents/enacted>. Please note that the relevant sections (83-88, Part 6) of the Act only apply to England and Wales.

to the charging of 'commission' by letting agents in Northern Ireland.

- Government to consider whether it is necessary to ban the practice of charging upfront fees (as is the current position in Scotland) if problems with opaque and disproportionate fees persist.

For further information contact

Peter O'Neill
Policy & Participation Officer
Housing Rights Service
peteroneill@housingrights.org.uk

May 2013