

Agenda – Equality, Local Government and Communities Committee

Meeting Venue:

Committee Room 3 – The Senedd

Meeting date: 11 July 2018

Meeting time: 09.00

For further information contact:

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Committee Clerk

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(Pre-meeting: 09.00 – 09.15)

- 1 Introductions, apologies, substitutions and declarations of interest**

- 2 Renting Homes (Fees etc.) (Wales) Bill – evidence session 5**
(09.15 – 10.15) (Pages 1 – 31)
Jennie Bibbings, Campaigns Manager, Shelter Cymru
Alun Evans, Senior Campaigns and Advocacy Officer, Citizens Advice
Jamie Matthews, Senior Policy Officer, Citizens Advice
Break (10.15 – 10.30)

- 3 Renting Homes (Fees etc.) (Wales) Bill – evidence session 6**
(10.30 – 11.00) (Pages 32 – 38)
Matt Dicks, Director, Chartered Institute of Housing Cymru
Matthew Kennedy, Policy and Public Affairs Manager, Chartered Institute of Housing Cymru

- 4 Renting Homes (Fees etc.) (Wales) Bill – evidence session 7**
(11.00 – 11.30) (Pages 39 – 42)
Bethan Jones, Operational Manager, Rent Smart Wales

- 5 Papers to note**
(Page 43)



- 5.1 Letter from the Chair of the Finance Committee in relation to the Welsh Government Draft Budget 2019–20**
(Pages 44 – 51)
- 6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting**
- 7 Renting Homes (Fees etc.) (Wales) Bill – consideration of the evidence received under items 2, 3 and 4**
(11.30 – 11.40)
- 8 Consideration of forward work programme**
(11.40 – 12.10) (Pages 52 – 60)
- 9 Inquiry into public services boards – consideration of evidence received and next steps**
(12.10 – 12.20) (Pages 61 – 153)

Document is Restricted

27th June 2018

Our vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

Introduction

Shelter Cymru welcomes the opportunity to provide evidence on this draft Bill. We've been calling for a ban on fees since our 2016 *Letting Go* campaign¹, which highlighted the cost of tenants' fees and the lack of transparency and consistency in agents' fee policies.

We warmly welcome the Welsh Government's commitment to ban fees. Doing so will help tenants to afford to find and keep a home; and it will assist local authority

¹ <https://sheltercymru.org.uk/letting-go/>

homelessness services by reducing demand on local 'spend to save' homelessness prevention budgets.

However, there are certain aspects of the Bill that need to be strengthened in order to avoid creating loopholes that could be exploited.

Default fees

Default fees are primarily levied against tenants on low incomes who are falling behind with their rent. In our experience it is the most vulnerable tenants who are the most likely to be hit by excessive or unfair default fees.

The Welsh Government's explanatory memorandum gives the rationale for not including default fees in the Bill as follows: '*The charging of payments in default is longstanding practice of which there is little evidence to show tenants within the PRS are being overcharged to a significant or consistent degree. On that basis, the Welsh Government sees no need to change such practice.*'

There is a great deal of evidence of unfair and excessive default fees being applied in Wales.

A letting agent in Swansea charges tenants for late payment of rent even if the tenant is not in arrears but is awaiting a payment of Universal Credit or Housing Benefit. This agent repeatedly refuses to change the rent due date to coincide with the UC payment date, and instead levies default fees every month, thereby increasing their profit at the expense of tenants on limited incomes.

We have tried to challenge this practice in court but the local District Judge has stated that it's a contractual matter.

We sampled 80 recent calls to our helpline where there was a problem relating to letting agents. One quarter of those calls related to agents' fees, half of which were default fees.

Agents claim that fees are only meant to cover their costs in chasing late payments, but we see many people who are charged fees that are completely out of proportion to the cost to the agent.

A woman called our helpline in desperation because her letting agent was charging her **£26.30 per day** for arrears. She had never had a written tenancy agreement so hadn't agreed to these charges.

Our caseworker's opinion was that the agent was charging this level of fees in order to increase the tenant's arrears over the eight-week limit that would trigger a mandatory possession ground.

The Welsh Government proposes that listing default fees in the tenancy contract will suffice in terms of transparency and fairness. The vast majority of agents already do this, and unfortunately it doesn't give tenants the protection they need. Contract terms can be written in ways that are hard to understand, and result in excessive fees being charged.

We are currently assisting a tenant in court for disputed rent arrears. Part of the claim against the tenant is late payment fees, described in the tenancy agreement as:

'3% above the bank of England base rate, payable on any rent which is more than 7 days overdue. Interest will be payable from the date on which the rent fell due until it is paid. If rent is overdue a 2nd time then a £25.00 charge will be made each time it is overdue in addition to the interest for the 1st week overdue and £10.00 per week that it remains overdue after that.'

This resulted in the tenant being charged **£366.60** over a four-month period.

Our mystery shopping exercise² carried out by our campaign supporters found that default fees were among the least transparent of all fees, with many agents appearing to make up fees on the spot.

We do recognise that there is a legitimate need for agents to recoup some cost when they are chasing arrears. However, if the Bill does not create consistency and fairness in the charging of default fees, this will become a loophole exploited by agents seeking to maximise profit. The Bill in its current form does not even require that default fees are reasonable and fair. It allows default fees to be summarily charged for any alleged 'breach by the contract-holder of a term of the contract'. This is open to abuse.

We propose an alternative approach. The Bill should require that default fees are limited to:

- Only two types of payment, to be defined in the Bill: late payment of rent, and lost keys. Other fees should be recovered via the security deposit
- No more than one fee for late payment of rent per month

² <https://sheltercymru.org.uk/wp-content/uploads/2016/08/Letting-Go-Email.pdf>

- Fees to be charged only for interest on the missed rent payment, capped at 3% above the bank of England base rate
- Fees not to apply until rent is 14 days late
- A requirement for landlords and agents to not unreasonably refuse a tenant's request to change a rent due date
- Default fees to be clearly set out in contract terms
- Fees for replacing lost keys should be limited to the cost of the actual key, not the agent's time, as this is part of their core function.

As an absolute minimum, the Bill should require that default fees be reasonable and fair. However it would be better for the Bill to set a cap, to reduce reliance on the courts to establish reasonableness. Many tenants are unwilling or unable to seek redress via the courts due to the costs and other difficulties. More detail on this is under the section on enforcement.

Holding deposits

We welcome that the Bill proposes to cap holding deposits at one week's rent and require them to be refundable. This is a great improvement on the current situation, where agents are able to charge excessive holding deposits on a non-refundable basis.

We advised a woman who was threatened with homelessness and being assisted by her local authority Housing Options team. She put down a £230 holding deposit on a property. The local authority agreed to assist her with the bond and rent in advance. In order to arrange this she had to wait 10 days for an appointment with the bond board.

Once this was done she contacted the letting agent promptly, only to find that the agent had let the property to another tenant. They refused to return the £230 holding fee. This meant that she had to return to Housing Options to seek further help as she was at increased risk of homelessness, with severely reduced financial resources due to the loss of the £230.

and unclear. There's a risk that holding deposits could be retained simply where a tenant has failed a credit check or referencing: ARLA have already suggested that this will be the case³. There is the possibility that minor, unintentional errors by tenants or normal fluctuations in income could be interpreted as false and misleading.

³ <http://www.arla.co.uk/news/november-2017/tenant-fees-bill-at-a-glance.aspx>

We query why the Bill allows holding deposits to be retained if the tenant fails a 'right to rent' check. The right to rent has not yet been enacted in Wales. Even if it is subsequently brought into force there is no requirement on Welsh Government to follow England in respect of how this affects letting fee regulation. Shelter highlights that right to rent checks in England can be complicated, and an individual may not always know whether they have the right to rent, or may fail simply because they don't have all their documents in order⁴.

The Bill should include a cooling-off period of 48 hours during which the holding deposit must be returned on request of the tenant. We often hear from tenants who say they've been pressurised during a viewing to pay money immediately to secure a property. A cooling-off period is consistent with principles of consumer law, and would give some protection to vulnerable tenants who are more at risk of feeling pressurised to hand over money.

Keith* was trying to help his daughter, Sharon*, along with her partner and young child, to secure a private tenancy. Sharon viewed a property and the agent told her she must pay £250 in cash if she wanted to proceed. The agent emphasised that others were also interested in the property and pressurised her to hand over cash then and there. Sharon made the payment, and Keith offered to act as a guarantor.

The agent sent Keith the guarantor information but when he read it he decided that he couldn't stand as guarantor as the requirements were so far-reaching. However, the agent informed Keith and Sharon that the £250 was non-refundable.

Keith contacted the Shelter Cymru helpline for advice. He described the agent's approach as 'predatory' and was very concerned that this was seen as acceptable behaviour in the letting agents' profession. At the time of writing Keith is pursuing a complaint through the agency, and will take it to the Ombudsman if it isn't resolved.

* Names changed to protect anonymity

There are times when a tenant is unable to take up a tenancy for good reasons, such as a family crisis or bereavement. Reputable agents will exercise discretion in these situations but unfortunately some take advantage to retain the deposit at all costs. The Bill should be amended to require holding deposits to be returned when the contract-holder has a good reason for withdrawing.

Hollie* was arranging to move from her home in England to be nearer to her mother, who had terminal cancer. Sadly, five days before Hollie was due to move, her mother died. Hollie could not bear to take up the tenancy, so she contacted the agent to ask for a refund of the holding deposit. The agent refused, stating that it was non-refundable.

Hollie sought help from Shelter Cymru. She felt strongly that the landlord was being very unfair in such cruel circumstances. We established that the agent had not been upfront about what the payment was for and the circumstances in which it would be refundable. We signposted Hollie to the specialist Citizens Advice Bureau consumer helpline.

Finally, we suggest it would be helpful if the Bill could require an agent to provide the tenant with a written explanation including evidence of why a holding deposit is being retained.

Enforcement

We broadly welcome the proposed use of Fixed Penalty Notices (FPNs). These are already being used effectively to enforce landlord licensing under Rent Smart Wales. Our view, however, is that £500 is too low to be an incentive, and will be even less of an incentive as time goes on. For this reason we would advise against setting the level of the FPN in the Bill itself as is currently proposed.

Instead, the Bill should allow for the level of the FPN to be set by the Minister and periodically revised in order to remain responsive to changing rent levels. We suggest that a fine set at 15 to 20 per cent of the average annual revenue for privately rented property in Wales would be appropriate.

It's welcome that the Bill requires convictions to be reported to Rent Smart Wales but this should also go for FPNs, since the licensing authority would want to know if an agent is repeatedly infringing the law.

The Bill proposes that contract-holders should apply to the County Court for recovery of fees. There are practical barriers to this and the Bill would be strengthened by also providing for alternative routes of redress. Applying to the County Court costs money and can be highly intimidating, especially for vulnerable tenants who may well be deterred from exercising this form of redress.

We have a number of suggestions:

- The Bill should also provide for contract-holders to apply via the existing redress bodies for recovery of fees: The Property Ombudsman, Property Redress Scheme, and Ombudsman Services: Property
- The Bill should allow the County Court to award compensation in addition to the recovery of the prohibited fee and costs, of up to three times the amount of the prohibited payment. This would be in line with existing legislation for security deposits

- A ban on possession actions while a prohibited payment has been taken and held would be a strong incentive for agents to refund. This measure has worked effectively in relation to landlord licensing. However, learning lessons from the implementation of the Housing (Wales) Act 2014, the ban should apply for section 8 fault-based possession proceedings as well as section 21 no-fault proceedings
- The Bill in England places much more emphasis on the role of Trading Standards, giving powers to local weights and measures authorities to require the repayment of prohibited fees, including interest. The English Bill also allows local weights and measures authorities to help tenants to make an application to recover prohibited payments. This would be very desirable for some tenants who may otherwise struggle with the process. The Welsh Bill would be stronger if it made similar provisions.

Security deposits

We welcome that the Welsh Government is prepared to set a limit on security deposits. It would be clearer for agents if this were included in the Bill rather than in regulations. We would argue for a cap of one month's rent, as was originally proposed for the Bill in England (subsequently revised upwards to six weeks).

Other issues: fees for ending a tenancy

The Bill makes it an offence for a landlord or agent to require payments as a condition of the granting, renewal or continuance of tenancy contracts. But the Bill doesn't mention fees for ending a tenancy, either in the form of checking-out fees (outside a fixed term) or cancellation fees (within a fixed term). These costs can be very high and we would urge the Government to ensure that the Bill explicitly bans fees for ending tenancies, to avoid creating a loophole. Our mystery shopping exercise found that tenants were being charged as much as £89 simply for handing their keys in at the end of the tenancy.

A young couple was living in shared accommodation when they found out they were expecting their first child. They needed to move to a new home suitable for raising a family, and this meant they had to leave their fixed-term contract early.

The couple were three months into a 12-month contract and they found a new home also managed by the same agent. Although they had found friends to replace them in the shared house, the agent wanted to charge £534 to change the contract, £450 for checks and references for the new tenants, and £500 for new checks and references for the couple despite this having already been done just three months previously.

The agent in question is one of the largest and most reputable agents in Wales.

It's possible that agents may argue that some charges for ending tenancies are legitimate, such as in the case study above when a tenant needs to move out during the fixed term and cancel the contract early. In these cases agents often require the outgoing tenants to find replacement tenants: in which case, the actual cost to the agent of establishing the new tenancy only includes credit and reference checks and getting the new agreement signed. However, if the agent re-advertises and recruits new tenants themselves, then costs to the agent might be higher. It may be fair to expect the outgoing tenant to pay a reasonable amount.

End-of-tenancy fees are by far the most common form of default fee that we have queries on. Problems arise frequently, so the Bill does need to address them.

In our view the Bill should:

- Include payments for ending a tenancy in the list of prohibited fees; and
- Allow agents to charge a reasonable fee for early cancellation of tenancies within the fixed term. Cancellation fees should be capped at one week's rent.



Evidence to the Equality, Local Government and Communities Committee inquiry into the general principles of the Renting Homes (Fees etc.) (Wales) Bill

June 2018

Introduction

1. Citizens Advice Cymru welcomes the opportunity to provide evidence to the Equality, Local Government and Communities Committee inquiry into the general principles of the Renting Homes (Fees etc.) (Wales) Bill. We would welcome the opportunity to discuss any of the issues raised in this paper with the committee and any broader issues relating to the Renting Homes (Fees etc.) (Wales) Bill.
2. In 2017 to 2018 the Citizens Advice service in Wales helped 101,911 people with 405,304 problems. We saw **9,000** people with **13,807** problems relating to housing. Problems with Private Rented Sector (PRS) housing dominate in this area with almost a third of all problems relating to privately rented housing.
3. In 2017 - 2018, our housing advice pages had **164,648** views from people in Wales.
4. We welcome the introduction of the Renting Homes (Fees etc.) (Wales) Bill. We fully support the government's proposed legislation, which will help make the private rented sector more affordable for renters. If the wording of the legislation is watertight and includes adequate enforcement mechanisms, it will fix a dysfunctional feature of the rental market. It will also make it easier for renters on lower incomes to meet the upfront costs of renting.

John's story

John¹ is married and lives with his wife and three children. They have recently moved to north Wales to be closer to family after his father-in-law became unwell. They found a private rented sector property closeby.

The family had to pay a credit check fee (£150, £75 per tenant), a check-in fee (£72), tenancy agreement and set up fee (£300) and an administration fee (£50). A total cost of £572 in fees.

The family have recently applied for and are now in receipt of Universal Credit with a full benefit cap. Their first month's claim was swallowed up in letting agent fees, the first month's rent (£550) and a deposit (£550). During this period, John's wife was diagnosed with severe mental health problems, which have been exacerbated by the stress and uncertainty of the UC claim, and she has been admitted to hospital. The clients are now one month behind with their rent and have been sent a letter by the letting agent charging them an additional £30 administration fee.

After paying the letting agent fees, John and his family were reliant on a food bank and have accrued a number of debts. Their local Citizens Advice office are trying to support them with their benefits and debt problems.

Key messages for the Committee

5. Citizens Advice Cymru believes that fees for tenants are uncompetitive whether they are charged by letting agents, landlords or a third party. We strongly support the need for legislation to remove such fees. The fundamental fact remains that renters do not, and should not be expected to, choose a property based on fees. It is important that the legislation is clear, with no exemptions that can be used to circumvent the purpose and intention of the ban.
6. The current PRS market is not competitive and fees to tenants are a barrier to an affordable private rent option for some tenants. We believe this legislation will allow renters the opportunity to enter the private rented sector for the first time and would strongly oppose any exemptions to a ban and enforcement must be effective.

¹ not his real name

Permitted Payments

7. All services provided by letting agents are on behalf of and for the benefit of landlords, not tenants. Permitted payments allowed in the draft legislation include rent, security deposits, holding deposits and payments in default. We have a number of concerns in relation to permitted payments as currently set out in legislation. We highlight our concerns below:
 - a. **Security deposits** - this cost can be prohibitive for some tenants, the legislation as drafted allows for the setting of a 'prescribed limit'. Analysis by the Deposit Protection Scheme has found that just over 50% of renters get their full deposit back and the average amount returned to the tenant is 75% of the original deposit value. Given that in the majority of cases renters get most or all of their deposits back, capping deposits to prevent excessively large upfront costs is a reasonable step. We strongly believe the limit should be at 3 weeks rent or below. This would balance a landlord's need for security against possible damage whilst protecting tenants from unnecessary hardship. We would also like to encourage greater innovation in how to support prospective tenants with their security deposits, such as in other European countries where deposits are paid in multiple installments.
 - b. **Holding deposits** - these should not be retained by the landlord or letting agent if the contract does not proceed. As currently drafted the legislation is open to interpretation and therefore possible misuse. We believe Welsh Government should provide greater clarity on the reasons why and understand what circumstances a holding deposit can be retained, the current drafting is ambiguous and could be misinterpreted.
 - c. **Payments in default** - we believe that tenants should not be charged for matters outside of their control. Any potential default fees should be subject to additional terms regulations if not contained within the model standard occupation contract, this must include a list of permitted fees. Fees should be reasonable and fair.
8. It is essential that the changes to legislation are widely communicated, not only to ensure letting agents and landlords comply, but also to ensure potential tenants are aware of their rights and what to do if they are charged a prohibited payment. Enforcement must also be communicated

clearly and resources, including training, must be made available to ensure the legislation is adhered to.

9. We broadly welcome effective enforcement through the use of Fixed Penalty Notices, however, we are not convinced that the £500 penalty will be a sufficient deterrent for those who do not wish to comply with the legislation.
10. Model standard occupation contracts and additional terms will be an important element in ensuring the intention of this Bill is fulfilled. In order to ensure that prospective tenants have some protection and clarity when entering into an agreement we feel that any terms which allow for default payments are clearly identified in regulations relating to standard and additional terms.

For more further information, contact:

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June 2018

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Renting Homes (Fees etc.) (Wales) Bill

CIH Cymru consultation response

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org

In Wales, we aim to provide a professional and impartial voice for housing across all sectors to emphasise the particular context of housing in Wales and to work with organisations to identify housing solutions.

For further information on this response please contact
Matthew Kennedy, policy & public affairs manager
at the above address or email matthew.kennedy@cih.org

General Comments

CIH Cymru welcomes the opportunity to provide evidence to the Equalities, Local Government and Communities Committee on the Renting Homes (Fees etc.) (Wales) Bill.

Our response is informed by feedback from our members, our knowledge of the housing industry and expertise from our policy and practice teams.

CIH Cymru supports the development of Welsh policies, practices and legislation that aim to address the key housing challenges we face, to improve standards and supply, promote community cohesion, tackle poverty and promote equality. We promote a *one housing system* approach that:

- places the delivery of additional affordable housing at the top of national, regional and local strategies as a primary method of tackling the housing crisis;
- secures investment to ensure the high and sustainable quality of all homes in a sustainable framework;
- improves standards and develops the consumer voice within the private rented sector
- promotes the concept of housing led regeneration to capture the added value that housing brings in terms of economic, social and environmental outcomes;
- recognises that meeting the housing needs of our communities is a key aspect of tackling inequality and poverty;
- ensures that that there are properly resourced support services in place to prevent homelessness and protect the most vulnerable;
- uses current and potential legislative and financial powers to intervene in housing markets and benefit schemes;
- promotes consumer rights & tenant involvement;
- and supports the continued professional development of housing practitioners.

1. Main messages

- We agree with the option outlined in the consultation which would see a ban on fees charged to tenants in Wales.
- Whilst there is much good practice by private landlords and letting agents we support the need to ensure consistency and transparency in the approach.
- Homelessness is on the rise in Wales with a particular challenge in reducing people sleeping on the streets. Add to this housing waiting lists continue to grow, and we have a situation where we must use our housing system to its fullest - the PRS is and does continue to have a central role in addressing these challenges - removing any barriers is therefore vital.
- There must be an on-going dialogue with the PRS to ensure implementation of the Bill does not cause concern that prompts changes to practices which, in turn, could limit the supply of homes
- There must be a comprehensive and clear programme of supported communication activity to ensure the public are aware of what 'fees' incorporate and therefore what enacting this legislation could mean for those renting in the future.

2. Introduction

- 2.1 Wales is facing an acute housing crisis. Estimates show that over the period 2011 to 2031 an additional 240,000 homes over the period, or 12,000 a year; of which 65% would be in the market sector (7,800 a year, 156,000 over the period) and 35% in the social sector (4,200 a year, 84,000 over the period).¹ This marks a return to house building rates not seen for a generation.
- 2.2 The private rented sector (PRS) has grown considerably in Wales in the last decade, as has been the trend across the UK. Between 2001-2011 every Local Authority in Wales saw at least 100% growth in the private rented market. Overall between 2000/01- The PRS has a key role to play in addressing the housing crisis in partnership with housing associations and local authorities.
- 2.3 The role of the PRS is further enhanced by provision in the Housing (Wales) Act 2014 (Part 2) where there is a greater emphasis on local authorities discharging their homelessness duty through providing a PRS housing solution. Whilst we and others in the sector have welcomed this provision, we must ensure that barriers to entering a secure and sustainable tenancy across the private and social rented sector are addressed and mitigated.
- 2.4. Lastly, we believe the potential to make progress in this area is further strengthened by the opportunity to learn from the experiences of the Scottish Government (in 2012) and more recently the Westminster government in progressing legislation with a similar policy intent in Scotland and England respectively.

¹ <https://sites.cardiff.ac.uk/ppiw/files/2015/10/Future-Need-and-Demand-for-Housing-in-Wales.pdf>

3. The general principles of the Renting Homes (Fees etc.) (Wales) Bill and the need for legislation to deliver the stated policy intention

- 3.1 In principle, we support the policy intention of this Bill to ban fees charged to tenants. The consultation documents provides strong evidence highlighting that variation does exist coupled with instances where tenants are not well-informed about the justification behind charging fees.
- 3.2 Whether someone is renting or buying, accessing a safe secure and affordable home should be at the heart of housing policy – this legislation seeks to address one such barrier in the system.

Handling of exempt fees

- 3.3 The opportunity through the introduction of standard contracts under the Renting Homes (Wales) Act 2016 is significant. The Act will provide consistency between the approaches in the social and rented sector, providing a better experience for tenants.
- 3.4 We welcome provisions set-out in the Bill to cap holding deposits at a week's rent. This payment serves an important purpose, as recognised in the Bill, of providing assurances to both landlord and tenants over the intention to potentially enter into a tenancy agreement. Capping this at a week's rent will not impact affordability whilst also ensuring it continues to provide the intended protection to both tenants and landlords.
- 3.5 However we are concerned about the potential impact of the 'right to rent scheme' if this were to be introduced in Wales. We consider that this is likely to be produce unfair situations where prospective tenants may well have applied in good faith.
- 3.6 As a general principle we feel that unless prospective tenants have deliberately misrepresented their circumstances, they should not be left substantially out of pocket as a result of their holding deposit being kept.
- 3.7 More generally if it were to be introduced in Wales, we have serious concerns about the right to rent scheme. An independent assessment has revealed a number of problems, including that (in England):
- It has led to a rise in discriminatory lettings practices. 51 per cent of landlords say that they are now less likely to rent to a non-EU national, while 42 per cent are less likely to rent to anyone without a British passport
 - It is not widely understood by landlords. 27 per cent of landlords are either unaware of the scheme or feel that they don't understand their obligations
 - Levels of enforcement are low. Only 654 individuals have come to the
 - Home Office's attention as a result of the scheme and only 31 of these have since been removed from the country.

Although we recognise that the future of the right to rent scheme is not within the scope of this discussion, it is our view that the evidence shows that it is not working and should be abandoned.

- 3.8 In relation to security deposits we welcome the provision in the Bill, through powers granted to Welsh Ministers under the legislation to place a cap on these charges. We

would encourage the Welsh Government to outline how this situation will be monitored to ensure evidence suggesting a change is acted upon if necessary.

Homelessness

- 3.9 The PRS has an important role to play in ensuring there are homes available to address homelessness. In April 2017, the Welsh Government published research that evaluated the impact of the Housing(Wales) Act 2014 and the changes which followed in how homelessness is addressed. The research highlights that:

It is clear that the PRS is utilised to a large degree in preventative and relief work. Almost half of preventative work to help households obtain alternative accommodation involves the PRS, and more households who have been successfully prevented or relieved have obtained PRS accommodation when compared to social housing.²

- 3.10 With the increasing intelligence available to Local Authorities on the shape of the PRS in their area, through Rent Smart Wales, an further emphasis on working with the PRS to reduce homelessness within the Housing (Wales) Act 2014, it seems sensible to explore removing any barriers to furthering the good progress already made by landlords and local authorities.

4. Any potential barriers to the implementation of the Bill's provision and whether the Bill takes account of them

- 4.1 It is important that the Welsh Government works closely with the PRS to ensure concerns are well-heard and addressed at the earliest opportunity. As is reflected in the consultation document, there will understandably be a fear that a ban on fees charged to tenants could lead to a number of changes in the sector which could have a negative impact – such as an increase in rents, higher fees for landlords or a reduction in services provided by letting agents.
- 4.2 These are similar fears to those expressed when the Scottish legislation was reviewed and re-enforced in 2012. In 2013, Shelter produced a report evaluating the impact of imposing the ban on fees charged to tenants.

The research found that:

- Renters in Scotland were no more likely to report a recent increase in their rent than those in other comparable areas of the UK.
- The majority of landlords (70%) who use letting agents had not seen an increase in fees since 2012
- Not one agency manager interviewed in the research found that it had had a negative impact on their business³

- 4.3 It is positive that many of the fears initially highlighted were not experienced to a detrimental level in practice. It will remain important to learn and disseminate

² <https://gov.wales/docs/caecd/research/2017/170808-post-implementation-evaluation-homelessness-legislation-interim-en.pdf> (Accessed (25/06/2018))

³ https://england.shelter.org.uk/_data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf (Accessed 26/06/18)

information arising from evaluations of this kind to ensure practices continue to be evidence-led and concerns addressed in a similar way.

5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

5.1 We feel the areas identified are appropriate.

6. Whether there are any unintended consequences arising from the Bill

Raising public awareness

6.1 In informing the public on these changes, if passed it will be vital to adopt a clear and coherent way of explaining the policy intention of the Bill. Any confusion could cause additional work for landlords and letting agents and cause disruption during the process of setting-up a tenancy.

6.2 The abolition of the right to buy in Wales is a current example of where the Welsh Government has produced materials intended for public use, in collaboration with the sector to outline clearly the opportunities some tenants may wish to exercise during the period before permanent abolition. We feel it would be beneficial to adopt a similar process where, in partnership with the sector details of how best to communicate the changes, as well as the detail of materials used are devised collaboratively.

Possible impact on supply in the PRS

6.3 There is a perceived risk, as outlined in the consultation, that some private landlords may reduce or stop completely an activity of adding property to their portfolios. The evidence from Scotland suggests that landlords felt no less optimistic about growing their portfolio under the conditions of a ban on fees charged to tenants.⁴

6.4 Whilst it is encouraging the evidence in practice in this case has suggested those fears are unlikely to materialise, research conducted by the Cambridge Centre for Housing and Planning research on behalf of the Welsh Government suggests that 77% of lettings agents said the result of a ban would see an increase in up-front costs charged to landlords.

7. The financial implications of the Bill

7.1 If the Welsh Government were to undertake a comprehensive programme of public communication aimed at raising awareness of these changes then this would clearly have financial implications.

⁴ https://england.shelter.org.uk/data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf
(Accessed 26/06/18)

8. Additional Comments

- 8.1 Accessing a home in the PRS is being made increasingly difficult for those where the housing benefit they receive does not meet the cost of their rent. In some parts of the Wales (and more broadly across the UK), Local Housing Allowance (LHA) rates do not match the cost of rent making it difficult for those on housing benefit to find affordable accommodation.
- 8.2 Whilst plans to apply the LHA rate to rents in the social sector were abandoned in late 2017, their impact on people's ability to meet the overall cost of renting in the PRS continues to be of considerable concern. We recognise that powers over welfare benefits are a non-devolved area, but strongly believe a Bill seeking to remove a similarly significant barrier should not be blind to this issue.

Rent Smart Wales (RSW) is a service hosted by Cardiff Council but ensures compliance with the legislation in partnership with 22 Welsh local authorities. The Welsh Ministers designated Cardiff Council as the Licensing Authority for the whole of Wales in 2015. The designation can be read on the [legislation website](#)

In its role as Licensing Authority under the Housing (Wales) Act 2014, the Rent Smart Wales service must process landlord registrations and grant licences to landlords and agents who are required to comply with the Housing (Wales) Act 2014.

One of the reasons the Welsh Government chose one Council to act as administrator for the whole of Wales is to make the service easier for landlords, agents and tenants to access. The central register means that landlords only have to complete one registration and if they self-manage only apply for one licence to cover them for the whole country. The same applies to agents, who need only apply for one licence. In addition it made sense to centralise the administrative functions associated with the legislation as this allowed the processing to be undertaken in the most efficient manner and consistently across Wales. However, there is a critical role for local authorities. Both the Single Licensing Authority and local authority implement the enforcement provisions and in some cases the local authority leads enforcement action against those landlords and agents not complying with their legal obligations on behalf of the Licensing Authority. The current breakdown of enforcement activity is set out below:

RSW have prosecuted 26 landlords and agents.
Local Authorities have prosecuted 14 landlords and agents.

These are across the whole of Wales with the exemption of Powys where no landlords have been convicted of Housing (Wales) Act 2014 offences.

FPNs served are detailed below:

309 FPNs have been issued to date. Of this number 6 have been issued by local authorities.

2 Swansea

2 Neath

2 Carmarthen

Local Authority	Total FPNs issued
**Not in Wales	46
**Unallocated (of these 15 are outside Wales)	29
BlaenauGwent	3
Bridgend	7
Caerphilly	8
Cardiff	45

Carmarthen	14
Ceredigion	2
Conwy	5
Denbighshire	4
Flintshire	6
Gwynedd	7
IsleOfAnglesey	8
MerthyrTydfil	4
Monmouthshire	3
NeathPortTalbot	12
Newport	17
Pembrokeshire	9
Powys	8
RhonddaCynonTaf	16
SWANSEA	26
Torfaen	4
ValeOfGlamorgan	17
Wrexham	9
Total	309

- **Section 14 of the Bill requires the local authority to notify RSW of any conviction; Members are particularly interested how this would impact on a landlord or agent's licence (would they still be considered a fit and proper person?)**

Currently RSW has a MOU in place with each Council setting out the arrangements for how we work together and share information. This, in the main, focuses on the relationship with the Housing Enforcement Teams within the authorities. The question of who will be authorised within a local authority to implement the enforcement measure within this Act will be an important consideration. The MOU with RSW will need to be amended and more robust arrangements will need to be developed with the Trading Standards Services specifically to ensure that the appropriate notifications occur.

It will be a missed opportunity if RSW cannot also deal with these offences, as we are currently doing audits of agents and it would be an appropriate time to deal with the offences as they arise or are identified. The consequence of not being able to do so is that a referral will be made to a local authority who may/may not be able to prioritise the activity in a timely manner. If this were to change, power to require information for this purpose would also need to be amended.

- **If a local authority did not prosecute a landlord or agent for taking prohibited fees, the tenant would have to go to court to get the money back – how would RSW find out? There is no mechanism in the**

Bill. Welsh Government officials said it would rely on either a local authority or tenant informing RSW – how would this work in practice?

RSW can take account of “any other matter” it considers appropriate in determining whether a landlord or agent is “fit and proper”. Currently we rely on tenants telling RSW directly of this type of issue. This information rarely comes from a local authority, unless the LA has concerns about the fitness and propriety of an individual. RSW implements a review process where significant number or significant type of complaints are received about a licensee, this automatically triggers an investigation / review of licence.

- **The RSW system for generating Fixed Penalty Notices is to be adapted to issue FPNs under this Bill – does that mean RSW will know about each FPN issued or not?**

The mechanism for this to happen has not been discussed and will require local authorities to sign up to using this as their approach. They may have their own systems for generating FPNs which they would prefer to use. If this is the case, RSW may never be advised, particularly if the FPN is paid and then the offender does comply with the legislation, at that time. To ensure this is consistently considered and/or triggers a F&P review, a formal notification system is required for FPNs as well as convictions for successful prosecutions.

RSW experience shows that despite unlimited fines being attached to these offences, the actual fines awarded by the courts are very low, at times less than the fixed penalty notice (where a landlords/agent is able to plead poverty). The way to change this is by setting a higher FPN fine, as has been done for this legislation. The question is whether £500 is sufficient; should there be a different penalty level for commercial agents?

- **How would RSW respond to the Bill in terms of updating the Code of Practice and landlord/agent training courses**

I have been advised that WG will amend the Rent Smart Wales code of practice. Amendments are already in hand to accommodate legislative changes which have occurred since the launch of RSW. RSW, LAs and other stakeholders have been consulted as part of this review process. Any complaints about this matter, will then be taken into account and will trigger a F&PP investigation in accordance with our processes.

- **How would RSW help publicise the requirements in the Bill: landlords/agents/tenants?**

RSW has the ability to notify its registered / licensed landlords and agents and would do so to advise of any update to the legislation which impacts them and the subsequent alterations to the code, which is a mandatory licence condition to comply with. We would also use our social media channels and website to inform the sector. We have a Stakeholder group which would also be used to ensure messages are consistent across the sector, which proved very useful in the roll out of RSW.

Bethan Jones
Operational Manager
Rent Smart Wales
4th July 2018

Agenda Item 5

Equality, Local Government and Communities Committee

11 July 2018 – papers to note cover sheet

Paper no.	Issue	From	Action point
ELGC(5)-22-18 Paper 5	Welsh Government Draft Budget 2019-20	Chair of the Finance Committee	Outlining the approach to scrutiny of the Welsh Government Draft Budget 2019-20.

Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Rural Affairs Committee
Chair, Culture, Welsh Language and Communications Committee
Chair, Economy, Infrastructure and Skills Committee
Chair, Equality, Local Government and Communities Committee
Chair, External Affairs and Additional Legislation Committee
Chair, Health, Social Care and Sport Committee

21 June 2018

Dear Committee Chairs

Welsh Government Draft Budget 2019–20

At our meeting on 21 June, the Finance Committee agreed its approach to the budget scrutiny. I am writing to all Chairs of subject committees to share our thinking, and to encourage your committees to consider how you can contribute to delivering the most coherent and effective scrutiny of the Government's spending plans.

Budget focus

We have agreed to continue the approach followed in previous years, whereby budget scrutiny is centred on the four principles of financial scrutiny: affordability, prioritisation, value for money and process. The principles are:

- **Affordability** – to look at the big picture of total revenue and expenditure, and whether these are appropriately balanced;
- **Prioritisation** – whether the division of allocations between different sectors/programmes is justifiable and coherent;
- **Value for money** – Essentially, are public bodies spending their allocations well – economy, efficiency and effectiveness (i.e.) outcomes; and
- **Budget processes** – are they effective and accessible and whether there is integration between corporate and service planning and performance and financial management.

Following a stakeholder event in Swansea, we have identified a number of areas which we would like to see the focus of the scrutiny, these are:

- *How the Welsh Government should use taxation and borrowing powers, particularly in relation to the Welsh Rate of Income Tax*
- *Approach to preventative spending and how is this represented in resource allocation (Preventative spending = spending which focuses on preventing problems and eases future demand on services by intervening early), particularly in relation to the financing of local health boards and health and social care services*
- *Sustainability of public services, innovation and service transformation*
- *Welsh Government policies to promote economic growth, reduce poverty, gender inequality and mitigate welfare reform*
- *The Welsh Government's planning and preparedness for Brexit*
- *How evidence is driving Welsh Government priority setting and budget allocations*
- *How the Future Generations Act is influencing policy making*

We would encourage you to use some of these areas as the focus for your budget scrutiny.

Draft budget consultation

As has been the previous practice, we will be undertaking a consultation on behalf of all Committees over the summer recess and the responses will be shared with you in the Autumn in order to assist your scrutiny of the draft budget.

I enclose a summary of the views we heard at the Finance Committee's pre-budget stakeholder event in Swansea on 7 June, which may inform your budget scrutiny.

Timetable

We have not yet been notified of the dates for the draft budget, the Cabinet Secretary for Finance is required to do this two weeks prior to summer recess. I have asked the Finance Committee Clerk to liaise with your Clerk once dates are known.

As you will be aware the provisions in relation to the reporting by policy committees changed in 2017, and you are now able to report in your own right (if you so wish), and your reports can be used as a supporting document to the draft budget debate.

As a Committee we are considering how we can maintain a strategic, oversight role of financial scrutiny. The Committee noted during our review of draft budget scrutiny in January 2018, the wide range of evidence gathered before and during



scrutiny last autumn, particularly in the health, local government and education areas. This led to insightful conclusions and recommendations, which we are pleased to see has been followed up throughout the year. We would welcome any views from you as to how the process may be improved.

If you have any questions about any aspect of the draft budget process, please feel free to contact me or the Clerk to the Finance Committee, Bethan Davies, 0300 200 6372, Bethan.Davies@assembly.Wales

Yours sincerely

A handwritten signature in black ink that reads "Simon Thomas". The signature is written in a cursive style with a large initial 'S'.

Simon Thomas

Chair



Stakeholder Engagement: Welsh Government Draft Budget 2019–20

Finance Committee | 13 June 2018

The Committee held an informal stakeholder event at the National Waterfront Museum, Swansea City Bay Region, on 07 June 2018. The event focussed on pre-budget scrutiny and the inquiry into preparations for replacing EU funding for Wales.

1. Preventative Spend, Health & Social Care

A major theme across all discussions was the importance of preventative spend, and putting a greater emphasis on preventative measures in the budgets for health and social care. Stakeholder views and experiences include the following:

- One delegate indicated that some preventative spend measures should act as investment on a community level, in order to continue the role that European Structural Funding has played in supporting communities and aiding prevention.
- Some stakeholders encouraged a linking of the preventative care & Future Generations agenda with regards to public health. An example offered by stakeholders is to include, within the Health Budget, specific funding for leisure centres, to help to promote long-term health through active lifestyles.
- Some stakeholders suggested that specific measures to improve health, including ring-fenced budgets, are preferable to simply allocating a larger proportion of the overall budget to Health, while others, in contrast, approved of the continued prioritisation and increases in the Health Budget.
- Another set of stakeholders suggested that consideration of greater interaction between health, research and research institutions should be made. One stakeholder indicated investing more of the Health Budget in Research and Development would lead to more targeted and efficient services.. Another stakeholder suggested that we consider how universities could be used to support the NHS and relieve it of some of its burdens.
- While stakeholders tended to agree that Active Travel is a good initiative, there were calls for a review of the degree to which it has been successful so far, of its long-term deliverability, and whether or not it requires additional funding.



- Stakeholders expressed concern that adult social services are being put under increasing pressure. Concern was expressed regarding the lack of funding allocated to older people and social care, suggesting that preventative spend is decreasing in this area.

2. Long-Term Planning & Strategies

Stakeholders consistently expressed dissatisfaction with all but NHS funding budgeted on an annual basis in Wales, calling for longer-term budgeting across the board for the sake of stability and certainty, and to enable better strategic planning, more efficient financial management and decision making.

Stakeholders said that long-term strategic planning and budgeting was also required for effective preventative & transformational spending. One third-sector organisation described a preventative care initiative of theirs which is funded – and, therefore, planned – on a rolling 6-month basis. The organisation describes this as inhibiting the initiative’s efficacy in delivering this preventative care. This sentiment was mirrored across a number of other third-sector stakeholders and local authority representatives, who claim that it will be difficult to sustain successful services over the long-term when budgeting is performed on a short-term basis. Specifically, local authority representatives suggested establishing funding arrangements for 2–3 year periods to ensure better planning and promote stability.

Stakeholders also emphasised the importance of the link between the Welsh Government’s strategic priorities and the Budget. Some delegates suggested that the Budget allocations should be more greatly influenced by the Well-being of Future Generations Act, by putting a greater focus on the environment and the need to develop skills in areas of long-term future value. Included within this is investment in skills which will prepare the workforce for automation and the widespread use of artificial intelligence throughout the economy, with one stakeholder claiming that the Government should be making far larger investments in such preparations. Further, a stakeholder stated that “the Welsh Government employability plan is good, but needs more funding allocated to it”.

Additional comments from stakeholders include the following:

- There should be officials in the Welsh Government who are tasked with discussing the impact of future legislation, policy and plans with local government, so that local authorities are aware early and can contribute to these potential changes.
- The National Farmers Union Wales currently have CAP 7-year funding programme, but are concerned this could drop to a 1-year funding programme after Brexit, meaning that the success of long-term planning may suffer.



- That Wales is very reactive in terms of construction at the moment: if we need something, we build it. Stakeholders said there was a need to be cleverer and more efficient with funding, and suggest the establishment of a hub–spoke model.
- That innovation is important to enable long–term saving.
- That there should be a clearer link between the Economic Action Plan and the Budget.

3. Economy, businesses & the Third Sector

A number of issues relating to the business and third sectors were raised by stakeholders.

A number of delegates highlighted the need for the Economic Action Plan to be reflected in the budget, to highlight where changes in government policy had led to changes in allocations.

One such issue raised by stakeholders was the lack of focus on small and medium–sized enterprises (SMEs). In particular, some stakeholders raised the problem of a limited number of exit plans available to SMEs, suggesting that options such as buy–outs from the Development Bank of Wales should be made more viable, rather than selling to large companies outside of Wales.

Another issue raised concerns grants that are available to businesses in Wales. Stakeholders noted that there are difficulties in obtaining grants from Business Wales, largely due to the lack of clarity and understanding on the criteria for eligibility for such grants. A similar uncertainty over eligibility criteria exists for the £50 million Brexit transition fund for businesses and public sector bodies: in particular, whether or not third sector organisations are eligible for funding in this manner.

Finally, some stakeholders raised concerns over the source of financing for the City Deals.

4. Education funding

Some stakeholders expressed concern that education funding had not been seen as a priority, and that other areas tended to overshadow it. They felt that this had led to the situation where capital investment in schools is now partially funded through the Mutual Investment Model, a form of Private Finance Initiative. They also highlighted that the uncertainty around annual allocations of local government revenue funding impacts on schools, who do not find out their budgets until relatively late on, which leads to redundancies.

5. Transparency & Scrutiny

Some stakeholders commented on the lack of transparency of the scrutiny process and details of spending. An example of this lack of transparency and detail raised by



stakeholders was the removal of the school uniform grant, which prompted one stakeholder to suggest that a year's notice should be provided by the Welsh Government in the event of budget cuts.

Others called for more scrutiny on budgetary increases, to ensure that value for money is achieved. The Finance Committee was asked to lead on this front, in terms of getting Committees to engage in the scrutiny process in order that the best questions are asked.

Stakeholders commented that the Assembly must ensure it has the resources and expertise to scrutinise newly devolved taxation and borrowing powers on behalf of the electorate, and that it could learn from Scotland in this regard.

The Finance Committee scrutiny of the budgets of organisations funded directly from the Welsh Consolidated Fund, such as the Assembly Commission, Auditor General for Wales and Public Service Ombudsman, should reflect changes to public sector funding.

6. Equality & Vulnerable Groups

The needs and representation of vulnerable groups, and how they are included in the Budget, were raised by a number of stakeholders. One discussion resulted in a call for more scrutiny of the "Equalities Impact Assessment", to assess and mitigate for over- or under-representation of certain interest groups in the Budget and budgeting process itself, and to assess the impact of proposals on protected characteristics. Calls were also made to engage further with disadvantaged and vulnerable groups, including young people, during the budgeting process, to remedy misrepresentation and recognise any harm to, or negligence of, such groups in the Budget.

Specific advisory comments advanced by stakeholders include: the requirement to consider the needs of people with disabilities in the Welsh Government's commitment to constructing 20,000 new homes by 2021; to continue the Independent Living Grant scheme; to consider how success will be ensured in post-16 reforms to the Additional Learning Needs Act without additional funding; and for the Welsh Government to commit to making preparations for mitigating the effects of welfare reforms.

7. Taxation

A suggestion offered by a stakeholder is to consider whether the setting of business rates should be more locally devolved, and whether taxes should be levied on income or on profits. Subsequent discussions resulted in the recommendation of thorough impact assessments to ensure that the impact of these considerations on very small businesses should be minimal, and that start-ups shouldn't be inhibited. Further, stakeholders called for efforts to be made to ensure that the tax systems isn't overly complicated.



Calls were also made by stakeholders for greater consideration of the impact of tax on incomes of people as a whole. Stakeholders suggested looking at the wider impact of tax decisions, for example by looking at demographics and the impact on the population, and how this links into council tax. Stakeholders also asked what modelling is being done in this respect, and say that greater transparency with respect to the research underpinning tax rates is needed.

8. Attitudes & Approaches

A number of general comments in relation to the required attitudes and approaches to ensure successful government were made. These include:

- The need to foster an atmosphere of ambition rather than negativity.
- An attempt to make the Budget more connected, so that the separate budgets support each other.
- The need to obtain better evidence on the degree of success of Welsh Government projects.



Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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