Tenants Fees Bill

Ministry for Housing, Communities & Local Government

RPC rating: fit for purpose

Description of proposal

At present, letting agents in the private rented housing market compete on price for the custom of landlords, but also charge fees to tenants. The Department argues that there is very limited competitive pressure controlling fees charged to tenants, as the rent and the qualities of the accommodation itself are of paramount importance to them and any given dwelling will be linked to a particular agent. It provides evidence that agents' fees to tenants are typically well in excess of fees charged for similar services by landlords, let alone the costs of the services provided; in some cases both landlord and tenant are charged for the same service (meaning that tenants may in effect pay twice). It also provides evidence that – despite existing legislation requiring agencies to display fees clearly – tenants find it difficult to assess the full cost of renting a property at the point of decision. Based upon this evidence, it argues that agencies are in some cases making excessive profits as a result of market failure.

In addition, the Department argues that the high initial costs of tenancy cause distress to some tenants and constitute an inefficient barrier to renting. In particular, the requirement to pay a substantial deposit alongside a month's rent in advance and agents' fees means that tenants incur large initial costs, which some cannot afford even if they can afford the rent. The Department argues that these up-front costs are in some cases a cause of homelessness.

The Department therefore proposes to ban the charging of fees to tenants (whether by agents or by landlords) except for utilities, Green Deal loan payments and fees arising because of a default or variation requested by the tenant, and to cap deposits charged by landlords at the beginning of a tenancy at a maximum of six weeks' rent.

Impacts of proposal

Impacts of ban on fees

The main direct impact of the proposal is a transfer from agencies (and landlords) to tenants as a result of the ban on fees; the Department expects that in practice this transfer will be reduced by pass-through from agents to landlords and from landlords to tenants (via increases in rent). The Department estimates these costs based on forecasts of the size of the private rented sector (PRS) over time and of the number of moves to and within that sector (the analysis takes account of fees payable both at the beginning of tenancies and at renewal). It then uses the proportion of landlords who use letting agents (51.5% based on a survey conducted by the Department), the median fees charged by agents (£223 for new tenancies and £72 for renewals) and the £26 average letting fee charged by the 50% of landlords who charge such fees (with no fee charged for renewals) based on English Housing Survey data to estimate direct costs of £314.5 million per annum to agents and £8.7 million per annum to landlords. The discussion of wider societal costs also includes estimates of pass-through rates from agents to landlords and from landlords to tenants (both estimated at 50%). These estimates are based on a report commissioned by the Association of Residential Letting Agents (ARLA). The Department notes that these estimates have a large impact on its estimates of the distributional effects of the policy and presents sensitivity analysis around them. Its best estimates of the impacts of pass-through imply that agents' net costs fall to £157.1 million per annum while landlords' net costs rise to £82.9 million per annum to landlords, with matching benefits totalling £239.9 million per annum to tenants (about 75% of the gross benefit available).

Landlords and letting agents will also need to familiarise themselves with the new legislation and to renegotiate contracts where necessary. The Department estimates that this will take two hours per landlord and 20 hours per agency, and using ASHE data on estate agents' earnings, estimates a total one-off cost of £44.7 million. Again, it notes that these estimates are not well-evidenced and carries out sensitivity analysis around them.

The Department plans to establish a lead Trading Standards authority to be responsible for enforcing the regulations; based on costs of similar schemes, it estimates these at £0.3 million per annum.

Finally, the Department draws on data from one of the deposit management schemes to estimate benefits to tenants as a result of the cap on deposits at £1.4 million per annum, starting in year 4 of the scheme. These arise from the fact that tenants have access to more of their money in the early years of a tenancy (and accordingly have greater value from it as a result of discounting); the Department estimates the length of a typical tenancy at 4 years, based on English Housing Survey data. It also notes that there will be costs to deposit management schemes as a result of reductions in the interest earned by investing the deposits they hold (which such schemes may use to cover their costs) and costs to landlords where deposits do not cover their costs at the end of a tenancy. The Department argues, based on its deposit management scheme data, that these costs are small relative to the other impacts set out in this IA; it does not monetise them. It is not clear whether the Department has considered the impact of possible rent increases as a result of banning fees in its assessment of the impacts of capping deposits, but this is likely to be a small effect in any case.

Quality of submission

The Department describes the measure and its impacts systematically and proportionately (making good use of a number of tables of costs and benefits). It sets out the rationale for banning fees clearly, with appropriate evidence to demonstrate the need for government intervention. It describes its rationale for the cap on deposits rather less effectively; the IA would be improved by a clearer explanation as to why government intervention is necessary in this case. In particular, its assumptions around homelessness and affordability are not clearly evidenced and it would be helpful if the views of landlords and others could be presented alongside those of tenants. It explains that it has considered a range of options and briefly explains why it has chosen not to proceed with any of the alternatives; this section of the assessment would be considerably improved by a clearer description of the costs and benefits of each option and how they have been accounted for in arriving at a preferred option.

The Department's assessment of the EANDCB of the measure is fit for purpose; it has made good use of a data from a range of sources including surveys, administrative data and consultation responses to assess the main impacts of the scheme. Its estimates of the time needed for familiarisation are supported by very limited evidence; the Department explains why this is and presents appropriate sensitivity analysis, but the IA could be improved considerably by testing these estimates more thoroughly with businesses. The Department also notes that because of the uncertainty surrounding the scope of the Business Impact Target (BIT) for this Parliament, some of the impacts of the measure may be out of scope for BIT purposes. Should it wish to exclude such impacts, it will need to submit an updated assessment or appropriate supplement for validation.

The Department's assessment of the overall costs and benefits of the measure is also fit for purpose; it acknowledges the limited evidence supporting its estimates of pass-through and presents appropriate sensitivity analysis. It could have improved this analysis still further by presenting the impact of the policy on average tenant costs (and consumers' surplus) explicitly, by discussing the behavioural impacts, if any, of setting a cap on deposits, and by discussing the interactions of the various elements of the policy. For example, reducing the cost of changing tenancies might reasonably be expected to reduce the length of the average tenancy and to place increased competitive pressure on landlords, thereby reducing rents. In addition, there are several behavioural channels (e.g. increased rents or holding deposits, denied tenancy) by which benefits to vulnerable/disadvantaged tenants might be differentially reduced compared to other tenants. The Department does consider these channels for tenants as a whole, but the analysis presented in the IA does not capture any equalities impacts of the measure.

The Department presents a clearly-expressed and proportionate SaMBA, which explains both the direct effects and the (indirect) market effects of exempting small businesses from the policy and proposes the use of guidance to mitigate some of the impacts of the policy on small businesses. The SaMBA could be improved still further by explaining why other mitigations are not appropriate in this case and what impact they would have on the objectives of the policy.

Finally, the Department states that it does not plan to review the policy individually, but will review collectively a range of recent and forthcoming policy changes affecting the private rented housing sector. It proposes to set the baseline for this review in 2018 (to coincide with the latest Private Landlords' Survey) and gives a brief, helpful description of the proposed analytical approaches, but does not state explicitly when the review will be completed. The RPC strongly welcomes the Department's commitment to review, intention to set a specific baseline and range of proposed approaches to monitoring and evaluation. However, the IA would be improved by setting a clear date by which policies in this area will be reviewed.

Departmental assessment

Classification	Under the 2015-17 framework: regulatory provision with net costs (IN)
Equivalent annual net direct cost to business (EANDCB)	£340.3 million
Business net present value	-£2615.6 million
Overall net present value	£34 million

RPC assessment

Classification	Under the 2015-17 framework: regulatory provision with net costs (IN). Under the 2017-2022 framework: to be confirmed.
Small and micro business assessment	Sufficient

Anthony Browne, Chairman