

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Second Sitting

Thursday 7 June 2018

(Morning)

CONTENTS

Examination of witnesses.
Adjourned till this day at Two o'clock.

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

not later than

Monday 11 June 2018

© Parliamentary Copyright House of Commons 2018

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chairs: †MR PETER BONE, MR VIRENDRA SHARMA

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

Witnesses

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

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

Rhea Newman, Policy lead on letting agents, Shelter

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

Dan Wilson Craw, Director, Generation Rent

Izzy Lenga, Vice President (Welfare), NUS

Public Bill Committee

Thursday 7 June 2018

(Morning)

[MR PETER BONE *in the Chair*]

Tenant Fees Bill

Examination of Witnesses

Councillor Simon Blackburn and Alex McKeown gave evidence.

11.30 am

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

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

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

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

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

Alex McKeown: One of the biggest issues is funding—I am sure that has been said many times, and Councillor Blackburn will say the same. There is a lack of expertise

within trading standards when it comes to legislation that relates to letting agents. At the moment, not many boroughs or authorities are enforcing the legislation.

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

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

Alex McKeown: Do you want a specific on something?

Melanie Onn: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

Q60 Mr Robert Goodwill (Scarborough and Whitby) (Con): I live in North Yorkshire, so the trading standards authority is North Yorkshire County Council, but

Scarborough Borough Council is our borough, which is a long way from Northallerton and from some of the trading standards officers. Will the boroughs and districts be able to step up to the mark? Should a disproportionate amount of the £500,000 be made available to the districts and boroughs where we do not have unitary authorities, or will it be difficult for those authorities that are not already trading standards authorities to step up to the mark? They are well involved in housing—we have one of those areas where the housing has to be brought up to standard. Will that work?

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

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

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

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

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

Q62 Sarah Jones: Since?

Councillor Blackburn: Since 2009.

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

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

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

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

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

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

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

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

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

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

Councillor Blackburn: I do not have a view.

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

Alex McKeown: I think it needs to be more similar to the redress scheme for letting agents and property managers in the Consumer Rights Act, because that is a fairly simple process. You get the evidence, you issue the notice of intent, they make representations, you then issue a final notice and it goes to the tribunal. That

process has worked very well. We obviously get some random judgments coming out of the tribunals, but that is a better way of doing it.

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

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

Alex McKeown: On the default fees?

Maria Caulfield: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To return to the additional and selective licensing programmes, that is what tenants have told council officers time and time again. They say, “I know it is not supposed to be like this, but I didn’t want to make a fuss

because I didn’t want to get thrown out.” That is the issue. To return to my previous point, enforcement can do only so much because we are heavily reliant on very vulnerable people taking the bold and brave step of complaining.

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

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

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

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

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

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

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

Councillor Blackburn: I strongly support that point.

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

Rishi Sunak: I can wait until the end.

Melanie Onn: I would like to come in.

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

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

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

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

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

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

even with some of the safety aspects, the fine will be £2,000, so we might as well go for the civil penalty—but it is difficult protecting those vulnerable tenants.

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

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

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

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

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

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

The Chair: As briefly as possible, please.

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

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

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

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

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

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

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

Alex McKeown: It is a significant deterrent.

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

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

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

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

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

Alex McKeown: To a degree.

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

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

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

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

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

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

Councillor Blackburn: Yes.

Alex McKeown: Absolutely.

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

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

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

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

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

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

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

Examination of Witnesses

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

12.16 pm

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

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

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

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

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

Again, we welcome the Bill and think it will go a long way towards solving some of the problems, but there are some problems with the wording, particularly about default fees, which could fundamentally undermine the Bill's intent to create fairer conditions, and create a

loophole that landlords could exploit. We think that should be tightened up in the legislation, following consultation. We also have concerns about the cap on the deposit, which should be reduced to four weeks rather than six, because six will only help 8% of renters. If we are really going to bring down the barriers to entry for the private rented sector, that should come down.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dan Wilson Crow: We think it is quite a big barrier. We have done some work and we published a report in March on tenancy deposits. The average deposit is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am sure they made the point about ensuring they are sufficiently resourced to enforce the ban. That will be a key part of it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Katie Martin: No, indeed.

James Frith: You think it should be.

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

Q101 James Frith: But they should be refunded pronto.

Katie Martin: Absolutely, yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dan Wilson Crow: Sorry, I don’t quite understand.

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

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

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

Dan Wilson Crow: Yes, it is.

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

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

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

[*Rishi Sunak*]

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

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

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

if they do not refund it they should provide evidence for why they are doing that. We think that, at the moment, the terms are not clear enough.

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

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

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

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

1 pm

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

Adjourned till this day at Two o'clock.