PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

First Sitting

Tuesday 5 June 2018

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Saturday 9 June 2018

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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