

Communities and Local Government Committee

Oral evidence: Draft Tenant Fees Bill, HC 583

Monday 8 Jan 2018

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Watch the meeting

Members present: Mr Clive Betts (Chair); Mike Amesbury; Bob Blackman; Helen Hayes; Andrew Lewer; Fiona Onasanya; Jo Platt; Mr Mark Prisk; Mary Robinson; and Liz Twist.

Questions 1-72

Witnesses

Kate Webb, Head of Policy, Shelter; Dr Julie Rugg, Senior Research Fellow, Centre for Housing Policy, University of York; and Professor Ian Loveland, the City Law School, University of London.

Examination of witnesses

Witnesses: Kate Webb, Dr Julie Rugg and Professor Ian Loveland.

Chair: Good afternoon, and happy new year to everyone—welcome to our first session of the new year. I am not sure whether we should now be talking about ourselves as the Communities and Local Government Committee or the Housing, Communities and Local Government Committee, given the Government's change of name for the Department today. You are still welcome, whatever our name is.

Today we have the slightly unusual situation of two evidence sessions being rolled into one: it is the first evidence session of our inquiry into the private rented sector and the first session of pre-legislative scrutiny of the draft Tenant Fees Bill. We are taking them together with the same panel of witnesses because the two are so clearly related and intertwined that it is sensible to do so. That is how we are approaching things today.

Before we pass over to you as witnesses, I will ask members of the Committee to put on the record any interests they have that are particularly relevant to these inquiries. I am a vice-president of the Local Government Association and I have one property that I rent out.



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Helen Hayes: I employ a councillor on my staff team.

Liz Twist: I am a councillor on Gateshead Metropolitan Borough Council.

Mike Amesbury: I employ a councillor.

Mary Robinson: I also employ a councillor on my staff team.

Jo Platt: I employ two councillors as part of my staff.

Mr Prisk: I am a non-practising member of the Royal Institution of Chartered Surveyors.

Andrew Lewer: I am a vice-president of the LGA.

Bob Blackman: I am a vice-president of the LGA and have a small property portfolio.

Chair: Right, that is our interests on the record. To help the Committee, will the witnesses go down the table saying who you are and the organisation you are representing?

Professor Loveland: I am Professor Ian Loveland, professor of public law at City, University of London.

Kate Webb: I am Kate Webb, head of policy at Shelter, the national housing and homelessness charity.

Dr Rugg: I am Dr Julie Rugg from the Centre for Housing Policy at York University.

Q1 **Chair:** Thank you very much for coming to talk to the Committee on this important subject. To set the scene, the private rented sector has been growing significantly in the last few years. Has the nature of the tenants who are renting property and the landlords in the private rented sector changed with that growth in the sector in the last 10 years or so?

Kate Webb: Certainly if you look at the profile of tenants, there have been some very significant changes. The most notable is probably families with children. About 10 years ago, you were looking at one in 10 children growing up in the private rented sector; it is now one in four. The perception that many of us still have about the sector largely serving young professionals and students is really now a thing of the past. It is now catering for people with children, for much longer periods and generally for a much broader and more diverse age group.

Dr Rugg: It is interesting to think about the dynamics of the sector. At the moment, we are looking at a much more mature sector. Landlords themselves are becoming more mature, as it were. One of the things we are seeking to do is to look at the demographic in a lot more detail. There are still a lot of single people and couples in the private rented sector.

Certainly I agree that we are seeing more families in the private rented sector, but we really need to understand why and how long those families



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are staying in the private rented sector. The sector is made up of lots of different things. There is a lot of churn in the sector, and we need to understand what the churn means.

Professor Loveland: I would not wish to make any general comments, but from my experience as a barrister practising in the area of housing law, it was notable to me over the last five years that I was representing an increasing number of tenants who had been placed in private sector accommodation by local authorities in discharge of their homelessness responsibilities. When I began my practice at the Bar in the early 2000s, that was quite rare, but it was very frequent by the time I stopped my practice in 2016.

Q2 **Chair:** What about the nature of landlords? Have they been changing as well, or do we have basically the same group of people renting who were renting 10 years ago?

Kate Webb: I have not seen anything to suggest that there has been a big shift in the profile of landlords. One of the things that has been quite striking is that a move towards larger, more institutional landlords has not happened, for reasons that are not entirely clear to people. There was a hope that you would get more institutional investors coming into the private rented sector, bringing in a more professional subsector, but that does not really seem to have happened. You still seem to have a dominance of the amateur landlord with one or two properties to their portfolio.

Dr Rugg: Again, we really have to understand the data a bit better. There are a lot of smaller landlords, but quite a large proportion of the private rented sector is in portfolios. A lot of property is owned by one landlord, but as part of a larger portfolio of properties. We have to distinguish between the pension landlord who is looking for one property to augment their pension and single landlords with a portfolio of properties that they are developing.

At the same time, we have to understand that some landlords are now starting to divest themselves of their properties because they are reaching pension age and retiring. We need to understand what landlordism does in somebody's life course. They go into landlordism and come out of landlordism, and we need to understand what that looks like. Otherwise, our policy is tending to be rather diffuse. It is not really focusing on the problems that we see in the market in terms of management.

Kate Webb: That trend is not new. People are often landlords for quite a short cycle of their life. They may have a 10-year plan, and then they will release the property.

Dr Rugg: There is a distinction between somebody who has bought a property with the buy-to-let generation, who are then thinking about retiring and moving out. They would have their property for quite a long period of time. The pension landlords will have their properties for a long period of time compared with the portfolio landlords, who might churn

their properties to make their portfolios work better. There are lots of different kinds of activities and actions going on, and it is very hard to generalise and say, "Landlords are of this type." We need to pin that down a bit better.

- Q3 **Chair:** I want to pick up the point about generalisation. Small landlords can be very different. They can have a very small portfolio but want to be landlords, as opposed to someone who inherits a property—sometimes a right-to-buy property—that they cannot get rid of and ends up being stuck with it as a landlord.

Kate Webb: That is probably the more important distinction—not necessarily the size of portfolio, but their intention, and whether they are planning to make a business as a landlord or are a purely accidental landlord because either they cannot sell or are waiting for the market to increase.

Dr Rugg: You are exactly right. We need to try to estimate how big a part of the market that is. These are people who do not really intend to be landlords for a long period because they were not intending to be landlords in the first place, and we need to pin down what that number looks like. It is going to churn quite a lot, but if it is, say, a quarter of a market that is churning quite a lot because we have landlords in that category, we need to understand why, because they are a very hard group to focus policy attention on. We need to understand whether it is good for the market that we have that, or whether we need to think about how we deal with that kind of landlordism.

Chair: The next question, obviously, is: what has this done to the standard of accommodation in the private rented sector? Is it getting better, or is it getting better in parts and worse in parts? What is your overall view?

Dr Rugg: Overall, quality in the private rented sector in terms of the decent homes standard has improved. In 2006, 47% of the market was not decent. That is down to 29%, so we have seen an actual improvement. That improvement cannot be explained simply by there being newer properties in the private rented sector, because the improvement goes beyond that proportion. It is important for us to understand what that improvement is about, but at the same time to be mindful that we still have disrepair in the sector and that that disrepair is disproportionately affecting some people rather than other people. We have recently done some evaluation: the people it most impacts are single-person households, people over the age of 55 and people who have an unemployment status.

The really important thing for us is that non-decency increases as the tenancy increases. It is not so much about churn—lots of properties churning—as about some people living for a long period of time in properties whose quality is declining over a long period of time. It is important to think about that. Actually, a lot of that looks like HMOs. We are talking about older people living in HMOs having the sticky end of the

bargain. That is something that we really need to be thinking about, because that is where a lot of the policy attention has been in the past few years.

Kate Webb: There is a very complex picture with the improvement, though. While it is certainly true that the proportion of private rented homes that do not meet the decent homes standard has fallen, the absolute number has actually increased. The growth we have seen in the sector has included a large number of non-decent homes. Our service user stats are always going to be swayed by who we are marketing to, for instance, but we have continued to see a big increase in the number of private renters. We would certainly not be confident about making a call that it has improved.

Dr Rugg: I absolutely agree. The absolute number of people in non-decent property has gone up, without a doubt. The proportion has shifted but the number has increased, and it is really important to underline that.

Q4 **Mike Amesbury:** How satisfied are tenants in private rented accommodation compared with other tenures?

Kate Webb: They tend to be the least satisfied, and they are the most likely to be living in a non-decent home. They do appear to be the unhappiest, and they are paying the most for the privilege. The average cost in the private rented sector is more than the average social rent or indeed mortgage repayment.

Q5 **Mike Amesbury:** The term “rogue landlords” is bandied about quite a bit in the press. What is your estimate of the number of people you would generally class as rogue landlords?

Kate Webb: We do not have an estimate of the number or proportion of rogue landlords, but again, part of what we need to do here is to drill into the complexity. I do not think it would be fair to characterise the sector as split between rogue landlords and a functioning sector; you have a lot of shades of grey in between, particularly among accidental landlords, who are often working from a position of huge naivety and, because they do not see themselves as in the sector for the long term, are very hard to reach.

There is a meaningful motivational distinction between rogue landlords, who, at the most rogue end, are genuinely criminal and bake that into their business models—they accept the cost of very high fines because they know that they will make that back in rent repayments—and people who inadvertently allow a category 1 hazard to remain in a property because they just do not know any better and have tenants who are not aware of their rights or of how to go about getting enforcement action.

My overall point is that I do not think it incredibly helpful to try to identify that 10% of landlords are rogues and assume the problem is there. You have to operate across the complexities of the different landlord types.

Q6 **Mike Amesbury:** Who would you reasonably describe as a rogue



landlord?

Kate Webb: We would say it is someone who is actually breaking legislation: illegal eviction and harassment of tenants; certainly the emerging trends you see around sex for rent or rent for sex—I can never remember which way around is correct—where landlords sexually exploit their tenants in exchange for somebody staying in the property; the “beds in sheds” model; and the extreme overcrowding in HMOs.

Everyone would be very confident in describing that end of the market as rogue. More problematic is the person who rents out their deceased parent’s flat and they just do not know about their obligations around gas safety and to ensure that mould and vermin and that sort of thing are dealt with.

Dr Rugg: With regard to satisfaction, there is certainly a difference. At the last EHS, 82% of private tenants were satisfied with their property. It is important to note that some parts of the market are working. We have really got to understand which parts of the market are working and why. It is easy to castigate the whole sector and say it is not working. If we understand that bits of it are working and why they are working, then we can think about how we can replicate those characteristics across other parts of the market. That sounds a little naive in some senses, but partly it is around the kind of rents that people are able to pay.

I find the rogue landlords distinction very unhelpful. It is not useful. It is important to note that some criminals actively engage in letting properties, and it is criminal activity. These are people who are also criminals in other senses. We need to be alert to the fact that this kind of criminal activity operates.

I agree with Kate that there are some people more or less aware of their regulatory responsibilities. Sometimes they are woefully inadequate and ignorant, and sometimes they really should care more, to be honest. I think that is definitely the case, and more information needs to be available to people.

At the same time, there is a responsibility around the regulations. The regulations are hugely complicated: really very complicated. I am sure, as landlords yourselves, you are thinking, “I want to do the right thing,” but finding that information can be very difficult and local authorities are very hard pressed to get that education information out to people. So it is complicated when thinking about why there are problems in the sector because the reasons for the problems are complex to understand.

Chair: We will now move on to the legislation and regulation.

Q7 **Helen Hayes:** I think I know part of the short answer to this question, but perhaps you could unpack it a bit more. On the range of legislation from which local authorities derive their powers to intervene on behalf of tenants in the private rented sector, is it coherent and is it fit for purpose?



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Dr Rugg: It is a quick no, really. We have all sorts of problems. One of the big issues that relates to some of the legislation is that it tends to split issues between condition-related issues, management-related issues, and issues that relate to letting agents, which we will come on to in a minute. A lot of it does not really link up.

There is a thought that the regulation that sits around property licensing will actively improve the property quality of the licensed properties, but that is not necessarily the case. The evidence for that is poor. So the legislation that we think is solving a particular problem is not necessarily solving that problem. That is quite important to understand.

A lot of local authority officers will probably be queuing to say, "This legislation does not work because of x, y and z." A lot of legislation has been brought in quickly and has not been drafted very well. There is information and changes that come on top of that. It is like a ship with lots of barnacles. All of these things have been added on to other bits of legislation, and now we are in a situation where it is hard for a local authority that thinks, "Which bit of legislation do I use to deal with this particular problem?" and then finds that none of the bits of the regulation that they have got to work with will deal with that particular problem, because none of it fastens up.

Kate Webb: We would certainly agree. It is unfortunate because a lot of that piecemeal nature has come from good intentions. There have been some rapid interventions announced in recent years to try and improve local authorities' tools. On an individual basis, a lot of them have been welcomed by both the local authority and by us, but you have to acknowledge that the overall result is a framework that is piecemeal.

We recently commissioned the universities of Bristol and Kent to do a review of legislation covering conditions in both the private and social rented sectors, and the conclusion of the professionals they spoke to was that it is not fit for purpose, partly because of the incoherent way it has developed, where you have bits of the legislation that relate to public health, often still steeped in Victorian notions. Other bits come from a consumer regulations standpoint. You do not have an overarching piece of legislation that actually says, "These are your rights and these are your responsibilities, and this is how local authorities will enforce it."

Q8 **Helen Hayes:** In what areas, in your view, does the legislation currently provide insufficient protection for tenants?

Kate Webb: A big frustration we still see is around enforcement orders, prohibition notices and the framework coming out of the Housing Health and Safety Rating System. You have a very practical problem in that the Housing Health and Safety Rating System has not been updated for about 20 years now, so a lot of the stats that underpin the assessment are out of date, and a lot of the examples that are given to local authority officers to help them to work through the process are too extreme.



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A big issue—this is a theme we need to get on to—is that the imperfect legislation very quickly rubs up against a severe lack of resources. What we tend to see is a lot of local authorities favouring informal routes rather than going through the statutory process. In some instances, that might be really worthwhile. There are a lot of good things that local authorities can do on an informal basis, but the inconsistency across the country in the number of local authorities that are serving enforcement notices suggests that there is something going on in terms of resources, and also in the understanding and application of the law.

Dr Rugg: I absolutely agree. There are difficulties around the force of the legislation and the resources that are there to implement that regulation not seeming to match up. Over the last few years, the private rented sector has doubled in size in some areas but the number of housing officers dealing with enforcement has not changed at all. I was talking to a local authority just recently and it told me that it had 39,000 properties in the PRS and four environmental health officers to deal with them, which, on anybody's measure, is inadequate.

Q9 **Helen Hayes:** Can you say a bit more about the Housing Health and Safety Rating System, about the areas in which it is deficient at the moment and about how a review and an update of the system might help local authorities to have more clarity?

Dr Rugg: It is a very complex system. I couldn't go into all the 29 different components of the system, to understand what they were. It is interesting to hear comments about how to work with the system. It is really problematic. There is something to be said about an environmental health officer's requirement and somebody saying, "This is a lettable property, as far as I'm concerned".

I am not saying that people should have low standards, but some people would say, "This is not a concern for me, necessarily, but this is a difficulty with this property". Just looking at the data, given that we have quite a high percentage of people being satisfied with the properties they are in, some of those properties are obviously not fit according to the standards. I wonder whether we might think about looking at the standards again and think about what is a reasonable standard to be working to and whether that standard is too complicated to work with very easily and cost-effectively.

If we are expecting landlords to deal with the regulations, they have to deal with somebody who has sufficient knowledge to be able to understand how the system works, and that really posits that information in a group of people who are very heavily under pressure. We need standards regulations that are more readily accessible so that everybody can work with them from a commonsensical viewpoint, in my view.

Kate Webb: I think that is true, and certainly one of the features of the Housing Health and Safety Rating System, and why it is so complex, is that it does not look at the property in isolation; it looks at it in regard to

who is living in it. So a property that is safe for one household might not be safe for another.

On the question of its opaqueness, that for us is one of the attractions of the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill, in that it is attempting to lift the baseline of the standards and put them in as the base expectation for what it means for a property to be fit for human habitation. It is then still up to the individual whether to pursue that, but it sets a very clear expectation for landlords and tenants of what the basic level of decent conditions looks like.

Q10 Helen Hayes: Can you say a little more about the resourcing issues that local authorities are experiencing at the moment? I am interested in the erosion—the loss—of capacity within local authorities, the way in which tenants experience making a complaint to a local authority and the response they are getting back, and the capacity of local authorities also to take cases through the courts and bring successful prosecutions.

Kate Webb: In our experience, capacity is the real issue. While local authorities in the vast majority of areas have had both growing private rented sectors and increased responsibilities themselves, their resources have shrunk. It is no surprise that, if you look at the activities that they are actually taking out, the proportion taking statutory action has fallen. They do not seem to have responded to the new powers in the growing sector in the way you would want. If anything, it has gone the other way.

Certainly, when we talk to local authorities, it is that lack of resources that is the number one concern, rather than a lack of powers. I think we have to be really cautious that this will probably get worse. Certainly, if you look at recruitment into environmental health, what they consistently tell us is that that is incredibly difficult. If you are a young graduate, why would you go into a profession that is increasingly ill-resourced by the local authority?

That means that individuals are effectively subject to a postcode lottery, depending on how many officers there are in their council, whether they favour a formal or informal approach and where they rank in the grand scheme of things. While there is a sort of duty to investigate all category 1 hazards, our experience is that there is definitely a kind of informal ranking, in which local authorities, for understandable reasons, try to prioritise the most severe cases. That means that, at the moment, tenants are left in a very frustrating situation in which they feel they have no recourse if they are living in substandard accommodation.

Dr Rugg: Absolutely, I would agree. I think Shelter is in the best position to comment on people's experiences of complaining—certainly from talking to tenancy relations officers. That long timeframe between a complaint and an environmental health officer then being able to go and visit and deal that complaint is so protracted in some instances that I am sure that there are tenants who might simply choose to move out, rather than wait around.

Similarly, where local authorities seek to pursue a case through the courts, sometimes the tenant is simply not around long enough to take that to court and to deal with it adequately. The problems are that the legislation is not very well framed, local authorities are not well resourced enough to deal with it and the courts are not sitting well enough in response to those two problems. We have problems on all three fronts.

Kate Webb: The other factor we also have to consider with the court angle is the loss of legal aid. You can now only get legal aid, first, if you are subject to the income threshold, which excludes a large number of low-paid tenants, and secondly, you have to be facing very serious disrepair. There are an awful lot of people who we would argue should be able to get recourse through the courts but who just aren't eligible until they reach that danger-crisis point.

Q11 **Helen Hayes:** Is it fair to say that we have a system of regulation and enforcement that is not fit for purpose in any sense at the moment?

Kate Webb: I think we would lean towards that conclusion. As I said, there is something about that that is problematic, when there has been a concerted effort to improve the tools available for local authorities. I do not think that incoherence is coming from a place of complacency. If you look at the Government's focus on the private rented sector, work on conditions stands out as being much better than work around affordability or stability. However, because it has evolved in a piecemeal way, it has not resulted in a coherent or, crucially, a well-resourced sector.

Q12 **Mary Robinson:** Ultimately, we are after the best outcome for the tenant, in terms of the housing that they will be living in and the condition of it. It is interesting that you have both spoken about amateur landlords being a problem—people who seem to have accidentally, or by other means, on a smaller scale, become landlords. Given that some authorities are choosing an informal route rather than a formal one, are we concentrating all our efforts on the legislative route, whereas we could perhaps be looking at more informal routes as well? Is it a case of education and information being part of this solution?

Kate Webb: Certainly, some local authorities are already doing that very well; we have certainly come across examples of some that have put a lot of effort into things like landlord forums, in which they can try to reach out to some of those landlords and try to educate them.

I think that more could be done. It strikes me as a little perverse that, if you speed in your car, you have to go to a one-day training course to learn how not to do that, but if you decide you will rent out someone's home for the next year or so, there is no requirement to go through even the most basic e-training in order to do so. That is certainly something that could be looked at next—augmenting the powers that local authorities have and looking at the softer tools available to them.

Dr Rugg: I agree. There is a presumption that you do not really need to know a lot to be a landlord. That is hugely problematic when you are talking about something as important as somebody's living environment.



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Part of the market does churn, and I do not think that is going to stop. We have to think quite hard about how rigorously we approach that, and about the best way of dealing with it. Is it about a culture change?

Everybody needs to know that this is not something that you can do on a car boot sale basis; it needs to be done properly if it is going to be done at all. That will take a culture shift in the way we talk about letting. It is not something that you can do informally; you really need to understand what you are doing before you get into it.

A further discussion might be what letting agents are doing in this situation—whether we think that letting agents are really good, bringing that informality into a more formal part of the market and then creating circumstances where the letting is better, or whether they are in some instances part of the problem. There are a range of things that we can think about, but we really have to begin to take this part of the market quite seriously. I do not think we should just say, “These are all amateurs” as if they are all a problem. Some of them are, but we really have to understand what this problem looks like.

- Q13 Mr Prisk:** Following on from that last question, Dr Rugg, you have talked about barnacles, legislatively speaking. I wonder whether actually we, as a Parliament, would do better to focus on clearly spelling out to people, both tenants and landlords, their rights and responsibilities.

We can consolidate existing legislation by all means, and incorporate the improvements coming forward, but the heart of this seems to me to be both an uncertainty and a lack of knowledge of people’s rights and responsibilities, on both sides of the table. We are looking at another barnacle coming forward. Do you feel that that will be an area where we, as Parliament, should focus on getting change made?

Dr Rugg: I think there are two things going on here: telling people what there is and thinking about whether we can actually just make the whole thing simpler, because that is a better option in some instances. The guidance given by Government on how to be a renter is actually really condensed.

At first, you think it is quite good because it is quite condensed, but if you take into account that it might be an HMO, then you probably have to have another leaflet for another type of letting. It starts to get quite complicated even for people to understand whether or not they are living in an HMO. Understanding the rights and responsibilities then starts to become complicated, because it is hard at the moment to understand what is and is not an HMO. I think it is less about just explaining the complexity to people, and more about thinking that maybe our focus should be on getting rid of some of the complexity.

- Q14 Fiona Onasanya:** Given what you said before when you were talking about regulation and enforcement, what do you consider are the main obstacles for a tenant in pursuing a complaint against a landlord? Do you think that factors into it?



Kate Webb: I think there is a very practical barrier, which touches on what we were just talking about: you need to know that you have a complaint, and you need to know where to go. Certainly, I have always been very struck, when we have done work with tenants and asked them in focus groups what they want, at how low their expectations are.

Tenants say, "I want my landlord to not let themselves into my property." That is, of course, already illegal. When I see the statistics about the percentage of people who are satisfied, I always bear in mind that we have extremely low expectations about the private rented sector. People need to know what their rights are, which they do not necessarily at the moment, and where they can go. I think it is fair to say that most local authorities are not proactive about publicising their role, which I cannot really blame them for when you think about how much they are lacking in resources.

I think there is another important factor, which we have sort of alluded to, in the cultural aspect. All of this is happening against massive growth in the private rented sector. Some of that has been among people who are quite affluent, and who have choices and potentially the ability to shop around. A lot of it, however, has been among people who have either been placed there by local authorities or would have ended up in social housing in a previous generation. They are very aware that they have very limited purchasing power in the private rented sector.

If you are on housing benefit and you have come across landlord after landlord saying, "No DSS. Professionals only," you are very aware that your options are limited. The existing powers relating to type-2 eviction are very narrow and, more importantly, very poorly understood, so you will be cautious about putting your stability at risk by rocking the boat and complaining about the landlord.

The temptation for most people in the private rented sector is to accept it and either, as Julie said, assume you will be moving in 12 months' time so it doesn't matter, or grind your expectations down and put up with poor conditions. When we survey tenants, we find that more than half report poor conditions in their properties. When you are looking at that kind of endemic disrepair and those poor conditions, that cannot be a long list of people who are waiting for the local authority to take action. That has to be telling us that there is something systematic about both where the conditions are and where people's expectations are.

- Q15 **Fiona Onasanya:** Have the surveys you are looking at specified the obstacles—for example, "I think it is going to take too long," "I don't think they are going to take me seriously," "I don't think taking this complaint forward is going to have a beneficial impact on me"? Have they set out to you what the main obstacles are?

Kate Webb: I would want to go back, check the data and share it with the Committee later. Certainly, the fear of losing the tenancy is a big obstacle that we see. Our advisors have to be very up front with people about that when they contact us about poor conditions. Even with the limited



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protection that the Deregulation Act 2015 brought in, we have to be incredibly clear with people that, AST legislation being what it is, making a complaint doesn't necessarily mean that their situation will get resolved. It might just mean that they are making a homeless application in three months' time.

- Q16 **Fiona Onasanya:** Since 1 October 2014, there has been a legal requirement for these agencies to be a part of a redress scheme, of which there are three. Has that had any benefits? Has it helped?

Kate Webb: I would struggle to say that we have seen a real shift since then. I don't know what your experience has been from the data you have been looking at.

- Q17 **Fiona Onasanya:** Do you think it has been effective?

Dr Rugg: I don't necessarily think it has been effective. I think there are issues if people are going for advice and are told that it's best not to complain because they might be evicted.

Kate Webb: We don't tell people that it is best not to complain, but it would be irresponsible not to explain to people, "This is what could happen—this is what we hope would happen, but this is also what could happen." It would be deeply irresponsible not to tell people that their landlord has the option to evict them.

- Q18 **Fiona Onasanya:** For raising a complaint?

Kate Webb: Yes, because they do. We have legislation governing the private rented sector that says that that's acceptable.

- Q19 **Fiona Onasanya:** Do you have anything to add, Dr Rugg?

Dr Rugg: I wouldn't agree with that, but there you go.

- Q20 **Fiona Onasanya:** Okay. Do you think that the Government's proposals to ensure that tenants have access to alternative redress schemes will be helpful, given the comments you just made?

Kate Webb: It is a welcome move, but I wouldn't want to make any bold claims about how effective it is going to be.

- Q21 **Fiona Onasanya:** Do you think it is sufficient?

Kate Webb: I don't. Again, the problem Julie was talking about was that you can't focus in on a particular problem and then very narrowly try to address it. You have to be looking at this in the main, and when you look at it in the main, Shelter would certainly argue that one of the things that you begin to have to look at is the fundamental power imbalance in the private rented sector and whether people have the stability and incomes to maintain a decent homes for themselves.

- Q22 **Fiona Onasanya:** Given that power imbalance, you don't think that the redresses that the Government has proposed will be sufficient.

Kate Webb: Not across the sector as a whole. They are useful for some tenants, but they are not necessarily going to reach into all corners.

- Q23 **Mr Prisk:** Can I turn to licensing? I am thinking here principally about selective licensing, but I am sure we will get into HMO licensing as well. How effective do you feel licensing schemes are, particularly in improving the quality of people's homes?

Dr Rugg: It is really important to understand whether and how far licensing schemes have a beneficial effect on quality. That is a really important question, and it is something that we have been looking at in a lot of detail. I am still to find evidence that links those two things in a way that is robust enough for us to be confident that selective licensing leads to that. That is not to say that there might not be improvement over a long period of time.

One of the difficulties that a lot of local authorities have in approaching a borough-wide licensing scheme in particular is that a lot of local authorities are absolutely in the morass of simply collecting information on what their sector looks like. They are in the morass of collecting information on who is a landlord in their borough, and then at some stage they might be able to move on to thinking about more effective enforcement. This task of counting, quantifying and deciding who is in the sector is hugely important, but I am not sure whether local authorities are distracted by it in thinking about how best to effect property improvement in the sector.

I think that the two are associated, but it will take an awfully lot of time for that licensing regime to result in improvements in property quality. It does seem to be effective in taking some kinds of problematic landlord out of the market, and that is quite interesting, but we have evidence from other local authorities and from landlords—there are a lot of mixed messages coming—that a lot of this is beginning to look like a bureaucratic exercise of making lists of people, charging amounts of money, receiving those moneys and just maintaining lists. Maintaining a list is not the point of the licensing exercise; the point of the exercise is to improve property quality.

- Q24 **Mr Prisk:** From the evidence you have at this stage, there is no link between the licensing scheme and a demonstrable improvement in the quality of accommodation. It clearly had changes in terms of the landlord, but in terms of the property there is no evidence at this stage.

Dr Rugg: No. It is interesting. We were trying to assess how many properties have been visited as a consequence of licensing. You would hope that licences would be issued only if a property met certain quality standards, but the legislation is that property has to be visited within a five-year period. We looked at 2013-14 and would estimate that around 2% of PRS properties had probably been inspected—possibly—which is very, very low given that these regimes have been in place for quite a long period of time. So the actual inspections activity is really low compared with the size of the sector.



Kate Webb: Licensing does two useful things. One is that it helps to identify the worst offenders. Most local authorities, particularly if they have a large PRS, will know who the real worst offenders are in their area. So it can help with that problem, but it can also help with the culture change in expectation. The problem is that that is inherently piecemeal, because you are only imposing it on landlords in a particular postcode.

There is something interesting, and grounds for optimism, if you look at Newham, where their borough-wide licensing scheme has been accompanied by a huge number of enforcement notices. That suggests that if you move beyond using the licensing scheme just to compile a list of your landlords, and start using it to drive about an increase in standards, it can be effective as the first tool for identifying where you need to look. But it would certainly be naive to think that just proposing a scheme is job done—it has to be part of a really dedicated, well-resourced, strategic focus on conditions.

Q25 **Mr Prisk:** So the gain for you is the increase in the number of prosecutions.

Kate Webb: Yes—if you think of licensing as a way to identify who your landlords are and begin a process of enforcement around the worst offenders, rather than just as a headcount of who is letting properties in that area.

Professor Loveland: At the very sharp end, in the context of possession proceedings, not having a licence for a property that requires one does mean that a section 21 notice cannot be used now. Bow county court, one of the courts in Newham that has recently been closed down, was quite aggressive in ensuring that all its district judges and deputy district judges who were hearing possession claims pressed that point, even if the tenant turned up unrepresented or even if the tenant did not turn up to a hearing at all.

There were landlords coming to uncontested hearings and finding that they were not getting possession orders because they could not satisfy the court that they had a licence for the property. I suspect that in quantitative terms very few tenants actually benefit from that provision, but it is a very effective means of conveying to some landlords that if they have not complied with the licensing regime, they will not get possession of their property back.

Q26 **Mr Prisk:** It is intriguing in the sense that the number of prosecutions in Newham is large—indeed, it is as much as most of the other boroughs—so why is it that, in London for example, none of the other boroughs has gone down that path or very few have taken that route?

Kate Webb: I think that the judicial review issued against Newham had a massive chilling effect and other boroughs were nervous to pursue the same borough-wide approach. Newham's scheme was renewed only at the end of last year.



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Interestingly, the Secretary of State stopped short of renewing it as a borough-wide scheme. They had to remove the Olympic park—which there were good grounds for doing, if you look at the kind and nature of properties in the Olympic park—but that stops a precedent being set about borough-wide selective licensing being okay. Certainly if you look at what local authorities have done in recent years, that chilling effect means that we cannot really judge how much enthusiasm they have. I know that Redbridge was keen to pursue its own borough-wide approach, but again was deterred by the legal pitfalls.

Mr Prisk: But the scheme started in 2013.

Kate Webb: Yes, but it was then judicially reviewed and they had to apply to the Secretary of State for permission to renew it, and that was only granted at the end of last year.

Dr Rugg: A second issue that rarely gets talked about is that we do not really understand the economics of the licensing framework, in terms of how much it costs a local authority to pursue that and whether they can see measurable benefits as a consequence. I think some local authorities might have considered those issues and thought, "Actually, we don't have the resources to do it and that is a reason not to do it."

None of these activities has been accompanied by an economic evaluation of how much it costs to implement and what results have come out of it. It is very difficult for a local authority to think, "We should do the same," without understanding how much it cost and what results came out that were robustly connected to the activity.

Q27 **Mr Prisk:** I was looking to see whether there was an independent assessment. Has Newham not done an assessment of the costs and the revenue, as it were, from this process, in order to work out what the net cost is to it as a borough?

Dr Rugg: It may have done, but it is not publicly available.

Q28 **Mr Prisk:** It has not published it?

Dr Rugg: I am saying that it may have done, but I have not seen anything publicly available.

Q29 **Mr Prisk:** Looking beyond that, are there other ways that local authorities can solve the problems about the quality of the accommodation and the nature of the landlord, other than licensing schemes?

One of the things that seems to come from the evidence you have given us, and some of the written evidence, is the big variance in the level and ability of enforcement, very often between neighbouring authorities with similar demographic situations. Is enforcement actually the issue here, whether resourcing it or looking at comparable performance between authorities to get on to raise their game? Is that a critical issue?

Dr Rugg: We cannot presume that every local authority thinks about the private rented sector in the same way. Some local authorities have a

particular view of the private rented sector, in terms of, "This is something that we need to work with," and they will work with it. Some local authorities do not want to work with the private rented sector.

I am not saying that either of those in practice is right or wrong. Some local authorities have two distinct and different views of the private rented sector simultaneously. They might think, "Quality is an issue in the private rented sector, but our homelessness teams are still placing people in those properties, and unless we have those properties available, we will not be able to fulfil our homelessness duties."

So local authorities are remarkably conflicted about the private rented sector. I would say that very few local authorities have a joined-up strategic understanding of what they want from the private rented sector that goes across tenancy relations officers, homelessness officers and environmental health officers. They do not join up policy to think about what they want the sector to do in their area and I think that is a really big problem.

Q30 Chair: Two points on selective licensing. When we looked at it as a Committee in the previous inquiry, there were two issues that caused concern. First was the restrictive nature of the criteria for having a selective licensing scheme. I understand that has now been broadened. Was that a good move by the Government?

Secondly, there is the bureaucratic nature of the process of actually going about setting up a selective licensing scheme. Is that still a problem that we ought to be concerned about?

Kate Webb: In terms of broadening the criteria it was certainly something we welcomed. It is notable that when you look at where selective licensing came from, it seems to come from a different era of the private rented sector. It conjures up an image of antisocial behaviour, low demand and areas in decline, whereas now we often see that in the areas with the biggest problems in the private rented sector, those are being driven by high demand, because landlords know that they have a captive market.

In terms of bureaucracy, I certainly would not feel confident talking about the bureaucratic demands on local authorities. I would say though that that has always struck us as an attraction of borough-wide schemes. In our view, it seems infinitely simpler to have a borough-wide scheme, in which you know that if you operate in Waltham Forest, you are subject to it, rather than having to work out whether you fall under a particular selective licensing scheme, which may cover a discrete neighbourhood. Potentially, if you are a landlord who works across several postcodes in several boroughs, you are dealing with lots of schemes, as opposed to maybe just one or two.

Dr Rugg: It is difficult—I will always say this as an academic—to judge, because the evidence is quite scant. For a local authority thinking, "You know what? Actually these three streets are where it's at in terms of HMOs and poor landlordism. This is where the problem is," there is no point in licensing the whole of the borough and spending a lot of time chasing



landlords who, for the most part, are not problematic, when it is this part of the sector that is problematic. Because when somebody then comes to make a complaint about their landlord, the HOs are too busy chasing compliant landlords to be able to deal with them. So I think there are advantages and disadvantages to different approaches.

Certainly, it is welcome that we have got a relaxation of the restrictions around what constitutes the reasons to pursue it, but local authorities have to pass through a number of different hoops before they are able to start introducing something, and I think that is difficult for a lot of local authorities—they might think that the hurdles are too great for them to think about what they want to implement in their borough.

Maybe local authorities should be given greater powers to decide what is good for their borough and what is the problem in it, rather than having to deal with national requirements of what is deemed to be problematic.

- Q31 Liz Twist:** I would like to ask about other approaches local authorities are taking to promote the private rented sector. What are some of the most effective approaches that local authorities have taken to support the provision of high-quality affordable private rented accommodation in their local areas?

Kate Webb: One of the big challenges is that affordable is not really within their gift. With the divergence between wages and rents, an increasing proportion of the private rented sector is reliant on local housing allowance to make the rent affordable, and that of course is a matter for central Government rather than local authorities.

Certainly, that is a tension that we see as being central to a lot of the problems local authorities have. It limits their ability to run effective PRS access schemes; they can offer all the incentives and help with deposits in the world, but if a landlord knows that the tenant cannot afford the rent on an ongoing basis, they are not going to take part. And it does undermine efforts to improve standards in the sector.

If we think back to the rationale for the local housing allowance cuts, it was very openly stated that it was about ensuring that people on housing benefit were restricted to the bottom end of the market. We cannot be surprised if the bottom end of the market does not look like the top end of the market.

Dr Rugg: Kate is absolutely right. This is not in the gift of local authorities. The local authorities' actions, in working with the private rented sector, are entirely stymied by the freezing of local housing allowance rates at the moment. That is proving hugely problematic. Looking towards the Homelessness Reduction Act, I wonder how many local authorities will be able to use that legislation effectively if the freeze continues. I think local authorities will find that landlords will not necessarily be willing to work in that part of the market.

- Q32 Liz Twist:** It sounds like you are saying there is a direct correlation between the level of local housing allowance and the quality of housing—



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is that right?

Dr Rugg: Not necessarily the quality of housing. It is really more about the willingness of landlords to take tenants who are wholly or partly reliant on local housing allowance, and the rates of those payments. I keep saying, "We don't understand the economics of things." We don't understand the economics of the bottom end of the market and whether and how far any landlord, with the best intentions, can take a property and let it to somebody reliant on local housing allowance and make that work. We don't know that that is the case. Unless we start looking at that, we cannot expect the bottom end of the private rented sector to be picking up this demand.

Q33 **Liz Twist:** So the two are inextricably linked.

Dr Rugg: Absolutely.

Q34 **Liz Twist:** Could local authorities do more to support and encourage the provision of private rented accommodation for people on lower incomes? Do they need new powers or funding? Given what you have just said, I guess the answer to the second bit is yes, but are there other things?

Kate Webb: I am sure around the margins there are some useful things that they could be doing. I was at a very interesting conference with local authority officers before Christmas, and there were some basics that some local authorities were not getting right: if you were a landlord and you wanted to let your property through them, you could not find their number, you did not get your emails replied to—you did not have consistent communication. There is that basic customer service element, which not all local authorities can claim to be on top of. But the basic consideration for landlords comes down to, "Will I get the rent covered?" and "Will the rent I receive be comparable to what I could receive if I was going through the private market and not involved with the local authority?" If the answer to that is no, all the hotlines and rapid response emails in the world will not counteract that market pressure.

Q35 **Liz Twist:** So it is tinkering around the edges?

Dr Rugg: For some markets, there is a positive aspect. Where the local housing allowance rates are very close to the market rates, that is fine and good, because local authorities can actively work with landlords to improve property quality. In other areas where there is a big disparity and shortfall between the two, it is very difficult.

As I have argued before, local authorities run the risk of introducing perverse incentives for landlords to hold out for an incentive to let to somebody, which skews that part of the market. That is a particular concern as the Homelessness Reduction Act comes in, which a lot of local authorities are looking to: "What kind of incentives do we need to put in place to work with that part of the market?" Landlords will increasingly expect some kind of incentivisation to work at the bottom end.



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Kate Webb: That is completely right. We also have to keep a very close eye on the sort of cross-borough competition that might emerge. Certainly, it is already seen in temporary accommodation. One borough may make the decision that accommodation is not up to scratch and that they will not work with those landlords, but if a neighbouring borough comes in and decides that they are happy to work with them, all your efforts to raise standards are instantly undermined. With the presumption of a far greater role for the private rented sector, we have to look carefully at how we ensure that local authority competition does not drive a race to the bottom.

- Q36 **Liz Twist:** We are speaking in generalities, but you referred to how far away the local housing allowance amount is in one area compared with another. Would you like to say anything about that? Are there any hotspots where that is a particular issue?

Professor Loveland: If I could chip in, one of the perverse consequences is that many London authorities are building quite good relationships with the private rented sector in places such as Walsall, Birmingham and even further north because they simply cannot afford to house homeless people in their own areas and they are shipping them very long distances away. A great deal of litigation in relation to the homelessness legislation is in respect of what are called "out of area placements".

It seems a rather peculiar scenario that Westminster, for example, employs housing officers who are effectively based in Walsall to find properties in the Walsall private rented sector to house people who are being decanted out of Westminster. That may cause some tension with local authorities in the areas that are being affected. It is a very odd scenario that you may find more aggressive outreach work from London authorities towards the private rented sector hundreds of miles from London rather than in London itself.

- Q37 **Liz Twist:** And a massive implication for the residents themselves?

Professor Loveland: Yes. It will be very disruptive. It also has ramifications for the private rented market in Walsall, which is now in effect being invaded by people from the south.

- Q38 **Andrew Lewer:** We have talked about the local authority angle and some of the tinkering around the edges, but what about the Government's announcement that they will bring forward new incentives for landlords who are doing the right thing? Thinking a bit more broadly, how can landlords be incentivised to improve the quality of accommodation and security for their tenants—not necessarily in relation to local housing provision and funding but the broader picture?

Kate Webb: If we look specifically at the housing benefit sub-market, one key bone of contention is whether payments are made direct to the tenant or to the landlord. It has been the policy of Governments of all parties in recent years to put the emphasis on payments to the tenant—for very sound reasons around not having a big distinction between being on benefits and being in work, and around responsibility—but that seems to

have made landlords quite nervous. That anxiety seems to be heightened ahead of universal credit coming in.

One tool that I have always been struck by as potentially underused is the quid pro quo of a guaranteed landlord payment in return for meeting certain conditions: for example, getting the guaranteed landlord payment direct if they take a family on a private rented sector offer to a statutorily homeless household on a three year tenancy. That works for the local authority and potentially works for the landlord, and it gives them that kind of stability. There is more that could be explored around the financial security angle.

Dr Rugg: I think you need to unpick the notion that you need to incentivise landlords to do particular things. There is a difference between incentivising a landlord to offer a longer tenancy and incentivising a landlord to offer better quality. They are two slightly different policy issues. Most landlords really want to let longer tenancies, and the reasons tenancies fail are not really about the AST; they are about other things, such as affordability issues. With all the will in the world, you can place people in a three-year tenancy, but if they cannot afford the rent, what is the point?

The incentives tend to be overly generalised and rather blunt and do not address what the problem is. What you want is a better private rented sector. Incentivisation tends to be a rather blunt instrument. Going back to our opening comments, parts of the market are reasonably professionalised. Some parts of the market are let through letting agents that operate very well. Do you really want to incentivise landlords who are already offering reasonable-quality accommodation and longer-term tenancies, because that is what the tenants are moving into? You have got to think about where the problem is, and how to deal specifically with the part of the market that is problematic, not about throwing incentives at the private rented sector as if the entire sector is a problem.

Q39 Andrew Lewer: Does this comment, then, strike you as something of a slogan?

Dr Rugg: We tend to think we need more regulation of the private rented sector, and it is not helpful. We need to think about what regulation we have, why it is not working and where it is working. We need to think about what is good about what we are doing and do more of that, rather than thinking that we need to add another layer on top of what we are already doing.

Q40 Bob Blackman: Moving from encouraging landlords to do the right thing to the bad landlords who are the serious problem, particularly in London, there are specific problems of family homes being subdivided into very small bedsits and then let out in so-called lockdown properties. The other challenge is beds in sheds, which are a real problem right across London. What should be done about these particular problems?

Kate Webb: First, you have to appreciate where they are coming from. These are all symptoms of a market where you have a section of the



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market with huge affordability problems and, particularly across London, increasing demand. If you didn't have that, you wouldn't have tenants willing to accept beds in sheds and these very small conversions.

I still have not seen very reliable data on the issue of lockdown properties and how many properties we are talking about. I think one issue that possibly warrants expansion, although there are unintended consequences to think through, is the option of having a studio local housing allowance rate between the shared and the one-bedroom. The challenge is that landlords do not have to do an awful lot to pull themselves over the bar of being considered self-contained; sometimes it is just putting a microwave into the room, for example. If you had a way to distinguish between a genuine one-bedroom property and a studio, that might change some of the financial incentives.

It is sort of related to the question earlier. I am not sure we can deal with the symptoms of the pressure of a market which is overheated and has serious affordability problems. I think if we don't like what we see, we have to start by unpicking the market itself, rather than just the hotspots.

- Q41 **Bob Blackman:** Dr Rugg, earlier in your evidence, you mentioned different challenges from different council departments, for example. One challenge is certainly that if a local authority inspects these properties and uncovers a problem, that group of people may well suddenly become homeless, and therefore potentially liable to be rehoused by the local authority. Is this a conflicting problem?

Kate Webb: It potentially is. If you look at the demographics of who is in those properties, a lot of them will not be in priority need, so in some respects, the local authority does not have that risk, but I think local authorities are acutely aware that sometimes it can be a case of choosing between raising standards or not making people homeless, and whether that would fall under their responsibility. That will be a tension.

One thing that makes Newham interesting is they have decided they are very comfortable with those unintended consequences, whereas other local authorities are a lot more anxious about increased homelessness.

- Q42 **Bob Blackman:** The GLA published just before Christmas on the problem of beds in sheds across London. Have any of you had a chance to review that and give a view on it? It clearly itemises literally thousands of properties where no council tax is being collected, huge amounts of rent are being collected and people are living in, frankly, outrageous conditions. I can accept that the market is overheated, but here are people who are being exploited, and I don't think any of us would condone that position.

Kate Webb: I have not had a chance to review the report yet. When I do, I will be considering whether the GLA have looked at whether those households being exploited are also the households that are subject to the right-to-rent restriction, because we have to accept that an unintended consequence of the mainstream market being inaccessible to people is the black market opening up.



Dr Rugg: That is fair comment—thinking about who are the tenants. A lot of the enforcement activity tends to overlook the consequences for the tenant, and that is something that we need to be closely aware of. It is very rare that local authorities' environmental health officers go with somebody who has the interests of the tenant at heart and is thinking about what is going to happen to the tenant in these circumstances.

In some instances, we ask why people don't complain. Sometimes they might just be thinking, "What is going to happen to me if somebody comes in and says, 'This property is not habitable'? What is going to happen then?" The local authority does not have a strong track record of demonstrating that it is going to help the person to move to a habitable property.

- Q43 **Bob Blackman:** There are frequent examples that I could quote, from my local authority and neighbouring local authorities, where beds are being rented for eight hours a day and multiple people are sharing the bedroom on a cyclical basis. That used to be a real problem in New York, for example; it is now a problem in London. Have you had a chance to take a view on that particular issue? Clearly, it is something that landlords are involved in, whether directly, or indirectly through someone having a tenancy and then sub-letting, possibly illegally.

Dr Rugg: You are right about the sub-letting issue. It is something that we have not got a very firm handle on—the number of landlords letting in good faith and then finding the property has been subdivided by a criminal tenant—and we really need to try to get a grasp on it.

That part of the market is really problematic. Some tenants are making economic decisions that that is how they are going to live for a proportion of their lives, and then they might move back to where they were or move on somewhere else; they will have done it just for a time. I am not saying that all tenants are like that, by any stretch of the imagination, but at the bottom, as Kate said, some people are willing to take that, for lack of an alternative. That is the heart of the issue—the lack of an alternative.

- Q44 **Chair:** I want to come back to the issue of lockdown properties. I recognise that we want to sort out the housing market in the wider sense, but that is going to take time, and in the meantime some landlords—almost the criminal element, in some cases—are simply taking the taxpayer for a ride with lockdown properties, aren't they? That is what they are doing; they are milking public funds and not providing proper accommodation. Apart from having a different element of housing benefit for studios, is there anything we should be doing to stop this practice?

Dr Rugg: A lot of the issues sit around definitions. It is clear that this practice can take place because the law doesn't marry together particularly well and it is possible to find these little ways through the legislation. One of the messages that comes out of that is that the legislation is poorly framed to deal with landlords who decide to circumvent it, one way or another, by being quite clever in the way they—

Q45 Chair: So it's a case of getting the different bits of legislation joined up?

Dr Rugg: They do not necessarily match up. A local authority officer visiting the property might find that it is quite small, but contains the things it is supposed to contain. They might think, "Okay, the rent is really high, but I am not looking at the rent when I am assessing this property; I am looking at whether it is suitable for one person to live in." A number of things might say this seems to be wrong, but actually pinning down the legislation that says, "This is why it's wrong," is quite problematic.

Kate Webb: As we have so often said, there is the crossover with the DWP as well. The policy intention behind local housing allowance is that it is very simple: you have a very large broad rental market area and then a going rate for properties within that. Even before lockdown properties, you have particular problems.

For example, Jaywick, which is a very deprived area, falls into a much more affluent BRMA. I am aware that the local authority there have previously raised with the Department for Work and Pensions that they would like some sort of power to intervene on a case-by-case basis. Ministers and officials have been very reluctant to compromise the simplicity of local housing allowance for that intervention. I certainly would not want to speculate here as to which way it should fall, but I think that is potentially an area that merits further evidence.

Chair: Thank you. That ends our first session.

We now move on to pre-legislative scrutiny of the draft Tenant Fees Bill, which is the second part of our considerations today, and look specifically at the proposals in the draft Bill.

Q46 Liz Twist: The Government's stated objective for the Bill is to deliver a fairer, more competitive and more affordable lettings market, where tenants have greater clarity and control over what they will pay and where the landlord is the primary customer of the letting agent. Do the provisions of the draft Bill enable this objective to be achieved?

Kate Webb: I think broadly we would say it does. They are certainly objectives that we strongly welcome. I think there are two areas of potential concern that we would probably like to focus on today. The first is around default fees and whether the clause is specific enough and provides enough safeguards. I think our central point is that it is quite problematic as it currently stands. The second is something we did not raise in our written evidence but are subsequently concerned about, which is the risk that the Bill as drafted allows for exit fees, which could cover a wide range of services from cleaning to check-out to a generic exit fee.

Professor Loveland: I think in principle, or in broad terms, the Bill is likely to achieve that objective. Speaking as a lawyer, both a practitioner and an academic, I do have a number of detailed concerns about the way the Bill is drafted at the moment and the implications that it might have. I do not know if it will be helpful if I address them seriatim.



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The thing that I think most concerns me is the enforcement mechanism, which is laid out from clause 7 onwards. The draft Bill, for example, envisages an initial fine to be levied by a local authority, which could be anywhere between £1 and £5,000, and £5,000 does seem a potentially disproportionately large amount in relation to what may only be a few hundred pounds in terms of prohibited payment. I am curious why there does not seem to have been any effort to link the fines strategy here with the damages provisions in the tenancy deposit scheme, which fix a ceiling at three times the amount of the deposit that has been unlawfully charged.

I would be concerned, also, that the range was going to lead to very wide discrepancies, not just between local authorities but possibly within them, even on a month-by-month basis, so that you may find yourself with two landlords in very similar situations, one of whom is being fined £500 and one of whom is being fined £5,000. There does not seem to be in the Bill itself, nor in the explanatory notes—although it may feature in the subsequent guidance—any governmental attempt to structure local authorities' discretion in relation to the size of fine that they charge. I think that is a serious omission.

It becomes a more serious omission, in my view, because of the way clause 7 interacts with clause 9, clause 9 being the criminal offence provision. If one reads back from clause 9 into clause 7, one finds that the fine can now go up to as much as £30,000. I have a specific drafting concern about this. If one looks at clause 7(3) it appears the local authority can raise its fine to £30,000 if it is satisfied beyond reasonable doubt that the landlord or the agent has committed an offence under clause 9. That, I must say, seems to me a quite extraordinary proposition, because it appears to be empowering the local authority itself to decide that someone has committed an offence, even if the person has not been brought before a magistrates court and actually convicted.

If that is the way that the Bill is interpreted, and that is its literal reading, I think there are going to be great difficulties reconciling it with article 6 of schedule 1 to the Human Rights Act, because you are effectively turning the local authority into a magistrates court with a very substantial punitive jurisdiction. Although strictly speaking, of course, it is a civil penalty, I am certainly sure the European Court of Human Rights would take the view it was analogous to a criminal one. It is a punitive measure.

This goes on—forgive me if I am being too lawyerly here—into the appeal provisions that we find in paragraph 6 to schedule 3 to the Bill. The jurisdiction is given to the first tier tribunal, but if one looks at subparagraph (2), it is not clear to me what the jurisdiction of the first tier tribunal is. In paragraph 6(2)(b), on pages 20 to 21 of the draft Bill, there seems to be an allusion to orthodox judicial review grounds: an appeal can be brought on an error of law. Also, paragraph 6(2)(a) seems to empower the tribunal to decide all questions of fact, which makes it sound like a primary decision maker and not exercising a judicial review jurisdiction. In paragraph 6(2)(c) and (d), we find the term “reasonable” being used, in

relation both to the level of the fine and to the decision to make a fine at all in the first place.

Those are terms that lawyers will tell you could mean either *Wednesbury* unreasonable, in an administrative law sense, which means the tribunal's jurisdiction would be very light touch indeed, or it could mean reasonable in the possession proceedings sense, which means the tribunal determines every question of fact and law as if it were the primary decision maker.

It seems to me that that really ought to be clarified as to what the legislative intention here is. What is the tribunal's role—a *de novo* primary decision maker or, in effect, a judicial review forum? Presumably, if one finds landlords who are being fined £5,000 or even £30,000, that question will be a very live one, because the intensity of the tribunals jurisdiction will have a very large bearing on the fine, if any, with which a landlord eventually leaves that process.

Kate Webb: On the issue of the size of the fine, we have to remember that the Bill is trying to disrupt an industry. Given what we know about the lack of enforcement and about tenants often not being aware of their rights and able to exercise their rights, you run the risk that if the fine is not meaningful, letting agents will simply price small fines in as the price of doing business. You need something that acts as a deterrent. The comparison with the deposit protection scheme slightly ignores the differences between landlords, who may have only one or two properties, and letting agents, who we can assume will have multiple tenants all subject to the same fee regime. Just charging a fine of three times the fee will potentially ignore the size of the pool of consumers who have been affected by the unfair fees, and, again, will not act as a sufficient deterrent. That is our concern.

Q47 **Liz Twist:** One of the questions was about whether the Bill will deliver a fairer, more competitive and more affordable lettings market. Clearly, you have raised some very technical legal issues. But on the principle of the Bill, if the issues that you have mentioned could be looked at, would that make it more effective? If not, what could be done to make it more effective?

Dr Rugg: I do not have lawyerly comments, but I think it is interesting to look at the contextual information that attaches to the Bill: the word "safe" is used two or three times, but it does not really appear in the drafting. To seek transparency and a more competitive sector, tenants should be given clearer indications of the quality of the property that they are offered, so that they can compare across different qualities of property. That is quite important.

In terms of the impact assessment that needs to be attached, we are not in a very good position to be able to judge the impact across the board of what this kind of activity will do in terms of costs—whether costs will fall in practice. I am not necessarily saying that rents might go up as a consequence; I am always more concerned that the quality will go down, rather than that rents will go up. Markets are such that a rental level will

be maintained, but the quality of the property might decline. The landlord's willingness to attend to repairs might go down if the letting agent fees go up. Those are the issues that we need to think about.

Q48 Liz Twist: For you, is there is a link to safety and quality?

Dr Rugg: Again, this is a piece of legislation that has decided that there is a particular issue and it has targeted it in a very, very piecemeal way. On one level, yes, it is an issue that needs to be dealt with, but it is being dealt with in an unstrategic way.

We are not asking what we want letting agents to be doing in the market—"what do we want letting agents to do?" We are just pinpointing what we don't like them doing, without necessarily saying, "Actually, what we want letting agents to be doing is effectively to create bits of the market that we're quite confident about." We want them to be letting at good quality and we want the rents to go up in a reasonable, staged way, where everybody knows what's going on. These are the things we want letting agents to be doing—to be professionalising on behalf of landlords—but the legislation that comes through is very bitty and is not necessarily addressing that wider strategy.

Kate Webb: Given, though, the narrow confines of the Act itself, our view is that it goes a long way towards improving competition in the sector. It has always been a source of concern for us that the landlord chooses the agent to market their property and tenants overwhelmingly shop around for the properties, so they effectively have a captive market then of who the landlord has appointed as the agent, with very little ability to say, "I really like the property. The conditions work for me and the rent works for me, but I have had bad experiences with x agent before." They can't do that. If you want to do that, you effectively have to walk away from what otherwise might be a perfect home.

Certainly, when we surveyed landlords before, an awful lot of them were actually unaware that agents were often charging both them and the tenant fees, often for the same service, which makes landlords nervous, because they do not know if that is fair. Is it double charging or is it actually splitting the cost? Who is the agent actually working for? We have always been clear that if you look at the actual relationship, the agent is working on behalf of the landlord and I think that having that clarified in terms of the fee arrangements will be incredibly welcome. And it will also mean that you have much clearer pricing, in terms of what is quoted to the landlords, which we hope overall will reduce costs.

That is because at the moment agents are strongly incentivised to make the most attractive offer to the landlord, who is the active consumer, knowing full well that they can pass it on to the tenant, who is far more passive in this situation. If you have all those costs concentrated on the landlord side, what you have then is a very active empowered consumer, who can really question, "Why is it £700 for a tenancy fee?", whereas tenants just have to accept it, because the alternative is losing out on the property.



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Q49 **Fiona Onasanya:** Julie, you mentioned the impact assessment. Are you concerned that a full impact assessment has not been published?

Dr Rugg: I would certainly be very interested to see what is contained within the impact assessment.

Q50 **Fiona Onasanya:** Is that the same for you?

Kate Webb: We would always want to see the impact assessment. We are personally reassured by a lot of the evidence that has come out from Scotland, after they clarified the ban on fees north of the border, which doesn't give cause for concern around what's happened to rents and also points to some areas where you can tighten up enforcement and awareness to ensure that the legislation is as effective as possible here, namely that the simpler and more transparent it is, the more likely it is that tenants will be able to self-enforce by just knowing and advocating for their rights.

Q51 **Fiona Onasanya:** So it is prudent that something should be published?

Kate Webb: It would be complacent of us to say that you should have legislation without having an impact assessment, but it has not been a cause for concern that it has not been available to date.

Professor Loveland: I couldn't add to that.

Q52 **Jo Platt:** You spoke earlier about the change in demographics in tenants. So what sort of tenants in the private sector do you think would benefit most from the draft Bill?

Dr Rugg: I presume that we are looking at the middle part of the market, where these fees are accepted and understood to be part of the transaction that you would have. It wouldn't necessarily benefit people very much at the bottom end of the market, because for the most part they wouldn't be looking to make those kinds of arrangement, I think.

The thing about the middle part is that you want to see an effective market when people are making those choices. If consumers are fully able to shop because they have all the information available to them, the response of the market will be to improve what it has to offer and the transparency of what it has to offer—you would hope. So I think it is the middle part of the market that will have the most impact on.

Kate Webb: The only thing I would add is that when we surveyed private tenants and looked at their incomes versus the average fees they were paying, it was lower-income tenants who were paying higher fees. That was certainly not what we were expecting, because we assumed that it would work as you suggested. I think we can be cautiously optimistic that it will have broader benefits than just that very mobile mid-market. There does seem to be some particular problems around the fees charged at the lower end. That might be because of the additional costs that are incurred around issues such as guarantors, referencing and that kind of thing.

Q53 **Jo Platt:** On the flipside, do you think there will be a risk to a cohort of



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people who rent at the moment—whether that is low-income families or those they deem to be a risk because they have pets or are smokers—because of the decisions from letting agents?

Kate Webb: Certainly the area we will be looking at most carefully is whether there are any adverse consequences around referencing. We will be asking people, “Do you find that when agents and landlords are bearing the full cost of referencing, they are turning away some potential tenants for superficial reasons without actually going to the expense of running them through proper referencing? Is that leading to inadvertent discrimination?” I am not predicting that that will happen, but if we were looking at areas to look out for, that would certainly be on our list.

Dr Rugg: Going back to the impact assessment, I keep saying this, but we do not really understand the letting agent industry particularly well in terms of the range of particular types of letting agent that are out there. The very high-end, franchised letting agents operate quite professionally. Some estate agents might also be doing letting on the side, but there are some landlords who are letting property on behalf of somebody else on an informal basis. The impacts will spread across that activity, and that is why there is concern to see the impact assessment. You would hope that that demonstrates a good understanding of how the industry works. Unless we understand how the industry works, we will not really understand what the impact will be.

Kate Webb: I think it is fair to say that we are operating in the dark. Certainly what we see from clients would lead me to question even the assumption that the more high-end big brands are operating in a professional way.

Dr Rugg: I agree.

Kate Webb: We have come across supporters who were using established names as agents, but were still being asked to hand over money in a supermarket car park as a holding deposit. That is not what “professional” looks like.

Dr Rugg: Exactly.

Q54 **Jo Platt:** Julie, you mentioned some of your views on rent increases if the proposed legislation goes through. You are saying that you are not confident that the increases will happen?

Dr Rugg: I go back to the point that we do not understand the economics of letting agents and the industry. We do not understand where the fees go. There is a presumption that everyone is going to charge as much as they can get away with.

Q55 **Jo Platt:** What happened in Scotland? They did that, and was there an increase in rent in Scotland?

Dr Rugg: But we don’t know how the economic bases of those businesses might have changed as a consequence and where those letting fees might have disappeared somewhere else within the business model. If we do not



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understand what the business models look like, we do not understand what the impact might be. The costs might be somewhere else within that business model, but we do not know where. Actually, it might take a while for where it is happening to become available and known to us.

It is naïve to say, "We are going to take some money out of this and nobody is going to feel it. Nothing is going to happen and everything is going to be fine." What do these models look like and how are they accommodating that decrease in income? They have to accommodate it one way or another, and we have to understand how they are accommodating it. It might be things such as people not doing as many inspections of a property as they might have done in the past, so that there is a cut in service rather than a cut in rent. That is quite an interesting thing to think about. They might not be training their staff in a way that you would want them to. All these other things could be a consequence of the fees going down, and we might not see them immediately, but in the long run those things might have an impact on how that market works as a good professional market.

Chair: Mary, you have a supplementary.

Mary Robinson: It was a supplementary, but I think it probably goes in the next part, which is about the increase in costs.

Q56 **Jo Platt:** There is the risk that there will be less available housing in the private rented sector as a result of the potential increase in landlord costs, pushing up rents further. Is that something you have done any assessment on?

Kate Webb: I have to say it is not a risk that we really recognise. It does not appear to have happened in Scotland. Agents are voluntary for landlords, so what is probably more plausible is that landlords will just decide to self-manage. Whether that is a good thing is open to question, but then it is not a simple answer, because it also depends on your assessment of how effective letting agents are at raising standards. If they were a well-regulated industry with significant barriers to entry, then you would be concerned if landlords were turning away from them and self-managing, but given that there are very low barriers to entry it is harder to be concerned at the notion of landlords going it alone.

Q57 **Jo Platt:** We are talking about the letting agents and the industry, but the issue is the impact that these things will have on the tenants. I would be interested in the capacity and resource of local authorities, and trading standards as well, if they were enforcing this.

Kate Webb: As in our conversation earlier, for us the big risk is that they will not have the resources to enforce. That is why simplicity is key to making this work. What you want to happen is for tenants to have a clear understanding of their rights and to be able to say, "You should not be charging me any fees." That is where some of the framing of default fees and the potential for exit fees makes us nervous, because it introduces a grey area where the letting agent can very confidently tell the tenant, who is not a professional, "Oh no, trust us, this is within the bounds of the



legislation,” knowing full well that it will be difficult for the tenant to challenge that.

- Q58 Mary Robinson:** The way it operates at the moment is that there would be an up-front fee, and often after a year’s assured shorthold tenancy there might be a continuation fee, which would be lower. It seems that under the legislation, while the fees cannot be charged, the rent could be higher. In other words, the fees could be spread over the number of months in the year and onward.

Is there potential for that fee to be put into the rent? Let’s say that the mean average fee would be about £240. Spread over a year, that is an extra £20 a month on the rent. As we have it at the moment, that fee would be less in the second year—it would go down because it would be a continuation fee. Under the new scheme it would perhaps be higher, so the rents going forward would be higher than they are now. Has that been considered?

Kate Webb: It was certainly something we thought through a lot when we were advocating for this position. As Julie says, it is very difficult to make predictions about what will happen to rents. As I was trying to explain earlier, we would not expect everything that is currently charged to tenants to be passed on to landlords.

When you look at the range and size of fees being charged across the sector, it is very difficult to argue that a landlord, who has the choice of whether to go with that particular agent and has the consumer power to question the fees, will accept some of the costs that are being charged to tenants. Our assumption is that they just will not.

Certainly, in some of the early reactions when the ban was announced, you heard examples of landlords demanding to know how the cost would be absorbed. I think you will see an overall reduction in the costs that agents are demanding, rather than pushing everything from the tenant to the landlord. That is grounds to be optimistic in the first place.

Secondly, we did some market research with tenants about what they would prefer. The overwhelming evidence was that, even if there was a small risk of rents going up, they would rather have the costs spread across the tenancy rather than have those big up-front costs of moving. When you combine the deposit, the rent in advance, the letting agent fee, the van and possibly cleaning, it is an awfully large sum of money to find at once, and it is much easier to manage that burden if it is spread across the tenancy.

Of course, for people on a particularly low income, it then potentially becomes eligible for housing benefit rather than being something that they have to find out of their own pocket or that an overstretched local authority access scheme has to pay.

- Q59 Mary Robinson:** I suppose what I am really saying is that it will not just be for the one year that the tenant is paying more; it will be a continuation of that extra payment. In the long run, the person is paying



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more in the rent.

Kate Webb: But I think it is a very big assumption that the agent will be able to put that much extra on the rent.

Dr Rugg: I think the point you are both making is that it becomes very opaque how the rent is set and what costs are included in it. Those up-front costs actually just become the rent, and issues pertain: "Well, we needed some sort of up-front fee at the beginning." It all starts to become a little bit confusing how the cost is being absorbed, what it is called and how people can define it. It does start to become problematic.

Q60 **Mary Robinson:** Should there be clarity about that? Should it actually be defined?

Dr Rugg: It should be defined as part of the rent, by saying, "For the initial year or the initial term, the rent is at this figure to accommodate this cost, and then it goes down." If that is the case, that is what you would have to say, rather than thinking that it is just the rent across the board. And how long is the tenancy going to last? At what point is that rent going to be paid?

Kate Webb: I think that is very problematic as well, when you look at what the Bill is actually trying to do. If you were to do that explicitly, I think—though I defer to you on this, Professor Loveland—that you would risk falling foul of the legislation.

Professor Loveland: Yes. There is certainly a possibility that if the rent is artificially inflated to include a fee of that sort, it would be regarded as a prohibited payment. At the moment, it is drafted quite narrowly in terms of whether you can identify a period when the rent is higher than during the rest of the tenancy.

There is a strong assumption that that higher figure is a way of trying to hide—not very subtly, of course—a prohibited payment. If you have a pro rata distribution all the way across a 12-month tenancy, it is going to be very hard to make the argument that the clause as it currently stands would bite, even if you convinced the relevant local authority and then the first-tier tribunal that that really was what was happening.

Q61 **Andrew Lewer:** We have asked about self-management already, so I will ask something else, if I may. Why wouldn't a simple cap, as a percentage of rent, be easier to do than what we are proposing in this legislation? You could say that a letting agent's fee could only be 50% or 100% of the monthly rent, so that it could not be regarded as extortionate—it would be clear and it would be capped.

Kate Webb: I think agents have never managed to make a credible argument for what their actual costs are; that is the first practical point. The second goes back to the question of who is actually the consumer. When the tenant does not have the ability to shop around and choose the agent they want to manage the property they are renting, and that power lies solely with the landlord, we would argue that it is right that the costs lie with the landlord. Lettings agents work for landlords, not tenants; the



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service is all towards the landlord. It is hard to think of parallels in any other industry where you would be allowed to split the cost in that way.

- Q62 **Andrew Lewer:** Okay. Given that that balance of power is in place, is there a risk that this Bill will affect the smaller letting agents, rather than larger ones, and will therefore damage competitiveness in the sector?

Kate Webb: I cannot claim to have seen their books, but I think profitability often does not quite correlate in the way you would want. This is why I completely agree with Julie that we have to have a conversation about what we want from the lettings industry, because I am very struck that a lot of the sector representatives talk about the risk of smaller agents going out of business, but at the same time the more professional industry bodies will talk very openly about the fact that there are a lot of people in their sector who ought to be driven out of business. I fear we need to resolve that bigger question before we start being worried about who is going to become unprofitable.

- Q63 **Mike Amesbury:** On that point, is there a risk that it could disproportionately affect the good smaller lettings agencies, reduce competition in the marketplace and limit the choices for tenants?

Kate Webb: I don't think the choice for tenants flows, because the choice for tenants comes from the properties. At the moment the choice is the landlord's choice—over who they choose to let and manage that property. I am not sure I have seen evidence that the huge number of agents we have at the moment is driving up standards. I would want to know whether it is true that the proliferation of small, large and medium-sized agents is actually a good thing before I start thinking about who to safeguard. It is an interesting question: why would landlords be actively choosing the worst agents to market their most valuable asset?

Dr Rugg: I think that is exactly right. We don't know where the value sits within the sector—as with landlords, where the bigger landlords are not necessarily the best landlords and the smaller landlords are not necessarily the most amateurish landlords, it will be the same with letting agents as well. To say that we have got to safeguard variety across the board—but it is difficult to know who is delivering what quality on what basis. Unless we understand that a bit better, it is hard to see where the risk is, I have to say.

- Q64 **Mike Amesbury:** You seem to be suggesting that the evidence so far suggests that won't be the case.

Dr Rugg: No, I am just saying that there is no evidence one way or another about very much of what we are talking about, to be honest.

- Q65 **Mary Robinson:** I am aware that there is no "one size fits all", but you may know that some landlords who have multiple properties set themselves up in addition as letting agents. They have a separate business, as a letting agent for their own properties, and can charge twice, if you like—the tenant may have to pay more. Is it your experience that this is happening? Do you think that this legislation will address that?

Kate Webb: I have not seen data on that.

Dr Rugg: Again, we are not really recognising the proportion of letting agents who are also landlords, or of landlords who might also let property on behalf of somebody else on an informal basis. There is lots of informal activity going on. In terms of trying to understand what that split looks like, I think it is quite difficult to arrive at.

To think about the range of services being offered, I think Kate was right about going back to, "What is being offered?", or "What is a reasonable charge for the kind of services that are being offered?", and setting that kind of framework for, "This is where we start our understanding of what it is reasonable to charge people for the services."

Kate Webb: Certainly, we have come across examples of landlords operating that model—as agents, you don't charge any fees at all. What no one has been able to get a handle on is how it is viable for some agents not to charge any fees to tenants when they are also their own landlords, and for others to charge extremely high fees.

Q66 **Chair:** Going back to the issue of the actual framework of the legislation and whether it is going to work, Professor Loveland, you were talking earlier about your concerns about the drafting and the legal issues. Are there more things you want to inform the Committee of, or any more concerns that you think we ought to be aware of, which perhaps need further consideration if we are going to get this right and working properly?

Professor Loveland: There are two or three other things that I would draw attention to. First, there is the notion of a lead authority in clause 16. The Bill seems to be entirely silent on the criteria the Secretary of State will use in selecting which local authority is to be the lead authority. What thought has been given to situations where you may have several authorities competing to have what might turn out to be a poisoned chalice?

There is no ouster clause in the Bill as it stands to prevent the Secretary of State's decision being subject to judicial review. Presumably it is anticipated that if he does find himself designating a lead authority, and another local authority that wants that task seeks to challenge his decision, then a judicial review should be available. If that is not the case, there ought to be an ouster clause in the Bill, making it clear that the Secretary of State's decision is final. There are arguments pro and anti in moral terms whether there should be an ouster clause, but I am surprised by the lack of clarity in the Bill, in the explanatory notes, on what the Secretary of State should take into account.

There is a very minor point arising in clause 18, which relates to the lead authority's powers. In sub-paragraphs (3), (4) and (5), we are in effect being told that the lead authority will enforce a breach of the legislation. It simply cannot mean that. It must mean that it is going to take



enforcement action against a breach of the legislation. That is just a lawyer's point.

More significantly, every local authority has an obligation to enforce this legislation under clause 6 as it stands. One question that I would have liked to see addressed is, what will the relationship be between the lead authority and another local authority that the lead authority thinks is not fulfilling its statutory responsibilities? Is the assumption that the lead authority can bring judicial review proceedings? Will it be a breach of statutory duty action? If so, is the High Court to have jurisdiction, or is it a matter that can be pursued in the county court? Those seem to be questions that ought to be thought about a little bit more carefully.

Clause 11 of the Bill is concerned with recovery of fees by the relevant person—the tenant or someone acting on his or her behalf. It appears, as the Bill stands, that any application is going to be made to the county court. I wonder why there is a division of jurisdiction between the first tier tribunal, to which a landlord or agent would appeal against a fine, and the recovery procedures being taken by a tenant. I am assuming at the moment that this recovery mechanism could be part of a counterclaim to a possession action. That is significant because if it is done in that way, a tenant who qualifies for legal aid will receive legal aid, as the legal aid system now stands, for the counterclaim element, as well as defending the possession proceedings. What often happens in scenarios arising under the tenancy deposit scheme in those circumstances is that a landlord very quickly gives up on the possession claim and will discontinue it, because that means the tenant will no longer qualify for legal aid for the counterclaim element of the legal proceedings. I am assuming that the same thing will happen here. If there is not a possession claim and this is a free-standing attempt at recovery, it is almost certainly going to be within the small claims court limit, so there will be no eligibility for legal aid. That means that unless the tenant is able to take the matter on herself, or a local authority—which has an entitlement but no obligation to assist in these circumstances—steps in, it is going to be a fairly meaningless remedy. I don't think you can realistically expect a tenant at the lower end of the market to act as a litigant in person seeking to get back any money paid over. I wonder if that point has been thought through.

The way to deal with it may be that one adds to paragraph 8 of schedule 3 a simple point about a fixed-cost regime, so that if a person is found to have charged a prohibited payment, there is an amount of fixed cost—perhaps £500 or £1,000—to be paid in addition to recovery, which would make it financially viable for legal aid-based firms, for example, to assist in proceedings of this sort. They will not do it in a small claims situation, of course, because there is no funding at all, but a modest fee of that sort may do a great deal to enhance the practicality of what I suspect would be quite a small number of cases that actually go that far.

Q67 Bob Blackman: I just want to follow up on the apparent discrepancies that you mentioned in the drafting on the fines for letting agents. The



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circumstances seem to be that the Government are looking at multiples of the unauthorised payment on the fee charged. Do you think that fines should be commensurate with that, or should they be commensurate with the size of the letting agent's market? For example, if a letting agent has 1,000 properties on which it exercises the same view and it is fined on one, should that be applied to the 1,000 properties that it manages?

Professor Loveland: My view is that simplicity is much the best route to follow in these circumstances. A fine that is simply related to the level of the fee itself would be much the most straightforward way to proceed. Anything that involves unstructured discretion will necessarily lead to a large amount of satellite litigation. Eventually, the matter will have to work its way up through the courts, and the Supreme Court will tell us in five years' time exactly what the principles should be. If that is not the route that will be followed in the legislation itself, I certainly suggest it should be followed in the guidance, so that we would at least have something relevant, if not definitive, on answering that question.

Q68 **Bob Blackman:** In terms of the discrepancy that you mentioned earlier, how would you see that being best corrected? Obviously, we are doing pre-legislative scrutiny, and we will give advice on what we think should happen, but given that you have identified a discrepancy—

Professor Loveland: A simple way, although it may not be ideal, would be to have a multiple of perhaps three for a first fine under clause 7. You would then simply move on, if a clause 9 offence has actually been committed, with the multiple of three perhaps increasing to 10. That is a significant increase.

Q69 **Bob Blackman:** So it ratchets up for more frequent offenders, basically?

Professor Loveland: Yes.

Q70 **Bob Blackman:** Looking at the other issue—this question is for everyone—trading standards is being used within the legislation to enforce a lot of this. In your considered view, do you think it has the necessary resources, and will the incentives be there to encourage trading standards to do this work?

Professor Loveland: Paragraph 10 of schedule 3 explicitly provides that local authorities may use such fines as they may levy under this legislation to finance the costs of their activities. I wonder if that means, by fixing the level of a fine as it now stands in the Bill, a local authority may think: "We are going to charge this landlord £5,000 because, even though she has not done anything particularly egregious, we need the £5,000 so that we can employ the enforcement officers who will go around checking that other, perhaps more egregious, landlords aren't doing the things that we don't want them to do." That seems to be a matter that ought to be thought through in the Bill itself.

Kate Webb: Another point, which is almost the opposite scenario, is that local authorities that are very proactive about publicising the Bill and encouraging local authorities to comply and educating tenants about their rights will potentially be able to receive less in fines than those that do



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very little around the commencement and have a large number of problems brought to their attention. That is a slightly curious situation. One issue that we would like to see the Department return to is whether there should be some up-front funding for trading standards as the legislation beds in.

Q71 Bob Blackman: Is tenants recovering unlawful fees via the county court a reasonable position to take?

Professor Loveland: In principle it is entirely reasonable, but in practice it is likely to be a complete nonsense and will never happen.

Kate Webb: There is a particular problem there around default fees. We are not comfortable with the entire concept of default fees as they are framed in the legislation, because, at the moment, contract law does not normally have penalties applied to it in that way, so there is something slightly curious about applying default fees to this.

What makes us more nervous is that the safeguard that the Department proposes is that a default fee is legitimate if it covers something that is in the tenancy arrangement, but there is no guarantee that clauses in the tenancy agreement will actually be reasonable. To challenge that, you will have to go to the county court. That is quite a high burden for tenants to get over, so the temptation will just be to accept it, which is obviously deeply unsatisfactory and problematic. Some of the risk can be removed by removing the provision around default fees and clarifying that the presumption is that the deposit is there to recover landlords' reasonable costs for lost keys and that sort of thing, rather than creating this grey area of acceptable fees that need to be policed in a very cumbersome way for the tenant.

Q72 Bob Blackman: Do you think that such fees should be laid out very clearly in black and white so that everyone understands what the potential is?

Kate Webb: Our recommendation would be to remove the provision for default fees full stop and have the understanding that the deposit is there. From our point of view, the Minister has missed an opportunity to maximise affordability by allowing the deposit to be six weeks rather than four, but as it is six weeks, a substantial sum of money is held by the landlord that can cover some of the costs that it seems default fees are proposed to address.

Chair: Thank you very much indeed for coming to give evidence to us on a very wide range of issues. That has been very helpful to the Committee.