

**Communities and Local Government Committee Inquiry: Draft Tenant Fees Bill**  
**Written Submission from ARLA PropertyMark**  
**December 2017**

**Background**

1. ARLA PropertyMark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA PropertyMark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA PropertyMark agent, consumers have the peace of mind that they are protected and their money is safe.

**General comments**

3. ARLA PropertyMark does not support the banning of letting agents charging fees to tenants. We believe fees should be open, transparent and reasonable. They represent legitimate costs to business that need to be covered.
4. When renting a property, a tenant is taking a legal interest in land for the duration of their tenancy and the fees charged to tenants are broadly similar to those charged when purchasing a property (referencing checks equate to mortgage application fees, contract negotiation charges are akin to conveyancing, and inventory costs are similar to a survey).
5. In terms of fees, the only difference between renting a home and buying a property is that when purchasing a property, the fees are paid to three different parties and generally cost the purchaser much more, whereas when renting a property, the letting agent acts in a quasi-legal capacity, undertaking these tasks on behalf of the tenant.

**Answers**

**The Government's stated objective is to deliver 'a fairer, more competitive, and more affordable lettings market where tenants have greater clarity and control over what they will pay and where the landlord is the primary customer of the letting agent.' Do the provisions of the draft Bill enable this objective to be achieved?**

6. ARLA PropertyMark does not believe that the provisions of the Draft Tenant Fees Bill will enable any of the Government's objectives to be delivered. A ban on letting agent fees will have a profoundly negative impact on the rental market and not deliver either a fairer, or a more competitive, or a more affordable lettings market and will not give tenants greater clarity and control over what they will pay. Currently, tenants know and understand what they

are committing to at the start of the tenancy. A ban will reduce the services that letting agents provide and cost the sector jobs. It will make buy-to let investment even less attractive and ultimately result in the extra costs borne by landlords being passed on to tenants.

7. The Bill will not make the market fairer for tenants. If less-professional and part-time landlords turn away from agents due to increasing costs, they will likely be unaware of new (and existing) legal requirements, causing widespread non-compliance and putting tenants in danger. This could well result in more tenants having to seek assistance from their local authority. In the current fiscal climate, many local authorities are dispensing with their Tenancy Relations Officers and their Housing, Environmental Health and Trading Standards teams, which are already over-stretched and under resourced, will struggle to enforce the laws. This will leave tenants, particularly vulnerable tenants, living in substandard conditions with nowhere to turn.
8. The Government outline in the Draft Tenant Fees Bill (Point 18 on Page 4) that they believe a ban on fees will make the private rented sector more competitive. However, the Government has provided no evidence to support this. We fundamentally believe that the Government is misguided in its approach for two reasons. Firstly, banning fees will reduce competition in the market by driving some agents out of business. In particular, smaller agents will struggle, their turnover will become smaller, driven out of business or taken over by larger agencies creating corporate monopolies rather than increasing competition in the sector. Secondly, those agents that remain in the sector will become more selective about the tenants they choose. The average fee charged by ARLA Propertymark agents is £202 per tenant, which we think is fair, reasonable and far from exploitative for the service tenants receive. As the ban shifts the focus of the agent from the tenant to the landlord this will lead to agents selecting the best tenant for the landlord; ultimately leading to some tenants finding it more and more difficult to find property to rent.
9. The ban will not make the sector more affordable to tenants. Fees charged by letting agents represent legitimate business costs that need to be covered. As a result 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 as a result of a full ban on fees tenants will pay an increased rent of £103 per year.<sup>1</sup> Their analysis shows that as rents will increase by less than the average tenant fees, those tenants who move more frequently will enjoy savings on overall costs. However, those that move property less often will not reap the same benefits in savings. Typically, these are likely to be lower income families who will probably move less often than younger, wealthier millennials. For savings to accrue to tenants from the change in policy they would need to move as often as every two-and-a-half to three years. As a consequence those tenants in long term tenancies will end up worse off. Rather than creating

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<sup>1</sup> <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

a system which is more affordable and encourages long-term tenancies, the proposed ban will financially disadvantage tenants unless they move on a regular basis.

10. The Government's approach will not bring clarity and control to tenants and the sector because current laws are not being enforced. Letting agent fees should be open, transparent and reasonable. No review has taken place and we are very disappointed that no action was taken after the Parliamentary Under Secretary of State for Communities and Local Government stated in the House of Commons on 3 May 2016, "when the requirement on letting agents to publicise fees was introduced in October 2015, we said we would review how well the scheme was working after 12 months."<sup>2</sup> Furthermore, the Minister added, "The review will be carried out later this year. In the meantime, the Government's position is that a ban or cap on letting agent fees would be disproportionate, probably pushing up rents without benefiting either landlords or tenants."<sup>3</sup> Instead of working with the industry and looking at the evidence, the Government announced unexpectedly that it would ban letting agent fees to tenants at the Autumn Statement on 23 November 2016. Under the Consumer Rights Act all letting agents in England must openly display a list of all fees, charges or penalties which may be incurred by a landlord or tenant.<sup>4</sup> However, there has been very little enforcement of these rules meaning that tenants and landlords are not getting the control and clarity they need in order to make informed decisions. Rather than pressing ahead with plans for more legislation in the sector to ban letting agent fees, the Government could provide greater control and clarity by using the powers they already have to improve transparency and introduce tougher penalties for agents found to be breaching the law.

#### **Are the Draft Bill's provisions necessary, clear and workable?**

11. The Draft Tenant Fees Bill is a very concise and well drafted piece of legislation. In this context we believe that the Draft Bill's provisions are clear and on the whole are workable. However, clarification is needed on the role of portals in displaying information and the Green Deal requirements. The Government also need to specify whether change of sharer and Surrender of Tenancy will be classed as a tenant default fee and if the premium associated with Deposit Replacement Insurance Schemes will be acceptable. We also strongly believe that the Government must exempt reference checks from the legislation in order to ensure that tenants are not overstressing themselves in terms of what they can afford.
12. It is sensible that the Draft Tenant Bill extends the requirement for agents to display all fees, charges and penalties under the Consumer Rights Act to property portals and any third party websites. Most tenants now search for rental accommodation by using the portals and will not visit the letting agent's own website or go into a branch until later in their property search. However, the Government need to clarify that once agents have provided the relevant

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<sup>2</sup> The requirement for letting agents to display fees was actually introduced on 27 May 2015.

<sup>3</sup> <https://hansard.parliament.uk/Commons/2016-05-03/debates/1605041000002/LettingAgentFeesAndDepositsPrivateRentedSector>

<sup>4</sup> <http://www.arla.co.uk/news/april-2015/consumer-rights-act-2015-publicising-fees/>

information to the portals it will be the legal responsibility of the portals to ensure that the fees are showing correctly. Agents pay to advertise on portals and by ensuring that liability is with them it will guarantee that every agent provides this information in a unified way; reducing the risk of agents opting out from using some portals and not others. It is also very difficult to display fees if properties are being advertised on third party websites like Twitter that require users to provide information in 280 characters or less.

13. Despite the Draft Bill banning landlords and agents from requiring tenants to secure and pay for services from any third party, the Government must be clear that loans under the Green Deal (or any subsequent energy efficiency scheme) which are payable by the tenant must be excluded from the ban. The Energy Act 2011 introduced a series of energy efficiency targets for residential properties. The Green Deal helps tenants and landlords make energy-saving improvements to the property. Tenants pay for the agreed proportion of the improvements through their energy bill during their tenancy. Therefore, tenants must agree to the non-optional Green Deal charge as a condition of granting, renewing or continuing a tenancy. In its present form, this would fall foul of Clause 2 (2) of the Draft Bill. If the Government wants the sector to use the Green Deal then the loans which are payable by the tenant must be exempt from the ban.
  
14. We believe letting agents should be able to charge tenants for dealing with changes of sharer / tenant or where a tenant wants to leave their tenancy early (Surrender of Tenancy). This is a breach of their tenancy agreement and almost every service provider (e.g. mobile phone contracts) comes with a default payment for early termination. By enshrining this into law it will give agents ultimate certainty and not create a PPI moment for the industry. Furthermore, a significant amount of time and resources is involved by agents in either a Surrender of Tenancy or change of tenant / sharer as effectively an entire new agreement, referencing and Right to Rent checks need to be undertaken. Such a situation will only ever occur at the request of the tenant or due to the tenant's actions. It will never be instigated by either a landlord or letting agent and therefore, we would argue that these should be exempt from the ban. Additionally, if they are not classed as a default payment by the tenant we are concerned that this service may not be provided at all, restricting tenants ability to move and reducing choice.
  
15. Recently, we have seen the emergence of deposit replacement insurance schemes whereby the tenant pays a non-refundable insurance premium (usually around one week's rent) before they sign the tenancy agreement. This insurance product then acts in place of a deposit and should the tenant go into rent arrears or damage the property, the landlord will be able to claim on the insurance policy. These schemes are not mentioned in the Draft Bill. Clarification is needed as to whether it will be acceptable to pay the premium rather than a tenancy deposit under the legislation. If they are permitted, will the annual insurance premium payment become a prohibited payment to a third party under Clause 2.2 of the Draft Bill or will these

schemes be deemed acceptable regardless of whether agents take them or not. The issue arises because essentially the option is only available at the beginning of the tenancy and not at renewal. Therefore if the option is chosen it will become a premium of continuing the tenancy and breach Clause 2.4 of the Draft Bill.

16. We believe that there should be an exemption for checks involved in referencing tenants. Reference checks are an essential part of the letting process, ensuring that tenants are who they say they are, work where they say they work and are able to make rental payments. If a tenant falls into rent arrears this could result in County-Court Judgments made against them, which could have a significant impact on their credit rating and their subsequent ability to obtain credit. In addition, tenant referencing is time consuming for letting agents and often involve significant time spent chasing all of the parties involved to complete the referencing process. Checks are frequently complex procedures and are in part (Right to Rent checks) required by law to create an excuse against civil penalty or criminal prosecution.<sup>5</sup> With such a chronic shortage of rental housing, a ban on fees for tenant referencing may make securing a rental home very difficult for those on low incomes or those who have a poor credit rating. In order 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.

#### **What are the resource implications for local authorities?**

17. The Draft Tenant Fees Bill outlines that Trading Standards departments will enforce any ban. However, Trading Standards need to be adequately resourced and funded. Unless specific funding is set aside for the sole purpose of enforcing these new laws, then we expect the same lack of effective enforcement on the ban on lettings fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015. This will result in professional agencies complying with the ban and rogue operators continuing to charge fees with impunity; thus creating a two-tier market. Furthermore, the level of enforcement across all aspects of landlord and tenant law is woefully inadequate. Until this issue is addressed and existing laws are properly enforced, we do not believe that new laws should be introduced as the result will be history repeating itself over again – professional landlords and agents will comply and the criminal element will continue operating under the radar.

#### **What is the likely impact of the legislation on key stakeholders including tenants, letting agents and landlords?**

18. In response to the Government's announcement in November 2016 that they will ban letting agent fees to tenants, ARLA Propertymark surveyed 1,008 letting agents to ask what the impact of a ban on fees would be. The majority of agents (90%) responded saying that rent

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<sup>5</sup> <http://www.arla.co.uk/lobbying/immigration-act/>

prices will increase as a result of banning fees. 60% said the quality of properties will decline and 40% think the ban will result in a fall in employment in the medium to long term.<sup>6</sup>

19. Letting agents deliver a hugely valuable service in ensuring that properties are safe, compliant and professionally managed. Up to June 2015, there were 145 laws with over 400 regulations that landlords need to abide by to legally let a property in England and Wales.<sup>7</sup> Legislation on residential lettings is amended regularly with new laws introduced frequently. If less professional and part-time landlords turn away from agents due to increasing costs, they will likely be unaware of new (and existing) legal requirements, causing widespread non-compliance and putting tenants in danger.
20. An outright ban on letting fees will likely mean that agents become unable to continue offering a full service to tenants; particularly Local Housing Allowance tenants who often require the assistance of their agent to fill in increasingly complex benefit applications. If agents withdraw the services they currently provide, the Department for Work and Pensions will likely see an increase in the number of failed Housing Benefit and Universal Credit applications because tenants have been unable to complete the forms on their own. Exempting referencing, as we suggest above, should effectively mitigate against this eventuality as letting agents will be able to retain current service levels to tenants.
21. The private rented sector is now the largest housing tenure outside of owner-occupation, set to grow and with an increasing numbers of families and longer term tenants. The professional services that letting agents provide will become even more important as a growing percentage of the population, from increasingly diverse demographics, rent their homes within an ever more complex legislative framework. However, after successive Governments have effectively focused on increasing property standards for those living in the private rented sector, policies such as this ban could well see the good work of the last two decades undermined as landlords struggle, with some failing, to make ends meet. The result will be a reduction in property conditions and an increase in poor management practices with the use of the professional services provided by letting agents reserved for only those who can afford it; leaving the most vulnerable tenants in the hands of inexperienced and/or unscrupulous landlords and agents.
22. The cost of running a letting agency – an office, staff, travel expenses, advertising properties and administration costs all mount up. Some letting agents may not be able to absorb the loss of income created by tenant fees and will close. Others may have to cut staff and costs. Capital Economics' analysis suggests that in the worst case scenario (where agents do not pass on any additional costs to landlords), 16,000 jobs will be lost in the sector and a further 8,000 in the supply chain and even in the most plausible scenario, whereby letting agents pass on 75% of the loss from the fees ban to landlords, this will result in 4,000 jobs in the sector being lost. In either situation, unemployment will increase as a direct result of the ban on letting fees;

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<sup>6</sup> <http://www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf>

<sup>7</sup> [http://www.propertychecklists.co.uk/downloads/20170508\\_1](http://www.propertychecklists.co.uk/downloads/20170508_1)

adding additional costs to the public purse in terms of direct unemployment benefits from those losing their jobs. It will also result in the reduction of new roles being created in the industry as it will reduce the ability for small businesses to grow, train their existing staff and take on properly-trained apprentices who will become the next generation of professional, qualified letting agents. Therefore, this policy again runs contrary to the Government's stated aim of championing small businesses; which represent the majority (60%) of the industry.

23. Private landlords are an important source of investment in housing stock and a worsening of their financial position will likely result in less investment. Some would-be landlords are likely to be put off by the increased costs that may be demanded by letting agents, and together with the withdrawal of mortgage interest rate relief and additional stamp duty, this will likely reduce the number of new entrants. This will put upward pressure on rents and stifle the market.
24. Finally, it is also important to note that residential lettings activity provides 58,000 jobs, which generate employee taxes in the order of £400 million for the exchequer each year. Furthermore, Value Added Tax (VAT) is currently charged on letting fees. Capital Economics estimate that the sector provides the Exchequer with annual tax revenues of around £1 billion, from VAT, business rates and employee taxes. Therefore, banning letting fees outright will result in a significant loss of income to the Exchequer.