

# **Tenant Fees Act 2019: Guidance for tenants**

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# **ABOUT THE BAN**

Please note: this guidance applies to England only.

## **The law on tenant fees is changing. Do you know what fees a landlord or agent can ask you to pay?**

A landlord or agent cannot require you (or anyone acting on your behalf or guaranteeing your rent) to make certain payments in connection with a tenancy in England. They cannot require you to enter a contract with a third party for the provision for a service or for insurance or make a loan in connection with a tenancy.

### **The only payments in connection with a tenancy that you can be asked to make are:**

- [the rent](#)
- [a refundable tenancy deposit](#) capped at no more than five weeks' rent where your total annual rent is less than £50,000, or six weeks' rent where your total annual rent is £50,000 or above
- [a refundable holding deposit](#) (to reserve a property) capped at no more than one week's rent
- [payments to change the tenancy](#) when requested by the tenant, capped at £50, or reasonable costs incurred if higher
- [payments associated with early termination of the tenancy](#), when requested by the tenant
- [payments in respect of utilities, communication services, TV licence and council tax](#); and
- A [default fee for late payment of rent and replacement of a lost key/security device giving access to the housing, where required under a tenancy agreement](#).

If the payment a landlord or agent is charging is not on this list it is not lawful, and a landlord or agent should not ask you to pay it. If a landlord or agent has charged a prohibited payment you should follow the steps on page 10.

**A landlord cannot evict you using the [section 21 eviction procedure](#) until they have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the section 21 evictions procedure will continue to apply.**

## When does the ban apply?

It depends on when you entered into a tenancy agreement. The ban is being introduced in two stages.

1. From **1 June 2019**, if you enter into a tenancy agreement, student let or licence to occupy housing in the private rented sector, a landlord or agent will be prohibited from charging you any fees or other payments that are not included in the list of permitted payments [above](#).

Landlords will be responsible for the costs associated with setting up, renewing or ending a tenancy (e.g. referencing, administration, inventory, renewal and check-out fees). Agents and landlords do not have to pay back any fees that they have charged you before **1 June 2019**. You should challenge a landlord or agent if you think they are charging an unlawful fee.

If you entered into a tenancy before **1 June 2019**, a landlord or agent will still be able to charge fees up until **31 May 2020**, but only where these are required under an existing tenancy agreement. This might include, for example, fees to renew a fixed-term agreement where you had already agreed to pay these. Nonetheless, businesses such as letting agents are prohibited from setting unfair terms or fees under existing consumer protection legislation. If you consider the level of fees being charged to be unfair, you should discuss this with your landlord or agent.

2. From **1 June 2020**, the ban on fees will apply to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England. Landlords and agents will not be able to charge any fees after this date (apart from those payments which are excluded from the ban – see above).

### **I've already entered into a tenancy, what does this mean for me?**

If a landlord or agent requires you to make a payment under a term within a tenancy which was entered into before the ban came into force, such as check-out or renewal fees, they can continue charging those fees until **31 May 2020**.

After **1 June 2020**, the term requiring that payment will no longer be binding. Should you, in error, make such a payment, you should ask the landlord or agent to return the payment immediately. The payment must be returned within 28 days. If they do not return the payment within 28 days, then they will be treated for the purposes of the Act as having required you to make a prohibited payment (a payment that is outlawed under the ban).

## Does the ban apply to me?

The ban applies to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England. Most tenancies in the private rented sector are assured shorthold tenancies.

In this guidance 'tenant' includes licensees. 'Relevant persons' are any persons acting on behalf of a tenant or licensee or guaranteeing the rent

You can use this [tenancy checker](#) to find out which tenancy you have.

**Please note:** certain licences to occupy are excluded from the Tenant Fees Act 2019, such as those granted under Homeshare arrangements (provided that the necessary conditions apply).

Local housing authorities, the Greater London Authority or a person or organisation acting on their behalf are excluded from the definition of relevant person under the Act and can continue to make payments in connection with a tenancy when acting on behalf of a tenant or guaranteeing their rent.

# ENFORCEMENT

## Q. What is considered to be a breach of the ban?

Each request a landlord makes for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- charging different tenants under different tenancy agreements prohibited fees
- charging one tenant multiple prohibited fees for different services at different times
- charging one tenant multiple prohibited fees for different services at the same time
- charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment e.g. £200 requested for arranging the tenancy and doing a reference check= multiple breaches.

Where a landlord or agent is being fined for multiple breaches at once, and they have not previously been served a financial penalty, the financial penalty for each of these breaches is limited to up to £5,000 each.

## Q. Who will carry out enforcement of the ban?

Trading standards authorities have a duty to enforce the ban but district councils that are not Trading Standards authorities may also enforce if they choose to do so. You can find your local trading standards authority [here](#).

## Q. Who are Trading Standards?

Trading Standards are based within local authorities and enforce consumer rights. They can determine whether a tenant or relevant person has been charged an unlawful or unfair payment by a landlord or agent and issue a financial penalty for a breach of the ban, if this has been established.

## Q. Are there any other enforcement options?

The Act also makes provision for tenants or relevant persons to be able to recover unlawfully charged fees through the [First-tier Tribunal](#), and, importantly, prevents landlords from recovering possession of their property via the [section 21 eviction procedure](#) until they have repaid any unlawfully charged fees or unlawfully retained holding deposit.

Your [local authority](#) may assist you with claims to the [First-tier Tribunal](#), and it may be useful to speak with [Citizens Advice](#) or a lawyer before you apply. If necessary, your [local authority](#) may also be able to support you with an application to the county court to enforce an order of the [First-tier Tribunal](#). If the issue is regarding a letting agent, you can apply to the relevant [redress scheme](#).

## **Q. What is a redress scheme and how do I find out which one my agent belongs to?**

A redress scheme is an impartial complaints resolution service which allows tenants and landlords to raise complaints against their letting agent where the agent has not satisfactorily resolved that complaint previously.

According to the Consumer Rights Act 2015, every letting agent must belong to a [Government-approved redress scheme](#). There are two redress schemes:

- The Property Redress Scheme
- The Property Ombudsman

Letting agents must display the name of the scheme they belong to in their offices and on their website. You can also have a look at either scheme's online checking tool to find out whether an agent is a member:

- <https://www.tpos.co.uk/find-a-member>
- <https://www.theprs.co.uk/consumer/members/>

If your agent does not belong to a [Government-approved redress scheme](#), you should contact Citizens Advice. Agents that are not a member of a scheme can face a financial penalty of up to £5,000.

The Tenant Fees Act extends the requirement to display fees to cover online property websites that advertise properties to let on behalf of letting agents.

## **Q. Will I be charged for making a claim to the local authority, First-tier Tribunal or redress scheme?**

Your [local authority](#), [redress scheme](#) or the charity [Citizens Advice](#) should not charge for their service. You should consider seeking independent advice before making a claim for the repayment of a prohibited payment.

If you wish to apply to the [First-tier Tribunal](#) for a repayment of a prohibited payment, you may have to pay a small fee. You can [apply for help paying the fee](#) if you're on certain benefits or a low income. The [local authority](#) may also assist you with claims to the [First-tier Tribunal](#).

## **Q. What evidence will I need to support my claim at the Tribunal?**

You should keep any evidence that proves a landlord or agent has requested a payment or any evidence to demonstrate that you have paid an unlawful charge; this could be:

- tenancy or pre-tenancy agreements
- any other relevant paperwork
- receipts and invoices
- bank statements



- correspondence from the landlord or agent – emails, letters, text messages
- notes that you made during or shortly after any conversation with a landlord or agent

If your landlord or agent asks you to make a **prohibited payment**, you should refuse. If your landlord or agent insists on the payment, you should get evidence of this in writing. You should ensure that you keep a record of any correspondence with the landlord or agent.

#### **Q. What is a Lead Enforcement Authority?**

The Secretary of State (i.e. the Government) can arrange for a lead enforcement authority whose duty it is to oversee the operation of the tenant fees ban and any other relevant letting agency legislation. The Secretary of State may themselves act as lead enforcement authority. The lead enforcement authority as of February 2019 is the National Trading Standards Estate and Letting Agency Team.

#### **Q. Why am I not entitled to compensation under the ban?**

You are entitled to be repaid the sum of any unlawfully charged fees, an unlawfully retained holding deposit or amounts paid under a prohibited contract as well as any interest owed. A landlord or agent will be liable for financial penalty of up to £5,000 for an initial breach of the ban. If they breach the ban again, they will be liable for a financial penalty of up to £30,000 or prosecution.

## What should I do if a landlord or agent has charged a prohibited payment?

1. Check the list of permitted payments within this guidance document – if you are still unsure you could seek independent assistance from a charity like Citizens Advice.
2. Use the [draft letter/email in Annex B](#) to ask your landlord or agent to return the payment immediately.
3. If a **letting agent** has charged an unlawful payment and they are refusing to return this, you could complain to the relevant [redress scheme](#).

All letting agents must belong to a Government-approved redress scheme. This information should be clearly available on the agent's website. If this is not available, you should ask your letting agent which redress scheme they belong to. Redress schemes offer an independent dispute resolution service between tenants/landlords and agents – they do not charge for their service.

4. Contact your [local authority](#) if your landlord or agent still does not return the payment.

Local authorities (usually trading standards) are responsible enforcing the ban. They can take formal enforcement action against the landlord or agent and require them to repay any fee that has been unlawfully charged. They may also require the landlord or agent to pay interest on this amount.

5. You could recover the payment directly via the [First-tier Tribunal](#).

The [First-tier Tribunal](#) is easy to access for tenants and relevant persons. You will be required to submit evidence to support any application you make (examples of evidence that you could provide are included below). The First-tier Tribunal can order a landlord or agent to repay a payment which has been charged unlawfully. The local authority may be able to assist with this process. You may have to pay a small fee to make a claim to the First-tier Tribunal. You will not be eligible for legal aid but may be eligible for other [financial support](#) to help pay any Tribunal fees.

### **You should keep any evidence that demonstrates:**

- you have been asked to pay an unlawful fee (i.e. emails or letters from the landlord or agent/notes from verbal conversations)
- you have paid an unlawful fee (i.e. written confirmation from the landlord or agent, receipts, invoices, bank statements)

### **Need help?**

- You can seek free advice and support through [Citizens Advice](#), your [local authority](#) (usually trading standards) or the Lead Enforcement Authority.

## What should I do if I think that a landlord or agent has retained my holding deposit unlawfully?

1. Check the list of permitted payments within this guidance document – if you are still unsure you could seek independent assistance from a charity like Citizens Advice.
2. Use the [draft letter/email in Annex B](#) to ask your landlord or agent to return your holding deposit within 7 days if you think they have retained it unlawfully.
3. If a **letting agent** is refusing to return your holding deposit, you could complain to the relevant [redress scheme](#).

All letting agents must belong to a Government-approved redress scheme. This information should be clearly available on the agent's website. If this is not available, you should ask your letting agent which redress scheme they belong to. Redress schemes offer an independent dispute resolution service between tenants/landlords and agents and do not charge for their service.

4. Contact your [local authority](#) if your landlord or agent still does not return your holding deposit.

Local authorities (usually trading standards) are responsible for enforcing the ban. They can take formal enforcement action against the landlord or agent and determine whether they have retained your holding deposit unlawfully.

5. You could recover your holding deposit directly via the [First-tier Tribunal](#).

The [First-tier Tribunal](#) is easy to access for tenants and relevant persons. You will be required to submit evidence to support any application you make (examples of evidence that you could provide are included below). The First-tier Tribunal can order a landlord or agent to repay your holding deposit. The [local authority](#) may be able to assist with this process. You may have to pay a small fee to make a claim to the First-tier Tribunal. You will not be eligible for legal aid but may be eligible for other [financial support](#) to help pay Tribunal fees.

## What do I need to know about holding deposits?

- A holding deposit is a refundable payment which demonstrates your commitment to rent a property whilst referencing checks take place.
- A landlord or agent cannot ask you for a holding deposit which is more than one week of the total rent for the property.
- A landlord or agent can only accept one holding deposit at any one time<sup>1</sup>.
- A landlord or agent should provide clear information in advance about the holding deposit and the circumstances under which you may lose the deposit.
- A landlord or agent should make you aware of the *suitability requirements* before taking a holding deposit from you (i.e. basic income and credit worthiness requirements for the property).
- Once you have paid a holding deposit, landlords and agents will usually have two weeks (14 days) to enter into an agreement with you before '**deadline for agreement**', which is the 15<sup>th</sup> day after the landlord or agent has received the deposit (unless agreed otherwise with you writing).
- A holding deposit can only be retained where a tenant:
  - provides false or misleading information which it is reasonable for a landlord or agent to take into account (this can include the tenants action in providing it) in deciding whether to grant the tenancy (e.g. affects their suitability as a tenant)
  - fails a Right to Rent check
  - withdraws from a property\*
  - fails to take all reasonable steps to enter into a tenancy agreement when a landlord or agent has done so\*

\*this does not apply where a landlord or agent imposes a requirement that breaches the ban (e.g. requiring you to pay an unlawful fee) and/or acts in such a way that it would be unreasonable to expect you to enter into a tenancy agreement with them (e.g. including unfair terms in a tenancy agreement or acting in a harassing or aggressive way)

- A landlord or agent is required to return the holding deposit or set out in writing their reason for retaining the deposit within 7 days of deciding not to enter the agreement if the '**deadline for agreement**' has not passed or within 7 days of the '**deadline for agreement**' if it has.
- Where applicable, landlords and agents should consider on a case-by-case basis whether they need to retain your holding deposit and the appropriate amount to retain.

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<sup>1</sup> Unless a landlord or agent has lawful grounds to retain an existing holding deposit in accordance with the Tenant Fees Act.

## Questions to ask:

- Has the landlord or agent asked for a holding deposit which is more than one week's rent?
- Has the landlord accepted multiple holding deposits for the same property?

*If the landlord has not returned your holding deposit:*

- Does the landlord or agent have legitimate grounds to retain your holding deposit?
- Has the landlord or agent set out the reason for retaining your deposit in writing?
- Has the landlord or agent imposed a requirement which breaches the ban or acted in such a way that it would be unreasonable to expect you to enter into a tenancy agreement with them e.g. a landlord or agent asks you to pay a prohibited payment, such as a fee for referencing, seeks to include an unfair term in your tenancy agreement or acts in an aggressive or harassing manner?

## You should keep any evidence that demonstrates:

- you were asked to pay a holding deposit (i.e. emails or letters from the landlord or agent/notes from verbal conversations)
- you paid a holding deposit (i.e. written confirmation from the landlord or agent, receipts, invoices, bank statements)
- you responded to reasonable requests for information from the landlord or agent in respect of your tenancy application (i.e. your address history, contact details for a former landlord, employer details)
- you asked a landlord or agent to return your holding deposit or to provide a legitimate reason for retaining the deposit (i.e. emails or letters to the landlord/agent)

## Need help?

- You can seek advice and support through [Citizens Advice](#), your [local authority](#) (usually trading standards), or the Lead Enforcement Authority.
- Follow the flowchart below for step-by-step assistance in recovering your holding deposit.

A diagram showing the process of assessing the lawfulness of handling a holding deposit

Q1: Did the landlord or agent ask you to pay a holding deposit above one week's rent for the property?

Yes: The excess is a prohibited payment. You should ask your landlord or agent to return the excess amount. Return to the start for remaining deposit amount.

No: Proceed to Q2.

Q2: Did you enter into a tenancy agreement with the landlord?

Yes: The landlord or agent must return the holding deposit within 7 days of entering the agreement.

No: Proceed to Q3.

Q3: Did the landlord or agent set out the reason for retaining your deposit in writing?

No: The landlord or agent must return the holding deposit within 7 days of entering the

Yes: Proceed to Q4.

Q4: Was the reason given any of the following?

- You failed a right to rent check
- You withdrew from the proposed agreement
- You failed to take all reasonable steps to enter into a tenancy whilst the landlord or agent did (this does not apply if the landlord or agent imposed a requirement that breached the ban and/or acted in such a way that it would be unreasonable to expect you to enter into a tenancy agreement with them).

Yes: The landlord or agent can retain your holding deposit (a landlord or agent must set out the reason for retaining your deposit within 7 days of deciding not to let the property to you if the '**deadline for agreement**' has not passed or within 7 days of the '**deadline for agreement**' passing).

No: Proceed to Q5.

Q5: Was the reason given any of the following?

- You failed a reference check as the landlord considered you unsuitable (but you provided accurate and honest information as required)
- You failed to reach an agreement in time (and neither the landlord, agent or you were at fault)
- The landlord or agent withdrew from the proposed agreement
- You took all reasonable steps to enter reasonable steps to enter into the tenancy (i.e. responding to reasonable requests for information required to progress the agreement)

Yes: The landlord or agent must return the holding deposit within 7 days of entering the agreement.

No: Proceed to Q6.

Q6: Did you provide false or misleading information that is reasonable for a landlord or agent to take the false or misleading information, or your conduct, into account when deciding whether to grant you the tenancy?

Yes: The landlord or agent can retain your holding deposit.

No: The landlord or agent must return the holding deposit within 7 days of entering the agreement.

# What should I do if a landlord or agent has charged a default fee or damages payment unlawfully?

## Default fees

1. Check the list of permitted payments within this guidance document – if you are unsure you should seek independent assistance from Citizens Advice.
2. Use the [draft letter/email in Annex B](#) to ask your landlord or agent to return the fee or demonstrate that the tenancy agreement permits them to charge a default fee for:
  - a) **a late payment of rent** (where the payment has been outstanding for 14 days or more, interest can be charged at no more than 3% above the Bank of England's annual percentage rate for each day it is outstanding); or
  - b) **a replacement key/security device giving access to the housing** (which must be evidenced in writing to demonstrate the reasonable costs incurred by the landlord or agent)
3. If a **letting agent** has charged an unlawful or unreasonable default fee or is refusing to provide evidence to support the fee (in the case of a lost key or security device), you could complain to the relevant [redress scheme](#).

All letting agents must belong to a Government-approved redress scheme. This information should be clearly available on the agent's website. If this is not available, you should ask your letting agent which redress scheme they belong to. Redress schemes offer an independent dispute resolution service between tenants/landlords and agents – they do not charge for their service.

4. Where a landlord or agent does not provide suitable evidence in writing to justify the default fee (in the case of a lost key/security device) or return the fee as appropriate, you can contact your [local authority](#) or Citizens Advice to report a suspected breach.

Local authorities (usually trading standards) are responsible enforcing the ban. They can take formal enforcement action against the landlord or agent if they have charged an unlawful or unreasonable default fee. They may also help you to recover fees through the First-tier Tribunal and then the county court if necessary.

5. You could challenge or recover the default fee directly via the [First-tier Tribunal](#). The First-tier Tribunal is easy to access for tenants or relevant persons. You will be required to submit evidence to support any application you make (examples of evidence that you could provide have been included below). The Tribunal can



order a landlord or agent to repay or adjust the level of default fee. The [local authority](#) may be able to assist with this process. You may have to pay a small fee to make a claim to the First-tier Tribunal. You will not be eligible for legal aid but may be eligible for other [financial support](#) to help pay Tribunal fees.

## **Damages**

'Damages' are the general remedy available for breach of contract and cover any contractual breach which is not expressly covered by a default provision in the tenancy agreement for late payment of rent or for replacing a lost key/security device.

Your landlord or agent can seek to recoup any losses from the tenancy deposit they have suffered from the tenancy deposit due to losses arising from the failure of the tenant to perform any of their obligations, or from the failure to discharge any liability arising under or in connection with the tenancy. This would include 'damage' to the property. However, a landlord or agent are also entitled to seek a 'damages' payment from you at any time, with your agreement or by applying for a court order, for example if the tenancy deposit does not cover the costs they have incurred at the end of the tenancy.

1. Firstly, you should challenge the charge: ask the landlord or agent to make clear why they are seeking 'damages' from you and provide evidence of the costs they have incurred.

*A payment for 'damages' can only be enforced by court order. However, you can agree to pay 'damages' in advance of this if you agree that the costs are fair.*

*You should refuse to pay any damages claims made by landlords or agents if you do not agree with them, you think they are unfair or do not understand why you are being charged. If you're unsure, always seek independent advice before taking action.*

2. The payment may breach the ban on fees if it is a default fee which is being disguised as damages. For example, landlords and agents cannot write terms into your tenancy agreement that require a penalty charge should you fail to perform an obligation. Any clause that says '**if you fail to do x then you must pay y**' even if the amount is not specified it is likely to be prohibited.

If you think the payment breaches the ban, you should contact either Citizens Advice for support or your [local authority](#) (usually Trading Standards), who may be able to take formal enforcement action against the landlord or agent.

3. If you refuse to pay and a landlord or letting agent wishes to recover the claim for damages before the end of the tenancy, they will need to do this by making an application to the courts (or they can recover a legitimate claim through your tenancy deposit at the end of your tenancy). If a case for damages goes to court, a judge will decide whether the damages are lawful and whether you need to pay them. If considered lawful by a court, you could also be responsible for paying the other parties' legal costs.

## What do I need to know about default fees and damages?

### Default fees

- Default fees allow a landlord or agent to recover certain costs that they have incurred during the tenancy, but only where you are late paying your rent or require a replacement key/security device giving access to the housing.
- Your tenancy agreement should set out the circumstances under which you will be liable for a default fee and how the fee will be determined. This might be called a 'default fee provision' or 'payment in event of default'. There are restrictions on the amount of fee that can be charged.
- **Late payment of rent:** where a payment of rent has been outstanding for 14 days or more, interest can be charged at no more than an annual percentage rate of 3% above the Bank of England's base rate for each day that the payment is outstanding.
- **Lost keys/security devices giving access to the housing:** the amount charged must not exceed a landlord or agent's reasonably incurred costs in replacing the lost key or security device, and these costs must also be evidenced in writing to the person liable for the payment. You do not have to pay the fee until you have received this evidence.

### Damages

- If your tenancy agreement does not permit a landlord or agent to charge default fees for late rent payments or lost keys/security devices giving access to the housing, they may still be able to recover damages for breach of contract.
- A landlord or agent is generally entitled to recover costs for damages to put them back in the position they would have been had you carried out all the

obligations in your contract (for example, returning the house in the same condition as it was found while allowing for fair wear and tear).

- Often, a landlord or agent will seek to recover damages by claiming against the tenancy deposit at the end of the tenancy (but may do so at any time through agreement with you or court action if you do not agree).
- If you dispute the damages a landlord or letting agent may decide to try and recover damages through the courts. If the landlord or letting agent is successful you could be required to pay all or part of the costs incurred for doing this.
- If there's a hearing, you can:
  - represent yourself
  - pay for a barrister or solicitor to represent you
  - ask someone to advise you in court - they do not have to be a lawyer
  - ask someone to speak on your behalf - you might need to get the court's permission

Your hearing can be held in the judge's room or a courtroom in a county court if the claim is for less than £10,000. There might be a more formal hearing if you're claiming for more.

#### **After the hearing**

- You'll get a decision on the day of the hearing. The court will also send you a copy of the decision by post.
- If you win your case, you will not need to pay the damages and may be able to get any costs you have had to pay back.

#### **Appeal the decision**

- You can appeal the decision if you think the judge made a mistake during the hearing.

## **Questions to ask**

### **Default fees:**

- Is there a relevant provision within your tenancy agreement that permits a landlord or agent to charge a default fee?
- Is the default fee legal, i.e. in a new tenancy agreement it should only be for a late rent payment or lost key/security device?

### **Damages:**

- Has your landlord or agent made clear why they are seeking a damages payment from you?

- Have they provided evidence of the costs they have incurred?

### **You should keep any evidence that demonstrates:**

- your liability (responsibility) to pay a default fee (i.e. a relevant provision in your tenancy agreement)
- you have been asked to pay a default fee or payment for damages (i.e. emails or letters from the landlord or agent/notes from verbal conversations)
- you have paid a default fee or payment for damages (i.e. written confirmation from the landlord or agent, receipts, invoices, bank statements)
- you have asked a landlord or agent to provide evidence to support the default fee or payment for damages (i.e. emails or letters to the landlord/agent)
- any evidence provided by the landlord or agent to demonstrate that they can charge a default fee and the fee being charged is in accordance with the requirements of the Tenant Fees Act (i.e. receipts, invoices)

### **Examples of default fee provisions:**

- *Interest will be charged in line with the Bank of England's rate + 3% if a rent payment is more than 14 days overdue for each day the payment is outstanding.*
- *The tenant is responsible for ensuring that they look after the keys for the property throughout the tenancy. If they fail to do so, they will be responsible for covering the reasonable costs of replacement.*

Note: For examples of unlawful default fees please see page 60.

### **Need help?**

- You can seek free assistance and support by contacting [Citizens Advice](#), your [local authority](#) (usually trading standards) or the Lead Enforcement Authority.
- Follow the flowchart below for step-by-step assistance in challenging or recovering a default fee.

## A diagram showing the process of assessing default fees

Q1: Is the default fee for a late rent payment or replacement key/security device?

Yes: Proceed to Q2.

No: The landlord or agent cannot require you to pay a default fee, but the landlord may be entitled to recover damages for breach of the tenancy agreement. Often, they will seek to recover damages from your deposit at the end of the tenancy (but they may do so at any time). [More information about how to challenge a damages payment is available here.](#)

Q2: Does your tenancy agreement permit the landlord or agent to charge the fee?

Yes: Proceed to Q3.

No: The landlord or agent cannot require you to pay a default fee, but the landlord may be entitled to recover damages for breach of the tenancy agreement. Often, they will seek to recover damages from your deposit at the end of the tenancy (but they may do so at any time). [More information about how to challenge a damages payment is available here.](#)

Q3: Is that default fee for late payment of rent?

Yes: Proceed to Q4.

No: Proceed to Q5.

Q4: Has the payment been outstanding for 14 days or more?

Yes: A landlord or agent can charge interest at no more than 3% above the Bank of England's base rate for each day that the payment has been outstanding.

No: You cannot be charged a default fee.

Q5: Is the default fee for replacing a lost key or security device?

Yes: Proceed to Q6.

No: You cannot be charged a default fee.

Q6: Did the landlord or agent provide written evidence to demonstrate that the costs they incurred in replacing the lost key or security device are reasonable?

Yes: Proceed to Q7.

No: Request evidence of the charge and keep a written record of this. [Do not pay the fee until you have received this evidence.](#)

Q7: Is the evidence sufficient to justify the fee being charged?

Yes: Pay the charge and keep a record of the payment.

No: Challenge the fee with your landlord or agent.

### If you are still not satisfied, you should make a complaint to:

- [A redress scheme](#) – where an agent is concerned, you can ask the relevant redress scheme to investigate the dispute.
- [Your local authority](#) – local authorities (usually Trading Standards) are responsible for enforcing the ban.
- [The First-tier Tribunal](#) - you can apply directly to the First-tier Tribunal for a judgement.

These bodies will be able to determine whether a charge is unlawful or unreasonable based on the evidence provided and can require the agent or landlord to repay all or part of the fee.

## **What is reasonableness?**

Reasonableness is a common legal test. Generally, it means that default charges imposed by agents and landlords should not exceed the reasonable commercial or market value of goods and services.

## **What interest can a landlord or agent ask me to pay on late rent?**

1. Work out the yearly interest: take the amount of rent you owe the landlord or agent and multiply it by the Bank of England's base rate + 3%.
2. Work out the daily interest: divide your yearly interest from step 1 by 365 (the number of days in a year).
3. Work out the total amount of interest: multiply the daily interest from step 2 by the number of days your rent has been overdue.

[Use this example to help you](#)

## **Where can I get more information about letting a property in England?**

The Government's [How to Rent guide](#) provides useful information on rights and responsibilities for tenants.

You should also consult the [How to Rent a Safe Home](#) guide for information about how to identify potential hazards and unsafe conditions, and to understand your landlord's legal obligations when letting a residential property.

# **ANNEX A – TENANT FEES BILL Q&A**

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## What type of tenancy do I have?

The ban applies to all assured shorthold tenancies, tenancies of student accommodation and most licences to occupy housing in the private rented sector in England. Most tenancies in the private rented sector are assured shorthold tenancies. See below for definitions of these types of housing.

In this guidance 'tenant' includes licensees and any persons acting on behalf of a tenant or licensee or guaranteeing the rent. 'Relevant persons' are any persons acting on behalf of a tenant or licensee or guaranteeing the rent.

You can use this [tenancy checker](#) to find out which tenancy you have.

### What is an assured shorthold tenancy?

A tenancy is likely to be an assured shorthold tenancy if all the following apply:

- the property is rented privately
- the tenancy started on or after 28 February 1997
- the property is your main accommodation
- your landlord doesn't live in the property
- rent is under £100,000 per annum

### What is a licence to occupy housing?

A licence is personal permission for someone to occupy accommodation. A licence can be fixed term or periodic (usually rolling month-to-month). A tenancy agreement usually provides more protection from eviction than a licence.

The main instances where you might have a [licence rather than a tenancy agreement](#) are where:

- there is no intention to enter a legal relationship (e.g. a friend has invited you to house sit while they're on holiday)
- there is no right to exclusive occupation (e.g. you are a lodger)
- the arrangement is a service occupancy (e.g. where an employee is required to occupy the accommodation under their contract as it is essential for performance of their duties).

# PROHIBITED PAYMENTS

## What payments are not permitted under the ban?

You should consider seeking independent advice from Citizens Advice, your local authority or the Lead Enforcement Authority before taking action in relation to a prohibited payment.

## VIEWING FEES

### **Q. Can a landlord or agent ask me to pay a fee to view a property?**

No. A landlord or agent cannot charge for this service as viewing a property is part of the process connected with granting a tenancy.

## TENANCY SET-UP FEES

### **Q. Can a landlord or agent ask me to pay when they are setting up a new tenancy?**

No. After the ban comes into force a landlord or agent cannot charge you for any activity (except if it is listed in the permitted payments section above) or for their time in setting up a new tenancy. It is a landlord's responsibility to pay for services they contract, including any costs associated with setting up a tenancy. This includes fees for referencing and credit checks, guarantor fees and administration.

However, if the tenancy was entered into before **1 June 2019** and you agreed in your contract to pay fees to renew your tenancy then a landlord or agent can charge these fees for a new [fixed-term agreement or statutory periodic agreement](#) up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on you. If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

A landlord or agent may ask you to provide information which supports them to carry out a reference check, such as:

- **bank statements** – to assess your income and ability to pay your rent
- **a reference from a previous landlord** (you cannot be asked to pay for this)
- **proof of your address history** (usually up to 3 years)
- **details of current/previous landlords** – to verify whether you have paid your rent on time, whether they would let to you again and if you left a property in good condition
- **details of current employer** – an employer can verify your income and confirm whether you are trustworthy, reliable and honest

Landlords and letting agents can obtain a reference through a number of third-party organisations, including agent and landlord associations – typically a full reference check should cost no more than £30.

Your landlord or letting agent could also check the Register of Judgements, Orders and Fines to see whether you have received a County Court Judgement (CCJ) in the last six years. A CCJ is issued when someone has failed to pay money that they owe and it could indicate money problems or trouble paying bills. However, a landlord should not rely solely on this information as tenants may be fully able to meet the terms of tenancy even if they have a CCJ.

Your landlord or letting agent could also search the bankruptcy and insolvency register for free. Any information received by your landlord or agent must be treated in accordance with relevant data protection legislation, including most recently, the General Data Protection Regulations which came into force in April 2018.

#### **Q. Can a landlord or agent ask me to pay for an inventory?**

No. A landlord may choose to carry out an inventory check, but they cannot charge you for this service, you can however **choose** to acquire your own inventory check and pay for this if the landlord does not do this and you wish to do so. An inventory is a written record of the condition the property was in at the start of the tenancy, including details of anything that was already damaged or worn. This record should be agreed by you and the landlord. This is in the interest of both tenants and landlords. Your landlord will need to demonstrate that any claims for damages against your deposit at the end of your tenancy are justified. It is preferable for an independent person to undertake check in and check out reports (e.g. specialist inventory clerk).

You can also take your own photographic evidence of the condition of the property. You would need to ensure that any such evidence is dated, and you should share a copy with your landlord or agent. It is best for any photographic evidence of the property's condition to be accompanied by a schedule of condition.

## **TENANCY CHECK-OUT FEES**

### **Q. Can a landlord or agent ask me to pay a check-out fee at the end of a tenancy?**

No. A landlord or agent cannot charge you for any services connected with the termination or ending of a tenancy. However, if the tenancy was entered into before **1 June 2019** and you agreed in your contract to pay exit fees, such as check-out or inventory fees, then a landlord or agent can charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on you. You should check your tenancy agreement or any agreement with your agent to understand what fees you have agreed to pay. Your landlord or agent cannot require you to pay any fees not set out in your tenancy agreement. If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

### **Q. Can a landlord or agent ask me to pay for a professional clean at the end of a tenancy?**

No. A landlord or agent cannot require you to pay for a professional clean when you check-out. However, if your tenancy was entered into before **1 June 2019** and you agreed in your contract to pay fees for cleaning to be provided then a landlord or agent can continue to charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on you. If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

A landlord or agent may request that the property is cleaned to a professional standard. You are responsible for ensuring that the property is returned in the condition you found it, aside from any [fair wear and tear](#). Fair wear and tear is considered to be defects which occur naturally or as part of the tenant's reasonable use of the premises.

You cannot be required to use a particular company to clean the property. If the property is not left in a fit condition, landlords and agents can recover costs associated with returning the property to its original condition and/or carrying out necessary repairs by claiming against your tenancy deposit. You should ask your landlord or agent to justify their costs by providing suitable evidence (such as an independently produced inventory, receipts and invoices). If your tenancy deposit does not cover the costs of returning the property to its original condition, the landlord or agent may seek 'damages' from you and if you cannot reach agreement on the amount/nature of those costs, they could seek the payment from you by making an application to the courts. See the section on 'damages' for more information.

A landlord or agent is not able to claim deductions from your deposit for any change in the condition of the property which is due to fair wear and tear or if you return the property in the same condition as it was found.

**Q. Can a landlord or agent ask me to pay for checking-out on a Saturday?**

No. A landlord or agent cannot require you to pay a fee when you leave the property, or check out, on a Saturday, or at any time over the weekend/evening. However, a landlord or agent must agree to this and may be reluctant to do so if this falls outside of their normal working hours, should they be required to attend. Therefore, if you choose to do this they may charge you provided that they have offered an alternative option which is not unreasonable and does not require you to pay a fee (e.g. a check out during office hours).

However, if the tenancy was entered into before **1 June 2019** and you agreed in your contract to pay such fees then a landlord or agent can charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on you. In the meantime, if you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

**Q. Can a landlord or agent ask me or my future landlord to pay for a reference?**

No. After **1 June 2019** a landlord or agent cannot charge you for providing a reference in relation to privately rented housing in England. If your new agent or landlord requests a reference from a previous landlord or agent, they would have to negotiate this with them directly and pay any associated costs. If your new agent or landlord requires a reference from a previous landlord or agent and they want to charge for this, your new landlord or agent would have to negotiate this with the previous landlord or agent directly and pay any associated costs if required.



## **THIRD PARTY FEES**

### **Q. Can a landlord or agent ask me to pay fees through a third party?**

No. Under the ban, your landlord or agent cannot require you to pay for the services of a third party. However, if you prefer to employ the services of a third party, for example, by purchasing your own reference check or inventory service, you will be responsible for any associated costs.

### **Q. Can a landlord or agent ask me to obtain a reference?**

A landlord or agent cannot require you to obtain a reference through a third-party reference service, but you can choose to obtain such a reference for yourself. A landlord or agent may ask you to supply a reference from a former landlord but you cannot be charged for doing this. If your new agent or landlord requires a reference from a previous landlord or agent and they want to charge for this, your new landlord or agent would have to negotiate this with the previous landlord or agent directly and pay any associated costs if required.

### **Q. Can a landlord or agent ask me to undertake a credit check through a third party?**

Yes. A landlord or agent can ask a third-party credit referencing agency to carry out a check on you, and they can ask you to provide the necessary details to complete the check. However, they cannot make you pay for this. If you do not provide the information reasonably required by the third party to carry out a check and you have been given reasonable notice, a landlord or agent may be able to retain your holding deposit if you have paid one.

### **Q. Can a landlord or agent refuse to let to me if I do not have a reference check provided by a third party?**

No. A landlord or agent cannot require you to meet any conditions that could only be met by paying a fee for a third-party service. This means that you cannot be required to pay a fee through a third party where there is an alternative option which does not require a fee but imposes an excessive or unrealistic requirement on you. For example, a landlord or agent cannot ask you to pay a fee to a third party for a credit check where the alternative requires you to provide five years' bank statements.

A landlord or agent can ask you to provide any information they reasonably require to undertake referencing or credit checks through a third party. If you do not provide this when requested and you have been given reasonable notice, you may be unable to let the property and the landlord or agent will be entitled to retain your holding deposit if you have paid one.

**Q. Can a landlord or agent ask me to pay for an inventory through a third party?**

No. You may wish to employ your own inventory service to provide an accurate written record of the property at the beginning of your tenancy, but a landlord or agent cannot require you to do this. If you choose to undertake an inventory independently, you will be responsible for paying the associated costs.

**Q. Can a landlord or agent ask me to take out insurance through a third-party?**

No. A landlord or agent cannot require you to do this, although you may choose to do this voluntarily.

**Q. Can a landlord or agent ask me to pay for gardening services?**

No. A landlord or agent cannot require you to pay for gardening unless this is included as part of your rent.

**Q. Can a landlord ask me to pay for a rent guarantor?**

No. A landlord or agent can ask you to provide a suitable rent guarantor as a condition of granting the tenancy; however, they cannot ask you or your guarantor to pay any fees associated with meeting this condition (e.g. referencing or administration costs).

**Q. What if I choose to pay for my own third-party service?**

You can use the services of a third party if you choose to do so. For example, you may use a reference checking company, deposit replacement product or inventory service. If you do this and this has not been required by the landlord or agent, you cannot charge these back to the landlord/agent and you are responsible for the cost.

A landlord or agent cannot require you to meet any conditions that could only be met by paying a fee for a third-party service. For example, requiring a professional clean at the end of the tenancy.

However, a landlord or agent may ask you or give you the option to do something as an alternative to complying with a different requirement which is permitted under the ban. For example, if you are required to pay a default fee under your tenancy agreement to cover the reasonable costs of a lost key, a landlord or agent may give you the option to replace a lost key at your own cost and time through a third party.

In another scenario, your landlord or agent may give you the option of using a deposit replacement product instead of paying a tenancy deposit. Where possible, we encourage landlords and agents to be flexible.

**Q. What if I choose to employ an agent to act on my behalf?**

If you choose to employ an agent to act on your behalf, for example, a relocation agent, to support you in finding housing to rent in England whilst you are living overseas or outside of the area, the agent would be permitted to charge you for such services (provided you rent housing from that agent and the agent is not also working on behalf of the landlord, i.e. to set up a tenancy).

**Q: Can I ask a tenant to pay for chimney sweeping services?**

No. Under the ban, landlords or letting agents cannot require tenants to pay for the services of a third party, including chimney sweeping services. If the tenants prefer to employ the services of a third party, they will be responsible for any associated costs.

Landlords have a duty to ensure the property is maintained safely and should consider the potential risks associated with chimneys. If the tenancy agreement prohibits tenants from using a fireplace or to have the chimney swept and the tenants failed to comply with the restriction or obligation and this constitutes a loss to the landlord i.e. causes damage or additional expense, the landlord may seek to recoup this loss from the tenancy deposit.

# PERMITTED PAYMENTS

## What payments are permitted under the ban?

### RENT

**Q. A landlord or agent has told me that I will have to pay more rent in the first few months to cover the cost of banned fees, can they do this?**

No. Under the ban a landlord or agent cannot require you to enter into an agreement that 'front loads' the rent at the start of a tenancy i.e. by charging more for the first month(s) of the tenancy (although in some circumstances a landlord may expect payment of rent upfront). The amount of rent charged should normally be equally split across the first year of the tenancy.

However, after the tenancy has begun, a landlord can reduce or increase your rent without breaching the fees ban if you agree to this or under a [rent review clause](#) in the tenancy agreement (provided that the rent review clause permits both a rent reduction or increase according to the circumstances).

**Q. Can a landlord or agent increase my rent part way through the tenancy?**

A landlord or agent can increase your rent if you agree to this or under [a rent review clause](#) in the tenancy agreement (if this is in the first year of the tenancy this is provided that the rent review clause would also have permitted a rent decrease). If your tenancy is an assured shorthold periodic tenancy your landlord may also increase your rent annually by notice in accordance with [section 13 of the Housing Act 1988](#).

If your landlord seeks to increase your rent by way of a [section 13 notice](#) you may apply to the [First-tier Tribunal](#) for determination of the reasonable rent.

A landlord or agent may want to consider including a [rent review clause](#) in the tenancy agreement to enable them to discuss any changes in rent level with you at an appropriate time. You should discuss any proposed rent increase with your landlord and ensure that it is affordable for you before agreeing to it.

**Q. Can a landlord or agent ask me to pay rent upfront if I don't have a suitable guarantor or reference checks?**

Yes, but you should ensure that this is an affordable option for you. Your landlord or agent could ask you to pay your rent in a lump sum. They cannot however charge any more in this lump sum payment than would have been chargeable over the fixed

term of the tenancy. For example, if your rent is £500 a month and the tenancy is for a fixed term of six months, your landlord or agent could ask you to pay £3,000 up front. They cannot ask you to pay more than this and if this is not affordable for you, you should discuss your circumstances with your landlord or agent.

A tenancy agreement must not ask you to pay more rent in the first month compared to a later period (the rent instalments should be split equally across the first year of the tenancy). A landlord or agent could reasonably ask you to pay more than one rent instalment at the start of the tenancy where the tenancy agreement does not require this as a single rent payment. For example, if the rent was £400 per month, a landlord or agent could ask you to pay three months' rent upfront (3 x £400 = £1200) but your tenancy agreement could not make you liable to pay £1200 in the first month and then £400 every month after that.

**Q. If I cannot afford to pay the tenancy deposit, can a landlord or agent increase the rent as an alternative?**

You should discuss with your landlord or agent whether there are alternatives to paying a tenancy deposit. You may be able to access a loan from a third-party scheme or secure a guarantor to cover damages and/or unpaid rent.

However, this may not be the right option for you: you will often still be responsible for the costs of any damages and/or unpaid rent at the end of the tenancy, even where you have paid a guarantee fee. [Citizens Advice](#) and [Shelter](#) have more information on help with renting costs on their website.

The amount of rent that a landlord asks for should be fair, in line with other similar properties in the area and clearly advertised to you. You should ask your landlord or agent to be clear what the rent covers (for example certain utilities or council tax) and choose a property based on rent that you can afford. You can use this [calculator](#) to help you determine what is affordable.

## **TENANCY DEPOSITS**

### **Q. What is a tenancy deposit?**

A tenancy deposit is a refundable payment that a landlord or agent can ask you, or a relevant person (i.e. someone acting on your behalf) to make. This provides a landlord with security if you cause damage to a property, do not return it in its original condition, do not pay your rent or break the terms of your tenancy agreement.

### **The level of tenancy deposit a landlord or agent can ask you to pay depends on the total annual rent for the property.**

- If the total annual rent for the property is less than £50,000, the maximum tenancy deposit a landlord or agent can ask you to pay is up to five weeks' rent.
- If the total annual rent for the property is £50,000 or above, the maximum tenancy deposit a landlord or agent can ask you to pay is up to six weeks' rent.

You can calculate your total annual rent using one of the following formulae:

- total monthly rent x 12
- total weekly rent x 52

You can calculate your weekly rent using one of the following formulae:

- (your monthly rent x 12) ÷ 52
- your annual rent ÷ 52

If you are still unsure over the maximum level of tenancy deposit you can be required to pay, you should contact [Citizens Advice](#) or your [local authority](#).

### **Q. How much rent or deposit am I liable (responsible) to pay under a joint tenancy agreement?**

There are two main types of tenancy agreement:

- Where a property is let separately on a room-by-room basis, this is an **individual tenancy**. The tenant is only liable for the rent and deposit set out in their agreement.
- Where you have signed a tenancy agreement with more than one person, you are likely to have a **joint tenancy**. This means that liability (responsibility) for payments such as the tenancy deposit and rent is spread across all named persons on the tenancy agreement. In this case, the cap on tenancy deposits relates to the total weekly rent for the property for which all tenants are jointly liable.

It is important to check what type of tenancy you are signing before you agree to move into a property.

### **Q. How much tenancy deposit can I be asked to pay?**

Where you have an **individual tenancy**, you cannot be asked to pay a tenancy deposit that is more than five weeks of the rent set out in your tenancy agreement (unless your annual rent is £50,000 or above per year).

Where you have a **joint tenancy agreement**, a landlord cannot require each tenant individually to pay a tenancy deposit equivalent to five weeks' rent (where the total annual rent for the property is less than £50,000) or six weeks' rent (where the total annual rent is £50,000 or more).

For example, where there are three tenants who are jointly liable for a total weekly rent of £240, the landlord or agent cannot ask each tenant to pay a tenancy deposit of up to five times the total weekly rent ( $5 \times 240 = £1200$ ). The maximum this group of tenants could be asked to pay as a tenancy deposit between them would be £1200. They may then choose to split this equally so that each person would pay £400.

Tenants in a joint tenancy agreement (where there is more than one name on the contract) are 'jointly and severally liable' (i.e. each person named in the contract bears equal responsibility) for paying the rent – therefore the tenancy deposit cap applies to the weekly rent liability which can be spread across the tenants.

*For properties where the total annual rent is less than £50,000, five weeks' rent is the statutory maximum a landlord or agent can ask you to pay as a tenancy deposit if you enter into a tenancy agreement on or after **1 June 2019**.*

*For properties where the total annual rent is £50,000 or more, six weeks' rent is the statutory maximum a landlord or agent can ask you to pay as a tenancy deposit if you enter into a tenancy agreement on or after **1 June 2019**.*

### **Q. Does a landlord or agent have to take a tenancy deposit?**

A landlord or agent is not obliged to take a tenancy deposit and it is best practice for landlords and agents to consider on a case by case basis the appropriate level of deposit to take.

A deposit equivalent to five weeks' rent (where the total annual rent is under £50,000) or six weeks' rent (where the total annual rent is £50,000 or more) is the upper limit and in many scenarios the amount of deposit requested will be less. The average level of tenancy deposit taken is between four-five weeks' rent. You should discuss with your landlord or agent the amount of deposit you need to pay.

For assured shorthold tenancies, any deposit that a landlord or agent requests from you must be protected with one of the three Government backed [tenancy deposit protection schemes](#) within 30 days of them taking the payment. Your landlord or agent must also provide you with information about where and how your deposit is protected. The deposit is your money and a landlord or agent will need to provide evidence to substantiate any claims against your deposit at the end of the tenancy. If your landlord or letting agent does not protect the deposit, you can seek up to three times the amount back from them by making an application to the courts. Citizens Advice provide more information on this [here](#).

#### **Q. Does the new tenancy deposit cap apply to me?**

From 1 June 2019, the cap on tenancy deposits will apply to new applicable tenancies. This includes assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England.

From 1 June 2019, the cap applies to fixed term contracts which are renewed for another fixed term – even if this is at the same property – as they will be a new applicable tenancy. Landlords and letting agents will be required at this point to repay the amount of the deposit held which is over the five (or, where appropriate, six) week cap. If the landlord or agent does not do this, you should ask them to return the payment.

If your held deposit is protected in a Government approved scheme, this deposit should be returned within 10 days of you and the landlord agreeing on the amount to be returned (minus any deductions for fair wear and tear for example) at the end of the tenancy. If the deposit is *not* protected (most likely the case if you are a lodger, a student in university halls of residence or if you have an assured or protected tenancy), it should still be returned at the end of the tenancy (minus any agreed deductions). If a landlord does not do this, you have the option to seek a refund through the courts. Citizens Advice offer more information on [how to get your deposit back](#) in this situation.

#### **Q. If I paid a tenancy deposit which exceeds the cap before 1 June 2019, can I ask my landlord or agent to re-pay the amount of the deposit above the cap?**

No. Landlords and letting agents are not obliged to immediately refund part of a tenancy deposit that is above the cap but was paid before 1 June 2019. If you signed a tenancy agreement before 1 June 2019 (and your tenancy is continuing or is a statutory periodic agreement) then you will be bound by the terms of that contract until it is either renewed or terminated.

#### **Q. What is the transition period? How will it apply to me?**

There is a 12 month transition period from 1 June 2019 to 31 May 2020. This is to allow time for landlords and letting agents to renegotiate their agreements.



From 1 June 2019, any provision which breaches the ban in a continuing tenancy agreement which was signed before this date continues to be legally binding on you. This includes continuing assured shorthold tenancies, tenancies of student accommodation, licences to occupy housing and statutory periodic tenancies which arise during the transitional period from a fixed term which was signed before 1 June 2019. This means you will continue to be liable for any payments agreed to in the tenancy which might occur within this transitional period.

**Q. What happens after the transition period?**

From 1 June 2020, any provision in continuing tenancies that breach the fee ban or deposit cap will no longer be legally binding. This includes continuing assured shorthold tenancies, tenancies of student accommodation, licences to occupy housing signed before 1 June 2019 and statutory periodic tenancy agreements arising during the transitional period from a fixed term signed before 1 June 2019.

Your landlord or agent does not need to immediately return any part of the deposit which is in excess of the cap (as this payment was not made after the cap came into force). However, they will be required to refund the deposit at the end of the tenancy in the usual way and any new tenancy agreed after this will need to comply with the new tenancy deposit cap.

**Q. What do I do if my landlord or agent is asking me to pay a tenancy deposit that is higher than the cap?**

You should refuse to pay an amount that is higher than the cap on tenancy deposits. Your landlord or letting agent could be breaking the law by requesting this payment. In the first instance, you should check whether the amount you are being required to pay is over the 5 weeks rent cap (where total annual rent is less than £50,000) or six weeks rent cap (where the total annual rent is £50,000 or more). There is a list of suggested step-by-step actions to take on page 10 if you think you are being charged a prohibited payment at the start of this document.

**Q. Why is the tenancy deposit cap higher for properties with a total annual rent of £50,000 or more?**

Certain high-end properties have higher costs associated with them in terms of more expensive fittings and furnishings. The costs of any damage and unpaid rent at the end of the tenancy is therefore greater in such properties.

**Q. Can a landlord or their agent take a higher amount of tenancy deposit from me if I have a pet?**

No, there are no special provisions or exemptions if you have a pet. A landlord or agent can request a tenancy deposit of up to a maximum of five weeks' rent (where

the total annual rent is less than £50,000) or six weeks' rent (where the total annual rent is £50,000 or more). This provision applies universally, regardless of your circumstances.

## **DEPOSIT OPTIONS**

### **Q. Can I access a rent deposit scheme to help me pay a tenancy deposit?**

A third party may offer loans to be used as deposits as part of a rent deposit scheme. Usually, the scheme lends you the money in advance and you will be required to pay it back over a period of time from your income, i.e. wages or benefits. These schemes are often run by local authorities and housing associations, but also certain employers and charity providers.

You should talk to your [local authority](#) or [Citizens Advice](#) about schemes which may be available and whether this is the right option for you.

### **Q. Can I access a rent guarantee or bond scheme to cover damages or unpaid rent?**

A number of third parties offer rent guarantee or bond schemes, often to people on low incomes or at risk of homelessness. These providers will offer a written agreement which guarantees to cover outstanding rent payments, default fees or damages associated with a tenancy agreement.

There is more information about how rent deposit schemes, rent guarantee and bond schemes work [here](#).

### **Q. If I do not pay a tenancy deposit, can I use a deposit replacement product?**

Yes – if the landlord or agent agrees to this. You may be required to pay a non-refundable fee up-front (often equivalent to one week's rent), a monthly payment for the duration of your tenancy, an annual levy or a premium based on your credit worthiness and rent liability. This usually removes the need for you to provide an upfront cash deposit to the landlord or agent. A landlord or agent cannot require you to use a deposit replacement product but may allow it as an option without contravening the Tenant Fees Act.

However, it is worth noting:

- A deposit replacement provider is still likely to require you to undertake referencing checks to determine your suitability and credit worthiness.
- Any fee paid to a deposit replacement provider is non-refundable (unlike a traditional upfront cash deposit paid to a landlord).
- There are several different products available on the market. In most cases, you will still be responsible for the costs of any damages incurred at the end

of the tenancy or may be required to pay an excess on any claim for damages or unpaid rent. The provider may also impose a charge for challenging a claim which is made by the landlord or agent against the cover provided.

You should be clear what you will be expected to pay and understand how the scheme operates with the provider. You should consider if this is the right option for you and should not feel forced to accept this option. Discuss with your landlord or agent what the alternatives are and work out which works for you financially.

## **HOLDING DEPOSITS**

### **Q. What is a holding deposit?**

A landlord or agent can take a holding deposit from you to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken. A landlord or agent **cannot ask you for more than one week's rent** as a holding deposit (this cap is based on the total agreed rent for the property).

For example, if there are three tenants who are jointly liable for the agreed total weekly rent of £240, the landlord or agent cannot charge each tenant a £240 holding deposit. The maximum this group of tenants could be asked to pay as a holding deposit between them would be £240. They may then choose to split this equally so that each person would pay £80.

A landlord or agent should stop advertising a property once a holding deposit has been paid. Landlords and agents can only accept one holding deposit for one property at any one time. They are not permitted to take multiple holding deposits for the same property.

The cap of one week's rent on holding deposits is an upper limit and not a recommendation. A landlord or agent is not obliged to take a holding deposit. Landlords and agents should consider on a case by case basis whether it is appropriate to take a holding deposit and the appropriate level of deposit to take.

### **Q. What are my responsibilities?**

- ✓ You should not waste a landlord or agent's time if you know that you will not be able to afford a property.
- ✓ You should read any tenancy agreement and be aware of the obligations under the tenancy before you pay a holding deposit.
- ✓ When you pay a holding deposit, this creates a binding conditional contract between you and the landlord. Under this contract, it is usual for you to agree and be bound to provide honest representations as to your income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord.
- ✓ You must not provide any false or misleading information to try and obtain the tenancy – this could risk losing your holding deposit.
- ✓ You must carry out any reasonable requests made by the landlord or agent to progress the tenancy.
- ✓ Any information required to support your tenancy application must be provided in a timely manner.

- ✓ If you are aware of any potential issues that may affect your tenancy application (i.e. previous County Court judgements), you should make the landlord or agent aware at the earliest opportunity.

### **Q. What are the landlord or agent's responsibilities?**

- ✓ A landlord or agent should provide you with clear information about why they are requesting a holding deposit, including the sum that is required and the circumstances where you may lose all or part of the deposit (in accordance with the Tenant Fees Act 2019).
- ✓ A landlord or agent should not waste your time. They should be clear with you about their expectations and check that you meet the basic income and credit worthiness requirements before taking a holding deposit from you. They may do this by having an informal discussion with you about the requirements to let the property, e.g. acceptable level of income. If they consider that you will not be a suitable tenant, they should not take a holding deposit from you.
- ✓ A landlord or agent should provide you with a copy of the tenancy agreement before taking the holding deposit.
- ✓ Once a holding deposit has been paid, a landlord should stop advertising the property and cannot accept multiple holding deposits for the same property unless they have been permitted to retain an earlier holding deposit.
- ✓ A landlord or agent should clearly define what they consider to be credit worthiness – you should have a clear understanding of what might count against you so that you have a fair opportunity to provide any relevant information. If this includes previous missed and late rent payments, a landlord or agent should make this clear to you.
- ✓ A landlord or agent must not unlawfully discriminate against you based on your disability, sex, gender reassignment, pregnancy or maternity, race, religion or belief or sexual orientation.

Landlords will usually have two weeks (14 days) to enter into a tenancy agreement with you once a holding deposit has been received by the landlord or agent. The **'deadline for agreement'** is the 15<sup>th</sup> day after the holding deposit has been received. However, you may agree a different **'deadline for agreement'** with them in writing (which could be more or less than 15 days).

**If you are asked to pay a holding deposit, you should always obtain confirmation in writing from the landlord or agent of:**

- the amount of deposit you have paid

- the agreed rent
- the specified date for reaching an agreement (**'the deadline for agreement'**)
- other agreed material terms you will be renting the property on

You will be able to use this as evidence should you need to challenge a landlord or agent's decision to retain your holding deposit. Before paying a holding deposit, you should ensure that you clearly understand the landlord or agent's requirements, the terms you are agreeing to rent the property and the circumstances in which you may lose your holding deposit.

**Landlords and agents must refund the holding deposit in full within 7 days of:**

- you and the landlord entering into a tenancy agreement
- the landlord choosing to withdraw from the proposed agreement; or
- the **'deadline for agreement'** passing without a tenancy having been entered

**A holding deposit can only be retained where you:**

- provide false or misleading information which the landlord or agent can reasonably take into account when deciding to let a property – this can include your behaviour in providing the false and misleading information
- fail a right to rent check
- decide not to proceed with a tenancy (i.e. you 'withdraw' from a property) – unless a landlord or agent imposes a requirement that breached the ban or acted in such a way towards you or a relevant person that it would be unreasonable to expect you to enter into a tenancy agreement with them
- fail to take all reasonable steps to enter into a tenancy agreement (and the landlord or agent takes all reasonable steps to do so, for example, clearly requesting information required to progress the tenancy)

A landlord or agent must return the holding deposit where they impose a requirement that breaches the ban or acts in such a way towards you or a relevant person that it would be unreasonable to expect you to enter into a tenancy agreement with them (e.g. a landlord or agent asks you to pay a prohibited payment such as a fee for referencing, seeks to include an unfair term in your tenancy agreement or acts in an aggressive or harassing way).

A landlord or agent must also set out in writing why they are retaining your holding deposit within 7 days of deciding not to let you if this is before the **'deadline for agreement'** or within 7 days of the **'deadline for agreement'** passing, otherwise they forfeit the right to retain your holding deposit and must return it you.

Even where a landlord or agent is entitled to retain your holding deposit, they should consider whether it is necessary to do so. We encourage landlords and agents to decide on a case-by-case basis whether to retain part of the deposit and understand that they may only need to cover specific costs which have been incurred (for example, referencing checks). Landlords or agents should be able to provide evidence of their costs in order to demonstrate that they are reasonable.

**You will be able to recover your holding deposit via your [local authority](#) (usually trading standards) or the [First-tier Tribunal](#), if a landlord or agent:**

- does not have legitimate grounds to retain your holding deposit; or
- retains your holding deposit but does not provide you with notice in writing setting out why they are retaining it within 7 days of deciding not to let to you or within 7 days of the ‘**deadline for agreement**’ passing

Unlawfully retaining a holding deposit is a civil offence with a penalty of up to £5,000.

**Q. What do you mean by a requirement which breaches the ban on fees?**

You are entitled to a full refund of your holding deposit where a landlord or agent imposes a requirement that breaches the ban. For example, a landlord or agent must return your holding deposit if they have requested a fee to carry out referencing checks or have asked for tenancy deposit which is more than five weeks’ rent (where the total annual rent is under £50,000).

**Q. What do you mean by a landlord or agent behaving in such a way that it would be unreasonable to expect the tenant to enter into an agreement with them?**

A landlord or agent is required to return your holding deposit if they behave in such a way that it would be unreasonable to expect you to enter into a tenancy agreement with them (e.g. pressuring you to enter into a tenancy agreement which contains unfair terms or acting in an aggressive or harassing manner).

**Please note:** an unfair term to a tenant is one that creates a disproportionate imbalance between a landlord and a tenant which is ultimately detrimental to the tenant (e.g. requiring you to pay a disproportionately high sum in compensation for not fulfilling an obligation in your tenancy agreement).

**Q. Can the landlord or agent accept multiple holding deposits?**

No. A landlord or agent that accepts more than one holding deposit for the same housing will be in breach of the Tenant Fees Act. This means that any holding deposit taken where a landlord or agent is already in receipt of a holding deposit for the same housing will be a prohibited payment.

The purpose of a holding deposit is to enable both the landlord and tenant to demonstrate their commitment to entering into a tenancy agreement on the terms agreed whilst reference checks are undertaken. A holding deposit creates a binding conditional contract between tenant and landlord. Under this contract, the tenant usually agrees to provide honest representations as to their income, tenancy history and references and to enter into the tenancy under the terms agreed with the landlord. The landlord agrees to enter into the tenancy as per the agreed terms subject to satisfactory fulfilment of all pre-tenancy checks.

Where a landlord or agent does not proceed with the tenancy agreement before the **'deadline for agreement'**, they must refund the holding deposit to the tenant within 7 days. A landlord or agent cannot accept another holding deposit until this has been repaid, unless they are permitted to retain the deposit in accordance with the Tenant Fees Act (e.g. a previous potential tenant has provided false or misleading information).

#### **Q. Can I put down more than one holding deposit on different properties?**

You are not prevented from registering your interest in more than one property but should consider carefully before doing so. A holding deposit creates a binding conditional contract between the tenant and landlord. Under this contract, you are agreeing to provide honest representations as to your income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord. If you withdraw from the agreement, you will not be entitled to have your holding deposit refunded and could be liable for other contractual remedies. If you therefore choose to put down more than one holding deposit, you should expect to lose any holding deposits on tenancies that do not progress and be aware that a landlord or agent could also choose to pursue you for additional contractual remedies.

#### **Q. Does a landlord or agent need to protect my holding deposit in one of the three tenancy deposit protection schemes?**

No, the holding deposit does not need to be protected in a tenancy deposit protection scheme. A landlord or agent must take reasonable steps to ensure that the money is held safely and that they can refund it to you when necessary. As required by law, from **1 April 2019**, any holding deposit taken by an agent must be protected through membership of a client money protection scheme.



If you subsequently enter into a tenancy agreement with the landlord, any amount of your holding deposit that you agree to be used to offset a tenancy deposit payment that you are required to pay must be protected within a government approved tenancy deposit protection scheme within 30 days of the date of the tenancy agreement.

**Q. Can a landlord or agent refund my holding deposit by putting it towards my first month's rent or the tenancy deposit?**

Yes. A landlord or agent can either refund the holding deposit directly to you or put it towards your rent or tenancy deposit. However, they can only do so if you have given your consent for this to happen. A landlord or agent cannot impose a charge where you opt to have your holding deposit refunded directly.

If you consent for the holding deposit to be used as a contribution towards the tenancy deposit, a landlord or agent will have 30 days to protect this money (and the full tenancy deposit) within a Government-approved tenancy deposit protection scheme from the date of the tenancy agreement.

**Q. Does a landlord or agent have to explain to me why they have retained a holding deposit?**

Yes, a landlord or agent must set out in writing to you why they are retaining your holding deposit. However, they will not be able to retain your holding deposit if they do not do this within:

- 7 days of deciding not to let the property to you
- 7 days of the **'deadline for agreement'** passing (this is usually 15 days after a holding deposit has been paid unless otherwise agreed in writing)

Any written explanation should set out clearly the grounds under which they are entitled to retain your deposit and ideally any evidence to support this.

**Q. What if I disagree with a landlord or agent's decision to retain my holding deposit?**

If the landlord or agent set out the reason for retaining your deposit in writing and you do not agree with their decision, you will be able to challenge this.

You should initially do this by using the draft correspondence templates provided at Annex B. This will give the landlord or agent an opportunity to provide evidence to support their decision if they have not done so already or to further substantiate their decision. If you remain dissatisfied, you should consider formally challenging the

decision through your [local authority](#) (usually trading standards), a [redress scheme](#) (if it concerns an agent) or via the [First-tier Tribunal](#).

**Q. What should I do if a landlord or agent does not explain why they are retaining my deposit?**

A landlord or agent must provide this information in writing within 7 days of deciding not to let the property to you if this is before the '**deadline for agreement**' or within 7 days of the '**deadline for agreement**' passing. If they do not do this, you will be automatically entitled to have your holding deposit back.

While the onus is on the landlord or agent to demonstrate that they have reasonable grounds to retain your deposit, you should keep hold of any correspondence which demonstrates that you have requested this information from the landlord or agent. An enforcement authority can use this to help decide as to whether a landlord or agent has breached the ban.

**Questions to ask:**

- Have you provided all the information requested honestly and in a timely manner?
- Have you taken all reasonable steps to enter into the tenancy?
- Has the landlord or agent asked for a holding deposit which is more than one week's rent?
- Has the landlord accepted multiple holding deposit for the same property?

*If the landlord has not returned your holding deposit:*

- Does the landlord or agent have legitimate grounds to retain your holding deposit?
- Has the landlord or agent set out the reason for retaining your deposit in writing?
- Has the landlord or agent imposed a requirement which breaches the ban or acted in such a way towards you or a relevant person in relation to you (e.g. someone acting on your behalf or guaranteeing your rent) that it would be unreasonable to expect you to enter into a tenancy agreement with them e.g. a landlord or agent asks you to pay a prohibited payment such as a fee for referencing, seeks to include an unfair term in your tenancy agreement or acts in an aggressive or harassing way?

## Case studies

**Please note:** The following list of case studies is **illustrative** and not exhaustive of the circumstances in which a landlord or agent may or may not retain a holding deposit.

### **False or misleading information**

#### **Q. Can a landlord or agent retain my holding deposit if I provided false information for the reference check?**

Yes. A landlord or agent may retain your holding deposit in this situation if you provide false or misleading information and the mistake is such that it is reasonable for them to take it, or your conduct, into account when deciding whether to grant you the tenancy.

You should take care to ensure that all the information that you provide is accurate. For example, you may previously have been in debt and received a County Court Judgement. You need to let your landlord or agent know about this. If you are unsure you can search for details of any judgements against you on the [register of judgements](#). You will have to pay a small fee - each search costs between £4 and £10.

Providing false or misleading information should not automatically disqualify you from renting a property. Landlords and agents should consider on a case-by-case basis whether the information provided affects your suitability as a tenant.

We encourage landlords and agents to only retain as much of the holding deposit as needed to cover their costs. It may only be reasonable for them to retain a fee to cover the cost of any referencing checks which have been carried out. You should ask your landlord or agent to provide evidence in the form of receipts or invoices to demonstrate the costs incurred.

#### **Q. What qualifies as false or misleading information that a landlord is reasonably entitled to take into account when deciding whether to let the property?**

A landlord or agent may, in some circumstances, retain your holding deposit if you provided false or misleading information. The holding deposit may be retained if the difference between the information you have provided and the correct information, or your conduct in providing false or misleading information, materially affects the landlord's decision to grant you the tenancy because it reasonably calls into question your suitability to rent the property.

This is likely to be the case only where the mistake casts doubt on your financial suitability or honesty, for example:

- your income declaration was significantly too high
- you have provided information which is clearly inaccurate about your income or employment – even if the landlord would have been satisfied with the correct information
- you have failed to disclose (when directly asked by the landlord or agent) any relevant information which later comes to the landlord or agent's attention (such as valid County Court Judgements)

A landlord or agent cannot retain your holding deposit if the false or misleading information you have provided is not relevant to your suitability as a tenant, for example:

- where you have misspelled your name, the name of your employer or a previous address
- you omitted to declare a previous address – and the omission had no bearing on your credit worthiness or other assessment of suitability
- you have slightly misstated your income

The landlord or agent must provide reasons in writing to explain why they are retaining your holding deposit and what the false and misleading information that you have provided is.

**Q. In a joint tenancy, what happens to the holding deposit if one sharer provides false or misleading information or withdraws from the proposed agreement?**

A landlord or agent would be entitled to retain all or part of a holding deposit where one tenant who is party to a joint agreement provides false or misleading information or withdraws from that agreement. However, we encourage landlords and agents to consider on a case-by-case basis whether it would be appropriate and reasonable to do this.

**Q. What if I provided false or misleading information unknowingly?**

Your landlord or agent can still retain your holding deposit in this situation if it materially affects the landlord's decision to grant you the tenancy. You should take care to ensure that all the information you provide is accurate.

Where a landlord or agent considers that you have unknowingly provided false or misleading information, we encourage them to only retain the costs of undertaking the reference check rather than the full amount of your holding deposit.

**Q. I entered into a tenancy agreement with the landlord, but they are refusing to return my holding deposit as I provided false or misleading information. Are they allowed to do this?**

No. There is an absolute requirement on the landlord or agent to return the holding deposit whenever they enter into a tenancy agreement with you. Ultimately, where a landlord decides that you are suitable to let the property, they forgo the right to retain your holding deposit.

**Reasonable requests for information**

**Q. Can a landlord or agent retain my holding deposit if I do not provide all the necessary information to carry out referencing checks?**

You should respond promptly to any reasonable request for information in respect of a tenancy made by the landlord or agent. Similarly, landlords and agents should take all reasonable steps to engage with you by responding promptly to any queries and making clear to you the information that you must provide for a tenancy to proceed. This is likely to include:

- **proof of ID:** passport or any other official form of ID
- **proof of residence:** recent bank statements, utility bills or voter registration confirmation or council tax statements (a landlord or agent may require proof of 3 years of address history)
- **credit check:** a landlord or agent can ask for any information required in order to carry out a credit check – they should explain the credit worthiness requirements and ask you to disclose any relevant information
- **proof of income:** recent bank statements, employer contact details, signed contract of employment or a letter from your employer

If you fail to provide the necessary information in good time, and a landlord or agent can demonstrate that they have given you enough notice to provide this, they will be entitled to retain your holding deposit. A landlord or agent must provide reasons in writing to you to explain why they have retained your holding deposit.

We would consider not providing the necessary information or documents to enable your landlord to carry out a [right to rent check](#) as not taking all reasonable steps to enter into the tenancy.

**Please note:** landlords and tenants will usually have two weeks (14 days) to enter into a tenancy agreement once a holding deposit has been received by a landlord or agent. The '**deadline for agreement**' is the 15<sup>th</sup> day after a holding deposit has been received. However, you may agree a different '**deadline for agreement**' with your landlord or agent in writing.

**Q. Can a landlord or agent retain my holding deposit if they fail to properly explain the information required for referencing?**

No. A landlord or agent can only retain the holding deposit if you provide false or misleading information or fail to take all reasonable steps to enter into the tenancy agreement (when the landlord and/or agent has done so).

A landlord or agent should not waste your time. They should clearly explain to you the criteria by which they judge suitability to rent the property (such as income and credit worthiness requirements) and request relevant information that would enable them to determine this before accepting a holding deposit. When explaining the credit worthiness requirements, a landlord or agent should clearly define what they consider to be credit worthiness and give you a clear understanding of what information you are required to disclose (e.g. whether this includes missed or late payments).

If you provide accurate information but fail a reference check, a landlord or agent must still return the holding deposit.

### **Failed reference check**

#### **Q. Can a landlord or agent retain my holding deposit if I provided correct information, but my references are not good enough?**

No. If you have provided factually correct information which a landlord or agent has requested, but they do not consider your references to be good enough in order to let the property to you, you are entitled to a full refund of your holding deposit.

A landlord or agent cannot retain a holding deposit merely because they do not consider your references to be satisfactory. This also applies where a landlord is unable to let the property for any other reason which is not your fault.

Failing a reference check should not automatically disqualify you from renting a property. We encourage landlords and agents to consider on a case-by-case basis whether an adverse credit history or bad references affect your suitability as a tenant. They may ask you to justify information which calls into question your credibility – such as a previous County Court Judgement. Adverse credit history should not automatically disqualify you from renting a property.

However, it is important to note that you should only apply for properties that you know you can afford. You should not waste a landlord or agent's time if you know that your references are likely to be refused.

#### **Q. If I have a County Court Judgement against me, does this mean that I cannot rent a property?**

No. However, you must disclose this information to the landlord or agent if they request it. Landlords and agents should consider on a case-by-case basis whether a previous County Court Judgement affects your suitability to rent the property. If you have a poor credit history, a landlord or agent may request additional financial assurances from you (e.g. a rent guarantor or rent payments in advance).

### **Withdrawing from a property**

**Q. If I decide that I no longer want to rent a property, but I have already put down a holding deposit, can a landlord or agent keep my holding deposit?**

Yes. If you change your mind and decide to withdraw from a property after paying a holding deposit, and you notify the landlord or agent of this before the '**deadline for agreement**' has passed, they are entitled to retain your holding deposit. Even if you do not notify them of your decision, they are still entitled to retain the holding deposit if you don't take reasonable steps to enter into the tenancy before that date (e.g. providing information requested by the landlord or agent to progress the tenancy).

If you have to withdraw from a property due to exceptional circumstances which are beyond your control, we would encourage a landlord or agent to take this into account and consider returning your full holding deposit. This could be, for example but not limited to circumstances where, your employment circumstances have changed, you have suffered with a physical or mental health crisis or you have experienced domestic violence from a cohabitee. We encourage you to discuss this with your landlord or agent at the earliest opportunity.

**Q. Can a landlord or agent retain my holding deposit if I withdraw from a property before any costs have been incurred?**

Yes, a landlord or agent is entitled to retain your holding deposit in this situation and must explain in writing that this is the reason they are doing so. However, if you pull out of a property before a landlord or agent has incurred any demonstrable costs, such as costs for referencing checks or they are yet to take the property off the market, we would strongly encourage them to refund your holding deposit.

### **Right to rent checks**

**Q. What is a right to rent check?**

A landlord or agent must check your immigration status and that of anyone aged 18 or over who'll be living with you before they rent a property to you. This is known as a '[right to rent check](#)'.

To do this, a landlord or agent will ask to see your passport or other official documents that prove your immigration status. They must take copies of the documents and keep the copies safe.



**Q. If I fail a right to rent check, can a landlord or agent retain my holding deposit?**

Yes. A landlord has a legal obligation to check that you have permission to stay in the UK - this is known as a 'right to rent' check. A landlord or agent cannot rent a property to someone who is unable to demonstrate that they have the right to rent. They should be upfront and ask you whether you have a legal right to reside in the UK - making clear that this is a condition of renting a property. If you fail a right to rent check or do not provide a landlord or agent with the necessary evidence required to complete the check, a landlord or agent can retain your holding deposit and must explain to you in writing that this is because you have failed a right to rent check.

If the Home Office has your original documents because of an ongoing immigration application or appeal, a landlord or agent can ask for a Home Office right to rent check. They will need your Home Office reference number and they should get a response within 2 days.

More guidance on right to rent checks is available [here](#).

**Q. If the Home Office tells a landlord or agent in error that I do not have the right to rent, can they still retain my holding deposit?**

No. If the Home Office reported to a landlord or agent that you did not have the right to rent, but it is later apparent that the Home Office made an error, the landlord or agent must return any amount of the holding deposit which they previously retained. They should do this once they have received confirmation of your status from the Home Office.

While a landlord or agent is not liable for a financial penalty in this circumstance, you still have the right to seek repayment of your holding deposit through the [local authority](#) or [First-tier Tribunal](#) if it has not been returned.

More guidance on right to rent checks is available [here](#).

### **Landlord or agent withdraws**

**Q. If a landlord or agent decides not to let the property because they do not like my references, can they retain my holding deposit?**

No. If a landlord or agent decides to withdraw from the proposed agreement because they do not wish to let the property to you, they must return your holding deposit within 7 days of making that decision. If a landlord or agent fails to take all reasonable steps to enter into the agreement by, for example, failing to send you a copy of the tenancy agreement before the **'deadline for agreement'** they must also refund your holding deposit.

**Q. Can a landlord or agent retain my holding deposit if the property is not ready in time?**

If you have failed to enter into the tenancy agreement before the **'deadline for agreement'** because the landlord and/or agent did not have property ready in time and you have taken all reasonable steps to enter the tenancy, then they must return your holding deposit.

Where a landlord or agent previously agreed for you move in on a specified date and subsequently changes that decision and the change in date materially affects your decision or ability to let the property, they may have acted in a way that it would be unreasonable for you to enter into a tenancy agreement with them. If this is the case, a landlord or agent would have to return your holding deposit.

## **DEFAULT FEES AND DAMAGES**

### **Q. What is a default fee?**

Landlords and agents can only charge a default fee where a tenancy agreement permits them to do so **and** one of the following applies:

#### **1. You are late paying your rent**

- A default fee can be charged for late payment of rent but only where the rent payment has been outstanding for 14 days or more (from the date set out in your tenancy agreement)
- Any fee charged by a landlord or agent cannot be more than 3% above the Bank of England's base rate for each day that the payment has been outstanding. A fee which exceeds this amount is unlawful.

#### **2. You have lost a key or security device giving access to the housing and require a replacement**

- Landlords and agents can charge a default fee for a lost key or equivalent security device. The landlord or agent must provide evidence in writing to the person liable for the payment to demonstrate that their costs in replacing the lost key or security device are reasonable. A fee which exceeds the reasonable costs incurred by the landlord or agent is unlawful.

Your tenancy agreement should set out the circumstances under which you will be liable for a default fee and how the fee will be determined. This might be called a default fee/or payment in event of default provision. Landlords and agents should highlight relevant default fee terms within a tenancy agreement before it is signed. Letting agents must also publicise any default fees they charge on their (or a property search) website and in their offices.

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages for breach of contract. Often, a landlord or agent will seek to recover damages by claiming against the tenancy deposit at the end of the tenancy (but may do so at any time through agreement with you or by initiating legal proceedings)<sup>2</sup>.

#### **Examples of default fee provisions:**

- Interest will be charged in line with the Bank of England's rate + 3%, if a rent payment is more than 14 days overdue for each day the payment is outstanding.

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<sup>2</sup> The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or otherwise.

- The tenant is responsible for ensuring that they look after the keys for the property throughout the tenancy. If they fail to do so, they will be responsible for covering the reasonable costs of replacement.

#### **Q. What is the difference between a default fee and damages?**

- A default fee is a payment which can be required by a landlord or agent under an express provision in the tenancy agreement and would therefore be permitted under the Tenant Fees Act. Default fees are only permitted where a tenant is late paying their rent or loses a key or security device giving access to the housing. A landlord or agent should highlight relevant default provisions within an agreement before you sign it.
- Damages are the general remedy available for breach of contract and cover any contractual breach which is not expressly covered by a default provision in the tenancy agreement for late payment of rent or for replacing lost keys/security devices.

#### **Q. What are contractual damages?**

The ban does not prevent landlords and agents from recovering damages for breach of contract. A landlord or agent is entitled to recover the costs to put them back in the position they would have been had you carried out all the obligations in your contract (for example, returning the house in the same condition as which it was found while allowing for fair wear and tear).

However, claims for damages which are aimed at deterring a breach of contract or punishing the party in breach are generally not enforceable. Terms which require a consumer to pay a disproportionately high sum to the trader in compensation for failing to fulfil his obligations under a contract are also considered unfair terms and unlawful under the Consumer Rights Act 2015.

Landlords and agents cannot write terms into your tenancy agreement that require a payment as a penalty should you fail to perform an obligation. For example, any clause that says **'if you fail to do x then you must pay y'**, even if the amount is not specified, is likely to be prohibited. Any claims for damages must be based on evidence and would only be permitted where a landlord or agent has incurred costs/actual loss because of the contractual breach (unless this is for late payment of rent or a lost key/security device which are expressly permitted default fees under the ban. Payments for lost keys/security devices must also be reasonable and evidenced in writing).

**Examples of 'default fee' or 'default provision' terms that are likely to be unfair and/or breach the ban:**

- £25 fixed penalty charge for any letters, emails or phone calls to chase late payment of rent which may be 7 days or more overdue.
- £100 an hour for a contractor to visit the property to carry out repairs and maintenance.
- £50 for a missed appointment with a contractor.
- Should it be necessary to send a letter regarding late payment of rent, these are chargeable to the tenant at a rate of £25 plus VAT. Personal visits are charged at £75 plus VAT.

**Q. What should I do if I think that a payment for damages that a landlord or agent is asking me to pay is unfair?**

You should refuse to pay any damages claims made by landlords or agents if you do not agree with them, you think they are unfair, or you do not understand why they are being charged. A landlord or agent should make clear why they are seeking damages from you and provide evidence of the costs they have incurred because of your actions. If you and the landlord/agent cannot agree on the amount of damages to be paid, or your tenancy deposit does not cover these costs, the landlord/agent could seek to recoup these costs from you by making an application to the courts.

**Q. Shouldn't a landlord or agent use the tenancy deposit to claim back damages?**

In most cases, landlords or agents will seek to recover claims for damages through the tenancy deposit at the end of the tenancy where independent arbitration will be available through the relevant tenancy deposit protection scheme.

The Alternative Dispute Resolution (ADR) arrangements provided by the tenancy deposit protection schemes are designed to make disagreements over the repayment of the deposit faster and cheaper to resolve than going to court. Where both the landlord and tenant agree to using the ADR service the case will be handled by an independent, impartial and qualified adjudicator and a decision will be made based on the evidence provided.

However, it is still the landlord or agent's right to seek contractual damages during the course of the tenancy and there may be cases where it makes sense for them to do so. For example, a landlord or agent could ask you to make a payment to recover the cost of repairing a fitting or furnishing where that work cannot reasonably wait until the end of the tenancy (e.g. a broken window), and you are responsible for the damage having occurred. In this event, they should be able to demonstrate evidence of their costs they have incurred.

In the first instance, the landlord or agent is likely to ask you to pay any costs they have incurred but may seek to recover their damages through court action if you challenge the claim or refuse to pay.

Where possible, we encourage landlords and agents to allow tenants to resolve issues independently and you should ask whether this may be possible.

It is worth noting that under the Landlord and Tenant Act 1985, it is a landlord's legal responsibility to immediately address hazards which present a risk to occupiers and to comply with any of their repairing obligations under that Act. In addition, the Homes (Fitness for Human Habitation) Act 2018 will come into force on 20 March 2019. Under this Act, if rented houses and flats are considered not 'fit for human habitation', then tenants can take their landlords to court. The court can order the landlord to carry out repairs or put right health and safety problems. The court can also make the landlord pay compensation in the form of damages for the harm caused to you. We have produced guidance for tenants on the Act [here](#).

**A landlord is always responsible for repairs to:**

- the property's structure and exterior
- basins, sinks, baths and other sanitary fittings including pipes and drains
- heating and hot water
- gas appliances, pipes, flues and ventilation
- electrical wiring
- any damage they cause by attempting repairs

Landlords are also responsible for repairing and replacing any appliances that they supply, such as white goods or furniture.

**Q. Can a landlord or agent still recover fees for late payment of rent or lost keys/security devices through the tenancy deposit?**

As is the case now, a landlord or agent may seek to recover any loss suffered or damages incurred through the tenancy deposit but only if they have not already sought to recover the money from you during the tenancy.

**Q. How do I know whether a landlord or agent can charge a default fee?**

A landlord or agent may only charge a default fee where this is required under the tenancy agreement and is for a late rent payment or for a lost key/security device giving access to the housing. You should always enter into a signed tenancy agreement with a landlord or agent. It is important that you read the terms of your tenancy agreement carefully before you sign it and that you are aware of any responsibility to pay default fees. Landlords and agents should highlight relevant

default provisions within the agreement to the tenant before it is signed. You should keep and file safely any original documents given to you by the landlord or agent.

**Q. Can a landlord and agent both charge a default fee for late payment of rent?**

No. A landlord and agent cannot both require you to pay a default fee for a late rent payment – you can only be charged once either by the landlord or by the agent and only when the rent is more than 14 days late.

**Questions to ask:**

- Is there a relevant provision within your tenancy agreement that permits a landlord or agent to charge for late rent or a lost key/security device?
- Is the default fee for a late rent payment or lost key/security device?

*If the answer to these two questions is 'no', it is likely that the default fee you are being charged is unlawful.*

**Q. Can a landlord or agent recover damages for breach of the tenancy agreement even if they didn't write them into the tenancy agreement?**

Yes. The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or court action.

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages for a breach of the tenancy agreement. In most cases, a landlord or agent can seek to recover damages by claiming against the deposit at the end of the tenancy (but they may do so at any time). Any damages claim that you do not agree to pay would need to be enforced by the landlord or agent by them making a claim in the courts. You should consider seeking assistance from Citizens Advice or Shelter before refusing to pay any damages claims.

If a landlord or agent is claiming against your tenancy deposit and there is a disputed charge, you can use the independent dispute resolution service offered by the three [tenancy deposit protection schemes](#).

**Q. Can a tenancy agreement include a clause that says in the event that legal fees are incurred for evicting the tenant, the tenant will have to cover the legal fees?**

No, we consider this would be a prohibited default fee provision which is requiring a payment in the event of the default of a tenant. Landlords, agents and tenants are responsible for their own legal costs resulting from a dispute of the tenancy

agreement. If the dispute progresses to court, it may make a ruling on how legal costs are to be distributed between the parties.

### **Q. Is there any other relevant legislation?**

The Consumer Rights Act 2015 prohibits agents and those landlords that are considered traders from including unfair terms in their agreements. A term is unfair if it creates a substantial imbalance in the rights and obligations between a 'trader' and a 'consumer', contrary to the requirements of good faith, to the detriment of the consumer<sup>3</sup>.

An unfair term in a tenancy agreement is one that creates such an imbalance between a landlord and a tenant, to the tenant's detriment. This would prohibit such landlords from requiring a tenant who fails to fulfil their obligations under their tenancy agreement to pay a disproportionately high sum in compensation. A term or notice that is unfair is not legally binding on consumers<sup>4</sup>.

The terms of a tenancy agreement cannot unreasonably exceed anything needed to protect the legitimate interests of those landlords considered traders or their agents. A term such as the following is likely to be unfair:

- If the rent shall be 14 days in arrears, then the full amount to the end of the tenancy shall become due.
- In the event of the property being left in an untidy or dirty state the landlord shall have the right to receive payment from the tenant of a sum equivalent to three weeks rent.

A landlord or agent can only require you to pay rent as set out in your tenancy agreement. The provisions of the Consumer Rights Act may be enforced by Trading Standards or the Competition and Markets Authority.

## **Default fees permitted under the ban**

### **Late payment of rent**

#### **Q. Can a landlord or agent charge me for a late rent payment?**

A landlord or agent can only charge interest on a late payment of rent where there is a term in the tenancy agreement which permits them to do so and the rent has been outstanding for 14 days or more.

Fixed penalty charges for late payment of rent and/or fees imposed for chasing up late rent are prohibited, for example:

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<sup>3</sup> <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>

<sup>4</sup> <https://www.gov.uk/guidance/unfair-terms-explained-for-businesses-full-guide>



- £25 fixed penalty charge for any letters, emails or phone calls to chase late payment of rent which may be 7 days or more overdue.
- Should it be necessary to send a letter with regard to late payment of rent, these are chargeable to the tenant at a rate of £25 plus VAT. Personal visits are charged at £75 plus VAT.

### **Q. How much interest can a landlord or agent charge?**

A landlord or agent can charge you interest on overdue rent if the late payment has been overdue for 14 days or more. Any interest charged must not exceed the Bank of England's base rate +3%. You can check the base rate [here](#).

For example, if the bank's interest rate is 3%, a landlord or agent would be entitled to charge interest at no more than 6% on the overdue amount for the number of days that the payment has been outstanding.

### **Q. How do I calculate the maximum amount of interest that a landlord or agent can charge on a late rent payment?**

4. Work out the yearly interest: take the amount of rent you owe the landlord or agent and multiply it by the Bank of England's base rate + 3%.
5. Work out the daily interest: divide your yearly interest from step 1 by 365 (the number of days in a year).
6. Work out the total amount of interest: multiply the daily interest from step 2 by the number of days your rent has been overdue.

### **Example**

For this example, we are assuming that the Bank of England's (BoE) base rate is 3%. As any interest charged must not exceed the BoE's base rate +3%. The total interest that could be charged would be: (BoE base rate at 3%) +3% = 6%.

If you owed the landlord or agent £500:

1. the annual interest would be £80 ( $500 \times 0.06 = 30$ )
2. you'd divide £30 by 365 to get the daily interest: about 8p a day ( $30 / 365 = 0.08$ )
3. after 30 days this would be £2.40 ( $30 \times 0.08 = 2.4$ )

We encourage landlords and agents to approach default fees on a case-by-case basis. For example, it may not be appropriate to charge a default fee where you provided a reasonable explanation for a late rent payment and have provided

enough notice that the payment would be delayed. This is especially the case if you normally pay your rent on time or your rent is late for a circumstance outside of your control (e.g. banking systems are down, delayed Housing Benefit or Universal Credit payments). You should notify your landlord or agent as soon as possible if you think there is going to be any delay in paying your rent.

**Q. Can a landlord or agent pass on costs from a third party?**

A landlord or agent cannot pass on costs that they have incurred from a third party (such as a mortgage company) as a default fee. However, they may seek contractual damages for any loss they have incurred because of your breach of contract (e.g. if a landlord has been charged £20 for failing to meet a mortgage repayment because of your late rent payment).

**Replacement key or security device**

**Q. How much can a landlord or agent charge me for a replacement key or security device?**

A landlord or agent may charge you a fee to cover the cost of replacing the lost key or security device giving access to the housing. However, they can only charge you for the reasonable costs that they have incurred because of the lost key or security device. Costs associated with the loss of a key or security device vary depending on the key/device. It is possible to obtain a new standard door key for between £3 and £10, a specialist door key could cost between £5 and £20 to replace and a key fob could cost up to £50.

Landlords or agents are required to demonstrate that their costs are reasonable by providing written evidence (e.g. an invoice or receipt for a replacement key or security device). Any evidence should be fully itemised with an accurate and clear breakdown to allow you to determine the reasonableness of the fee charged. Landlords and agents should proactively seek value for money in respect of any works undertaken.

Where possible, we encourage a landlord or agent to allow you to resolve issues independently. For example, your landlord or agent may give you the option to replace a lost key or security device at your own cost instead of requiring you to pay a default fee. If this is not offered as an option, you can ask your landlord or agent if this would be possible.

**Q. What should I do if a landlord or agent does not provide evidence to demonstrate that their costs are reasonable?**

You should inform them that under the Tenant Fees Act 2019 any default fee charged for the loss of a key or security device giving access to the housing must be accompanied by evidence which demonstrates the reasonableness of the fee. This must be provided in writing to the person who is responsible for making the payment.

You are not responsible for paying the charge until evidence is provided. If you have been asked to pay a default fee or you have requested evidence of the reasonable costs incurred by a landlord or agent in replacing the key or security device, you should keep a clear record of this in writing.

A landlord or agent who fails to provide written evidence of their costs or imposes an unreasonable default fee will be in breach of the Tenant Fees Act. You should object to paying the fee and follow the steps outlined on page 16. Enforcement authorities will be able to impose a financial penalty of up to £5,000 where a landlord or agent has imposed an unreasonable default fee.

The following default fees are not likely to be permitted because they would usually exceed the costs reasonably incurred in the loss of a key or security device:

- A charge of £100 as well as the cost of replacement keys/fobs will be issued to the tenant for the replacement of lost keys or security devices during the course of the tenancy.
- A charge of £50 for a standard front door key.

**Q. Can a landlord or agent charge for their time in replacing a key or security device?**

Generally, we do not consider it necessary for landlords or agents to charge for their time in replacing a lost key or security device.

In certain cases, it may be appropriate, but the onus will be on the landlord or agent to demonstrate that they have incurred costs which are in addition to their general responsibilities in addition to the cost of replacing the lost key or security device. A landlord or agent must provide written evidence that their costs are reasonable and attributable to the default.

We would consider a cost of no more than £15 per hour, which is the median hourly wage of an employee in the lettings industry (taking into account non-wage costs) to be a reasonable charge for a landlord or agent's time in replacing a lost key or security device.

Where possible, we encourage a landlord or agent to allow you to resolve issues independently. For example, your landlord or agent may give you the option to replace a lost key or security device at your own cost instead of requiring you to pay a default fee. If this is not offered as an option, you can ask your landlord or agent if this would be possible.

**Q. If a tenant requests more sets of keys (e.g. for family or cleaners) can they be charged for the cost of extra sets of keys?**

The decision on whether to provide tenants with additional keys or secure devices giving access to the housing is a matter for landlords and agents. If a tenant voluntarily requests additional keys or security devices, landlords or agents may ask the tenant to pay for this service. However, landlords or agents must not require a tenant to pay for the additional key or security device that wasn't requested. For example, a landlord or agent would be prohibited from requiring you to pay for additional keys or security device(s) for a cleaner or contractor that wasn't requested by you.

This is distinct from replacing keys or security devices which a landlord or agent must provide, but a landlord or agent can charge for their reasonably incurred costs which have been evidenced in writing provided this is set out in the tenancy agreement.

## **CHANGES TO A TENANCY**

### **Q. What do you mean by a change to a tenancy?**

A change to a tenancy is any reasonable request to alter a tenancy agreement. This could be making changes to the tenancy agreement to enable:

- pets to be kept in the property
- a change of sharer in a joint tenancy
- permission to sub-let
- a business to be run from the property
- or any other amendment which alters the obligations of the agreement

Where possible, a landlord or agent should make every effort to accommodate any reasonable changes you have requested.

### **Q. Can a landlord or agent charge me a fee for a change of sharer?**

Yes. Where you request a change of sharer, a landlord or agent is entitled to charge you for any costs incurred for amending the tenancy agreement up to £50 (inc. VAT), or for any reasonable costs incurred if these are higher than £50. The general expectation is that this charge will not exceed £50. In some circumstances, it may be appropriate for this to be higher. In any case, a landlord or agent should be able to demonstrate to you that any fee charged above £50 is reasonable and provide evidence of their costs. You should ask your landlord or agent to provide evidence in the form of receipts or invoices. Any costs that are not reasonable are a [prohibited payment](#).

**Note:** A landlord or agent cannot charge you for any changes to an agreement before it is entered into, for example, if you request to remove specific clauses or provisions from a tenancy agreement before it is signed.

### **Q. I have found a suitable replacement tenant, can the landlord or agent still charge more than £50 for a change of sharer fee?**

It is unlikely that a landlord or agent could justify charging a fee above £50 in this circumstance. The costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit should be small. You could also offer to obtain such a reference voluntarily (a landlord or agent cannot require you to do this though) to further reduce the costs incurred by the landlord or agent. There are a number of third-party organisations which will carry out professional referencing checks for you at a small cost – for example, a full tenant reference check can cost up to £30.

A landlord or agent should be able to demonstrate to you that any fee charged above £50 is reasonable and provide evidence of their costs. You should ask your landlord

or agent to provide evidence in the form of receipts or invoices. Any costs that are not reasonable are a [prohibited payment](#).

**Q. Can a landlord or agent charge a fee for each change to a tenancy agreement?**

Yes. However, a landlord or agent should be able to justify the costs that they have incurred because of each change. Not all changes to a tenancy agreement will incur the same cost, for example, including a pet clause within an existing tenancy agreement is unlikely to incur the same cost as a change of sharer. The general expectation is that this charge should not exceed £50. If a landlord or agent seeks to charge you more than £50, you should ask your landlord or agent to provide written evidence in the form of receipts or invoices to demonstrate that the amount charged does not exceed reasonable costs. Any costs that are not reasonable are a prohibited payment.

A landlord or agent should not charge £50 per change if more than one change is requested at the same time in one variation. For example, an agent charging £150 for 3 changes to a tenancy requested at the same time. The amount which exceeds £50 or the reasonable costs incurred in making the variation would be a prohibited payment.

## **EARLY TERMINATION FEES**

### **Q. Can a landlord or agent charge me if I want to leave a tenancy before the end of my fixed-term or the end of my notice period?**

A landlord or agent can require you to make payments in connection with the early termination of the tenancy if you have requested this, but there are restrictions on what can be charged.

Generally, the costs charged for early termination must not exceed the loss incurred by the landlord (usually the loss in rent resulting from your decision to leave and/or the costs of re-advertising or referencing), or the reasonable costs to the agent (such as referencing and marketing costs).

If a landlord or agent agrees to your leaving early, they can ask you to pay rent as required under your tenancy agreement until a suitable replacement tenant is found. This is because you are liable for rent until your fixed-term agreement has ended or in the case of a statutory periodic tenancy, until the required notice period under your tenancy agreement has expired (if no replacement tenant is found during this time). However, a landlord is not able to charge more than the rent they would have received before the end of the tenancy.

If a landlord agrees to terminate your tenancy early, you should make sure that this is clearly set out in writing. It is good practice for a landlord or agent to agree to a reasonable request to end the tenancy early. Where this is agreed to, landlords and agents should consider on a case-by-case basis whether it is appropriate to charge an early termination fee, for example, whether there are any exceptional circumstances which require the tenant to leave early.

However, they could reasonably charge a fee to cover any referencing and advertising costs that they have incurred because of you leaving early, but they should be able to provide evidence to demonstrate these costs.

**Please note:** a landlord or agent should not require you to pay any charges in this circumstance if you are exercising a break clause in your contract which permits you to leave before the end of your fixed-term (if you have given notice as required by the terms of your agreement).

### **Q. What can a landlord or agent charge if a replacement tenant has been found?**

A landlord or agent may be more willing to let you leave early if you offer to help find a suitable replacement, as this is likely to reduce the up-front costs.

Where a suitable replacement tenant is found and the landlord has agreed to an early termination of the tenancy, the landlord or agent can only charge you rent until the new tenancy has started. If a landlord or agent does not stand to lose any rent because of your decision to leave, they are not permitted to consider lost rent as part

of any fee charged for early termination. The landlord or letting agent could reasonably charge a fee to cover any referencing and advertising costs that they have incurred because of you leaving early, but they should be able to provide evidence to demonstrate these costs.

**Q. What should I do if a replacement tenant has not been found?**

If there is no replacement tenant and the landlord or agent insists on you paying rent until the end of your fixed-term agreement, we would encourage you to continue paying your rent monthly (or as required under your tenancy agreement), until a new tenant is found. You are not required to pay the outstanding rent amount as a lump sum unless you still agree to terminate the tenancy and agree this with the landlord.

**Q. Can I sub-let a property as an alternative to terminating my fixed-term agreement early?**

You should not sub-let a property unless your tenancy agreement allows this and this has been agreed in writing by the landlord.

If it is not appropriate for you to sub-let the property, we would encourage a landlord or agent to let you leave the tenancy agreement early provided that a suitable replacement is found.



## **OTHER PAYMENTS**

### **Q. Are there any other payments that I can be required to make?**

Yes. You are responsible for your bills if these are not included within your rent. Payments for utilities, broadband, TV, phone and council tax are all excluded from the ban. However, landlords must not overcharge tenants if they pay utilities separately from the rent.

### **Q. Are utility payments (gas, electricity, water) excluded from the ban?**

Yes. You can still be required to pay for any utility services, such as gas, electricity or water that you consume. However, there is legislation which prevents landlords from over-charging tenants for provision of these services (the Office of Gas and Electricity Markets, 'OFGEM', fixes maximum resale prices under section 44 of the Electricity Act 1989, section 37 of the Gas Act 1986 and the Water Resale Order 2006 governs the maximum price for water).

### **Q. What can my landlord charge for gas and electricity?**

Landlords who resell energy to their tenants for domestic use are governed by Maximum Resale Price provisions set by Ofgem. This means that landlords can only resell energy to you at the price they have paid to a licensed energy supplier. You are entitled to receive a breakdown of the costs paid by a landlord upon request, and you can take your landlord to court to recover any amount which has been overcharged. Guidance on these provisions is available [here](#).

[Citizens Advice](#) and Ofgem offer advice on your rights in respect of utilities payments.

If you pay a flat rate for accommodation which includes utilities, you should consider whether this rate is affordable and reasonable for the property concerned.

### **Q. What can my landlord charge for water?**

Similar provisions exist for the resale of water. Landlords are prohibited from over-charging tenants for the resale of water under the Maximum Resale Price provisions set out in the Water Resale Order 2006. The Maximum Resale Price ensures that landlords who resell water or sewerage services must charge no more to tenants than the amount they are charged by the water company.

Landlords are also allowed to charge a reasonable administration fee. The administration charge is set to cover administration costs and the maintenance of meters. Generally, landlords can recover around £5 each year in administration for a property without a meter and £10 for a property with a meter.

**Q. Do I have the right to change my gas and electricity provider?**

If you are directly responsible for paying the gas or electricity bill, you have the right to choose the supplier. Landlords or agents are not allowed to prevent you from doing this. Ofgem has published [guidance](#) on its website to explain your right to choose your energy supplier.

**Q. If I have a pre-payment meter installed, can I have this removed?**

If you are responsible for paying the gas and electricity bill you have the right to change the type of meter installed in the property, this includes the removal of an existing prepayment meter.

**Q. What happens if I've got a prepayment meter and have a debt on my account, can I still switch provider?**

The Debt Assignment Protocol enables prepayment meter customers with a debt up to £500 per fuel to switch to another supplier's cheaper prepayment tariff. This is designed to help you pay off your debt quicker and save money on your energy use.

**Q. Are loans under the Green Deal (or any subsequent energy efficiency scheme) excluded from the ban?**

Yes. You are still liable to make any payments that you are responsible for under a [Green Deal loan](#).

**Q. Are broadband, TV or phone payments excluded from the ban?**

Yes. You are still liable to pay for any services (e.g. broadband, TV or phone), that are a condition of the tenancy, or that you may choose to contract if these are not included within your rent. Landlords are prohibited from over-charging for communications services under the ban.

**Q. Are council tax payments excluded from the ban?**

Yes. You are still liable to pay for any council tax payments associated with the property that you are responsible for, unless a valid exemption applies (e.g. you are enrolled in a full-time higher education course).

**Q. If a tenant owes a permitted fee which they don't pay, can interest at 3% above the Bank of England base rate be charged?**

No. Landlords or agents can only charge interest on a late payment of rent where there is a term in the tenancy agreement which permits you to do so and the rent has been outstanding for 14 days or more.

Where the rent includes payments in respect of council tax, utilities, television licences or communication services, the landlord or agent would be entitled to include the amount owed by the tenant for these services which has been outstanding for 14 days or more.

## **EXCLUDED LICENCES TO OCCUPY (HOMESHARE ORGANISATIONS)**

**Q. What are Homeshare organisations?**

Homeshare organisations recruit and match people who need companionship and sometimes low-level care and support ('Householders'), with people ('Homesharers') who need somewhere affordable to live. Householders are often older people but can be adults with other support needs such as disabled people or people with mental health problems. They can have 'low-level' support needs but Homeshare arrangements do not involve the provision of regulated personal care. They either own their own homes or are tenants with a spare room. Homesharers are often younger people, such as students or people starting their careers. Homeshare organisations have traditionally charged both participants for their support and advice in facilitating an arrangement.

A national charity, Shared Lives Plus, provides membership to UK Homeshare organisations and a register of its members is available here:

<https://homeshareuk.org/>. Further guidance on Homeshare can be sought from Shared Lives Plus.

**Q. Is there a tenancy agreement involved?**

No. The Householder offers the Homesharer a licence to occupy. No rent is paid, and no money is earned by the Householder for the accommodation provided. Often there will be an agreement to share household bills and council tax.

**Q. Why do the Householder and Homesharer pay fees to the Homeshare organisation?**

Homeshare organisations typically help potential participants understand what is involved in Homeshare and vet potential Homesharers before supporting the participants to decide on a Homeshare match. The organisation may provide training as well as ongoing advice and support to the participants, including ending or replacing matches where necessary.

**Q. Does the Tenant Fees Act 2019 apply to Homeshare organisations?**

The Tenant Fees Act excludes certain licences to occupy from the ban, including those which are typically established under Homeshare arrangements. These licences to occupy must be:

- arranged between the licensee and licensor with the assistance or advice of a registered charity or Community Interest Company (usually a registered Homeshare organisation) and
- arranged in order to provide the licensor with companionship sometimes combined with care or assistance (but not financial assistance)

No rent or other consideration must be paid to the licensor for the accommodation, but they may receive payments from the licensee in respect of council tax, a utility, a communication service or a television licence.

Where all of these conditions apply the licenses are excluded from the Tenant Fees Act 2019 and Homeshare organisations can charge fees to the Homesharer as well as the Householder for their support, assistance and advice.

# **ANNEX B – DRAFT LETTERS TO LANDLORDS AND AGENTS**

<b>TENANT FEES .....</b>	<b>78</b>
<b>HOLDING DEPOSITS.....</b>	<b>79</b>
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You should consider seeking independent assistance from a charity like Citizens Advice if you are unsure of whether you are being asked to pay a prohibited fee or damages before taking action.

You can use the templates below to ask your landlord or letting agent to return your fees or your holding deposit, or to ask a landlord or agent to provide evidence to support fees that have been charged or retained.

## **TENANT FEES**

### **Re: Return of banned fees under the Tenant Fees Act 2019**

I am writing to request the return of the [**£X**] I was charged in relation to my [**proposed**] tenancy agreement at [**insert property address**], which is unlawful under the Tenant Fees Act 2019.

The Tenant Fees Act 2019 prohibits a landlord or agent of privately rented housing in England from requiring a tenant or any persons acting on their behalf or guaranteeing the rent, to make certain payments in connection with a tenancy.

The fee charged does not amount to a permitted payment under the Act.

Please return this fee within [**XX\***] days from this date, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at:  
<https://www.gov.uk/government/collections/tenant-fees-act>

I look forward to hearing from you soon.

Yours sincerely,

**\*Please note: A prohibited payment is unlawful and should be repaid immediately. 'XX' is the amount of time you are giving the landlord or agent before you will take further action.**

## **HOLDING DEPOSITS**

### **Re: Return of holding deposit under the Tenant Fees Act 2019**

I am writing to request the return of the [£X] paid as a holding deposit in relation to [insert property address], which I believe has been unlawfully retained under the provisions of the Tenant Fees Act 2019.

The Tenant Fees Act 2019 sets out the circumstances under which a landlord or agent is entitled to retain a holding deposit in relation to privately rented property in England. Where landlord or agent wishes to retain a holding deposit, they must set out in writing the reason for retaining the holding deposit to the person who paid the deposit<sup>5</sup>.

#### **A holding deposit can only be retained if I:**

- provide false or misleading information which it is reasonable for you to take it into account (or my conduct in providing it), when deciding whether to grant the tenancy
- fail a Right to Rent check
- withdraw from a property
- fail to take all reasonable steps to enter into a tenancy agreement when you have done so

You are required to return the holding deposit or set out in writing your reason for retaining the deposit to me within 7 days of the date the landlord decided not to enter the agreement if this is before the '**deadline for agreement**' or the '**deadline for agreement**' (usually 15 days after a holding deposit has been paid unless otherwise agreed in writing with the tenant). If a landlord or agent enters into a tenancy agreement, the holding deposit must always be returned to the tenant within 7 days of the date that agreement was signed.

If you consider that you have legitimate grounds to retain my holding deposit, please provide the reason in writing and any appropriate evidence to support your claim in accordance with the above. If you do not return my holding deposit or fail to provide a satisfactory reason for retaining the deposit within the required period, I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at:  
<https://www.gov.uk/government/collections/tenant-fees-act>

I look forward to hearing from you soon.

Yours sincerely,

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<sup>5</sup> A landlord or agent must provide this information within 7 days of deciding not to let the property to the tenant or 7 days of the 'deadline for agreement' passing (usually the 15th day after a holding deposit has been received by the landlord or agent unless otherwise agreed in writing with the tenant).

## **DEFAULT FEES**

### **Re: Default fees under the Tenant Fees Act 2019**

I am writing to **[request the return of the £X I was charged as a default fee]** **[challenge the default fee I have been charged]** **[delete as appropriate]** in relation to my tenancy agreement at **[insert property address]**.

Under the Tenant Fees Act 2019 you are prohibited from requiring me to make certain payments in connection with a tenancy.

The Act only permits default fees to be charged for late payment of rent or a lost key/security device giving access to the housing<sup>6</sup>. Whilst you are permitted to charge me a fee in the event of a late rent payment or a lost key/security device, this must be required under the tenancy agreement and there are restrictions on the amount of fee that can be charged. These restrictions are set out below:

#### **Late payment of rent**

Where a payment of rent has been outstanding for 14 days or more (in accordance with the date set out in the tenancy agreement), interest can be charged at no more than an annual percentage rate of 3% above the Bank of England's base rate for each day that the payment is outstanding.

#### **Lost keys/security devices**

Where a replacement key or security device is required in order to give access to the housing, any amount charged must not exceed a landlord or agent's reasonably incurred costs in replacing the lost key or security device. These costs must also be evidenced in writing to the person liable for the payment.

**[delete as appropriate]**

**Where your tenancy agreement does not permit a default fee to be charged [I do not believe that my tenancy agreement allows for a default fee to be charged in the event of a late rent payment/lost key/security device].**

**For late rent payments charges – [I believe that the amount charged as interest for my late rent payment exceeds the limit set out in the Tenant Fees Act 2019 as outlined above.]**

**For lost key/security device charges – [Under the requirements of the Act, please could you provide evidence to justify that the costs incurred in replacing the lost key/security device were reasonable.]**

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<sup>6</sup> Please note, the Act does not affect a landlord or agent's entitlement to recover damages for breach contract



Where the default fee charged is NOT for late rent or a replacement key/security device – [In accordance with the Tenant Fees Act, the default fee you have charged is unlawful and breaches the ban.]

Please could you [provide appropriate written evidence to support the charge] [return the charge within XX\* days from this date] [delete as appropriate], or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at:  
<https://www.gov.uk/government/collections/tenant-fees-act>

I look forward to hearing from you soon.

Yours sincerely,

**\*Please note: A prohibited payment is unlawful and should be repaid immediately. 'XX' is the amount of time you are giving the landlord or agent before you will take further action.**