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Research into Letting Agents Fees to tenants

1. Executive Summary

This study was commissioned by the Welsh Government in order to broaden their understanding of the letting agent fees charged to tenants renting in the Private Rented Sector (PRS) in Wales, as well as possible implications if these fees were to be banned. The research comprised interviews with stakeholders across Wales, as well as in Scotland and across the UK; a survey completed by 168 agents in Wales (who between them managed around half of the agent-managed PRS properties in Wales); and two separate surveys completed by a total of 278 landlords. Data on the size and operation of the sector was also explored from other sources, including Rent Smart Wales (RSW).

The Consumer Rights Act 2015 obliges agents to publicise a full tariff of their fees. There are, however, no laws preventing agencies from charging fees to tenants in Wales once they have been offered a property, subject to satisfactory references and checks, and fees can be set at any level.

In Scotland, setup fees to tenants are banned, whilst both England and Northern Ireland have recently consulted on proposals to ban setup fees to tenants, and it has been recently announced that the UK Government will bring this ban into effect in England.

2. Key Findings from the research

Existing practice

- Around 400 - 700 agents currently operate in Wales, and accommodation in every local authority is managed by a range of agencies. Overall, we estimate that 29% of the private rented housing in Wales is managed by agencies, with a further 7% being let by agents but subsequently managed by landlords.
- Of the 168 letting agents who took part in this research, 76 (46%) were part of an estate agent business; 74 (44%) were dedicated letting and management agencies, and 17 (10%) were part of some wider business.

Fees charged

- Of the 168 letting agents who took part in this research, 112 (84%) reported charging a setup fee, averaging at £178 per tenancy. The survey found that on average, fees charged are somewhat higher in high rent areas, and by larger agencies. Overall, it was estimated from survey data that 19% of letting agency income in Wales comes from fees charged to tenants, around £10m per annum in total.
- Two thirds of the agents surveyed (72 of 111) charge a fixed fee per tenant or per tenancy and did not break fees down by what they covered, though some provided a list of what is included in the total cost. Most felt this to be clearer than a “menu” of charges.
- 49 agents out of 131 agents (37%) reported charging tenants for a tenancy renewal, with typical charges being £60, varying from £15 to £250. Very few agents reported charging for a tenancy termination, unless the tenant wanted to leave early.
- The research suggested that the large majority of agents either ask for a holding deposit, or used the fees charged as a deposit to ensure a commitment from tenants before the tenancy was signed.
- Most agents (108 out of 129; 84%) also charged upfront fees to landlords, with a median of £200 for managed properties and £300 for let-only services. In addition, monthly management charges (deducted from the rent) averaged at 10% for full management, or 7% for rent collection only.
- The landlords surveyed who let their own properties reported rarely charging setup fees, with only 11 out of 112 (10%) doing so, averaging at £125 where charged. Most landlords did not take a holding deposit, instead relying on personal contacts and trust to ensure commitment from prospective tenants.

Why charge fees to tenants?

- The 168 agents surveyed estimated that a new tenancy typically took 14 staff hours to set up, and incurred costs of around £92 paid to other organisations. The research found indications that some of the highest (per tenancy) costs are associated with specific types of properties, such as HMOs, where more work is involved.
- Agents argue that some of the work in setting up new tenancies, such as drawing up a fair tenancy agreement and a detailed inventory, is carried out on behalf of the tenant. Some charges issued during a tenancy relate to tenant requests, or are incurred as a result of tenant actions, and agents felt these should rightly be charged to the tenant.
- A holding deposit was considered by agents to be necessary to ensure buy-in from prospective tenants. Most of the landlords surveyed (85 out of 111 landlords; 77%) never charged a holding deposit, but often reported more informal relations with their tenants.
- Agents interviewed said that they currently charge fees to tenants because the lettings market is more competitive for landlords, with tenants easier to find. This means that to operate successfully, agents need to keep costs low for landlords.

Problems with fees

- There is substantial evidence that the costs of moving into or between PRS properties present difficulties for tenants, and that agency fees are one of the components of these costs.
- The model of charging both landlords and tenants gives rise to a lack of transparency and concerns that both think they have paid for the same thing.
- Despite the 2015 Consumer Rights Act protection, there remain concerns that tenants do not always understand what fees they will be charged.
- Tenants are in a weak market position because they do not usually have any choice of agency. Unlike landlords, they cannot shop around for the best deal independently of choosing the house they want. The evidence strongly suggests that landlords are either not aware of the fees charged to tenants or do not consider them when appointing an agent.
- The overall shortage of housing, relative to demand, means that market forces currently push agents to increase fees to tenants in order to reduce them for landlords.
- This research found that agency fees vary widely and do not appear to be related to the amount of work undertaken. Fees relating to tenancy renewals appear sometimes excessive for the work entailed.

Likely impacts of a ban on fees

- When asked about the impact of a ban on fees, 89 out of 117 agents (76%) felt it likely that they would see profits fall. Some of the costs are likely to be passed on to landlords, either as upfront costs or as higher management charges deducted from rent.
- Most agents surveyed were very concerned about the impact of banning fees to tenants on their business model. When asked to rate the significance of the ban on their business from 1 to 5 (with 5 being the most significant), 91 out of 117 agents (78%) answered 4 or 5.
- 76 out of 93 landlords who use agents (82%) say that they would increase rents if the agency fees they paid were to increase. Analysis of the data suggests that this would likely be around £5 a month, or between 0.5% and 1% on a typical monthly rent.
- Tenant groups are in favour of a ban on fees, even if it does lead to an increase in rents, because rent is easier for tenants to cope with financially. There are some concerns that Local Housing Allowance (LHA) could fall further behind rents if rents were to increase.

Learning from Scotland

- Prior to 2012, there was already legislation in Scotland that banned “premiums” being charged to tenants. There was widespread confusion as to what the legislation meant, a lack of enforcement, and fees charged to tenants were common practice.
- The impact of the change on rents is hard to ascertain, as other changes came into effect at the same time in Scotland. Two separate reports both found that around a third of agents had increased charges to landlords, and that a minority of landlords had increased rents as a result. A quantitative assessment suggested a small inflationary impact of 1-2% on rents.

- Overall, the 2012 clarification is generally considered to have been largely successful in banning upfront fees to tenants. It was widely considered to have had limited impact on the sector, with other issues being of greater concern to agents.
- There remains a lack of clarity over whether holding deposits and charging fees to third parties (e.g. for referencing) are permissible under the 2012 legislation.
- Despite active campaigning by tenant groups, some issues remain with enforcing the ban. The need to find ways to enforce a change without relying on tenants complaining was highlighted by stakeholders as a key lesson for Wales, should it choose to ban fees.

3. Conclusions

There is evidence that upfront fees to tenants exacerbate difficulties in accessing the PRS. There is, however, work involved for agents in setting up a new tenancy. This research suggests that agencies do not generally make excessive profits on setup fees. In contrast, there appears little justification for renewal fees in any circumstance, or for exit fees except where a tenant leaves early.

There is, however, no compelling evidence that tenants should pay fees rather than landlords:

The large majority of the work undertaken by agents is work that the landlord would otherwise be doing themselves, and is therefore a service provided for a landlord. The landlord chooses the agent and can negotiate on fees, or choose a different agent if unhappy with the offer. Tenants are rarely able to choose the agent independently of the property. The analysis of fees and costs concluded that market forces are operating ineffectively between tenants and agents.

The Scottish experience suggests that most of the fears that agents have about a ban on fees to tenants may be unfounded. If fees to tenants were banned, agents could recoup the costs of setting up new tenancies in the fees they charge to landlords. This would create an increased incentive for landlords to self-manage. However, our research suggests that most landlords, if otherwise happy with the service their agent provides, would be unlikely to do so. Increased fees to landlords, in conjunction with other recent tax reforms, may cause some landlords to sell up and, overall, this is likely to exert a small downward pressure on the speed of growth of the PRS in Wales.

There is a strong case for allowing a small holding deposit; for allowing agents to charge tenants who break things; and for charging tenants who want to leave a fixed term contract early.

4. Recommendations

- 1) The Welsh Government should consider a ban on fees to tenants, along similar lines to that being proposed by the English Government and already in place in Scotland.
- 2) Renewal fees and tenancy termination fees (excluding those for leaving early) should be included in any ban, as the Renting Homes Wales Act may not be sufficient to prevent renewal or exit fees as it is currently worded.
- 3) Any change in rents should be monitored over the two years following a ban, including the implications for tenants on LHA. The impact on the take up of Discretionary Housing Payments should be monitored to see whether higher rents lead to increased use of

DHPs. There may be some savings to homelessness prevention budgets currently paying fees on behalf of tenants.

- 4) The Welsh Government should consider allowing a small holding deposit (such as one week's rent) in order to ensure tenants show some financial commitment before agents take a property off the market.
- 5) Charges for work a tenant creates during a tenancy, such as losing keys or failing to be in when a contractor calls at a time they have arranged, should legitimately be charged for at cost, along similar lines to the English consultation proposals. These could be capped at the actual costs due to third parties, with the letting agent's time in overseeing such events falling within their management fee.
- 6) Agents and landlords should be allowed to charge tenants who want to be released early from a contract, in return for a definite acceptance of a contract termination. (Tenants should not be charged upfront payments for advertising a property, with no assurance of being able to leave early unless a new tenant is found.)
- 7) Legislation should also address the likely consequence of tenants being asked to produce their own credit check and references when applying for a property. Evidence from Scotland suggests that if tenants are free to choose their own provider for checks, then these fees can be very low. It can also help to speed up the lettings process as tenants, once used to the process, can approach an agent with references and a credit check in hand. Some vulnerable tenants may need support with this process.
- 8) Any ban on fees should be well publicised. There is strong evidence from Scotland that a ban on fees to tenants should be implemented with as much publicity as possible, to tenants, landlords and agents alike. Wales is in a good position to implement this via RSW.
- 9) If a ban is implemented, there will be a need for independent enforcement that does not rely on tenants complaining if they are asked to pay a fee; tenants often struggle to find somewhere to live and will prioritise gaining a tenancy over complaining about a fee, even if they are aware it is illegal. There is likely to be a key role here for RSW.

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Available at: hyperlink: <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?skip=1&lang=en>

Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government

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