PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Third Sitting

Thursday 7 June 2018

(Afternoon)

CONTENTS

Clauses 1 to 3 agreed to.
Schedule 1 agreed to.
Clause 4 agreed to.
Adjourned till Tuesday 12 June at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

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

not later than

Monday 11 June 2018

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

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

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 7 June 2018

(Afternoon)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

2 pm

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

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

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

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

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

Clause 1

Prohibitions applying to landlords

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

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

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

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

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

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

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

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

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

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

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

In the Bill, the phrase

"in connection with a tenancy"

is defined deliberately widely. Requirements in consideration of the

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

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

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

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

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

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

PropertyWire also says:

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

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

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

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

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

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

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

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

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

[Melanie Onn]

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

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

2.15 pm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Rishi Sunak]

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

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

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

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

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

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

2.30 pm

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

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

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

PROHIBITIONS APPLYING TO LETTING AGENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Melanie Onn]

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

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

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

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

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

2.45 pm

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

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

PROHIBITED AND PERMITTED PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Schedule 1

Permitted payments

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

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

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

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

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

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

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

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

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

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

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

[Sarah Jones]

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

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

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

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

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

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

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

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

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

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

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

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

3 pm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Sarah Jones]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.15 pm

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

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

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

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

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

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

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

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

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

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 1]

AYES

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

NOES

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

Question accordingly negatived.

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

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

Clause 5 stand part.

That schedule 2 be the Second schedule to the Bill.

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

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

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

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

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

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

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

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

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

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

[The Chair]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.30 pm

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

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

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

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

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

One of the Select Committee's recommendations was:

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

The Government's response stated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Government went on to state:

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

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

The Government went on to say:

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

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

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

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

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

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

Shelter said in their response to the Bill:

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

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

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

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

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

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

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

3.45 pm

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

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

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

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

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

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

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

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

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

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

Mr Smith continued by saying that the fixed fee

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

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

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

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

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

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

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

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

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

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

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

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

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

Melanie Onn: When will that guidance be provided?

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

Melanie Onn: Will the Minister give way?

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

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

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

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

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

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

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

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

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

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

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

4 pm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Richard Graham]

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

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

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 2]

AYES

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

NOES

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

Question accordingly negatived.

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

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

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

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

(a) perform an obligation, or

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

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

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

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

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

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

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

The amendment also deals with the benefit of having

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

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

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

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

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

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

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

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

The Select Committee recommended

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

in my view, that does not go far enough—

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

and it was.

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

4.15 pm

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

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

On default fees, Shelter argues that the Bill

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

Amendment 10 would provide that required tightening. Shelter stated:

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

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

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

Shelter goes on:

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

In Wales, a Shelter

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

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

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

Shelter said:

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

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

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

He went on:

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

I know that one—

"and an inventory check-out report"—

I know that one too—

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

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

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

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

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

Hyslop continued:

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

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

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

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

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

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

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

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

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

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

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

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

4.30 pm

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

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

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

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

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

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 3]

AYES

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

NOES

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

Question accordingly negatived.

Dr Paul Williams (Stockton South) (Lab): I beg to move amendment 1, in schedule 1, page 24, line 21, at end insert—

"(1A) On provision of documentary proof from the tenant, sub-paragraph (1) shall not apply to tenancies terminated at the tenant's request as a result of the tenant having—

(a) suffered a physical or mental health crisis that requires care to be provided in an alternative environment, or

(b) been subjected to domestic violence by a cohabitee

and the Secretary of State shall make regulations specifying the documentary proof required from the tenant for the purposes of this sub-paragraph."

This amendment would enable tenants in particular circumstances to end fixed-term tenancies early without having to pay the full rent due to the end of those tenancies.

[Dr Paul Williams]

It is a pleasure to serve under your chairmanship, Mr Sharma. I draw the Committee's attention to my entry in the Register of Members' Financial Interests. I am a landlord of two properties—actually, they are both in the Minister's constituency, where I used to reside. I am also a tenant.

I rise to support amendment 1, which relates to the schedule of permitted payments and in particular to termination payments that are permitted when a tenant leaves their tenancy—whether fixed or variable term—early. I understand that a landlord or agent may ask for payment of rent up until the end of the fixed term or for the agreed period of time—usually two months. They may also ask for payment of utilities and perhaps council tax, and that would be permitted.

If someone decides of their own free will to leave a tenancy agreement early, it is reasonable and legitimate that they should pay those extra costs. However, I propose two groups of people for whom paying such costs is not reasonable and legitimate and as such they should be excepted from them. Both groups involve people who have exceptional problems that require them not to be present in that house: through no fault of their own, they require care or support that would involve their leaving the property.

The first set of circumstances that someone may incur is having a serious physical or mental health crisis that is so bad that they cannot stay in the home. Let us say someone has a serious road traffic accident, perhaps involving a head injury, and requires a long period of hospitalisation followed, perhaps, by rehabilitation in an alternative environment. If they are insured against that possibility, they could continue to pay their rent, but if they are not—many vulnerable people are not—it would be catastrophic for them to have to continue paying rent while they were in a hospital or rehabilitation centre, perhaps for many months, until the end of their tenancy.

The other set of circumstances to do with health would be when someone has a mental health crisis, particularly one that requires admission to hospital or relocation to another area for support. For example, a student might have a mental health crisis at university. As part of their rehabilitation, it might be appropriate for them to leave their university town and go back to live with their parents for a few months. Under those circumstances, if they have to continue to pay the rent because they are unable to terminate the rental agreement, not only will they get into serious financial problems, but those financial problems are likely to exacerbate their mental health crisis and make recovery more difficult.

There is an excellent report by Mind, called "Brick by Brick", which looks at some of the implications of housing on mental health. I think this is a particular situation where mental health could be adversely affected. These people have entered into a contract in good faith and their situation has changed radically, meaning that they cannot continue to hold the contract. They should be protected. They cannot live in the house. Perhaps they cannot earn money. The amendment proposes that they could leave the tenancy without that termination payment. At the moment it is at the discretion of the landlord whether to show leniency in those circumstances.

There is another set of circumstances in which it would be good if that situation applied: when somebody suffers domestic violence, for example when two people are joint signatories to a tenancy agreement, often a co-habiting couple, and one is a victim of domestic violence perpetrated by the other and has to leave the property for his or her own safety. They might have to go to a refuge and be unable to meet their obligation to pay the rent. The situation has completely changed for that individual. To expect them to continue to be liable for rent when they have had to leave the premises through no fault of their own seems to me to be unreasonable.

To conclude, we have an opportunity through this amendment to protect a small number of exceptionally vulnerable people who have serious problems, whether it is a serious physical health problem, such as a head injury, a mental health problem or being a victim of domestic violence within the home from a co-habitant. They have entered into their contract in good faith. This would be a crisis not of their own making and we have the opportunity to give that small group of vulnerable people protection.

Mr Goodwill: The hon. Gentleman is making some good points. In terms of domestic violence, would a criminal conviction have to be secured to prove that, or would an allegation just have to be made?

Dr Williams: I thank the right hon. Gentleman for asking that. I am not making any proposals about the standard of proof. I have suggested in the amendment that,

"the Secretary of State shall make regulations specifying the documentary proof required from the tenant for the purposes of this sub-paragraph."

It could be that the threshold would have to be a criminal conviction. I believe that there are other circumstances in which a victim of domestic violence might get legal aid. I am not sure what the threshold of proof is for that, but it might perhaps be wise to use a similar one. The amendment gives the Secretary of State the power to set the threshold of proof. I urge the Minister to consider using this amendment to prevent individual crises turning into catastrophes.

Rishi Sunak: It is a pleasure to respond to the amendment tabled by the hon. Gentleman, my constituency neighbour. I am not sure whether the whole Committee knows that he is making a sacrifice to be with us today, since I think it is his daughter's birthday. We all wish her a happy birthday—[Hon. Members: "Hear, hear!"]—and I hope we can speed him on his way back up north to her as quickly as possible. I look forward to welcoming both her and him back to their native home in north Yorkshire, where they will be very welcome in the Richmond constituency.

4.45 pm

At the outset, the hon. Gentleman, as a practising doctor, understands this particular issue much better than me, and I appreciate his bringing it to our attention. I have enormous sympathy for those who suffer a mental or physical crisis of health and for the victims of domestic violence, especially as that can affect a person's

ability to maintain stable living conditions. Where a tenant's circumstances are such that domestic violence or a health crisis means they need to end their tenancy during the fixed term, the Government would always encourage landlords to be understanding and flexible. I can assure the hon. Gentleman that our guidance will specifically touch on and emphasise that; I hope we can look to him to help to inform that guidance.

The Bill enables landlords and tenants to come to an arrangement if the tenant needs to terminate the tenancy before the end of the fixed term. Paragraph 6 of schedule 1 permits, but does not require, landlords to ask for an agreed payment in lieu of the remaining rent they are contractually entitled to. To not permit such a payment might lead to a situation where landlords are less willing to let to tenants who they deem more likely to suffer a physical or mental health crisis, or less likely to offer them a longer tenancy if they judge it to be a greater financial risk. I am therefore nervous that an amendment could end up hurting the very people it is trying to protect.

It is also appropriate to reflect on the other side of the equation, which the amendment does not address: a landlord could equally suffer a health crisis, be the victim of abuse or have some other difficult personal situation, which might lead them to want to recover their property. Should they automatically have the right to do that? That would put people's secure tenancies at risk. At the moment they could not just do that; landlords have to follow due process and give the tenant notice of their intention to repossess a property at the end of the tenancy. They have no ability unilaterally to declare, or even give some evidence, that their health circumstances have changed and they need the property back. The protection of a shorthold tenancy, which provides certainty of duration, provides protection to tenants as well as landlords.

The issues the hon. Gentleman touches on are extremely important and sensitive. He will know that the Minister whose primary responsibility is housing and homelessness, my hon. Friend the Member for South Derbyshire (Mrs Wheeler), is passionately committed to those who have suffered domestic abuse, in particular, having the support they need. The hon. Member for Stockton South will of course have first-hand familiarity with the fact that those entering care can avail themselves of means-tested support from their local authority. In the round, I would like to think that there are lots of other avenues of support for those people. Unfortunately, the Government cannot support this particular amendment and I urge him to withdraw it, but I hope he can help to inform the guidance we will put together on this issue.

Dr Williams: I thank the Minister for his response and for his wishes; I will pass his message on to my daughter if I get there before she turns in to bed. I believe that a landlord has the power to terminate a contract with two months' notice—I believe that to be correct.

Rishi Sunak: That refers to taking back possession under section 21 at the end of a shorthold tenancy. It is two months in advance of that period, which is typically six months or more likely 12 months. It is not for use randomly in the middle of the tenancy agreement.

Dr Williams: I thank the Minister for that clarification. As things stand, even after the passage of this Bill, landlords will have more power than tenants. I am supportive of the Government's position on encouraging flexibility from landlords. Of course, as we have recounted, the good landlords will always show that flexibility and the poorer landlords will not. For that reason, I would like to put this amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 4]

AYES

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

NOES

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

Question accordingly negatived.

Richard Graham: On a point of order, Mr Sharma. May I raise a point for the Minister to comment on? We are seeing a bit of trend in this sitting of Opposition Members tabling various extremely well-meaning amendments that, in my view, would make for extremely bad law. For example, the amendment tabled by the hon. Member for Stockton South about having an exception for people with mental health difficulties could land huge numbers of tenants and landlords in all sorts of arguments going into the courts about what constitutes a reasonable amount of mental health difficulty or stress. My concern, which I would like the Minister to respond to, is that some of the amendments are extremely well meaning but not helpful in the bigger picture.

The Chair: I take your point, but it is up to Opposition Members what amendments they propose, and it is up to the Minister to respond to them. Opposition Members have that democratic right. You cannot just say that you think it is bad—I am sorry.

Sarah Jones: I beg to move amendment 11, in schedule 1, page 24, line 34, after paragraph (4), insert—

"(4A) In the event of a tenant terminating a tenancy as a result of a breach of section 1 or section 2 of this Act, any payment beyond the date of termination is a prohibited payment."

This amendment is consequential on Amendment 10.

The Chair: With this it will be convenient to discuss amendment 12, in clause 4, page 4, line 5, at end insert

", except that the tenant may choose to terminate the agreement without penalty."

This amendment enables a tenant to end a fixed-term tenancy immediately in the event of a section 1 or 2 breach by a landlord or letting agent.

Sarah Jones: I rise to speak in support of amendment 12, which would give tenants a right to leave a tenancy agreement after a breach of clauses 1 or 2, and amendment 11, which would prevent landlords from charging a tenant for termination of a tenancy if they leave under the provisions added in amendment 12. Those simple amendments would help to redress the balance in the relationship between landlords and tenants and offer real benefit to other areas of the Bill.

The Bill provides for a strong set of rights for tenants to dispute and reclaim money that was taken as a prohibited payment. Yet if there is one thing to take away from all the evidence we heard this morning and on Tuesday, it is that people on all sides want an enforcement system that works and want landlords who charge such fees to be held accountable for their actions. As the Bill stands, there is not enough funding in the enforcement mechanism for that to be done consistently by a trading standards body or enforcement authority. The Opposition want more funding for enforcement to catch out wrongdoers, but inevitably tenants may need to go to a first-tier tribunal themselves if they are charged a prohibited fee and wish to challenge it.

The Bill should therefore consider closely the drivers and the things that discourage tenants in reporting landlords and letting agents that charge prohibited fees. The amendment aims to resolve one of the real discouraging factors for anybody who has either just moved into a new house on a fixed-term contract or anybody who has agreed a long fixed-term contract with their landlord.

We know that the relationship between a tenant and landlord is important to having a happy and successful tenancy. Indeed, for those who live with their landlord it is a relationship with someone they see on an everyday basis and with whom they share facilities. Taking a landlord to a tribunal could drive a significant wedge into that relationship, and it would be natural for tenants to feel that they are no longer secure in their rental agreement through no fault of their own, after a landlord has tried to charge them a prohibited fee. Yet, as the Bill stands, they may need to remain in the agreement until the end of the tenancy. So the landlord has tried to charge a prohibited fee, but the tenant has to remain in the agreement until the end of the tenancy.

That would be a major barrier to bringing up the prohibited charge. People might think that challenging a prohibited fee is not worth their feeling uncomfortable in their rental agreement for months, possibly years, as opposed to just accepting the fee, so as not to sour the relationship with the landlord.

This amendment would get rid of that barrier by giving the tenant the ability to leave if they feel uncomfortable staying in an agreement with a landlord who has already charged a prohibited payment. It is a method both of improving the rights of tenants if they are charged a prohibited fee and of removing a barrier to reporting the charging of a prohibited fee by a landlord or letting agent.

It would also act as an extra disincentive to a landlord or letting agency charging a prohibited fee. If they could lose a tenant as a result of charging a fee, that could lead to the loss of rental income for the period between the tenant moving out and finding a new tenant, given that amendment 11 would prevent the charging of fees for the early termination of tenancy under this new provision. This set of simple amendments would improve the effectiveness of the Bill and I hope that Members from all parties will support it.

Rishi Sunak: I hope that we can do this very quickly. The Government believe that both amendments 11 and 12 are problematic, and this discussion comes down to just a simple difference of opinion on principle. Removing the obligation for a tenant to pay the remainder of their rent if they terminate their tenancy following a breach of the ban could lead, in our view, to landlords being disproportionately penalised for perhaps an inadvertent breach that they immediately take steps to rectify.

Clause 4 already ensures that any term that breaches the ban on fees is not binding on the tenant and the Bill also provides for tenants to recover any prohibited payments, and for enforcement authorities to take quite significant action in such cases, potentially leading to an unlimited fine.

For those reasons, and it is a simple difference of opinion on what is proportionate, I ask the hon. Lady to withdraw the amendment.

Sarah Jones: I heard the Minister; there is clearly a difference of views. I am happy to withdraw the amendment, but I obviously reserve the right to return to this matter on Report.

Amendment, by leave, withdrawn.

Question proposed, That the schedule be the First schedule to the Bill.

Sarah Jones: There are parts of schedule 1 that we have concerns about; we have already touched on those concerns briefly. In particular, we touched on paragraph 8, which deals with

"Payment in respect of utilities etc".

We are really concerned that these measures were not part of the consultation and of the initial Bill, but have been added subsequently, and we are also concerned that people have not been given enough time to consider them, or make a case against them.

It would be the case—would it not?—that landlords could charge, say, £500 a month, including bills, when the bills are only £30 a month and the market rent is £400 a month. This is a loophole that is new and that has not been consulted on, and it would leave people open to abuse.

Agencies could make back what they are losing in fees by charging higher rates on bills than the bills come to, and this would be particularly an issue for students, where they do not use the whole house and it is therefore harder to work out what the bills should come to.

We have not tabled an amendment to that effect, but will the Minister look again and ensure that there is some kind of clause that enables tenants not to be ripped off by being charged more for their utilities than they should be?

Question put and agreed to.

Schedule 1 accordingly agreed to.

Clause 4

EFFECT OF A BREACH OF SECTION 1 OR 2

5 pm

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

Rishi Sunak: We want to ensure that the effect of including a banning requirement as a term of a tenancy agreement is clear, and the clause provides that a term of any agreement that contravenes the proposed legislation is not binding on the tenant. The clause also establishes that the rest of the agreement will continue to apply where any part is found to be non-binding, to ensure that the tenancy can continue and that landlords and tenants remain protected by the terms of the contract. Finally, the clause provides that if the tenant or someone acting on their behalf has been required to make a prohibited loan, that money should be repaid on demand. Members of the Select Committee will be pleased that that provision has been included, as it reflects one of the Committee's recommendations during pre-legislative scrutiny. The clause establishes vital protections for tenants.

Melanie Onn: The spirit of the proposed legislation is to protect tenants and remove burdens from them wherever possible, in order to rebalance power, which has for so long been in the hands of letting agents and landlords, in favour of tenants. That is as true for costs as it is for other things. We tabled amendments 11 and 12 because we would like to see more rights. Although we opted not to press them—we have not been very successful in votes this afternoon—we welcome clause 4, as it offers tenants greater protection from retaliatory evictions. Even if it is not as bold or strong as we might like, it is nevertheless a step forward legislatively.

As we know, retaliatory evictions are a real problem. They can cause a great deal of distress and concern for tenants, and they are one of the major reasons why people do not speak up against their landlords or seek to enforce their rights as tenants. The power imbalance in the relationship between the landlord and the tenant, which I have referred to throughout our deliberations, represents one of the worst abuses of the sanctity of people's homes. Despite our amendments having fallen, any additional contract security for tenants is a good thing, although we urge the Government to consider strengthening it.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Kelly Tolhurst.)*

5.4 pm

Adjourned till Tuesday 12 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

TFB42 Shelter

TFB43 Chartered Trading Standards Institute

TFB44 Leaders Romans Group Limited

TFB45 Dr Andrew Summers

TFB46 iQ Student Accommodation

TFB47 Good2Rent