PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

First Sitting

Tuesday 5 June 2018

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 9 June 2018

The Committee consisted of the following Members:

Chairs: †Mr Peter Bone, Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Witnesses

David Cox, Chief Executive, ARLA Propertymark

Isobel Thomson, Chief Executive, National Approved Lettings Scheme

Adam Hyslop, Founder, OpenRent

Richard Lambert, Chief Executive, National Landlords Association

David Smith, Policy Director, Residential Landlords Association

Public Bill Committee

Tuesday 5 June 2018

[Mr Peter Bone *in the Chair*]

Tenant Fees Bill

9.25 am

The Chair: Before we begin, I have a few preliminary announcements. Please switch electronic devices to silent. Teas and coffees are not allowed during sittings as they are deemed to be hot drinks, although you can persuade me otherwise. We will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication, and a motion to allow us to deliberate in private about our questions before the oral evidence session. In view of the time available, I hope that we can take those matters formally, without debate.

I call the Minister to move the programme motion standing in his name, which was discussed yesterday by the Programming Sub-Committee.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 5 June) meet—

(a) at 11.30 am and 2.00 pm on Thursday 7 June;

(b) at 9.25 am, 2.00 pm and 5.00 pm on Tuesday 12 June;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Table

Date	Time	Witness
Tuesday 5 June	Until no later than 10.25 am	ARLA Propertymark; National Approved Letting Scheme; OpenRent
Tuesday 5 June	Until no later than 10.55 am	National Landlords Association; Residential Landlords Association
Thursday 7 June	Until no later than 12.15 pm	Local Government Association; Chartered Trading Standards Institute
Thursday 7 June	Until no later than 1.00 pm	Shelter; Citizens Advice; Generation Rent; National Union of Students

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3; Schedule 1; Clauses 4 and 5; Schedule 2; Clauses 6 to 8; Schedule 3; Clauses 9 to 33; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 7.00 pm on Tuesday 12 June.—*(Rishi Sunak.)*

The Chair: The deadline for amendments to be considered at the first line-by-line sitting of the Committee was the rise of the House yesterday. The next deadline will be the rise of the House on Thursday for the Committee's sitting a week today.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Rishi Sunak.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Rishi Sunak.)*

9.27 am

The Committee deliberated in private.

Examination of Witnesses

David Cox, Isobel Thomson and Adam Hyslop gave evidence.

9.30 am

The Chair: We resume our public sitting and will hear evidence from the Association of Residential Letting Agents, the National Approved Letting Scheme, and OpenRent.

Before I call the first Member to ask a question, I remind all hon. Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme motion that the Committee has just agreed. For this session we shall have until 10.25 am. Also, I ask whether any members of the Committee wish to declare any relevant interest in connection with the Bill.

Mr Robert Goodwill (Scarborough and Whitby) (Con): May I draw attention to my entry in the Register of Members' Financial Interests. I have eight residential properties and three commercial properties, for none of which, however, we charge deposits or use letting agents.

James Frith (Bury North) (Lab): I draw attention to my entry in the Register of Members' Financial Interests. I have one property of which I am a landlord.

Richard Graham (Gloucester) (Con): I draw attention to my declaration in the Register of Members' Financial Interests. My wife and I have recently become landlords of a property.

Dr Paul Williams (Stockton South) (Lab): May I draw attention to my entry in the Register of Members' Financial Interests? My partner and I rent out two properties, and we are also tenants.

The Chair: Thank you. I call the first panel. Will the witnesses please introduce themselves for the record?

David Cox: I am David Cox, from the Association of Residential Letting Agents.

Isobel Thomson: I am Isobel Thomson, from the National Approved Letting Scheme.

Adam Hyslop: I am Adam Hyslop, from OpenRent.

Q1 The Chair: Good morning. This is a fairly informal process to help the Committee get views as background for when they go through the Bill line by line. It might be an idea, starting with Mr Cox, to make an opening statement.

David Cox: Thank you, Mr Bone. We do not support the Bill. We do not think it will achieve its aims. The market has grown up over a period of time. It is already quite a heavily regulated market. We estimate that there are about 145 pieces of legislation and 400 sets of regulations that govern the lettings industry. When talking about greater clarity and control, one of the problems that we have had is the complete lack of enforcement in the sector.

The Select Committee on Housing, Communities and Local Government has recently carried out an inquiry looking at the private rented sector. Enforcement levels are pitifully low. The London Borough of Newham prosecutes about 250 landlords and agents a year, and that accounts for half the number of prosecutions in the sector. I am sure that Isobel will talk about some research that NALS did last year on the impact of enforcement with respect to the agent transparency regulation from 2015. If laws were being enforced—if trading standards was going out and enforcing the law—we would not have the problem that the Bill is trying to solve.

We are worried that there will be a repeat of what has happened every time before: a new law is passed; professional agents—our members—will abide by that law; and unregulated and unprofessional agents will continue operating and charging fees with absolute impunity because there will be such low levels of prosecution.

Lending fees represent legitimate costs to business. They cover three essential elements of a contract: the tenant referencing, the contract negotiation and the inventory check-in/check-out report. Those services are provided to tenants, and landlords pay for the different services.

At the moment, an agent is effectively the servant of two masters. They are the agent to both, and they have a legal duty of care to both. We are worried that, when the fee ban comes into force, the services to tenants will probably diminish because the legislation effectively states that the primary consumer of the letting agent service is the landlord. Therefore, the customer service enhancements that legislation over the past 20 years has focused on—good property condition and good management practice—will be undone.

The research we undertook through Capital Economics last year indicates that it is likely that tenants will pay about £103 per tenant per year more in rent as a result of the ban. They will make a saving if they move more regularly, but we, like everybody else in this room, want to see longer-term tenancies. According to Capital Economics, the over-under is two and a half years. Therefore, people who want well-maintained tenancies—three-year tenancies—will end up paying more as a result of the ban than they would if we left it as it is today.

Isobel Thomson: I concur with everything David just said. I am a representative of a letting agent organisation, and our aim is to raise standards in the private rented sector. We are very concerned about the impact of the ban. We think it will result in an increase in rents, which is ultimately not in the interests of the tenant. Landlords faced with additional costs may move to self-management, which would not ultimately be in the interests of the tenant either.

During the passage of this Bill, I am sure you, as consistency MPs, have visited letting agencies in your constituencies, so you know that they are good, sound businesses, and that people work hard to deliver the service to tenants. There will be an impact on those small businesses, which are the eyes and ears of the local housing community. Businesses will close, and there will be a loss of employment. It was sad to read the Government quite glibly say in their impact assessment that the impact of the ban will be about £10,000 per branch of a letting agent company, because £10,000 outside London is the cost of a part-time member of staff. A small business—perhaps a sole trader with only one member of staff—will have to get rid of that part-timer, who could easily be a tenant, so there is an impact there.

David mentioned enforcement. We carried out a survey of 42 local authorities in June last year, looking at the enforcement of the Consumer Rights Act 2015. Of those 42 local authorities, 93% had failed to issue a single financial penalty against a letting agent in the previous two years.

What are we going to be faced with with the fee ban? Enforcement really needs to come to the fore. The Government have mentioned that there will be a lead enforcement authority. We need to know who that is, how they are going to gear up and how they are going to be resourced. That is what I would like to see.

Adam Hyslop: Just to give you some context, OpenRent is the largest letting agent in the UK. We let 70,000 properties last year, and we are on track to let 100,000 properties this year. Our policy since inception six years ago has been to ban admin fees. We provide quite a compelling case study that the fee ban is not at odds with running a successful and sustainable letting business.

Further to that, I do not believe a fee ban would increase rents. The logic for that is that our rents across the country are in line with the national average. Roughly, the nationwide average is about £900 per month, and the London average is about £1,500 per month. In fact, by switching to OpenRent from a high street agent, landlords save, on average, over £1,000, and we often see those savings passed back to tenants in the form of lower rents. I am here today hopefully as a case study to show that some of the concerns the industry has raised might not be valid.

We have two specific concerns about the Bill. One is the issue of default fees. The concern is that, as the Bill is currently drafted, tenants might not have the full protection that it intends. I have further comments on that, which I will probably come to later. Secondly, there is the treatment of holding deposits relating to false and misleading information provided by tenants. The period during which a tenant is referenced is quite complex, and I feel that the current drafting does not quite provide the incentives to get the right outcomes for tenants or landlords acting in good faith. We have those two concerns about the detail of the Bill, but at a high level we are supportive.

The Chair: Thank you. We will now move to questions from members of the Committee. This is a rather unusual situation because this is a time when the Minister is allowed to have some fun and to ask you questions. Let us start with the shadow Minister.

Q2 Melanie Onn (Great Grimsby) (Lab): Thank you, Mr Bone. I wonder if I could get your views on the ban on tenant fees in Scotland. Obviously, there was a revision to the 1984 ban on tenant fees in 2012, and I would like your views on what that did to the sector.

David Cox: As you pointed out, tenant fees were technically banned in Scotland in 1984, but the legislation was not well drafted and it therefore required revision in 2012. It meant that tenant fees in Scotland between 1984 and 2012 were generally lower than they are in England, at around the £50 or £60 mark.

Various organisations have done research into this, and I would point to the Scottish Government's own statistics, which suggest that in the 12 months after the ban came into force, rents in Scotland went up by 4.2%. Against that, the English housing survey suggests that rents in England went down by 0.7%. There was, therefore, a 5% difference—well, 4.9% to be specific—between rents in England and Scotland during that period. That is not based on our statistics; that is based on official statistics from the Westminster and Scottish Governments.

I do not suggest that the whole 5% is attributed to tenant fees, but a good proportion of it will be. That is a good example based on official Government statistics that show what is likely to happen. That is why in the impact assessment the Government have accepted that rents are likely to go up, and when this measure was announced in the autumn statement, the Office for Budget Responsibility said that rents will go up as a result. I am fairly sure that everybody who gave evidence to the Select Committee in the pre-legislative phase said that rents will go up as a result.

Q3 Melanie Onn: What did that mean in cash terms, and what do you make of Shelter's 2014 report that said that the market had improved, and that that was one of the reasons why?

David Cox: I am afraid I only have percentages; I do not have that figure in actual cash terms. On Shelter's report, I draw your attention to the then Communities and Local Government Committee's eighth report of the 2014-15 Session. It noted that the Committee had concerns about the methodological approaches adopted, and the sample used in that report equates to 29 letting agent managers surveyed. Its conclusion was that the information was inconclusive based on the small sample size. I would probably agree with that determination, and that is why I prefer to use the Scottish Government's statistics, which come from a much broader sample base.

Q4 Melanie Onn: Do the other panel members agree with that assessment? Is there anything different that you want to add to that?

Isobel Thomson: No, I do not have any details other than what David has already said.

Q5 Melanie Onn: Mr Cox and Ms Thomson, you both mentioned enforcement. Why do you think financial penalties have not been issued on the scale that you referenced in your opening statements?

Isobel Thomson: I think there is a lack of resources—I think the will is there to do it, but there is a lack of resources. Because of that, as an organisation, we produce an enforcement toolkit for trading standards officers to use to assist them in their work. Although, of course, we were, and are, happy to do that work, we think that they should have the resources themselves to produce such documentation.

David Cox: I agree with everything Isobel just said. If I may, I will add two quick anecdotes. First, not long after the fee transparency rules came into force, I was on BBC Radio 4's "You and Yours" programme with the head of the Chartered Trading Standards Institute, discussing their enforcement. The gentleman said on air, "Our budgets have been slashed, and we are reducing trading standards offices around the country. Would you prefer us to enforce against children's toys that are dangerous and choking children, or to check whether tenant fees are being correctly displayed?" With the best will in the world, live on air, I could not say tenant fees.

The other example is of agents up and down the country coming to me and ARLA on a regular basis to tell us about agents that are not displaying their fees correctly. We notify the local trading standards departments, and we get nothing back. As an example, just before Christmas, I notified a trading standards department in the north-west of the country of 13 agents in its area. We provided the evidence that it needed. We got a "Thank you. We will reply within 30 days" email and then nothing. That was five months ago. We are doing the most we can.

That is why we are very supportive of the lead enforcement authority, because ARLA's sister organisation on the sales side, the National Association of Estate Agents, has the national trading standards estate agency team, so we can feed all the intelligence across the country into one body, which can disseminate it more effectively and forcefully than we can to the local trading standards and environmental health department. We hope that the lead enforcement authority under the Tenant Fees Bill will have a similar impact on the letting side.

Q6 Melanie Onn: The intention of the Bill is that it will be cost-neutral and that fines will cover the cost of any enforcement activity. Do you think that fines set at the level indicated in the Bill will manage to do that, given that fines for non-display are £5,000 at the moment?

Isobel Thomson: They may do ultimately, but there will need to be an accumulated number of fines applied to meet the cost of running the service. They need a pot of money to kick-start the lead enforcement authority, and they need it quickly, because in the Bill there is great reliance on the guidance that they will give to consumers. They need to scale up and be ready, but we have not had any indication yet of when that will happen.

David Cox: I agree entirely. Possibly, in years two or three and beyond, they will, once they have the teams up and running, going out and doing the enforcement. But if they do not have any of the seed funding across board and even in the trading standards department to resource the team in the first place to start going out and doing the enforcement, they will never get to that point where they can start to self-fund. It needs that initial seed funding. There is money set aside for seed funding, but I do not think it will be enough at this point in time.

Q7 Melanie Onn: One final point and then I will be quiet. You said that between 1984 and 2012 tenant fees were lower in Scotland. Why do you think the industry in England did not follow the lead of Scotland and reduce tenant fees during that period?

David Cox: Scotland and England are different markets. Rents and house prices are much lower across the board in Scotland. Rents follow house prices. The costs incurred are different, based on employment costs, office costs and the general nature of the business. Our research suggests that tenant fees in London are more expensive than they are outside London, to take into account the increased costs of running businesses in the capital, compared with the costs of running businesses outside the capital. Scotland is cheaper than England.

Q8 The Chair: Mr Hyslop, do you want to add anything to that?

Adam Hyslop: To loop back to the previous point on enforcement, I would add that one of the great things that, hopefully, the Bill will bring through is the ability to self-enforce better. Currently, there is legislation that was designed to promote transparency and to make sure that tenants are aware of what fees will be charged, without seeking to limit those. That has not been totally successful, partly because it is quite difficult for a tenant to prove whether they were shown those fees and whether they were made clear to them. It is a somewhat abstract concept whether they were aware of the fees before they were asked to pay them at a later point in the process.

The good thing about a clearer and higher-level fee ban is that a tenant paying money is a far more provable event. A tenant can get to that point in the process and then simply refuse to pay the fee if it is presented to them. Even if they get past that phase and they were not aware that they were being charged a fee illegally, it is then easier to prove that they did pay a fee and to unwind that. I feel that self-enforcement is far easier with the legislation being proposed than with the current set-up.

Q9 Richard Graham: May I explore some of the comments that you all made? David Cox, you said effectively two things. First, you said that you do not support the Bill, and then you criticised it for the lack of an adequate enforcement mechanism. The two are totally different things, aren't they? If you do not support the Bill, the fact that it has not got an adequate enforcement mechanism is neither here nor there. If you are not supporting the Bill because it has not got an enforcement mechanism, the focus is on your offering some suggestions as to how that could be helped. The shadow Minister's comment about whether the price of the fines is going to be adequate to help finance good trading standards teams is pretty relevant to that. Why do you think that the Bill is not going to achieve its aims, when Adam Hyslop of OpenRent has clearly said that it will?

David Cox: We do not support the concept of the Bill; we do not think it will achieve its aims. I will return to that in a moment.

Q10 Richard Graham: Why?

David Cox: In terms of why we made comments about enforcement, we have to take a practical consideration, and the likelihood is that the Bill will go through and become law. Therefore, we want to ensure that what comes out the other end from this Committee and the parliamentary process is a Bill that will affect the whole of the market, not just those professional agents who are our members and who will do this, as we have seen with so many previous pieces of legislation.

Q11 Richard Graham: Okay, but let us focus on the first bit first. Adam Hyslop has said clearly that the Bill will achieve its aims. He had a couple of queries that we can come back to. You have said that it will not, but you have heard his experience. How can you defend your position against that?

David Cox: There are different types of agencies in the market. Adam's business is very different from a traditional letting agent's. The traditional high street letting agent that you walk into, or the one you are considering as a letting agent, is not offering the same service as Adam and OpenRent provides. As I understand it, they are very much more geared towards a listing service for landlords who want to self-manage. I do not think they have an option where they manage the properties on the landlord's behalf—Adam will be able to answer that. Traditional agents do an awful lot more than the basic listing service, which is a service that they charge the landlord for. They charge the landlord for going out and doing the viewings, for example.

The tenant aspect is much more around issues as they arise, such as issues at the beginning of the tenancy, to ensure that agents are providing the best tenant and to ensure that the tenant is not getting into any financial difficulty as a result of taking properties that they cannot necessarily afford. In particular areas of the country, such as the north-east, a lot of letting agents will go that extra mile for the tenant, to help them apply for benefits and with their benefits paperwork. They do it because applying for the local housing allowance—or now universal credit—is an incredibly complicated process. Therefore, they sit there with the tenant and go through the application processes.

Q12 Richard Graham: Those are all important aspects of what letting agents can do. I argued, when we last debated this, that there is a critical role for letting agents in compliance—keeping landlords and letting agents within the law—ensuring tenants know where the fire escape is, and all the rest of it. Given the importance of those issues, why do both you and Isobel Thomson believe that, suddenly, letting agents are going to close down and there are going to be lots of job losses? Is that not so important that it is the key thing to market to both landlords and tenants?

David Cox: I would argue it is a cost issue. Capital Economics estimated last year that letting fees account for approximately 20% of the sector's turnover, or approximately £700 million a year. In its most plausible scenario, it expects agents' turnovers to reduce by about £200 million, landlords' costs to increase by about £300 million a year—

Q13 Richard Graham: It sounds a little like what the betting association predicted when we changed the rules on the maximum amounts you could bet. Do you not think this is possibly exaggerated?

David Cox: These are the figures from an independent market research agency that has been used by all sides of the argument. Shelter uses the agency on a regular

basis, as well to do independent analysis, and those are the results that it has come back with. There are about 55,000 letting agents in the country, and it estimates that about 4,000 jobs will be lost as a result of this.

Q14 Richard Graham: If I may ask one more question, Adam Hyslop, you were hinting that there could be a problem in terms of tenants having full protection on default fees. Do you mind expanding that a bit?

Adam Hyslop: Sure. This is probably the lower of the two points I would like to make today. The common practice at the moment is not only to charge admin fees up front but to have fees listed within the tenancy agreement—things such as cleaning and an inventory check-out report at the end of the tenancy. I believe the Bill's intention is to ban those as well—they are not permitted payments. So, the intention is to prohibit them, but my concern is that, in practice, some of those will be left in and you will have tenants feeling obliged to pay them towards the end of tenancy agreements, even though they might be outlawed payments.

I do not know how this will be addressed in practice, but a lot of the—let us call them—disputes are where you have got a landlord asking a tenant to pay, say, £150 to clean the property at the end, when actually what is reasonable is for the tenant to restore the property to the level of cleanliness when they moved in, which could be by using their own cleaning company or doing their own housework, as it were.

A lot of these disputes end up with the deposit protection services. I do not know whether they will be briefed that these fees would be immediately thrown out if they were ever disputed. But, actually, before you get to that stage, it is a very low single-digit percentage of deposits that ever go to formal arbitration in these schemes, so there is a big piece to do, whether in the wording of the Bill or in guidance, to ensure that tenants know that these are also explicitly prohibited and that they should not accept any agent or landlord saying, "No, it is in your tenancy agreement. You signed up to it with free will at the start."

Q15 Richard Graham: Perhaps the Minister will address that. The other side was the false declaration by tenants, and that did sound quite serious. What is your concern there?

Adam Hyslop: The current drafting is basically that a holding deposit is placed, and if a tenant passes referencing, everything obviously proceeds, and it would usually go to contract signing. If the tenant fails referencing, the current intention is that the holding deposit, with no deduction, is refunded back to the tenant. That is fair, and that is in line with how my own business operates at the moment.

What is more complicated is where there is a sense that a tenant provided what in the current drafting is "false or misleading information" to the landlord—information that could be exaggerating their own financial situation. So the landlord accepts the holding deposit, takes the property off the market, incurs the cost of referencing and then is left in a difficult situation when it turns out the tenant is not really who they say they are.

My concern around that—this may be stating the obvious—is that the point where a holding deposit is placed and referencing is under way is by far the most stressful part of a tenancy application process on both sides. You have got a landlord who is basically saying, "I really hope this tenant is who they say they are—I just want to get them signed up so that I have the certainty of them moving into the property at a future date," and you have got a tenant going, "I really hope I get this property so that I do not have to reset my search back to square one," with all the stress that comes with that.

Referencing is quite a complex process. Actually, what the tenant said to the landlord up front is not a particularly clear area. First, there is significant variation in the kind of application forms that a landlord or agent might put in front of a tenant. Second to that, the actual process of referencing itself is quite complex. A reference usually involves a credit check, an employment check and a previous landlord reference, but I believe that the overarching wording of "Did the tenant provide false or misleading information?" would in practice be quite problematic. Sometimes a referencing company will literally capture the tenant's address history, where they work and how much they earn. I believe that the drafting of the Bill was done with the perception that referencing is a lot simpler than it is.

You can imagine some really simple cases. If I say that I earn twice what I earn, and referencing then finds me out—my employer says that I earn x—that is a clear case of false and misleading information. Actually, we find that when references fail, only 25% fail due to income and affordability. The other case in which you might provide false or misleading information is neglecting to mention that you have a former bankruptcy, a CCJ or something like that. Those are simple ones that the current Bill is completely fit for purpose for—if a tenant withholds or distorts that information, that tenant absolutely should lose their holding deposit, because they placed it under false pretences by making claims to the landlord that were not substantiated.

The majority of cases, however, will not be as clearcut as that. There will be things like whether a tenant was aware that they had a good credit score or a bad credit score which resulted in them failing the reference. There may be previous landlord references or elements of the employer reference that are not as simple as, "This person earns this amount of money"—it might be length of contract and things like that. Unless you have a completely exhaustive, fully transparent application form—a theoretical one—that the tenant fills in and where they declare everything about themselves, which can later be demonstrated to be false or misleading, then, in practice, there will be lots and lots of cases where it is unclear and some kind of arbitration is needed, or at least some kind of dispute arises.

What that means in practice, I believe, is that where it is the majority case—that is, the tenant may or may not have provided misleading information, and there is now a dispute about it—either you will have landlords who lose their holding deposit, despite the tenant applying in bad faith, because they are unable to prove that the tenant provided false and misleading information, or you will have tenants who lose their holding deposit because the agent or landlord asserts that they applied in bad faith. What that means is that the Bill will not actually protect the landlord or the tenant in that case.

I therefore conclude that the fairest way to put this into practice is to permit a cost of referencing—to have referencing as a permitted payment within the Bill. I

would recommend that that is capped, because I do not want it to be an unlimited fee that becomes an admin fee of £300. We charge £20 for a reference per applicant, which is basically the market cost. The reason we do that is precisely this: referencing is very messy and will very quickly turn into disputes around whether it is false or misleading, or what people's intentions were, unless there is a really clear way of saying, "You're rejected because your referencing failed, but we don't need to go through a full arbitration of whether it is false or misleading." You cover the cost of your referencing, which aligns the incentives, so that the tenant covers the cost of referencing and will basically lose that amount if they invalidate it in the first instance.

The Chair: A number of Members are trying to catch my eye, so with the Minister's permission, I shall hold him to the end.

Q16 James Frith: This is very interesting. In the contributions we have the new and future economic model in this industry, and the old economic model. One is protecting the status quo and one is saying, "This direction will be fine." Adam, will you just talk us through—whatever you feel comfortable with—your growth as a business in recent years, including any employment opportunity growth that you have provided by virtue of these 70,000 properties last year, please?

Adam Hyslop: Sure. At a high level, those are the numbers, so we are taking significant market share. What is really interesting is that I do not see our business pitched against the status quo of the high street. Actually, 50% of landlords do not use an estate agent. What we try to do is to provide—our watchword—accessibility, which is in terms of not only ease of use but cost.

David is not quite correct about the service that we provide. We do not provide a fully managed service—25% of landlords use a fully managed service, in which they do not want to meet the tenants and they want a professional to handle the interaction. We do not serve that 25% of the market. We do serve the 75%, which is the 25% of people who use an agent for tenant finding and the 50% of people who effectively do everything themselves. What we try to do is to make that accessible, so for £50 we will do everything from taking that holding deposit to referencing, contracts, deposit protection, first month's rent collection and things like that.

What we are actually doing is professionalising the 50% of the industry who do not currently use a high street letting agent. We believe the only reason they do not use a high street letting agent is cost. We think that, by doing that for £50 rather than the average fee of over £1,000 a year, we provide huge accessibility. In terms of our high-level growth, those landlords are coming from the DIY sector and obviously we are taking share from the high street as well.

In terms of actual gross employment, I do not really like the word "disruption" to describe what we are doing. There is a lot of good practice in the industry already. A lot of our processes layer technology on to that, but we are not trying to tear up the rule book and pretend that we can do something better than what is already in the Housing Act or, say, the property ombudsman code. Those are ways of working that are really important to protect consumer rights. What we think we can do is put those things in place in a very systematic way and provide access to those services to the entire market, so that basically every landlord and tenant has access to a professional tenancy creation service. By having the holding deposit placed in a sensible way, having money held in a client money account and having a professionally drafted tenancy agreement, we provide a huge consumer benefit across the industry—on both sides, actually.

Q17 James Frith: And to answer the question?

Adam Hyslop: Sorry, I meant to loop back to the question. We are not really disrupting in the sense of eliminating employment or anything like that—that is one of the myths here. Actually, most of the suppliers that we use are those used by high street agents anyway. We have a large contract with a referencing company, which does all our tenant referencing. We contract gas engineers, inventory clerks, photographers—all those different services—across the industry.

Q18 James Frith: How many people does your business employ itself?

Adam Hyslop: It employs 15 people.

Q19 James Frith: Has that grown significantly in recent times, or is that a core rump of people you have kept?

Adam Hyslop: The idea—this is no secret in the industry—is that it is possible to have good practice in the industry in terms of following a professional tenancy creation process, but to use technology to make that something that does not need lots of phone calls and interaction in between. That is one of the main insights that keeps our core headcount low. Yes, we have far fewer people working on administering holding deposits and administering contract drafting, for instance, simply because we have the technological systems and processes in place to manage those.

Q20 James Frith: Mr Cox and Ms Thomson, I take it on board that Adam is saying his business is not actually hugely disruptive. It sounds pretty disruptive in terms of some of its transformative impact and the market share he is taking from the high street, but I am assured that he uses existing networks, contractors and professionals in the sector. How are you catching up with that way of working to improve accessibility? It feels like there is an equalising quality to Adam—he is saving money for the landlord and for the tenants. Are you just behind the curve on this?

David Cox: I am afraid I would disagree. I would not characterise it in the same way at all. It is a different type of service. We have to factor in the fact that the places most tenants, buyers, sellers and landlords go to look for their properties are Rightmove and Zoopla—the big properly portals. An individual landlord renting out a property on their own cannot access Rightmove and Zoopla. Therefore, services like Adam's, which are entirely necessary in the market, act as the entry point into Rightmove and Zoopla so that those landlords who want to self-manage and want to be able to advertise their properties on Rightmove and Zoopla can do so. That is why Adam is able to charge much lower fees. The middle service is £29 to a landlord and £20 to a tenant. A couple renting a one-bedroom property, if

they reference through Adam, will actually end up paying more than the landlord. That is not the case with the traditional agencies, where the landlord always pays significantly more—around £1,000, as Adam points out.

You asked specifically about the number of people employed for those 70,000 tenancies. I can think of only one large corporate agency off the top of my head for which I know the statistics, but I know that one of the three large corporate agencies manages 60,000 properties and employs 7,000 people to do that. That is about much greater interaction on the ground on a day-to-day basis during the tenancy. I suppose the question is what we want a letting agent to do in the future. Are the Government saying that a letting agent is like a sales agent, to a certain extent? Once you hand over the keys in a sales transaction, the estate agent's role is finished. Someone has bought the house, and they move on to the next property. In a lettings transaction, once you hand over the keys that is just the start of your relationship with the tenant. If the letting agent is managing the property they are there to help landlord and tenant throughout the entire process of the tenancy. It is a much longer term.

Q21 James Frith: In your opening contribution you talked about serving two masters. I would say that the premise of that is inaccurate. The tenant has no choice as to who the agent of their property is. The landlord instructs as the client. That relationship does not change ever, at all. The decision maker remains the landlord. A relationship might be involved; you may well have more involvement with the tenants than the landlord, but the landlord is the decision maker here, and therefore I would challenge the very premise by which you are protecting this status quo. I do not believe that the tenants hold an equal relationship.

Isobel Thomson: I do not think we are comparing like with like. I think Adam Hyslop's service, which is obviously really good, is meeting a need for a certain part of the market; but I feel that lettings is a people business. It is the letting agent who mediates between the tenant and the landlord, so when the tenant fails the reference and something comes out of the woodwork the agent sits down with the tenant and often says, "Okay, well look, I understand you had that five years ago; I will have a word with the landlord." It is that interface and activity that the agent is offering.

Also, for example, for housing benefit tenants, a mechanical, online technological system is not necessarily going to give that type of tenant access to the private rented sector, whereas the agent who sits down with the tenant, talks it through and presents the case to the landlord often facilitates that. It is not old-fashioned; it is a need.

The Chair: The trouble with these sittings is that we could go on forever, because it is so interesting and it helps the Committee enormously, but a number of Members want to ask questions, so I will move us on.

Q22 Chris Philp (Croydon South) (Con): I would like to pick up on the question of conflict, which David Cox brought up at the beginning. Is it not the case, Mr Cox, that in most regulated industries, such as financial services, it is already unlawful for a professional service provider to charge both sides of the transaction, which in this case means both the tenant and the landlord? The reason that in regulated activity such as financial services it is unlawful to charge both sides of the transaction is that it creates a conflict of interest. Is it not therefore appropriate, Mr Cox, that under the Bill agents should charge only one side of the transaction—the landlord—because that will eliminate the conflict of interest?

David Cox: I am afraid that, not having worked in those industries, I do not know. I will take your word for it. I do not think it creates a conflict of interest. It is why we have a lot of the systems in place that already exist—to a certain extent to take the agent out of those conflict of interest issues. For example, before the Housing Act 2004, tenancy deposit protection was only voluntary. Our organisations required our members to put the moneys in a deposit protection scheme. The Housing Act 2004 put that into law, and that cleaned up the deposit protection and deposit market completely because it takes the agent and landlord out of those conflict situations.

Particularly, when I talk about being the servant of two masters, it comes down to things that Adam has mentioned in the default fees. If the agent is managing the property and the tenant locks themselves out at 2 o'clock in the morning, they phone the agent. An agent who is not providing a service to the tenant is unlikely to get out of bed at 2 am, drive to the office, pick up the keys, drive to the property, let the tenant in, drive back to the office, drop off the keys, drive back home and go to bed again. At that point, is it a conflict of interest or a service purely for the tenant?

Q23 Chris Philp: Would not that be allowed as a default fee under the Bill?

David Cox: That is certainly what we are arguing, and what we are hoping for, but I do have to factor in those sorts of situations.

Q24 Chris Philp: I will come on to default fees in just a moment. In your earlier evidence you mentioned that one of the services paid for by the tenant was to provide the best tenant for the landlord, but there is clearly a conflict there. From a landlord's perspective, they want the most creditworthy tenant, but any individual tenant just wants to get the house. There is an inherent conflict there, and to represent both sides of that is misleading. I put it to you that this legislation clears up that conflict by making it clear that the agent is acting for the landlord.

David Cox: I think we have to factor in what would happen if a tenant took a property that they could not afford. Government statistics already suggest that now that the private rented sector is larger than the social sector, the largest cause of homelessness is ending an assured shorthold tenancy. That makes sense now that the private sector has overtaken the social sector. Tenants regularly have eyes larger than their pockets—I cannot find a better way of saying that—and they will try to take a tenancy that they simply cannot afford. The agent is there to say, "You can't afford this tenancy. If you want to move in you are going to dig yourself into massive debt, and you will end up getting evicted. This is not the right property for you." They will then say,

"However, we've got all these other properties." When the ban comes into force, it is unlikely that people will even get to that point. We are expecting pre-viewing vetting to start taking place, so that agents, with the best will in the world, do not waste hours every day going on viewings with tenants who cannot afford the property.

Q25 Chris Philp: That is fine because it will not waste the tenant's time either.

David Cox: But it is the tenants who want the properties. The agent is serving the tenant.

Q26 Chris Philp: But you are saying that they cannot afford those properties, so it will avoid tenants wasting their time. Let me move on to your other point. You suggested that in 2012 rents in Scotland went up, whereas in the rest of the UK they were flat or very slightly down, and you sought to ascribe that to the changes in fee arrangements. Are you potentially confusing coincidence with causality? The first thing you get taught when you study science is that correlation is not the same as causality.

David Cox: I have no evidence to create a direct link, but it was the only major change in legislation between the two nations that year.

Q27 Chris Philp: I am interested that you have conceded you have no direct evidence—that is a very important admission. I suggest one reason might be that whereas average incomes in England and Scotland are broadly similar, average rental prices in England are about 50% higher, so that relative move you described simply closes a very small part—about one tenth—of the relative differential between those two nations. You said you do not have any direct evidence, which is a very helpful admission.

Before I turn to your comments on referencing, Mr Hyslop, let me commend you on setting up such an effective and efficient business. It has clearly grown very quickly and I was impressed by what you said about the way your company operates and the low costs that you have managed to deliver to both tenants and landlords. Congratulations on innovating in that way. As a former entrepreneur, I strongly endorse what you have done.

Adam Hyslop: Thank you.

Chris Philp: On your question about misleading information, you gave examples of information that is clearly misleading, such as a mis-stated salary. You went on to give examples of things that are less clear, such as a poor credit score or employer reference. Is the point that the prospective tenant will not have made a representation or statement about their credit score or their employer's reference, so they will not be guilty of having given misleading information? They will not say, "My Experian credit score is at least 800," so they will not get caught by the clause because they will not have provided misleading information?

Adam Hyslop: My point is that this can fall on either side. Sometimes a tenant who applied in good faith might lose their holding deposit, and other times a landlord who accepted an application in good faith might not be able to retain a holding deposit. The example you have given is one that would disadvantage the landlord because they cannot charge for referencing. Essentially, you would have an asymmetry of information. The tenant knows their own situation far better than the landlord. Indeed, the purpose of referencing is to close that gap.

A tenant might not know their exact Experian score, but they will have a good sense of whether they might pass this referencing—or at least a better sense than the landlord. In the case you described, you might have a situation where a tenant does not think they can afford the property but they might be in a desperate situation so they will apply anyway, knowing that, because they never stated their precise credit rating or anything like that on the form, if the landlord later discovers the tenant is not suitable, the landlord is obliged to refund the entire holding deposit. The landlord is out of pocket by the cost of referencing and however many days the property was held off the market. That is a case where the disadvantage is to the landlord, and I think the remedy is the same: the referencing fee should be permitted to a reasonable level at cost.

Q28 Chris Philp: Are you suggesting £20?

Adam Hyslop: That is about the market price. You can pay more than that; you can pay a bit less.

The Chair: I am going to have to cut you short on that. I am conscious that I promised the Minister to allow him in before the end.

Q29 Neil O'Brien (Harborough) (Con): I want to bring us on to the question of refundable tenancy deposits. The Bill caps them at six weeks of rent. Do you all think that is the right level?

David Cox: If brevity is the answer, yes.

Q30 Neil O'Brien: Some have argued for taking it down to four weeks. What would be the effect of that?

David Cox: If we drop it to four weeks—the security deposit is a risk mitigation product, and therefore four weeks is effectively one month. If the tenant leaves without paying the last month's rent and damages the property, if it is a month, they will either have the money for the lost rent or the money for repairing the property. That is why we have suggested the cap or agree with the cap at six weeks—because it gives the ability for the tenant not to pay the last month's rent and to damage the property. That is why we have suggested and support six weeks, bearing in mind that, provided everything goes smoothly, the tenant will get that full money back at the end.

Isobel Thomson: I would like to see a permitted payment or an exemption for the situation where a tenant has a pet. Often, agents charge a higher deposit because of having a pet. We would not want to disadvantage people with cats and dogs, would we? That is something that should be looked at.

Adam Hyslop: I agree. The risk from limiting the level of deposit is simply that it limits tenant choice. Some tenants are higher risk than others. Pets are a good example where a landlord might want to take a higher deposit. Another example is that we get quite a lot of people who come from overseas and they are harder to reference. Although you can contact employers, they do not have a UK credit score and things like that. The remedy, without charging that tenant an actual fee, would be to increase the deposit to a reasonable level.

There are things such as rent in advance that can work around that, but frankly, a six-week deposit feels like a reasonable compromise to protect tenant choice on this, rather than foreclosing on some groups.

Q31 The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): May I thank all the panellists for being with us this morning and thank you for engaging with the Department during the course of the formulation of the Bill. I appreciate all the time you have given.

For the record, the Government and I do not have the intention of trying to drive letting agents out of business, as was potentially characterised early on. We very much recognise the valuable role that high quality letting agents play. We have got a great example of one here this morning. This Bill is just about improving the industry to make it work for tenants where there have been abuses of the system and an asymmetry of power. I wish to put on record our thanks for the work many good letting agents do.

In the brief time we have—and in a quick answer to the question—the Bill allows for default fees for things such as a lost key or a late rental payment. Do you think that is a sensible provision to have in the Bill? Also, the Bill allows for payment for changes to the tenancy agreement at the request of the tenant—such as an extra sharer added to the tenancy agreement—capped at the landlord's reasonable fees for that. Do you think those are sensible? Do you think they should be limited or broadened?

Isobel Thomson: I would say that they are eminently sensible but we just need guidance around how they will operate. I know that civil servants have already started to engage with stakeholders on that.

David Cox: I would support that; I think they are absolutely necessary. I highlighted one example a few moments ago. Under the Bill, they will have to be written into the tenancy agreement so that tenants are aware of them from the outset. Our reading of the Bill is also that anything that is in the tenancy agreement will need to be in the fee schedule, that is displayed prominently in the office and on the website and, under the Bill, on any third-party websites such as Rightmove or Zoopla. I would just query on that one. A lot of agents use Twitter to display their fees; I am not sure how they would get the fees on to the advert in the necessary number of Twitter characters.

We also have to factor in that—

The Chair: Order. I am very sorry to interrupt. You have been a very engaging and useful panel and we could have gone on much longer, but I am afraid that under the programming motion, I have to bring the session to an end. Thank you very much for attending this morning.

Examination of Witnesses

Richard Lambert and David Smith gave evidence.

10.25 am

Q32 The Chair: We will now hear oral evidence from the National Landlords Association and the Residential Landlords Association. We only have until 10.55 for this session. Gentlemen, would you introduce yourselves and, to speed things up, perhaps make an opening statement at the same time?

Richard Lambert: I am Richard Lambert, chief executive officer of the National Landlords Association. Briefly, we are aware of the growth of these charges to tenants by agents over the past 10 to 15 years. We are aware that that has been exploited to some extent, so we see a wide variation. Some of those fees have, frankly, reached egregious levels. We are also increasingly aware that agents double-charge landlords and tenants possibly for the same services. We agree that the Bill goes a long way to dealing with the issues that have emerged.

We think it is important for the Committee to remember that you are legislating to deal with the activities, in the end, of a small minority, but that the legislation will impact the entire industry; and that you are also legislating without having had a chance to evaluate some of the measures that have been brought in over the past couple of years, to see the full extent of the impact that they might have on the industry as things go through.

In terms of the impact on landlords, as David Cox has explained clearly, the client relationship in the future will be unambiguous: the agent will owe a duty to the landlord through the contract.

We have no doubt that the costs to landlords will increase. Agents will certainly try and pass on part of the fee that they have charged to tenants to landlords. We do not believe it is going to be possible for them to move all those charges from the tenant to the landlord, but landlords will certainly have to absorb some of those and, like any other business, they will attempt to respond to an increase in costs by maintaining their profit margins by increasing the price. So, there will be some increase in rents, but how much that happens will depend very much on the market, and that will depend very much indeed on the locality and the situation there.

I think both landlords and agents will have to absorb some degree of that cost. As a result of agents charging landlords more, we expect that there will be more competition. That competition could be in terms of the quality of service, as agents try to retain and increase their client list by providing better value for money; but we could also see that competition emerge in terms of fees, in that agents will try and attract landlords by charging lower and lower fees. We are already advising our members to keep a firm eye on the level of service they are being offered and to make sure that the level of service they are being offered is what is delivered and that it relates to some of their other needs. For example, the number of inspections they are being offered each year by their agent should correspond to that which is required under their insurance contracts.

Undoubtedly, there will be more self-management. Landlords will look at the fees they are being charged and consider whether they should be managing themselves. We have some evidence from some of our surveys that people are increasingly thinking in that direction. Ultimately, as was also made clear in the previous session, the key is enforcement. There are many issues across the private rented sector where we have the legislation in place but there just are not the resources to enforce it, so we need to ensure the surety and certainty of enforcement to make sure that what is in this legislation—and, indeed, in all other legislation across the sector—actually sticks.

David Smith: I am David Smith, the policy director for the Residential Landlords Association. We also have some concerns about the Bill. Clearly, there has been a situation where some agents charge egregious fees, but as Richard rightly said, they are the minority, not the majority. We do not think the Government have done enough with the Consumer Rights Act 2015; there were powers to make regulations under the Act to increase transparency around fees, which were not taken up.

We are very concerned about enforcement. Enforcement under the Consumer Rights Act has been what I would generously call patchy—I have used other terms in other places—and we do not think that enforcement is going to be sufficient. In fact, enforcement provisions in the Bill are a bit of a mess, and we think that is likely to lead to poor enforcement and make the Bill ineffective. I think there is a very high risk that the Bill in fact will not achieve any effect at all, because there will be insufficient enforcement against the bad agents who are already charging the excessive fees and will carry on doing so, and in some cases people will find ways to work around the Bill, as they already have in Scotland to some extent.

We are also concerned that there is a missed opportunity here. Our view is that the biggest cost for tenants is not the fee they have to pay when they move, but the fact that they have to have two tenancy deposits—one for the outgoing property and one for the incoming property. We have advocated on a number of occasions for legislation to be passed to change that dynamic and to rethink the way we use tenancy deposits—to find some way of making tenancy deposits cross over from tenancy to tenancy, to avoid a scenario where tenants are actually having to pay two deposits.

There are no circumstances in which a fee is ever going to be as high as six weeks' rent. Therefore, the tenancy deposit is always the actual controlling factor in terms of how much tenants have to pay.

Q33 Melanie Onn: Do you think that it is about enforcement, or is it about deterrence? Fines are set at around £5,000. Do you think that is enough of a deterrent? Do you think that if those fines were sufficiently high to worry the small number of rogue landlords, we would not have to worry so much about the enforcement side?

David Smith: The Consumer Rights Act has a £5,000 deterrent penalty, which clearly—presumably—has not worked, because otherwise, we would not be having this discussion at all. I endorse the National Approved Letting Scheme's study from last year that shows that very, very few penalties have been levied. What is particularly interesting, which Isobel did not mention, is that even fewer of those penalties have actually been collected. Not only are people not levying very many penalties, but in many cases when they levy them, they are never in fact paid anyway. So, I do not see much deterrence there. Local authority officers have told me anecdotally of situations where they have levied penalties and people have said, "Yeah, fine. Send me a £5,000 penalty and I'll pay it. It doesn't make any difference to me."

The structure is also a bit nonsensical. There is a certain situation where the Bill states that it is an offence to charge a prohibited fee, but it is only an offence if I have already sent you a £5,000 penalty notice and then catch you at it again. From a practical point of view—a trading standards officer point of view—they will have to do the whole thing twice to get a prosecution. The Bill also creates a system whereby we can ban agents under the new banning order provisions in the Housing and Planning Act 2016, but the reality is that banning is very unlikely to occur on a first offence, so you are going to have to get two prosecutions, which means you are going to have to catch somebody four times and prove a case against them before you can move to banning them. If prohibited tenant fees are an offence, then they should be an offence and they should be treated as an offence; they should not be an offence with some codicil on the front that says, "You can pay a little bit of money for it not to be an offence." That does not make sense.

Q34 Melanie Onn: Mr Lambert, would you agree with that?

Richard Lambert: Absolutely. I think the level of penalty is a deterrent to the law-abiding because it ensures that they will not slide into error, but for the people who are breaking the law and who factor it in as part of the cost of business, it will not matter at all, because the lack of enforcement means that they will assume that most of the time they can get away with it, and on the occasions that they cannot, it is simply a cost of doing business.

David Smith: There is a significant level of ignorance, as well. We should not ignore the fact that not all agents are bad in the sense of being evil; many of them are bad in the sense of just being fairly incompetent. While there is a significant percentage of highly professional and highly skilled agents, there is a minority of agents who I would not apply those words to.

Q35 Melanie Onn: Do you think it is right that tenants in England should pay more than tenants in Scotland?

David Smith: It depends what you mean by "pay more". Do you mean pay more for rent or for fees?

Q36 Melanie Onn: In relation to tenant fees, given that is what we are here to discuss. I am not allowed to go outside the scope of that.

Richard Lambert: Housing is a devolved issue, and therefore it is for the individual countries of the UK to decide their situations.

David Smith: I appreciate that there is a great attraction in comparing Scotland with England, but the markets are enormously different. Outside the main cities in Scotland, the vast majority of letting and estate agents are co-located with solicitors, so the economics of the business is totally different. Inside the cities, it is a bit more like it is in England and Wales, but the size of the market is tiny by comparison and I am not convinced that it is a particularly good comparator. You might do better by comparing with the Irish Republic, which is of a similar size and has much more similar economic structures in some way. I see your point, and I do not think you are necessarily wrong, but I do not think it is as simple as a direct comparison between the two—sorry.

Q37 Maria Caulfield (Lewes) (Con): On the issue of enforcement, I have been working closely with my local citizens advice bureau in Lewes, which has done a huge

[Maria Caulfield]

amount of work on this. The current system does not work because it is up to local authorities to enforce it, and tenants often do not realise that there are fees that have to be paid, and that on the same high street those fees could vary from hundreds to, in some cases in my constituency, thousands of pounds, and that letting agents are supposed to publish those fees.

So, currently, the enforcement system is not working. Is it not right that if fees are banned, tenants will be able to self-enforce, because they will be aware that no fees should be charged? Do you not recognise that this would give more power to tenants in the process, given that currently they are not able to make those decisions?

David Smith: But why? There is no mechanism within this Bill for tenants to self-enforce.

Q38 Maria Caulfield: There is, because it will be very clear that these fees will be banned.

David Smith: But they are still reliant on the local authority taking up the cudgels on their behalf, which evidence shows that at the moment they do not do.

Q39 Maria Caulfield: But do you not recognise that that gives power back to the tenants? They can then question letting agents as to why fees are being charged. Currently they do not have the information to be able to do that.

Richard Lambert: There is a level of lack of understanding amongst many tenants, in that often they will find themselves handing over money that they discover is for fees when they thought it was for a deposit. The agent will give them an explanation as to why they are being asked to pay something over, and will then change the story later on.

If an agent is exploiting the opportunity, inevitably tenants will fall into that. We do still find that many people who go looking for rented property simply are not aware of the legislation and the protections that they already have. We, as an organisation, have actively gone to local authorities and said, "We have walked down the high street and counted up the number of agents who are not displaying their fees. We think that you could probably collect enough fines over a space of two hours to fund your activity enforcing this regulation for the rest of the year." The reluctance is to do it in the first place, because the response is always, "We don't have the resources to do that in the first place."

David Smith: Every time I go and see a local authority councillor I always bring them at least one example of an agent in their area who is illegally charging fees or breaking the law in some way. I do it consistently.

Q40 Maria Caulfield: Do you not welcome the Bill, then, in that it will make it very clear to tenants that there should not be fees being charged in the first place? They can then make that decision for themselves.

David Smith: But there are scenarios in which the Bill allows the charging of fees. It allows the charging of fees provided they are optional, for example. It is not an outright ban on fees; it is a partial ban on fees. There are circumstances where fees are chargeable, where they are optional. And you are relying on tenants actually finding out about their rights. Unfortunately, at the moment most tenants are grossly unaware of their rights, and will remain so.

Q41 Maria Caulfield: Do you not recognise that the Bill would improve that situation?

Richard Lambert: The Bill will make the situation clear for the majority but, again, there will be a minority of tenants who will not be fully aware of their rights, and there will be a minority of agents who will continue to try to exploit the situation. The only way to deal with that is with effective enforcement. In the first instance, effective enforcement needs to be properly resourced. Once you have that kick-start, the fines generated and the authorities' ability to attain the proceeds from those fines will mean that they can continue to resource it. You have to have the initial resource to make that enforcement effective, otherwise you are simply passing the legislation, and it is not being policed.

David Smith: More to the point, it would be the weakest and most vulnerable tenants being exploited by the agents, as it is now.

Q42 Maria Caulfield: I just have a quick question on default fees. Will you set out your views on default fees, and why they are necessary? I recognise that there are tenants who often leave properties in a state in which they did not find them. How often, in your experience, are default fees payable? What percentage of tenants would this apply to?

Richard Lambert: I wouldn't know.

David Smith: We don't have data. The continuing use of the phrase "default fees" misrepresents what is going on here. David Cox gave one of the best examples: that of a tenant who loses their keys and expects the agent to go over at midnight. "Default fees" is shorthand for a mechanism that exists in almost every commercial contract.

Maria Caulfield: So businessmen like you don't know how often default fees are applied, as it stands.

David Smith: At the moment, quite a lot of agents put default fees into their agreements, but they are very rarely charged. In practice, they are mostly taken out of the tenant's deposit. In many cases there is no deposit left to take. Most agents do not bother.

Richard Lambert: I think for self-managing landlords, it depends whether you have just one incidence of this. Let's stay with the example of somebody locking themselves out, forgetting their keys and coming home from a night out at 2 am and being unable to get in. They ring the landlord and ask them to bring a key round. The landlord will usually complain and possibly do it once. If they find that it is happening two or three times then they will start to say, "Well actually, I am going to charge for my time involved in getting up in the middle of the night, coming over and letting you in." If there is more of an issue and the landlord has to engage a locksmith, that could involve a charge of £150 or £200 in London. They will want to try and recover that kind of fee. With self-managing landlords where the relationship is directly with the tenant, there is a level of give and take initially, but then if it is a continuing problem or if there are several incidents then, yes, they will do something.

Q43 Maria Caulfield: So is there a need to have default fees within this Bill?

Richard Lambert: I think there is.

David Smith: Landlords are always entitled to recover their costs from a tenant's breach of contract. A default fee is actually where the parties pre-agree what the level of that fee should be, creating a degree of certainty

between them so that tenants are going to know that they will have to pay this amount and this amount only, whatever the actual cost of, say, a locksmith. There is a benefit to having a fixed tariff of fees for particular contractual breaches. It is a commonly used mechanism across a wide range of contracts.

Q44 Sarah Jones (Croydon Central) (Lab): May I just ask for information? Obviously we accept that the majority of landlords are good landlords and do the right thing. You talk about exploitation, variation and some egregious levels of charging, and some exploitation of people. Would you describe what evidence there is as to the numbers of good agents versus bad agents, and good landlords versus bad landlords? We talk about the bogus ones who are charging people but is there evidence of the number, or of where they tend to be? Do they tend to be the bigger ones or smaller ones? Are they in cities or in rural areas? What do we know?

Richard Lambert: It is almost impossible to identify that. Those kinds of landlords and agents do not self-identify, by definition. Somebody once said to me, "The worst tenants tend to gravitate towards the worst landlords." Often, those kinds of landlords will be housing people with chaotic and vulnerable lives who find it difficult to go anywhere else, or people who may be on the verges of criminality. Quite often, you find that the actual accommodation provision is a sideline of a wider organised criminal activity, and it is a part of something that will involve people trafficking, prostitution, drugs, money laundering and so on. The letting of the property is simply a factor: they need somewhere to house the people.

David Smith: The only way to clarify that would be to look at the number of landlords prosecuted as a percentage of the overall number of landlords. However, the problem with that as a measure is that enforcement is so poor.

Q45 Sarah Jones: Yes. On the agent side, you said you could walk down a street and point the local authority to all the agents who are not displaying their fees at the right level. Do you have any sense of where and who those agents are? Are there any numbers to any of these assertions?

David Smith: Again, you have to distinguish between walking down the street and finding technical breaches of the Consumer Rights Act 2015, for which you could probably find 15-odd per cent of agents, depending on where you are, and agents who wilfully go out to break the law across a wide sweep of things. There are aspects on which some agents are just not very good at keeping up with what is, at the moment, a pretty fast-moving legislative picture.

Q46 Sarah Jones: My question is whether there are any numbers on any of that, or whether it is all just speculation.

Richard Lambert: The closest I can get is to flip the question around. We have regularly done tenant surveys over the past five years, and one question we ask is whether they have ever dealt with a rogue landlord, by which we mean someone who engages in criminal activity. The answer pretty consistently comes back as somewhere between 12% and 16% of tenants having at any time during their renting lives dealt with someone who they thought was acting in a criminal manner.

We always ask after that what the landlord was doing that made the tenants think that. Some of the stories we have heard shocked us, and we are used to hearing some real horror stories about landlords. For others it is low level management problems, such as not repainting a ceiling after a leak or taking three days to get a plumber when the boiler packed up. What people actually understand as criminal activity on the part of a landlord—

Sarah Jones: Might vary.

Richard Lambert: Might vary and indeed might not be accurate.

Q47 Sarah Jones: I have two other quick questions, if that is okay, Mr Bone. We have talked a lot about enforcement. Can you describe your ideal enforcement regime that would enable the Bill to be implemented?

David Smith: I would prefer a two-track option with a direct mechanism for tenants to enforce rights themselves, with local authority back-up. I am aware that Ms Onn has tabled an amendment that would allow tenants to enforce in a similar way to tenancy deposit protection. I am not sure I necessarily agree with the three-times-amount penalty, but there is certainly a logic in allowing tenants to have direct enforcement of their rights. That clearly makes sense and would certainly help in potential situations where a local authority is not adequately resourced or is unwilling to carry out enforcement activity itself.

Q48 Sarah Jones: In terms of local authorities, what kind of enforcement do we need there? We talked earlier about needing more resources. What else do we need?

David Smith: It is not just about more resources. The RLA has consistently asked not just for resources, but for a fixed, clear, repeatable sum of money, year on year, that allows a genuine enforcement structure to be built. That is not just little bits of money left over at the end of the year in the budget of the Department for Communities and Local Government, as it was, but an actual fixed sum of money, so that—to flip it around—local authorities can have a clear and understandable plan to execute enforcement, but they need repeatable money that goes on for five years.

Richard Lambert: We would like the Ministry to make it clear to local authorities that enforcement is a priority and should be considered a priority within their budget-setting, and to argue to the Treasury that the resources for enforcement should be enabled through the support grant that goes to local authorities and that local authorities should have the wherewithal that they need. If this is as important as the debate seems to suggest it is—we would say that it is—they need the resources to actually make that happen.

David Smith: A great deal of enforcement interest is targeted towards things that appear to be important because they make the press. They are important issues, but bad housing wrecks lives again and again, every day, because tenants go home to it every day. I do not think it gets the interest and support it needs in that regard.

Q49 Sarah Jones: I completely agree. On the six-week cap on deposits, people have suggested that the majority of landlords charge four weeks' rent, and that if this piece of legislation goes through as it is, they would automatically put it up to six weeks. What is your view on that?

Richard Lambert: I would say that we are ambivalent. It is true that if you impose a cap, there is always a tendency within the market to move toward the maximum of the cap. Having said that, certainly for the last five, six or seven years the advice that our advice line gives landlords has been, "If you are going to charge a deposit, charge six weeks, because what you want to do is to detach the sense that the deposit is equivalent to a month's rent, so that the tenant does not get into the mindset that, 'I can leave the tenancy early; the landlord's got the last month's rent in the deposit,' so the tenancy does not end correctly." Even so, the vast majority of people still charge one month's rent, with some flexibility where they need to add some compensation for a tenant's additional risk, as was described by my predecessors.

David Smith: We find that a lot of our members are charging six weeks for very much the same reasons that Richard has laid out, and that would be our advice to our members. We are concerned that by putting on a six-week cap, you will find that a lot of tenants with pets simply will not get property.

Q50 Sarah Jones: The question is whether people who are on four will put it up to six when this legislation is passed.

David Smith: That is possible, but I do not think a lot of landlords will, because why bother? Why go through the effort? Our bigger concern is that we surveyed some of our landlords towards the end of last year and around 50% of them said that they simply would not rent to tenants with pets if the deposit was capped in a way that they did not feel would allow them to recover the potential cost of that.

The Chair: Thank you. I am going to move to Richard Graham very briefly, and then I want the Minister to have some fun.

Q51 Richard Graham: We all totally understand that there is a huge risk of unscrupulous agents or unscrupulous landlords continuing to exploit the most vulnerable, but a number of you, in this session and earlier, have said rather airily that you could just walk down the high street and find the—I think you used this figure—15% of agents with wrong information and so on. If you have that sort of information, why do you not share it with both local authorities and the MPs involved?

David Smith: But we do. We do tell local authorities.

Q52 Richard Graham: I can absolutely assure you I have never had a letter, from your organisation or anyone else, telling me anything about any agent in the city of Gloucester who is doing it wrong. I would be delighted to have it and I would follow up on it, and I think you would find that a lot of MPs would share the same view.

David Smith: It is not our habit to share it with MPs because you are not the direct enforcers, but we would be very happy to tell you about it if that were to happen.

Q53 Richard Graham: May I suggest that you change your habit if you think there is a real problem, and then we can help you to resolve it?

David Smith: Happy to.

The Chair: We are running short of time. Minister.

Q54 Rishi Sunak: Thank you both for coming today, and thank you for your engagement with the Department on formulating the Bill, which we very much appreciate. I have one quick question about holding deposits. The Bill permits a holding deposit to be taken by a landlord while references and things are being conducted, and allows part of that to be withheld if misleading or false information is provided. Do you agree with that provision? Do you think it provides an appropriate protection for landlords?

Richard Lambert: We believe that the tenant has to have some kind of financial stake in securing the tenancy, so that they do not game the system by putting in offers on a number of properties and then only taking one, whereas the individual landlords will remove the property from the market once they have a firm offer. We would have preferred the situation where the landlord could have charged directly for the reference fee, because we think that is clearer and more transparent. The holding fee is acceptable as far as we are concerned, but we would have preferred something that was much clearer and more transparent to both the landlord and the tenant.

David Smith: The market has tended to move away from holding deposits in the last few years and has simply charged a fixed fee, which ideally should have been linked to referencing, but has occasionally become linked to a random figure made up by the agent. I suspect that what will actually happen is that quite a lot of landlords and agents will not charge holding deposits, particularly in London, and they will simply run it tournament-style: whichever tenant gets there the fastest, with the mostest, will get it.

Q55 Rishi Sunak: Just to clear up something you said before, you talked about ambivalence regarding the deposit—that is, the number of weeks of deposit. To be crystal clear, are you ambivalent about the number of weeks at which the deposit should be capped, or do you agree that six weeks is the right level, or too low, or too high?

Richard Lambert: We would prefer not to have a cap at all. If the Government are determined to bring one in, six weeks is something that we think we can work with. What I was ambivalent about was whether it would mean that people who currently take four weeks as a deposit would automatically move to six. I think that very much depends on the individual, but there is evidence elsewhere in the economy that if you set a limit on what can be charged, the market tends to gravitate towards that limit.

David Smith: We will accept six weeks and will work with it if they put on a cap, but we would prefer to have some scope within the Bill. We have proposed an amendment to the Bill that would allow a slightly higher deposit where there is a particular set of risk factors such as a pet, or someone who is coming from overseas, or someone who can provide no evidence of their income. Otherwise, we feel that landlords just will not rent to those people.

The Chair: Thank you very much for coming today. It has been a most interesting session. We could have continued for longer, but I am afraid that the programme order requires me to stop the evidence session now.

That brings us to the end of your evidence session today. The Committee will continue to take oral evidence in our next sitting on Thursday at 11.30 am, ahead of beginning the line-by-line consideration of the Bill at 2 pm.

10.55 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till Thursday 7 June at half-past Eleven o'clock.

Written evidence reported to the House

TFB01 Riley Marshall

TFB02 Tracey Glenn, Lettings Director at John German

TFB03 Steve Harris, Managing Director at Abode

TFB04 Simon Hardy, Director, Harvey Scott Cheshire Ltd

TFB05 Maria Morgan, Managing Director, Platinum Properties Ely

TFB06 Andrew GM Hepburn, Proprietor, Mead Property Management

TFB07 Sue & John Warburton, Proprietors of Belvoir – Leamington Spa

TFB08 Phil Watson, Managing Director, Martin&Co

TFB09 Sonny Sabharwal, Lettings Director, Hampton-Heath

TFB10 David Votta, Senior Lettings Manager, Haart

TFB11 Deanna Musgrave, BEP Relocation

TFB12 Dennis H Dowen, Dowen Surveyors and Estate Agents

TFB13 Stan Heeks and others

TFB14 Grant Nicholls, Woodholls, Director

TFB15 Urban Patchwork

TFB16 Michael and Elizabeth Fenton

TFB17 Steve Ballam, Director, Martin&Co Poole

TFB18 Louise Griffiths, Managing Director, Martin&Co

TFB19 Susan Rowlands, Peach Lettings

TFB20 Roy Pabari, Hilton & Fox Ltd

TFB21 Simon Bland, Director, sbliving Limited

TFB22 Jonathan Morgan, Managing Director, Morgans City Living

TFB23 Adam Gregory, AGT Property Management & Lettings Ltd

TFB24 Luke Gidney, Managing Director, Let Leeds

TFB25 Daniel Dow, Director, KT Residential Ltd

TFB26 Bill Cooper

TFB27 David Westgate, Chief Executive, Andrews Property Group

TFB28 Nathan Anderson Dixon, Managing Director, Abode Midlands

TFB29 James Whittaker, Norwich Accommodation Agency

TFB31 Jenny Robinson

TFB32 Mr Kameron Singh

TFB33 Sarah Hope, Saxon Kings

TFB34 Jeremy Traynor, Traynor and Co Surveyors

TFB35 Lucinda Watts, Sulgrave Estates Limited

TFB36 Citizens Advice

TFB37 ARLA Propertymark

TFB38 Refugee Council

TFB39 Movemetolondon.com

TFB40 Mervyn Terrett, A-Top Management Services Ltd

TFB41 Residential Landlords Association

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Second Sitting

Thursday 7 June 2018

(Morning)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 11 June 2018

The Committee consisted of the following Members:

Chairs: †Mr Peter Bone, Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Witnesses

Councillor Simon Blackburn, Chair of the LGA Safer & Stronger Communities Board, and Leader of Blackpool Council, Local Government Association

Alex McKeown, Lead Officer for property and lettings, Chartered Trading Standards Institute

Rhea Newman, Policy lead on letting agents, Shelter

Katie Martin, Head of News, Campaigns and Public Affairs, Citizens Advice

Dan Wilson Craw, Director, Generation Rent

Izzy Lenga, Vice President (Welfare), NUS

Public Bill Committee

Thursday 7 June 2018

(Morning)

[Mr Peter Bone *in the Chair*]

Tenant Fees Bill

Examination of Witnesses

Councillor Simon Blackburn and Alex McKeown gave evidence.

11.30 am

The Chair: This morning we will hear first from the Local Government Association and the Chartered Trading Standards Institute. Questions should be limited to matters within the scope of the Bill, and we must stick to the timings in the programme motion that the Committee has agreed to. We must finish this first session by 12.15 pm, and our second session will finish no later than 1 pm. I welcome our witnesses, and I would be grateful if they would introduce themselves and perhaps make a small opening statement.

Councillor Blackburn: Thank you, Mr Bone. I am Councillor Simon Blackburn. I chair the Local Government Association's safer and stronger communities board. However, in my day job as leader of Blackpool Council I have a significant interest in the private rented sector and its impact on the housing market in general. I am here to support the proposals in the Bill, and just to add a few notes of caution, fundamentally around the capacity of trading standards in local authorities, and to suggest some ways forward.

Alex McKeown: I am Alex McKeown, joint lead officer for property and lettings for the Chartered Trading Standards Institute. I am also an enforcement officer for Westminster Council trading standards, so I enforce the current legislation in relation to letting agents. I am not here to say whether we support the Bill or not. The fact is, the tenant fee ban is going to come in, so it is more about enforcement—the issues we have with the current enforcement of legislation, and how enforcement will be rolled out for this Bill. Some things in the Bill really need to be addressed before it becomes an Act of Parliament.

The Chair: Members will now ask you questions. I should point out that this is a very unusual Committee, in that the Minister gets to have some fun and ask you questions, which will probably happen towards the end.

Q56 Melanie Onn (Great Grimsby) (Lab): Welcome, and thank you for taking the time to be with us this morning. Alex, you touched on some of the challenges that trading standards currently faces within the tenant sector and with the regime. Will you expand on that a little, please?

Alex McKeown: One of the biggest issues is funding—I am sure that has been said many times, and Councillor Blackburn will say the same. There is a lack of expertise within trading standards when it comes to legislation that relates to letting agents. At the moment, not many boroughs or authorities are enforcing the legislation.

I watched Isobel Thomson and David Cox give evidence on Tuesday. Isobel did a survey last year of 42 boroughs to see who had issued financial penalties, and only 7% had done so—and I have worked for four of those. I am the person issuing them, so I know the pitfalls and issues with the current legislation. I have made the mistakes, but I have also achieved quite a lot in what I have done. My knowledge is very different because I do this every day. This is what I do 100% of the time—dealing with this legislation—whereas most trading standards authorities have more than 250 pieces of legislation that they have to deal with. So there needs to be more expertise; there needs to be more funding in order to train trading standards to enforce this legislation.

Q57 Melanie Onn: Explicitly in terms of what could be done to improve the Bill, you have mentioned funding and training. Is there anything else?

Alex McKeown: Do you want a specific on something?

Melanie Onn: Yes.

Alex McKeown: Something that I have picked up on is that, at the moment under the Consumer Rights Act 2015 and the redress scheme legislation, the burden of proof is on the balance of probabilities, in terms of issuing these financial penalties. What you are trying to say is that this is going to be self-funding, and at the moment with the Consumer Rights Act 2015 that has the ability to be self-funding, because all we have to do is look at a website and we can see whether it is displaying the correct information or not. It is easy—we have to prove it on the balance of probabilities, we download the website and we have the proof.

In this Bill, you are asking for a criminal burden of proof for a civil financial penalty, and that is going to scare people off; that is going to scare trading standards off. They are not going to want to prove beyond all reasonable doubt that a tenant has been charged a fee. Then, you are also relying on the complaints to trading standards. We do not get that level of complaints to trading standards in relation to tenancies. Then you have to tell the tenant, "You have to give a witness statement on the fact that you've been charged a fee", and they are going to say, "But we might get thrown out of our house. We don't want to give you a witness statement." To have it beyond all reasonable doubt, we are going to be up against it, and it will not be self-funding.

Q58 Melanie Onn: Councillor Blackburn, in terms of the specifics in the Bill, what do you think could be strengthened or improved that would actually assist in delivering the Bill and doing what it sets out to do?

Councillor Blackburn: We need to be clear that national trading standards is responsible for appointing a lead authority in terms of enforcement, because that is very important in directing and co-ordinating action. Their current partner—their current lead agency—is a Welsh local authority in relation to housing matters and, of course, because this Bill affects only England, it will not be possible simply to ask that authority to absorb that.

However, finance is also an issue. At the moment, £500,000 is promised to assist in the up-front costs of setting these schemes up. The average local authority

trading standards budget is £671,000 a year, so that £500,000 spread across 340 local authorities is unlikely to fill the gap that exists. That is extremely important.

There is also a capacity-building issue within the trading standards profession. As it is, 64% of trading standards authorities are reporting that they have difficulties in recruiting and retaining people, and that issue needs to be looked at nationally. The LGA stands ready to assist in that process and will work with the Chartered Trading Standards Institute, but there is a demographic time bomb in there as well, about the average age of trading standards officers. As councils have cut back on trading standards because of the overall financial pressures on local authorities, it is not seen as a long-term, safe career, if I can put it that way.

The Chair: I am going to let the Minister have a go now.

Q59 The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): Thank you, Mr Bone. And thank you very much, both of you, not only for being here this morning, but for the time that I know both of your institutions have spent engaging with the Department in formulating the legislation. I very much appreciate you sharing your thoughts and insights to help us get to where we are today.

May I just start with a broad question as to the role of trading standards? Simon, you have touched on this. Do you think that we have got it right, in the sense that trading standards are the obvious and correct body to enforce this Bill? That was obviously the overwhelming view of the correspondence to the consultation, but I wanted to check with both of you whether you think that is appropriate.

Alex McKeown: I definitely think it is appropriate, because at trading standards we have the power and we are used to dealing with businesses. With the redress scheme legislation, it was the local borough or district council. Having worked in London on that sort of project, I know that the private sector housing departments are used to dealing with landlords and with the Housing Act 2004, but they are not used to going into letting agents and issuing those fines; we are, and we are the best people to deal with it. But the officers need proper training so we can get more officers up to speed to continue that work and encourage more boroughs to carry out this work. That is down to funding again; a lot of the chiefs are saying, "We haven't got the funding, so we have other priorities at the moment."

Councillor Blackburn: It should be either trading standards or private sector housing teams that deal with this, particularly in relation to small district councils, which are not weights and measures authorities. It may make sense in some areas for the private sector housing enforcement team, which would probably be one individual, to lead on it, because they will be most familiar. There needs to be flexibility, but in most primary authorities, it would be trading standards.

Rishi Sunak: One of my colleagues has a follow-up to that question.

Q60 Mr Robert Goodwill (Scarborough and Whitby) (Con): I live in North Yorkshire, so the trading standards authority is North Yorkshire County Council, but Scarborough Borough Council is our borough, which is a long way from Northallerton and from some of the trading standards officers. Will the boroughs and districts be able to step up to the mark? Should a disproportionate amount of the £500,000 be made available to the districts and boroughs where we do not have unitary authorities, or will it be difficult for those authorities that are not already trading standards authorities to step up to the mark? They are well involved in housing—we have one of those areas where the housing has to be brought up to standard. Will that work?

Alex McKeown: Some of the difficulty with the legislation that is already there with regard to letting agents is that you have to have knowledge of housing and of trading standards, so you almost need a trading standards and housing officer hybrid person. I have worked in authorities where I was a trading standards enforcement officer but I sat with private sector housing, and that worked quite well.

It is difficult to know, because there are also different problems in different areas of the country. In London, there is a much bigger problem than in the leafy counties. You will not get the same issues. In London, there are more vulnerable tenants who are being exploited, and you get the rogue agent element, but I cannot really speak for how it will work outside London, because I have worked in London for so long.

Q61 Sarah Jones (Croydon Central) (Lab): I wanted to ask a couple of questions on the enforcement side. Do you have any numbers for how many enforcement officers—trading standards officers—we have now compared with five years ago? How much have the numbers gone down by?

Alex McKeown: Fifty per cent. I think a survey was done in 2010.

Councillor Blackburn: I have 56%—as in, it has reduced by 56%.

Q62 Sarah Jones: Since?

Councillor Blackburn: Since 2009.

Q63 Sarah Jones: On your point about London having more rogue landlords and abuse, can you talk us through some of what you actually see?

Alex McKeown: Because a lot of students come to London, a lot of foreign students come to London, and a lot of people come from all around the world to work in London, they often go to letting agents that take quite substantial up-front fees. They cannot afford very much so they end up in properties—some boroughs in London have selective or additional licensing—such as a house of multiple occupation, where the house is unsafe, the agreement that they have been given is what we would call a sham licence, and the letting agent does not actually understand the legislation that relates to what they are doing.

I have found in the past four and half years that you can talk to a lot of the lettings industry about certain things, such as whether they have an EPC, and they will ask what an EPC is. They think that, because they do not have a job, they will set up a letting agency. Obviously, there are the big ones that are members the Association of Residential Letting Agents or the National Association

of Estate Agents Propertymark, and they get the training, but there are also a huge amount of agents who are under the radar. A lot have virtual offices, and a lot cannot be tangibly found. That is some of the difficulty.

Q64 Sarah Jones: Do you have any sense of the scale of the problem and what you are able to do about it? In terms of what you are able to do, how many of those rogue landlords and letting agents have not been tackled?

Alex McKeown: A substantial amount. My colleagues—who are behind me—and I would say that, with the surveys, more were non-compliant than compliant. Even after we have given them a substantial amount of advice, they remain non-compliant. More than 50% are still non-compliant.

Councillor Blackburn: If I may, because this also speaks to Mr Goodwill's question from a few moments ago, I would not agree that this issue is specific to London. Other parts of the country suffer very much from this, not least seaside towns, where there has been a proliferation of former guesthouses and hotels that have been badly converted into bedsits and one-bedroom flats. We know that local authorities that have implemented selective licensing and additional licensing in those areas have found horrendous living conditions, and a considerable number of properties have been shut down.

To briefly return to Mr Goodwill's question, giving district councils the ability to work with unitary and county councils to jointly enforce, where appropriate, and to fund that model, would make absolute sense. The issues in Scarborough will be very different from the issues in Harrogate or Northallerton, so there needs to be a strong element of localism in this. However tempted I might be to directly answer your question, the LGA does not get involved in issues of resource allocation, because we represent district, county and unitary councils.

Q65 Sarah Jones: For my final question I just want to change the subject. We will look today at the deposit element of this proposed legislation. There has been quite a debate on what level of deposit is fair, in terms of what people can afford and what is fair for the landlord to be able to hold. Do you have any views on what that level should be, whether it should be three, four, five or six weeks' rent, or something else?

Alex McKeown: I certainly think the maximum should be six weeks, which it is at the moment. That has been the norm within the industry. I know that Citizens Advice—the CAB—and others that have given evidence want it brought down to at least five weeks. I understand some of their arguments for that, but to be honest with you, that has not been my main focus.

Councillor Blackburn: I do not have a view.

Q66 Maria Caulfield (Lewes) (Con): I want to touch on the point you made about the requirement in the Bill of proof to a criminal standard and how difficult that will be. Do you have any suggestions for how the Bill could be formed to allow enforcement to happen relatively easily and effectively?

Alex McKeown: I think it needs to be more similar to the redress scheme for letting agents and property managers in the Consumer Rights Act, because that is a fairly simple process. You get the evidence, you issue the notice of intent, they make representations, you then issue a final notice and it goes to the tribunal. That process has worked very well. We obviously get some random judgments coming out of the tribunals, but that is a better way of doing it.

The only issue we have found is that you will get a large fine against a company—such as the £30,000 fine—and they will then fold their company and phoenix. That is where we may need to look at holding the directors themselves liable. That will assist trading standards in getting the money back.

Q67 Maria Caulfield: That is very helpful. In terms of the bands having clear and unambiguous definitions, particularly around the default fees, are you saying that in the Bill itself and its schedules, there is not enough detail to be able to uphold that?

Alex McKeown: On the default fees?

Maria Caulfield: Yes.

Alex McKeown: Yes. I have not looked closely at that, but I know that, again, the CAB has written an amendment on the default fees aspect, to try to make that clearer. At the moment it is quite vague. That does need to be tightened up.

Q68 Maria Caulfield: As a trading standards officer, as the Bill stands would that be difficult to—

Alex McKeown: To prove beyond all reasonable doubt? Yes, I think so.

Q69 Daniel Zeichner (Cambridge) (Lab): I want to pick up on the point in the evidence from the CTSI about the rise of alternative business models—certainly in my city, and I also did some work with my hon. Friend the Member for Blackpool South (Gordon Marsden) in Blackpool on this issue. I just wonder whether you feel that the Bill as it is currently framed would deal with some of those issues, or whether there is a danger that people might move to using some of those platforms to evade the focus of the Bill.

Alex McKeown: The alternative business model is often rogue agents trying to avoid protecting deposits, to avoid giving legal agreements and, in time, to charge the tenant fees. That is also why I feel the burden of proof needs to be back down to the civil burden of proof. It will be difficult to prove beyond all reasonable doubt that somebody is a letting agent and not a membership club. You can see the evidence we need to prove it from the legislation that relates to the membership clubs, and from some of the legal precedents about what constitutes an assured shorthold tenancy.

To give an example, the London Borough of Tower Hamlets took a letting agent to court that said, "We don't have to join a redress scheme, because we're not a letting agent, because we only issue a licence to occupy." The London Borough of Tower Hamlets then had to go into housing law and ask, "Is this tenancy a licence to occupy or an assured shorthold tenancy?" The judge in that tribunal case said, "On the balance of probability, you are a letting agent and should be a member of a scheme."

That is what we need for the alternative business models. We need to able to prove that, on the balance of probability, they are not membership clubs, the agreements they are giving out are tenancies, and the fees they are charging will be prohibited fees.

Q70 Daniel Zeichner: But, as it stands, the Bill would not help you to do that.

Alex McKeown: I do not think so; not as it stands. To try to prove it beyond all reasonable doubt will be a lot more difficult, and you will get more people doing it.

Councillor Blackburn: If I may venture a view, however beautifully crafted and drafted the Bill is, the sector is already trying to, and will, find ways around it. We need to be careful about not disappearing down the enforcement rabbit hole. The most effective way of protecting tenants is for the Government to lead a high-profile campaign to remind tenants of their rights, and to remind the sector that such fees are outlawed. That will be the single most useful thing that we can do to inform tenants of their rights and to ensure that they do not engage with companies that are trying to extract fees from them.

Enforcement can do only so much. Even with all the resources in the world, the risk of companies just folding to avoid paying the fine, and our not being able to trace those responsible, will always be there. The most useful thing that the Government can do is to lead a national campaign and make it very clear to tenants that from date X such fees are outlawed. That is probably the most helpful thing that we can do, because alternative business models will spring up left, right and centre as a way of trying to get around it.

Q71 Dr Paul Williams (Stockton South) (Lab): As the Bill stands, how will you even learn if a landlord or letting agent is charging a non-permitted fee?

Alex McKeown: It will be through the complaints. That is one of the problems in trading standards. When a tenant goes to make a complaint to their local citizens advice bureau, they will be referred to Shelter. Our first-tier advisory service is the citizens advice consumer service, and again they get referred to Shelter.

We would have to trawl the databases to try to find the complaints. The one thing the chiefs say is that we do not get the complaints from tenants, because they do not know to complain to us. The information that Shelter takes from tenants is not good enough to pass on. There is no memorandum of understanding between Shelter and trading standards, so we do not get a clear idea of the problems. Historically, when I have had meetings with Shelter and said, "We need the information you have," they have said, "But we don't take trader details." I need trader details; I need to have that information. If we had access to the information that Shelter holds, the big problem would be shown.

Q72 Dr Williams: Simon, you have talked about the need to inform tenants about their rights better.

Councillor Blackburn: Absolutely. To answer your question very directly, we are talking about very vulnerable people who do not complain and do not go to their local trading standards—first, because they do not understand the law, and secondly, because the rogue trader involved has groomed them to make them think they are very lucky to be allowed to live in the property, and they are very fearful that if they complain they will become homeless. They will not come to us.

To return to the additional and selective licensing programmes, that is what tenants have told council officers time and time again. They say, "I know it is not supposed to be like this, but I didn't want to make a fuss because I didn't want to get thrown out." That is the issue. To return to my previous point, enforcement can do only so much because we are heavily reliant on very vulnerable people taking the bold and brave step of complaining.

Q73 Dr Williams: Is there anything the legislation could do, or that we could introduce, that would further protect those very vulnerable people?

Councillor Blackburn: There are already rules about not evicting tenants as an act of spite, but we are dealing with rogue traders, so the notion that they would comply with one bit of the law when they would not comply with another bit of the law is quite difficult. That is why I return to the issue of up-front funding to allow authorities to set this scheme up comprehensively from day one, and a Government-led awareness campaign.

Q74 Dr Williams: Are you suggesting that local authorities and trading standards would go out proactively and ask people whether they have been subjected to non-permitted payments?

Alex McKeown: I think that would be difficult, because the only way you could ask people is by working closely with housing teams to see when they have visited something like a house in multiple occupation and find found there are six tenants in there who have all got sham licences. If we work closely with our housing teams, we could go and ask them, "Were you charged a prohibited payment?" We are an intelligence-led body, so we need the intelligence to come to us. Otherwise, where do we start looking for it? If they were displaying tenant fees on their website or in their offices, we could issue a fine.

Councillor Blackburn: But they are not going to do that, which is why, as I said earlier, in some places it will make sense for private housing enforcement teams, rather than trading standards, to be the lead on this. It is in the renewal of an HMO licence, or as part of a selective licensing visit, that we will have an opportunity to get behind the front door, speak directly to tenants and persuade them to trust us with the information they provide.

Alex McKeown: Having worked in authorities where they have selective licensing, and having gone into properties at 7 o'clock in the morning with the Border Force and the police, I know that they are still too scared to give information to trading standards and the authorities, because they will lose their home. Councillor Blackburn mentioned the Deregulation Act and retaliatory evictions. The fact is that the tenancy relations officers in the councils are so under-resourced that I have heard them say, "We haven't got the capacity to enforce on retaliatory evictions." The process is such that it becomes almost impossible to enforce it, anyway.

Going back to one of my earlier points, when it comes to the fines, one way of trying to get businesses to be fearful of those fines rather than phoenixing their companies is to say that directors will be personally liable. If they are personally liable and they reoffend, and there is a £30,000 fine, we are already met with, "We can't afford it." "Okay, fine. We will put a charge on your property so that when you sell your property we will get that £30,000."

Councillor Blackburn: I strongly support that point.

The Chair: Numerous Members want to catch my eye. Does the Minister want to come in on this point?

Rishi Sunak: I can wait until the end.

Melanie Onn: I would like to come in.

The Chair: In that case, shadow Minister, you may.

Q75 Melanie Onn: What you said about the fines is timely. I had just written down a note to ask about the limits of the £5,000 fine. We are concentrating quite a lot on the enforcement side, but there is also the element that it is intended to be a deterrent. You clearly do not think that £5,000 is a deterrent.

Alex McKeown: No. At the moment the rogue agents just fold their companies and re-phoenix, or they simply do not pay. There was a case in Redbridge a few years ago. A rogue letting agent was issued with a £5,000 fine by the local authority three times and they carried on trading. They said, "We are not going to pay it and there is nothing you can do." Obviously, there are criminal sanctions under the Consumer Protection from Unfair Trading Regulations 2008, but when it comes to the fines, the agent continued to trade. They were featured on the Channel 5 programme, but they continued to trade. So the fine is not enough of a deterrent because, ultimately, they just folded their company and the directors walked away.

Q76 Helen Hayes (Dulwich and West Norwood) (Lab): I want to revisit the issue of confidence and how protection can be given to tenants to come forward. When the Housing, Communities and Local Government Committee conducted pre-legislative scrutiny of the Bill, we had evidence of the very low expectations of tenants. The quality of accommodation in certain parts of the sector is poor. They are often very vulnerable people and they are proactively told, "This is as good as you can expect and this is what the standard is," which is combined with the vulnerability inherent in the landlord-tenant relationship and people's fear of losing their homes. That was reinforced when we went out with Newham Council to do enforcement visits under its selective licensing scheme, and we met tenants who were living in properties that were clearly not fit for purpose and in breach of regulations, but they were told that was fine.

The Bill mentions the need for effective communication with tenants about their rights. We know that the retaliatory eviction legislation is not working and not functioning. How do we get to a framework of protection for tenants that ensures people are sufficiently aware of their rights and also confident enough to come forward and report breaches so that the agents and landlords responsible for those breaches can be put out of business?

Alex McKeown: That is quite a difficult one. The tenants are always going to be scared of being thrown out because so many letting agents do not care about illegal evictions. Again, the housing teams are under so much pressure that they cannot take action when there is an illegal eviction and someone is locked out of their house and loses everything. I go back to having fines against directors as a deterrent and then the criminal sanctions further down the line. Money is always a deterrent to people. They prefer not to pay. They would prefer to have a company criminal record than pay out £30,000. As my colleague says, criminal prosecutions are expensive. It is down to resources, again. What we have often found with the criminal prosecutions is that even with some of the safety aspects, the fine will be £2,000, so we might as well go for the civil penalty—but it is difficult protecting those vulnerable tenants.

Councillor Blackburn: Perhaps I may briefly reflect on our experience in Blackpool of having a very high-profile scheme of selective and additional licensing, working with the local media, and using our own communications channels to get across to people exactly what the council are doing—taking journalists and other interested parties out with us, as has clearly been done in Newham, to see exactly what happens. That has had twin effects. It has raised awareness among tenants that the council is involved and is on their side rather than the side of the landlord. It has also had the effect of some of the worst landlords and letting agents deciding that it is easier for them to go and do business elsewhere. Again, on the awareness-raising side, I think there is a great deal we can do to communicate the fact that "The Government and your local council are on your side here, but you need to take us into your confidence and trust us."

Alex McKeown: I will just add this: we have all mentioned HMO licensing, selective licensing and additional licensing. I started dealing with letting agents in Newham, so I am well versed in licensing, and I think it works very well in areas with a high percentage of rogue agents, because they will not get the licence, and there is that way forward.

The other thing I will mention is clause 12, which says that trading standards will assist tenants to get their prohibited fees back. As to the likelihood of that happening—it just is not likely. That is one of the problems. However, the Housing, Communities and Local Government Committee report refers in paragraph 99 to tenants being able to go to the first-tier tribunal. What I think would encourage tenants to complain to trading standards and give us statements would be if we could serve our penalty charge notices and, a bit like in a criminal prosecution, add the compensation order for the tenant to our case in the tribunal, rather than saying, "We are going to go to the tribunal with our penalty charges"—and then we have to start a new action in the county court.

It seems disjointed. If we can say to the tenants, "We will get your money back. We are going to deal with this. We will put it into our case, so it all goes into the same tribunal hearing," I think that will work better. I think that will assist vulnerable tenants a lot more.

The Chair: I am jumping in, because I can see we are going to run out of time. I know the Minister is chomping at the bit to have some fun with you, but I am sorry, Ms McKeown, I am going to have to go to the shadow Minister.

Q77 Melanie Onn: I will be brief. I wanted to ask about holding deposits and whether you think that the phrase "reasonably entitled" is sufficient to make it possible to enforce the provision. Do you think that removing the criminal offence from the original draft Bill, following the Government's response to the Select Committee, was the right decision? Finally, under clause 21, what will be the effect of moving the enforcement of client money protection schemes in non-unitary areas from district to county council level?

The Chair: As briefly as possible, please.

Alex McKeown: I did not look at the holding deposits, I admit, so I cannot answer on the holding deposit aspect and the removal of the criminal sanction on that. You asked about client money protection.

Melanie Onn: Yes, in terms of moving enforcement of client money protection schemes from district councils to county councils—it is probably a question for Councillor Blackburn.

Councillor Blackburn: There needs to be substantial flexibility in there. As Mr Goodwill commented before, in large counties, the number of cases that will be dealt with in one small district council could hugely outweigh all the other cases that are dealt with across the rest of the county council. There need to be options for local authorities to work together, if they so wish, or to appoint one lead authority—perhaps one district council in a county council, or the county council itself. There is not a one-size-fits-all answer to that question, because the way in which local authorities operate and the amount of expertise differ so much.

The Chair: I am sorry; it is very frustrating that we have such little time, but the Minister has been very patient.

Q78 Rishi Sunak: Thank you, Mr Bone. Alex, you gave an example of people receiving multiple fines and your view that that did not act as a deterrent. Are you aware of what happens and the potential penalties in this legislation for a repeated offence?

Alex McKeown: There is option to issue a £30,000 fine or to take criminal action. The difficulty is that criminal action is expensive. Often, we do not get our costs back and we still do not achieve very much. It is better to issue the fines but, again, the repeated offenders—

Q79 Rishi Sunak: But in terms of the deterrent effect, the ultimate penalty for a landlord who breaches the legislation is an unlimited fine and a lifetime ban. Do you agree that that has a pretty significant deterrent effect?

Alex McKeown: It is a significant deterrent.

Q80 Rishi Sunak: Thank you. You also talked about phoenix companies, and the idea, which I completely agree with, that people should not be able to circumvent legislation by setting up as a phoenix company. Have you read clause 13 of the Bill?

Alex McKeown: I think I have; is this the one that says you can hold the directors—

Q81 Rishi Sunak: In the interests of time, clause 13 specifically addresses the point you raised and makes it clear than an officer or member of a corporate body can also be held liable for a breach of the ban, both for unlimited fines and for banning orders. Does that deal with your concern?

Alex McKeown: To a degree, but the burden of proof is beyond all reasonable doubt.

Q82 Rishi Sunak: Given that it is a very significant sanction, that seems appropriate. But do you think that the principle that an individual cannot avoid prosecution is dealt with?

Alex McKeown: To a degree.

Q83 Rishi Sunak: Councillor Blackburn, you talked about training for trading standards and local authorities; are you aware that the Department is planning a series of roadshows, over the summer in particular, to address all these issues and to talk to local authorities about the enforcement of private rental sector legislation and regulation? Would you welcome that engagement with the sector?

Councillor Blackburn: I would have welcomed some earlier engagement to tell me that that was happening so that we could have co-designed it, but yes of course, Minister, I welcome that new development.

Q84 Rishi Sunak: It is not so much new, but perhaps new for you. I appreciate that you welcome it, and that is good.

You talked a little about funding—I hope you welcome the £500,000 that has been indicated. Have you done any bottom-up analysis that you can give us today that suggests that the figure should be different and that provides the figure that you would be comfortable with?

Councillor Blackburn: I anticipated that question and spoke to my officials on the way over. I said, "So when he asks me what we think it ought to be, do we not have a figure?" The answer was that we do not have a figure, but we are doing that bottom-up research. We were consulted about how much we thought it might cost, but we were given about a week to turn that around, which was not enough time to get sufficient data from our members about how much it might cost. That is work is ongoing. As soon as we have a figure, we will come back to you with it.

Q85 Rishi Sunak: I look forward to that. Lastly, on the lead enforcement authority, which we have not had the chance to discuss much today, I understand that the sector has previously welcomed the role of the lead enforcement authority. It is being funded with a few hundred thousand pounds as well. I would like your thoughts on whether that is a valuable addition to the enforcement landscape and whether it can play a role in helping both trading standards and district councils to enforce the legislation.

Councillor Blackburn: Yes.

Alex McKeown: Absolutely.

Q86 Rishi Sunak: Is there anything in particular you would like to see from that body, to help you do your jobs?

Councillor Blackburn: I am reasonably confident that they will want to work with the LGA to help us disseminate best practice and to advise our members. That is certainly what has happened in the past.

Alex McKeown: I do not have anything specific that I would like to see. I suppose I look for it to be very similar to the national estate agency team, which I am used to already.

Q87 Rishi Sunak: Do you think that model works well?

Alex McKeown: Yes, I think so. Generally, when complaints are sent via the national estate agency team, trading standards is more likely to do something about it.

Rishi Sunak: Brilliant. Thank you very much for your time.

The Chair: Thank you very much to both of you; you have been excellent and informative witnesses, but we have been beaten by time. Thank you very much for your attendance.

Examination of Witnesses

Rhea Newman, Katie Martin, Dan Wilson Craw and Izzy Lenga gave evidence.

12.16 pm

Q88 The Chair: We will now hear evidence from Shelter, Citizens Advice, Generation Rent and the National Union of Students. We have until 1 pm for this session. May I ask the witnesses to introduce themselves and make a short introductory statement?

Dan Wilson Craw: My name is Dan Wilson Craw, the director of Generation Rent. We broadly support this Bill and campaigned for it originally. We think it will save tenants money and, by reducing barriers to moving, give them more bargaining power in their relationship with landlords and letting agents. There will also be a more efficient market if landlords are made responsible for all the costs of agents and there is clear pricing in the market. We are worried about how default fees are defined and about how a tenant might help to enforce the law and ensure that default fees and, indeed, banned fees are not charged or abused. We also think the Bill is only a first step in the wider reform of the rental market. Security of tenure is an important aspect of giving tenants the confidence to complain.

Rhea Newman: I am Rhea Newman; I work in the policy team at Shelter. We also strongly welcome the Bill and generally the Government's commitment to making the rental market fairer and more affordable. We think the Bill will go a long way towards doing that and, in particular, the ban on up-front fees will make a significant difference for private renters, reducing the barriers to securing a new tenancy, which will particularly benefit those on low incomes who struggle most with up-front costs.

There are a couple of areas of the Bill that we think need to be further tightened to provide clarity and ensure they cannot be exploited. Our main priority is on payments in the event of a default, and we have a secondary concern about the terms when a holding deposit is refunded. Broadly, we strongly welcome the Bill.

Katie Martin: I am Katie Martin from Citizens Advice. You guys are probably familiar with Citizens Advice. We give advice to about 7.5 million people each year, over the phone, via webchat and email, and face to face. Some 400,000 of those people came to us last year with housing problems, 100,000 of whom were in the private rented sector, so we are pretty close to some of the problems people face. We use that evidence to support Government, to help to prevent problems arising, and that is why we have been calling for a ban on letting agent fees for almost a decade.

Again, we welcome the Bill and think it will go a long way towards solving some of the problems, but there are some problems with the wording, particularly about default fees, which could fundamentally undermine the Bill's intent to create fairer conditions, and create a loophole that landlords could exploit. We think that should be tightened up in the legislation, following consultation. We also have concerns about the cap on the deposit, which should be reduced to four weeks rather than six, because six will only help 8% of renters. If we are really going to bring down the barriers to entry for the private rented sector, that should come down.

We think this will be a strong Bill with those changes. We really welcome it, but we want to see those things tightened up.

Izzy Lenga: Hi, I am Izzy Lenga, the vice-president of welfare at the National Union of Students. The NUS represents students across further and higher education, around a third of whom live in the private rented sector. Students in higher education represent 5% of the total number of households in the private rented sector, according to the English housing survey.

The NUS runs tenant training programmes for student unions, so that they can train their members on their rights and responsibilities as tenants, knowing that, when those tenants graduate and move on to other private rented properties, they will take that knowledge with them. Our aim is to equip future generations of renters with a good understanding of their rights and how best to protect them.

We really welcome the spirit of the Bill. Alongside the other witnesses, we absolutely support measures that will improve renting, although we have some concerns around specific areas in the Bill—namely, the resources for enforcement within trading standards, the level of security deposit and especially the terms suggested around the holding deposit, which we believe could unfairly affect some renters.

The Chair: Thank you. We will shortly move to questions from Members. This is a very important part of the Committee system, because it allows Members to be better informed before going into the line-by-line examination of the Bill, which they will start this afternoon. It also gives the Minister the opportunity to put some concerns to you as well. We will start with the shadow Minister.

Q89 Melanie Onn: Thank you, Mr Bone. Could you go into a little bit more detail about your concerns over the description of default fees? What specifically concerns you about what is in the Bill?

Rhea Newman: We accept the principle that there may be certain circumstances in which a tenant should cover the cost of a default, but we want to ensure that there are sufficient protections in the Bill to ensure that, first, this is part of a fair term in a tenancy agreement, and secondly, tenants cover only the actual cost of the default. We welcome that the Government, as a result of the pre-legislative scrutiny, have already tightened the definition to limit payment in the event of a default to the landlord's loss.

However, we think that that needs to be tightened further, so that the payment covers only the landlord's reasonable and proportionate loss, because what could be included in loss is currently too broad. We do not think that landlords' and agents' business costs, which could include their time, should be factored into that, and we also think that charges for things like sending letters or making phone calls to chase late rent are

unfair. Tenants chasing a landlord to fulfil their obligations cannot charge for every communication they send, so we think that there should be parity in those principles.

We think that that definition needs to be tightened further. We also think that, through regulations, the Government could set out clearly the types of things that are allowed to be charged for as a default fee, and impose a requirement on landlords and agents to produce evidence of their costs when trying to charge a default fee. That should be shown to a tenant up front, which would make it easier for them to challenge if anything looks unfair.

The Government are currently proposing to produce non-statutory guidance. We do not think that that will be strong enough, because it will not be binding on landlords and letting agents. Putting it in regulations will make it easier for tenants to challenge and strengthen the hand of trading standards when trying to enforce the Bill.

Katie Martin: I support everything that the witness from Shelter has said. The only thing I would add is that we have seen attempts to use guidance for enforcement in other sectors. For example, in the energy sector, Ofgem introduced guidance around back-billing. That was found to be ineffective, so it had to introduce rules around that. That is also true of council tax debt collection practices. There are other examples of guidance not being followed, which has then required stronger measures. We think that that should be pre-empted and that it should be written into the proposed legislation at this point.

Dan Wilson Craw: I agree with what has been said. I am particularly worried that challenging default fees that are unfair or that relate to unfair terms in a contract will be very difficult for the tenant. Because it is not clear cut, trading standards might not devote resources to investigating it, so we think something stronger than guidance is necessary.

Izzy Lenga: We need a bit more clarity on the reasonableness of charges. There is an issue for students in particular around garden maintenance. There is quite a big disparity as to whether the cost would be just for a gardener or for a whole landscape change. That difference can be a massive cost and that needs a lot more clarity. Anecdotally, I remember that when I was a student we spent two days just plucking weeds out of my garden, because we did not know what we were meant to do and what the cost could be. That clarity would help students a fair bit.

Q90 Melanie Onn: I think it was Shelter that said it welcomed the ban on up-front fees, but it is not quite the case that the Bill bans all up-front fees. There is still a requirement for a holding deposit and the cost of the deposit. On Tuesday, we heard some evidence that highlighted the issue of the dual deposit situation where, if you are in one tenancy and you have paid your deposit, and then you are seeking to move and you have to find a deposit for your next place, you are out of pocket by two deposits and you need to find a holding deposit. The Bill does not entirely deal with that, and I wonder what your view is on how much of a barrier that is for people.

Dan Wilson Craw: We think it is quite a big barrier. We have done some work and we published a report in March on tenancy deposits. The average deposit is about £1,000, and you have to find that as well as the current £400 average letting fee. The majority of tenants will get their deposit back in a number of weeks, but only after they have moved out of their current place and into their new place so, as you say, they are out of pocket. One of our proposals was to passport deposits or to enable a portion of the deposit to be passported from the first tenancy to the next one. The Residential Landlords Association is looking at that as well. This Bill is a great opportunity to explore that in further detail.

Rhea Newman: We support what Dan said about up-front costs: they are a significant barrier for tenants. In our most recent private rented survey, moving costs were about £1,400 on average, and for those who paid letting fees, the average fee was about £250. We regularly hear from our advisers across the country about what a challenge those up-front costs pose for people who are trying to secure a new tenancy, particularly lots of tenants we support who might be on lower incomes.

There is a distinction to be made between what we are referring to as up-front fees that are non-refundable and the refundable bits in the Bill, which are the holding deposit and the security deposit. We support proposals around deposit passporting and that is an area that certainly merits further attention, but it is perhaps beyond the scope of the Bill. Our priority for the Bill is to ensure that the existing provisions are clear and enforceable so it can have the maximum impact for tenants. There is further work to do on other up-front costs, as Dan highlighted.

Katie Martin: Clearly, up-front costs, whether they are refundable or not, are a big barrier for people who are moving within the private rented sector or entering it. We would like that to be tackled. If the cap on the deposit was brought down to four weeks, as we recommend, that would help in respect of dual deposits as well.

Izzy Lenga: I echo my fellow panellists. Our priority campaign this year at the NUS is "Poverty Commission". We know that students are really struggling with money and are having to work two or three jobs to find where their next month's rent will come from, on top of their studies and any extracurricular activities. Such things place an added burden and stress on people that in turn can have an impact on their mental health, their ability to study and so on. It affects students financially, but also academically and in their whole welfare.

Q91 Melanie Onn: I have two more questions. Can you tell me about specific challenges for students when it comes to renting and what their general experience is?

Izzy Lenga: A specific challenge is definitely affordability. That is a massive challenge that students face. As I mentioned earlier, the fact that students are too often living in poverty and do not know where their next month's rent will come from really affects them.

Students often do not know their rights as tenants. That is something that we really try to train them up on. The NUS runs a "Ready to Rent" scheme and encourages student unions to do the same. Landlords often take advantage of the fact that a lot of students are first-time renters, so it might be their first time looking over a contract, for example. There is also the question of the effect on students who are estranged or do not have the necessary documents, such as a passport, and on working-

class students who have lived in social housing their whole life and whose families have not filled in contracts and stuff like that for housing.

Those are big things. Another is that the quality of housing for students just is not up to par. People joke, "It's student accommodation—it's meant to be damp and in squalor." We did a report this year about fuel poverty. Students are living in increasing fuel poverty and just cannot afford to heat their own homes, because of the price and because they do not know they can change energy supplier. Things like that are the key issues for students with renting at the moment.

Q92 Melanie Onn: My final question is, how will enforcement work in practice? I would like to get a flavour of how it currently works and what people need to be able effectively to enforce their rights, if that is possible.

Dan Wilson Craw: Do you mean in terms of the general quality of housing?

Melanie Onn: Under the Bill, how will people be able to enforce the rights they are being offered in the context of housing legislation as it exists at the moment?

Dan Wilson Craw: A tenant has two options apart from simply saying to the agent, "This fee is unfair." The tenant can say, "If you don't retract it, we'll report you to the council," or, "We'll take you to the first-tier tribunal." Those are the two options they have, in essence. The tenant can go to the council's trading standards or to another authority and rely on officers to carry out an investigation, or take it upon themselves to make an application to the first-tier tribunal. We need that back-up process, but all a tenant can get through that process is the fee back, so we think there is merit in awarding a higher form of compensation to a tenant who goes through that process. That would create more of a deterrent for an operator who charges an illegal fee, it would potentially save the council work, and it would give the tenant something back for the effort they put in.

Rhea Newman: Enforcement starts with having a really clear ban in the first place. The clearer the ban is up front in terms of all the different provisions—for default fees and refunding holding deposits, and the ban on up-front fees—the easier it will be for landlords and agents to know what they can charge and for tenants to know what they should pay. When the Bill comes into force, there will need to be clear communication to all parties, so that it is very clear what should be charged and what should be paid.

Once the Bill comes into force, it may be quite difficult for a tenant to challenge an unfair fee charged by an agent during a tenancy. That is one of our concerns about default fees. There is concern among tenants, who do not want to raise issues with the landlord during a tenancy for fear that they might face a retaliatory rent increase or eviction. There are problems with challenging unfair fees once you are in a tenancy.

We have concerns that few tenants will use the option to go to the first-tier tribunal. Citizens Advice has done some research about how likely tenants are to take formal routes of redress, such as going to court, for disrepair issues. We know that few tenants will use that option, but it is important that it works as well as possible for those who can be supported to use it. I know you heard from local authorities this morning. I am sure they made the point about ensuring they are sufficiently resourced to enforce the ban. That will be a key part of it.

I come back to the point that the clearer the ban is in the first place, the easier it will be for all to enforce it. The evidence from Scotland really points to that. The reason the ban needed to be clarified in Scotland in 2012 was that the provisions were not clear in the first place. Even after 2012, Shelter Scotland has been running a campaign to help people to reclaim their fees. That just highlights how important it is to get it right in the first place.

Katie Martin: We think that it is really important to get enforcement right. We are concerned about the reliance on trading standards in terms of resourcing and the willingness of authorities to take action. We think the market is very much skewed in favour of landlords and agents, and that tenants actually have very weak bargaining power. As we have pointed out, tenants feel like they are intimidated and do not want to take action against their landlord for fear of retaliation.

We very much support the Government's moves to introduce mandatory redress membership and we want that to happen as soon as possible, but we do not think that that will fix all the problems. We think that trading standards needs to be adequately resourced. We need to make sure that the requirements in the legislation are really clearly set out so that we hopefully do not get to the point where we have to resort to this kind of redress, but if that happens, it has to be adequately resourced and tenants need to be supported.

Q93 Mr Goodwill: In the opening comments from Citizens Advice, we heard that a four-week deposit was preferable to a six-week one on the grounds of affordability, but in a previous evidence session, we heard from the landlords that where there is a four-week deposit, often the departing tenant will just not pay the last month's rent in the knowledge that the landlord will then take the deposit to cover that rent. There is then nothing left to cover any damage or any other problems, so they were very much of the view that a six-week deposit would prevent that from happening. In the experience of the panel, is that something that happens quite a lot and would a six-week deposit be preferable for that reason?

Katie Martin: We have done some research on this. Our most recent research found that currently only 2% use their security deposit as their last month's rent, and 34% have a deposit of four weeks, so it does not stack up as an argument for us. We think the benefits of bringing it down to four weeks would far outweigh the risks.

Mr Goodwill: Indeed, the passporting arrangement that the Opposition mentioned would solve that problem as well. It is interesting to have some statistics behind that. Thank you very much.

Q94 Neil O'Brien (Harborough) (Con): I have a question for the whole panel. Two days ago, we heard from various landlords' groups that they did not think that the Bill would lead to net savings for tenants. For complete clarity, could I get a quick answer from each of you on whether you think that the end of lettings fees will lead to benefits to tenants?

Dan Wilson Craw: The Bill will benefit tenants. Yes, we think that.

Rhea Newman: Yes, we do. Is this in relation to potential rent increases? Is that what the question is?

Neil O'Brien: Yes, the argument was made that rents would just go up to compensate.

Rhea Newman: We still think the Bill will benefit the majority of private renters, because it will save them money every time they move. In terms of rent increases, we do not expect that all the fees currently charged to tenants will start being charged to landlords, because landlords have the consumer power to shop around and choose the agent that they use, and therefore there will be a competitive pressure on agents to drive down their prices and to offer surpluses at the best value for money.

If we look at the example of Scotland, there is no conclusive evidence that the ban led to a spike in rent increases immediately after it came into force. We conducted some independent research that suggested that there might have been a small short-lived increase in rents, but only one out of 120 landlords had experienced their agents putting up the price and consequently put that on to renters. Similarly, the Office for National Statistics produces an index of rental prices that is now the most authoritative source on rent increases and in the years after the ban, for the first two years, rents increased at roughly the same rate in Scotland and England. Four years later, they had increased much more in England than in Scotland, at 9% to 5%.

Neil O'Brien: That is quite the opposite of what we had been told the other day. Katie?

Katie Martin: Overall, we absolutely think that this Bill will benefit tenants, with the changes that we have proposed. If there were to be any rent increases passed on to tenants, which it sounds like there will not be, that would at least be transparent and visible, and that would help to create a competitive market for tenants. So overall, yes.

Izzy Lenga: I was going to echo the point about what happened in Scotland. When the Scottish Parliament banned those fees there was not that much of a spike in an equivalent rise in rent. I also echo the point that ensuring that the guidance is clearer, more transparent and provides a lot more clarity will be really beneficial for students, especially in learning how to manage to budget. As I have mentioned a few times, students can really struggle with money. Clear and more transparent guidance about where their money is going, and when and what they need to pay, will really help students in general.

Q95 Neil O'Brien: If it is okay, Mr Bone, I have a question specifically for Rhea. You just made an interesting point about reasonable charges. I can see your argument that tenants are not able to claim the costs of getting in touch with their landlords, but on the other hand, as you were speaking I was struck by the thought that if it does take months of work, legal effort and endless emails to enforce something, I am not sure how a clause about "reasonableness" would be interpreted. On the face of it, charging for those kinds of costs might be considered reasonable. Could you perhaps say a little more about your idea? I feel sort of left hanging by what you said.

Rhea Newman: Currently, the Bill limits payments in the event of a default to a landlord's loss, but it is not clear what could be included in that. For example, replacement keys come up a lot. We think that it is absolutely right that if a tenant loses their key they should pay for it to be replaced, but we think that they should pay the cost of having a new key cut, not necessarily other costs that could be added to that such as time, going to get the new key cut and business lost. To draw a comparison, if you broke a glass in a shop you would be very happy to pay for a replacement glass, but I do not think you would necessarily offer to pay lots of additional things on top of that, which you would consider part of the shop's business costs.

Q96 Neil O'Brien: Just to push you a little on that, in quite a lot of other industries you do pay for the time. For example, if you get a parking charge you will get charged for all the associated legal stuff if you have bailiffs enforced against you. In lots of other industries you do get charged for the time. I wonder how you see your proposal being interpreted. Would it be for the courts to decide what is reasonable, eventually, or would you want a defined list?

Rhea Newman: In regulations we would like a defined list of the types of fees that can be charged. In terms of what comes down to reasonableness, it might be difficult for that to be set out in regulations. I guess there are already some protections in the Consumer Rights Act around what is considered fair or unfair. I think reasonableness is about what a reasonable person would expect to pay in those circumstances, which is the cost the landlord actually incurs.

It is the combination of the reasonableness with the evidence. The landlord sets out the evidence and shows what the costs are. The tenant can then look at that, potentially get some advice, and challenge it. The problem is that by just saying that it is limited to a landlord's loss, landlords could try to put lots of extra things in there. We have been asking some of our supporters and staff about things that they are potentially charged for at the end of a tenancy. For replacing items such as a dustpan and brush you could be charged £45 because an initial procurement fee was put on to it as well. That is the kind of thing that we are trying to guard against.

Q97 James Frith (Bury North) (Lab): This has slightly been touched on, but does Citizens Advice, or anyone else who wants to answer this, have an example of landlords taking the mick when it comes to default fees and incidental fees? We have discussed the loss of keys, but there is some concern about incidental fees, as well as the range of fees that are applied, being increased as an opportunity to recoup some of the earnings that agents or landlords might be losing. Are there any examples of that?

Katie Martin: I am sure our advisers see examples of that every day. I am afraid I do not have any off the top of my head—I do not know whether other panellists do. We know that many tenants are being exploited by landlords. Not all of them—many landlords are totally fair and reasonable, but some are not, and we think that the legislation should prevent those unscrupulous landlords from being able to take advantage of tenants. I do not have examples off the top of my head.

Rhea Newman: I was going to pick up on a point that was made earlier. Garden maintenance could be quite a good example: what is expected of a tenant in terms of maintaining a garden? If you give landlords and agents the potential to do so, some—it is only some—might attempt to write in quite creative things that put unfair expectations on a tenant, and then charge them for not meeting them.

The existing examples we see that we are particularly worried about are the letters to chase late rent as well as emails, phone calls and so on. If they are charged at, say, £60 a time and there is no limit on how often a landlord or agent can send those letters or emails, that might be considered an unfair term in the Consumer Rights Act, but as we have said, it is actually quite difficult for a tenant to challenge that. That is why we think there need to be clear provisions up front about what is chargeable and what is reasonable.

Dan Wilson Craw: We have a couple of examples. We asked our supporters for examples like this and someone was required by their landlord to have their chimney swept once a year even though their fireplace was completely out of action.

There was another whose landlord would not fix a broken extractor fan in the bathroom, so the bathroom got very damp. By the end of the tenancy, one of the cabinets had got water damage, so the landlord tried to claim for that. The tenant successfully argued that that was the landlord's fault because of the extractor fan, and he was awarded his deposit back. But the point a lot of our supporters made was that in these cases they knew their rights and knew that they were in the right, but they felt that a lot of tenants in a similar situation would not have the confidence to take on the landlord, or perhaps could not have a deposit just held in escrow for months on end while that gets resolved.

Katie Martin: In terms of transparency, it is required that any of these incidental fees default fields are written into the contract, but we know from our research that a quarter of tenants receive their contract on the day they are moving. So they have already paid the deposit and committed without having seen the contract. We think that is far too late for those things to be made clear to them.

Rhea Newman: It is also potentially very difficult to identify charges in a contract, depending on how they are written in, and it is very difficult to negotiate. That is a really good point about when you receive the contract, but even if you received it earlier, if you want a particular property and you know that queues of tenants are trying to get it, you are in a very weak bargaining position.

Q98 James Frith: My other question is about whether holding deposits are needed. You raise an interesting point, Katie, that essentially the landlord and agents feel assured that the tenant is moving in because they have paid a holding deposit, but then they do not follow up with their own obligations and issue a contract on time. Is that what you are saying?

Katie Martin: I am saying that they do not see the contract. I am not sure about the exact requirement for when they are supposed to see it, but we know that in reality they do not see it until the point when, as I say, it is too late to challenge.

We do think there is a role for holding deposits, but we think they should be limited. We also think that the terms on which they should be refunded should be really clear. It should only be in the case of misinformation—

Q99 James Frith: So the holding deposit coming off or being the first month's rent is the scenario for getting it back.

Katie Martin: The holding deposit is separate from the deposit that you keep for the course of the tenancy. I think the holding deposit would be capped at a certain amount. It is not something that we have looked at closely.

Q100 James Frith: So you think it should be more commonplace. It is not universal, is it?

Katie Martin: No, indeed.

James Frith: You think it should be.

Katie Martin: No. We can see the case for when they might be needed.

Q101 James Frith: But they should be refunded pronto.

Katie Martin: Absolutely, yes.

Q102 Richard Graham (Gloucester) (Con): Katie Martin, I will ask you a question I wanted to ask our previous witnesses about who the best people are to try to work with tenants when there are issues effectively of breaking the law. We heard from previous witnesses that they had real doubts about vulnerable tenants turning to people such as trading standards and so on for help.

In my experience, quite a lot of tenants will turn to housing departments with questions, particularly on environmental health issues. For example, I have noticed a huge increase in the number of young mothers who go to the city council complaining about mould or damp properties. It is true that those tend to be more for housing associations than for private tenancies, where maybe the tenants feel more secure. However, do you think that if second-tier councils' housing departments had responsibility for enforcing the measures in this Bill, tenants would be more likely to raise issues with them?

Katie Martin: I think you have hit the nail on the head about people in social housing feeling much more secure. Tenants in the private rented sector hesitate to come forward with complaints because there is a huge fear of retaliation, which is one of the reasons why we think that all of these problems should be pre-empted in the legislation rather than having to be picked up later. People do not feel like they are empowered. They are very worried about what action the landlord might take, such as not renewing their tenancy and all kinds of different things. That is definitely problematic for renters.

Q103 Richard Graham: Do you happen to know whether it is mandatory at the moment for an agent, or a landlord if it is a direct tenancy, to provide tenants with a bit of paper that spells out what tenants' rights are on things such as environmental health and up-front fees? If that is the case and it was clearly marked, "If you see evidence of any of these issues, contact your

second-tier council housing team on this telephone number", would that help make people more aware of their rights?

Katie Martin: I will turn to Rhea on what is currently provided.

Rhea Newman: Landlords and agents do now have to provide a document that the Government produced, the "How to rent" guide, which includes lots of information about the roles and responsibilities of landlords and tenants. The Department has worked closely on that and engaged with a lot of stakeholders to try to make things clearer, but there is a challenge. Providing it is one thing; ensuring that tenants can actually engage with it and understand their rights is another. Sometimes people do not look at things until a problem occurs.

Q104 Richard Graham: Do you think a part of that is about effective media communication from local councils when landlords are fined? For example, on illegal tobacco, I have noticed from the number of cases that since trading standards gave publicity to the fines of people who had been selling illegal tobacco, that has raised awareness of the issue hugely. Do you think the same thing would be effective on some of the up-front fees?

Rhea Newman: Communications are really key to that. When the ban comes into force it will be really important in the lead-up to that to make sure that there are clear communications at a national and local level to try to reach all landlords, agents and tenants to make sure they are clear about what they should and should not pay. The clarity of the Bill helps to make sure those communications can then be clear.

Q105 Richard Graham: Rhea, you mentioned earlier that you were worried about the business of multiple deposits for people moving tenancies. Does the concept of passporting the deposit from one landlord to another deal with the issue?

Rhea Newman: We think passporting could have a key role to play in dealing with such issues. There are real challenges for people when they cannot get one deposit back and they are trying to put a deposit on a new tenancy, so there is certainly merit in exploring deposit passporting. We would be keen to work with MHCLG and organisations such as Generation Rent on that.

Q106 Richard Graham: Dan Wilson Craw, is there anything you would like to add on either of those questions?

Dan Wilson Craw: On the question of communication, council websites are really important. Tenants are supposed to get their heads around the guide, but it is a national document and they need to be able to find local information easily. Unfortunately, in our experience, a lot of councils do not really have much information on their websites for private renters. A lot of the time, if someone has a problem with their landlord, they phone up their council—this is an example that I came across—and get put through to the housing department. They are simply told, "This is how you apply for a council house", and it is left at that, even though they have the right to have an environmental health officer come out and inspect the property.

Q107 Richard Graham: Do you agree that the environmental health officers are the right people in the council housing team? If you have a housing team that also has responsibility for following up on this, that is a more logical link.

Dan Wilson Craw: I think each council will have to work out exactly how to communicate the letting fees ban under their existing responsibilities and the best way of communicating it. Obviously it depends on whether it is a two-tier council. as well.

Q108 Richard Graham: Do you agree that that tends to be where the expertise is? People in council housing teams often have a strong feel for who is a good landlord and who is likely not to be, and of course a better awareness of the tenants.

Dan Wilson Craw: Sorry, I don't quite understand.

Q109 Richard Graham: Within the Bill there are different options for who will have responsibility for enforcement. It could easily be at the first-tier level—the county council—but on the whole they do not have any direct experience of dealing with housing issues, whereas the housing teams in the second-tier councils do. They have environmental health officers and they deal with people who are looking for tenancies, so they know the customer very well.

Dan Wilson Craw: Absolutely. What the Bill appears to do—we support this—is to allow second-tier councils to take on the responsibility for enforcement.

Q110 Richard Graham: It does. My question was whether you support that and think it is a good idea. Is that a yes?

Dan Wilson Craw: Yes, it is.

Rhea Newman: In their responsibilities for enforcing across the private rented sector, it is really important that trading standards and environmental health officers work together. That joint work is fundamental. They obviously have resource challenges at the moment, which need to be addressed. We have always supported having one responsible authority—trading standards—in the Bill, but if they can work with their district councils, that is really important.

Q111 Rishi Sunak: Thank you to all of you for joining us today. You have all been working with the Department extensively in helping formulate the legislation, not least by providing input into the guidance that is currently being formulated. I really appreciate your help there, and I guess congratulations are in order. You have all campaigned for a long time on this issue, so I am sure you are delighted to see it come into practice. Thank you for your broad support for the aims of the Bill.

I have a very quick question about the principle of a holding deposit. Obviously, there is some debate about that. The argument that has been put forward—we heard it again the other day—is that having a holding deposit is sensible because it does two things: it ensures that tenants have a financial stake in the process and that they are not speculating on multiple properties, and it protects landlords, so they do not cherry-pick among

[Rishi Sunak]

tenants. If there were not a holding deposit, landlords might be inclined to pick safer tenants. I understand that you might have some different views about the detail of how it is implemented, but first I would love to hear whether you agree with the principle of a holding deposit. Katie, do you want to start?

Katie Martin: Yes. As I said, we do not object in principle to holding deposits. We think they should be measured to ensure prospective tenants are not taken advantage of. We also think it is really important that the legislation ensures that the landlords or letting agents cannot retain the holding deposit following a failed credit check or reference check. They should do that only if tenants have provided misleading information. The circumstances under which holding deposits are withheld should be closely looked at, but we do not object to them in principle.

Rhea Newman: We also do not object in principle. We think they can play a role. We are not sure, in practice, how much tenants speculate on multiple properties at the same time—in highly competitive markets, tenants often feel lucky to find one property that meets their needs—but we accept the principle of a holding deposit. We have always argued for a lower cap of about two days' rent, because one week's rent—I think the average is £192 across England—is a lot to lose if your circumstances change. Our main priority is to ensure the terms for refunding holding deposits are really clear. We think there needs to be a paper trail around what information is taken before holding deposits are given. Landlords and agents should tell tenants how it will be treated, and if they do not refund it they should provide evidence for why they are doing that. We think that, at the moment, the terms are not clear enough.

Dan Wilson Craw: I agree. We think holding deposits serve a function in a market in which it takes a while to get a reference from the tenant. If technology and the market were to develop post the fees ban, and a tenant could be referenced instantly, you would potentially not need a holding deposit.

We have a couple of concerns. Having this Bill to formalise the process of taking a holding deposit is really important. Under the Bill, a landlord or a letting agent could still take holding deposits from several tenants and ultimately give the tenancy to only one tenant. What it would do for tenants who had put down a holding deposit and did not get the tenancy is to put their flat hunting on hold for 15 days. We would quite like to see the Bill tightened up in that respect. Also, as was mentioned before—

The Chair: Order. I am afraid we will never know what the second point was, because time has beaten us. You have been excellent witnesses. Thank you so much for coming.

That brings us to the end of the oral evidence session for this Bill. The Committee will meet this afternoon to begin the line-by-line consideration of the Bill. To remind Members, that will happen not in this Room but in Committee Room 12 in the Palace of Westminster at 2 pm.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Third Sitting

Thursday 7 June 2018

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 11 June 2018

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 7 June 2018

(Afternoon)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

2 pm

The Chair: Before we begin, I have a few housekeeping points. Will everyone ensure that electronic devices are turned off or switched to silent mode? Teas and coffees are not allowed during sittings.

We now begin line-by-line consideration of the Bill. The selection list for today, which is available in the Committee Room and on the Bill website, shows how the selected amendments have been grouped for debate. Grouped amendments generally deal with the same or similar issues. A Member who has put their name to the lead amendment in a group will be called first; other Members will then be free to catch my eye to speak about all or any of the amendments in that group. A Member may speak more than once in a single debate.

At the end of the debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or to seek a decision. If any Member wishes to press any other amendment or new clause in a group to a vote, they will need to let me know. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments, if any are tabled.

Please note that decisions take place not in the order that amendments are debated, but in the order that they appear on the amendment paper. In other words, debate occurs according to the selection list, and decisions are taken when we come to the clause that an amendment affects. I shall use my discretion to decide whether to allow a separate stand part debate on an individual clause or schedule following debates on the relevant amendments. I hope that explanation is helpful.

The Committee agreed on Tuesday to the programme order, which is printed on the amendment paper and sets out the order in which we have to consider the Bill.

Clause 1

Prohibitions applying to landlords

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): It is a pleasure to serve under your chairmanship, Mr Sharma. I welcome all Committee members to the first of our line-by-line sessions. I hope that we make constructive and speedy progress through the various amendments and clauses.

The purpose of clause 1 is to ban landlords from charging any letting fees to tenants or other relevant people in connection with a residential tenancy in England, which very much achieves the overall aim of the Bill. In addition, the clause provides that landlords must not require a tenant to take out a loan in connection with a tenancy. Our approach to implementing this policy is to ban all fees, with the exception of certain permitted payments outlined in schedule 1, which we will no doubt discuss later.

The clause also provides that a landlord must not require a tenant to procure and pay for insurance or the services of a third party in connection with a tenancy, with the exception of utilities and communications services. That prevents landlords from circumventing the ban and charging fees by other means.

Melanie Onn (Great Grimsby) (Lab): What does the Minister think about the terms of utilities and communications contracts that tenants may be entered into?

Rishi Sunak: Relatively straightforwardly, if a landlord has a utility arrangement in his or her name, as is common, it may be more sensible for the contract to stay in the name of the landlord but for the payments to be made by the tenant. That is what the clause refers to. That is reasonably common—indeed, it is accepted practice—and it is important that the Bill allows for it, as it is often cheaper and easier for all parties concerned for that to happen than for the name of the owner of the contract to be changed.

Melanie Onn: Does the Minister have any evidence that that is cheaper?

Rishi Sunak: As I am sure Committee members know, it is common for there to be hassle, time and cost involved in changing providers between people. I have personal experience of doing so for a satellite service and of adding my wife's name to something. Those things can sometimes take time, and it is easier for all parties if they stay in the name of the landlord, with an agreement between parties that the tenant pays for the services as they are incurred. Indeed, it is common, generally accepted practice for the tenant to be obliged to pay for their use of such utilities as electricity or gas, as measured by inspection of the gas meters. That is what is allowed for under the clause.

Jo Stevens (Cardiff Central) (Lab): May I ask the Minister about a situation in which a tenant wants to change supplier? If the contract is in the landlord's name, how would the tenant be able to enforce a change of gas or electricity provider?

Rishi Sunak: That is a separate question between a landlord and tenant in any rental contract. The clause deals with the question of payment. It is important, if the Government are attempting to ban payments being charged to tenants, to note that there are certain exceptions. The clause captures the fact that, on occasion, tenants will continue to pay for the utilities they consume, and that that should not be captured by a ban on fees. It would obviously not be right for tenants to use electricity

and gas without the landlord being able to make an appropriate charge for them, if that was how things were arranged.

In the Bill, the phrase

"in connection with a tenancy"

is defined deliberately widely. Requirements in consideration of the

"grant, renewal, continuance, variation, assignment, novation or termination"

of a tenancy that are included in the terms of the tenancy are all covered. That is to ensure that fees cannot be charged at any point during the tenancy, including upon exit. That addresses the concerns raised during pre-legislative scrutiny that the previous drafting, banning fees that were a condition of a grant in renewing or continuing a tenancy, might still allow fees to be charged at the end of a tenancy. That would have been contrary to the policy intention.

Landlords also cannot require outgoing tenants to pay for a reference, in the same way as employers do not charge their employees for a reference today. The clause also applies to a person acting on behalf of a tenant, and a person guaranteeing a tenant's rent. Tenants and such persons are referred to as "relevant persons". The clause is one of the principal clauses in the Bill, and as such I beg to move that it stands part of the Bill.

Melanie Onn: It is a pleasure to serve under your chairmanship this afternoon, Mr Sharma, and to join the Minister in debating a Bill in our present roles for the first time. I am sure that it will be a suitably memorable occasion.

The private rented sector is the fastest growing sector of the housing market. The number of private renters is predicted to grow by 24% by 2021, which means that one in four households will be renting rather than in owner occupation in three years, according to a report on the PropertyWire website last June. PropertyWire says that property rental

"has doubled in the last 10 years or so, and it is expected to continue to grow to 5.79 million households while 68% of renters still expect to be living in the rental sector in three years' time, according to the latest tenant survey from real estate firm Knight Frank."

PropertyWire also says:

"The report says that growth of the PRS has been spurred by conditions both in the housing and labour markets. Younger workers especially are taking advantage of the increased flexibility of renting as a tenure which allows moving between locations without any of the costs associated with buying or selling a property."

It is clear, therefore, that far from being a nation of homeowners, we are shifting towards being a nation of renters, with about 4.7 million people renting their homes—some by choice, and some because there is no other choice. We must make absolutely sure that regulation of the sector is fit for purpose in the 21st century.

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. The future that my hon. Friend describes has already come to pass in many parts of the country. At least a quarter of properties in Cambridge are now in the private rented sector. The Bill is welcome in many ways, but I worry that it will not necessarily keep up with the changing business models emerging in many places. There is a tendency for landlords to find new and imaginative solutions. Does my hon. Friend worry, as I do, that some internet platforms and so on could provide avenues for people to get around the Bill?

Melanie Onn: That is an important point in considering the sector, which I will deal with later in my comments.

The Minister must be alive to ensuring that the Bill is future-proofed. We have heard evidence this week about online providers of landlord services who offer a much more flexible service to their clients—very different from that provided by the traditional estate agent and letting agent sector. The Bill must be right for the future, because the sector is fast-moving and swelling to meet housing needs that the state is currently not providing for in either type or scale. The needs of tenants must have a stronger role than in the past.

It is right that the clause sets out everything that a landlord must not do in relation to tenants, but it is sad that we have to be here prescribing rules to deal with those landlords who have not treated their tenants well. The Government have sought to limit the potential for a loophole where landlords simply require prohibited payments to be made to a third party. The clause sets the expectations that the Government have of landlords and attempts to deal with the relative position of power that landlords have held over tenants, whether that has always been fully recognised or not, to bring about an overdue rebalancing.

The Opposition recognise that the Government have previously taken steps to ensure that bad landlords have nowhere to hide. There will be a record of landlords who continue to flout rules on the quality of housing or overcrowding and of those who have certain criminal convictions. While it is slightly off topic, I cannot miss the opportunity to ask the Government to take steps to make that register more widely available so that tenants' choice is made part of the country's housing availability process.

As we heard in evidence this morning, an increasing number of tenants have for too long found themselves with the smallest of bargaining chips in their relationship with their landlord. On Second Reading, I talked about the inherent difficulty of the situation, with landlords, often seeing their property as an asset on which to secure returns, set against the needs of tenants who, in the absence of being able to secure ownership, wish to make their house their home.

The Government have made an exception to prohibition, including contracts for utilities and communications services, which is why I asked the Minister the questions I did with some interest. I understand that utility and communication services may be in place at the start of a tenancy. Indeed, some purpose-built to-let properties have all amenities covered, with free wi-fi provided to entire blocks, as an incentive or assistance to tenants, and as one less thing to worry about, with landlords not wanting to have their tenants wait around for engineers to arrive—or not, as the case may be—and deal with installations. However, is it not the case that the contracts that landlords have adopted for their properties may sometimes not provide the best value—for example, where prepayment meters are used or the tariff is at a general level—resulting in excessively high bills? That could come as a surprise to some tenants.

[Melanie Onn]

Prepayment meters are particularly common at the lower end of the housing market, and they bring their own problems. Once the equipment is in place, it is difficult to change provider. There can be charges for removals—no longer, I accept, from the big six—and if the account is in deficit, customers cannot swap between providers, let alone move to a billing system for their energy needs. That is important because, as the PropertyWire report goes on to explain, there is growth in the private rented sector at the more economic end of the housing scale at a time when the sector as a whole is changing.

With prepayment meters, it is not the tenant but the landlord who is the customer, but the tenant is tethered to the landlord's choice of how their energy will be supplied, and those on low incomes or benefits are stuck with the most expensive method of energy bill payment. The Bill says—I paraphrase—that a landlord must not require a person to enter into a contract with a third party in connection with their tenancy, but that does not apply if the contract is for the provision of a utility to the tenant, or for the provision of communication services. For prepayment meters, the tenant is not required to enter into a contract—they have absolutely no choice in the matter. Worse than that, they are unlikely to ever have a choice in the matter so long as they reside in that property. They will remain tied into something that has been paternalistically decided for them.

2.15 pm

Mr Robert Goodwill (Scarborough and Whitby) (Con): Is it not the case in many cases that there being a key meter or a prepayment meter in the property is due to the actions of a previous tenant, for whom the meter had to be installed because of an unpaid bill? It is then very difficult for either the landlord or the new tenant to change that situation.

Melanie Onn: The hon. Gentleman raises a valid point. It is certainly the case that landlords often find themselves feeling that they have no other option but to put a prepayment meter in to avoid ending up as the recipient of all the bad debt that may well have been run up. However, I think it has become a bit of a choice for some in the sector, particularly at the lower end of the market, and by doing so they devolve themselves of any more responsibility in relation to their tenants. That is a shame, because it means that a good relationship is then not built up between tenant and landlord and there is not the element of trust, or of being treated like an adult, that one might hope for in that situation.

Landlords come in all shapes and sizes and are at variance across the country in the type and number of properties that they hold. There are landlords who are not resident in this country; entrepreneurial, buy-to-let landlords with small portfolios; those who inherit a family home on the death of a loved one; those who find themselves with an additional property after meeting a new partner; professional landlord companies that purpose-build to cater for particular groups, such as students or young professionals; speculative landlords who devolve all responsibility to agents; and those who live in the next street and keep a very close eye on things. Subsection (4), which relates to utilities and communications, needs to be clear to all those different types of landlords. Does the Minister think that that is the case?

That clarity is especially important because there is continuing growth of large-scale investment in build-to-let or multi-housing, which is professionally managed rental accommodation, usually at scale, in purpose-built blocks. That market, which only emerged in force in the UK in very recent years, is now worth an estimated £25 billion. Will tenants be protected against being required by these large corporations to enter into a contract that may not be the most economical, and that may take away their ability to choose between providers?

What will happen if there are difficulties in the contract that tenants have been required to sign up to? How easy will it be for the tenant to extract themselves from that contract—or could they prohibited from doing so if it is connected to their tenancy? For example, if they want to live in a building, will they have to go with Virgin for broadband or Npower for gas and electricity—other good broadband providers and power and energy suppliers are available—as the landlord gets a special tariff when those are supplied to the whole building? That would be entirely outwith the tenant's control. What are the Minister's thoughts on that?

Young professionals aged 25 to 34 make up the largest proportion of households living in the private rented sector. That is expected to remain the same in 2021, with their stay in the sector further lengthening, as the affordability issues surrounding home ownership—particularly gaining access to a deposit—remaining a challenge. Why should those people be limited in their ability to make a choice on their provider?

Among professionals living in the private rented sector, it is expected that there will be slightly faster growth in the number of under-25 households during the next five years, as well as an increase in older households—especially baby boomers. We must have consideration for those when it comes to the affordability of bills.

Under-25s receive a lower rate of minimum wage than other workers, so their disposable income will be much more restricted. Younger workers are usually paid less commensurate with their post and experience, which of course does not make them any less professional, and their ability to access things like housing benefit, the limits on local housing allowance and the shared occupancy rate all have an impact on their securing housing in the first place. How much they are required to top up from their own funds will have a severe impact on what utilities they can afford.

Hon. Members present must have had numerous constituents come to see them about the challenges of utility bills. The Minister has mentioned the difficulties of trying to change provider. Such difficulties are encountered particularly when prepayment meters are involved and perhaps when there are multiple occupants. Getting bills straightened out when there is confusion about meters is a lengthy process that, in my experience, results in carrier bags full of contradictory letters from those providers. Older renters on fixed incomes may also face financial restrictions, and I ask the Minister to consider that in his response too.

On the definition of a landlord, I outlined some of the common understandings of the types of landlords that we might all recognise, but I would like assurances from the Minister about who will be covered by the Bill.

We cannot have a situation where Parliament takes all reasonable steps to further protect renters from the precipitous situations that they currently find themselves in, only to discover that organisations are deliberately seeking to absolve themselves of the responsibilities that all other landlords are subject to under the Bill.

In particular, I think about the case of Lifestyle Club London that I brought up on Second Reading. At the moment, that company can forgo many of the protections that are considered standard in a usual tenancy. By defining itself as a membership club, it can enter a property with absolutely no warning, it can levy huge fines to tenants for small things such as dirty dishes, and it can even give just seven days' notice before terminating a contract and forcing the occupying person to move out.

Of course, that goes against many of the things that should be guaranteed for any renter, but companies such as Lifestyle Club London can justify that behaviour by saying that their residents are licensees and not tenants on assured shorthold tenancies. Residents pay a membership fee rather than a deposit, a monthly contribution rather than rent, and have terms and conditions rather than a tenancy agreement. That type of practice is completely unacceptable and unfair to residents, who often do not realise they are being exploited by companies that act in that way.

The Bill is the place to end that practice once and for all, by ensuring that licensees are covered by the same protections against fees as assured tenants and by prohibiting membership fees, monthly contributions and terms and conditions fines. The fact that a loophole exists to allow that type of agreement suggests that licensees of that nature have been left out of protections brought in by similar legislation to prevent landlords from acting in certain ways towards tenants.

I do not intend to move an amendment today because I await the Government's response with interest. The Government have an opportunity to be explicit in their intentions and perhaps to table their own amendments in future to make it absolutely clear that companies such as Lifestyle Club London are covered by the Bill. Is it the Minister's understanding that such clubs will be considered to be landlords under the terms of the Bill?

I would also like reassurance from the Minister that there are no loopholes around how tenancies and tenancy agreements can be defined that would allow de facto tenants to be afforded less protection from prohibited fees, and that if it turned out that a landlord could use alternative definitions to charge prohibited fees, the Government would return to the House to make the necessary changes to close that loophole as soon as it became apparent.

What type of loan is the Minister thinking of in subsections (5), (6) and (7)? I have spent a long time trying to conjure the purpose of such a loan from tenant to landlord, how that might come about and on what evidence the terminology is based, but it remains altogether unclear. I hope the Minister will provide some reassurance on those points.

Rishi Sunak: It is a great pleasure to embark on my first Bill Committee with the hon. Member for Great Grimsby and I look forward to going through it with her. I will try to keep this on point and address the specific issues that she raised.

First, on utilities and the provision thereof, some of her comments will be well directed at the energy price cap legislation that is working its way through Parliament. I am sure she will engage in that process. With regard to this Bill and this specific clause, I say to her that that process is something that any tenant would likely follow as part of their deliberations about which kind of property to rent, in the same way as I would imagine tenants decide whether a property has good mobile signal, any broadband available, what kind of energy is available, and so on. Those are all things a tenant will have awareness of in advance of making a decision with regard to the suitability of that particular property for their circumstances.

Daniel Zeichner: I would ask the Minister to think a little—I have examples in my own area—not about properties at the lower end of the market, but about new properties where there are shared heating schemes. I am not as convinced as he is that people moving into those properties are fully aware of the scale of charges they may face. There are disputes going on currently around this, because people do not necessarily understand and in some cases they feel that they are not fair or reasonable. I wonder whether he would consider inserting at some point a reasonableness test, because just passing on the charges without people necessarily understanding what they are when they enter into that agreement in the beginning, as I say, has created problems, which I am aware of.

Rishi Sunak: That is something that we are certainly looking at exploring in the guidance that is being developed in conjunction with various consumer rights groups, particularly around the "How to rent" guide, ensuring that potential tenants are aware of the things that they should be asking, which ought to be relatively common sense. As I said, there will be explicit notice in that guidance around the things that tenants should make themselves aware of. Those are the types of questions they should be asking to ensure that they have full sight of what that particular property and tenancy will mean for them.

Helen Hayes (Dulwich and West Norwood) (Lab): We heard evidence this morning of the situation that many tenants find themselves in, having committed by way of a reservation to let a particular property, where they are unaware of many of the terms of the tenancy, including perhaps some of these contractual obligations, until it is far too late for them to back out of it, because money has already exchanged hands, they are already committed and they face consequences from pulling out at that stage. What does the Minister have to say to tenants in those circumstances?

Rishi Sunak: I would say to tenants in those circumstances that it is absolutely not a good idea to enter into an agreement without seeing the actual document that you are signing and committing yourself to. It is obviously good practice, as will be mentioned in the guidance that is to be published, that all potential people renting should seek to have a proper shorthold tenancy contract. That would be good practice that most people would aim for. There would be an obligation on them to take some responsibility for that, rather than entering into a

[Rishi Sunak]

situation where they are unaware of their obligations. I should make some progress, but if the hon. Lady wants to intervene one more time, she is welcome to do so.

Helen Hayes: I am grateful to the Minister for giving way again on that point. I think the Minister misunderstands the nature of the culture in much of the letting agency industry, where tenants are frequently told, "This is the only property available to you. It is the best offer at this time—you absolutely must. There is a queue of other potential tenants." In practice, they do not have the type of choices at their disposal that the Minister seems to believe they do.

Rishi Sunak: I am confident that with the awareness that will be spread as a result of this Bill—we have heard a lot about the simplicity of this Bill, which will make it more effective for potential tenants to enforce and know about their rights—the circumstances in which that happens will be reduced. In case letting agents themselves are putting on the pressure, as the hon. Lady will know from being on the Select Committee, the Government are currently consulting on enforcing standards for the letting agency industry, a code of practice and potential licencing of that particular industry. Those are the kinds of tactics and behaviour that that consultation will look at.

Jo Stevens: The Minister just said that he is very confident that what my hon. Friend suggested will not be the case. On what evidence is his confidence based? I do not share it.

Rishi Sunak: As we heard in evidence, because of this Bill's simplicity around banning fees, which is a simple and easy to understand message, and the awareness that will come around that and the fact that it will come into force on a particular day, together with the income provided to local authorities to raise awareness of these issues, I am confident that tenants will be in a much better place to know that their rights have been dramatically improved as a result of the Bill, and will be in a position to know those rights, ensure that they avail themselves of them and ask the questions hon. Members are saying that they should ask. I am particularly confident because new guidance will be published and widely publicised, which will make these rights, and questions tenants should ask, explicit and clear to them. I therefore remain confident.

As I said, there is separate Government work going on, looking particularly at the conduct of letting agents. Plans have been mooted for codes of practice and conduct, and for licensing of that industry. Some of the behaviours that have been mentioned are exactly the kinds of things that will be captured in that forthcoming piece of work.

2.30 pm

I will try to make some progress—I know that Members are keen to do that. Turning to the second question asked by the hon. Member for Great Grimsby, about examples of insurance payments, the language in the clause was very specific. Just to review it, that clause allows a landlord to require a tenant to make a payment or enter into a contract or grant only if it is a reasonable alternative to another requirement that is not prohibited by the Bill. It must not simply be a different means of requiring a tenant to pay a prohibited payment, and landlords cannot provide a false alternative to paying fees. That allows landlords the flexibility to, for example, give tenants the option of entering into a deposit replacement agreement instead of providing an upfront deposit. It would, of course, be prohibited for the landlord to give the tenant the option of paying a fee as an alternative to filling in, for example, an onerous reference form. I hope that reassures the hon. Lady that that is in the clause for a specific reason, and is very tightly drafted.

On the hon. Lady's last question, I can confirm that the types of landlords who will be captured by the Bill are: first, a landlord of an assured shorthold tenancy, which, as I am sure she knows, is the bulk of the industry; secondly, a person granting a licence to occupy; and thirdly, a landlord of student accommodation. Obviously, it would not be appropriate for me to comment on any individual company, but hopefully those categories give her confidence that her question was answered.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

PROHIBITIONS APPLYING TO LETTING AGENTS

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: The clause bans letting agents from requiring a tenant or other relevant person to make a payment or loan, or secure insurance or services from a third party in connection with a tenancy. The clause works with clause 1 to ensure that the legislation applies equally to all tenants, no matter whether they let through a letting agent, as captured in this clause, or directly with a landlord, as captured in clause 1.

The provisions in the clause essentially mirror those in clause 1, so I will not repeat myself, but it may be helpful if I highlight briefly where the two clauses differ. The key differences are in the definition of "in connection with" a tenancy agreement, because the letting agent makes arrangements on behalf of the landlord and is not itself party to a tenancy agreement. There is also no exception allowing letting agents to require a tenant to procure utilities or communication services. That exception is relevant only to landlords, but clause 2 essentially has the same effect as clause 1, which is to ban letting fees.

Melanie Onn: I recognise that for the most part the clause mirrors the prohibitions applying to landlords. It is important that letting agents, which are often the professional guide to the amateur landlord and often operate on behalf of the landlord, developing close relationships over many years while in the pay of the landlord, have the propriety of their conduct considered closely.

The same principle applies to letting agents as to landlords, in that there are some excellent agents and some that fall far short, often seeming to set unreasonable

charges without much comeback. Letting agents also lack the personable relationship with tenants that often develops between landlords and tenants. Landlords often develop levels of understanding with tenants that give tenants a bit of leeway, meaning that they could charge under the permitted fees under the Bill, and under a tenancy agreement through default fees.

Good landlords will often be empathetic about genuine and honest mistakes or problems that tenants make or face, and look for practical and easy solutions for both parties. For example, they may let tenants sort out replacing a lost key by themselves, and at a lesser cost, if it is a first offence. They may take some of the loss if a tenant has to move out in the event of a job loss, or a family emergency, or a genuine struggle to pay rent or exit fees. While there are some excellent letting agents that go the extra mile to keep tenants happy and in their property, too often letting agents take an extremely hands-off approach to tenants and only see them as a way to make money and collect fees, which are currently far too high, whenever they contractually can.

Currently, letting agents often charge fees that would be prohibited under the Bill during the move-in period and make a significant amount of money out of a new tenant. As a result of the Bill, letting agents will be far more driven by the desire to keep properties full for as long as possible, as they will see far fewer benefits from a property that rapidly changes tenancy than when they could charge those often high fees. That will help the drive towards achieving the aim of everybody in this room to see longer tenancies in the private rented sector, and increase the value of good-quality service from letting agents that keeps tenants happy and in place.

It will also move the balance of power in the letting market far more towards the tenant. Letting agents often make money through introductory charges to tenants and a percentage commission of the rent. Where once letting agents may have been happy to charge high fees and wait until someone comes along who is able and willing to pay them, the Bill will mean that letting agents will want a property to be filled as soon as possible, so they can earn commission on the rent. That will mean that letting agents have more reason to provide a good service to tenants and act to promote properties to get them filled as quickly as possible.

Tenants have no choice of letting agent if they want to move into a specific property. Who to choose as an agent for a property is currently at the behest of the landlord and therefore letting agents do not focus on offering a good deal to tenants, but on offering the best deal to landlords. Letting agents levy as much of the charge as possible on a tenant to avoid charging above the market rate to a landlord, as there is no point in trying to offer a good deal to tenants if no landlords use the agency to let their property. The result is that tenants are often charged well above reasonable amounts in set-up costs alone. They can often be expected to find hundreds of pounds for things such as credit checks, referencing and set-up paperwork, on top of a holding deposit, security deposit and the first month's rent. Even for a modest property, that often runs into hundreds of pounds, perhaps even thousands.

We know that people on low and average wages often find it impossible to find the deposit to buy a property, but at the moment many would struggle to find the money to move into a rented property. That is grossly unfair, given that at the very least the landlords are the owners of a property that has increased often significantly in value over the past few years, and are often also rich in their own right. Yet they receive all the advantages in the letting agent market at the expense of our growing population of private renters, who are often young and increasingly likely never to own a home.

That is especially true in areas with high levels of student accommodation. For example, Leamington Spa has an extremely high level of student accommodation for a town of its size, due to a nearby university. Almost all that rental market is operated through agents and is used by students who have little knowledge of their rental rights and what is a fair rate for the charges that letting agents levy. It is a fast-moving market. There is pressure on students to secure a place that they like quite rapidly, often for a fixed-size group, six or seven months before moving in, and the pressure often leads to students paying £300 or £400, sometimes unexpectedly, if the pace of the property uptake surprises them, on top of their current rent and living costs while they are at university.

Jo Stevens: I represent a typical university constituency. It is in Wales and is not affected by this Bill, but by way of example, I mentioned on Second Reading a street in one of the wards in my constituency. I added up every single person living in student accommodation in that street of 200 houses, and letting agents are making in excess of £320,000 every single year in just that one street. Does my hon. Friend agree that that is something we need to prevent?

Melanie Onn: The important thing for students is that they understand the system that they are going to be entering, as for many of them it will be the first time they have moved away from home. They also should understand whether they are subject to unfair fees that are excessive for young people who are most likely to be reliant on student finance and part-time work if they do not have help from their family. We should also ensure they are fully aware of all their rights in those circumstances. The idea that they are having to make such decisions many months in advance when they are feeling the pressure leaves them wide open to exploitation. Their situation will hopefully be aided by the Bill.

Picking up what I was saying—it is a little haphazard, sorry—these costs represent a lot of money for a full-time worker, but for many students, they represent their whole living costs for a month. The balance needs to change dramatically. The extension of schedule 1 to letting agents will mean that they can no longer absorb the cost of a low landlord commission rate by passing the cost on to tenants.

We support the clause, but a few points of concern arise. As it is nearly identical to clause 1 in wording, I will not labour the points I raised in our consideration of that, but I want to seek some clarity on some particular differences between the clauses and draw the Minister's attention to subsections (4), (5) and (6). Will he outline again the purpose of the loan and confirm that it is included as a preventive measure to avoid landlords seeking any alternative finance mechanism by which to re-route a payment? I would be grateful if he did. It would ensure that I have understood what he said.

[Melanie Onn]

The main point I wish to make about clause 2 relates to subsection (3), which states that a letting agent cannot require a tenant to enter into a contract for provision of a service or a contract of insurance. While the rest of the clause reflects clause 1, subsection (3) does not go on to specifically exclude utilities or communications. Why is that the case?

The Minister will know that letting agents can earn a commission for placing clients' properties with particular utility companies. Switches of energy provider must be done with the bill payer's consent, and that is likely to be the landlord during a period of the property being void, but it allows for a default situation to arise for tenants when they move in and start receiving bills that are not the most economical for them, requiring them to pay higher rates on generic tariffs. They are then free to change supplier, but they have already been paying at a higher rate and they then have to go through the process of moving supplier. I know that process is supposed to be easy and straightforward, but it is still a chore and an off-putting task for anyone trying to find the right and best deal.

Are letting agents to be permitted to continue to be incentivised to sign up unwitting renters to these rip-off rate utility companies? Will the Government commit to taking steps within the Bill, rather than waiting for guidance? If we are to deal with tenants' fees and making things fairer for renters, why not do it all now? We should say that such inducements should not be available to letting agents. Renters should be notified in advance who the utility and any other established providers are and given the opportunity to make arrangements that better suit their budget. I hope the Minister can provide answers to those questions.

Rishi Sunak: To respond directly to the two specific points that the hon. Lady raised, I can give her the same assurance that I gave on clause 1: the exception for insurance can specifically not be a means to require a payment that otherwise would be prohibited by the legislation. The same assurance stands here, and I hope that gives her the reassurance she needs. Secondly, to focus specifically on the clause we are debating, it does not allow letting agents to charge for utilities or communications services, but clause 1 does. The specific reason for that is that the contract would typically be in the name of the landlord and would be a function of the landlord-tenant relationship. That should not be permitted for the letting agent. I assume that she does not think they should be included.

Melanie Onn: My concern is that letting agents are able, upon the agreement of the landlord, to set these things up in their own name. That does happen. Does the Minister think that that is okay, particularly given that they receive inducements for it?

2.45 pm

Rishi Sunak: After the legislation passes, that would be a particularly silly thing for letting agents to do, because they would not, under the legislation and this particular clause, be able to charge the tenant for those utility arrangements. The clause specifically prohibits letting agents from charging those payments to tenants. The hon. Lady should feel reassured about that.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

PROHIBITED AND PERMITTED PAYMENTS

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Our approach to implementing this policy is to ban all payments in connection with a tenancy, with the exception of certain permitted payments outlined in schedule 1. The clause introduces that schedule, and provides for enabling the Secretary of State, by regulations, to amend the list of payments permitted under the Bill.

Although no changes to the categories of permitted payments are currently intended, the private rented sector is expanding and has a changing demographic as well as growing technological innovation. Similarly, legislative changes or other circumstances may arise where it becomes necessary to add, modify or remove a description of a permitted payment. We do not intend for the power to be used to significantly alter the objective of the legislation, but we recognise the broad scope of the power. That is why we consider it appropriate for the power to be subject to the affirmative procedure, to allow adequate parliamentary debate and scrutiny of any changes to the payments permitted under the Bill. That will provide sufficient safeguards that the power is not used for any purposes contrary to the objectives of the legislation, or to make changes that may have negative consequences for the lettings market.

It is also worth noting that the power to amend permitted payments is qualified by subsection (3), which states that the power does not extend to removing rent from the categories of permitted payments. We consider the negative procedure to be appropriate in the case of regulations made solely to amend the £50 cap on fees that can be charged to vary a tenancy when requested by a tenant. Any changes to that cap would purely be to reflect changes in the value of money, and the power could not be used to undermine the intention of the legislation.

It is important to note that in its scrutiny of the delegated powers memorandum accompanying the draft Bill, the Regulatory Reform Committee indicated that use of the power in clause 3 is justified to deal with changes in circumstances that cannot at the moment be anticipated or predicted. Clause 3 is vital to ensure that the legislation remains relevant and, in the words of the hon. Member for Great Grimsby, prepared for the future.

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma—it is the first time I have done so, so it is very exciting all round.

As the Minister set out, clause 3 spells out that only permitted payments defined in schedule 1 can be charged by landlords or agents. We have heard already from my

hon. Friend the Member for Great Grimsby about the pressures faced by private renters. Given the rapidly increasing number of people in the private rented sector, with only the bare minimum of consumer protections people can be exploited financially and forced into substandard and sometimes dangerous accommodation. All of us in our everyday lives, as well as in our caseload, will have seen people who are either excluded from accessing the sector or charged exorbitant fees.

It is right that the Bill limits the number of things for which tenants can be charged. The most important role of the clause is to give effect to schedule 1, which restricts permitted payments to things such as rent, tenancy deposits, holding deposits, default fees, terminations and bills. I am sure we all agree that the clause is essential in making the Bill work effectively and allowing the private rented market to continue functioning.

However, Opposition Members would like to challenge several poorly defined, excessive or unnecessary permitted payments that are enabled by clause 3 and schedule 1. That includes issues with tenancy deposits, holding deposits, default fees and termination payments, and we will discuss those in more detail. There are other permitted payments enabled by clause 3 which we are not seeking to amend at this stage but, as the Minister will know, several of the permitted payments were added subsequent to the publication of the draft Bill, following Government consultation and pre-legislative scrutiny. The draft Bill presented last year included just four permitted payments: rent, tenancy deposits, holding deposits and default fees. As the Committee will note, there are now 10 permitted payments enabled by clause 3 and outlined in schedule 1. I hope the Minister can answer that he has confidence that the addition of those new permitted payments was done with sufficient evidence, and that he can tell us which views were taken into account when they were added.

The clause also gives the Secretary of State the tools to add, remove or amend what is considered a permitted payment if it is necessary to do so in the future. That has the potential to future-proof the Bill by ensuring that the Government can easily bring forward changes to prohibited and permitted payments if it turns out that there is a need for change, either through a loophole that becomes apparent after the Bill becomes law, or through a change in style of renting that means we need additional permitted payments, or a change to permitted payments if it becomes apparent that there is a route for exploitation.

The powers in the Bill should come with the responsibility to use them wisely and in a timely manner if it becomes apparent that it is necessary to use them at all; otherwise, there is a risk that the Bill's provisions slowly become obsolete as our renting culture evolves over the years and decades. I look for reassurance that the Minister will use that power in a proper manner, to keep the Bill up-to-date as much as feasibly possible.

A particular concern I have with the Bill in general is that there are certain maximum thresholds contained in schedule 1 that are far too high to have a real positive effect on the everyday finances of tenants. That is why we have tabled amendments to try to tip the balance away from something that looks good on paper, but achieves very little saving for tenants. The Government are consistently slow to adapt to ideas to reset the balance of power between tenants and landlords—a Labour Government would have brought this Bill forward five years ago—so I suspect that things the Conservatives may oppose today, they may see as perfectly reasonable in three or four years' time, once the harsh reality that tenants face in the housing market becomes even clearer.

I look for reassurance from the Government that they will continue to monitor the real-life effects of the numbers they have chosen in schedule 1, and to pledge to lower the permitted thresholds if it becomes apparent that the levels in the Bill are far too high to have a meaningful effect on the ground. Overall, the Opposition support the clause.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Schedule 1

Permitted payments

Sarah Jones: I beg to move amendment 7, in schedule 1, page 23, line 12, leave out "six" and insert "three".

This amendment reduces the maximum amount that may be taken as a deposit from six weeks' rent to three weeks' rent.

The Chair: With this it will be convenient to discuss the following:

Amendment 8, in schedule 1, page 23, line 15, leave out first "six" and insert "three".

This amendment reduces the maximum amount that may be taken as a deposit from six weeks' rent to three weeks' rent.

Amendment 9, in schedule 1, page 23, line 15, leave out second "six" and insert "three".

This amendment reduces the maximum amount that may be taken as a deposit from six weeks' rent to three weeks' rent.

Sarah Jones: Amendment 7 seeks to amend part 2 of schedule 1, on tenancy deposits. We all agree, I think, that this long-overdue Bill will go some way to addressing some of the issues we have been debating.

Rishi Sunak: I am conscious that in the debate on clause 3, the hon. Lady posed a specific question that I did not respond to, about the changes in the permitted payments, to which I wish to respond, if she does not mind and if you would indulge me, Mr Sharma. As we are coming on to discuss those payments in general, I hope it is appropriate and within scope.

The reason for the expansion was that the previous drafting was less all-encompassing around the payments that could not be charged. As the drafting in clauses 1 and 2 was expanded to cover almost any incidence of anything happening during the tenancy, it then necessarily became apparent that we needed to add specific clauses to allow for payments that would previously not have been captured by clause 1, but now would be and needed to be expressly permitted, such as an early termination clause or a change in sharer. With the new drafting of clause 1 and 2, things such as that would not be permitted unless they were specifically listed in schedule 2, which is the reason for the expansion. I hope that gives the hon. Lady the reassurance she needs.

Sarah Jones: Thank you. As we have heard, the Bill will mainly address issues within the private rented sector through the banning of letting agent fees, but, as

[Sarah Jones]

we all know, letting fees are not the only cost faced by prospective tenants, nor are they the largest or even the most common. Tenancy deposits are the largest and most common fees that renters face. Research by Citizens Advice found that nine in 10 renters pay a tenancy deposit, and that one third of tenants paid more than £1,000 for their deposit. According to deposit protection scheme data, the average deposit in March 2017 was £1,161—up from £979 in 2012. That is an increase of nearly 20% in five years.

We all understand the need for tenancy deposits of some kind, so it is absolutely right that they are included as a permitted payment in schedule 1, but the absence of a cap on tenancy deposits to date has left some private renters paying extortionate amounts. It is undeniable that that presents a major barrier to people looking to rent privately—particularly in areas such as London. We will not improve the situation for tenants to any significant degree if we do not solve the flaws in the tenancy deposit system.

Citizens Advice says that, in the past year alone, it has worked with almost 11,000 private renters who have come to it because of issues relating to deposits. One of my members of staff had to find £3,000 for a tenancy deposit—equivalent to eight weeks' rent. One of my constituents who came to me about this issue is currently homeless with five children. She approached the council for help, but it deemed her to be intentionally homeless because she abandoned a tenancy in Manchester to come to Croydon as she was suffering ill health and wanted to be closer to her family. At present, she is staying in her brother's house, which means there are eight people living in a two-bedroom flat. Her brother said she cannot stay for long, but does not want to kick her out on the streets. She is on universal credit and cannot afford to save for a deposit on a private rented property. She has been left in a Catch-22 situation.

People are looking to move to a new city, perhaps to find work or start a business, but are restricted by significant up-front costs. People face the combined costs of a large deposit, their first month's rent and living costs for a month or more before they get their first paycheque. That means that, to move to a more expensive city, they must set aside £2,000, £3,000 or more before making the move. We cannot ignore the impact that has on our economy. It is important for people with the right skills to be able to move easily to places where those skills are in demand.

The Mayor of London has recognised the pressures in cities such as London, and has worked with London First and employers to give Londoners access to tenancy deposit loans. Organisations such as the Met police, Transport for London and other private companies now offer tenancy deposit loans to their staff. That has given more than 100,000 Londoners access to loans. Although that is commendable on the Mayor's part and shows that he is on the side of tenants, it is a very sad state of affairs that the situation has got so bad that tenants have to borrow from their employers to cover their housing costs.

In addition to the actual cost, there are several ways in which tenancy deposits, in their current form, leave tenants out of pocket, which the Bill fails to recognise. One major issue is the need for tenants to pay a deposit on a new property before receiving their deposit back from a previous one. Tenants are charged high sums twice simply because of the way the system works. Tenants are also penalised through the deposit protection scheme. We all agree that the scheme's introduction was a good thing, but it was set up in such a way that tenants are losing out to landlords, agents and the deposit protection companies.

Generation Rent has found that most of the £4 billion currently held in deposit protection is held by landlords and agents, who then pay a small insurance fee to deposit protection companies. Although in most cases that money is paid back to tenants, only 2% of tenants receive interest on their deposit when it is returned. Essentially, it gives landlords and agents a low-cost loan. Generation Rent estimates that tenants are missing out on £80 million per year in lost interest. Others advocate a proper reform of the system, such as a personal tenant account with passporting, which would allow tenants to transfer funds between deposits and to accrue the interest they deserve on their deposit. We will debate that point later.

A cap on tenancy deposits as part of schedule 1 is, in principle, very welcome, but in proposing a cap equivalent of six weeks' rent and ignoring the significant other flaws with tenancy deposits, the Government have missed a huge opportunity and have ignored the advice of numerous experts. I hope the Minister will work with us today and will consider the merits of amendment 7 and the related amendments, which seek to bring genuine improvements for tenants. For too many people, tenancy deposits are one cost too many. As I will set out, in its current form the Bill is at the very least ineffective and at worst risks making things worse for renters than they already are.

First, I will explain why the clause is ineffective. The Government have said very clearly that they want to make things better for private renters. On Second Reading, the Secretary of State said that by setting a six-week cap,

"we are delivering on our commitment to make renting fairer and more affordable".—[*Official Report*, 21 May 2018; Vol. 641, c. 645.]

However, we all know that in the vast majority of cases that is simply not true.

Polling by Shelter found that the majority of deposits—55%—are charged at just four weeks' rent. According to the same polling, only 6% of landlords require a deposit of more than six weeks' rent. Similar figures have been published by Citizens Advice, which found four weeks' rent to be the most common deposit amount. It argues that in its current form this measure will make renting "more affordable" to just 8% of renters. That would not fulfil the Secretary of State's objectives.

3 pm

The Government's own impact assessment, which I have with me, sets out on page 16 the proportion of deposits by number of weeks' rent. It shows that roughly half of all renters pay one month's rent as a deposit. The impact assessment also uses data to estimate the average size of deposits in different regions, with the lowest—at 4.4 weeks' rent—in the north-east, and the highest—at 5.4 weeks' rent—in the south-east. Across England, the estimated average is 4.8 weeks' worth. So, although the figures vary slightly between those provided

by organisations and those provided by the Government, I think we can all agree that about half of renters currently pay four weeks' rent as a deposit, with some paying less and some paying more.

Those numbers show that even the recommended cap of five weeks' rent, which was proposed by the HCLG Committee, would have little impact, and a cap of six weeks' rent would certainly not have an impact.

What do tenants want? Again, the Government's own impact assessment shows, on page 15, the results of the Government's own consultation. We can see that a clear majority of tenants—two thirds—want a cap of four weeks' rent. We can also see that a clear majority of landlords and agents want six weeks' or even two months' rent as a deposit. Very clearly, the Government have come down on the side of landlords and agents, and not on the side of tenants. They have claimed to be on the side of tenants but they are not.

Richard Graham (Gloucester) (Con): On the length of time for the deposit, it is of course eight weeks in Scotland, so does the hon. Lady agree that this Bill is a significant step forward?

Sarah Jones: I am looking specifically at the impact of this Bill, which will be on people in England, and currently most people in England pay a deposit of four weeks' rent—some pay less, some more—so we know that in England this Bill will not have an impact on the vast majority of people who are currently renting. That is the point that I am trying to make; I am not comparing the situation in England with that in Scotland.

Richard Graham: Surely the hon. Lady will agree that this is part of a package of measures, and that, taken in the round, these are significant steps forward in bringing down costs for tenants, as all our witnesses this morning realised.

Sarah Jones: I will shortly make the case that in some cases people will end up paying more money as a result of the Bill as it currently stands.

So a cap of six weeks' rent will not make a difference to the vast majority of private renters, and it does not send a message to tenants that this Government want to improve things for them. I would like the Minister to explain his thinking on that.

In areas with higher housing costs, such as London, a six-week deposit based on median rents will see private renters needing to fork out £2,000. Therefore, amendment 7, in keeping with the advice from various experts, seeks to make this part of the Bill more impactful by setting a three-week cap. That would save tenants £575 compared with the Government's proposals, rising to £928 in London.

I come to my second main point. We have established that, as it stands, this schedule will be fairly ineffective, but in fact it is in danger of making things worse. To emphasise the lack of impact that it will have in its current form, we can again look at the Government's own impact assessment. It claims that a cap of six weeks' rent will result in

"money being available to tenants to spend, leading to wider economic benefits."

The impact assessment estimates that 1.4 million households moving home in the private rented sector in year one will pay £12 million less in deposits than they do currently. If that benefit is spread across all those households, the average saving is £8.50 per household, which would not be a massive boost to the economy.

The original briefing for the Queen's Speech indicated an intention to cap deposits at four weeks—that is really important. The *Financial Times* was among publications that reported that

"deposits that tenants leave with landlords or their letting agents will be capped at no more than one month's rent."

When the draft Bill came out in May 2018, groups such as the National Landlords Association and the Association of Residential Letting Agents claimed victory in pushing the cap back to six weeks. A National Landlords Association newsletter stated:

"The Government had initially proposed in the consultation to cap security deposits at no more than 4 weeks' rent. From the beginning of the process, the NLA has been actively campaigning around raising the cap to 6 weeks. This was outlined when…CEO of the NLA…met with the Minister of State for Housing and Planning…in September and pressed him to rethink the level of this cap."

Perhaps the Minister can explain what arguments the Government took into account when deciding to amend their plans for a four-week cap, and why they did not listen to the evidence given by Shelter, Citizens Advice and others that a lower cap was the only way to effectively tackle the hardship faced by many private renters. Indeed, why did the Minister not listen to the views of tenants themselves?

On Second Reading, the Secretary of State gave various arguments in defence of a six-week cap, but I am afraid that none of them stands up to scrutiny. He argued that a cap of six weeks' rent will give landlords greater flexibility to accept higher-risk tenants, such as those with pets, but analysis conducted by MHCLG as part of its impact assessment did not find a link between the level of deposit and the riskiness of the tenant. As landlords told us earlier this week, a better system for higher-risk tenants might be to allow an exception to the cap in specific cases, such as pets.

The Government have also argued that a six-week cap will address concerns about tenants leaving without paying their final month's rent. Experts have argued that that is a rare occurrence, and just this morning, we heard that only 2% of tenants used their deposit as their final month's rent. The important role played by the deposit protection scheme means that there are already means by which we can resolve disputes.

The Housing Secretary rightly pointed out the need to ensure a balance between financial security for landlords and affordability for tenants, but the data we have on deposits suggests that the proposals are skewed in favour of landlords. Deposit protection scheme data suggests that on average, since 2007, tenants have received more than 75% of their deposit value back. In more than half of cases, tenants receive their deposit back in full, with no deductions. Of course, landlords need the security of knowing that they can recoup costs if needed, and there should be a deterrent for tenants who might otherwise leave properties in a bad state, but the numbers suggest that a much lower-value deposit would still allow landlords to recoup any legitimate costs at the end of a tenancy.

[Sarah Jones]

The amount of the deposit could be halved and landlords would still have an ample amount to cover the average deduction. If the average deposit is £1,000, with people paying back a quarter on average, that means landlords receive back £250 on average. If the deposit was halved to £500, they would still have enough for that average to be returned. The majority of the deposit would still be returned to the tenant in most cases, but it would also leave room for a bigger than average deduction if necessary.

Importantly, the Housing Secretary argued that the six-week cap was not a recommendation, despite repeated warnings on Second Reading that it may be interpreted as such and become the norm. The inherent seal of approval of a Government cap could result in landlords thinking it was okay and normal to raise deposits to that six-week level. That is relevant in the context of other fees being restricted by the Bill.

The potential backfiring of the Bill could mean that an average deposit of 4.8 weeks across the country suddenly jumped to six weeks, which would cost tenants hundreds of pounds in extra deposit fees and completely negate the benefit of the main part of the Bill, which bans letting fees. The Government estimate the average cost of letting fees to be between £200 and £300. If the most common deposit of four weeks became six, based on average rents, Londoners would pay £500 more on their deposits, which means that the net impact of the Bill on renters would be negative.

Daniel Zeichner: My hon. Friend is making an excellent speech, but she has a tendency, as all London MPs do, to constantly refer to London, which I entirely understand. I suggest that she looks a bit further up the country to an area such as mine, which displays similar attributes to London. There are always different views on exactly what average rents are, but something like £1,000 to £1,200 is typical in my city. She is making an important point about what the Bill could lead to for young people such as those looking to rent in Cambridge, which they have to do because they are completely priced out of purchasing property. They would have to have about £1,500 or £1,600 up front. That would have a significant effect on one of the economic powerhouses of the country. Will the Minister bear that in mind? If six weeks' rent becomes the norm, that will have importance not only ethically but for the effectiveness of our economy in difficult times.

Sarah Jones: My hon. Friend makes an excellent observation, and I take his point completely. There are many parts of the country where the rental market is pressurised and prices are prohibitively high, so the impact would be the same as it is in London. He is right.

There is precedent for the Government setting a figure that becomes the norm, whether it is a cap or a floor. In many cases such a precedent has been created, and that could occur here. That price level is given inherent Government approval for those on the other side of the deal, who say, "This is what the Government say we can charge". There are two obvious examples, one a cap and one a floor: tuition fees and the minimum wage respectively. We are all aware of how universities raised their fees to the maximum of £9,000 as soon as they could, despite claims that there would be price competition. Likewise, when the minimum wage was introduced, it was said that it would be an absolute floor but, sadly, for many workers it has become the norm.

If we are trying to make things better for private renters, which I am sure the Minister is, we should not be settling for the status quo, nor should we be considering something that may make the situation worse. We should be the leaders we were elected to be and change the Bill. To reiterate our argument for a three-week cap, if the most common deposit is now four weeks' rent and the average amount returned is more than 75% of the deposit value, reducing the cap to three weeks would still leave more than enough room to give landlords financial protection while at the same time bringing real benefits to tenants.

Rishi Sunak: I appreciate that reasonable people can disagree about these amendments and the number of weeks that is suitable for a deposit cap. It is a tricky issue to balance. However, the amendments would not help tenants. Lowering the deposit cap to three weeks risks distorting the market and leading to behavioural change.

Using data from deposit protection schemes, we estimate that about 93% of deposits are for greater than three weeks' rent, and as we have heard, most landlords require a deposit of about one month or five weeks' rent. The deposit serves an important function as a deterrent. It gives tenants an added incentive to comply with the terms of their tenancy agreement. Further, if we lower the cap on deposits to three weeks' rent, there is a higher risk that a deposit will no longer fully cover the damages to a landlord's property or any unpaid rent. Landlords would be likely to seek to offset that risk by asking for more rent up front, or they may be deterred from investing in the sector entirely. Neither of those outcomes would help tenants.

We have listened to concerns that a cap at four weeks' rent or less may encourage tenants to forgo their final month's rent. The Housing, Communities and Local Government Committee also recognised that particular risk, acknowledging that this was an area where it is difficult to achieve balance, and interestingly suggested a cap of five weeks, which is considerably more than the three weeks that we are discussing. Furthermore, nine out of 10 respondents to our consultation on banning letting fees agreed that deposits should be capped at at least four weeks' rent.

As the landlord or agent representatives we heard on Tuesday pointed out, a cap of six weeks provides the flexibility that landlords need to rent to higher-risk tenants. For example, lowering the deposit cap to three weeks' rent might hurt pet owners or those who live abroad.

Sarah Jones: Does the Minister not accept the evidence from his own Department, which states that there is no link between high risk and deposits?

Rishi Sunak: It is important not to conflate aggregate information with the particular circumstances of individual tenants. We are talking about particular, unique circumstances pertaining to individual tenants that would

put them at potentially more risk of a landlord cherry-picking and not wanting to rent to them if they did not have a deposit that would cover their risk. We heard that from the landlord and agent representatives on Tuesday. The groups in question often have to pay a higher than average deposit, to provide landlords with the assurance they need. That provides them with a home to rent.

Sarah Jones: Will the Minister consider accepting our amendments and introducing a separate one that applies to pet owners?

3.15 pm

Rishi Sunak: It is hard to be prescriptive about all the circumstances in which someone might require a higher than average deposit, which is why the Bill provides a cap and guidance on interpreting that cap. It is for individual landlords to make the determination as they see fit. I remind hon. Members that these amendments would reduce the cap to three weeks.

Lastly, I will mention Scotland, which was raised by the hon. Lady and my hon. Friend the Member for Gloucester. It is important to know that Scotland has an eight-week cap, which is considerably higher than the six weeks that we are proposing. There was some concern that deposits would escalate up to that cap, but the evidence that we have seen and analysis that we have conducted thus far do not suggest that that is the case. The average deposit in Scotland remains at about a month's rent. There is good evidence there that that fear is misplaced.

Sarah Jones: What does the Minister say about the fact we have seen time and again, such as with student fees and the minimum wage, that when the Government set a definition, that is where the industry moves to?

Rishi Sunak: The specific issue we are talking about is a cap on deposits. We do not need to look at potentially similar industries; we can look at an exactly analogous industry, because in Scotland where there is an eight-week cap that has been in force for a while. There, deposits have not gravitated to that level and have remained at about a month's rent. There can be no more compelling evidence than that.

Richard Graham: The analogy offered by the hon. Member for Croydon Central is interesting, but it is not true, particularly for apprenticeship wages, where there is a minimum apprenticeship wage and very large numbers of apprentices get considerably more.

Rishi Sunak: My hon. Friend is right that the evidence on apprenticeships certainly does not suggest the conclusion that has been referred to.

The guidance that will be published will encourage landlords to consider on a case-by-case basis when to take a deposit and the appropriate level of deposit.

Sarah Jones: It would be nice if the Minister could publish the evidence on Scotland.

Rishi Sunak: I would be very happy to write to the Committee with the current analysis. In fact, I can give the Committee that right now: the statistics on deposits in Scotland suggest that average deposits have not accelerated to the cap. Average deposits in Scotland during 2017-18 ranged from £580 to £730, compared with a median rent of £643for a two-bedroom property over a similar time period. I will happy provide the Committee with the source for that, which I do not have to hand, as soon as I can.

I hope that the hon. Lady will withdraw her amendment.

Sarah Jones: We want to push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 1]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Melanie Onn: I beg to move amendment 5, in schedule 1, page 23, leave out lines 19 to 29.

The Chair: With this it will be convenient to discuss the following:

Clause 5 stand part.

That schedule 2 be the Second schedule to the Bill.

Amendment 22, in clause 6, page 4, line 21, leave out "or Schedule 2".

Amendment 23, in clause 7, page 4, line 35, leave out "and Schedule 2".

Amendment 24, in clause 8, page 5, line 9, leave out "or Schedule 2".

Amendment 25, in clause 8, page 5, line 29, leave out subsection (5).

Amendment 26, in clause 10, page 6, line 43, leave out subsections (6) to (9).

Amendment 27, in clause 10, page 7, line 2, leave out "(2), (5) or (8)" and insert "(2) or (5)".

Amendment 28, in clause 15, page 10, line 13, leave out subsection (2).

Amendment 29, in clause 15, page 10, line 20, leave out "or holding deposit".

Amendment 30, in clause 15, page 10, line 21, leave out "or holding deposit".

Amendment 31, in clause 15, page 10, line 23, leave out "or holding deposit".

[The Chair]

Amendment 32, in clause 15, page 10, line 24, leave out "or holding deposit".

Amendment 33, in clause 15, page 10, line 35, leave out "or holding deposit".

Amendment 34, in clause 15, page 10, line 37, leave out "or holding deposit".

Amendment 35, in clause 15, page 10, line 39, leave out "or holding deposit".

Amendment 36, in clause 17, page 11, line 23, leave out subsection (2).

Amendment 37, in clause 17, page 11, line 28, leave out "or holding deposit".

Amendment 38, in clause 17, page 11, line 30, leave out "or holding deposit".

Amendment 39, in clause 17, page 11, line 32, leave out "or deposit".

Amendment 40, in clause 17, page 11, line 34, leave out "or deposit".

Amendment 41, in clause 17, page 11, line 36, leave out "or deposit".

Amendment 42, in clause 17, page 11, line 39, leave out "or holding deposit".

Amendment 43, in clause 26, page 16, leave out line 34.

Amendment 44, in clause 28, page 20, line 22, leave out subsection (11).

Melanie Onn: The aim of the amendment is to remove unfair fees from tenants' disproportionate burden, and to make the system fairer and power more balanced than it has been in the past. On Second Reading, the Secretary of State described holding deposits as simply a "refundable" deposit to "reserve a property". I fear that they have the potential to be used in other ways.

As I said on Second Reading, the inclusion of such deposits in the legislation was

"allegedly designed to minimise instances of tenants securing multiples of properties at the same time before finally settling on their preferred property. There has been very little, if any, evidence that this is a regular practice."—[*Official Report*, 21 May 2018; Vol. 641, c. 647.]

Indeed, in this morning's evidence session we heard completely the opposite from Generation Rent, and that, in fact, holding deposits can often be used by letting agents or landlords to hold multiple deposits from one individual, taking their funds, preventing them from seeking other properties or from participating in a bidding process to rent other properties, and setting them back weeks in being able to access the home that they want.

Richard Graham: I thought we heard clearly from all our witnesses this morning that the proposal to passport deposits was widely welcomed and would help to solve that problem. Does the hon. Lady agree?

Melanie Onn: The hon. Gentleman is slightly mistaken in his recollection. That was not to do with the holding deposit; it was to do with the deposit given as security once the prospective tenant has gone through the holding deposit process. The holding deposit is simply to secure a property and to register interest. Referencing is then undertaken before a person is accepted and considered to be the tenant. Although I agree with the principle of passporting deposits, that was not the specific issue with holding deposits.

Richard Graham: Surely the deposit and the ability to move from one tenancy to another are much more important.

Melanie Onn: I disagree. The principle aim of the proposed legislation is to limit the unfair, up-front costs that make it much more difficult. We know that young people make up the bulk of the sector at the moment, and that is only set to grow. Moreover, in general—I accept that this is not always the case—those young people will be on lower wages, so such deposits are an unnecessary barrier to people in that age bracket being able to obtain the property that they desire to become their home.

My concern relates to the abuse of those holding deposits. When this matter was discussed in the Select Committee, there was a suggestion that tenants seeking a property were putting down multiple holding deposits so that they could play a game of which property they were going to choose, as if individuals have so much money that they are able to put down multiple holding deposits. I have not seen the evidence for that.

Maria Caulfield (Lewes) (Con): It was my understanding, listening to the witnesses this morning, that they all agreed in principle with holding deposits. They saw a need for them. They might have concerns about how that mechanism is used, but I heard them speak in support of holding deposits in principle.

Melanie Onn: The hon. Lady's point that the witnesses had concerns about how holding deposits would be used is exactly why I am raising this matter. The aim of the proposed legislation is to make things fairer and easier for tenants. The suggestion has been that tenants are somehow playing a system or a game—

James Frith (Bury North) (Lab): Spread betting.

Melanie Onn: My hon. Friend says "spread betting" from a sedentary position. It does feel as though everyone is hedging their bets on the property of their choice. It seems nonsensical that anybody would have sufficient spare funds available to put down multiple holding deposits and undergo multiple reference checks, which would not work in their favour when it came to their credit scores. It is interesting that we heard something today that we did not hear during the Select Committee's pre-legislative scrutiny. It was suggested that the situation could be completely reversed, with holding deposits being used unscrupulously by letting agents or with landlords holding all that money for a period of time. That would then set back individual tenants in their search for a property. There absolutely is room for improvement.

Mr Goodwill: The hon. Lady says that the aim of the proposed legislation was to make things fairer for tenants. Does she agree that all the NGOs that gave evidence this morning made it clear that it would make things fairer for tenants?

Melanie Onn: The NGOs were very clear that there were still issues and that they still had concerns. We were all in the same evidence session this morning, and we all heard them say there are issues. We are right to take into consideration all the evidence and not simply cherry-pick the bits we might wish to hear. I am raising this point because I do not think sufficient consideration has been given to the impediment that holding deposits may represent for individuals, particularly young people who may be on lower incomes.

In addition, the Government say that there are a number of exceptions to having to refund that deposit, including when the tenant provides false or misleading information. Although on the face of it that is a sensible measure, there are no additional protections for tenants if the incorrect information is not their fault. For example, a reference that does not exactly match a tenant's claims should not immediately mean that they lose that holding deposit. There is scope to develop a mechanism to test inaccuracy and establish the reasons behind it before immediately assuming information has been deliberately misleading.

I suspect that the Minister will respond robustly to that point and say that there is provision within the Bill, particularly relating to landlords, that gives them flexibility to give reasonable consideration to the circumstances. That is absolutely fine, but in practice most people go through some form of letting agent or management agent as part of the letting process. It is a tick-box exercise and the possibility of any kind of flexibility is much reduced. Letting agents go through it page by page, thinking, "Have I done everything that I was supposed to do on the list? Have I collected the deposits? Have I done the appropriate checks? Have I compared the information provided to me by the prospective tenant with the information from their previous landlord?" Who knows what information a previous landlord may deliver to a letting agent, because there is nothing to say that it would necessarily be a favourable response.

The letting agent is not necessarily going to utilise any kind of discretion, because it is not in their interest to do so. They simply have to complete the necessary forms and stages to enable the tenancy to take place. They then have to provide evidence to meet the requirements of the legislation, or prove to their employer, who is also their client—the landlord—that they have undertaken all the necessary checks and that the information does not meet, to the letter, the requirements of the legislation, unless there is further regulation, so x number of people have been rejected. I am interested to know how many tenants are rejected because the information they provide is not a carbon copy of that provided by their previous landlord.

3.30 pm

I refer the Committee to the Select Committee's view that there should be further protection for when a prospective tenant's conduct is not deliberate and it is unknowing, and that tenants should not be penalised. A reference check could be failed for many reasons. The Government have chosen not to follow that recommendation, and I would like the Minister to take the opportunity to explain why.

On Second Reading, several hon. Members, including the hon. Member for Harrow East (Bob Blackman), urged the Government to think again about the Committee's recommendation. He said:

> "The Government have partly accepted the Select Committee's position on whether fees such as holding deposits can be considered reasonable. If someone goes into a letting agency wanting a tenancy, appropriate fees for reference checks, which are of the order of £20 to £50, are reasonable costs for them to incur, but it is unreasonable for the landlord to pay if someone fails a reference check. The Committee also recommended that if a prospective tenant gives deliberately misleading information, they should lose the holding deposit, which should be retained by the landlord. That suggestion has not been accepted in full by the Government, and it needs to be considered in detail again."—[*Official Report*, 21 May 2018; Vol. 641, c. 656.]

The hon. Member for Dulwich and West Norwood, who is present, made the important point in the House that,

> "incorrect information can be provided where this is not the fault of the tenant. For example, the tenant may be unaware that their credit rating has dipped, or an employer may hold out-of-date salary information, and there are many other such circumstances. The Bill must ensure that tenants are protected against incorrect information being provided by someone else. The failure to do so could result in tenants who have lost a proportion of their savings being prevented from accessing another home, with dire consequences."—[*Official Report*, 21 May 2018; Vol. 641, c. 667.]

One of the Select Committee's recommendations was:

> "The Bill should provide that a landlord may retain the holding deposit if a tenant provides false or misleading information (without the need to show this is reasonable). However, unless the tenant did so knowingly, the landlord should only be able to retain the cost of any reference check, limited to an amount to be prescribed by the Secretary of State."

The Government's response stated:

> "We are not accepting this recommendation. We believe that the approach in the Bill with regards to the requirements on landlords to return a holding deposit is the right one. Not permitting landlords to charge a holding deposit is likely to lead to tenants speculating on a number of different properties".

Again, I ask, where is the evidence for that? It all seems to be based on conjecture and opinion. Of course, we take the word of people who come to Select Committee inquiry hearings, but did they provide any statistics, or any evidence to back that up? I have not been able to find any so far.

The response says that not permitting landlords to charge a holding deposit,

> "could result in landlords and agents being unfairly penalised financially—this was a concern raised by a number of landlords in the public consultation"—

but none of them said they had had experience of that. They said it was a fear of something that might happen as a result. The response continues:

> "Such an approach could also result in landlords self selecting those tenants that they perceive to be 'less risky' and more able to pass a reference test."

The Select Committee report did not support that response at all—it said completely the opposite. The Library pack published prior to Second Reading also stated that that was not the case, and that there was no evidence to support that assertion.

It is disappointing that the Government decided against inserting a "knowingly" test. They stated:

> "We considered inserting a 'knowingly' test to the provision, whereby a landlord would only be entitled to retain the deposit if the tenant 'knowingly' provided false or misleading information. However, such a test would be difficult to implement in practice".

We heard today from trading standards representatives that, as the Bill stands, the whole thing will be difficult to implement in practice. There are concerns about

enforcement because of issues with local government funding, training and whether trading standards is the right agency to take it forward. It seems a somewhat poor argument to say that the test would be difficult to implement in practice.

We require quite a lot from landlords and letting agents—they must ensure that people who rent their properties have residency and go through that whole process—so the fact that the Government cannot conceive of any such test seems rather short-sighted on their part. If they put in a little more effort, I think a solution would quite easily be found.

The Select Committee made a considered recommendation that rejections should be more stringently evidenced, but the Government stated:

"This could lead to landlords taking a risk-averse approach and self selecting those tenants that they perceive to be 'less risky.'"

A "could" approach to whether landlords might do something does not seem enough. Indeed, there would be ways to regulate away the possibility of landlords self-selecting less risky tenants. To be perfectly honest, I think the intention of most landlords in every kind of reference-checking process is to seek the least risky tenant. That is part and parcel of the process, which in itself is not great, but we seem to be continuing with that whole process anyway.

For people on low incomes and those who have limited choice about the kind of property they live in—people who are considered risky—incredibly prohibitive additional charges will still be in place, and it will still be very difficult for them to find somewhere to live. We should assess in the future whether the Bill improves their rights at all. I simply am not particularly convinced by the Government's approach, which seems to dodge the Bill's aim of making renting fairer. Penalising someone for something they did not knowingly do is fundamentally unfair.

The Government went on to state:

"To address the concerns the Committee has raised, we will provide guidance to landlords and tenants to clarify scenarios when a holding deposit can be retained."

I hope that information goes out in a timelier fashion, and that there is more awareness of it, than the information about the Minister's roadshows over the summer, which the local authority leader we heard from this morning did not seem to know an awful lot about. It is essential that that information is made available in a timely fashion, and that everyone is aware of it; otherwise, cracks may open up through which the legislation could slip.

The Government went on to say:

"We will also seek to encourage landlords to be flexible where a tenant fails a reference check in good faith and to only retain the costs of a reference check rather than the full amount. In addition, we have removed the criminal penalty for unlawfully withholding the holding deposit. A breach will now be punishable only by a civil penalty of up to £5,000."

We again see, from that commitment, that it is only a matter of guidance for landlords, and clarification of scenarios when a holding deposit can be retained. We heard this morning about the dangers of only providing guidance, and not taking a stronger step in providing regulation on such matters.

Inevitably, where money is involved, dispute will follow. Organisations such as Citizens Advice and Shelter deal with such disputes day in, day out. However, they will be expected to work without appropriate regulations that would support individuals and give them something concrete to challenge; such regulations would be preferable to the idea of guidance that does not go anywhere. The Government are missing a trick.

Jo Stevens: We know from previous Acts and codes of practice that guidance codes of practice have little weight in dealing with the rogue organisations that we are concerned with. If the Government are serious about their intentions—and I believe they are—they should simply put what they want in the Bill. If it is in the Bill, it can be enforced.

Melanie Onn: My hon. Friend is right. On Second Reading I was clear about wanting to make the Bill the best it can be and not leave gaping gaps through which tenants' rights can fall, to be blatantly ignored. If there is an opportunity to improve it, I hope that the Minister will not be too precious, and that he will take those things on board and seek to make improvements so that the aims are achieved. I believe that the aims are genuinely held, so why not do accordingly? I would follow up on what my hon. Friend said by commenting that when such structures are left to mere guidance they are too soft and they will not prevent unscrupulous landlords and letting agents from doing all they can to skim off money and maximise their profit margins.

Guidance is not good enough if we are to transform a system that is stacked against tenants. That point extends across more than the provisions on holding deposits; it is a foundational problem with the approach taken in the Bill. Clarity is important not only in relation to landlords and those who might want to act unfairly. If it is not clear when the withholding of holding deposits is not legal, that is a serious problem. Informed tenants are empowered tenants; so if the Government are serious about transforming letting and the process around lettings, they will do all they can to inform all relevant stakeholders as clearly as can be.

Shelter said in their response to the Bill:

"Evidence from Scotland suggests there is lingering confusion around the ban on letting fees which has affected compliance".

We do not, and I am sure that the Minister does not, want to be in the situation that Scotland was in, after many years during which legislation was in force that did not work all that well, of having to do it all again or put forward amendments. If there is an opportunity to get things right and learn lessons from our nearest neighbours, let us do so and make sure the Bill does all it sets out to do.

The Shelter response said that independent research had highlighted the fact that,

"even after the ban was clarified, less than one-third of renters clearly understood there was a law banning fees."

That emphasises the importance of a simple ban. The Government must always prioritise clarity and good communication, as this morning's sitting with a representative from the Local Government Association made clear.

The issue of holding deposits also adds to the broader financial burden facing tenants. To secure a property under the Bill would cost, according to Shelter's estimates,

£3,750 for a property in London and £2,290 outside the capital. Those figures include a six-week deposit—as the proposed cap, which is really quite high, allows—a month's rent and a week's holding deposit. The six-week deposit could leave a tenant out of pocket twice. If they leave one property and are seeking a new property, there is a period when they are doubly out of pocket. Although the deposits are refundable, tenants receive an average of only 77% of their deposit back, so the idea of passporting deposits must be given greater consideration.

3.45 pm

I say again to the Minister, what are we waiting for? Why would the Minister want to go through a whole new process of Select Committees and scrutiny? Why would he want to go through the legislative process again to introduce more guidance or legislation around letting agents, when we have the perfect opportunity in front of us to do it?

We heard evidence about passporting in this morning's sitting. The Government should show they are listening to generation rent—I do not mean the organisation, but the young people out there—and this is a way to do that effectively, quickly and easily. I would venture to suggest that it would save them a lot of trouble in the future. These are very significant amounts of money, particularly for people on low incomes and those with dependants. More work needs to be done to lower these figures.

Giving more attention to holding deposits—we recommend their removal—is one crucial part of this. The justification for allowing charges for holding deposits seems a stretch, given the realities of letting. The Government argue that agents and landlords need them, because otherwise potential tenants would put them down in numerous places, leaving landlords in the lurch. We cannot see where that happens in a significant way. The evidence we heard from Open Rent was particularly significant on that point. Its spokesperson said that it minimises the amount it requires tenants to pay in up-front fees, including for things such as holding deposits. He said that he does not see the need for them in the future, given the modern way in which lettings take place.

Numerous key stakeholders agree. In this morning's evidence session, the spokesperson for Shelter said that they do not think the problem exists. They made it clear that, in the most competitive markets—in cities, not least our capital—tenants often feel lucky to get any property. In those sorts of markets, the encoding of holding deposits—this unclear system, in which deposits can be withheld—can have a dire impact.

If a renter is penalised on multiple occasions—letting agents or landlords can withhold a week's rent, which is hardly an insignificant sum, for a reason that is outside the renter's knowledge—they can find themselves in a financial hole, perhaps without having secured a property. Landlords can be pickier in markets in which there are many potential tenants and insufficient properties to meet demand. A small infraction on a reference check—perhaps the tenant unwittingly provided some slightly inaccurate information—could be enough to start that financial problem. Without clear regulatory guidance, unscrupulous landlords will exploit the situation. In the most competitive markets, tenants can quickly find themselves in a financial hole.

In Tuesday's evidence session, we heard concerns about the holding fees. Richard Lambert from the National Landlords Association said:

> "The holding fee is acceptable as far as we are concerned, but we would have preferred something that was much clearer and more transparent to both the landlord and the tenant."

That desire for clarity and transparency fits with the broader aim of having regulation, rather than guidance. Although Richard Lambert was supportive of holding fees, as hon. Members have said, David Smith of the Residential Landlords Association disputed them, in contrast to the perceived interests of the groups he represents. He said:

> "The market has tended to move away from holding deposits in the last few years and has simply charged a fixed fee".

I do not think I am wrong in saying that the fixed fees were to cover the real costs that landlords faced—£20 for a reference check seems much more favourable than a holding deposit that could be £150 to £200.

Mr Smith continued by saying that the fixed fee

> "ideally should have been linked to referencing, but has occasionally become linked to a random figure made up by the agent."

Obviously, I would not advocate for the random figure made up by the agent. He went on:

> "I suspect that what will actually happen is that quite a lot of landlords and agents will not charge holding deposits, particularly in London, and they will simply run it tournament-style: whichever tenant gets there the fastest, with the mostest, will get it."—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 26, Q54.]

So it could have the opposite effect to that which the Government intend and increase rents, just by the power of the market and the pressure of people's desire to get the kind of property that they want to live in. If they have got the funds, and a letting agent can achieve more for their landlord, or their landlord can get more, that is what they will go for.

That gives weight to our proposal that there is no clear need for such deposits and that it is eminently doable to allow proceedings to occur without them. As that is the case, it is questionable why we are encoding in law a high level of holding deposit. There does not seem to be evidence for it and, as such, the Government are creating a solution to a problem that does not exist.

There is also the risk, as a result of capping holding deposits, as the Government want—indeed, by encoding within law their right to exist—that we create a fresh charge in many instances or that, where the charge might already exist, we further legitimise it and perhaps even raise it, when there is no clear reason why it should exist at all. That is why we have tabled the amendment—so that the Bill would better reflect the realities of letting. Tenants do not act like this Government assert, and that ignores the realities.

While the overarching premise and motive of the Bill is to improve the conditions under which tenants pay fees—with the aim to remove them entirely where that is feasible—by codifying fees in this way, those best intentions backfire. We see no clear justification for why holding deposits need exist, and the Government have not clearly explained why. Even if there were a clear justification, the Government must take care that the laying out in legislation of what is allowed fits within their aims in the Bill, or they run the risk that, for all their good intentions, the legislation will not achieve what it aims to do.

If the Government not only make holding deposits explicitly permissible but encourage their usage to become ever more widespread, that is a problem. Similarly, by making it clear what the maximum can be, the maximum could simply become the norm, as with regular deposits. We know, and have been warned by groups in the evidence sessions, that unscrupulous letting agents and landlords might, on the enacting of the Bill, seek gaps in the legislation to recoup their losses when they are restricted in what fees they can charge. Leaving any room for a charge, when there is no clear need, has the potential to undermine the Bill's aims.

Rishi Sunak: I will speak first to clause 5 and schedule 2 in general, and then respond specifically to amendments 5 and 22 to 44.

Clause 5 and its accompanying schedule, schedule 2, relate to the treatment of holding deposits. The Government recognise the concerns of agents and landlords that, in certain circumstances, they can be put at risk because of a tenant's actions—for example, if a tenant withdraws from a property despite reference checks having been undertaken. To address that, landlords and agents will be allowed to charge a holding deposit, capped at one week's rent. That will act as a deterrent to tenants from registering in multiple or unsuitable properties, and ensure that there is a financial commitment from the tenant to a property.

We also do not want to inadvertently encourage agents and landlords to discriminate against individuals when considering potential tenants for their properties. The use of holding deposits will ensure that landlords do not cherry-pick tenants they perceive to be the most suitable and therefore likely to pass a referencing check.

We recognise that it may sometimes be appropriate for landlords and agents to retain the holding deposit. For example, if a tenant fails a right to rent check under section 22 of the Immigration Act 2014 and the landlord or agent could not reasonably have been expected to know that they would fail; if the tenant provides false or misleading information that the landlord is reasonably entitled to take into account when deciding whether to grant a tenancy; or if the tenant decides not to rent the property. In such cases, the landlord or agent will be entitled to retain the holding deposit.

We will of course encourage landlords and agents to consider, on a case-by-case basis, the appropriate amount of deposit to retain and to provide a reasonable explanation to tenants when they decide to retain a holding deposit. Guidance will be provided to support landlords, agents and tenants to understand their rights and responsibilities around holding deposits.

Melanie Onn: When will that guidance be provided?

Rishi Sunak: It will be soon. The hon. Lady will be pleased to know that—

Melanie Onn: Will the Minister give way?

Rishi Sunak: If I may finish the sentence, the hon. Lady will be pleased to know that organisations such as those we heard from this morning—Generation Rent, Shelter and Citizens Advice—are currently engaged with officials in helping to draft that guidance. I am sure she will want that guidance to be as accurate and as helpful as possible. I think I am right in saying that a meeting may have taken place yesterday, so that guidance is well on the way.

Melanie Onn: Was the phrase the Minister intended to use "in due course"?

Rishi Sunak: As the hon. Lady said, I will not be precious in this Committee, and I will take reasonable suggestions. I will take her suggestion on board and rephrase to "in due course". I assure her that work on the guidance is under way, and we are working to get it right. As I said, we believe that this approach is fair to landlords and tenants.

On the amendments, it is important to clarify for Committee members what we are discussing. The amendments do not suggest reforming, improving or tweaking the holding deposits. They suggest that holding deposits be removed entirely from the list of permitted payments outlined in schedule 1, so that, under no circumstances, should there be any holding deposit. That was obviously not the Select Committee's position following its pre-legislative scrutiny, and it was not the position of the witnesses we heard from this morning, all of whom, when asked if they agree with the principle of a holding deposit, said they do.

The amendments go against that set of opinion and suggest removing holding deposits entirely. To do so would be to take away a vital mechanism in the Bill that allows landlords security while reference checks are carried out. That is important for several reasons. From the outset of this policy, landlords and letting agents have expressed concern that one of the side effects of the ban on tenant fees would be that tenants might speculate on multiple properties.

Melanie Onn: Where did the Minister get the evidence that that has ever happened in the history of anything?

Rishi Sunak: Yes, I heard the shadow Minister's points on this. It is important to note that there is no evidence for this because there are currently letting fees. Tenant fees are charged, and that is what we are all here to get rid of. The side effect of tenants no longer having to pay any fees will be that there will be no financial disincentive when they apply for a property. The disincentive to speculate currently applies, but when we legislate to remove tenant fees, which is exactly what we are doing, that safety lock and mechanism will not be there. That is why people consider it to be a side effect. Looking for evidence of something that has yet to happen is unlikely to be fruitful.

Helen Hayes: There are of course letting agents, including in my constituency, that ceased charging fees to tenants some time ago, so I am afraid that I do not accept the Minister's assertion that there is no evidence to be looked for on this. Without evidence from those agents that already follow this practice, I cannot accept that the Minister's arguments are well founded.

Rishi Sunak: The hon. Lady talks about a subset. I am also talking about groups of agents. It is not necessarily the case that speculating might or might not happen,

but it is important to guard against it happening. That is surely fair, and landlords are reasonable in asking for some protection against it. This is not about unfairly withholding money from people. In the cases that I will come on to, and as we have already discussed, there is no reason why deposits will not be returned to tenants acting in good faith.

Melanie Onn: The Minister seems to be asserting that, in the absence of these up-front fees, people will suddenly be going around with wedges of cash in their pocket that they would not otherwise have had, rather than understanding the difficulty that people have had up until now to get any money together whatever for this purpose. It really is a slightly erroneous argument.

4 pm

Rishi Sunak: I do not think it is erroneous at all. Removing tenancy fees from the legislation, as we are doing, will of course put money back into the pockets of tenants.

What we are talking about here is a deposit that is there for a number of days while a tenant applies in good faith for a property, which presumably they have the financial means to afford and have the deposit for. It is entirely reasonable to request that and, as we have heard, not all agencies require it. Indeed, the guidance will not say that it is mandatory or necessary. It is there as a safety mechanism, should landlords feel that it is appropriate to their situation.

Melanie Onn: How many days, on average, are holding deposits held for?

Rishi Sunak: That will be a function for people to decide individually. The legislation sets a cap of one week's rent for what can be taken as a holding deposit, but it is not mandatory that a full week's rent is taken.

Melanie Onn: How long will it be before individuals can get their deposit back, if they are required to pay one?

Rishi Sunak: I believe I am right in saying that, from a tenancy agreement being signed, it is a matter of days. If the hon. Lady allows me, I will get back to her with that information. My memory is that it is seven days, and it can be used in lieu of the deposit itself, but I will happily come back to her on that point. She is right that it will not be stuck there in the system so that it cannot be used for a subsequent purpose to do with the tenancy. I think that is the general point she is making.

Allowing a landlord to ask for a holding deposit enables tenants to demonstrate that they are sincere in their application for a property. It ensures that landlords and agents are not out of pocket if a tenant registers an interest in a property, only to withdraw it when something better comes along.

Secondly and importantly, we want to ensure that landlords do not take an overly cautious approach and pre-select the tenants that they perceive would be most likely to pass a reference check. Removing holding deposits from the list of permitted payments would put the tenants who most need the protections that the Bill provides in a position where they are less likely to be considered.

Finally, holding deposits act as a means of security for the landlord, who is at risk of losing out on a week's rent if a tenant withdraws from the application, fails a right to rent check, or provides incorrect or misleading information.

Helen Hayes: The Minister will be aware that a High Court challenge was recently permitted in relation to the right to rent policy. It is being taken to judicial review on the grounds that it is a prejudicial policy. First, does he agree that the right to rent policy is much more likely than an absence of holding deposits to cause landlords to take a prejudicial view of tenants? Secondly, will he confirm that, in the event that the judicial review is successful and the conclusion is that the right to rent policy is unlawful, holding deposits that have been withheld from tenants on the basis of that policy will be repaid to them?

Rishi Sunak: I am sure the hon. Lady will appreciate that I cannot comment on an ongoing legal case, nor speculate on what policy might be depending on its outcome. I remind her that we are considering an amendment that would do away with holding deposits in their entirety. That is not the recommendation of the Select Committee, of which she is a considered member, which wanted to tweak how holding deposits work.

The Bill does not require landlords and agents to take a holding deposit. The amount can be capped to prevent abuse, and the tenant will get their money back if they proceed with the tenancy and provide correct information. Of the tenant respondents to the Government's consultation, 93% agreed with the general premise of the proposed approach to ban letting fees for tenants, with the exception of a holding deposit, refundable tenancy deposit and tenant default fees.

Sarah Jones: The Minister is using the evidence of tenants for one argument, but ignoring it for others. I ask him, throughout the Bill, to look at the views of tenants. In other cases, that would lead him to do a different thing entirely.

Rishi Sunak: I would like to think that we are focused on getting the policy right. We have listened and responded to all participants in the industry. It is not a question of one or the other. We want to get the policies right for the long term to ensure not only that tenants are treated fairly, but that the market functions and that a healthy buy-to-rent sector is available, with investment going into it. It is important for that reason to make sure that some of the concerns that landlords have are addressed and listened to in order to ensure the functioning of this market in the years ahead. In the past, we have seen the catastrophic consequences for the supply of private rented accommodation of dramatic impositions on landlords, and I am sure that none of us would want to return to those bad old days.

Richard Graham: All the figures that have been shown to us in evidence so far suggest that the demand to rent from the private sector will continue to rise considerably

[Richard Graham]

over the next few years. It is vital that this market functions well, and it is not just a case of doing everything that every tenant would want or everything that every landlord would want, but of finding the balance so that good landlords and good agents are motivated to provide the private sector housing that good tenants need. That seems to me to be the purpose of the Bill. Does my hon. Friend agree?

Rishi Sunak: I could not agree more with my hon. Friend, who puts it very well. This is not about demonising people; it is about making sure that the private rental sector, which, as he so rightly identifies, is likely to experience some growth, is healthy and well invested in so that people who are looking for somewhere to rent have somewhere to call home. That is why we get the balance right in the Bill.

To conclude, we heard evidence on Tuesday from agent and landlord groups who were quite certain that if landlords and agents were unable to take a holding deposit, they would cherry-pick tenants. None of us wants to see that. I remind the Committee that the amendment would remove in its entirety the idea that landlords can charge any holding deposit. We do not support that and think that it would damage the functioning of the market, so I urge the hon. Member for Great Grimsby to withdraw the amendment and ask hon. Members to agree to clause 5 and schedule 2.

Melanie Onn: I have listened carefully to the Minister's response, but I am not convinced, unfortunately. I would like to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 2]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

The Chair: For the sake of clarity, I remind Members that although we have debated clause 5, schedule 2 and various amendments, decisions on those points will be taken formally later in our proceedings according to the order of consideration set out on the selection list.

Melanie Onn: I beg to move amendment 10, in schedule 1, page 23, leave out paragraph 4 and insert—

"4 (1) Subject to sub-paragraphs (3), (4) and (5), a payment that a tenant is required to make in the event of a default by the tenant is a permitted payment if the tenant is required by the tenancy agreement to make the payment in the event of such a default.

(2) In this paragraph "default" means a failure by the tenant to—

(a) perform an obligation, or

(b) discharge a liability, arising under or in connection with the tenancy.

(3) But if the amount of the payment exceeds the reasonable and proportionate value of the loss suffered by the landlord or letting agent as a result of the default, the amount of the excess is a prohibited payment.

(4) The Secretary of State must by regulations made by statutory instrument specify the circumstances in which a payment is to be considered a payment in the event of a default within the meaning of sub-paragraph (1).

(5) Regulations under sub-paragraph (4) must also make provision as to the procedure to be followed by a landlord or letting agent in seeking to recover a payment under this paragraph, which may include a requirement to give notice of proposed recovery in a prescribed form accompanied by evidence of the loss sustained by reason of the relevant default."

This amendment would require the Secretary of State to make regulations on payment of defaults and procedures for recovery of default payments.

The Bill leaves us with far too great a risk of subjective interpretations and loopholes through which those who would seek to maximise profits can do so at the expense of tenants. We are concerned that the Government are far too willing to leave these fees up for interpretation, with enough room for a whole manner of things to be put within them. That is why we tabled amendment 10.

When the fundamental purpose of the Bill is to ensure a fairer deal for tenants and remove fees that have no clear basis, it is a mistake to set out the specific circumstances in which default fees may be charged simply in guidance and not in regulations. We know that although guidance should be followed, unfortunately that is not likely to happen in every circumstance. That is why we tabled our amendment to remove paragraph 4 of schedule 1, which would require the Secretary of State to make explicit what is acceptable as a default payment. It must be absolutely clear; otherwise, abuse is all too easy.

The amendment also deals with the benefit of having

"a prescribed form accompanied by evidence of the loss sustained by reason of the relevant default."

Having a paper trail akin to invoicing is a fair principle on which to work. Businesses have to invoice in all other transactions, and we see no reason why default fees should be treated differently. Transparency is key to trust in the system. If a tenant is being charged, it is fair and reasonable that they be able to see clearly what they are being charged for and that it is not disproportionate to the costs facing the landlord. Recovery of the costs genuinely incurred by the landlord would be guaranteed by the need to accompany the form with evidence, such as receipts.

Taking the example that recurred throughout the evidence session, if the tenant needed a replacement key but the landlord, as standard, wished to charge the capped fee of £50, the tenant would not know whether that was a fair charge. In fact, we know that that would not be a fair charge. Fifty pounds for a new key—does anybody think that that would be a fair charge? Yet that is precisely what landlords or letting agents will be able to charge. The tenant might think it unreasonable, given how much cutting a key costs, but their ability to query

the charge would not be clear—it could be wrapped up with the agent's time or the number of phone calls it took.

Plenty of people will ask "How many letting agents does it take to get a key cut?", but a clear itemised bill will make clear what each charge is for. I would not advocate that a landlord or letting agent charge for their time spent on getting an additional key cut, phoning to make an appointment to get the key cut or sending a notice of the intention to get the key cut, but if that was happening and those were standard charges within the letting agent's brief—there is often a set of standard charges for that sort of thing—itemisation would enable the individual tenant at least to see exactly what the landlord or agent was charging them for and thus to challenge the charge. There would be no place to hide any rounding up or skimming off that would boost the landlord or letting agent's profits.

If we do not make the amendment, tenants' confidence in the whole system could be fatally undermined. Trust needs to be rebuilt. As things stand, the relationship between tenants and those who provide them with homes is fundamentally unbalanced. We believe that the requirement for a paper trail fits in with the principle outlined in paragraph 5, which highlights the need for any charges to be reasonable, referring to

"the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy".

Amendment 10 is firmly in accord with that spirit and the broader intent behind the Bill. Finessing the Bill to require a paper trail and to clarify the provisions dealing with what is and is not a default payment would go a long way to restoring tenants' trust in an often unfair system.

The Select Committee recommended

"that Government issue clear guidance to tenants, landlords and letting agents"—

in my view, that does not go far enough—

"on what constitutes a reasonable default fee, and guidance to tenants about how to challenge the inclusion of such fees in tenancy contracts. The reasonableness of both the type and the amount of fee should be considered. The Government's intention to issue such guidance should be communicated during the Second Reading debate",

and it was.

As we heard in evidence today, however, guidance is not always sufficient. Even if someone had the nerve to challenge a fee that was levied upon them when they suspected that it was unfair, the guidance would not be sufficient to enable organisations that represent tenants on a regular basis to support them sufficiently.

4.15 pm

The Government response was to accept the recommendation and to commit "to providing such guidance", but I return to the point that allowing this matter to remain in guidance, rather than putting it formally in legislation, is not the correct way to go about it. We need it laid out clearly, with no room for pernicious interpretations.

I echo concerns that have been expressed repeatedly: that something about the legislation has the ability to weaken it fundamentally, leaving it unable to fulfil the ambitions described by the Government—that is, the lack of funding. That will impact on the ability to enforce the reasonableness of default fees. The Chartered Trading Standards Institute has been highly critical of the funding formula proposed by the Government, describing it as "completely erroneous". Without funding for the ability to enforce, there are great challenges ahead.

On default fees, Shelter argues that the Bill

"needs tightening to ensure it will not be undermined by agents/landlords charging default fees."

Amendment 10 would provide that required tightening. Shelter stated:

"Shelter is concerned that permitting the charging of default fees risks undermining the aims of the Bill. It potentially creates a loophole through which agents or landlords can charge disproportionate fees to tenants for defaulting on unreasonable terms in their tenancy agreement. Whilst Shelter understands the rationale for allowing agents/landlords to charge tenants to cover the cost of a default such as replacing a lost key, Shelter believes there are two clear reasons why this clause should be removed…

Firstly, default fees are penalty clauses and penalty clauses are unenforceable in the common law of contract where they exceed a party's actual loss or reasonable administrative expenses, and where there is no equality of bargaining power between the parties. Tenants are at the mercy of landlords/agents when presented with a tenancy agreement, and it is a question of 'take it or leave it'. Where consumer contracts (such as tenancy agreements) are concerned, penalty clauses are governed by the Consumer Rights Act 2015. Part 2 of that Act provides that a contractual term will be unfair and unenforceable if 'contrary to good faith, it causes a significant imbalance in the parties' rights to and obligations to the detriment of the consumer'. The Act specifies an example of an unfair contract term as 'a term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation'. Default fees are an arbitrary fine for failing to do something, and have nothing to do with compensation. Therefore the draft Bill appears to legitimise something that is illegitimate under consumer contract law and would set a concerning precedent."

On that point I would appreciate the Minister's consideration and comments. I am sure his intention would not be for a precedent such as that to result from the legislation.

Shelter goes on:

"Secondly, there is no way of ensuring default fees will be proportionate to the loss incurred for the default. Shelter sees numerous examples of tenancy agreements where default fees are out of all proportion to any costs incurred and Shelter's legal team have witnessed a growth in default fees in the last 10 years. In one tenancy agreement, a landlord included a £40 charge for a late rent payment, a £40 administration fee for every phone call or letter to chase overdue rent and a £40 charge for visiting the premises to collect overdue rent. Another clause allowed the landlord to charge £20 per hour for their time for any activity connected to serving notice, recovering rent arrears or enforcing any terms of the tenancy agreement. The issue with default fees has been highlighted elsewhere".

In Wales, a Shelter

"mystery shopping exercise highlighted that late payment fines were some of the least transparent of all letting agent fees in Wales, with many agents appearing to make up fees on the spot."

I have experience of exit fees—we have not discussed them at length—for a prior clean through the letting agent, which was charged at £250 for a one-bedroom flat, which sounds extraordinary, and additional charges for items left behind on termination of a tenancy. That was not the result of leaving behind a mattress, a bed, a wardrobe and all my worldly belongings; it was a cup—thank goodness they did not see the spoons I took. That

goes to show that there are lots of hidden fees and charges that are grossly disproportionate to the circumstances that agents and landlords find themselves in.

Shelter said:

"By permitting default fees, the Bill will allow the least responsible agents to legally continue with some of the worst practices and will further entrench the split between responsible agents and rogue operators. Landlords or agents may counter that if such clauses are unfair…and therefore this would not come under enforcement by Trading Standards…a tenant would be required to bring a court action with all the costs that entails. Consequently the unfair terms legislation is likely to provide little protection for tenants and Shelter urges the Committee to reject the clause on default fees."

Adam Hyslop, of OpenRent, said in the evidence session that one of his two issues with the Bill was specifically about default fees:

"The concern is that, as the Bill is currently drafted, tenants might not have the full protection that it intends."—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 4, Q1.]

He went on:

"The common practice at the moment is not only to charge admin fees up front but to have fees listed within the tenancy agreement—things such as cleaning"—

I know that one—

"and an inventory check-out report"—

I know that one too—

"at the end of the tenancy. I believe the Bill's intention is to ban those as well—they are not permitted payments. So, the intention is to prohibit them, but my concern is that, in practice, some of those will be left in and you will have tenants feeling obliged to pay them towards the end of tenancy agreements, even though they might be outlawed payments.

I do not know how this will be addressed in practice, but a lot of the—let us call them—disputes are where you have got a landlord asking a tenant to pay, say, £150"—

I wish it had only been £150 in my situation—

"to clean the property at the end, when actually what is reasonable is for the tenant to restore the property to the level of cleanliness when they moved in, which could be by using their own cleaning company or doing their own housework, as it were."—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 9, Q14.]

That seems eminently sensible and straightforward, but it brings us back to the point that when it comes to letting agents, it is a tick-box exercise. They have a folder of forms that they photocopy and they go through them and check that they have done all those things. If that involves charging £150 for an exit clean, that is precisely what happens.

Hyslop continued:

"A lot of these disputes end up with the deposit protection services. I do not know whether they will be briefed that these fees would be immediately thrown out if they were ever disputed. But, actually, before you get to that stage, it is a very low single-digit percentage of deposits that ever go to formal arbitration in these schemes, so there is a big piece to do, whether in the wording of the Bill or in guidance"—

I do not want it to be in guidance, as hon. Members are aware—

"to ensure that tenants know that these are also explicitly prohibited and that they should not accept any agent or landlord saying, 'No, it is in your tenancy agreement. You signed up to it with free will at the start.'"—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 9, Q14.]

He expressed those concerns very clearly, and pointed to a much broader issue of literacy among tenants about their rights, and about the rights that landlords and agents have over them. It is essential that we get that right in the legislation, that tenants are clear about what is happening and that there is no grey area to be argued over, as far as possible. If people do not know what is permissible and what is not, the legislation is fundamentally undermined.

In this morning's session, the NUS's Izzy Lenga said that students, who perhaps are that little bit less experienced, can often end up fulfilling duties that are not altogether fair. The gardening duties that she described are the sort of thing that some tenants might unknowingly accept a significant bill for having a professional fulfil. Clarity from the Government on this issue, and laying it down in legislation, is key.

Helen Hayes: It is a pleasure to serve under your chairmanship this afternoon, Mr Sharma. I wish to speak briefly in support of amendment 10, which appears in the names of my hon. Friends the Members for Great Grimsby and for Croydon Central.

The amendment seeks to address a loophole that was identified by the Housing, Communities and Local Government Committee, of which I am a member, during the pre-legislative scrutiny inquiry that we undertook. The loophole was the biggest issue with the Bill that the Committee identified. We spent a great deal of time receiving and considering evidence on this matter, and discussing possible solutions.

This Committee heard strong evidence this morning from representatives of the trading standards industry that the least scrupulous parts of the lettings industry will try to find ways around the ban on fees to tenants. It is my view that the loophole on default fees represents one of the ways in which they will try to do so, as the Bill stands. The Bill places no parameters on the charging of default fees and, while the Government have indicated a willingness to look at the issue, it is regrettable that the Committee does not have, by way of an amendment or draft published guidance, any way to scrutinise the ways in which it is proposed that that will take place.

It is already common practice for some agents and landlords to add spurious sums of money to the charges that a tenant has to pay both during and at the end of a tenancy, in the event, for example, that a key is lost, as garden maintenance charges, or through the blurring of the line between fair wear and tear and damage. We know that that happens. The Bill presents a risk that such practices may continue and increase as letting agents seek to make up the income that they will lose as a consequence of not being able to charge fees to tenants. It is easy to imagine the circumstances in which such charges might be imposed on tenants. In my view, that would be a significant failing of the Bill.

Amendment 10 seeks to ensure clear, transparent parameters within which default fees can be charged to ensure that they are reasonable and proportionate. Without the amendment, the Bill will be at significant risk of failing in its ultimate objective of reducing costs to tenants, and may even make matters worse by allowing costs to be imposed on tenants that are random, spurious and opaque. On the whole, the Bill has the potential to deliver significant improvements and benefits for tenants, but the Government will make a serious error if they do not take firm and robust action to close this loophole. The Bill will be poorer for that and may well fail in its

ultimate objective as a consequence of overlooking this point. I therefore urge the Minister to set out in detail how the Government propose to close this significant loophole and to accept amendment 10, which presents a robust way to do so.

Rishi Sunak: I am pleased that hon. Members accept the principle of default fees and agree with the general view that it is not fair for landlords to pay fees that arise from default by the tenant. Our approach to default fees has been to avoid listing the types of default, as such a list would be likely to need updating in future. Although the amendment seeks to set out default fees through secondary legislation rather than on the face of the Bill, the principle against such a fixed list stands.

4.30 pm

We repeatedly hear generic examples of default fees that are common to most tenancies, such as lost keys or late rent payments; they would qualify as default events, but many are specific to a particular property. There are numerous examples, but they may include patio doors that need particular care, failure to comply with prescribed conditions on communal areas such as bike storage, alarm fobs and other such things. Government simply cannot account for every individual circumstance regarding a particular property, which is why we have taken the approach that we have.

We very much believe that default fees do not represent a loophole. Under the legislation, they are permitted only if the tenant is made aware when agreeing to the tenancy that they can be charged such fees in the event of a default. They are listed in the agreement specifically up front—there is nothing hidden about that. The amount that can be charged is capped at the landlord's loss—that is also in legislation. The idea that there could be extreme default fees is simply not borne out by the legislative position. The landlord would need to say in the tenancy agreement that if the tenant breaches an obligation imposed by the agreement to take appropriate care of keys, the tenant is responsible for the replacement costs, and the replacement fee can be no more than the cost incurred by the landlord in replacing the key. In our guidance we will state that it will be best practice for the landlord to provide evidence of their loss.

Helen Hayes: I fear that, once again, the Minister's remarks fail to take into account culture and practice in the lettings industry and the extreme imbalance of power between landlords and tenants. What is to stop a landlord from saying, "Well, it cost me £150 to replace that, so that is what you have to pay"? That happens all the time. Notwithstanding current legislation, there is no protection in reality for tenants against such charges.

Rishi Sunak: I thank the hon. Lady for her comment, but the point of the legislation is that there will be far greater protection for tenants and a deterrent for landlords from behaving in the way she outlined, because there will be significant financial penalties and banning orders at stake for landlords who misbehave. There is a process for tenants to seek redress, partly informed by the recommendations of the Select Committee, such as going to the first-tier tribunal that does not exist today. The combination of all those things makes it much less likely that a landlord would behave in such a manner, for the simple reason that they would be behaving illegally. If that were to be found out by trading standards, the first-tier tribunal or any redress scheme, the penalties for that misbehaviour could be incredibly significant.

This legislation will have the impact required. The guidance we will put forward will specify that it will be best practice for the landlord to provide evidence of their loss, which they will do precisely because they know in the back of their mind that if they put out a speculative number and are challenged, the consequences will be significant for them. All in all, I ask the hon. Member for Great Grimsby to withdraw her amendment.

Melanie Onn: The Minister says that the Bill will seek to ensure that erroneous behaviours by landlords or letting agents will be far less likely, but that does not fill me with any kind of confidence. He goes on to talk about the enforcement element—the fines, trading standards and potential criminal prosecution if that happens more than once—but he fails to acknowledge the issues of enforcement, which I understand comes much later in the Bill, that have been very clearly expressed in the oral evidence we have heard.

Making the legislation work requires the enforcement to work. As we have not yet got to that point, it is very difficult for me to feel at all convinced that the Minister's proposals will ensure that tenants will be properly protected from default fees and that letting agents or landlords will fulfil all their responsibilities. I know that the responsible ones will, but I am not remotely interested in them. For that reason, I am afraid that I will not withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 3]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Dr Paul Williams (Stockton South) (Lab): I beg to move amendment 1, in schedule 1, page 24, line 21, at end insert—

"(1A) On provision of documentary proof from the tenant, sub-paragraph (1) shall not apply to tenancies terminated at the tenant's request as a result of the tenant having—

(a) suffered a physical or mental health crisis that requires care to be provided in an alternative environment, or

(b) been subjected to domestic violence by a cohabitee

and the Secretary of State shall make regulations specifying the documentary proof required from the tenant for the purposes of this sub-paragraph."

This amendment would enable tenants in particular circumstances to end fixed-term tenancies early without having to pay the full rent due to the end of those tenancies.

[Dr Paul Williams]

It is a pleasure to serve under your chairmanship, Mr Sharma. I draw the Committee's attention to my entry in the Register of Members' Financial Interests. I am a landlord of two properties—actually, they are both in the Minister's constituency, where I used to reside. I am also a tenant.

I rise to support amendment 1, which relates to the schedule of permitted payments and in particular to termination payments that are permitted when a tenant leaves their tenancy—whether fixed or variable term—early. I understand that a landlord or agent may ask for payment of rent up until the end of the fixed term or for the agreed period of time—usually two months. They may also ask for payment of utilities and perhaps council tax, and that would be permitted.

If someone decides of their own free will to leave a tenancy agreement early, it is reasonable and legitimate that they should pay those extra costs. However, I propose two groups of people for whom paying such costs is not reasonable and legitimate and as such they should be excepted from them. Both groups involve people who have exceptional problems that require them not to be present in that house: through no fault of their own, they require care or support that would involve their leaving the property.

The first set of circumstances that someone may incur is having a serious physical or mental health crisis that is so bad that they cannot stay in the home. Let us say someone has a serious road traffic accident, perhaps involving a head injury, and requires a long period of hospitalisation followed, perhaps, by rehabilitation in an alternative environment. If they are insured against that possibility, they could continue to pay their rent, but if they are not—many vulnerable people are not—it would be catastrophic for them to have to continue paying rent while they were in a hospital or rehabilitation centre, perhaps for many months, until the end of their tenancy.

The other set of circumstances to do with health would be when someone has a mental health crisis, particularly one that requires admission to hospital or relocation to another area for support. For example, a student might have a mental health crisis at university. As part of their rehabilitation, it might be appropriate for them to leave their university town and go back to live with their parents for a few months. Under those circumstances, if they have to continue to pay the rent because they are unable to terminate the rental agreement, not only will they get into serious financial problems, but those financial problems are likely to exacerbate their mental health crisis and make recovery more difficult.

There is an excellent report by Mind, called "Brick by Brick", which looks at some of the implications of housing on mental health. I think this is a particular situation where mental health could be adversely affected. These people have entered into a contract in good faith and their situation has changed radically, meaning that they cannot continue to hold the contract. They should be protected. They cannot live in the house. Perhaps they cannot earn money. The amendment proposes that they could leave the tenancy without that termination payment. At the moment it is at the discretion of the landlord whether to show leniency in those circumstances.

There is another set of circumstances in which it would be good if that situation applied: when somebody suffers domestic violence, for example when two people are joint signatories to a tenancy agreement, often a co-habiting couple, and one is a victim of domestic violence perpetrated by the other and has to leave the property for his or her own safety. They might have to go to a refuge and be unable to meet their obligation to pay the rent. The situation has completely changed for that individual. To expect them to continue to be liable for rent when they have had to leave the premises through no fault of their own seems to me to be unreasonable.

To conclude, we have an opportunity through this amendment to protect a small number of exceptionally vulnerable people who have serious problems, whether it is a serious physical health problem, such as a head injury, a mental health problem or being a victim of domestic violence within the home from a co-habitant. They have entered into their contract in good faith. This would be a crisis not of their own making and we have the opportunity to give that small group of vulnerable people protection.

Mr Goodwill: The hon. Gentleman is making some good points. In terms of domestic violence, would a criminal conviction have to be secured to prove that, or would an allegation just have to be made?

Dr Williams: I thank the right hon. Gentleman for asking that. I am not making any proposals about the standard of proof. I have suggested in the amendment that,

"the Secretary of State shall make regulations specifying the documentary proof required from the tenant for the purposes of this sub-paragraph."

It could be that the threshold would have to be a criminal conviction. I believe that there are other circumstances in which a victim of domestic violence might get legal aid. I am not sure what the threshold of proof is for that, but it might perhaps be wise to use a similar one. The amendment gives the Secretary of State the power to set the threshold of proof. I urge the Minister to consider using this amendment to prevent individual crises turning into catastrophes.

Rishi Sunak: It is a pleasure to respond to the amendment tabled by the hon. Gentleman, my constituency neighbour. I am not sure whether the whole Committee knows that he is making a sacrifice to be with us today, since I think it is his daughter's birthday. We all wish her a happy birthday—[Hon. Members: "Hear, hear!"]—and I hope we can speed him on his way back up north to her as quickly as possible. I look forward to welcoming both her and him back to their native home in north Yorkshire, where they will be very welcome in the Richmond constituency.

4.45 pm

At the outset, the hon. Gentleman, as a practising doctor, understands this particular issue much better than me, and I appreciate his bringing it to our attention. I have enormous sympathy for those who suffer a mental or physical crisis of health and for the victims of domestic violence, especially as that can affect a person's

ability to maintain stable living conditions. Where a tenant's circumstances are such that domestic violence or a health crisis means they need to end their tenancy during the fixed term, the Government would always encourage landlords to be understanding and flexible. I can assure the hon. Gentleman that our guidance will specifically touch on and emphasise that; I hope we can look to him to help to inform that guidance.

The Bill enables landlords and tenants to come to an arrangement if the tenant needs to terminate the tenancy before the end of the fixed term. Paragraph 6 of schedule 1 permits, but does not require, landlords to ask for an agreed payment in lieu of the remaining rent they are contractually entitled to. To not permit such a payment might lead to a situation where landlords are less willing to let to tenants who they deem more likely to suffer a physical or mental health crisis, or less likely to offer them a longer tenancy if they judge it to be a greater financial risk. I am therefore nervous that an amendment could end up hurting the very people it is trying to protect.

It is also appropriate to reflect on the other side of the equation, which the amendment does not address: a landlord could equally suffer a health crisis, be the victim of abuse or have some other difficult personal situation, which might lead them to want to recover their property. Should they automatically have the right to do that? That would put people's secure tenancies at risk. At the moment they could not just do that; landlords have to follow due process and give the tenant notice of their intention to repossess a property at the end of the tenancy. They have no ability unilaterally to declare, or even give some evidence, that their health circumstances have changed and they need the property back. The protection of a shorthold tenancy, which provides certainty of duration, provides protection to tenants as well as landlords.

The issues the hon. Gentleman touches on are extremely important and sensitive. He will know that the Minister whose primary responsibility is housing and homelessness, my hon. Friend the Member for South Derbyshire (Mrs Wheeler), is passionately committed to those who have suffered domestic abuse, in particular, having the support they need. The hon. Member for Stockton South will of course have first-hand familiarity with the fact that those entering care can avail themselves of means-tested support from their local authority. In the round, I would like to think that there are lots of other avenues of support for those people. Unfortunately, the Government cannot support this particular amendment and I urge him to withdraw it, but I hope he can help to inform the guidance we will put together on this issue.

Dr Williams: I thank the Minister for his response and for his wishes; I will pass his message on to my daughter if I get there before she turns in to bed. I believe that a landlord has the power to terminate a contract with two months' notice—I believe that to be correct.

Rishi Sunak: That refers to taking back possession under section 21 at the end of a shorthold tenancy. It is two months in advance of that period, which is typically six months or more likely 12 months. It is not for use randomly in the middle of the tenancy agreement.

Dr Williams: I thank the Minister for that clarification. As things stand, even after the passage of this Bill, landlords will have more power than tenants. I am supportive of the Government's position on encouraging flexibility from landlords. Of course, as we have recounted, the good landlords will always show that flexibility and the poorer landlords will not. For that reason, I would like to put this amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 4]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Richard Graham: On a point of order, Mr Sharma. May I raise a point for the Minister to comment on? We are seeing a bit of trend in this sitting of Opposition Members tabling various extremely well-meaning amendments that, in my view, would make for extremely bad law. For example, the amendment tabled by the hon. Member for Stockton South about having an exception for people with mental health difficulties could land huge numbers of tenants and landlords in all sorts of arguments going into the courts about what constitutes a reasonable amount of mental health difficulty or stress. My concern, which I would like the Minister to respond to, is that some of the amendments are extremely well meaning but not helpful in the bigger picture.

The Chair: I take your point, but it is up to Opposition Members what amendments they propose, and it is up to the Minister to respond to them. Opposition Members have that democratic right. You cannot just say that you think it is bad—I am sorry.

Sarah Jones: I beg to move amendment 11, in schedule 1, page 24, line 34, after paragraph (4), insert—

"(4A) In the event of a tenant terminating a tenancy as a result of a breach of section 1 or section 2 of this Act, any payment beyond the date of termination is a prohibited payment."

This amendment is consequential on Amendment 10.

The Chair: With this it will be convenient to discuss amendment 12, in clause 4, page 4, line 5, at end insert

", except that the tenant may choose to terminate the agreement without penalty."

This amendment enables a tenant to end a fixed-term tenancy immediately in the event of a section 1 or 2 breach by a landlord or letting agent.

Sarah Jones: I rise to speak in support of amendment 12, which would give tenants a right to leave a tenancy agreement after a breach of clauses 1 or 2, and amendment 11, which would prevent landlords from charging a tenant for termination of a tenancy if they leave under the provisions added in amendment 12. Those simple amendments would help to redress the balance in the relationship between landlords and tenants and offer real benefit to other areas of the Bill.

The Bill provides for a strong set of rights for tenants to dispute and reclaim money that was taken as a prohibited payment. Yet if there is one thing to take away from all the evidence we heard this morning and on Tuesday, it is that people on all sides want an enforcement system that works and want landlords who charge such fees to be held accountable for their actions. As the Bill stands, there is not enough funding in the enforcement mechanism for that to be done consistently by a trading standards body or enforcement authority. The Opposition want more funding for enforcement to catch out wrongdoers, but inevitably tenants may need to go to a first-tier tribunal themselves if they are charged a prohibited fee and wish to challenge it.

The Bill should therefore consider closely the drivers and the things that discourage tenants in reporting landlords and letting agents that charge prohibited fees. The amendment aims to resolve one of the real discouraging factors for anybody who has either just moved into a new house on a fixed-term contract or anybody who has agreed a long fixed-term contract with their landlord.

We know that the relationship between a tenant and landlord is important to having a happy and successful tenancy. Indeed, for those who live with their landlord it is a relationship with someone they see on an everyday basis and with whom they share facilities. Taking a landlord to a tribunal could drive a significant wedge into that relationship, and it would be natural for tenants to feel that they are no longer secure in their rental agreement through no fault of their own, after a landlord has tried to charge them a prohibited fee. Yet, as the Bill stands, they may need to remain in the agreement until the end of the tenancy. So the landlord has tried to charge a prohibited fee, but the tenant has to remain in the agreement until the end of the tenancy.

That would be a major barrier to bringing up the prohibited charge. People might think that challenging a prohibited fee is not worth their feeling uncomfortable in their rental agreement for months, possibly years, as opposed to just accepting the fee, so as not to sour the relationship with the landlord.

This amendment would get rid of that barrier by giving the tenant the ability to leave if they feel uncomfortable staying in an agreement with a landlord who has already charged a prohibited payment. It is a method both of improving the rights of tenants if they are charged a prohibited fee and of removing a barrier to reporting the charging of a prohibited fee by a landlord or letting agent.

It would also act as an extra disincentive to a landlord or letting agency charging a prohibited fee. If they could lose a tenant as a result of charging a fee, that could lead to the loss of rental income for the period between the tenant moving out and finding a new tenant, given that amendment 11 would prevent the charging of fees for the early termination of tenancy under this new provision. This set of simple amendments would improve the effectiveness of the Bill and I hope that Members from all parties will support it.

Rishi Sunak: I hope that we can do this very quickly. The Government believe that both amendments 11 and 12 are problematic, and this discussion comes down to just a simple difference of opinion on principle. Removing the obligation for a tenant to pay the remainder of their rent if they terminate their tenancy following a breach of the ban could lead, in our view, to landlords being disproportionately penalised for perhaps an inadvertent breach that they immediately take steps to rectify.

Clause 4 already ensures that any term that breaches the ban on fees is not binding on the tenant and the Bill also provides for tenants to recover any prohibited payments, and for enforcement authorities to take quite significant action in such cases, potentially leading to an unlimited fine.

For those reasons, and it is a simple difference of opinion on what is proportionate, I ask the hon. Lady to withdraw the amendment.

Sarah Jones: I heard the Minister; there is clearly a difference of views. I am happy to withdraw the amendment, but I obviously reserve the right to return to this matter on Report.

Amendment, by leave, withdrawn.

Question proposed, That the schedule be the First schedule to the Bill.

Sarah Jones: There are parts of schedule 1 that we have concerns about; we have already touched on those concerns briefly. In particular, we touched on paragraph 8, which deals with

"Payment in respect of utilities etc".

We are really concerned that these measures were not part of the consultation and of the initial Bill, but have been added subsequently, and we are also concerned that people have not been given enough time to consider them, or make a case against them.

It would be the case—would it not?—that landlords could charge, say, £500 a month, including bills, when the bills are only £30 a month and the market rent is £400 a month. This is a loophole that is new and that has not been consulted on, and it would leave people open to abuse.

Agencies could make back what they are losing in fees by charging higher rates on bills than the bills come to, and this would be particularly an issue for students, where they do not use the whole house and it is therefore harder to work out what the bills should come to.

We have not tabled an amendment to that effect, but will the Minister look again and ensure that there is some kind of clause that enables tenants not to be ripped off by being charged more for their utilities than they should be?

Question put and agreed to.

Schedule 1 accordingly agreed to.

Clause 4

EFFECT OF A BREACH OF SECTION 1 OR 2

5 pm

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: We want to ensure that the effect of including a banning requirement as a term of a tenancy agreement is clear, and the clause provides that a term of any agreement that contravenes the proposed legislation is not binding on the tenant. The clause also establishes that the rest of the agreement will continue to apply where any part is found to be non-binding, to ensure that the tenancy can continue and that landlords and tenants remain protected by the terms of the contract. Finally, the clause provides that if the tenant or someone acting on their behalf has been required to make a prohibited loan, that money should be repaid on demand. Members of the Select Committee will be pleased that that provision has been included, as it reflects one of the Committee's recommendations during pre-legislative scrutiny. The clause establishes vital protections for tenants.

Melanie Onn: The spirit of the proposed legislation is to protect tenants and remove burdens from them wherever possible, in order to rebalance power, which has for so long been in the hands of letting agents and landlords, in favour of tenants. That is as true for costs as it is for other things. We tabled amendments 11 and 12 because we would like to see more rights. Although we opted not to press them—we have not been very successful in votes this afternoon—we welcome clause 4, as it offers tenants greater protection from retaliatory evictions. Even if it is not as bold or strong as we might like, it is nevertheless a step forward legislatively.

As we know, retaliatory evictions are a real problem. They can cause a great deal of distress and concern for tenants, and they are one of the major reasons why people do not speak up against their landlords or seek to enforce their rights as tenants. The power imbalance in the relationship between the landlord and the tenant, which I have referred to throughout our deliberations, represents one of the worst abuses of the sanctity of people's homes. Despite our amendments having fallen, any additional contract security for tenants is a good thing, although we urge the Government to consider strengthening it.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Kelly Tolhurst.)*

5.4 pm

Adjourned till Tuesday 12 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

TFB42 Shelter

TFB43 Chartered Trading Standards Institute

TFB44 Leaders Romans Group Limited

TFB45 Dr Andrew Summers

TFB46 iQ Student Accommodation

TFB47 Good2Rent

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Fourth Sitting

Tuesday 12 June 2018

(Morning)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 16 June 2018

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 June 2018

(Morning)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

9.25 am

The Chair: Before we begin, will everyone ensure that all electronic devices are turned off or switched to silent mode? Tea and coffee are not allowed during sittings. We now resume line-by-line consideration of the Bill. We start with clause 5, which we debated as part of an earlier group of provisions. I therefore cannot allow a separate stand part debate, but will put the question on the clause forthwith.

Clause 5

Treatment of holding deposit

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 5]

AYES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

NOES

Elmore, Chris	Onn, Melanie
Frith, James	Williams, Dr Paul
Hayes, Helen	Zeichner, Daniel
Jones, Sarah	

Question accordingly agreed to.

Clause 5 ordered to stand part of the Bill.

The Chair: We have also debated schedule 2 as part of an earlier group and therefore I cannot allow a separate debate on it.

Schedule 2 agreed to.

The Chair: For the sake of clarity, I point out that amendments 22 to 44 were all consequential on the proposal to remove schedule 2 from the Bill. As schedule 2 has been agreed to, those amendments automatically fall and cannot be moved.

Clause 6

Enforcement by local weights and measures authorities

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): It is a pleasure to serve under your chairmanship, Mr Sharma. I look forward to our making speedy progress today.

The Bill proposes a number of enforcement measures that offer a strong deterrent to irresponsible agents and landlords and, in doing so, protects tenants from unfair letting fees. Clause 6 places a duty on local weights and measures authorities—that is, trading standards authorities—to enforce the ban on letting fees and requirements relating to holding deposits. Trading standards have an important role in enforcing existing legislation on letting agents—such as the requirement on agents to display their fees transparently. With their existing local knowledge of the industry, trading standards are the clear choice to enforce the ban on letting fees. Indeed, 69% of respondents to the Government consultation agreed that trading standards should enforce the provisions of the Bill. We have also spoken to trading standards officers, who agree that enforcement of the Bill aligns with their responsibilities to enforce other legislation relating to fair trading and consumer protection.

Trading standards authorities are responsible for enforcement in their own local areas. Where a breach occurs in the area of more than one trading standards authority, a breach is considered to have occurred in each of the relevant local areas. Trading standards must have regard to any guidance issued by the Secretary of State or lead enforcement authority. The investigatory powers available to a local trading standards authority for the purpose of enforcing the Bill are set out in schedule 5 to the Consumer Rights Act 2015.

Daniel Zeichner (Cambridge) (Lab): Will the Minister explain to the Committee what assessment he has made of the capacity of trading standards departments to implement the measures that he is discussing, and what additional resources he intends to give them to make that possible?

Rishi Sunak: I am very happy to answer the hon. Gentleman's question briefly now, as I am sure that we will come to it when we consider the various amendments and clauses that deal particularly with capacity and resources. In a nutshell, we believe that the Bill and the enforcement measures in it will be self-financing with the fees that can be charged by local enforcement authorities and trading standards authorities; on top of that, they will receive seed funding in the first year of up to £500,000.

As I was saying, the investigatory powers are set out in schedule 5 to the 2015 Act.

Melanie Onn (Great Grimsby) (Lab): The Minister just mentioned charges. Is he referring to the fines?

Rishi Sunak: Yes; I meant the fines that will be charged of up to £30,000 for a second offence and £5,000 in the first instance.

To return to the investigatory powers, they are laid out and provide the ability for trading standards authorities to investigate, inspect and enforce the provisions; they enable them to carry out their enforcement activity.

I hope that the clause will stand part of the Bill.

Melanie Onn: It is a pleasure to serve under your chairmanship, Mr Sharma.

As we have heard and read in the evidence from the likes of the Local Government Association, the Chartered Trading Standards Institute and the Chartered Institute of Housing, there are significant concerns about the enforcement powers being conferred on the local weights and measures authorities around the country. For the avoidance of doubt, we are talking in this clause about local trading standards teams. As I have mentioned before, they have a wide and varied remit. They enforce laws on behalf of consumers on matters such as age-restricted products; agriculture; animal health and welfare; fair trading, which includes pricing, descriptions of goods, digital content and services, and terms and conditions; food standards and safety; intellectual property, including counterfeiting; product safety; and, of course, weights and measures.

Trading standards cover more than 250 statutory duties, including providing businesses with advice. The CTSI says that the service is already overstretched and underfunded, with just £1.99 per head being spent. The situation has been recognised by the National Audit Office, which has said that there is a direct threat to the consumer protection system's viability as a whole, yet here the Government seek to add another layer of responsibilities, technicalities and duties to those of the service without giving due consideration to the implications of the request, and simply assuming that their assessment that the scheme will be fiscally neutral after two years will come to pass. That seems a rather carte blanch approach to me—a "close your eyes, cross your fingers and hope for the best" kind of plan. It is not robust and it is not a process modelled on the evidence of the experts who operate in the roles, day in and day out. There is time for the Minister to correct this.

Our constituents will mostly know trading standards for tackling rogue traders. My constituency being a port town, we have a very active trading standards department, which regularly discovers dodgy goods that people try to smuggle in, including recently some dangerous counterfeit cigarettes, filled with anything up to and including asbestos, for sale cheap on the black market, with a street value of around £8,500. Trading standards are often the first in a position of authority to come across goods linked to organised crime and criminal gangs, and they provide essential eyes and ears within local communities.

Is the Minister confident that the addition of these tenant fees enforcement powers to trading standards' responsibilities, with only pin money for start-up and roll-out, will not impact on its already essential role protecting consumers? How can he be sure, and what steps will he take to ensure that that is the case going forward? We heard of cuts to trading standards departments of 40% to 50% at a local level.

Across the country, the Chartered Trading Standards Institute tells us that there has been a cut of more than 50% of skilled officers. Does the Minister seriously think that trading standards will be able to effectively implement these new powers? If so, how? What priorities should trading standards officers have? If faced with tracking down an influx of poisonous fake spirits, surveilling for evidence to prosecute the sale of knives to under-18s or taking action against a landlord requiring a £150 prohibited fee from a tenant, which would he suggest the officers pursue as urgent?

If the Minister concedes that the loss of money is likely to be less urgent in its nature than the matter of illegal spirits or the selling of knives to teenagers, at what point does he anticipate that an officer ought to get around to looking into the issue of the prohibited fee? Given the restrictions on time and staffing levels, is not a TSO, rather than acting in an individual case, far more likely to deal with a single landlord facing multiple allegations of charging prohibited fees? It will be dealing with the big fish, rather than the small fry, that will be a reasonable and proportionate use of staff time. Has the Minister thought about the practicalities of enforcement? Has he compared it with how enforcement of housing matters is currently dealt with, or even tried to plug some of those gaps?

In order for the London Borough of Newham's landlord licensing scheme to be effective, it had to bring together several different agencies, including the police, the UK Border Agency and specialist housing officers, and had to invest in systems to accurately identify those properties that were incorrectly licensed. While it has drawn in significant revenue for the Treasury and the council, it took a laser-focused determination from the political leadership in Newham to get their processes up and running to tackle landlords operating outside the regulations. Can the Minister guarantee that the same will happen to trading standards departments around the country, when it could be said to be somewhat of a Cinderella service? How will he monitor that, and what will his measure of success be?

The Local Government Association said in its evidence that, given the reduction in capacity of trading standards across many authorities, there should be flexibility for local areas to determine whether the ban is enforced by local trading standards or private sector housing teams. Does the Minister agree? The LGA went on to say that the Government had ignored the findings of the working group, which concluded that there should be enforcement of mandatory client money protection by local authorities, rather than trading standards. Is the Minister content to ignore the working group's findings?

Has the Minister listened to the CTSI when it says that a self-financing enforcement model would potentially create a disincentive to provide regulatory compliance? That certainly seems to be the case with the current system around the display of fees. The fine acts as neither a disincentive for the businesses nor an incentive for the enforcement teams. The LGA pointed out that the Government's theory that funds generated by fines will increase when non-compliance increases does not add up if companies close themselves down, only to re-emerge under a different name or structure in order to avoid a fine.

The CTSI also says that the costs of providing advice and guidance to a company that is subsequently compliant are not factored into the Government's calculations. Of course, there was the issue raised by CTSI in our evidence session regarding the differences in the burden of proof and the framework of enforcement. The enforcers, in this instance the trading standards officers, will be required to prove offences beyond all reasonable doubt. What does this mean in practice for people—for families—who are already likely to be afraid about not securing the property that they want to live in and perhaps are under pressure to secure it because they have given notice on a prior residence, or are being thrown out of a

[Melanie Onn]

property that they already reside in? Will this substantial basis of evidence encourage people to come forward, to make a complaint and seek redress? Let us remember that they are already in a significantly less advantageous position than the landlord or the lettings agent. They are not the experts in renting and even less so are they experts in the most recent legislative changes.

It goes back to the point I made earlier: the reality is that enforcement officers are far more likely to try to build up a stronger case with multiple complainants than deal with breaches on a single case-by-case basis. Does the Minister consider that this is serving tenants' best interests? The remedy would not be sufficient in financial terms for the local authority, nor will the legislation be seen as fit for purpose by those it is intended to protect. Is he really content to preside over this? The CTSI says that most consumer rights breaches and the Estate Agents Act 1979 are obtainable on a balance of probability test. Why does he not consider amending the Bill to reflect this modest yet effective change? If it is the case that the higher the evidential requirement, the more work is involved and the more risk there is for the local authority, and the less likely it is that the Act will be easily enforceable, should he not just do the right thing and make the amendment now? I say that because one of the biggest frustrations of my constituents is around laws that are not enforced. Whether it is parking restrictions, dog mess or fly-tipping, they expect the rules to be fully and fairly applied. Where they are not, the blame comes back on an unfairly overstretched local authority, trying to do its best against the financial odds—financial odds that I know the Minister has recognised in previous comments that he has made.

I do hope that the Minister will take my comments on board. These are the views of royally chartered organisations, which work within the current legislative framework and can anticipate the difficulties of seeing this legislation in operation. It is only through proper enforcement with enforceable regulations that we can hope to see this law do everything the Minister has set out for it to do; otherwise, I am confident that it will be left wanting.

Rishi Sunak: There are in general three broad questions or buckets of comments. First, whether trading standards are the right institution to take on this task; secondly, prioritisation of resources for the things that trading standards have to do; and thirdly, a specific question about the burden of proof required for the penalties that are in place in this legislation. I will try to answer each of those three questions directly.

First, regarding whether trading standards are indeed the right body, which the hon. Lady questioned, there is unanimous agreement among leading industry bodies that trading standards are the logical choice. Indeed, the Chartered Trading Standards Institute itself, which the hon. Lady referred to, said that trading standards

"are well placed to enforce the ban",

thanks to their local knowledge of landlords and letting agents.

Melanie Onn: Would the Minister accept that in the evidence we heard there was a reference to trading standards working closely with housing officers in particular, to better inform their local knowledge in an area that they may not have information relating to, because the trading standards authority has said that in terms of tenants they currently receive a small number of complaints in this area.

Rishi Sunak: I am generous in giving way, but in this occasion I may have been too generous, because I was just about to make that point. It is exactly because we recognise that in different areas there are different situations that we do not want to mandate a top-down approach. We have encouraged close co-operation. I do not want to pre-empt our debate on the next clause, which talks specifically about the powers for district authorities to enforce the provisions in the Bill. Also, on the particular question raised about client money protection and who ought to be the body enforcing that, 74% of respondents to the consultation said that that enforcement should primarily be by trading standards. It is important to note that trading standards can, under this legislation, discharge their responsibilities to the local housing authority, should they feel that is most appropriate for their area. I hope that addresses concerns on that point.

9.45 am

I do not want to pre-empt a future conversation we will no doubt have on the appropriate level of resources. However, to the specific question of how a trading standards operation prioritises between various tasks, it is not for me to direct them to a different area. There will be different needs for each area and they will make those decisions themselves.

Committee Members should note that, as a result of this and previous housing legislation, notably the Housing and Planning Act 2016, local trading standards authorities are able to keep the money they make from civil penalties related to housing to fund greater enforcement of these housing measures. Those powers have been in place only since April 2017, so it is too early to say exactly how they are working, but I can say that the early news is encouraging. For example, in Torbay, trading standards have used the revenue that they have raised from civil penalties to fund an extra enforcement officer specifically for housing. That provides good evidence that the model we propose in this legislation will stand the test of time and prove to be fruitful.

Lastly, I turn to the points raised by the hon. Lady about the burden of proof and whether the right threshold for enforcement has been set in the Bill. I believe it has, for a couple of simple reasons. First, it is worth bearing in mind that we are talking about judicial matters, so we should properly consider these questions. The Bill includes a two-step process to a criminal conviction, if a landlord or letting agent breaks the terms of the legislation twice in a five-year period. The second of those contraventions will trigger a criminal conviction, a potentially unlimited fine and a banning order for that institution. That is obviously a very serious penalty, and for that reason it is right that the burden of proof is analogous to that of a criminal conviction, which is "beyond all reasonable doubt". That is why the legislation is designed in the way that it is. It would not be appropriate or legally fair to have a criminal conviction penalty without a criminal conviction burden of proof.

It is also worth noting that that was laid out in the draft Bill and there were, to our knowledge, no adverse comments either from participants or the Select Committee.

It is also important to note that it is usual to require a criminal standard of proof for financial penalties that are issued as an alternative to prosecution. For example, it is a requirement for any regulations made under the Regulatory Enforcement and Sanctions Act 2008, to confer powers on regulators, to impose financial penalties for an offence, and is also the position for several other pieces of legislation, including the Housing and Planning Act 2016, the Housing Act 2004 and the Political Parties and Elections Act 2009.

Melanie Onn: I thank the Minister for his response. The suggestion that there has been unanimous agreement across professional bodies on TSOs does not stand up to the evidence we heard. In all the submissions we had in writing, concerns were raised about the level of training available for trading standards officers, the level of experience they have in this area and their expertise, and they may well be better assisted by other organisations.

Rishi Sunak: I would be grateful to know if the hon. Lady is aware of an industry body that does not believe that trading standards should be the enforcement agency for this legislation. If she could name that industry body, who else does it propose should be the enforcement body?

Melanie Onn: I am commenting based on the evidence we heard last week. We heard from the CTSI and the LGA, which both raised those concerns. It is not about not having trading standards involved, because they clearly have an area of expertise, but there were concerns about their level of expertise, experience, training and resources.

The issue of resources was repeatedly mentioned in the evidence we received in writing and verbally. I appreciate the points the Minister made about resources and about looking to Torbay as the standard bearer for all enforcement and revenue-raising operations. I presume that we will look to Torbay in the future as the arbiter of whether this legislation is working.

On the burden of proof, the Minister says that nobody raised issues about that in the Select Committee's pre-legislative scrutiny. However, it has come to light more recently. The high level of the burden of proof is something that we have heard about and that industry bodies have raised as a concern, given what they are used to dealing with as trading standards officers. It would be an error for the Minister to dismiss those comments lightly.

Daniel Zeichner: My hon. Friend is giving a very good speech. I think we were all in the evidence session the other day when we heard from the CTSI, which made it very clear why it is so important that we get this right. My experience in this place in the last three years is that we have seen successive pieces of legislation that we are pretty sure are not going to get enforced. Does my hon. Friend agree that if they do not get enforced, there is no point in having them, and that undermines public trust in what we are doing? It is really important that this legislation is enforceable.

Melanie Onn: I thank my hon. Friend for making that point, which goes to the heart of this. There is no point in doing this if the legislation is not enforced or does not do what the Minister intends—namely, rebalance the relationship of power between tenants and landlords. Enforcement is key, because if rogue landlords do not fear that the fine or the potential banning order will reach them, why would they bother to worry about whether they are operating within the legislation?

Helen Hayes (Dulwich and West Norwood) (Lab): On the Select Committee, we went to see the licensing scheme in Newham in action. One important feature of that scheme is that the council undertakes proactive enforcement work against properties it suspects are being let by landlords who have not yet registered. It is an important part of the resourcing requirement that councils need to make the scheme as effective as possible, but that has not yet been taken into consideration. Will my hon. Friend comment on that?

Melanie Onn: My hon. Friend makes an incredibly important point about being proactive and about the intention of trading standards officers or others to undertake that initial work, rather than just relying on the enforcement element of the legislation. I hope the Minister has heard those points, takes them seriously and receives them in the manner in which they are intended. We will not be pressing this matter to a vote, but we reserve the right to return to it on Report.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

ENFORCEMENT BY DISTRICT COUNCILS

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: The clause places a duty on local trading standards authorities to enforce the ban on letting fees and the requirements relating to holding deposits. It gives district councils the power to enforce the provisions if they choose to do so.

Local housing authorities enforce other measures in private rented sector legislation, such as the provisions related to banning orders for rogue landlords and agents. We very much encourage close working between district and county councils in non-unitary authorities to ensure effective enforcement. That is why we are giving district councils that are not trading standards authorities the power to enforce this legislation. That will ensure that local housing authorities are able to take enforcement action should they become aware, while undertaking their other duties, of a landlord or agent breaching the provisions of the Bill.

District councils must have regard to any guidance issued by the Secretary of State or the lead enforcement authority. The investigatory powers available to a district council for the purposes of enforcing the Tenant Fees Bill are set out in schedule 5 to the Consumer Rights Act 2015, which the clause amends.

Melanie Onn: The Government included the clause following the Bill's pre-legislative scrutiny. We understand that the devolution of powers between different tiers of local government is in the interest of promoting

[Melanie Onn]

collaborative relationships with a range of stakeholders, but will the Minister explain how a district council will enable or access these powers?

The Bill provides district councils with the same powers as a weights and measures authority. The Government's response to the Housing, Communities and Local Government Committee's report on the Bill says that a district council may choose to be an enforcement authority, but the Committee's recommendation refers to a weights and measures authority being able to delegate its powers to other tiers of local government where appropriate. Will the Minister explain what process he envisions district authorities having to go through order to be able to undertake enforcement roles in this context?

If weights and measures responsibilities are held at a county council level, and if additional funding for staffing or training has been directed there, but a district council wishes to undertake its own enforcement measures, will there be a requirement for that funding to be cascaded down? Or do the Government expect that funding bids will be made at the outset by those authorities that wish to be enforcers, and that there may then be overlap in the bidding and awarding of such funds?

The Committee's report contained evidence that any system based purely on hypothecated funds would provide a challenging environment for councils, as it would not provide for up-front or proactive work. It is in the interests of local authorities, tenants, landlords and letting agents that fines are a last resort; it is the early work that will prove the most important.

Rishi Sunak: With regard to district councils enforcing the Bill, there is no special process that they need to go through; they have the same rights and powers as trading standards authorities, so they do not need any special permissions. They can get on and do that should they see fit.

With regard to the hon. Lady's last point, just like trading standards authorities, an authority that enforces against the contravention of the Bill will of course keep any fines that are levied, which will help to fund that enforcement.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Financial penalties

Melanie Onn: I beg to move amendment 2, in clause 8, page 5, line 13, leave out "£5,000" and insert "£30,000".

The Chair: With this it will be convenient to discuss amendment 3, in clause 8, page 5, line 16, leave out from "exceed" to the end of line 17 and insert "£30,000".

Melanie Onn: We welcome the spirit of clause 8. We must seek to hit landlords and letting agents who act badly where it hurts if we are to change realities for tenants. However, the need to strengthen the financial penalties in the clause is twofold. First, we must always ensure that the penalty fits the seriousness of the breach and acts as a deterrent. Secondly, we need to recognise that, if the Government's plan is for the regulation to become self-funding, fines need to be able to fund the enforcement of the legislation.

To make my point on this, I draw the Committee's attention to the evidence given by the experts last week. Isobel Thomson from the National Approved Letting Scheme said:

"We carried out a survey of 42 local authorities in June last year, looking at the enforcement of the Consumer Rights Act 2015. Of those 42 local authorities, 93% had failed to issue a single financial penalty against a letting agent in the previous two years.

What are we going to be faced with with the fee ban? Enforcement really needs to come to the fore. The Government have mentioned that there will be a lead enforcement authority. We need to know who that is, how they are going to gear up and how they are going to be resourced. That is what I would like to see."—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 4, Q1.]

The NALS evidence is absolutely clear: without the resources for enforcement, there are concerns that the letting fees ban could have very little impact. That surely cannot be what the Government want to see.

There are others who fear that the lack of resources could prove a real impediment to the legislation functioning as intended. When I asked the LGA's Councillor Blackburn what he felt could be done to strengthen the Bill so that it achieves its aims, he was quite clear. He detailed how the financing of the Bill was an issue:

"At the moment, £500,000 is promised to assist in the up-front costs of setting these schemes up. The average local authority trading standards budget is £671,000 a year, so that £500,000 spread across 340 local authorities is unlikely to fill the gap that exists. That is extremely important."

There is also a capacity-building issue within the trading standards profession. As it is, 64% of trading standards authorities are reporting that they have difficulties in recruiting and retaining people, and that issue needs to be looked at nationally. The LGA stands ready to assist in that process and will work with the Chartered Trading Standards Institute, but there is a demographic time bomb in there as well, about the average age of trading standards officers…because of the overall financial pressures on local authorities, it is not seen as a long-term, safe career, if I can put it that way."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34-35, Q58.]

10 am

Councillor Blackburn's evidence should encourage the Government to look again at the funding structures, as well as the broader issue of how this will be enforced. Chronic local government underfunding is all part of the problem. He also clearly pointed to the issue of a brain drain in the sector, with a 56% drop in the number of skilled trading standards enforcement officers since 2009.

Alex McKeown from the CTSI said similarly clearly at the evidence session that that was the case:

"One of the biggest issues is funding—I am sure that has been said many times, and Councillor Blackburn will say the same. There is a lack of expertise within trading standards when it comes to legislation that relates to letting agents. At the moment, not many boroughs or authorities are enforcing the legislation."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 33-34, Q56.]

She openly said she was primarily operating in the London boroughs, which is where we expect much of the enforcement will be required. If that is the situation in the biggest hotbed of lettings problems, what will it be like in future?

Ms McKeown went on to say there was a key problem in clause 8:

"In this Bill, you are asking for a criminal burden of proof for a civil financial penalty, and that is going to scare people off; that is going to scare trading standards off. They are not going to want to prove beyond all reasonable doubt that a tenant has been charged a fee. Then, you are also relying on the complaints to trading standards. We do not get that level of complaints to trading standards in relation to tenancies. Then you have to tell the tenant, 'You have to give a witness statement on the fact that you've been charged a fee', and they are going to say, 'But we might get thrown out of our house. We don't want to give you a witness statement.' To have it beyond all reasonable doubt, we are going to be up against it, and it will not be self-funding."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34, Q57.]

That last point, about whether this legislation can ever be self-funding, crops up time and again. No part of the sector or none of the witnesses, whose expertise is most relevant to the question, is not concerned by the proposed funding model, particularly given the context of ongoing cuts and drops in skilled enforcement workers.

Ms McKeown raised another point, on clause 8(3), which says:

"If the enforcement authority is satisfied beyond reasonable doubt that the person has committed an offence under section 12, the financial penalty—

(a) may exceed £5,000, but

(b) must not exceed £30,000."

The phrase "beyond reasonable doubt" has connotations of criminal responsibility, and experts tell us—as they did at last week's evidence sessions—that it can put off both tenants and enforcement officers at different stages of the process.

I fear that this matter has been under-examined by the Government, and the potential consequences underestimated. Will the Minister please reassure me of his logic on this point? The concept of "beyond reasonable doubt" is a real issue, and one that has been expressed by the industry. It would be right for the Minister to take the matter rather more seriously than he has done to this point.

Rishi Sunak: After careful consideration of all the feedback received during the consultation and engagement process, the Government are of the view that the level of financial penalties provided in the Bill is the right one. Furthermore, the approach to financial penalties aligns with that in other housing legislation. Most would agree that a £30,000 fine for an initial breach of the ban, as the amendment suggests, is excessive and could cause significant devastation.

Melanie Onn: Can the Minister explain the circumstances in which he anticipates a £30,000 fine will be imposed against an initial offence?

Rishi Sunak: My understanding of the amendment tabled by the hon. Lady is that that is what it proposes—an initial breach of the ban would be £30,000.

Melanie Onn: But what about in the Minister's version?

Rishi Sunak: In the Government's version, it would be £5,000, and that is what we are discussing. My understanding of the hon. Lady's amendment is that the financial penalty for an initial breach would be £30,000 rather than £5,000. We propose to leave it at £5,000. I am happy to take an intervention if she wants to clarify.

Melanie Onn *indicated dissent.*

Rishi Sunak: No—okay.

The Government's aim has been to provide a sufficient deterrent for an initial breach of the ban that still allows landlords and letting agents who may inadvertently commit a breach not to be disproportionately penalised. We therefore resist amendments 2 and 3.

As hon. Members have noted, breaches of legislation related to letting agents, such as the requirements to belong to a redress scheme and to be transparent about letting fees, are subject to a fine of up to £5,000. However, we have listened to concerns that a £5,000 fine may not be enough of a deterrent for some agents and landlords, so clause 8 proposes a financial penalty of up to £30,000 for a further breach of the ban.

Importantly, that upper limit is consistent with the higher rate of civil penalties introduced in April 2017 under the Housing and Planning Act 2016. Given that the repeated charging of fees is a banning order offence, we firmly believe that the level of penalty needs to be consistent with the legislation under that Act, which brought banning orders into force.

It is too early to argue that the higher level of financial penalty at £30,000 has not been successful in offering a more significant deterrent to non-compliance. In the evidence that Alex McKeown of the Chartered Trading Standards Institute gave last week, she said that she believed that £30,000 would act as a "significant deterrent".

Richard Graham (Gloucester) (Con): There is a slight note in the debate of some who see landlords and agents as villains and enemies to be bashed at every conceivable opportunity. For many of us, however, the issue is about how we construct a partnership that gives tenants more rights and that provides a better sense of fairness in the relationship, but which ensures that there is a strong and functioning market and that we do not go back to the 1970s when the Opposition created a situation in which there was very little provision of private sector housing, of which we know that we will need a great deal more.

Rishi Sunak: I thank my hon. Friend for another thoughtful and measured comment. He is absolutely right: we are not in the business of demonising particular groups of people; we are interested in having a fair and functioning market. The balance that that requires has been a focus throughout all the deliberations on the Bill.

Melanie Onn: Would the Minister accept that the principle of the fines is not to demonise anybody, but to act as a successful deterrent?

Rishi Sunak: Indeed, I was quoting the evidence from the Chartered Trading Standards Institute that said that £30,000 was a significant deterrent.

Melanie Onn: If the CTSI says that £30,000 is a suitable deterrent, does the Minister think that that should be the minimum?

Rishi Sunak: Again, I fear that I have been too generous in giving way. I was about to make the point that it should not be forgotten that an agent or landlord convicted of an offence under the ban is liable for an unlimited fine, if that is the route of enforcement that the enforcement agency wants to go down; £30,000 is the alternative to a criminal prosecution where fines can be unlimited and people can be subject to banning orders, which I am sure all hon. Members agree are extremely serious and significant deterrents. The guidance that we will produce will support local authorities in determining the level of the penalty in any given case. I urge the hon. Lady to withdraw her amendment.

Melanie Onn: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: We have aimed to be ambitious and tough in our enforcement approach to provide a sufficient deterrent to the continued charging of fees. Clause 8 sets out the fact that a breach of the fees ban will be a civil offence with a financial penalty of up to £5,000. However, if a further breach is committed within five years, that will amount to a criminal offence. In such a case, local authorities will have discretion on whether to prosecute or impose a financial penalty. Clause 8 provides that enforcement authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution, as we have discussed. The level of fine reflects the feedback that we received during the consultation period. I will not rehash the arguments for why we think that is an appropriate level.

A financial penalty cannot be imposed if the landlord or agent has failed to return the holding deposit because they have received incorrect information about the tenant's right to rent property in the UK. That reflects a recommendation from the Select Committee on this particular point. Before imposing a financial penalty, enforcement authorities must be satisfied beyond reasonable doubt that the landlord or agent has breached the ban on charging tenant fees. Only one financial penalty may be imposed per breach and an enforcement authority can impose a penalty for a breach outside its area. This clause should be read with schedule 3, which sets out the procedure to be followed by an enforcement authority after it imposes a financial penalty. Financial penalties, I believe, will act as a serious deterrent to non-compliance.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Schedule 3

FINANCIAL PENALTIES ETC

Question proposed, That the schedule be the Third schedule to the Bill.

Rishi Sunak: It is important that there is consistency in the way in which local authorities impose financial penalties and that the process is fair. This schedule sets out the procedure to be followed.

Enforcement authorities must give the landlord or agent notice of their intention to service a financial penalty within six months of the breach occurring. This notice must contain relevant information about the reasons for imposing the penalty, the amount and the right to make representations. The landlord or agent then has 28 days to respond. If the enforcement authority decides to impose a penalty, it must provide a final notice setting out the amount of penalty, how much to pay, the rights of appeal and the consequences of failing to comply. An enforcement authority may at any time withdraw or amend a notice of intent or final notice. The landlord or agent must be notified of this in writing.

Landlords and agents have a right to appeal to the first-tier tribunal against a final notice. This appeal must be brought within 28 days of the final notice and is to be a re-hearing of the enforcement authority's decision, but the tribunal may admit evidence that was not heard before the enforcement authority, if relevant. The final notice is suspended until the appeal is determined or withdrawn. The first-tier tribunal may confirm, vary or quash the final notice. It may impose a penalty up to the same maximum penalty as the enforcement authority could have imposed. If the landlord or agent fails to pay all or part of this financial penalty, the authority can seek repayment on the order of the county court. Similarly, if the authority requires the landlord or agent to repay the tenant any prohibited fees and they fail to do so, this can be recovered under an order of the county court.

I am aware that concerns have been raised about the resources of local authorities. I trust that the Committee welcomes the schedule, as it enables an enforcement authority to retain the proceeds of any financial penalty, as we have discussed, for future housing enforcement.

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma, for our second day in Committee. As the Minister has set out, schedule 3 provides some clarity over financial penalties, including notices of intent, recovery of penalties and proceeds of those penalties. The Opposition support the schedule as drafted. We are seeking clarity, however, from the Minister on certain aspects, before we give our support for its inclusion in the Bill. I would like to focus on paragraphs 6 and 7, which deal with the specifics of appeals and the recovery of penalties.

As with any piece of legislation such as this, the right to appeal is extremely important. It is correct that this is reflected in the Bill. It is also vital that the conditions of any appeal are presented with the utmost clarity to prevent abuse or a miscarriage of justice. Pre-legislative scrutiny by the Select Committee rightly raised concerns about how the Bill defined grounds for appeal, arguing that a first-tier tribunal should decide appeals as complete rehearings, which should take into account all matters, whether known to the local authority at the time of its decision or not. We are glad that the Government took that into account and amended the Bill accordingly. However, a number of questions about appeals remain, and I hope that the Minister can offer some clarity in his response.

10.15 am

Paragraph 6(5) of schedule 3 confirms the following:

"On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice."

That is an important requirement where the first-tier tribunal finds in favour of the landlord or agent. I think it is clear to us all that where the first-tier tribunal finds fully in favour of the landlord or agent—that is, it finds that the decision to impose the penalty was incorrect—it is quite a simple process; the final notice will be quashed.

However, where the tribunal finds in favour of a landlord or agent who has challenged the amount of the penalty rather than the decision itself, things become more complicated. I hope that the Minister can offer us some detail on the type of situations in which there may be a challenge to the amount of the penalty and in which the tribunal might be expected to find in favour and therefore vary that amount. Before it was amended, the Bill mentioned the amount of the penalty being "unreasonable"—a very vague term. That term has been removed from the Bill, but the current version still offers little clarity on that point. I hope that the Minister can give us assurances that more clarity will be provided on what constitutes genuine grounds for appeal on the amount of penalty. It is not hard to imagine a situation in which lack of clarity opens the door to an unprecedented number of appeals on the grounds that the cost is unreasonable.

What is more, there is confusion about the level of financial penalty that authorities will be able to charge. That was discussed in the Select Committee report, which raised concerns about how the Bill seemed to suggest that authorities could set the level of fee dependent on the cost of enforcement—something that we will come on to in more detail. That has the potential to place a significant burden on first-tier tribunals, and I wonder whether the Minister has considered the implications of this part of the Bill. Should we not have more clarity on what does and does not represent a reasonable or unreasonable cost?

Another aspect of the appeals system could benefit from closer Government attention. Any appeals system such as this is essentially a safety net for bad decision making at the first stage. That means that if a significant number of decisions are overturned at the appeal stage, something is going wrong at the enforcement or judicial level. We all know from dealing with casework in other areas—particularly disability benefit—how easy it is for that to happen. Sadly, in the case of disability benefits and first-tier tribunals, the Government are not doing enough to look at why so many decisions initially go against the claimant and are then overturned at tribunal.

If this Bill is wrongly enforced, it has the potential to impact negatively on a large number of businesses and landlords across the country. The time and effort needed to fight an incorrect decision would be significant; the legal fees and time investment needed could be extremely detrimental to businesses. It is therefore very important that some form of review date be put in place to guarantee a detailed look at how many appeals are being submitted, what percentage are successful and for what reason. That will give the Government the ability to identify consistently occurring issues and resolve them. I hope that the Minister will consider that and give us his thoughts on whether the Government would introduce a review of that type—for example, six months after the Bill takes effect. I know that such a measure would be supported by landlords, agents and enforcement authorities.

Paragraph 7 provides important clarity on the recovery of financial penalties. Like paragraph 6, this paragraph has been amended following feedback from the Select Committee. We agree with the Government's decision to amend the Bill to that effect. However, there are still question marks over how this aspect of the Bill will be enforced, and I hope that the Minister will be able to offer us assurances. One issue would be the recovering of fines from non-UK residents. We are all aware of the issues about foreign ownership in the property market. Characterised by a lack of transparency, London in particular is regularly cited as a haven for dirty money. That creates clear issues about enforcing good standards in the property market. Recently, that has been seen most acutely in the issues about the recladding of private tower blocks, which we discussed in the Chamber yesterday.

To give just a small example, I had to write to a well-known Hong Kong billionaire playboy called Stephen Hung, whom my office, after a long search, had identified as the ultimate owner of an unsafe tower block in my constituency. The water supply had been turned off for a whole week, and it was the third time that that had happened. Only through lots of interrogation did we find out who he actually was and put the situation right. There are therefore questions about how the Government expect local enforcement authorities to be able to enforce effectively the fines under the Bill when those responsible for the offences live in other countries.

The second issue is companies that are deliberately folded to avoid payment. Linked to my previous point about foreign ownership, the situation in the private rented sector is such that ultimate ownership of property can be obscured by multiple shell companies or other opaque ownership structures. It is not impossible to imagine a situation in which rogue landlords and agents are able to game the system—for example, ownership structures for property that might allow owners to avoid a fine by folding one company while keeping others going. That would also allow rogue landlords or agents to continue trading on the rest of their assets, thereby avoiding any potential ban. Overall, the Opposition support the inclusion of the schedule in the Bill, but I hope that the Minister will look at the points I have raised and will offer reassurance that they will be considered carefully.

Rishi Sunak: It is a pleasure to respond to the hon. Lady. I am cautious, as I wish to stay on point, with your direction, Mr Sharma. The hon. Lady raised some review periods, which we will no doubt discuss more specifically towards the end of this sitting when debating the new clauses tabled by Opposition Members, and with regard to phoenix companies, which are specifically covered by clause 13. I will leave discussion on those matters to the debates on the relevant clauses.

On the hon. Lady's broad point about the level of fines, I thank her for recognising that the Government took on board the advice of the Housing, Communities and Local Government Committee's on drafting these clauses, and we amended the draft legislation. I hope that she appreciates that. As I said, we took on board the Committee's specific recommendations about the first-tier tribunal and the process that will be followed.

[Rishi Sunak]

More specifically, on the hon. Lady's point about the level of fines that can be varied, as with all judicial matters that will be a matter for the tribunal or the judicial processes of the county court—whichever avenue the enforcement mechanism finds itself in. Guidance will be published on the appropriate level of penalty, dependent on a broad range of situations, which will serve as a framework for how local authorities will enforce that penalty. The first-tier tribunal will subsequently have regard to that. It will not be for the Minister or the Government to direct in every circumstance what the level of fine should be.

As the hon. Lady rightly recognised, it is appropriate, as it is across our judicial system, that the courts have the flexibility to determine things on a case-by-case basis. I hope she welcomes that flexibility, which was added to the Bill at the request of the Select Committee. I look forward to debating phoenix companies and other such matters with her when we debate subsequent clauses.

Question put and agreed to.

Schedule 3 accordingly agreed to.

Clause 9

POWER TO AMEND MAXIMUM FINANCIAL PENALTIES

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: The clause is straightforward and contains a power for the Secretary of State to make regulations amending the amount of financial penalty that a local authority can change. This is purely to reflect changes in the value of money.

Permitting local authorities to levy financial penalties of up to £30,000 for breaches of the regulations on fees is intended to serve as a significant deterrent to agents and landlords. Including a power to amend the maximum penalty ensures that the Government can address any issue where the deterrent effect has not kept pace with inflation. We consider that regulations by negative procedure are appropriate in this case, since the changes are intended only to reflect the value of money, not to alter the intent or effect of the legislation.

Subsection (3) enables the Government to make transitional, transitory or saving provisions in relation to the uprating, in order to ensure that there is a smooth transition from one upper limit to another. In summary, the clause will enable the legislation to remain relevant over time.

Melanie Onn: It is crucial for this policy and for the hopes within it to be impactful that the fines are sufficient to act as a deterrent. Opposition Members have raised concerns throughout Committee stage that they might not be.

Any punishments for wrongdoing by rogue landlords and letting agencies must be sufficient to be seen as more than simply the cost of doing business. That is not simply my opinion but that of a landlord advocacy group. Indeed, Richard Lambert, chief executive of the National Landlords Association, said earlier this year:

"The NLA supports making the punishment fit the crime because too many of the criminals who operate in the private rented sector"—

it is somebody within that sector who said this—

"see the current level of fines as little more than a cost of doing business and we would welcome greater consistency between civil and criminal penalties."

As is clear from the amendments we have tabled, we have concerns that the Bill will not go far enough in ensuring that its aims can be fulfilled. The fines are a clear example of where the tension between aims and the probable reality of any impact is at its greatest. If fines can be as little as £5,000, as with the penalties for the display of tenants' fees, that seems to act as a minimal deterrent to landlords. Surely the best that we should hope for is that those fines encourage the sector to operate well within that framework, and that they do not have to be levied. In the more lucrative markets, that is a very small sum. For larger landlords, it is small fry.

To add to that hypothetical, trading standards and local government up and down the country have had their budgets decimated. As we heard at the evidence session last week from Councillor Blackburn of the Local Government Association, as I have mentioned, there has been a 56% drop in trading standards enforcement officers since 2009—more than half of them have been lost. It is a vital sector, which will enforce the Bill, but without good trading standards officers, there is a real risk that the legislation, for all its good intentions, could lack impact on the ground.

There is a lack of expertise and resources, and those problems seem likely to get worse. Rogue landlords and agencies are likely to factor the likelihood of any claims being made against them into their business calculations, as Richard Lambert of the NLA suggested. As things stand, their calculations might suggest that taking a risk is worth it, particularly in areas where tenants are not as clued up, or where local authority services and budgets have been really affected.

Any changes need to be made by means of new primary legislation, but perhaps that is not the ideal approach; perhaps the Minister or the Secretary of State should be able to look at the matter again in conjunction with evidence about how the enforcement process has been going, and whether the fines are sufficient sticks to encourage that good practice across the board. It is clear that the Government want the policy to be part of transforming letting to make the tenant's life much fairer than it is under the status quo, but for that to be done, there needs to be some real, critical engagement with the facts on the ground from the Government in future. For the legislation to have its proposed impacts, it is key that the Minister has an open mind about how it is best put into practice. The punishments have to fit the crime, and they need to be responsive to the realities of the letting market, which means that there must be space for rethinking that which is required.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

RECOVERY BY ENFORCEMENT AUTHORITY OF AMOUNT PAID

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 11 stand part.

Rishi Sunak: We want to ensure that when a tenant has paid an unlawful fee, they are repaid as soon as possible. Clause 10 enables an enforcement authority to require a landlord or letting agent to repay the tenant or other relevant person any outstanding prohibited payment or holding deposit. Similarly, if the landlord or agent required a relevant person to enter into a contract with a third party, they may be required to pay compensation. That may be ordered if the local authority imposes a financial penalty for a breach of the Bill. It does not apply if the tenant has made an application to the first-tier tribunal to recover the payment or if the amount has already been repaid.

Clause 11 enables the enforcement authority to require the landlord or agent to pay interest on any payment referred to in clause 10. That ensures that the agent or landlord does not receive any financial benefit from a prohibited payment.

Melanie Onn: For the Bill to have an impact, it has to be possible for prohibited payments to be recovered, and for those enforcing the legislation to fulfil their roles. We have already touched on our concerns about whether there are sufficient resources for local authorities and trading standards to function as the Government would like. These clauses highlight a particular potential issue in the legislation as it stands. The need for a criminal level and burden of proof for the civil financial penalties discussed in this Bill is a flaw that could well hamper its effectiveness. We all want to see legislation that is effective, that leaves tenants and landlords clear on what is permissible and what is not, that ensures that rogue traders are dealt with effectively, and that leaves tenants able to bring claims when things do go wrong.

10.30 am

As things stand there is work to be done on all those points, particularly the last point, as the focus in these clauses seems to be uncertain. The Government's plan for penalties for breaches by landlords and letting agents is for any claim against them to be proven to a criminal level of beyond all reasonable doubt, as opposed to the usual civil standard of preponderance of evidence—something that is more likely than not to have happened, given the balance of probabilities.

What will that mean in practice? It will mean fewer successful claims, so there will be less money in the pot to make this policy self-funding. It will mean less confidence in the system from tenants, who will not see examples of successful claims and evidence that it can be done. It will mean that tenants are far less likely to complain about breaches, as they know that they will have to undergo a process that is far more rigorous.

For those tenants who are in a particularly vulnerable situation, anything that puts them under undue strain or pressure, that is seen to be rigorous, and that pits them in an adversarial manner against their landlords will operate as a disincentive, in our view. Practically speaking, they may be more likely to do a trade-off, whereby they know that they would have to go through a hard and unpleasant process, which is less likely to be found in their favour, all the while souring the relationship they may have with the landlord or the letting agent. We have to bear in mind with this legislation that there are very sensitive relationships between tenants and landlords, which are finely balanced. To take action as a tenant against a landlord is no mean feat. It is not something that any tenant would willingly put themselves through, unless they felt that there was a genuine opportunity for redress.

I draw the Committee's attention to some of the facts around revenge evictions, which I think are relevant, particularly in this context, in order to look at what letting really means in this country. Laws, unfortunately, do not always mean an end to bad practice, particularly if people think they can escape justice and avoid those laws for any reason. Of private renters in this country—a growing sector—nearly a fifth, or 17%, did not ask for repairs to be carried out or for conditions to be improved for fear of eviction. Those are Shelter's statistics. All of us will feel that that has some relevance to the postbag we get from our constituents. Often, by the time constituents reach us with their concerns about privately rented accommodation, they have lived for an extremely long time in conditions that none of us would wish anybody to be living in—certainly not conditions we would accept ourselves. A small issue of damp could become a significant issue of damp—I can recall such cases—resulting in whole families living in one room and not using the rest of the property, because of the cost of trying to heat the rest of the property and keep damp to a minimum.

Given Shelter's evidence, it is not unreasonable to think that many renters will work out whether to report a fee they have been charged on a comparative basis. If the rent is otherwise a reasonable value and the property in a good state of repair, would a relatively small prohibited payment lead them to complain and risk ruining a relationship or a potential eviction? The likelihood is that it will not, if they know that they will get a good deal on their rent. That does not mean that the actions of the landlord would be right; it certainly does not mean it would be acting within the proposed laws as they stand. However, if the property is in an area where properties are few and far between, and it would be risky to jeopardise the tenant-landlord relationship when there is no guarantee that a new property would be easy to come by, again a prohibited payment may not lead to a complaint from a tenant.

That is probably broadly reflected in what trading standards have said so far about complaints they have received relating to tenancies. The letting market in many parts of the country is very unbalanced; far more power is concentrated in the hands of landlords. Even when landlords and letting agents are entirely scrupulous, that imbalance can persist simply in the most straightforward sense of supply and demand, such as where demand is much greater than the supply of appropriate properties, such as in London, although not exclusively in the capital. In those locations, tenants may well be far less able, and thus less likely, to report unjust fees.

Take the evidence from last week's sessions given by expert witnesses—the people who know better than anyone what implementing these policies looks like on the ground. Alex McKeown of the CTSI clearly highlighted the problem:

"Something that I have picked up on is that, at the moment under the Consumer Rights Act 2015 and the redress scheme legislation, the burden of proof is on the balance of probabilities, in terms of issuing these financial penalties. What you are trying to say is that this is going to be self-funding, and at the moment

with the Consumer Rights Act 2015 that has the ability to be self-funding, because all we have to do is look at a website and we can see whether it is displaying the correct information or not. It is easy—we have to prove it on the balance of probabilities, we download the website and we have the proof. In this Bill, you are asking for a criminal burden of proof for a civil financial penalty, and that is going to scare people off; that is going to scare trading standards off. They are not going to want to prove beyond all reasonable doubt that a tenant has been charged a fee. Then, you are also relying on the complaints to trading standards. We do not get that level of complaints to trading standards in relation to tenancies."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34, Q57.]

She went on to say that a requirement to tell the tenant what they are expected to provide in evidence to a trading standards officer, in order to provide evidence to enable the officers to take the necessary enforcement action, prompts severe doubts that this will come to pass in the way that the Minister intends. If the experts fear that this measure will put people off—and they know far better than us whether that is probable—we ought to listen to the likes of the CTSI.

If we look at clause 11 in that context, the idea behind it is sound—that interest could be charged and it could be made clear how that could be done. However, if the enforcement is made less achievable as a result of the burden of proof required and tenants not having confidence in the system, it is not likely to come into play very often.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11 ordered to stand part of the Bill.

Clause 12

OFFENCES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 13 stand part.

Rishi Sunak: It is vital that strong action is taken against irresponsible agents and landlords who persist in charging unlawful and unfair fees to tenants. This will act as a strong deterrent and better protect tenants. Clause 12 provides that a landlord or letting agent who breaches the ban on fees commits an offence if they do so within five years of conviction or imposition of a financial penalty for an earlier breach. Agents and landlords who commit an offence are liable on conviction to an unlimited fine. An enforcement authority has, in each case, the discretion to decide whether to impose a financial penalty of up to £30,000 or to pursue prosecution. A financial penalty issued as an alternative to prosecution does not amount to a criminal conviction. Subsection (6) amends the Housing and Planning Act 2016 to provide that an offence under the clause is a banning order offence, which means that if a landlord or agent is convicted of an offence a local housing authority may apply to the court to ban them from letting housing and/or acting as a letting agent or property manager in England for at least a year.

In our consultation there was strong support for prosecuting and/or banning repeat offenders. We have listened, and the clause shows that we are serious about cracking down on rogue operators. If the court makes a banning order, the local housing authority must add the landlord or letting agent to the database of rogue landlords and property agents established under the 2016 Act. By giving local authorities the power to take robust action against the worst operators we better protect tenants and ensure that reputable agents and landlords are not undercut or tarnished by rogues.

Clause 13 provides that, as well as the business itself, an officer of a body corporate or a member with management functions can be prosecuted for a breach of the ban on letting fees. The clause addresses issues raised by the hon. Member for Croydon Central and is designed to ensure that individuals with responsibility for repeatedly breaching the ban on tenant fees can, along with their organisations, be prosecuted and banned from operating. That will help to prevent the establishment of so-called phoenix companies, whereby an individual moves from a firm that has been banned and opens up a new business only to continue disreputable practices.

Melanie Onn: I want to make a couple of points. On the rogue landlords database, have the Government conceded that they will open it up, making it far easier for tenants to assess whether their potential landlord is someone from whom they wish to rent a property?

The provision regarding phoenix companies is incredibly important and I am pleased that the Minister has taken the opportunity to include it in the Bill, but is he confident that it will work in practice? I have seen such companies operating in other industries, and I am concerned about whether individuals who are overseas can be prosecuted. Will it be easy to prevent such individuals from continuing to be landlords within phoenix companies? Although an individual may be named as part of a company in Companies House records, a phoenix company can arise in the name of someone else with whom that person has a close association. Parent companies and subsidiaries can be established and registered in other names, but an individual can have an association with each of the subsidiaries of a parent company that might not have direct influence on or knowledge of what those subsidiaries are doing. That might come about regularly, so on whom will justice be brought to bear for breaches of legislation?

Rishi Sunak: I am glad that the hon. Lady generally welcomes the approach to tackling something that I think we all want to see prohibited. We are confident that the provisions will work. Overseas landlords and letting agents are subject to all the existing requirements for being a member of a redress scheme, and we have consulted on those provisions and will extend them. It is mandatory for letting agents to be a member of a redress scheme. Without such membership they cannot function in the market and will be in breach of their legal obligations. Whether people are overseas or in the domestic realm, there are multiple levels of protection and they must comply with the regulations in order to let property.

10.45 am

With regard to the hon. Lady's other broad point about associations between people, we have drafted the legislation in a way that is consistent with other legislation that tackles this. Generally, the test is for the director or

officer; then there is a further test about either deliberate negligence or a particular action of the individual in question that has led to the breach, which is a standard and appropriate legal framework. The hon. Lady knows that this is an evolving area. In this case, we are right on the cutting edge in making sure that we address it, but if there are innovative schemes that people come up with to try to avoid legislation—whether this or any other—the Government will always stand ready to try to stamp that out. We remain confident that this will work in practice. It addresses the concerns that many hon. Members on both sides of the Committee have raised. I beg to urge the Committee to support the clauses and their addition to the Bill.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13 ordered to stand part of the Bill.

Clause 14

DUTY TO NOTIFY WHEN TAKING ENFORCEMENT ACTION

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: This clause, too, is relatively straightforward. It places a duty on enforcement authorities to notify other relevant authorities when taking action. That is necessary for a number of reasons, each of which the clause provides for. First, if a local trading standards authority takes action outside its local area, or a district council takes action, the relevant local trading standards authority is notified and work is not duplicated. The relevant local trading standards authority is then relieved of its enforcement duty, unless it is subsequently informed that the proposed enforcement has not taken place. Secondly, a record can be kept by the lead enforcement authority where a financial penalty has been imposed, withdrawn or quashed on appeal. That will inform whether any subsequent breach is dealt with as an offence. A trading standards authority must notify the local housing authority if it has imposed a financial penalty or made a conviction. That ensures that the relevant information is communicated to the right authorities at the appropriate time. As such, the clause has a key but simple role in ensuring that the enforcement of the legislation is carried out effectively and all relevant parties are aware of what is happening on the ground. I urge the Committee to support the clause.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

RECOVERY BY RELEVANT PERSON OF AMOUNT PAID

Melanie Onn: I beg to move amendment 13, in clause 15, page 10, line 36, after "that" insert

", with the consent of the relevant person,"

This amendment provides that the consent of a tenant or the person acting on their behalf or who has guaranteed to pay their rent must consent to the use of a prohibited payment for rent payments or tenancy deposit payments.

Under amendment 13, the tenant would have to consent to their holding deposit or a prohibited payment being used to cover rent or deposit costs. We do not object to the principle of subsection (6), which the amendment seeks to change. The payment of a tenancy deposit or a prohibited payment into a deposit or as part of rent is entirely sensible and in many cases will be an optimal arrangement for both the tenant and the landlord. In the case of the holding deposit, this can be an important agreement between the tenant and the landlord that reduces the burden of paying a deposit, rent in advance and holding deposit all at the same time. Allowing a tenant to put that money towards a deposit can make it easier to pay what for many is a high fee and a significant amount, and prevent the holding deposit being held for as much as a week after an agreement has been made, when the tenant is likely to be short of money. We are therefore glad to see the principle in the Bill.

However, as the Bill stands, the landlord will have discretion as to whether to apply that payment. Although that does not seem to be a significant problem at first, and in many circumstances may not cause a problem, allowing landlords to do so indiscriminately could lead to difficulties for tenants in certain circumstances. The first problem arises from the fact that many people pay their rent on a monthly basis, through a fixed-sum standing order. Although standing orders are amendable, that can be a time-consuming process for the tenant. To deduct the prohibitive fee from a month's rent, they must amend the standing order twice to account for the change. Government Members might feel that that is quite a trivial point, as making changes to bank payments is part of daily life, but we believe it will result in the tenant having to go out of their way for something that is not their fault. We must remember that when considering this amendment. It would be wrong for tenants to end up doing time-consuming work to receive their money in a timely and orderly fashion, given that they are not the ones who charged the fee.

A second problem that we seek to address with the amendment is how subsection (6) would apply to people with a joint tenancy. Taking the example of a joint tenancy in which the tenants pool the rent in one account and pay it to the landlord as a lump sum, if one tenant loses their key and is required to pay a default fee, which is later deemed to be prohibited, would the landlord be able to deduct that from the rent? In that scenario, taking the prohibited fee from the rent would not be a simple way of paying back the tenant. They paid the fee from their own pocket, but the rent deduction comes out of a pool for which all tenants are jointly responsible. Given that the deduction would not automatically be tied to the person who is entitled to it, the process could be abused by other people who are part of the pool. Although in most cases such agreements are set up by families or a close group of friends, it should not automatically be assumed that it is an easy or preferred way for the relevant person to receive their money.

It is their money. I have set out several scenarios, but a significant rationale for this amendment is the principle. Put simply, it is the tenant's money, and they should have the final say about what happens with it. As it stands, subsection (6) allows landlords to do what they want with the tenant's money that they have been required to give back and ought not to have had in the first place. I hope that Committee members will recognise that this is a practical and fair amendment. If someone

[Melanie Onn]

has been wronged, it should be made as easy as possible for them to receive the repayment to which they are entitled.

Rishi Sunak: An important principle of the Bill is that any unlawful payment can be recovered in full by the tenant, as it is their money. Tenants can do that either by seeking direct recovery from the landlord or agent, or by going to the local authority or applying to the first-tier tribunal. It is important to note that they can also go to their agent's redress scheme if they are seeking the recovery of a prohibited payment from an agent. Offsetting the prohibited payment against the rent or deposit will ensure the tenant is not left out of pocket. It is best practice for a landlord or agent to ask the tenant, or any person guaranteeing their rent, whether they are happy for any unlawfully paid fee to contribute towards a future rent or tenancy deposit payment. We are planning to encourage that through guidance, and we expect that most landlords and agents will do that. We do not currently see the need for specific provision to that effect in legislation.

That said, I have been considering this broad area for a while, and I want to ensure that what we have in place works. I hear what the hon. Lady said. The clause was designed to ensure that the repayment process is relatively automatic. We did not want to put extra steps, which might delay things, into the process. We are looking at some of the areas that she mentioned. With that in mind, if she will bear with me as I look through those things, I ask her to withdraw the amendment.

Melanie Onn: I am glad the Minister is listening. He said that the automatic expectation is that, to seek redress, tenants will go through a first-tier tribunal or go to a local authority just to get back what is theirs, which is in the hands of the landlords, despite the fact that the Minister clearly thinks it is best practice for landlords to have a good relationship with tenants. It is not inconceivable that the relationship has broken down if it is deemed that a prohibited payment has been made.

I was going to press the amendment to a vote, but given that the Minister has requested that we bear with him, I will not do so. I will hold him to his word. I will withdraw the amendment, but I reserve the right to table it again if we are not satisfied with what he comes back with. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Melanie Onn: I beg to move amendment 14, in clause 15, page 11, line 4, leave out

"all or any part of",

and insert—

"a sum of money not less than and not more than three times".

This amendment would enable tenants to claim back prohibited payments without assistance from the local authority, along with compensation from the landlord or letting agent worth up to three times the fee paid.

The amendment would entitle tenants who seek to claim back prohibited payments without assistance from the local authority to compensation from the landlord or letting agent worth up to three times the fee paid. During the evidence sessions, we heard often how the Bill needs more resources to enforce the new provisions that it will bring in and to fully achieve its aims. One thing necessary to improve the enforcement of the Bill is to provide further encouragement to tenants to self-report and to call out the use of prohibited fees by their landlords.

Trading standards will face practical difficulties in enforcing the Bill. They face a lack of resources across the country, which has meant their losing, as we have said, 56% of enforcement officers since 2009 and therefore lacking the expertise with letting agents that they would like. There is therefore a need to look at self-reporting as an addition to trading standards, and the addition of clause 15 to the Bill shows an acknowledgment of that by the Government. The amendment would strengthen that by providing tenants with compensation, when making a claim, for three times the initial sum charged.

A three times figure is already used to enforce deposit protection regulations, so both the three times figure and the idea of compensation for mistreated tenants has a basis in current property law. The amendment would act as an extra deterrent to landlords' and letting agents' breaking the law, by increasing the level of punishment, and would provide sufficient motivation and compensation for tenants to go through what could be a stressful and time-consuming tribunal process. As the amendment would help to enact the purpose of a Bill that both Government and Opposition want to be effective, I hope that both will accept it and thereby increase the enforcement power of the Bill.

Rishi Sunak: Tenants absolutely should get back any unlawful payments in full, whether direct from the landlord or agent, via the enforcement authority or through an order of the first-tier tribunal. However, we do not think it appropriate for the tenant to receive further compensation, given that the landlord or agent is liable for a significant financial penalty in addition to reimbursing the tenant.

It is also worth noting that the Bill provides further protection to tenants by preventing landlords from recovering their property, via the procedure set out in section 21 of the Housing Act 1988, until they have repaid any unlawfully charged fees. To add in compensation, as the amendment suggests, risks penalising agents and landlords multiple times for the same breach, which is not fair. We believe that our existing approach strikes the right balance and offers a serious deterrent to non-compliance. I ask the hon. Lady to withdraw the amendment.

Melanie Onn: Unfortunately, I will not withdraw the amendment. I do not feel entirely satisfied by the Minister's comments on this and I do not think that he has addressed the issues around the negative position that tenants find themselves in compared with landlords, so I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 6]

AYES

Frith, James	Onn, Melanie
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

11 am

Rishi Sunak: Clause 15 works with clause 10 to establish multiple routes for tenants to be able to recover any prohibited payments. It enables a tenant or other relevant person to apply to the first-tier tribunal for compensation where they have been required to make a prohibited payment or where a holding deposit has been unlawfully retained. We have listened to the Select Committee on this point and acknowledge that the first-tier tribunal is generally more accessible for tenants as it is less formal and costly than the county court. If a landlord or agent refuses to abide by an order of the first-tier tribunal, a tenant would be required to go to the county court to have the decision enforced and to recover their fees. We have made provision in clause 16 for a local authority to help the tenant with that. I ask hon. Members to agree that clause 15 stand part of the Bill.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

ASSISTANCE TO RECOVER AMOUNT PAID

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 16 is another straightforward clause. It provides that an enforcement authority such as a local trading standards authority can help a tenant recover unlawfully charged fees or a holding deposit that has been unlawfully withheld. That is because we recognise that tenants might require or would like assistance to navigate the county court process. The enforcement authority would help a tenant or other relevant person to make an application to the first-tier tribunal: for example, by providing advice or by conducting proceedings.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

RESTRICTION ON TERMINATING TENANCY

Melanie Onn: I beg to move amendment 15, in clause 17, page 12, line 3, at end insert—

"(5A) No section 21 notice may be given in relation to the tenancy until the end of a period six months from:

(a) the day after the day on which the final notice in respect of the penalty for the breach was served; or

(b) the day after the day on which any appeal against the final notice is determined or withdrawn."

This amendment would protect tenants against the issue of a section 21 notice when a penalty has been applied in relation to a breach under Clauses 1 and 2 of this Bill.

I believe the amendment would strengthen the provisions in the clause. As the Bill stands, landlords are unable to serve section 21 notices while there is still an outstanding balance of a prohibited payment or holding deposit to be repaid to the relevant person. The principle behind the clause is welcome. It would be wrong for a tenant to be served a section 21 notice while a landlord has failed to serve their obligations in terms of repaying money that was taken incorrectly. The same principle guides the inability of landlords to serve section 21 notices if they do not properly protect a tenant's deposit, and more recently if they do not carry out their obligation to undertake any necessary improvements.

Such extra protections should improve a tenant's rights and mean that rogue landlords cannot get away with retaliatory evictions if a tenant challenges bad practice. However, too often the principle is not matched in practice. This can be seen in the enforcement of the Deregulation Act 2015, which led to the banning of revenge evictions if a landlord was ordered to carry out repairs by a local council. A 2014 study by Shelter estimated that 200,000 private renters had been served with an eviction notice after complaining to their landlord about a problem with their home. The legislation should have led to significant action, given how widespread the problem of retaliatory evictions is, yet more than half of councils in the UK did not use the new powers in the Act a single time within a year of enactment. There is clearly a disconnect between what leaves this place as law and the reality of what is actually enforced.

Protection against section 21 evictions is vital for tenants who fear that standing up to a landlord could lead them to be evicted. It is worth remembering what landlords have to do to be exempt from serving a section 21 notice. These are landlords who do not protect tenants' deposits, do not provide repairs in a timely manner, and who will charge prohibited fees under this new Bill. So these landlords have, at best, already shown a lack of knowledge as to their rights and responsibilities, and at worst are rogue and exploitative to the point where they will cross legal lines to avoid their obligations. This comes to the heart of why enforcement in this area is so important and needs to be done far better under current housing regulations, and needs to be enhanced in the Bill as it stands.

We know that the vast majority of landlords comply with regulations and discharge their obligations in a timely and professional manner. Those landlords would never threaten retaliatory evictions and would ensure that they followed the rules regarding serving a section 21 notice if needs be, but there are too many rogue landlords who look to shirk their responsibilities and exploit tenants at every opportunity. If a rogue landlord is willing to take a chance on a tenant's not picking up on and reporting a prohibited fee, or to threaten a tenant with eviction when they ask for repairs, why would they suddenly act in a fit and proper manner when it comes to serving a section 21 notice?

During the evidence sessions, the NUS representative made the point that students often do not know their rights. They are often first-time renters and many will not have the experience of looking over a contract or challenging actions that are unlawful, which means that they may not be comfortable taking action against activities such as charging a prohibited fee or serving a section 21 notice. That could be particularly true if the

[Melanie Onn]

Act required a tenant to take a landlord to court to prove that a section 21 notice was invalid, so tenants may end up leaving under an invalid section 21 notice when there is no reason for them to do so.

Too many rogue landlords get away with outlawed acts because there is not enough enforcement of the current laws that prohibit bad practice. The Government should consider carefully the evidence we heard in last week's evidence sessions. It is fair to say there was a general feeling that there is not enough enforcement power in the Bill for it to do all the good it could do.

Enforcement could come through several different channels, such as increasing fines to increase the deterrent that rule breakers face, reimbursing a lead enforcement authority or reducing the barriers that tenants face if they report a landlord. Amendment 15 would mean that tenants were safe from retaliatory evictions that could result from reporting a landlord who charged a prohibited fee, for six months after the final notice of the penalty for the breach is served or the appeal is determined or withdrawn.

The amendment arises from what should be a guiding principle of good law making: in introducing new laws and regulations, we should learn from the mistakes of similar legislation and build a Bill that counters those flaws and pitfalls. To ensure that this Bill hits the ground running, it is important to look at other pieces of legislation that govern landlords to see where they have failed in the past.

We must learn from the effect that a lack of protection from eviction had on the repair of properties that were not in a fit or liveable state. As a result of that, tenants ended up living in houses with no protection from draughts, large damp problems and faulty electrics. No one should live in those conditions in this country, but tenants feared that if they complained about those problems, their landlord would serve them with a section 21 notice rather than carry out the repairs. Tenants were left with a choice between putting up with uncomfortable, unsafe and uninhabitable conditions and pressing their landlord to fix those issues when the landlord held the power to kick them out. No one should have to make that choice, because no one should be penalised for wanting a house that is habitable. Similarly, no one should have to make the choice between flagging a prohibited payment and keeping their landlord happy so that they do not get served with a section 21 notice.

To prevent tenants from retaliatory evictions when repairs are necessary, the Deregulation Act 2015 prevents landlords from serving a section 21 notice for six months after the council orders repairs to be made. Although there are problems with the enforcement of that Act, the principle of it acts to prevent retaliatory evictions. In particular, it prevents the serving of a section 21 notice for six months after the serving of an improvement notice, which gives tenants the same protection as they would have at the start of any tenancy. That is an extremely important addition to tenants' rights, which helps to remove a barrier to self-reporting. There is too little extra protection for self-reporting tenants if the law simply states that the landlord can serve a section 21 notice the second they have managed to fulfil the obligation that they were reported for. That also covers self-reporting tenants who could be subject to retaliatory evictions if they report a landlord.

Just as it was sensible to extend the provisions concerning revenge evictions for repairs in the 2015 Act, it is sensible to learn from the past situation around repairs now and get the Bill right at the first time of asking, by bringing it into line with the thinking of that previous legislation and adding a six-month period in which landlords cannot serve a section 21 notice after a breach of the Bill.

Rishi Sunak: The Bill already protects tenants by preventing landlords from recovering their property via section 21 of the Housing Act 1988 until they have repaid any unlawfully charged fees. This approach is in line with legislation that already applies where the "How to rent" guide has not been provided or a landlord has not secured the required licence for a house in multiple occupation, so there is good precedence for our approach.

Further, clause 4 ensures that any clause in a tenancy seeking to charge tenants a prohibited fee is not binding on the tenant, so we do not consider that further provision is needed. The wording of this amendment would specifically mean that if a landlord appealed against the imposition of a financial penalty and this was upheld, that landlord would be restricted from using the no-fault eviction process for six months after the appeal was determined. That clearly is not fair. I therefore ask the hon. Lady to withdraw the amendment.

Melanie Onn: I thank the Minister for that response. It is unfortunate that he is not prepared to accept the amendment. It may well be the case that landlords will happily give people back the money they owe them and then still decide that they are troublemakers and seek to serve an eviction notice against them. While I accept the Minister's comments regarding a landlord's appeal, I think this is something that he should look at. If the Bill is about increasing and protecting tenants' rights, this is a prime opportunity to do so. Despite that, I am happy not to press the amendment, but I reserve the right to discuss this issue further on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 17 has been included following a recommendation specifically from the Select Committee during pre-legislative scrutiny of the draft Bill, and I therefore hope that it commands broad support. It ensures that a landlord cannot evict an assured shorthold tenant via the section 21 no-fault eviction procedure if the landlord has previously required a tenant to make a prohibited payment and failed to repay this payment or apply it to the rent or deposit. We agree with members of the Select Committee that this affords tenants additional protection and serves as a further deterrent to non-compliance for agents and landlords.

Similarly, a landlord cannot use a section 21 procedure if they have breached the requirement to repay a holding deposit. This clause is intended to establish a further layer of protection and security for tenants and to act as a deterrent to landlords. The approach mirrors that

used to promote compliance with other housing legislation, such as licensing for houses in multiple occupation and the requirements to give tenants a copy of the "How to rent" guide and valid gas safety certificates. I beg to move that the clause stands part of the Bill.

Melanie Onn: We have made our concerns around this clause quite clear, and we reserve the right to come back and discuss it on Report. I sincerely hope that the Minister's intention does work in practice. I think he is applying some of the principles to landlords who would never wish to be in breach of any of this legislation, and he is not considering fully the issue of rogue landlords, who are the ones we are trying to tackle.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

DUTY TO PUBLICISE FEES ON THIRD PARTY WEBSITES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 19 and 20 stand part.

Rishi Sunak: Thank you, Mr Sharma, for permission to group these three clauses. I will discuss them briefly in turn. Clause 18 amends section 83 of the Consumer Rights Act 2015. Section 83 places a duty on letting agents to publicise their fees and information about redress under client money protection schemes in order to provide greater transparency for landlords and tenants.

In the Government consultation on banning tenant fees, concerns were raised that these transparency requirements do not apply in relation to property portals, such as Rightmove and Zoopla. These websites are often the first port of call for tenants when searching for a home to rent. To ensure that tenants and landlords have easy access to relevant information, this clause extends the transparency requirements to third-party websites. I am sure that will be warmly welcomed.

11.15 am

Clause 19 amends section 83 of the Consumer Rights Act 2015 to require agents in the private rented sector to publicise the specific name of their client money protection scheme. At present, agents have to say only whether they are a member of such a scheme. The Government are committed to making membership of a scheme mandatory for all agents in the private rented sector. This will ensure that all tenants and landlords have the financial protection they want and deserve. Regulations were laid on 3 May to achieve that and are intended to come into force on 1 April 2019, subject to parliamentary clearance. Once it is mandatory for letting agents to belong to a client money protection scheme, we want agents to display the name of their scheme provider so that this information is clearly available to tenants and landlords.

Lastly, clause 20 amends section 87 of the Consumer Rights Act 2015. There has been a desire for greater clarity about whether trading standards can impose more than one financial penalty if letting agents continue to fail to publicise specified information. That includes information related to their fees, their redress and their client money protection scheme membership. The amendments made by this clause provide that clarity, and I hope they are warmly welcomed. Their effect is that if trading standards impose a financial penalty due to a breach of the transparency requirements that the agent fails to rectify within 28 days, they may impose a further financial penalty, unless the agent appeals. If the agent appeals, a further financial penalty may be imposed if the breach continues after 28 days from the conclusion of the appeal process. No further financial penalty may be imposed if the earlier financial penalty has been withdrawn or overturned on appeal.

Together, clauses 18, 19 and 20 strengthen consumer protections, and I beg to move that they stand part of the Bill.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clauses 19 and 20 ordered to stand part of the Bill.

Clause 21

ENFORCEMENT OF CLIENT MONEY PROTECTION SCHEMES FOR PROPERTY AGENTS

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 21 amends section 135 of the Housing and Planning Act 2016. It makes enforcement of the requirement for letting agents to belong to a client money protection scheme the responsibility of trading standards authorities. That has the effect in non-unitary authorities of moving the enforcement responsibility from district councils to county councils. Trading standards are best placed to enforce this provision due to their role in enforcing other legislation relating to letting agents. The change will ensure better alignment between enforcement of the provisions of the Tenant Fees Bill and client money protection.

In November to December last year, the Government consulted on the implementation of client money protection. I am pleased to say that the majority of the respondents—74%—agreed that enforcement responsibility should sit with trading standards rather than district councils, given their skills and experience. To ensure joined-up enforcement of relevant letting agent legislation, I beg to move that clause 21 stands part of the Bill.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

LEAD ENFORCEMENT AUTHORITY

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clauses 23 and 24 stand part.

New clause 1—*Enforcement: costs*—

"The Secretary of State shall reimburse—

[The Chair]

(a) a lead enforcement authority, where this is not the Secretary of State, for any costs incurred by the authority in the exercise of its duties under section 23 or section 24 of this Act, and

(b) an enforcement authority for any additional costs incurred by that authority in the exercise of its duties under section 1 or section 2 of this Act."

Rishi Sunak: Clause 22 establishes a lead enforcement authority in the lettings sector to oversee enforcement of the Bill and associated letting agent legislation, including the transparency requirements in the Consumer Rights Act 2015, the requirement for letting agents to belong to a redress scheme and the forthcoming requirement for letting agents to belong to a client money protection scheme. Although, in the first instance, this responsibility lies with the Secretary of State, the clause gives the Secretary of State the power to designate a local trading standards authority as the lead enforcement authority. The clause also enables the Secretary of State to make provision, via regulations, to smooth the transition if there is a change in the lead enforcement authority.

In the Government consultation, there was strong agreement from respondents across the sector to the introduction of a lead enforcement authority; 86% of respondents were in favour, stating that this would lead to more consistent operation of the regulatory framework. We consider that trading standards authorities are best placed to act as the enforcers, given their other responsibilities for enforcing requirements on letting agents and consumer protection laws.

We recognise the overlap between the lettings and estate agent sectors and will work with National Trading Standards to ensure that the new lead enforcement authority works effectively alongside the existing arrangements in the estate agent sector. We intend to provide funding to support the setting up and workings of a lead enforcement authority.

Clause 23 describes the duties of the lead enforcement authority. Broadly, those duties are to provide guidance and support to local authorities in England with regard to their enforcement responsibilities in respect of relevant letting agent legislation. The lead enforcement authority will help to develop best practice in enforcement and ensure consistent application of the legislation.

The clause also enables the lead enforcement authority to disclose information to a relevant local authority to enable that authority to determine whether there has been a breach of, or offence under, relevant letting agency legislation. That power will, in particular, enable the lead enforcement authority to disclose information as to whether a financial penalty has been issued against a landlord or agent and thus whether an offence has been committed under the Bill.

We have taken into account feedback from the Select Committee, so the clause now places a duty on the lead enforcement authority to issue guidance to enforcement authorities about the exercise of their functions under the Bill. As discussed earlier, enforcement authorities must have regard to that guidance.

Clause 23 also provides a power for the Secretary of State to direct the lead enforcement authority to produce guidance about the operation of other relevant letting agency legislation and about the content of such guidance. The lead enforcement authority will be able to provide information and advice to tenants, landlords and letting agents to help them to understand the impact of the Bill and other relevant legislation.

The lead enforcement authority's position as a central point of contact for local authorities will facilitate its duty to monitor developments in the lettings sector and, as necessary, to advise the Secretary of State. That includes the effectiveness and operation of the Bill and associated relevant letting agency legislation and related social and commercial developments.

Clause 24 makes provision for the lead enforcement authority to enforce the provisions of the Bill and other relevant letting agent legislation. We want the lead enforcement authority to play a proactive role in enforcement and to exercise best practice and provide support when it is appropriate and necessary for it to do so.

Individual trading standards authorities will remain primarily responsible for enforcing breaches of the fee ban. However, they may want to ask the lead enforcement authority for support. Alternatively, a local trading standards authority may not be taking enforcement action in line with its duties under the Bill, leaving tenants at risk of unfair loss. The clause gives the lead enforcement authority the power to take enforcement action in such situations.

Where the lead enforcement authority steps in and proposes to take action in respect of a breach, it must provide notice to the relevant local authority. The latter is then relieved of its duty to take enforcement action in relation to the breach, but the lead enforcement authority may require it to provide assistance. Relevant enforcement authorities will be required to report on their enforcement of the legislation and other relevant lettings legislation.

The lead enforcement authority will have a number of investigatory powers at its disposal to enforce the relevant letting agency legislation. As we discussed previously, those powers are laid out in schedule 5 to the Consumer Rights Act 2015, which this clause amends. That includes the power to require information where it reasonably expects that a breach has been committed.

I hope that clauses 22 to 24 stand part of the Bill and, with your permission, Mr Sharma, I will reserve the right to respond after the hon. Member for Croydon Central speaks to new clause 1.

Sarah Jones: New clause 1 sets out that both the lead enforcement authority and local enforcement authorities will be reimbursed by the Government for costs incurred in enforcing the Bill. That is necessary because the Bill as it stands will simply not provide adequate resources for proper enforcement. That view is backed up by experts from across the sector. We have already talked about the scale of the challenge, and my hon. Friend the Member for Great Grimsby has talked about the cut in enforcement officers and the—

The Chair: Order.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Fifth Sitting

Tuesday 12 June 2018

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 16 June 2018

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Frith, James *(Bury North)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Onn, Melanie *(Great Grimsby)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Sunak, Rishi *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 June 2018

(Afternoon)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

Clause 22

Lead enforcement authority

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Clause 23 and 24 stand part.

New clause 1—*Enforcement: costs*—

"The Secretary of State shall reimburse—

(a) a lead enforcement authority, where this is not the Secretary of State, for any costs incurred by the authority in the exercise of its duties under section 23 or section 24 of this Act, and

(b) an enforcement authority for any additional costs incurred by that authority in the exercise of its duties under section 1 or section 2 of this Act."

Sarah Jones (Croydon Central) (Lab): It is a relief to come back and see that the Minister has not resigned and followed the advice of his colleagues. I am reassured that he is still here.

As I was saying this morning, new clause 1 sets out that both the lead enforcement agency and local enforcement agencies will be reimbursed by the Government for costs incurred in enforcing the Bill. That is necessary because the Bill as it stands does not, in our view, provide adequate resource for enforcement.

We talked this morning about the scale of the challenge, with 56% of enforcement officers lost since 2009. In our evidence session, the Chartered Trading Standards Institute emphasised the scale of the problem that exists with enforcement, pointing out that more than 50% of the landlords and letting agents that it works with in London are still non-compliant with the rules. Shelter has highlighted the extreme difficulty in assessing the true number of rogue landlords, saying that the number is still underestimated. Another challenge for enforcement is collecting sufficient evidence to secure convictions. This morning, my hon. Friend the Member for Great Grimsby cited the Chartered Trading Standards Institute among others, which has worries about the burden of proof and said that it will scare people off, including trading standards.

The Minister might point to the provisions to stop retaliatory measures that were included in the Deregulation Act 2015, but the lack of progress on enforcing those provisions serves only to reinforce the point. Following scrutiny by the Housing, Communities and Local Government Committee, the Government were forced to admit that overstretched local authorities were not even collecting the data that would allow them to see whether the retaliatory eviction provisions in the 2015 Act have been used. The Government wrote:

"We are currently unable to provide this data as local authorities are not specifically obliged to provide it and the Department does not routinely collect it. However, we recognise that this is an area of concern and we are writing to request this information from local authorities to inform our understanding about the effectiveness of the provisions."

On that topic, Shelter's most recent survey of tenants found that a quarter of renters who had a problem serious enough to report failed to report it because they were worried about retaliatory measures from their landlord or letting agent. That clearly demonstrates a failure to give tenants confidence in the policy, and backs up the point that tenants may be too scared to engage properly with the enforcement process to build a strong enough case.

The challenges to enforcing the Bill will come from all directions. We know from evidence that was provided that local trading standards authorities may not have the capabilities or expertise. For example, Shelter has raised concerns about how effectively trading standards will be able to police the use of default payments. Shelter has asked the Committee to explore whether local authorities will have sufficient powers and resources to evaluate whether a default fee genuinely represents a landlord loss, and the kind of guidance that the Government propose to provide to assist authorities in making such determinations. The Residential Landlords Association has argued that trading standards should not enforce the Bill at all, and that the responsibility should rest with environmental health departments.

Three concerns have caused us to table the new clause. The first is about getting the numbers right. We have serious concerns about the numbers being thrown around by the Government about how much it will cost to enforce this at a local and national level, as well as the confusion over how financial penalties will be calculated by enforcement authorities.

We have significant doubts about the Government's argument that the cost of enforcement will be fiscally neutral for local authorities by year 2. The Government have been forced to admit that that will not be the case for year one. The £500,000 allocated by the Government for enforcement in the first year feels as if it was plucked from the air, with similarly little thought. It is unclear whether that figure will change if authorities' costs are higher than estimated.

The very thin detail on enforcement costs first provided to the Select Committee in November as part of an impact assessment argued that the cost to local enforcement authorities would be £150,000 per annum. The Government's assumption that the enforcement would be self-funded from year one was rightly questioned by the Select Committee, and the Government duly committed to providing additional funding to local authorities. In the full impact assessment published last month, the Government amended their assessment of expected costs to local authorities in the first year to £300,000. That is a significant jump from their assessment in December. The impact assessment also states that the Government assume £200,000 in set-up costs for the

court system, thus reaching the £500,000 figure. However, they appear to contradict themselves in the explanatory notes to the Bill:

"We estimate that local authorities will incur a new burden in respect of enforcement costs in year one of the policy only and we estimate this to be no more than £500,000."

Assuming that the £200,000 earmarked for the courts in the impact assessment actually goes to the courts, will the Minister confirm whether local enforcement authorities will be getting £300,000 as indicated in the impact assessment, or £500,000, as indicated in the explanatory notes? There is also confusion over whether that money is the maximum authorities will receive or whether the Government will fund the actual costs, and we note the use of the word "estimate" in the explanatory notes.

We had concerns about how the Government arrived at the year one figure before the Committee sittings began. They increased during the evidence sessions last week, when the Minister asked outright for any analysis that the Local Government Association had done on how much funding should be allocated for year one. It then emerged that the LGA had been asked for that information, but had been given just one week to provide the figure. I have a great deal of respect for the ability of the LGA, so if it cannot turn that request around in a week, I doubt that many others could.

It seems astonishing that the Government could still be unclear as to how much this crucial part of the Bill is likely to cost, and I worry that they are pulling numbers out of the air. If the Minister will not accept our new clause, will he explain how the Government arrived at this figure—and, indeed, what the correct figure is? If he cannot share the evidence now, will he write to the Committee? The key point is that, whether it is £300,000 or £500,000, it is simply not enough. As the LGA has rightly pointed out, that amount split over 340 local authorities is a laughable sum of money when we consider that the average budget for one council trading standards team is more than £650,000.

The confusion over costs extends to what enforcement authorities can charge as penalties. As we discussed earlier, the Government have so far left that open, suggesting that local authorities can take into account the need to cover the costs of their enforcement functions when setting the level of the financial penalty. As the Select Committee pointed out, that is a departure from the usual principle that penalties should relate principally to the gravity of the wrongdoing. The decision to fund enforcement from year two solely by fines risks creating a bizarre situation where enforcement areas with a lower level of offences require higher fines to cover their authority's costs. The same logic goes for areas where the most successful preventive enforcement is happening.

Our second concern is about the pressures on local trading standards authorities. The Chartered Trading Standards Institute rightly pointed out:

"Resource is, without question, the pervasive issue which will determine the efficacy of the Tenant Fees Bill."

However, as we have already emphasised, the pressures on local enforcement authorities are increasing at a time when budgets are stretched to an unprecedented degree. Some of the new burdens taken on by trading standards include enforcement around, as my hon. Friend the Member for Great Grimsby mentioned, the sale of knives, as well as the use of wood burners, which is related to the Government's clean air strategy. The effect of that pressure is being seen in the private rented sector. It was pointed out on Second Reading and since then by many organisations that there is already legislation that requires letting agents to advertise their fees, but it is simply not enforced.

The fact of the matter is that after the first year, and probably during that year too, the money recouped by fines will be completely insufficient to pay for any semblance of an effective enforcement system for the Bill. Trading standards authorities will be in a vicious circle, with an inability to enforce due to inadequate resources that then leads to the funding stream getting even worse that then leads to the enforcement getting thinner, and so on and so forth until nobody is bothering to enforce the measures at all.

There is much evidence from across the sector that that will be the case, and the Government are simply ignoring it. The London Borough of Newham says that it does not consider that moneys recovered through the civil penalties will adequately cover local authorities' enforcement costs. The Chartered Institute of Housing points out the danger of a funding gap, as well as the risk that councils will need to invest in additional resources without being able to guarantee a particular level of financial return. The Association of Residential Letting Agents argues:

"Unless specific funding is set aside for the sole purpose of enforcing these new laws, we will see the same lack of effective enforcement of the ban on tenant fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015."

Citizens Advice says:

"The legislation in its current form is reliant on Trading Standards, which we believe risks rogue agents continuing to charge fees. The lack of capacity facing local Trading Standards means many will struggle to take on additional enforcement duties without support."

We ask the Minister the same thing on fiscal neutrality as we did on the figure for first-year costs: he must provide evidence, either today or in writing, on how the Government arrived at that assumption, or accept our new clause for the Government to reimburse the costs. To force local authorities to pick up the bill for something his Department has not costed properly would be unacceptable.

Thirdly, we are concerned about lead enforcement authority and the pressures around information. The Bill rightly allocates a lead enforcement authority to help streamline and co-ordinate enforcement work—something that has been pretty much universally supported. However, the same questions remain about the resourcing of that body. The Select Committee recommended that the lead enforcement authority should be tasked—and, importantly, given funding—to launch a nationwide awareness-raising campaign, to promote the legislation to tenants. In its oral evidence last week, the Local Government Association again pointed out the need for a high-profile, national campaign to remind tenants of their rights and remind the sector that fees are outlawed. The need for that is made much more pertinent by the fact that Shelter's tenant survey, which I discussed earlier, found that more than 20% of renters who had a problem that was serious enough to report failed to do so because they were not aware that they could raise it with their local council.

Unlike their other financial estimates, the Government have at least been consistent in expecting the costs of the lead enforcement authority, in line with similar lead

[Sarah Jones]

bodies, to be between £200,000 and £300,000 a year. It is unlikely, however, that that will be enough to ensure that any significant awareness campaign is run. There is a big question mark over the ability of the lead enforcement agency to do sufficient work to spread awareness of the changes made by the Bill—and awareness is crucial to its success. As with my previous points, I ask the Minister either to support our new clause or provide details about how such an awareness campaign would be funded, perhaps through his Department.

My final point is about the pervasive disincentive that the Bill as currently proposed would create. As I have set out in detail, experts from the Chartered Trading Standards Institute, the LGA and various local authorities agreed that funding through fines will not cover the cost of enforcement if it is done properly. One of the most frustrating aspects of the Bill is that that will ruin any chances of good preventive work being done. Initial fines of up to £5,000 will not give authorities the resources or incentive to do proper work to prevent breaches. As authorities themselves point out, if trading standards enforcement activities are effective, civil penalties will rarely be charged. That is because most intensive activities of council officers concern monitoring practices and working with letting agents to comply with the law. That creates what the Select Committee called a

"pervasive disincentive for authorities to engage proactively".

I hope that the Minister can offer us something constructive on that point. He will admit that nobody wants this important piece of legislation not to deliver what we want it to deliver. If he will not support the new clause, will he agree to look at ways to finance activity where authorities can demonstrate that good preventive work is keeping convictions down, and come back to us with a proposal to that effect on Report?

I re-emphasise the scale of criticism about the provisions in the Bill for enforcement. The Chartered Trading Standards Institute said:

> "The central concept that enforcement of the ban will be self-funded from the proceeds of civil penalties recovered by trading standards is completely erroneous."

I urge the Minister to look again at this core part of the Bill and, if he will not support new clause 1, will he agree, at the very least, to provide the information we request and consider what else he could introduce on Report to improve the situation?

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): We believe that the new clause, which essentially provides a blank cheque to local authorities, is not the right approach. Given that my day job is Local Government Minister, of course I am minded to ensure that local authorities have the resources that they need to carry out their various functions adequately. That is what I spend most of my time doing. The provisions in the Bill are intended to be self-financing. Local authorities will be able to retain any moneys recovered through financial penalties for future housing enforcement. That ensures that they are better incentivised to undertake enforcement activity. We believe that that incentive impact and behavioural change is important and helpful.

I draw Committee members' attention to the consultation, where it was generally agreed that ongoing costs would be met from enforcement. We heard from landlord and agent representatives last Tuesday that they, too, thought that would be sufficient, but that some initial funding as seed money is needed in year one for familiarisation and adjustment with the new regime. Indeed, the Government agree about that, which is why we intend to provide additional funding of up to £500,000 in year one of the policy, to support implementation and education. That figure has been arrived at through consultation and analysis together with several local authorities and officials in the Department to arrive at a bottom-up estimate of what overall costs might be. We are also committed to providing funding for the lead enforcement authority of up to £300,000 a year to support its important role of providing guidance and support to local enforcement authorities.

2.15 pm

More broadly, since April 2017, local authorities have been able to retain money from financial penalties for offences under the Housing and Planning Act 2016 and the Housing Act 2004 for future housing enforcement. That has been welcomed. It is too early to say whether or not the approach has been effective. We have discussed the example of Torbay as one council that has used such proceeds to invest in new enforcement personnel. We are working with local authorities to understand any additional resource needs across the breadth of their responsibilities in the private rented sector, including offering a series of roadshows in the summer. I look forward to engaging with local authorities on those.

Finally, I point out the comments of the panellist from OpenRent last week, who made it clear that as a result of the Bill and the simplicity of the ban that we propose self-enforcement will be considerably easier, which will lower the burden on all enforcement agencies and is a welcome approach. I also point out that there are other avenues for tenants to receive redress, namely their client redress schemes. As we have touched on, the Government are expanding the remit of those schemes and, more broadly, looking at redress in the round. In totality, we feel that we are in a good place, so I urge hon. Members not to press the new clause.

Sarah Jones: I have listened to the arguments and we will not press the new clause, although we reserve the right to return to this matter on Report.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clauses 23 and 24 ordered to stand part of the Bill.

Clause 25

MEANING OF "LETTING AGENT" AND RELATED EXPRESSIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 26 stand part.

Rishi Sunak: Clauses 25 and 26 are reasonably straightforward definitional clauses. Clause 25 defines "letting agent" as

"a person who engages in letting agency work"

and goes on to define such work as

"things done by a person in the course of a business in response to instructions received from…a landlord…or…a tenant…seeking"

to let or rent a property. The definition of a letting agent excludes a person who carries out letting agency work under their employment contract, as we would not want to capture such people under the Bill. It also excludes legal professionals who are under instruction in a similar capacity.

Clause 26 defines various expressions used in the Bill. For example, as we discussed in our first sitting, it defines "tenancy" as

"an assured shorthold tenancy…a tenancy which meets the conditions"

regarding letting to students, or "a licence to occupy". I commend the clauses to the Committee.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26 ordered to stand part of the Bill.

Clause 27

Consequential amendments

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: The clause makes consequential amendments to the lead enforcement authority's enforcement functions in respect of relevant letting agency legislation: section 87 of the Consumer Rights Act 2015; section 85 of the Enterprise and Regulatory Reform Act 2013; article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014; and section 135 of the Housing and Planning Act 2016. That legislation relates to transparency requirements, membership of a redress scheme and membership of client money protection schemes respectively. Its effect is to require the relevant enforcement authorities to have regard to any guidance issued by the lead enforcement authority. The duties of those authorities under the relevant letting agency legislation is to be subject to the provisions of clause 24, which provides for enforcement of the legislation by the lead enforcement authority.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

Transitional provision

Sarah Jones: I beg to move amendment 16, in clause 28, page 19, line 33, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

The Chair: With this it will be convenient to discuss the following:

Amendment 17, in clause 28, page 19, line 37, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Amendment 18, in clause 28, page 20, line 10, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Amendment 19, in clause 28, page 20, line 14, leave out "one year" and insert "six months".

This amendment would reduce the period of transitional provision from a year to six months.

Sarah Jones: Amendment 16 would deliver an important and achievable result for more than 4 million households currently in a private rental contract. Along with its consequential amendments 17 to 19, the amendment seeks simply to speed up the pace of the changes that the Bill will deliver. As we draw towards the end of this Committee sitting and prepare to discuss the European Union (Withdrawal) Bill, it is fitting perhaps that that we set about talking about the transitional period.

We believe that the transitional period set out in clause 28 is correct. Landlords and agents will need time to come up to speed with new rules and to review the elements in their agreements with tenants that will subsequently cease to have effect. Labour Members, however, argue that a year is an unnecessarily lengthy period. Among other issues, a lengthy transition period may see unscrupulous landlords and agents charging excessive fees through loopholes, such as default fees, in a rush to extract money as quickly as possible before the law changes.

In opposing the amendment, the Government might cite concerns about the capacity of enforcement authorities to develop the requisite skills and learning properly to enforce the Bill. If they truly do have those concerns, they should look again at our proposals on enforcement. When the underlying issues with an overstretched trading standards system are so serious that the National Audit Office is warning of a direct threat to the consumer protection system's viability, a six-month difference will not change much. I fully expect the Government to highlight the need for proper consultation with landlords and tenants to ensure that they are properly briefed, which is absolutely right, but there is no reason that work cannot start before clauses 1 and 2 come into force. The Government have been clear that a strong deterrent effect will be provided by the penalties and convictions described in the Bill. We have already set out in detail our concerns about enforcement, but we agree in principle that, if enforced effectively, the penalties will be a clear deterrent. If the Government are confident about their deterrent, surely the Minister will agree that landlords and agents will be motivated quickly to come to terms with the changes they will need to make. If not, will he tell us which specific measures he expects to take up to a year to put in place?

As we have previously pointed out, a Labour Government would have introduced the Bill years ago. The cumulative total of the money lost to tenants through the Government's reluctance to do likewise has likely been millions. We owe it to all private renters to bring the Bill into force quickly.

We will shortly discuss the issues posed by the wording of clause 32 and the merits of our amendments 20 and 21. I will not go into too much detail here, beyond pointing out that clauses 1 and 2 are not currently included in the provisions that will come into force on the day on which the Act is passed. As we will hear,

[Sarah Jones]

clause 32 is problematic, as it allows the Secretary of State to choose the day when the full Act, including clauses 1 and 2, will come into force, and it currently sets no limit on how long he or she might delay that decision. We believe that the combined uncertainty over the effective start date and the year's delay proposed in clause 28 would be unacceptable to tenants. If the Minister does not support the amendments, will he set out a clear timetable, either now or in writing, for how that year will be used?

The amendment is not onerous. It would not cause disproportionate hardship to tenants, agents, enforcement authorities or the Government. What it would do is ensure that tenants get more quickly the fair deal they were promised which, I think we all agree, is something they deserve.

Rishi Sunak: Clause 28 deals with how the prohibitions described in clauses 1 and 2 will apply in relation to agreements that were entered into before the commencement of the relevant parts of the Bill. Upon commencement, the fees ban will apply to all new tenancies and agreements between agent and tenant. The transitional provisions in clause 28 mean that for a period of a year the ban will not apply to tenancies the terms of which were agreed prior to commencement. Similar transitional provision is made for agents' agreements with tenants.

The amendments that we are considering seek to reduce that transitional period from a year to six months, and we do not believe that that would be fair on landlords and agents. Although most fees are charged at the outset of a tenancy, some landlords and agents will have agreed that tenants should pay other fees at a later stage. Tenants will have signed a contract accordingly, and we need to allow time for landlords and agents to renegotiate those contracts to ensure that they are not unfairly penalised.

Data from the English Housing Survey 2015-16 shows that 48% of tenants had an initial tenancy agreement of 12 months and 39% had an initial agreement of six months. Reducing the transitional provision would mean that more landlords and agents with pre-commencement tenancies—tenancies that were entered into before the legislation came into force—would be at risk of not being able to renegotiate their contracts, and would be responsible for fees that their tenant had previously contractually agreed to pay. That strikes me as retrospective and does not seem fair, and we do not seek in the Bill to unfairly penalise landlords and agents.

We recognise the importance of having a clear date when the ban on fees applies to all tenancies, and we know that tenants are eager for the ban to come into force. That is why the Government have revised their position from that reflected in the draft Bill, which had no end date for when fees could be charged in pre-commencement tenancies. The transitional provisions as drafted here mean that all tenants will see the benefit of the fees ban a year after it comes into force. Unlike the proposed amendments, they ensure that agents and landlords will not be significantly financially affected retrospectively, and will have an opportunity to review their contracts during that transitional period. I therefore ask the hon. Lady to withdraw the amendment.

Sarah Jones: I listened to the Minister, and I agree with him that tenants are eager for the clause to come into force, but I will not withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 7]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 28 deals with how the prohibitions described in clauses 1 and 2 will apply in relation to tenancy agreements that were entered into before the commencement of the relevant parts of the Bill. As we have just discussed, the fees ban will apply to all tenancies, but the clause provides for a transitional period of one year during which the ban will not apply to what we call "pre-commencement tenancies"—tenancies the terms of which were agreed to prior to the commencement of the ban. After one year, any term of a tenancy agreement that breaches the fees ban will not be binding on the tenant, regardless of the date on which the tenancy agreement was entered into. Any payment accepted by the landlord and not returned within 28 days will then be a prohibited payment.

2.30 pm

Equivalent provisions also apply in relation to any agreement between tenants and letting agents. We have provided for this 12-month transitional period in order to mitigate the risk of retrospective effect on landlords of pre-commencement tenancies—although we consider that risk to be relatively low and also offset by the benefit of having a clear date when no letting fees can be charged to tenants. These transitional provisions will mean that all tenants will see the benefit of the fees ban a year after the ban comes into force. That will create a clear marker after which no tenant fees may be charged. That is likely to reduce confusion in the marketplace and facilitate tenant-led policing of the ban. I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

FINANCIAL PROVISIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 30 and 31 stand part.

Rishi Sunak: Clause 29 deals with the financial provisions of the Bill, which we have already discussed at some length, so I shall be brief. The Government intend to provide funding of up to £500,000 in year one of the policy to support local authorities in implementation and up to £300,000 per year for the lead enforcement authority.

Clause 30 deals with the application of the Bill to the Crown. The Bill will apply in relation to the tenancies of those Crown interests that are capable of granting an assured shorthold tenancy but the Crown will not be criminally liable for any breach, as is customary. I am pleased to tell the Committee that the Queen's consent has been granted.

Clause 31 sets out the territorial extent of the Bill, which is, in part, England and Wales, and in part, England and Wales, Scotland and Northern Ireland. As the Bill will apply in relation to housing in England only, and housing is a devolved matter in relation to Scotland, Wales and Northern Ireland, the latter perhaps requires some explanation. The amendments made by clauses 6(6), 7(4) and 24(10) apply the investigatory powers set out in schedule 5 of the Consumer Rights Act 2015 to authorities enforcing the provisions of this Bill. In line with that Act, they therefore have UK-wide extent, although the application of this Bill is England-only.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clauses 30 and 31 ordered to stand part of the Bill.

Clause 32

Commencement

Melanie Onn (Great Grimsby) (Lab): I beg to move amendment 20, in clause 32, page 21, line 17, leave out from "force" to end of subsection (1) and insert

"on the day on which it is passed."

This amendment would bring the Act into force on the day it is passed.

The Chair: With this it will be convenient to discuss the following:

Amendment 21, in clause 32, page 21, line 21, leave out subsection (3).

This amendment is consequential on Amendment 20.

Clause stand part.

Melanie Onn: The amendments would alter the Bill by making the provisions come into force on the day of enactment, rather than leaving them at the discretion of the Secretary of State and when he chooses to bring a statutory instrument forward. The Government's rationale behind the Bill was that it would save tenants millions of pounds and make the market fairer and more transparent. That is a principle we have long supported. However, the potential for a delay in the enactment of legislation surely flies in the face of such an intention. Although we welcome the legislation, we cannot see it as the end of the road for measures to improve the situation that private renters all too regularly find themselves in. There are aims in the Bill that all of us in this room support, because we know how much this is costing tenants and how confusing the housing market can be, but we need the Bill to come forward and make a positive change as soon as possible.

Right now, we are in the middle of exam season across our schools, colleges and universities. That means that in around two to three months, hundreds of thousands of ex-students and graduates will be taking their first steps in their new career. For many of those new graduates, that will mean moving away from home and, potentially, facing the rental market for the first time while holding down a full-time job. People in this group are exactly the type that the Bill should do the most good for.

Unexpectedly high fees can cause huge problems for those who are moving for the first time to start a job. For many at the moment, that means finding large amounts of money before they can even start to find employment, as they will have to pay tenant fees on top of a significant deposit and the first month's rent. That can easily run into thousands of pounds for people who might have had little income to call on to get that sort of money, or even no income at all. That might mean that people in such a scenario have to turn down dream jobs or graduate placements because they simply cannot afford to move close to work. That impacts on the country as a whole.

Those costs are highest in our capital, which is where many of those dream jobs and placements will be, but people from poorer backgrounds in our northern towns and cities, who are unable to call on family for help in affording their deposits, might find that hurdle too high to overcome. That means that some of our best and brightest will miss out on the jobs and opportunities that are afforded to people who are able more easily to commute to London from a relative's home, or who can call on family to support start-up renting costs.

This process will happen again very shortly: many graduate jobs start in September, although others go straight on the back end of school, college or university and will start as early as next month, so we should ensure that the Bill is in place for that cohort of people to enable us to prevent yet another year of unfair tenant fees and high deposits, which present such an affordability problem for many first-time renters and graduates.

As well as providing a better deal for tenants, setting a fixed date now for the Bill to come into force would provide certainty for landlords and letting agents by giving a clear set date from which they would have to comply. I understand that the decision not to specify such a date in the Bill is not a usual one, so perhaps the Minister will explain. At the moment, that point is simply to be defined by way of a statutory instrument when the Secretary of State so chooses. That means that landlords and letting agents will have no idea when they will have to stop charging prohibitive fees and tenants will have no idea when they will be entitled to challenge a fee.

I cannot consider the reason for delay in implementing the legislation to be justified in any meaningful way. The Minister has said that work is already under way on guidance. Therefore, it must be possible to get the guidance produced, published and circulated in a speedy fashion, so that tenants would be protected at the earliest opportunity. If the Minister feels that that is not possible, he should explain exactly why tenants will continue to be penalised while the Government get their act together. Perhaps trailing an implementation date now—with Government-led advertising and awareness-raising ahead of the duties' coming into force, a bit like with the general data protection regulation rules—would provide for readiness across the sector and local authorities.

[Melanie Onn]

Rishi Sunak: We, like many tenants, are keen for the legislation to come into force as soon as possible, but we have to strike a fair balance between protecting tenants and allowing landlords and letting agents adequate time to become compliant with the legislation. The ban is not about unfairly penalising landlords and letting agents or driving them deliberately out of business. Letting agents should be reimbursed for the services they provide, but that must be by the landlord rather than by the tenant.

If commencement began the day the Bill was passed, as the amendment suggests, letting agents would have no time to renegotiate their contracts with landlords, which would have an adverse effect on their business model. We propose that there should be a fair period—a few months—to allow for that renegotiation and adjustment to happen. We are also taking steps now to engage with landlord and agent groups to ensure that they are taking steps themselves to prepare for the legislation coming into force. I ask that the amendment be withdrawn.

Melanie Onn: The Minister says he is keen for the legislation to be brought into force, but he does not seem to be taking decisive action, other than offering us a few months, which is particularly imprecise. It is unrealistic to suggest that letting agents cannot start negotiations when they know that the Government's stated intention is going through Parliament.

Rishi Sunak: I gently point out that the Government's approach is to have a precise date, and allowing them a few months to decide enables them to do that. The amendment specifies that the Bill would come into force on Royal Assent—that parliamentary process could take place be on any particular day—whereas the Government's approach is to allow some time after Royal Assent so that they can set a specific day for all communications and so on. That provides the sector and tenants with greater precision than having an indeterminate day that is out of the control of Ministers, Government or anyone else. The hon. Lady's amendment would result in the parliamentary timetable deciding the date of enforcement.

Melanie Onn: I am confident the Minister will have the ear of the Leader of the House when it comes to enacting the Bill. He says that he is confident that the sector will be provided with certainty and that that will happen within a matter of months, but perhaps he could prescribe whether it will take six, eight or 10 months.

Rishi Sunak: At least a few months.

Melanie Onn: The Minister is ready to say a few months. I reserve the right to return to the issue, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 32 ordered to stand part of the Bill.

Clause 33

SHORT TITLE

Question proposed, That the clause stand part of the Bill.

Rishi Sunak: Clause 33 sets out the short title of this legislation, which is to be the Tenant Fees Act, and as such I hope it will stand part of the Bill.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

New Clause 2

TRANSFERABLE DEPOSITS

"The Secretary of State may by regulations made by statutory instrument amend paragraph 2 of Schedule 1 to make provision which enables a relevant person, at the conclusion of a tenancy, to transfer all or part of a tenancy deposit from the landlord or agent with whom that tenancy was held to a second landlord or agent".*—(Sarah Jones.)*

This new clause would enable the Secretary of State to provide for a tenant to transfer their deposit from one landlord to the next when moving tenancy, rather than needing to find the money for a new deposit before the old one had been refunded.

Brought up, and read the First time.

Sarah Jones: I beg to move, That the clause be read a Second time.

The new clause seeks to build on the positive outcomes we all hope this Bill will have for tenants by allowing for much-needed changes to the tenancy deposits system. The new clause seeks to resolve the problem faced by large numbers of tenants whereby deposits are charged on new tenancies before the deposit from a previous tenancy is returned, costing significant sums of money every time a tenant moves. There is no need for such a situation to occur, and members on both sides of the Committee support looking at ways of solving it.

As we pointed out last week, it would fail tenants and be a waste of our time if we sat here and allowed through a Bill that simply reinforced the status quo. We have said repeatedly that we welcome the Bill's ban on agency fees. We urge the Government to go further to resolve other significant up-front fees faced by private renters.

The most significant up-front fees are tenancy deposits, which I remind the Committee are significantly higher than agency fees, often running to several thousand pounds. We have already touched on the issue of the six-week cap for tenancy deposits, but I ask the Government one more time to look at that cap before Report and to think about what we could do. A lower cap would have a measurable benefit for tenants. There are options that the Minister could consider if he really wants to make provision for what he calls "high-risk tenants".

2.45 pm

Aside from the cap, and as several organisations have highlighted, the Bill is an opportunity to look again at whether the whole tenancy deposits system is fit for purpose. Our new clause proposes a system for deposit passports. In its report "Rethinking Tenancy Deposits", Generation Rent, which we heard oral evidence from, argues convincingly for a new standard of deposit protection

based on personal tenant accounts. That would result in a much-needed shift in the deposits system back towards tenants, who too often surrender their money with insufficient control over it. Of course, the arbitration facility in the deposit protection system would remain, so that landlords could be confident they could claim for damage, and tenants would still have the required incentive to keep their property in a good state. More importantly, the system would help to alleviate the pressure on tenants who are being asked to stump up significant sums twice.

If properly implemented, the new system could also allow tenants to recoup some of the interest from the £4 billion of their money that is currently being held, predominantly by landlords and agents through insurance-based deposit schemes. Generation Rent estimates that tenants lose out on £80 million of interest per year to agents and landlords who are essentially able to use deposit funds as a low-cost loan.

The proposed personal tenant account would provide tenants with an individual account with an accredited deposit protection scheme. It would allow the tenant to transfer or passport deposit funds between tenancies. Suggested requirements are that the tenant gives adequate notice to their landlord and pays the final month's rent. If that happens, an equivalent portion of the protected deposit could be released so that the tenant can transfer those funds towards the deposit on a new tenancy.

It is possible that this new type of scheme would require insurance-based deposit schemes to be phased out. However, the licenses for those types of schemes are set to expire in the next couple of years anyway, and the figures compiled by Generation Rent suggest that they have a negative impact on tenants. Insurance-based schemes allow landlords and agents to pay an insurance premium in exchange for a guarantee on the deposit, enabling them to hold that deposit rather than lodge it with a custodial deposit scheme. Agents and landlords are currently free to collect interest on their tenants' deposit funds through the insurance-based schemes. One of the two main schemes, the tenancy deposit scheme, advises its members first to collect tenants' consent. However, figures from a Generation Rent survey found that only one in four agents has tenants' agreement for that, and only 2% pass interest on to tenants.

We heard evidence that there is support across the sector for this proposed measure, including from the Residential Landlords Association, Generation Rent and Shelter. Generation Rent argues that there is support for passports in the existing deposit protection system. All those organisations have offered to work with the Government to develop a system that works.

The new clause would give the Secretary of State the powers, through secondary legislation, to amend paragraph 2 of schedule 1 after developing a system with which the Government are happy. It is important to note that the new clause sets no requirement on the Secretary of State to implement that change if the Government cannot come up with a system they are happy with. In the evidence we heard, however, there was a clear desire from across the sector to make this work.

If supported, the new clause will be warmly welcomed for giving the opportunity to streamline the existing deposit system, to remove excess bureaucracy for landlords and agents, and to solve a needless and costly problem that continues to present barriers to people hoping to rent in the private sector.

Mr Robert Goodwill (Scarborough and Whitby) (Con): If I may briefly interject, the hon. Lady identifies a problem, which came through in the evidence sessions, that affects landlords as well as tenants. The frustration of having a deposit locked up with the current landlord that cannot be given to the new landlord is a problem. However, now is not the time to address it. Indeed, the hon. Lady said that we should look at ways of solving the problem. Were we to try to do that in this Bill, we could end up delaying the introduction of legislation that everyone agrees will be of great benefit to tenants, because a lot of consultation would need to be done. We would need to look at situations where, for example, the tenant misleads the new landlord that all the deposit will be released when in fact there might be some deductions.

I absolutely sympathise with the feelings expressed, but I hope the Minister will not allow this issue to delay the Bill. Although I sympathise with the hon. Lady, I am sure many on the Conservative Benches will not be able to support the new clause at this time.

Rishi Sunak: I am delighted to say that I agree with both the hon. Member for Croydon Central and my right hon. Friend the Member for Scarborough and Whitby. We fully support and encourage innovation in the tenancy deposit sector. We know that it can often be difficult for tenants to raise funds for a deposit at the outset of a tenancy, especially if they are moving from one property to another; indeed, that is partly the motivation for bringing forward the Bill.

In the Government's response to the Housing, Communities and Local Government Committee following the pre-legislative scrutiny, we emphasised our commitment to assess the merits of alternatives to traditional security deposits and promised to report our findings to the Committee. The Government responded only in May, so I hope Members will forgive me when I say that the work is not quite completed, but it is in process.

We have been exploring this issue for a while, including in the 2017 consultation on banning letting fees. It may interest hon. Members to know that my Department, like many others, offers an employer-backed deposit scheme to civil servants living in the private rented sector. That works in the same way as a season ticket loan, allowing employees to borrow from their salary up front to pay for a rental deposit and repay it from salary payments over the course of their career. Many private businesses, such as Starbucks, take the same approach, and we definitely encourage more to do so.

I am pleased to say that in May the Minister for Housing and Homelessness held a roundtable with my hon. Friend the Member for Broxbourne (Mr Walker), who has been passionate about this issue, along with the three deposit protection schemes and Shelter, to explore further how existing tenant deposit protection was working and what further innovation was possible. I am pleased to say that, as a result of that preliminary work, the Minister has been working much harder to progress the issue and will convene a formal working group with the deposit schemes and key representatives from tenant and landlord groups to explore it further.

[Rishi Sunak]

There are still many things that need to be considered, as was highlighted by my right hon. Friend the Member for Scarborough and Whitby. For example, the key concern with deposit passporting is ensuring that landlords are still able to recover any damages at the end of a tenancy. There is a great deal of technical complexity that needs to be examined. That would involve understanding the percentage of the deposit that could be passported, and when and how liability for providing a tenant with the relevant prescribed information about where their deposit is protected should be passed from one landlord to another.

We certainly need to consult the sector and get its input before implementation. We are also keen to explore other alternatives, aside from passporting, such as payment of deposits by instalment. I hope hon. Members can see that the Government are taking this issue very seriously. My hon. Friend the Minister has already convened groups and is continuing to convene working groups to examine this issue and figure out a way forward. With that in mind, rather than delay this legislation, I call on the hon. Lady to withdraw her new clause.

Sarah Jones: I have listened to the Minister's response, and I am glad that there are working groups, roundtables and other such things looking at these issues. As a former senior civil servant, I know well the line that there are still many things that need to be considered, which can be used to push things into the long grass so that they never get completed.

I take the point from the right hon. Member for Scarborough and Whitby that we do not want to delay the Bill and that we need to look at these matters properly, but I urge the Minister to speed up the working groups and roundtables and to try to come forward with something. If he did, I am sure he would have the support of the Opposition. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 3

Report on operation of Tenant Fees Act

"The Secretary of State shall within a period of 12 months from the date of commencement of this Act and annually for the four years thereafter lay before Parliament a report on the operation of this Act, setting out the number of breaches of sections 1 and 2, the number and amounts of financial penalties levied by enforcement authorities, and the number of criminal prosecutions commenced and concluded in each 12-month period". *—(Melanie Onn.)*

This new clause would require the Secretary of State to report annually for five years on the effect of the Act

Brought up, and read the First time.

Melanie Onn: I beg to move, That the clause be read a Second time.

The new clause is quite clear that it intends the Act to be reviewed and closely monitored by the Minister. There has not been a great deal of discussion around the monitoring of the implementation of this legislation so far. Assessing the effectiveness of the legislation is incredibly important, and I hope the Minister will be able to support it. We know from the experience in Scotland that legislation, even when well intended, may not be effective if the wording is not clear enough, the rights are not precisely defined, the impact is not fully, properly and regularly communicated to those who need it, and the enforcement mechanisms are inadequate. I do not want to let the Minister leave here without allowing for future Ministers and Governments to recognise early the elements of the Bill that are not quite working as intended. From the discussions we have had, it seems that the Bill will probably not come into force for 18 months, which is quite some time away. How it actually pans out in practice will perhaps be well out of our hands.

It is inevitable that there will be clauses of the Bill that, once in action, do not work quite as anticipated. To rectify that, the Government could accept this new clause, which would ensure regular assessments are undertaken of the number of breaches of sections 1 and 2, as well as providing details around the fines—how many have been issued, what revenue has been generated and whether there have been any prosecutions. It would enable the Government to show their demonstrable concern for tenants by making it clear that they were keeping a beady eye on the practicalities of the measures and not simply leaving matters to chance.

No doubt there would be a Select Committee inquiry without these changes. What do the Government anticipate that they might wish to hide? By being proactive, they would be ahead of the curve and would save the Select Committee a great deal of time that it might spend on other inquiries.

I anticipate that the Minister will say he is confident that local authorities will maintain such records. That might be suitable for him, but it would not compel him to collate such data to gain regional perspectives on the implementation. Given the failure on the display of tenants fees rules so far—so much so that they now have to be beefed up through the Bill's enforcement powers—accepting the new clause would be an honest recognition that legislation does not always work well.

The new clause would provide for an ongoing evidence base from which future improvements could be made. It would show landlords, letting agents, councils and tenants that the Government were taking a responsible approach to a significant piece of new law and showing a keen interest in its future application.

Were it to be found that the funding for new burdens was insufficient, the Government could deal with that rapidly, rather than facing the worst-case scenario of the laws not being used and being completely useless. They could check where the laws were being best utilised, identify why and assist in the sharing of best practice around the country. They could check that the legislative process was quick and that the remedy was proportionate to the breach.

In housing, timing is often of the essence. Those who would be charged prohibited fees are most likely to be those who can ill afford them—those who are forced towards bad landlords or letting agents. Should resolution of the process take too long, a tenant may be two or three properties along since the original complaint was submitted. I urge the Minister to consider this sensible step.

Rishi Sunak: I rise for potentially the last time, to discuss new clause 3. I am pleased to tell the Committee that we do plan to monitor the implementation of the Tenant Fees Bill through continued engagement with key stakeholder groups representing landlords, agents and tenants, as well as through wider intelligence from agencies such as the lead enforcement authority and trading standards, which will enforce the requirements of the Bill. Unfortunately, however, we believe the new clause is unworkable.

We would not be able to identify all breaches of sections 1 and 2, as the new clause suggests, as we will be encouraging tenants to challenge their landlords and agents directly in the first instance if they have been charged prohibited fees. Indeed, we want landlords and agents to rectify breaches first, without the need for an enforcement authority, and it would of course not be possible or practical to record every time that that type of informal enforcement and rectification happened.

With regard to the number of financial penalties and criminal convictions under the ban, that information will, owing to the reporting requirement that already exists in the Bill, be captured by the lead enforcement authority anyway. Those agents and landlords who are banned from operating will also be captured on the rogue landlord database. Local housing authorities also have powers to include persons convicted of a breach of the fees ban on that database, as well as people who receive two or more financial penalties within a year for any banning order offence.

I hope that that reassures hon. Members that we will be tracking and reviewing the effectiveness and enforcement of the ban. We do not think it is necessary to prescribe further reporting requirements on the face of the Bill, but we will consider how to make the information available, especially regarding the lead enforcement authority. We will review the legislation within five years, in line with normal parliamentary and scrutiny practices.

3 pm

We also do not intend to review the Bill in isolation. There have recently been a number of welcome legislative changes to the lettings industry, with more planned—notably the regulation of letting agents. Those changes, with this Bill, support and deliver our commitment to rebalance the relationship between tenants and landlords and to make renting fairer. It is important that any future evaluation consider all those important and transformative measures in the round, so I ask hon. Members not to press their new clause.

Melanie Onn: The Minister says that the Department will monitor the process and the progress of the enforcement of this legislation. He also says it plans to review in five years. That raises the question of why that should not be included in the Bill. The Minister has diligently described to us all the varying places where that information is kept; the new clause simply seeks to ensure that it will be kept centrally by Ministers so that they do not have to go to various different organisations to retrieve it and will have it centrally, at their fingertips, so that reports and responses are full and accurate. Therefore, we will not withdraw the new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 8]

AYES

Elmore, Chris	Onn, Melanie
Frith, James	Stevens, Jo
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

Afolami, Bim	O'Brien, Neil
Caulfield, Maria	Philp, Chris
Goodwill, rh Mr Robert	Sunak, Rishi
Graham, Richard	Tolhurst, Kelly
Green, Chris	

Question accordingly negatived.

Question proposed, That the Chair do report the Bill to the House.

Rishi Sunak: I gather that we are bringing proceedings to a conclusion, so if I may, Mr Sharma, I will briefly put on record my thanks to you and Mr Bone for your distinguished chairmanship of the Committee; to your team of Clerks for keeping us all on track and ensuring we followed due procedure; to the Whips for ensuring that we were all here on time and did what we were told; and to my fantastic team of officials, including those who are giving up valuable swimming and cocktail time to be with us today, which I very much appreciate. Indeed, I put on record my thanks to all hon. Members for their valuable and insightful contributions, and especially to Opposition Members for the constructive and good-natured way in which they have engaged with the topic. I look forward to continuing those debates in subsequent stages of the Bill. I make one final apology to the daughter of the hon. Member for Stockton South for depriving her party of her father's presence.

Lastly, I put on the record my thanks to the Under-Secretary of State for Housing, Communities and Local Government, my hon. Friend the Member for South Derbyshire (Mrs Wheeler), who of course could not be with us to take the Bill through the Committee, but who put in an extraordinary amount of work in the months leading up to this point to ensure that we were discussing what I am sure we all agree—whatever our individual differences on certain points—is an important piece of legislation addressing a very important topic. She deserves enormous credit for her diligence and hard work in getting us to this point. I know we wish her well, not just at home but with all the other work she is doing to ensure that we bring fairness to the private rented sector, and we look forward to seeing her back soon.

Question put and agreed to.

Bill accordingly to be reported, without amendment.

3.5 pm

Committee rose.

Written evidence reported to the House

TFB48 LiFE Residential

TFB49 London Borough of Newham

TFB50 Yasmine Eldene, Atwell Martin

TFB51 John Socha, Socha Estates

TFB52 Dan Wilson Craw, Director, Generation Rent

TFB53 Chartered Institute of Housing

TFB54 Paul Atwell

TFB55 Will Linley, Linley & Simpson

TFB56 John Socha, Socha Estates (further submission)

TFB57 Hayley Brinn