PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

TENANT FEES BILL

Fourth Sitting

Tuesday 12 June 2018

(Morning)

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Saturday 16 June 2018

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mr Virendra Sharma

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

Mike Everett, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 June 2018

(Morning)

[Mr Virendra Sharma *in the Chair*]

Tenant Fees Bill

9.25 am

The Chair: Before we begin, will everyone ensure that all electronic devices are turned off or switched to silent mode? Tea and coffee are not allowed during sittings. We now resume line-by-line consideration of the Bill. We start with clause 5, which we debated as part of an earlier group of provisions. I therefore cannot allow a separate stand part debate, but will put the question on the clause forthwith.

Clause 5

Treatment of holding deposit

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

The Committee divided: Ayes 9, Noes 7.

Division No. 5]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 5 ordered to stand part of the Bill.

The Chair: We have also debated schedule 2 as part of an earlier group and therefore I cannot allow a separate debate on it.

Schedule 2 agreed to.

The Chair: For the sake of clarity, I point out that amendments 22 to 44 were all consequential on the proposal to remove schedule 2 from the Bill. As schedule 2 has been agreed to, those amendments automatically fall and cannot be moved.

Clause 6

Enforcement by local weights and measures authorities

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

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): It is a pleasure to serve under your chairmanship, Mr Sharma. I look forward to our making speedy progress today.

The Bill proposes a number of enforcement measures that offer a strong deterrent to irresponsible agents and landlords and, in doing so, protects tenants from unfair letting fees. Clause 6 places a duty on local weights and measures authorities—that is, trading standards authorities—to enforce the ban on letting fees and requirements relating to holding deposits. Trading standards have an important role in enforcing existing legislation on letting agents—such as the requirement on agents to display their fees transparently. With their existing local knowledge of the industry, trading standards are the clear choice to enforce the ban on letting fees. Indeed, 69% of respondents to the Government consultation agreed that trading standards should enforce the provisions of the Bill. We have also spoken to trading standards officers, who agree that enforcement of the Bill aligns with their responsibilities to enforce other legislation relating to fair trading and consumer protection.

Trading standards authorities are responsible for enforcement in their own local areas. Where a breach occurs in the area of more than one trading standards authority, a breach is considered to have occurred in each of the relevant local areas. Trading standards must have regard to any guidance issued by the Secretary of State or lead enforcement authority. The investigatory powers available to a local trading standards authority for the purpose of enforcing the Bill are set out in schedule 5 to the Consumer Rights Act 2015.

Daniel Zeichner (Cambridge) (Lab): Will the Minister explain to the Committee what assessment he has made of the capacity of trading standards departments to implement the measures that he is discussing, and what additional resources he intends to give them to make that possible?

Rishi Sunak: I am very happy to answer the hon. Gentleman's question briefly now, as I am sure that we will come to it when we consider the various amendments and clauses that deal particularly with capacity and resources. In a nutshell, we believe that the Bill and the enforcement measures in it will be self-financing with the fees that can be charged by local enforcement authorities and trading standards authorities; on top of that, they will receive seed funding in the first year of up to £500,000.

As I was saying, the investigatory powers are set out in schedule 5 to the 2015 Act.

Melanie Onn (Great Grimsby) (Lab): The Minister just mentioned charges. Is he referring to the fines?

Rishi Sunak: Yes; I meant the fines that will be charged of up to £30,000 for a second offence and £5,000 in the first instance.

To return to the investigatory powers, they are laid out and provide the ability for trading standards authorities to investigate, inspect and enforce the provisions; they enable them to carry out their enforcement activity.

I hope that the clause will stand part of the Bill.

Melanie Onn: It is a pleasure to serve under your chairmanship, Mr Sharma.

As we have heard and read in the evidence from the likes of the Local Government Association, the Chartered Trading Standards Institute and the Chartered Institute of Housing, there are significant concerns about the enforcement powers being conferred on the local weights and measures authorities around the country. For the avoidance of doubt, we are talking in this clause about local trading standards teams. As I have mentioned before, they have a wide and varied remit. They enforce laws on behalf of consumers on matters such as age-restricted products; agriculture; animal health and welfare; fair trading, which includes pricing, descriptions of goods, digital content and services, and terms and conditions; food standards and safety; intellectual property, including counterfeiting; product safety; and, of course, weights and measures.

Trading standards cover more than 250 statutory duties, including providing businesses with advice. The CTSI says that the service is already overstretched and underfunded, with just £1.99 per head being spent. The situation has been recognised by the National Audit Office, which has said that there is a direct threat to the consumer protection system's viability as a whole, yet here the Government seek to add another layer of responsibilities, technicalities and duties to those of the service without giving due consideration to the implications of the request, and simply assuming that their assessment that the scheme will be fiscally neutral after two years will come to pass. That seems a rather carte blanch approach to me—a "close your eyes, cross your fingers and hope for the best" kind of plan. It is not robust and it is not a process modelled on the evidence of the experts who operate in the roles, day in and day out. There is time for the Minister to correct this.

Our constituents will mostly know trading standards for tackling rogue traders. My constituency being a port town, we have a very active trading standards department, which regularly discovers dodgy goods that people try to smuggle in, including recently some dangerous counterfeit cigarettes, filled with anything up to and including asbestos, for sale cheap on the black market, with a street value of around £8,500. Trading standards are often the first in a position of authority to come across goods linked to organised crime and criminal gangs, and they provide essential eyes and ears within local communities.

Is the Minister confident that the addition of these tenant fees enforcement powers to trading standards' responsibilities, with only pin money for start-up and roll-out, will not impact on its already essential role protecting consumers? How can he be sure, and what steps will he take to ensure that that is the case going forward? We heard of cuts to trading standards departments of 40% to 50% at a local level.

Across the country, the Chartered Trading Standards Institute tells us that there has been a cut of more than 50% of skilled officers. Does the Minister seriously think that trading standards will be able to effectively implement these new powers? If so, how? What priorities should trading standards officers have? If faced with tracking down an influx of poisonous fake spirits, surveilling for evidence to prosecute the sale of knives to under-18s or taking action against a landlord requiring a £150 prohibited fee from a tenant, which would he suggest the officers pursue as urgent?

If the Minister concedes that the loss of money is likely to be less urgent in its nature than the matter of illegal spirits or the selling of knives to teenagers, at what point does he anticipate that an officer ought to get around to looking into the issue of the prohibited fee? Given the restrictions on time and staffing levels, is not a TSO, rather than acting in an individual case, far more likely to deal with a single landlord facing multiple allegations of charging prohibited fees? It will be dealing with the big fish, rather than the small fry, that will be a reasonable and proportionate use of staff time. Has the Minister thought about the practicalities of enforcement? Has he compared it with how enforcement of housing matters is currently dealt with, or even tried to plug some of those gaps?

In order for the London Borough of Newham's landlord licensing scheme to be effective, it had to bring together several different agencies, including the police, the UK Border Agency and specialist housing officers, and had to invest in systems to accurately identify those properties that were incorrectly licensed. While it has drawn in significant revenue for the Treasury and the council, it took a laser-focused determination from the political leadership in Newham to get their processes up and running to tackle landlords operating outside the regulations. Can the Minister guarantee that the same will happen to trading standards departments around the country, when it could be said to be somewhat of a Cinderella service? How will he monitor that, and what will his measure of success be?

The Local Government Association said in its evidence that, given the reduction in capacity of trading standards across many authorities, there should be flexibility for local areas to determine whether the ban is enforced by local trading standards or private sector housing teams. Does the Minister agree? The LGA went on to say that the Government had ignored the findings of the working group, which concluded that there should be enforcement of mandatory client money protection by local authorities, rather than trading standards. Is the Minister content to ignore the working group's findings?

Has the Minister listened to the CTSI when it says that a self-financing enforcement model would potentially create a disincentive to provide regulatory compliance? That certainly seems to be the case with the current system around the display of fees. The fine acts as neither a disincentive for the businesses nor an incentive for the enforcement teams. The LGA pointed out that the Government's theory that funds generated by fines will increase when non-compliance increases does not add up if companies close themselves down, only to re-emerge under a different name or structure in order to avoid a fine.

The CTSI also says that the costs of providing advice and guidance to a company that is subsequently compliant are not factored into the Government's calculations. Of course, there was the issue raised by CTSI in our evidence session regarding the differences in the burden of proof and the framework of enforcement. The enforcers, in this instance the trading standards officers, will be required to prove offences beyond all reasonable doubt. What does this mean in practice for people—for families—who are already likely to be afraid about not securing the property that they want to live in and perhaps are under pressure to secure it because they have given notice on a prior residence, or are being thrown out of a

[Melanie Onn]

property that they already reside in? Will this substantial basis of evidence encourage people to come forward, to make a complaint and seek redress? Let us remember that they are already in a significantly less advantageous position than the landlord or the lettings agent. They are not the experts in renting and even less so are they experts in the most recent legislative changes.

It goes back to the point I made earlier: the reality is that enforcement officers are far more likely to try to build up a stronger case with multiple complainants than deal with breaches on a single case-by-case basis. Does the Minister consider that this is serving tenants' best interests? The remedy would not be sufficient in financial terms for the local authority, nor will the legislation be seen as fit for purpose by those it is intended to protect. Is he really content to preside over this? The CTSI says that most consumer rights breaches and the Estate Agents Act 1979 are obtainable on a balance of probability test. Why does he not consider amending the Bill to reflect this modest yet effective change? If it is the case that the higher the evidential requirement, the more work is involved and the more risk there is for the local authority, and the less likely it is that the Act will be easily enforceable, should he not just do the right thing and make the amendment now? I say that because one of the biggest frustrations of my constituents is around laws that are not enforced. Whether it is parking restrictions, dog mess or fly-tipping, they expect the rules to be fully and fairly applied. Where they are not, the blame comes back on an unfairly overstretched local authority, trying to do its best against the financial odds—financial odds that I know the Minister has recognised in previous comments that he has made.

I do hope that the Minister will take my comments on board. These are the views of royally chartered organisations, which work within the current legislative framework and can anticipate the difficulties of seeing this legislation in operation. It is only through proper enforcement with enforceable regulations that we can hope to see this law do everything the Minister has set out for it to do; otherwise, I am confident that it will be left wanting.

Rishi Sunak: There are in general three broad questions or buckets of comments. First, whether trading standards are the right institution to take on this task; secondly, prioritisation of resources for the things that trading standards have to do; and thirdly, a specific question about the burden of proof required for the penalties that are in place in this legislation. I will try to answer each of those three questions directly.

First, regarding whether trading standards are indeed the right body, which the hon. Lady questioned, there is unanimous agreement among leading industry bodies that trading standards are the logical choice. Indeed, the Chartered Trading Standards Institute itself, which the hon. Lady referred to, said that trading standards

"are well placed to enforce the ban",

thanks to their local knowledge of landlords and letting agents.

Melanie Onn: Would the Minister accept that in the evidence we heard there was a reference to trading standards working closely with housing officers in particular, to better inform their local knowledge in an area that they may not have information relating to, because the trading standards authority has said that in terms of tenants they currently receive a small number of complaints in this area.

Rishi Sunak: I am generous in giving way, but in this occasion I may have been too generous, because I was just about to make that point. It is exactly because we recognise that in different areas there are different situations that we do not want to mandate a top-down approach. We have encouraged close co-operation. I do not want to pre-empt our debate on the next clause, which talks specifically about the powers for district authorities to enforce the provisions in the Bill. Also, on the particular question raised about client money protection and who ought to be the body enforcing that, 74% of respondents to the consultation said that that enforcement should primarily be by trading standards. It is important to note that trading standards can, under this legislation, discharge their responsibilities to the local housing authority, should they feel that is most appropriate for their area. I hope that addresses concerns on that point.

9.45 am

I do not want to pre-empt a future conversation we will no doubt have on the appropriate level of resources. However, to the specific question of how a trading standards operation prioritises between various tasks, it is not for me to direct them to a different area. There will be different needs for each area and they will make those decisions themselves.

Committee Members should note that, as a result of this and previous housing legislation, notably the Housing and Planning Act 2016, local trading standards authorities are able to keep the money they make from civil penalties related to housing to fund greater enforcement of these housing measures. Those powers have been in place only since April 2017, so it is too early to say exactly how they are working, but I can say that the early news is encouraging. For example, in Torbay, trading standards have used the revenue that they have raised from civil penalties to fund an extra enforcement officer specifically for housing. That provides good evidence that the model we propose in this legislation will stand the test of time and prove to be fruitful.

Lastly, I turn to the points raised by the hon. Lady about the burden of proof and whether the right threshold for enforcement has been set in the Bill. I believe it has, for a couple of simple reasons. First, it is worth bearing in mind that we are talking about judicial matters, so we should properly consider these questions. The Bill includes a two-step process to a criminal conviction, if a landlord or letting agent breaks the terms of the legislation twice in a five-year period. The second of those contraventions will trigger a criminal conviction, a potentially unlimited fine and a banning order for that institution. That is obviously a very serious penalty, and for that reason it is right that the burden of proof is analogous to that of a criminal conviction, which is "beyond all reasonable doubt". That is why the legislation is designed in the way that it is. It would not be appropriate or legally fair to have a criminal conviction penalty without a criminal conviction burden of proof.

It is also worth noting that that was laid out in the draft Bill and there were, to our knowledge, no adverse comments either from participants or the Select Committee.

It is also important to note that it is usual to require a criminal standard of proof for financial penalties that are issued as an alternative to prosecution. For example, it is a requirement for any regulations made under the Regulatory Enforcement and Sanctions Act 2008, to confer powers on regulators, to impose financial penalties for an offence, and is also the position for several other pieces of legislation, including the Housing and Planning Act 2016, the Housing Act 2004 and the Political Parties and Elections Act 2009.

Melanie Onn: I thank the Minister for his response. The suggestion that there has been unanimous agreement across professional bodies on TSOs does not stand up to the evidence we heard. In all the submissions we had in writing, concerns were raised about the level of training available for trading standards officers, the level of experience they have in this area and their expertise, and they may well be better assisted by other organisations.

Rishi Sunak: I would be grateful to know if the hon. Lady is aware of an industry body that does not believe that trading standards should be the enforcement agency for this legislation. If she could name that industry body, who else does it propose should be the enforcement body?

Melanie Onn: I am commenting based on the evidence we heard last week. We heard from the CTSI and the LGA, which both raised those concerns. It is not about not having trading standards involved, because they clearly have an area of expertise, but there were concerns about their level of expertise, experience, training and resources.

The issue of resources was repeatedly mentioned in the evidence we received in writing and verbally. I appreciate the points the Minister made about resources and about looking to Torbay as the standard bearer for all enforcement and revenue-raising operations. I presume that we will look to Torbay in the future as the arbiter of whether this legislation is working.

On the burden of proof, the Minister says that nobody raised issues about that in the Select Committee's pre-legislative scrutiny. However, it has come to light more recently. The high level of the burden of proof is something that we have heard about and that industry bodies have raised as a concern, given what they are used to dealing with as trading standards officers. It would be an error for the Minister to dismiss those comments lightly.

Daniel Zeichner: My hon. Friend is giving a very good speech. I think we were all in the evidence session the other day when we heard from the CTSI, which made it very clear why it is so important that we get this right. My experience in this place in the last three years is that we have seen successive pieces of legislation that we are pretty sure are not going to get enforced. Does my hon. Friend agree that if they do not get enforced, there is no point in having them, and that undermines public trust in what we are doing? It is really important that this legislation is enforceable.

Melanie Onn: I thank my hon. Friend for making that point, which goes to the heart of this. There is no point in doing this if the legislation is not enforced or does not do what the Minister intends—namely, rebalance the relationship of power between tenants and landlords. Enforcement is key, because if rogue landlords do not fear that the fine or the potential banning order will reach them, why would they bother to worry about whether they are operating within the legislation?

Helen Hayes (Dulwich and West Norwood) (Lab): On the Select Committee, we went to see the licensing scheme in Newham in action. One important feature of that scheme is that the council undertakes proactive enforcement work against properties it suspects are being let by landlords who have not yet registered. It is an important part of the resourcing requirement that councils need to make the scheme as effective as possible, but that has not yet been taken into consideration. Will my hon. Friend comment on that?

Melanie Onn: My hon. Friend makes an incredibly important point about being proactive and about the intention of trading standards officers or others to undertake that initial work, rather than just relying on the enforcement element of the legislation. I hope the Minister has heard those points, takes them seriously and receives them in the manner in which they are intended. We will not be pressing this matter to a vote, but we reserve the right to return to it on Report.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

ENFORCEMENT BY DISTRICT COUNCILS

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

Rishi Sunak: The clause places a duty on local trading standards authorities to enforce the ban on letting fees and the requirements relating to holding deposits. It gives district councils the power to enforce the provisions if they choose to do so.

Local housing authorities enforce other measures in private rented sector legislation, such as the provisions related to banning orders for rogue landlords and agents. We very much encourage close working between district and county councils in non-unitary authorities to ensure effective enforcement. That is why we are giving district councils that are not trading standards authorities the power to enforce this legislation. That will ensure that local housing authorities are able to take enforcement action should they become aware, while undertaking their other duties, of a landlord or agent breaching the provisions of the Bill.

District councils must have regard to any guidance issued by the Secretary of State or the lead enforcement authority. The investigatory powers available to a district council for the purposes of enforcing the Tenant Fees Bill are set out in schedule 5 to the Consumer Rights Act 2015, which the clause amends.

Melanie Onn: The Government included the clause following the Bill's pre-legislative scrutiny. We understand that the devolution of powers between different tiers of local government is in the interest of promoting

[Melanie Onn]

collaborative relationships with a range of stakeholders, but will the Minister explain how a district council will enable or access these powers?

The Bill provides district councils with the same powers as a weights and measures authority. The Government's response to the Housing, Communities and Local Government Committee's report on the Bill says that a district council may choose to be an enforcement authority, but the Committee's recommendation refers to a weights and measures authority being able to delegate its powers to other tiers of local government where appropriate. Will the Minister explain what process he envisions district authorities having to go through order to be able to undertake enforcement roles in this context?

If weights and measures responsibilities are held at a county council level, and if additional funding for staffing or training has been directed there, but a district council wishes to undertake its own enforcement measures, will there be a requirement for that funding to be cascaded down? Or do the Government expect that funding bids will be made at the outset by those authorities that wish to be enforcers, and that there may then be overlap in the bidding and awarding of such funds?

The Committee's report contained evidence that any system based purely on hypothecated funds would provide a challenging environment for councils, as it would not provide for up-front or proactive work. It is in the interests of local authorities, tenants, landlords and letting agents that fines are a last resort; it is the early work that will prove the most important.

Rishi Sunak: With regard to district councils enforcing the Bill, there is no special process that they need to go through; they have the same rights and powers as trading standards authorities, so they do not need any special permissions. They can get on and do that should they see fit.

With regard to the hon. Lady's last point, just like trading standards authorities, an authority that enforces against the contravention of the Bill will of course keep any fines that are levied, which will help to fund that enforcement.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Financial penalties

Melanie Onn: I beg to move amendment 2, in clause 8, page 5, line 13, leave out "£5,000" and insert "£30,000".

The Chair: With this it will be convenient to discuss amendment 3, in clause 8, page 5, line 16, leave out from "exceed" to the end of line 17 and insert "£30,000".

Melanie Onn: We welcome the spirit of clause 8. We must seek to hit landlords and letting agents who act badly where it hurts if we are to change realities for tenants. However, the need to strengthen the financial penalties in the clause is twofold. First, we must always ensure that the penalty fits the seriousness of the breach and acts as a deterrent. Secondly, we need to recognise that, if the Government's plan is for the regulation to become self-funding, fines need to be able to fund the enforcement of the legislation.

To make my point on this, I draw the Committee's attention to the evidence given by the experts last week. Isobel Thomson from the National Approved Letting Scheme said:

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

What are we going to be faced with with the fee ban? Enforcement really needs to come to the fore. The Government have mentioned that there will be a lead enforcement authority. We need to know who that is, how they are going to gear up and how they are going to be resourced. That is what I would like to see."—[*Official Report, Tenant Fees Public Bill Committee,* 5 June 2018; c. 4, Q1.]

The NALS evidence is absolutely clear: without the resources for enforcement, there are concerns that the letting fees ban could have very little impact. That surely cannot be what the Government want to see.

There are others who fear that the lack of resources could prove a real impediment to the legislation functioning as intended. When I asked the LGA's Councillor Blackburn what he felt could be done to strengthen the Bill so that it achieves its aims, he was quite clear. He detailed how the financing of the Bill was an issue:

"At the moment, £500,000 is promised to assist in the up-front costs of setting these schemes up. The average local authority trading standards budget is £671,000 a year, so that £500,000 spread across 340 local authorities is unlikely to fill the gap that exists. That is extremely important."

There is also a capacity-building issue within the trading standards profession. As it is, 64% of trading standards authorities are reporting that they have difficulties in recruiting and retaining people, and that issue needs to be looked at nationally. The LGA stands ready to assist in that process and will work with the Chartered Trading Standards Institute, but there is a demographic time bomb in there as well, about the average age of trading standards officers…because of the overall financial pressures on local authorities, it is not seen as a long-term, safe career, if I can put it that way."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34-35, Q58.]

10 am

Councillor Blackburn's evidence should encourage the Government to look again at the funding structures, as well as the broader issue of how this will be enforced. Chronic local government underfunding is all part of the problem. He also clearly pointed to the issue of a brain drain in the sector, with a 56% drop in the number of skilled trading standards enforcement officers since 2009.

Alex McKeown from the CTSI said similarly clearly at the evidence session that that was the case:

"One of the biggest issues is funding—I am sure that has been said many times, and Councillor Blackburn will say the same. There is a lack of expertise within trading standards when it comes to legislation that relates to letting agents. At the moment, not many boroughs or authorities are enforcing the legislation."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 33-34, Q56.]

She openly said she was primarily operating in the London boroughs, which is where we expect much of the enforcement will be required. If that is the situation in the biggest hotbed of lettings problems, what will it be like in future?

Ms McKeown went on to say there was a key problem in clause 8:

"In this Bill, you are asking for a criminal burden of proof for a civil financial penalty, and that is going to scare people off; that is going to scare trading standards off. They are not going to want to prove beyond all reasonable doubt that a tenant has been charged a fee. Then, you are also relying on the complaints to trading standards. We do not get that level of complaints to trading standards in relation to tenancies. Then you have to tell the tenant, 'You have to give a witness statement on the fact that you've been charged a fee', and they are going to say, 'But we might get thrown out of our house. We don't want to give you a witness statement.' To have it beyond all reasonable doubt, we are going to be up against it, and it will not be self-funding."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34, Q57.]

That last point, about whether this legislation can ever be self-funding, crops up time and again. No part of the sector or none of the witnesses, whose expertise is most relevant to the question, is not concerned by the proposed funding model, particularly given the context of ongoing cuts and drops in skilled enforcement workers.

Ms McKeown raised another point, on clause 8(3), which says:

"If the enforcement authority is satisfied beyond reasonable doubt that the person has committed an offence under section 12, the financial penalty—

(a) may exceed £5,000, but

(b) must not exceed £30,000."

The phrase "beyond reasonable doubt" has connotations of criminal responsibility, and experts tell us—as they did at last week's evidence sessions—that it can put off both tenants and enforcement officers at different stages of the process.

I fear that this matter has been under-examined by the Government, and the potential consequences underestimated. Will the Minister please reassure me of his logic on this point? The concept of "beyond reasonable doubt" is a real issue, and one that has been expressed by the industry. It would be right for the Minister to take the matter rather more seriously than he has done to this point.

Rishi Sunak: After careful consideration of all the feedback received during the consultation and engagement process, the Government are of the view that the level of financial penalties provided in the Bill is the right one. Furthermore, the approach to financial penalties aligns with that in other housing legislation. Most would agree that a £30,000 fine for an initial breach of the ban, as the amendment suggests, is excessive and could cause significant devastation.

Melanie Onn: Can the Minister explain the circumstances in which he anticipates a £30,000 fine will be imposed against an initial offence?

Rishi Sunak: My understanding of the amendment tabled by the hon. Lady is that that is what it proposes—an initial breach of the ban would be £30,000.

Melanie Onn: But what about in the Minister's version?

Rishi Sunak: In the Government's version, it would be £5,000, and that is what we are discussing. My understanding of the hon. Lady's amendment is that the financial penalty for an initial breach would be £30,000 rather than £5,000. We propose to leave it at £5,000. I am happy to take an intervention if she wants to clarify.

Melanie Onn *indicated dissent.*

Rishi Sunak: No—okay.

The Government's aim has been to provide a sufficient deterrent for an initial breach of the ban that still allows landlords and letting agents who may inadvertently commit a breach not to be disproportionately penalised. We therefore resist amendments 2 and 3.

As hon. Members have noted, breaches of legislation related to letting agents, such as the requirements to belong to a redress scheme and to be transparent about letting fees, are subject to a fine of up to £5,000. However, we have listened to concerns that a £5,000 fine may not be enough of a deterrent for some agents and landlords, so clause 8 proposes a financial penalty of up to £30,000 for a further breach of the ban.

Importantly, that upper limit is consistent with the higher rate of civil penalties introduced in April 2017 under the Housing and Planning Act 2016. Given that the repeated charging of fees is a banning order offence, we firmly believe that the level of penalty needs to be consistent with the legislation under that Act, which brought banning orders into force.

It is too early to argue that the higher level of financial penalty at £30,000 has not been successful in offering a more significant deterrent to non-compliance. In the evidence that Alex McKeown of the Chartered Trading Standards Institute gave last week, she said that she believed that £30,000 would act as a "significant deterrent".

Richard Graham (Gloucester) (Con): There is a slight note in the debate of some who see landlords and agents as villains and enemies to be bashed at every conceivable opportunity. For many of us, however, the issue is about how we construct a partnership that gives tenants more rights and that provides a better sense of fairness in the relationship, but which ensures that there is a strong and functioning market and that we do not go back to the 1970s when the Opposition created a situation in which there was very little provision of private sector housing, of which we know that we will need a great deal more.

Rishi Sunak: I thank my hon. Friend for another thoughtful and measured comment. He is absolutely right: we are not in the business of demonising particular groups of people; we are interested in having a fair and functioning market. The balance that that requires has been a focus throughout all the deliberations on the Bill.

Melanie Onn: Would the Minister accept that the principle of the fines is not to demonise anybody, but to act as a successful deterrent?

Rishi Sunak: Indeed, I was quoting the evidence from the Chartered Trading Standards Institute that said that £30,000 was a significant deterrent.

Melanie Onn: If the CTSI says that £30,000 is a suitable deterrent, does the Minister think that that should be the minimum?

Rishi Sunak: Again, I fear that I have been too generous in giving way. I was about to make the point that it should not be forgotten that an agent or landlord convicted of an offence under the ban is liable for an unlimited fine, if that is the route of enforcement that the enforcement agency wants to go down; £30,000 is the alternative to a criminal prosecution where fines can be unlimited and people can be subject to banning orders, which I am sure all hon. Members agree are extremely serious and significant deterrents. The guidance that we will produce will support local authorities in determining the level of the penalty in any given case. I urge the hon. Lady to withdraw her amendment.

Melanie Onn: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Rishi Sunak: We have aimed to be ambitious and tough in our enforcement approach to provide a sufficient deterrent to the continued charging of fees. Clause 8 sets out the fact that a breach of the fees ban will be a civil offence with a financial penalty of up to £5,000. However, if a further breach is committed within five years, that will amount to a criminal offence. In such a case, local authorities will have discretion on whether to prosecute or impose a financial penalty. Clause 8 provides that enforcement authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution, as we have discussed. The level of fine reflects the feedback that we received during the consultation period. I will not rehash the arguments for why we think that is an appropriate level.

A financial penalty cannot be imposed if the landlord or agent has failed to return the holding deposit because they have received incorrect information about the tenant's right to rent property in the UK. That reflects a recommendation from the Select Committee on this particular point. Before imposing a financial penalty, enforcement authorities must be satisfied beyond reasonable doubt that the landlord or agent has breached the ban on charging tenant fees. Only one financial penalty may be imposed per breach and an enforcement authority can impose a penalty for a breach outside its area. This clause should be read with schedule 3, which sets out the procedure to be followed by an enforcement authority after it imposes a financial penalty. Financial penalties, I believe, will act as a serious deterrent to non-compliance.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Schedule 3

FINANCIAL PENALTIES ETC

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

Rishi Sunak: It is important that there is consistency in the way in which local authorities impose financial penalties and that the process is fair. This schedule sets out the procedure to be followed.

Enforcement authorities must give the landlord or agent notice of their intention to service a financial penalty within six months of the breach occurring. This notice must contain relevant information about the reasons for imposing the penalty, the amount and the right to make representations. The landlord or agent then has 28 days to respond. If the enforcement authority decides to impose a penalty, it must provide a final notice setting out the amount of penalty, how much to pay, the rights of appeal and the consequences of failing to comply. An enforcement authority may at any time withdraw or amend a notice of intent or final notice. The landlord or agent must be notified of this in writing.

Landlords and agents have a right to appeal to the first-tier tribunal against a final notice. This appeal must be brought within 28 days of the final notice and is to be a re-hearing of the enforcement authority's decision, but the tribunal may admit evidence that was not heard before the enforcement authority, if relevant. The final notice is suspended until the appeal is determined or withdrawn. The first-tier tribunal may confirm, vary or quash the final notice. It may impose a penalty up to the same maximum penalty as the enforcement authority could have imposed. If the landlord or agent fails to pay all or part of this financial penalty, the authority can seek repayment on the order of the county court. Similarly, if the authority requires the landlord or agent to repay the tenant any prohibited fees and they fail to do so, this can be recovered under an order of the county court.

I am aware that concerns have been raised about the resources of local authorities. I trust that the Committee welcomes the schedule, as it enables an enforcement authority to retain the proceeds of any financial penalty, as we have discussed, for future housing enforcement.

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma, for our second day in Committee. As the Minister has set out, schedule 3 provides some clarity over financial penalties, including notices of intent, recovery of penalties and proceeds of those penalties. The Opposition support the schedule as drafted. We are seeking clarity, however, from the Minister on certain aspects, before we give our support for its inclusion in the Bill. I would like to focus on paragraphs 6 and 7, which deal with the specifics of appeals and the recovery of penalties.

As with any piece of legislation such as this, the right to appeal is extremely important. It is correct that this is reflected in the Bill. It is also vital that the conditions of any appeal are presented with the utmost clarity to prevent abuse or a miscarriage of justice. Pre-legislative scrutiny by the Select Committee rightly raised concerns about how the Bill defined grounds for appeal, arguing that a first-tier tribunal should decide appeals as complete rehearings, which should take into account all matters, whether known to the local authority at the time of its decision or not. We are glad that the Government took that into account and amended the Bill accordingly. However, a number of questions about appeals remain, and I hope that the Minister can offer some clarity in his response.

10.15 am

Paragraph 6(5) of schedule 3 confirms the following:

"On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice."

That is an important requirement where the first-tier tribunal finds in favour of the landlord or agent. I think it is clear to us all that where the first-tier tribunal finds fully in favour of the landlord or agent—that is, it finds that the decision to impose the penalty was incorrect—it is quite a simple process; the final notice will be quashed.

However, where the tribunal finds in favour of a landlord or agent who has challenged the amount of the penalty rather than the decision itself, things become more complicated. I hope that the Minister can offer us some detail on the type of situations in which there may be a challenge to the amount of the penalty and in which the tribunal might be expected to find in favour and therefore vary that amount. Before it was amended, the Bill mentioned the amount of the penalty being "unreasonable"—a very vague term. That term has been removed from the Bill, but the current version still offers little clarity on that point. I hope that the Minister can give us assurances that more clarity will be provided on what constitutes genuine grounds for appeal on the amount of penalty. It is not hard to imagine a situation in which lack of clarity opens the door to an unprecedented number of appeals on the grounds that the cost is unreasonable.

What is more, there is confusion about the level of financial penalty that authorities will be able to charge. That was discussed in the Select Committee report, which raised concerns about how the Bill seemed to suggest that authorities could set the level of fee dependent on the cost of enforcement—something that we will come on to in more detail. That has the potential to place a significant burden on first-tier tribunals, and I wonder whether the Minister has considered the implications of this part of the Bill. Should we not have more clarity on what does and does not represent a reasonable or unreasonable cost?

Another aspect of the appeals system could benefit from closer Government attention. Any appeals system such as this is essentially a safety net for bad decision making at the first stage. That means that if a significant number of decisions are overturned at the appeal stage, something is going wrong at the enforcement or judicial level. We all know from dealing with casework in other areas—particularly disability benefit—how easy it is for that to happen. Sadly, in the case of disability benefits and first-tier tribunals, the Government are not doing enough to look at why so many decisions initially go against the claimant and are then overturned at tribunal.

If this Bill is wrongly enforced, it has the potential to impact negatively on a large number of businesses and landlords across the country. The time and effort needed to fight an incorrect decision would be significant; the legal fees and time investment needed could be extremely detrimental to businesses. It is therefore very important that some form of review date be put in place to guarantee a detailed look at how many appeals are being submitted, what percentage are successful and for what reason. That will give the Government the ability to identify consistently occurring issues and resolve them. I hope that the Minister will consider that and give us his thoughts on whether the Government would introduce a review of that type—for example, six months after the Bill takes effect. I know that such a measure would be supported by landlords, agents and enforcement authorities.

Paragraph 7 provides important clarity on the recovery of financial penalties. Like paragraph 6, this paragraph has been amended following feedback from the Select Committee. We agree with the Government's decision to amend the Bill to that effect. However, there are still question marks over how this aspect of the Bill will be enforced, and I hope that the Minister will be able to offer us assurances. One issue would be the recovering of fines from non-UK residents. We are all aware of the issues about foreign ownership in the property market. Characterised by a lack of transparency, London in particular is regularly cited as a haven for dirty money. That creates clear issues about enforcing good standards in the property market. Recently, that has been seen most acutely in the issues about the recladding of private tower blocks, which we discussed in the Chamber yesterday.

To give just a small example, I had to write to a well-known Hong Kong billionaire playboy called Stephen Hung, whom my office, after a long search, had identified as the ultimate owner of an unsafe tower block in my constituency. The water supply had been turned off for a whole week, and it was the third time that that had happened. Only through lots of interrogation did we find out who he actually was and put the situation right. There are therefore questions about how the Government expect local enforcement authorities to be able to enforce effectively the fines under the Bill when those responsible for the offences live in other countries.

The second issue is companies that are deliberately folded to avoid payment. Linked to my previous point about foreign ownership, the situation in the private rented sector is such that ultimate ownership of property can be obscured by multiple shell companies or other opaque ownership structures. It is not impossible to imagine a situation in which rogue landlords and agents are able to game the system—for example, ownership structures for property that might allow owners to avoid a fine by folding one company while keeping others going. That would also allow rogue landlords or agents to continue trading on the rest of their assets, thereby avoiding any potential ban. Overall, the Opposition support the inclusion of the schedule in the Bill, but I hope that the Minister will look at the points I have raised and will offer reassurance that they will be considered carefully.

Rishi Sunak: It is a pleasure to respond to the hon. Lady. I am cautious, as I wish to stay on point, with your direction, Mr Sharma. The hon. Lady raised some review periods, which we will no doubt discuss more specifically towards the end of this sitting when debating the new clauses tabled by Opposition Members, and with regard to phoenix companies, which are specifically covered by clause 13. I will leave discussion on those matters to the debates on the relevant clauses.

On the hon. Lady's broad point about the level of fines, I thank her for recognising that the Government took on board the advice of the Housing, Communities and Local Government Committee's on drafting these clauses, and we amended the draft legislation. I hope that she appreciates that. As I said, we took on board the Committee's specific recommendations about the first-tier tribunal and the process that will be followed.

[Rishi Sunak]

More specifically, on the hon. Lady's point about the level of fines that can be varied, as with all judicial matters that will be a matter for the tribunal or the judicial processes of the county court—whichever avenue the enforcement mechanism finds itself in. Guidance will be published on the appropriate level of penalty, dependent on a broad range of situations, which will serve as a framework for how local authorities will enforce that penalty. The first-tier tribunal will subsequently have regard to that. It will not be for the Minister or the Government to direct in every circumstance what the level of fine should be.

As the hon. Lady rightly recognised, it is appropriate, as it is across our judicial system, that the courts have the flexibility to determine things on a case-by-case basis. I hope she welcomes that flexibility, which was added to the Bill at the request of the Select Committee. I look forward to debating phoenix companies and other such matters with her when we debate subsequent clauses.

Question put and agreed to.

Schedule 3 accordingly agreed to.

Clause 9

POWER TO AMEND MAXIMUM FINANCIAL PENALTIES

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

Rishi Sunak: The clause is straightforward and contains a power for the Secretary of State to make regulations amending the amount of financial penalty that a local authority can change. This is purely to reflect changes in the value of money.

Permitting local authorities to levy financial penalties of up to £30,000 for breaches of the regulations on fees is intended to serve as a significant deterrent to agents and landlords. Including a power to amend the maximum penalty ensures that the Government can address any issue where the deterrent effect has not kept pace with inflation. We consider that regulations by negative procedure are appropriate in this case, since the changes are intended only to reflect the value of money, not to alter the intent or effect of the legislation.

Subsection (3) enables the Government to make transitional, transitory or saving provisions in relation to the uprating, in order to ensure that there is a smooth transition from one upper limit to another. In summary, the clause will enable the legislation to remain relevant over time.

Melanie Onn: It is crucial for this policy and for the hopes within it to be impactful that the fines are sufficient to act as a deterrent. Opposition Members have raised concerns throughout Committee stage that they might not be.

Any punishments for wrongdoing by rogue landlords and letting agencies must be sufficient to be seen as more than simply the cost of doing business. That is not simply my opinion but that of a landlord advocacy group. Indeed, Richard Lambert, chief executive of the National Landlords Association, said earlier this year:

"The NLA supports making the punishment fit the crime because too many of the criminals who operate in the private rented sector"—

it is somebody within that sector who said this—

"see the current level of fines as little more than a cost of doing business and we would welcome greater consistency between civil and criminal penalties."

As is clear from the amendments we have tabled, we have concerns that the Bill will not go far enough in ensuring that its aims can be fulfilled. The fines are a clear example of where the tension between aims and the probable reality of any impact is at its greatest. If fines can be as little as £5,000, as with the penalties for the display of tenants' fees, that seems to act as a minimal deterrent to landlords. Surely the best that we should hope for is that those fines encourage the sector to operate well within that framework, and that they do not have to be levied. In the more lucrative markets, that is a very small sum. For larger landlords, it is small fry.

To add to that hypothetical, trading standards and local government up and down the country have had their budgets decimated. As we heard at the evidence session last week from Councillor Blackburn of the Local Government Association, as I have mentioned, there has been a 56% drop in trading standards enforcement officers since 2009—more than half of them have been lost. It is a vital sector, which will enforce the Bill, but without good trading standards officers, there is a real risk that the legislation, for all its good intentions, could lack impact on the ground.

There is a lack of expertise and resources, and those problems seem likely to get worse. Rogue landlords and agencies are likely to factor the likelihood of any claims being made against them into their business calculations, as Richard Lambert of the NLA suggested. As things stand, their calculations might suggest that taking a risk is worth it, particularly in areas where tenants are not as clued up, or where local authority services and budgets have been really affected.

Any changes need to be made by means of new primary legislation, but perhaps that is not the ideal approach; perhaps the Minister or the Secretary of State should be able to look at the matter again in conjunction with evidence about how the enforcement process has been going, and whether the fines are sufficient sticks to encourage that good practice across the board. It is clear that the Government want the policy to be part of transforming letting to make the tenant's life much fairer than it is under the status quo, but for that to be done, there needs to be some real, critical engagement with the facts on the ground from the Government in future. For the legislation to have its proposed impacts, it is key that the Minister has an open mind about how it is best put into practice. The punishments have to fit the crime, and they need to be responsive to the realities of the letting market, which means that there must be space for rethinking that which is required.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

RECOVERY BY ENFORCEMENT AUTHORITY OF AMOUNT PAID

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

The Chair: With this it will be convenient to discuss clause 11 stand part.

Rishi Sunak: We want to ensure that when a tenant has paid an unlawful fee, they are repaid as soon as possible. Clause 10 enables an enforcement authority to require a landlord or letting agent to repay the tenant or other relevant person any outstanding prohibited payment or holding deposit. Similarly, if the landlord or agent required a relevant person to enter into a contract with a third party, they may be required to pay compensation. That may be ordered if the local authority imposes a financial penalty for a breach of the Bill. It does not apply if the tenant has made an application to the first-tier tribunal to recover the payment or if the amount has already been repaid.

Clause 11 enables the enforcement authority to require the landlord or agent to pay interest on any payment referred to in clause 10. That ensures that the agent or landlord does not receive any financial benefit from a prohibited payment.

Melanie Onn: For the Bill to have an impact, it has to be possible for prohibited payments to be recovered, and for those enforcing the legislation to fulfil their roles. We have already touched on our concerns about whether there are sufficient resources for local authorities and trading standards to function as the Government would like. These clauses highlight a particular potential issue in the legislation as it stands. The need for a criminal level and burden of proof for the civil financial penalties discussed in this Bill is a flaw that could well hamper its effectiveness. We all want to see legislation that is effective, that leaves tenants and landlords clear on what is permissible and what is not, that ensures that rogue traders are dealt with effectively, and that leaves tenants able to bring claims when things do go wrong.

10.30 am

As things stand there is work to be done on all those points, particularly the last point, as the focus in these clauses seems to be uncertain. The Government's plan for penalties for breaches by landlords and letting agents is for any claim against them to be proven to a criminal level of beyond all reasonable doubt, as opposed to the usual civil standard of preponderance of evidence—something that is more likely than not to have happened, given the balance of probabilities.

What will that mean in practice? It will mean fewer successful claims, so there will be less money in the pot to make this policy self-funding. It will mean less confidence in the system from tenants, who will not see examples of successful claims and evidence that it can be done. It will mean that tenants are far less likely to complain about breaches, as they know that they will have to undergo a process that is far more rigorous.

For those tenants who are in a particularly vulnerable situation, anything that puts them under undue strain or pressure, that is seen to be rigorous, and that pits them in an adversarial manner against their landlords will operate as a disincentive, in our view. Practically speaking, they may be more likely to do a trade-off, whereby they know that they would have to go through a hard and unpleasant process, which is less likely to be found in their favour, all the while souring the relationship they may have with the landlord or the letting agent. We have to bear in mind with this legislation that there are very sensitive relationships between tenants and landlords, which are finely balanced. To take action as a tenant against a landlord is no mean feat. It is not something that any tenant would willingly put themselves through, unless they felt that there was a genuine opportunity for redress.

I draw the Committee's attention to some of the facts around revenge evictions, which I think are relevant, particularly in this context, in order to look at what letting really means in this country. Laws, unfortunately, do not always mean an end to bad practice, particularly if people think they can escape justice and avoid those laws for any reason. Of private renters in this country—a growing sector—nearly a fifth, or 17%, did not ask for repairs to be carried out or for conditions to be improved for fear of eviction. Those are Shelter's statistics. All of us will feel that that has some relevance to the postbag we get from our constituents. Often, by the time constituents reach us with their concerns about privately rented accommodation, they have lived for an extremely long time in conditions that none of us would wish anybody to be living in—certainly not conditions we would accept ourselves. A small issue of damp could become a significant issue of damp—I can recall such cases—resulting in whole families living in one room and not using the rest of the property, because of the cost of trying to heat the rest of the property and keep damp to a minimum.

Given Shelter's evidence, it is not unreasonable to think that many renters will work out whether to report a fee they have been charged on a comparative basis. If the rent is otherwise a reasonable value and the property in a good state of repair, would a relatively small prohibited payment lead them to complain and risk ruining a relationship or a potential eviction? The likelihood is that it will not, if they know that they will get a good deal on their rent. That does not mean that the actions of the landlord would be right; it certainly does not mean it would be acting within the proposed laws as they stand. However, if the property is in an area where properties are few and far between, and it would be risky to jeopardise the tenant-landlord relationship when there is no guarantee that a new property would be easy to come by, again a prohibited payment may not lead to a complaint from a tenant.

That is probably broadly reflected in what trading standards have said so far about complaints they have received relating to tenancies. The letting market in many parts of the country is very unbalanced; far more power is concentrated in the hands of landlords. Even when landlords and letting agents are entirely scrupulous, that imbalance can persist simply in the most straightforward sense of supply and demand, such as where demand is much greater than the supply of appropriate properties, such as in London, although not exclusively in the capital. In those locations, tenants may well be far less able, and thus less likely, to report unjust fees.

Take the evidence from last week's sessions given by expert witnesses—the people who know better than anyone what implementing these policies looks like on the ground. Alex McKeown of the CTSI clearly highlighted the problem:

"Something that I have picked up on is that, at the moment under the Consumer Rights Act 2015 and the redress scheme legislation, the burden of proof is on the balance of probabilities, in terms of issuing these financial penalties. What you are trying to say is that this is going to be self-funding, and at the moment

with the Consumer Rights Act 2015 that has the ability to be self-funding, because all we have to do is look at a website and we can see whether it is displaying the correct information or not. It is easy—we have to prove it on the balance of probabilities, we download the website and we have the proof. In this Bill, you are asking for a criminal burden of proof for a civil financial penalty, and that is going to scare people off; that is going to scare trading standards off. They are not going to want to prove beyond all reasonable doubt that a tenant has been charged a fee. Then, you are also relying on the complaints to trading standards. We do not get that level of complaints to trading standards in relation to tenancies."—[*Official Report, Tenant Fees Public Bill Committee,* 7 June 2018; c. 34, Q57.]

She went on to say that a requirement to tell the tenant what they are expected to provide in evidence to a trading standards officer, in order to provide evidence to enable the officers to take the necessary enforcement action, prompts severe doubts that this will come to pass in the way that the Minister intends. If the experts fear that this measure will put people off—and they know far better than us whether that is probable—we ought to listen to the likes of the CTSI.

If we look at clause 11 in that context, the idea behind it is sound—that interest could be charged and it could be made clear how that could be done. However, if the enforcement is made less achievable as a result of the burden of proof required and tenants not having confidence in the system, it is not likely to come into play very often.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11 ordered to stand part of the Bill.

Clause 12

OFFENCES

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

The Chair: With this it will be convenient to discuss clause 13 stand part.

Rishi Sunak: It is vital that strong action is taken against irresponsible agents and landlords who persist in charging unlawful and unfair fees to tenants. This will act as a strong deterrent and better protect tenants. Clause 12 provides that a landlord or letting agent who breaches the ban on fees commits an offence if they do so within five years of conviction or imposition of a financial penalty for an earlier breach. Agents and landlords who commit an offence are liable on conviction to an unlimited fine. An enforcement authority has, in each case, the discretion to decide whether to impose a financial penalty of up to £30,000 or to pursue prosecution. A financial penalty issued as an alternative to prosecution does not amount to a criminal conviction. Subsection (6) amends the Housing and Planning Act 2016 to provide that an offence under the clause is a banning order offence, which means that if a landlord or agent is convicted of an offence a local housing authority may apply to the court to ban them from letting housing and/or acting as a letting agent or property manager in England for at least a year.

In our consultation there was strong support for prosecuting and/or banning repeat offenders. We have listened, and the clause shows that we are serious about cracking down on rogue operators. If the court makes a banning order, the local housing authority must add the landlord or letting agent to the database of rogue landlords and property agents established under the 2016 Act. By giving local authorities the power to take robust action against the worst operators we better protect tenants and ensure that reputable agents and landlords are not undercut or tarnished by rogues.

Clause 13 provides that, as well as the business itself, an officer of a body corporate or a member with management functions can be prosecuted for a breach of the ban on letting fees. The clause addresses issues raised by the hon. Member for Croydon Central and is designed to ensure that individuals with responsibility for repeatedly breaching the ban on tenant fees can, along with their organisations, be prosecuted and banned from operating. That will help to prevent the establishment of so-called phoenix companies, whereby an individual moves from a firm that has been banned and opens up a new business only to continue disreputable practices.

Melanie Onn: I want to make a couple of points. On the rogue landlords database, have the Government conceded that they will open it up, making it far easier for tenants to assess whether their potential landlord is someone from whom they wish to rent a property?

The provision regarding phoenix companies is incredibly important and I am pleased that the Minister has taken the opportunity to include it in the Bill, but is he confident that it will work in practice? I have seen such companies operating in other industries, and I am concerned about whether individuals who are overseas can be prosecuted. Will it be easy to prevent such individuals from continuing to be landlords within phoenix companies? Although an individual may be named as part of a company in Companies House records, a phoenix company can arise in the name of someone else with whom that person has a close association. Parent companies and subsidiaries can be established and registered in other names, but an individual can have an association with each of the subsidiaries of a parent company that might not have direct influence on or knowledge of what those subsidiaries are doing. That might come about regularly, so on whom will justice be brought to bear for breaches of legislation?

Rishi Sunak: I am glad that the hon. Lady generally welcomes the approach to tackling something that I think we all want to see prohibited. We are confident that the provisions will work. Overseas landlords and letting agents are subject to all the existing requirements for being a member of a redress scheme, and we have consulted on those provisions and will extend them. It is mandatory for letting agents to be a member of a redress scheme. Without such membership they cannot function in the market and will be in breach of their legal obligations. Whether people are overseas or in the domestic realm, there are multiple levels of protection and they must comply with the regulations in order to let property.

10.45 am

With regard to the hon. Lady's other broad point about associations between people, we have drafted the legislation in a way that is consistent with other legislation that tackles this. Generally, the test is for the director or

officer; then there is a further test about either deliberate negligence or a particular action of the individual in question that has led to the breach, which is a standard and appropriate legal framework. The hon. Lady knows that this is an evolving area. In this case, we are right on the cutting edge in making sure that we address it, but if there are innovative schemes that people come up with to try to avoid legislation—whether this or any other—the Government will always stand ready to try to stamp that out. We remain confident that this will work in practice. It addresses the concerns that many hon. Members on both sides of the Committee have raised. I beg to urge the Committee to support the clauses and their addition to the Bill.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13 ordered to stand part of the Bill.

Clause 14

DUTY TO NOTIFY WHEN TAKING ENFORCEMENT ACTION

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

Rishi Sunak: This clause, too, is relatively straightforward. It places a duty on enforcement authorities to notify other relevant authorities when taking action. That is necessary for a number of reasons, each of which the clause provides for. First, if a local trading standards authority takes action outside its local area, or a district council takes action, the relevant local trading standards authority is notified and work is not duplicated. The relevant local trading standards authority is then relieved of its enforcement duty, unless it is subsequently informed that the proposed enforcement has not taken place. Secondly, a record can be kept by the lead enforcement authority where a financial penalty has been imposed, withdrawn or quashed on appeal. That will inform whether any subsequent breach is dealt with as an offence. A trading standards authority must notify the local housing authority if it has imposed a financial penalty or made a conviction. That ensures that the relevant information is communicated to the right authorities at the appropriate time. As such, the clause has a key but simple role in ensuring that the enforcement of the legislation is carried out effectively and all relevant parties are aware of what is happening on the ground. I urge the Committee to support the clause.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

RECOVERY BY RELEVANT PERSON OF AMOUNT PAID

Melanie Onn: I beg to move amendment 13, in clause 15, page 10, line 36, after "that" insert

", with the consent of the relevant person,"

This amendment provides that the consent of a tenant or the person acting on their behalf or who has guaranteed to pay their rent must consent to the use of a prohibited payment for rent payments or tenancy deposit payments.

Under amendment 13, the tenant would have to consent to their holding deposit or a prohibited payment being used to cover rent or deposit costs. We do not object to the principle of subsection (6), which the amendment seeks to change. The payment of a tenancy deposit or a prohibited payment into a deposit or as part of rent is entirely sensible and in many cases will be an optimal arrangement for both the tenant and the landlord. In the case of the holding deposit, this can be an important agreement between the tenant and the landlord that reduces the burden of paying a deposit, rent in advance and holding deposit all at the same time. Allowing a tenant to put that money towards a deposit can make it easier to pay what for many is a high fee and a significant amount, and prevent the holding deposit being held for as much as a week after an agreement has been made, when the tenant is likely to be short of money. We are therefore glad to see the principle in the Bill.

However, as the Bill stands, the landlord will have discretion as to whether to apply that payment. Although that does not seem to be a significant problem at first, and in many circumstances may not cause a problem, allowing landlords to do so indiscriminately could lead to difficulties for tenants in certain circumstances. The first problem arises from the fact that many people pay their rent on a monthly basis, through a fixed-sum standing order. Although standing orders are amendable, that can be a time-consuming process for the tenant. To deduct the prohibitive fee from a month's rent, they must amend the standing order twice to account for the change. Government Members might feel that that is quite a trivial point, as making changes to bank payments is part of daily life, but we believe it will result in the tenant having to go out of their way for something that is not their fault. We must remember that when considering this amendment. It would be wrong for tenants to end up doing time-consuming work to receive their money in a timely and orderly fashion, given that they are not the ones who charged the fee.

A second problem that we seek to address with the amendment is how subsection (6) would apply to people with a joint tenancy. Taking the example of a joint tenancy in which the tenants pool the rent in one account and pay it to the landlord as a lump sum, if one tenant loses their key and is required to pay a default fee, which is later deemed to be prohibited, would the landlord be able to deduct that from the rent? In that scenario, taking the prohibited fee from the rent would not be a simple way of paying back the tenant. They paid the fee from their own pocket, but the rent deduction comes out of a pool for which all tenants are jointly responsible. Given that the deduction would not automatically be tied to the person who is entitled to it, the process could be abused by other people who are part of the pool. Although in most cases such agreements are set up by families or a close group of friends, it should not automatically be assumed that it is an easy or preferred way for the relevant person to receive their money.

It is their money. I have set out several scenarios, but a significant rationale for this amendment is the principle. Put simply, it is the tenant's money, and they should have the final say about what happens with it. As it stands, subsection (6) allows landlords to do what they want with the tenant's money that they have been required to give back and ought not to have had in the first place. I hope that Committee members will recognise that this is a practical and fair amendment. If someone

[Melanie Onn]

has been wronged, it should be made as easy as possible for them to receive the repayment to which they are entitled.

Rishi Sunak: An important principle of the Bill is that any unlawful payment can be recovered in full by the tenant, as it is their money. Tenants can do that either by seeking direct recovery from the landlord or agent, or by going to the local authority or applying to the first-tier tribunal. It is important to note that they can also go to their agent's redress scheme if they are seeking the recovery of a prohibited payment from an agent. Offsetting the prohibited payment against the rent or deposit will ensure the tenant is not left out of pocket. It is best practice for a landlord or agent to ask the tenant, or any person guaranteeing their rent, whether they are happy for any unlawfully paid fee to contribute towards a future rent or tenancy deposit payment. We are planning to encourage that through guidance, and we expect that most landlords and agents will do that. We do not currently see the need for specific provision to that effect in legislation.

That said, I have been considering this broad area for a while, and I want to ensure that what we have in place works. I hear what the hon. Lady said. The clause was designed to ensure that the repayment process is relatively automatic. We did not want to put extra steps, which might delay things, into the process. We are looking at some of the areas that she mentioned. With that in mind, if she will bear with me as I look through those things, I ask her to withdraw the amendment.

Melanie Onn: I am glad the Minister is listening. He said that the automatic expectation is that, to seek redress, tenants will go through a first-tier tribunal or go to a local authority just to get back what is theirs, which is in the hands of the landlords, despite the fact that the Minister clearly thinks it is best practice for landlords to have a good relationship with tenants. It is not inconceivable that the relationship has broken down if it is deemed that a prohibited payment has been made.

I was going to press the amendment to a vote, but given that the Minister has requested that we bear with him, I will not do so. I will hold him to his word. I will withdraw the amendment, but I reserve the right to table it again if we are not satisfied with what he comes back with. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Melanie Onn: I beg to move amendment 14, in clause 15, page 11, line 4, leave out

"all or any part of",

and insert—

"a sum of money not less than and not more than three times".

This amendment would enable tenants to claim back prohibited payments without assistance from the local authority, along with compensation from the landlord or letting agent worth up to three times the fee paid.

The amendment would entitle tenants who seek to claim back prohibited payments without assistance from the local authority to compensation from the landlord or letting agent worth up to three times the fee paid. During the evidence sessions, we heard often how the Bill needs more resources to enforce the new provisions that it will bring in and to fully achieve its aims. One thing necessary to improve the enforcement of the Bill is to provide further encouragement to tenants to self-report and to call out the use of prohibited fees by their landlords.

Trading standards will face practical difficulties in enforcing the Bill. They face a lack of resources across the country, which has meant their losing, as we have said, 56% of enforcement officers since 2009 and therefore lacking the expertise with letting agents that they would like. There is therefore a need to look at self-reporting as an addition to trading standards, and the addition of clause 15 to the Bill shows an acknowledgment of that by the Government. The amendment would strengthen that by providing tenants with compensation, when making a claim, for three times the initial sum charged.

A three times figure is already used to enforce deposit protection regulations, so both the three times figure and the idea of compensation for mistreated tenants has a basis in current property law. The amendment would act as an extra deterrent to landlords' and letting agents' breaking the law, by increasing the level of punishment, and would provide sufficient motivation and compensation for tenants to go through what could be a stressful and time-consuming tribunal process. As the amendment would help to enact the purpose of a Bill that both Government and Opposition want to be effective, I hope that both will accept it and thereby increase the enforcement power of the Bill.

Rishi Sunak: Tenants absolutely should get back any unlawful payments in full, whether direct from the landlord or agent, via the enforcement authority or through an order of the first-tier tribunal. However, we do not think it appropriate for the tenant to receive further compensation, given that the landlord or agent is liable for a significant financial penalty in addition to reimbursing the tenant.

It is also worth noting that the Bill provides further protection to tenants by preventing landlords from recovering their property, via the procedure set out in section 21 of the Housing Act 1988, until they have repaid any unlawfully charged fees. To add in compensation, as the amendment suggests, risks penalising agents and landlords multiple times for the same breach, which is not fair. We believe that our existing approach strikes the right balance and offers a serious deterrent to non-compliance. I ask the hon. Lady to withdraw the amendment.

Melanie Onn: Unfortunately, I will not withdraw the amendment. I do not feel entirely satisfied by the Minister's comments on this and I do not think that he has addressed the issues around the negative position that tenants find themselves in compared with landlords, so I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 6]

AYES

Frith, James	Onn, Melanie
Hayes, Helen	Williams, Dr Paul
Jones, Sarah	Zeichner, Daniel

NOES

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

Question accordingly negatived.

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

11 am

Rishi Sunak: Clause 15 works with clause 10 to establish multiple routes for tenants to be able to recover any prohibited payments. It enables a tenant or other relevant person to apply to the first-tier tribunal for compensation where they have been required to make a prohibited payment or where a holding deposit has been unlawfully retained. We have listened to the Select Committee on this point and acknowledge that the first-tier tribunal is generally more accessible for tenants as it is less formal and costly than the county court. If a landlord or agent refuses to abide by an order of the first-tier tribunal, a tenant would be required to go to the county court to have the decision enforced and to recover their fees. We have made provision in clause 16 for a local authority to help the tenant with that. I ask hon. Members to agree that clause 15 stand part of the Bill.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

ASSISTANCE TO RECOVER AMOUNT PAID

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

Rishi Sunak: Clause 16 is another straightforward clause. It provides that an enforcement authority such as a local trading standards authority can help a tenant recover unlawfully charged fees or a holding deposit that has been unlawfully withheld. That is because we recognise that tenants might require or would like assistance to navigate the county court process. The enforcement authority would help a tenant or other relevant person to make an application to the first-tier tribunal: for example, by providing advice or by conducting proceedings.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

RESTRICTION ON TERMINATING TENANCY

Melanie Onn: I beg to move amendment 15, in clause 17, page 12, line 3, at end insert—

"(5A) No section 21 notice may be given in relation to the tenancy until the end of a period six months from:

(a) the day after the day on which the final notice in respect of the penalty for the breach was served; or

(b) the day after the day on which any appeal against the final notice is determined or withdrawn."

This amendment would protect tenants against the issue of a section 21 notice when a penalty has been applied in relation to a breach under Clauses 1 and 2 of this Bill.

I believe the amendment would strengthen the provisions in the clause. As the Bill stands, landlords are unable to serve section 21 notices while there is still an outstanding balance of a prohibited payment or holding deposit to be repaid to the relevant person. The principle behind the clause is welcome. It would be wrong for a tenant to be served a section 21 notice while a landlord has failed to serve their obligations in terms of repaying money that was taken incorrectly. The same principle guides the inability of landlords to serve section 21 notices if they do not properly protect a tenant's deposit, and more recently if they do not carry out their obligation to undertake any necessary improvements.

Such extra protections should improve a tenant's rights and mean that rogue landlords cannot get away with retaliatory evictions if a tenant challenges bad practice. However, too often the principle is not matched in practice. This can be seen in the enforcement of the Deregulation Act 2015, which led to the banning of revenge evictions if a landlord was ordered to carry out repairs by a local council. A 2014 study by Shelter estimated that 200,000 private renters had been served with an eviction notice after complaining to their landlord about a problem with their home. The legislation should have led to significant action, given how widespread the problem of retaliatory evictions is, yet more than half of councils in the UK did not use the new powers in the Act a single time within a year of enactment. There is clearly a disconnect between what leaves this place as law and the reality of what is actually enforced.

Protection against section 21 evictions is vital for tenants who fear that standing up to a landlord could lead them to be evicted. It is worth remembering what landlords have to do to be exempt from serving a section 21 notice. These are landlords who do not protect tenants' deposits, do not provide repairs in a timely manner, and who will charge prohibited fees under this new Bill. So these landlords have, at best, already shown a lack of knowledge as to their rights and responsibilities, and at worst are rogue and exploitative to the point where they will cross legal lines to avoid their obligations. This comes to the heart of why enforcement in this area is so important and needs to be done far better under current housing regulations, and needs to be enhanced in the Bill as it stands.

We know that the vast majority of landlords comply with regulations and discharge their obligations in a timely and professional manner. Those landlords would never threaten retaliatory evictions and would ensure that they followed the rules regarding serving a section 21 notice if needs be, but there are too many rogue landlords who look to shirk their responsibilities and exploit tenants at every opportunity. If a rogue landlord is willing to take a chance on a tenant's not picking up on and reporting a prohibited fee, or to threaten a tenant with eviction when they ask for repairs, why would they suddenly act in a fit and proper manner when it comes to serving a section 21 notice?

During the evidence sessions, the NUS representative made the point that students often do not know their rights. They are often first-time renters and many will not have the experience of looking over a contract or challenging actions that are unlawful, which means that they may not be comfortable taking action against activities such as charging a prohibited fee or serving a section 21 notice. That could be particularly true if the

[Melanie Onn]

Act required a tenant to take a landlord to court to prove that a section 21 notice was invalid, so tenants may end up leaving under an invalid section 21 notice when there is no reason for them to do so.

Too many rogue landlords get away with outlawed acts because there is not enough enforcement of the current laws that prohibit bad practice. The Government should consider carefully the evidence we heard in last week's evidence sessions. It is fair to say there was a general feeling that there is not enough enforcement power in the Bill for it to do all the good it could do.

Enforcement could come through several different channels, such as increasing fines to increase the deterrent that rule breakers face, reimbursing a lead enforcement authority or reducing the barriers that tenants face if they report a landlord. Amendment 15 would mean that tenants were safe from retaliatory evictions that could result from reporting a landlord who charged a prohibited fee, for six months after the final notice of the penalty for the breach is served or the appeal is determined or withdrawn.

The amendment arises from what should be a guiding principle of good law making: in introducing new laws and regulations, we should learn from the mistakes of similar legislation and build a Bill that counters those flaws and pitfalls. To ensure that this Bill hits the ground running, it is important to look at other pieces of legislation that govern landlords to see where they have failed in the past.

We must learn from the effect that a lack of protection from eviction had on the repair of properties that were not in a fit or liveable state. As a result of that, tenants ended up living in houses with no protection from draughts, large damp problems and faulty electrics. No one should live in those conditions in this country, but tenants feared that if they complained about those problems, their landlord would serve them with a section 21 notice rather than carry out the repairs. Tenants were left with a choice between putting up with uncomfortable, unsafe and uninhabitable conditions and pressing their landlord to fix those issues when the landlord held the power to kick them out. No one should have to make that choice, because no one should be penalised for wanting a house that is habitable. Similarly, no one should have to make the choice between flagging a prohibited payment and keeping their landlord happy so that they do not get served with a section 21 notice.

To prevent tenants from retaliatory evictions when repairs are necessary, the Deregulation Act 2015 prevents landlords from serving a section 21 notice for six months after the council orders repairs to be made. Although there are problems with the enforcement of that Act, the principle of it acts to prevent retaliatory evictions. In particular, it prevents the serving of a section 21 notice for six months after the serving of an improvement notice, which gives tenants the same protection as they would have at the start of any tenancy. That is an extremely important addition to tenants' rights, which helps to remove a barrier to self-reporting. There is too little extra protection for self-reporting tenants if the law simply states that the landlord can serve a section 21 notice the second they have managed to fulfil the obligation that they were reported for. That also covers self-reporting tenants who could be subject to retaliatory evictions if they report a landlord.

Just as it was sensible to extend the provisions concerning revenge evictions for repairs in the 2015 Act, it is sensible to learn from the past situation around repairs now and get the Bill right at the first time of asking, by bringing it into line with the thinking of that previous legislation and adding a six-month period in which landlords cannot serve a section 21 notice after a breach of the Bill.

Rishi Sunak: The Bill already protects tenants by preventing landlords from recovering their property via section 21 of the Housing Act 1988 until they have repaid any unlawfully charged fees. This approach is in line with legislation that already applies where the "How to rent" guide has not been provided or a landlord has not secured the required licence for a house in multiple occupation, so there is good precedence for our approach.

Further, clause 4 ensures that any clause in a tenancy seeking to charge tenants a prohibited fee is not binding on the tenant, so we do not consider that further provision is needed. The wording of this amendment would specifically mean that if a landlord appealed against the imposition of a financial penalty and this was upheld, that landlord would be restricted from using the no-fault eviction process for six months after the appeal was determined. That clearly is not fair. I therefore ask the hon. Lady to withdraw the amendment.

Melanie Onn: I thank the Minister for that response. It is unfortunate that he is not prepared to accept the amendment. It may well be the case that landlords will happily give people back the money they owe them and then still decide that they are troublemakers and seek to serve an eviction notice against them. While I accept the Minister's comments regarding a landlord's appeal, I think this is something that he should look at. If the Bill is about increasing and protecting tenants' rights, this is a prime opportunity to do so. Despite that, I am happy not to press the amendment, but I reserve the right to discuss this issue further on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Rishi Sunak: Clause 17 has been included following a recommendation specifically from the Select Committee during pre-legislative scrutiny of the draft Bill, and I therefore hope that it commands broad support. It ensures that a landlord cannot evict an assured shorthold tenant via the section 21 no-fault eviction procedure if the landlord has previously required a tenant to make a prohibited payment and failed to repay this payment or apply it to the rent or deposit. We agree with members of the Select Committee that this affords tenants additional protection and serves as a further deterrent to non-compliance for agents and landlords.

Similarly, a landlord cannot use a section 21 procedure if they have breached the requirement to repay a holding deposit. This clause is intended to establish a further layer of protection and security for tenants and to act as a deterrent to landlords. The approach mirrors that

used to promote compliance with other housing legislation, such as licensing for houses in multiple occupation and the requirements to give tenants a copy of the "How to rent" guide and valid gas safety certificates. I beg to move that the clause stands part of the Bill.

Melanie Onn: We have made our concerns around this clause quite clear, and we reserve the right to come back and discuss it on Report. I sincerely hope that the Minister's intention does work in practice. I think he is applying some of the principles to landlords who would never wish to be in breach of any of this legislation, and he is not considering fully the issue of rogue landlords, who are the ones we are trying to tackle.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

DUTY TO PUBLICISE FEES ON THIRD PARTY WEBSITES

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

The Chair: With this it will be convenient to discuss clauses 19 and 20 stand part.

Rishi Sunak: Thank you, Mr Sharma, for permission to group these three clauses. I will discuss them briefly in turn. Clause 18 amends section 83 of the Consumer Rights Act 2015. Section 83 places a duty on letting agents to publicise their fees and information about redress under client money protection schemes in order to provide greater transparency for landlords and tenants.

In the Government consultation on banning tenant fees, concerns were raised that these transparency requirements do not apply in relation to property portals, such as Rightmove and Zoopla. These websites are often the first port of call for tenants when searching for a home to rent. To ensure that tenants and landlords have easy access to relevant information, this clause extends the transparency requirements to third-party websites. I am sure that will be warmly welcomed.

11.15 am

Clause 19 amends section 83 of the Consumer Rights Act 2015 to require agents in the private rented sector to publicise the specific name of their client money protection scheme. At present, agents have to say only whether they are a member of such a scheme. The Government are committed to making membership of a scheme mandatory for all agents in the private rented sector. This will ensure that all tenants and landlords have the financial protection they want and deserve. Regulations were laid on 3 May to achieve that and are intended to come into force on 1 April 2019, subject to parliamentary clearance. Once it is mandatory for letting agents to belong to a client money protection scheme, we want agents to display the name of their scheme provider so that this information is clearly available to tenants and landlords.

Lastly, clause 20 amends section 87 of the Consumer Rights Act 2015. There has been a desire for greater clarity about whether trading standards can impose more than one financial penalty if letting agents continue to fail to publicise specified information. That includes information related to their fees, their redress and their client money protection scheme membership. The amendments made by this clause provide that clarity, and I hope they are warmly welcomed. Their effect is that if trading standards impose a financial penalty due to a breach of the transparency requirements that the agent fails to rectify within 28 days, they may impose a further financial penalty, unless the agent appeals. If the agent appeals, a further financial penalty may be imposed if the breach continues after 28 days from the conclusion of the appeal process. No further financial penalty may be imposed if the earlier financial penalty has been withdrawn or overturned on appeal.

Together, clauses 18, 19 and 20 strengthen consumer protections, and I beg to move that they stand part of the Bill.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clauses 19 and 20 ordered to stand part of the Bill.

Clause 21

ENFORCEMENT OF CLIENT MONEY PROTECTION SCHEMES FOR PROPERTY AGENTS

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

Rishi Sunak: Clause 21 amends section 135 of the Housing and Planning Act 2016. It makes enforcement of the requirement for letting agents to belong to a client money protection scheme the responsibility of trading standards authorities. That has the effect in non-unitary authorities of moving the enforcement responsibility from district councils to county councils. Trading standards are best placed to enforce this provision due to their role in enforcing other legislation relating to letting agents. The change will ensure better alignment between enforcement of the provisions of the Tenant Fees Bill and client money protection.

In November to December last year, the Government consulted on the implementation of client money protection. I am pleased to say that the majority of the respondents—74%—agreed that enforcement responsibility should sit with trading standards rather than district councils, given their skills and experience. To ensure joined-up enforcement of relevant letting agent legislation, I beg to move that clause 21 stands part of the Bill.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

LEAD ENFORCEMENT AUTHORITY

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

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

Clauses 23 and 24 stand part.

New clause 1—*Enforcement: costs*—

"The Secretary of State shall reimburse—

[The Chair]

(a) a lead enforcement authority, where this is not the Secretary of State, for any costs incurred by the authority in the exercise of its duties under section 23 or section 24 of this Act, and

(b) an enforcement authority for any additional costs incurred by that authority in the exercise of its duties under section 1 or section 2 of this Act."

Rishi Sunak: Clause 22 establishes a lead enforcement authority in the lettings sector to oversee enforcement of the Bill and associated letting agent legislation, including the transparency requirements in the Consumer Rights Act 2015, the requirement for letting agents to belong to a redress scheme and the forthcoming requirement for letting agents to belong to a client money protection scheme. Although, in the first instance, this responsibility lies with the Secretary of State, the clause gives the Secretary of State the power to designate a local trading standards authority as the lead enforcement authority. The clause also enables the Secretary of State to make provision, via regulations, to smooth the transition if there is a change in the lead enforcement authority.

In the Government consultation, there was strong agreement from respondents across the sector to the introduction of a lead enforcement authority; 86% of respondents were in favour, stating that this would lead to more consistent operation of the regulatory framework. We consider that trading standards authorities are best placed to act as the enforcers, given their other responsibilities for enforcing requirements on letting agents and consumer protection laws.

We recognise the overlap between the lettings and estate agent sectors and will work with National Trading Standards to ensure that the new lead enforcement authority works effectively alongside the existing arrangements in the estate agent sector. We intend to provide funding to support the setting up and workings of a lead enforcement authority.

Clause 23 describes the duties of the lead enforcement authority. Broadly, those duties are to provide guidance and support to local authorities in England with regard to their enforcement responsibilities in respect of relevant letting agent legislation. The lead enforcement authority will help to develop best practice in enforcement and ensure consistent application of the legislation.

The clause also enables the lead enforcement authority to disclose information to a relevant local authority to enable that authority to determine whether there has been a breach of, or offence under, relevant letting agency legislation. That power will, in particular, enable the lead enforcement authority to disclose information as to whether a financial penalty has been issued against a landlord or agent and thus whether an offence has been committed under the Bill.

We have taken into account feedback from the Select Committee, so the clause now places a duty on the lead enforcement authority to issue guidance to enforcement authorities about the exercise of their functions under the Bill. As discussed earlier, enforcement authorities must have regard to that guidance.

Clause 23 also provides a power for the Secretary of State to direct the lead enforcement authority to produce guidance about the operation of other relevant letting agency legislation and about the content of such guidance. The lead enforcement authority will be able to provide information and advice to tenants, landlords and letting agents to help them to understand the impact of the Bill and other relevant legislation.

The lead enforcement authority's position as a central point of contact for local authorities will facilitate its duty to monitor developments in the lettings sector and, as necessary, to advise the Secretary of State. That includes the effectiveness and operation of the Bill and associated relevant letting agency legislation and related social and commercial developments.

Clause 24 makes provision for the lead enforcement authority to enforce the provisions of the Bill and other relevant letting agent legislation. We want the lead enforcement authority to play a proactive role in enforcement and to exercise best practice and provide support when it is appropriate and necessary for it to do so.

Individual trading standards authorities will remain primarily responsible for enforcing breaches of the fee ban. However, they may want to ask the lead enforcement authority for support. Alternatively, a local trading standards authority may not be taking enforcement action in line with its duties under the Bill, leaving tenants at risk of unfair loss. The clause gives the lead enforcement authority the power to take enforcement action in such situations.

Where the lead enforcement authority steps in and proposes to take action in respect of a breach, it must provide notice to the relevant local authority. The latter is then relieved of its duty to take enforcement action in relation to the breach, but the lead enforcement authority may require it to provide assistance. Relevant enforcement authorities will be required to report on their enforcement of the legislation and other relevant lettings legislation.

The lead enforcement authority will have a number of investigatory powers at its disposal to enforce the relevant letting agency legislation. As we discussed previously, those powers are laid out in schedule 5 to the Consumer Rights Act 2015, which this clause amends. That includes the power to require information where it reasonably expects that a breach has been committed.

I hope that clauses 22 to 24 stand part of the Bill and, with your permission, Mr Sharma, I will reserve the right to respond after the hon. Member for Croydon Central speaks to new clause 1.

Sarah Jones: New clause 1 sets out that both the lead enforcement authority and local enforcement authorities will be reimbursed by the Government for costs incurred in enforcing the Bill. That is necessary because the Bill as it stands will simply not provide adequate resources for proper enforcement. That view is backed up by experts from across the sector. We have already talked about the scale of the challenge, and my hon. Friend the Member for Great Grimsby has talked about the cut in enforcement officers and the—

The Chair: Order.

11.25 am

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

Adjourned till this day at Two o'clock.