

# 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.<sup>1</sup>

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["The Hidden Costs of Private Renting in Northern Ireland", May 2013, and Housing Rights policy response on the OFT draft guidance for letting professionals, Dec 2013.]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".<sup>2</sup>*

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 2015-2020<sup>3</sup>:

- 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.

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

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

<sup>3</sup> [http://www.nihe.gov.uk/northern\\_ireland\\_housing\\_market\\_perspectives\\_2015-2018.pdf](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 Forum<sup>4</sup> undertook a 'mystery shopper'<sup>5</sup> 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].<sup>6</sup>

## **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 Ulster<sup>7</sup> 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 Index<sup>8</sup> 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).

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

<sup>5</sup> [https://en.wikipedia.org/wiki/Mystery\\_shopping](https://en.wikipedia.org/wiki/Mystery_shopping)

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

<sup>7</sup> [http://www.nihe.gov.uk/living\\_in\\_the\\_private\\_rented\\_sector.pdf](http://www.nihe.gov.uk/living_in_the_private_rented_sector.pdf)

<sup>8</sup> [http://www.nihe.gov.uk/performance\\_of\\_the\\_private\\_rental\\_market\\_in\\_northern\\_ireland\\_jan\\_june\\_2014.pdf](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 2013/14<sup>9</sup>. 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 Shelter<sup>10</sup> found landlords in Scotland were no more likely to have increased rents since 2012 than landlords elsewhere in the UK. Generation Rent<sup>11</sup> 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 agencies<sup>12</sup> and any client money protection scheme in place (if applicable).<sup>13</sup> [To date the introduction of the scheme in England appears to have had a positive impact, with the Property Ombudsman<sup>14</sup> 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.*”<sup>15</sup> Letting agents in the Republic are also required under law to be licenced with the

<sup>9</sup> [http://www.nihe.gov.uk/northern\\_ireland\\_housing\\_market\\_perspectives\\_2015-2018.pdf](http://www.nihe.gov.uk/northern_ireland_housing_market_perspectives_2015-2018.pdf)

<sup>10</sup> [http://www.england.shelter.org.uk/.../6636\\_Scottish\\_letting\\_fees\\_report\\_v9.pdf](http://www.england.shelter.org.uk/.../6636_Scottish_letting_fees_report_v9.pdf)

<sup>11</sup> <http://www.generationrent.org/>

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

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

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

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

Property Services Regulatory Authority<sup>16</sup> and abide by a code of practice. Those who are members of a professional body, such as the Institute of Professional Auctioneers and Valuers<sup>17</sup> or the Society of Chartered Surveyors Ireland<sup>18</sup> are obliged, under the terms of their membership, to hold a current licence and they too must abide by a code of practice.<sup>19</sup>

## Need for improved regulation

The charging of letting fees highlights the broader concern, shared by both Housing Rights and the Landlords Association for Northern Ireland<sup>20</sup> 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 fees<sup>21</sup>, 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.

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

<sup>17</sup> [www.ipav.ie](http://www.ipav.ie)

<sup>18</sup> <https://www.scsi.ie>

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

<sup>20</sup> <http://www.lani.org.uk/>

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

