

# Communities and Local Government Committee

## Oral evidence: Private Rented Sector and Draft Tenant Fees Bill, HC 440 and HC 583

Monday 22 January 2018

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Members present: Mr Clive Betts (Chair); Bob Blackman; Helen Hayes; Andrew Lewer; Jo Platt; Mr Mark Prisk; Liz Twist.

Questions 73 - 146

### Witnesses

I: Dan Wilson Craw, Director, Generation Rent; Mette Isaksen, Policy Researcher, Citizens Advice.

II: Adrian Jeakings, Chairman, National Landlords Association; David Smith, Policy Director, Residential Landlords Association; David Smith-Milne, Managing Director, Placefirst.

### Examination of Witnesses

Witnesses: Dan Wilson Craw and Mette Isaksen.

Q73 **Chair:** Welcome to our inquiry into the private rented sector and the pre-legislative scrutiny of draft Tenant Fees Bill. We have the two issues to deal with this afternoon. Before I ask you to introduce yourselves, I am just going to ask members of the Committee to put on record any particular interests they have that may be relevant to this inquiry. I am a Vice-President of the Local Government Association. I have one property that I rent out.

**Helen Hayes:** I employ a councillor in my staff team here.

**Jo Platt:** I have two councillors in my constituency office.

**Liz Twist:** I am a member of Gateshead Metropolitan Borough Council.

**Andrew Lewer:** I am a Vice-President of the LGA.

**Bob Blackman:** I am a Vice-President of the LGA, and also I have a small property portfolio.



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**Chair:** Right, that is us done with so over to you. Just say who you are and the organisation you are representing, please.

**Dan Wilson Craw:** I am Dan Wilson Craw, Director of Generation Rent.

**Mette Isaksen:** I am Mette Isaksen, Policy Researcher at Citizens Advice.

Q74 **Chair:** Thank you very much for coming to be with us this afternoon. To begin with, I will start asking about the quality of accommodation in the private rented sector. Very often you mention the private rented sector and everyone thinks of the worst properties they can possibly imagine but, when you actually ask tenants in surveys, over 80% of them say that they are basically satisfied with their properties. What does that tell you about the state and quality of properties in the private rented sector? Are things actually getting better?

**Dan Wilson Craw:** The 80% correlates quite well with what we see in the problems with housing, so 18% is what the English Housing Survey finds as the proportion of private rented properties that have Category 1 hazards, which are the most severe hazards. We might expect a big chunk of those 20% or thereabouts of private renters who say they are dissatisfied are living in unsafe homes. There may be others who have other problems with their property.

**Mette Isaksen:** I would say that sometimes the satisfaction criteria can be a bit of a misnomer. Particularly in the private rented sector, renters tend to have very low expectations of their housing. If their landlord is even meeting legal responsibilities, they are pretty pleased with what they are getting. It can be a bit misrepresentative to be content with 80% saying they are satisfied. Certainly at Citizens Advice we see more private renters than we do those from other tenures. Repairs and maintenance is up there; it is consistently the most frequently brought up issue by private renters, so it is certainly a concern we see more broadly across the piece.

Q75 **Chair:** Is it getting better?

**Dan Wilson Craw:** We do not really see that it is getting better. The proportion of homes that are considered unsafe has gone down, but that is in line with the sector actually expanding. We still have a significant number, around 800,000 properties, that are unsafe and that has fluctuated over the years. A lot of the new properties coming into the sector probably are of better quality, but we still do not see enough evidence of properties getting better, because of various problems with enforcement of the law and tenants having the ability to get repairs done in their home.

**Mette Isaksen:** As you say, while the proportion has gone down, the actual number has slightly increased over the past decade. The numbers coming to us for repairs and maintenance issues have not significantly



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dropped by any means so, using that as a marker, we do not think there has been that much of a significant improvement.

- Q76 **Chair:** Looking at the properties where there is no satisfaction and where there are risks in the property and poor standards, are there particular groups of tenants who are more likely to be living in that sort of accommodation where, for want of a better word, they are potentially being exploited by the landlords who own them?

**Dan Wilson Crow:** We tend to find that basically anyone who is a private renter can find themselves in a poor property, particularly if they are struggling to pay the rent and find themselves moving into somewhere where they are trying to pay as little rent as possible. They might take a poorer quality home because they can manage the rent more easily than if they were paying an extra £100 a month for something slightly better quality. In London that could be young professionals, but probably the most likely and highest-risk type of tenant is someone who is claiming housing benefit, because that shrinks the pool of properties that they can actually access. Certainly not all landlords but many landlords who will accept housing benefit might also be willing to cut corners in terms of the quality of their properties. We would say that tenants claiming housing benefit would have the most risk of being in an unsafe home.

**Mette Isaksen:** I would certainly echo that, as the LHA rate has reduced the number of properties available for that group. That is a distinct difficulty that they face. Some research we did looked at the HHSRS and some of the most common categories that come up for renters within that. We actually found that families and households with children in them were consistently more likely to report that they had had those HHSRS problems during their current tenancy, so there is potentially that group there that we see experiencing more problems too.

- Q77 **Chair:** Is that due to the way the landlords behave or because of the particular nature of the household, in terms of families with children?

**Mette Isaksen:** I do not think that, from the piece of research we did, you could necessarily separate the two. There certainly is a proportion of that group that experiences problems whose landlords responded to the problems in a very timely fashion to the problems, because we asked about that responsiveness too. In about a fifth of cases, the landlords either had never fixed the problem or it had taken an excessive amount of time for them to do so. Both things are at play.

- Q78 **Chair:** Coming back to the tenants on housing benefit, are there particular landlords who almost make a living out of letting to people in those circumstances, knowing that they have nowhere else to go and that they can let pretty bad properties to them?

**Dan Wilson Crow:** That tends to be what we find. There will be a lot of landlords who may have got into letting out property without meaning to; maybe they inherited a property and are not particularly aware of their



responsibilities and obligations. You may find that their homes are unsafe or that they are unresponsive to their tenants, but we found that most unsafe homes are the result of a landlord taking a particular strategy in how they let out a property, knowing that they can intimidate their tenants into not reporting problems or knowing that they can get other as-desperate tenants in, if the tenant leaves. This is part of their business model.

**Q79 Helen Hayes:** What are the main obstacles in tenants pursuing complaints against their landlords?

**Mette Isaksen:** We did some research that looked into that question, based on a landlord's Section 11 responsibilities to keep a house in repair, based on structure, exterior and so on. That found that the main reason from tenants where landlords had failed to carry out their legal responsibilities in that manner was fear of eviction. That came out really strongly as the main reason, closely followed by fear that their landlord would increase the rent. In both cases, fear of retaliation for pursuing that complaint meant that tenants would, for instance, fix the disrepair themselves, just keep quiet or move to a new property, rather than pestering their landlord to fix it or pursuing more formal means.

We also specifically looked at the court route, where a tenant could take a disrepair claim. In that case, there were two main things that came out that prevented tenants from pursuing those complaints. One was the cost involved, which is very difficult for tenants to predict. It is not necessarily just the sum total that it may cost them at the end; it is the unpredictability of that. It is also the complexity of that court process. It is very complicated, even to understand whether your disrepair claim has any chance of success. That also involves costs. Even to understand whether you may have a chance of success you often have to pay a lawyer to look through previous cases and so on. That in and of itself puts off a lot of tenants from pursuing those more formal routes.

**Dan Wilson Crow:** We have heard similarly that it is the fear of eviction or the fear of a rent rise that puts a lot of tenants off making the complaint in the first place or raising it to the council if the landlord is unresponsive. Even if they do contact the council, most tenants now have the right and might expect protection from a retaliatory eviction if the council serves an improvement notice. We found that the experience of some tenants is that the council has not been able to issue an enforcement notice or just, for whatever reason, has not done what the tenant was expecting. There is a lack of confidence in that protection from the council.

**Mette Isaksen:** There are a couple of things that play with the current retaliatory eviction provisions. First, the bar for that protection is set incredibly high, because they are Category 1 and 2 hazards. That in and of itself is a very complicated HHSRS system as it is. As a tenant, you have to get your head around that and understand whether the disrepair you are seeing in your home, say the damp and mould that you are



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seeing all around you, is going to meet that threshold or not. Secondly, we know that a lot of local authorities are not having a lot of inspections or carrying out a lot of enforcement action. As a tenant, it is very difficult to rely on that retaliatory eviction provision, and it is a very risky route to go down if you suspect that your landlord might issue you with a no-fault eviction notice.

**Q80 Helen Hayes:** In your experience, how aware are tenants of their rights and of the processes for escalating complaints against a landlord who is not meeting their responsibilities?

**Mette Isaksen:** We find quite often that the reason that a tenant comes to Citizens Advice is that they are trying to understand what their options are. They say, "I am in this situation. I have this problem in my home. My landlord is not responding or has said they are not going to do anything about it. What can I do?" Obviously we set out the various options but have to remind people that there are risks, for instance with retaliatory eviction. There are a lot of cases where tenants will say that they are not willing to take that risk, which is very understandable.

**Dan Wilson Crow:** We do not have figures, but we have anecdotes of tenants who approach us, often when they are quite the way down the line and have been served with an eviction notice. They had not considered contacting the council previously or they were not fully aware of what the council could do or in what sort of situation the council would help. There is an awareness that there might be protection but, given that there are 29 different types of hazards in the HHSRS, there is not a lot of awareness among certainly some of the tenants who we have spoken to of just what they can expect.

**Q81 Helen Hayes:** What new powers could be given to tenants to redress the power relationship between landlords and tenants and reduce the risk of retaliatory evictions?

**Dan Wilson Crow:** We were very supportive of the Private Members' Bill that was debated on Friday, the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill, which would give tenants a route through court to take action if they did not want to take the council's support or if the council was not able to support them fully. What we found, though, given the experience of retaliatory eviction protections, is that they are not sufficient. If a tenant were to take their landlord to court, the landlord would be free to issue a Section 21, assuming various other conditions were in place, or they could raise the rent. The Government are obviously looking at bringing in longer tenancies or greater security of tenure. We think that, as a minimum, this sort of protection from rent rises and no-fault evictions would have to be a central part of that, in order to give tenants that confidence to seek redress from their landlord.

**Mette Isaksen:** The first thing to point out is that there has been some positive progress in this area, partly through the fitness for human



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habitation Bill. One of the main benefits of that that will be that it sets a really clear and simple standard, so hopefully tenants will understand a bit more in terms of their rights. Even for those who do not feel able to go to court, it will give them a bit more bargaining power in terms of that informal negotiation with their landlord about their rights.

Similarly, we are pleased that the Government are planning to introduce a mandatory ombudsman for landlords. Again, having that non-court-based route can be a really positive thing for a lot of tenants. It is very rare to find a consumer market where you do not have a non-court-based route to resolve these sorts of disputes. Both of those schemes are reliant on a tenant feeling able to access them and feeling able to use them. As Dan said, unless there is that security in place that is going to be really difficult.

Issues of quality and security are intrinsically linked. If you are aiming to improve quality in the private rented sector, there has to be a conversation about securing tenancies. That comes as two parts really: there is the security overall, in the form of those family-friendly tenancies that the Government are hoping to introduce in the build-to-rent sector. We would really want to see that across the board, so that all private renters have that security, and then additional security where a dispute is currently underway. That would be enhancing the retaliatory eviction provisions that currently exist so that, whether you are applying to a local authority or whether you have applied to the redress scheme, you know that you cannot be evicted because you sent in that application.

**Q82 Helen Hayes:** Could you say a little bit about the role that the Section 21 provisions play in all of this and what those provisions mean for many tenants in the private rented sector, in their experience?

**Mette Isaksen:** Sector 21 or the no-fault eviction is an eviction that a tenant has no defence against, assuming that the landlord has carried out the eviction notices properly and so on. How that interacts with the retaliatory eviction provisions as they currently stand means that, if you as a tenant were to complain to your landlord and go through the local authority enforcement notice process, you can end up in a sort of race against your landlord if they choose to issue you with a Section 21 notice. You are hoping that your local authority will inspect and choose to issue an enforcement notice before your Section 21 possession hearing. If that does not take place, you have no defence against that eviction, even if there are legitimate Category 1 or 2 hazards in your home.

**Dan Wilson Craw:** I would add on Section 21 that there are certain conditions. A landlord cannot issue one if they have not protected the deposit and if they have not furnished the tenant with certain documents at the start of the tenancy that set out their rights.

**Q83 Helen Hayes:** Finally from me, since 1 October 2014 it has been a legal requirement for all letting agents in England to belong to one of three Government-approved redress schemes. In your experience, how



effective is that measure in the law?

**Dan Wilson Craw:** We are collecting data at the moment to see just what impact this has had and if tenants are using the process. Our instinct is that the remit of the redress schemes is quite narrow, in terms of if you have been ripped off by your letting agent, if they have included an unfair term in their contract or if they have reneged on an agreement in setting up the tenancy. Those are the sorts of issues that would be addressed, but there is a much wider range of issues that a renter might find themselves up against. Because of that, there is not a great amount of awareness of the process. On the whole, we did some research while we were looking at the letting fees and found that a minority, probably one in 10 agents, did not have their redress scheme listed on their website. That may have meant that they were not compliant, or maybe they were compliant but were just missing this one badge.

**Mette Isaksen:** I would echo the comment on the scope of the schemes. That also makes it more difficult from a consumer perspective, if certain things fall in scope and others do not. We have done quite a lot of work on alternative dispute resolution and redress schemes across the landscape. A common complaint is redress schemes that only deal with targeted issues, which means that you can apply and get rejected because your issue is slightly out of scope. You end up being ping-ponged between various schemes, so that is definitely something that could be improved.

There are a couple of other issues with the redress schemes as they currently are. The first one is around security. It is still an issue with your agent as a tenant. If you do not feel that you can complain, then you are not going to access the scheme. Again that issue comes up. Secondly, it is quite a complicated redress landscape in housing, which confuses many tenants, both in terms of what you can apply for and where you can apply. We hope that the introduction of mandatory redress for landlords can actually be an opportunity to simplify redress across the housing landscape so that, whether it is an issue with your deposit, disrepair or an agent delivering poor service, it is really clear and there is a single entry point as a tenant, from which your complaint can be dealt with.

Q84 **Mr Prisk:** Mr Wilson Craw, can I just ask about the evidence on retaliatory eviction? You have talked about the risk; what estimate have you made about that level of risk?

**Dan Wilson Craw:** Is that the risk that the local authority does not provide that?

**Mr Prisk:** No, the risk that someone will be retaliatory evicted.

**Dan Wilson Craw:** We have done some research looking at who has experienced an eviction or an unwanted move. About one in four private renters have experienced an unwanted move.



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Q85 **Mr Prisk:** What is an unwanted move?

**Dan Wilson Crow:** It is if the private renter has been given a no-fault eviction from the Section 21, if they have had an unreasonable or unaffordable rent increase or if they have been harassed by the landlord.

Q86 **Mr Prisk:** That is a bit wider than retaliatory, so what is the risk level for retaliatory eviction?

**Dan Wilson Crow:** The English Housing Survey looked at this as well and published some data last summer. That found that about one in six moves in the private rented sector was a similar unwanted move. Within that, it is very difficult. It was a smaller number, a single-digit percentage, which was the landlord issuing an eviction notice. Whether that was a retaliatory eviction or not, we do not have the data. The other thing we know is that 63% of evictions were a result of the landlord wanting either to move back in or sell the property, and that is from the English Housing Survey as well.

**Mr Prisk:** I would imagine that is separate from a retaliatory eviction in the description.

**Dan Wilson Crow:** Indeed it is.

Q87 **Mr Prisk:** Do you have a percentage?

**Dan Wilson Crow:** We do not, but I believe that Shelter did some research on this, which I do not have to hand.

**Mette Isaksen:** It is a very difficult thing to do research on, because a tenant will often not know that that is the reason they have been evicted. They may suspect, but that is not the same thing. We have done some research looking at consumer perceptions around that, and 14% of tenants felt they had been penalised as a result of raising a complaint. The other side of the coin is tenants who fear raising complaints in the first instance, which is significantly higher. Approximately half of tenants say that they have not raised a complaint because they feared that they would be evicted if they did. That obviously has negative consequences for landlords and the housing stock as a whole. The problem of retaliatory eviction is not purely one for tenants; it is one for the wider housing market.

Q88 **Mr Prisk:** As you were saying to Ms Hayes, the challenge around that is as much about informing consumers presumably. You expressed concern earlier that consumers were not clear about what their rights actually were.

**Mette Isaksen:** There is definitely an element of consumer education, in part simplifying laws, so that it is reasonable to expect you to understand what your rights are, as a tenant. A lot of housing law is very complicated. At the same time, I do not think that we can say that it is purely an issue of consumer education. Retaliatory eviction is a real issue that tenants experience, so fear of eviction is quite a legitimate



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concern for many people, particularly when there are a lot of costs to moving, as well as the personal upheaval to yourself and your family.

**Mr Prisk:** I was just trying to get what the evidence was, thank you.

Q89 **Liz Twist:** I want to ask about enforcement, please. Shelter told us that tenants are subject to a postcode lottery with regard to the level of support that they receive from local authorities in dealing with dangerous hazards in the home. Would you agree with that?

**Mette Isaksen:** Yes, I think we would support Shelter in saying that there is a postcode lottery, in the sense that there is a large element of variability depending on which borough you happen to be in. Newham is always cited as the one borough that carries out the majority of enforcement in London, and about half nationally. As soon as you have certain boroughs that are taking that much action, while others are barely issuing any enforcement notices and a very low number of inspections, your experience as a tenant is going to be a bit of a lottery.

**Dan Wilson Crow:** It is not looking at the differences between councils, but we found an average that goes back to a report published by Karen Buck in 2015, which found that the average local authority receives 433 complaints. Of those, only 260 are inspected. It suggests that councils are generally underperforming in terms of their responsiveness. Of those 260 inspections, on average, we are getting 70 Category 1 hazards being identified. You might find that some of the inspections are prompted by less severe hazards but then, of those, only 17 enforcement notices were issued. That number—17 out of 70—suggests that there is this shortfall in local authorities actually following up. These figures date back to 2013-14, which is before the retaliatory eviction protections came in. We would like to see those numbers increase, but they show that there is this lack of responsiveness from local authorities in general to severe hazards.

Q90 **Liz Twist:** The first hurdle is people knowing what they can ask of the local authority, if I got you right, and having the information about what they can talk to the local authority about.

**Mette Isaksen:** I think that is a hurdle. Obviously knowing your rights is the first step to enforcing them. However, I do not think it is the most significant hurdle. The lack of enforcement is much more of a hurdle than consumers knowing where to turn.

Q91 **Liz Twist:** In your experience, do local authorities require more powers, more resources or both?

**Mette Isaksen:** The variability points to the fact that not all of the existing powers are being used in equal measure across the country. I am sceptical about whether introducing new powers as such would necessarily improve enforcement or equalise enforcement nationally, for instance. Funding is certainly a problem that many local authorities face. It is worth remembering that it is not only the fact that local authorities have seen substantial cuts; it is also that that has come at a time when



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the private rented sector has doubled in size. We are trying to deal with more with less.

**Dan Wilson Crow:** They had new powers that came in in April, and then some new ones are coming in later this year on banning orders. We may find that many councils actually use those powers very effectively. We have spoken to some councils for which this has the potential to transform their performance in enforcement. In addition to resources, these new powers will give them access to greater resources through fines and civil penalties to landlords. There is a danger that a lot of tenants who have experienced poor practice in the past and have not had the support they should expect from councils now have a poor image of the council and will not expect to be supported again in the future, even though there may be grounds for them to ask for an inspection and enforcement from the council in future.

Q92 **Liz Twist:** If I am getting this right, although there are new powers coming on board, people may not use them. They may be sceptical about them.

**Dan Wilson Crow:** That is the danger. There needs to be effective communication to tenants of their rights, especially because one of the new changes is a rent repayment order. If a landlord has not responded to an enforcement notice, the tenant can claim back rent, which ought to be a quite powerful option for tenants. It may well be that the local authority or central Government could lead that awareness-raising.

Q93 **Liz Twist:** Going on to the proposed Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill, which we have touched on already, how would this Bill, which recently received government support, help tenants to seek redress for inadequate private rented accommodation?

**Mette Isaksen:** I will try not to repeat what I said earlier. It is an important legal right for tenants to have, and so we are very pleased that it is being introduced. In terms of the practicalities of it, it sets a really clear standard. Irrelevant of what tenure you are in, it widens the range of health and safety hazards that you can take a landlord to court over, if they are not keeping in repair and not fixing, so that is really important. It also potentially offers a bit more negotiation for a tenant. We know that a lot of tenants are not able to go through a court process or are not willing to do so, but hopefully the Bill will still increase their rights and tenants' awareness of their rights.

**Dan Wilson Crow:** In addition to what I mentioned earlier about improving security, one of the important things to get right is giving tenants the access to legal support that they would need to bring an action against a landlord.

Q94 **Liz Twist:** Does the Bill fully address the concerns that have been expressed about the quality of accommodation, or is there more that the



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Government could or should do?

**Dan Wilson Crow:** Certainly on the security question the Government should be doing more. In terms of legal access, it is important to look at what legal aid is available for tenants and who might qualify for that in order to use this new right.

**Mette Isaksen:** By its nature it deals with the very worst housing in the very worst condition, and it does so very effectively, but there is a need to accompany that with a wider set of non-court-based opportunities, where perhaps the disrepair is not meeting the uninhabitable status, but is still a landlord failing to meet their legal responsibilities to a tenant.

Q95 **Bob Blackman:** Turning to the licensing schemes that are in operation, we have heard conflicting evidence on this particular issue. We would be grateful to hear from you what evidence there is that licensing schemes actually produced an improvement in the quality of housing provided—if any; you may not have the evidence.

**Dan Wilson Crow:** The best case study we have of licensing so far is Newham. It has recently had its scheme renewed by the Government, so it has seen an increase in its enforcement notices against landlords who have fallen foul of the licensing scheme, whether through licensing or conditions not meeting their responsibilities. On the basis that it has driven landlords out of the market, it has seen landlords prosecuted and it has seen other forms of enforcement that may have ended up with the landlord becoming compliant, then it has been very effective.

Q96 **Bob Blackman:** Could I just push you on that a bit? Clearly the Committee is going to Newham and we have had a lot of contact with Newham, but one of the concerns will be whether it has actually improved the quality of housing or whether it has just driven that housing out of the market, therefore meaning there is less housing available without the landlords actually implementing what we want to see, which is decent-quality housing.

**Dan Wilson Crow:** I do not have the figures for that. If a landlord leaves the sector and sells their property, then that property will become a home to someone else, whether that is an owner-occupier or a tenant who rents from another landlord. We do not think there is really a risk of the supply of homes reducing because of this.

Q97 **Bob Blackman:** In answer to earlier questions, one of the issues is that, if a landlord invests in a property, they are going to expect to recover the money. That could be passed on in the additional rent, so do you have any evidence of that happening? The licensing is then forcing landlords to do what they should do, which is provide decent-quality housing, but that then leads to increased rents, which people who are finding it difficult to manage their finances then cannot afford to pay.

**Dan Wilson Crow:** We do not have that evidence.



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**Mette Isaksen:** It is not something that Citizens Advice has done extensive research into.

Q98 **Bob Blackman:** At the moment we do not have that evidence. Clearly Newham is an example of where this has been used quite extensively, but there are other areas where smaller blocks have complained. Is there any evidence from those smaller areas, because they tend to be more focused areas, rather than the borough-wide arrangements that Newham have made?

**Dan Wilson Craw:** One observation we have on other schemes is that, sometimes, if they are focused on a particular area where there are concerns about exploitation of tenants or poor quality in general, the enforcement resources of the council will be entirely focused on that. There is a concern that that would be the case. If someone in a different part of the council area had a concern about a landlord and raised it with the council, we would be concerned if there was not a response. Clearly councils will want to remove particularly egregious criminal behaviour from the area but, at the same time, tenants are reliant on councils to enforce their rights.

**Bob Blackman:** The point we are making here is that we want to see measures that will improve the quality of housing. If you have evidence that the licensing schemes are working, then that might be a means towards greater use of those schemes. If there is no evidence yet, we need to see that happening before it would be rolled out nationally. Thank you.

**Chair:** We are moving on to the draft Tenant Fees Bill.

Q99 **Mr Prisk:** Can we just look at the Bill from the point of view of the tenants and what the impact is, and get your views on this? We have had conflicting written evidence around this area, but the central question that many people ask is: do you think that rents will increase if the fees in question are banned? How do you see that rolling out in terms of the impact for tenants?

**Mette Isaksen:** Assuming that the legislation effectively bans fees, so there are no loopholes written into the wording of the legislation, we would anticipate that tenants would save hundreds of pounds every time they move. From our research, the average fee that a tenant pays to their letting agent is £400. We would anticipate that, if you banned letting agent fees, you would be making the market work more fairly and you would fix that dysfunctional feature of the tripartite relationship between a renter, landlord and letting agent. You would limit competition to the functioning side of that market, namely between the landlord and letting agent. Because landlords are able to shop around for their agent and they are able to move if they are paying too high a price or they are receiving poor service, we would expect letting agents to have to compete more actively for that work. At the moment, tenants are forced to use whichever agent happens to have the property that they wish to



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be their home, so we would anticipate that the letting agents will be absorbing the vast majority of the cost of this policy as a result of this increased competition.

Q100 **Mr Prisk:** You do not think rents will go up.

**Mette Isaksen:** No, we have not seen evidence from Scotland. I think your own Committee found that there was inconclusive evidence of that. We do not have any evidence that that would be the case. Judged on the fact that there are inflated fees at the moment and there is double-charging of landlords and tenants, we would at least anticipate that tenants would definitely save money and that letting agents will absorb at least the vast majority of the cost of it.

Q101 **Mr Prisk:** Some people have argued that slightly higher rents over a period, instead of an upfront fee, would be preferable. What is your view about that?

**Mette Isaksen:** Yes, that is what our evidence shows. People significantly prefer a shared burden over a period of time, rather than an upfront lump sum. That is particularly true for tenants who are on the lowest incomes, who find it particularly difficult to get together those hundreds of pounds, potentially every six months.

**Dan Wilson Crow:** We agree that, because of the extra competition and the extra impetus for landlords to shop around, letting agents will reduce their fees to the landlords in order that what they charge tenants will not be passed on to the landlord in full. Our view is that, without tenants having to pay £400 every time they move—there are other costs, of course—it makes the barriers to moving lower. Tenants will have extra clout in the market as well so, if a landlord tries to raise the rent, the tenant will find it easier to move to a cheaper home. Similarly, if there is a problem with the home and if something needs fixing, the landlord cannot ignore it as easily because of this knowledge that the tenant could move out more easily.

The other thing to bear in mind is that two-thirds of private rental properties are not mortgaged, so there is a big part of the market for which the landlord is able to absorb any extra costs quite easily. We do not see that as resulting in higher rents. If a landlord tried to raise the rent, they might find that the rest of the market is not responding in the same way. That said, a lot of tenants will prefer to avoid costs at the start of the tenancy, even if it means that they are paying slightly more.

Q102 **Mr Prisk:** Why do you think the Government have specifically put into the Bill measures to try to limit rent increases if, as you say, they are not going to happen? You are saying that you do not anticipate rents will rise, so why have the Government chosen to put into the Bill measures that are looking to limit those rent increases?

**Dan Wilson Crow:** Landlords and/or letting agents, if they are inclined in a certain way, will try to find any excuse to add costs or pass the costs



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on to the tenant. It is sensible of the Government to include this clause to prevent fees being front-loaded on to the rent, because there will be less scrupulous agents who will try to do that, if there were no restrictions on doing that.

**Q103 Mr Prisk:** Some people have argued that one of the natural results will be that, if agents are not going to charge fees, landlords will be taking on more of the responsibility themselves and letting directly. Is that to be welcomed? What are the risks from that? I will start with Mr Wilson Craw.

**Dan Wilson Craw:** The English Housing Survey looked at satisfaction rates for tenants who had paid a fee at the start of the tenancy and tenants who had not. We might assume that tenants who had not paid a fee are not renting through a letting agent, and they were more satisfied with their tenancy by about eight percentage points. I am not sure if that is something we can apply to the post-fee world, but it suggests that there is not a huge difference in quality between self-managed properties and agent-managed properties. If anything, landlords who manage properties directly do a better job.

**Q104 Mr Prisk:** You are happy to have the agents out of it altogether.

**Dan Wilson Craw:** Clearly there is a role for agents where a landlord is not living nearby. I would imagine that it would be quite difficult for a landlord to take it on as a self-managed property. If they do, it is doubly important that we have effective forms of redress for the tenant in that situation.

**Mette Isaksen:** There is no particular evidence that, in terms of a letting agent versus a self-managing landlord, one would be better than the other. There is a large variability in the quality of letting agents, and hopefully the additional regulation that the Government are planning would bring up those standards, because a lot of landlords are accidental or naive landlords; they have come into the business without necessarily thinking of themselves as a business, but rather it is a secondary source of income, so there is definitely a real need for quality letting agents in the private rented sector. As it currently stands, the variability means that you cannot really say that letting agents, in and of themselves, are better than self-managing landlords.

**Q105 Mr Prisk:** For you, the critical thing here is question as to who the client is and, therefore, who is paying for what service. Therefore, the desire to look to remove fees charged upfront to tenants is because you regard the agent as obviously being an agent of the landlord and, therefore, it is the landlord who should be paying for charges or services undertaken. Is that the essence?

**Mette Isaksen:** Yes, the landlord is paying for a service from the letting agent in order to get their income from the rent, so that is where the service should be provided and the payment should be made.



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Q106 **Mr Prisk:** One of the slightly more technical things—and I perhaps should declare an interest, as I put the legislation in in the first place—is around regulatory impact assessments. This Bill does not actually have a full impact assessment at the moment. Civil servants have told us that that is because it is a draft Bill, which would not have happened when I was the deregulation Minister. Nevertheless, we do not have a proper impact assessment at the moment, so we cannot make an accurate assessment of the costs. Are you concerned that, at this point, we do not have a published income assessment as to the actual net costs of the change in legislation?

**Mette Isaksen:** With any large or meaningful piece of legislation it would be sensible to carry out an impact assessment, both in terms of the financial and the non-financial costs and impacts of it being carried out. We would hope to see the Government carry one out.

**Dan Wilson Craw:** Yes, I agree. We are not particularly concerned at this stage, but the sooner we see it the better.

Q107 **Mr Prisk:** Presumably the critical issue here is what the cost is to the various parties involved, to Government and, more importantly, to agents, landlords and potentially to tenants. You would like to see that published ASAP.

**Dan Wilson Craw:** Yes, it would help determining what should be in the Bill eventually.

Q108 **Jo Platt:** You answered a little bit of Mr Prisk's question, which relates to what I want to ask you about, which is whether the draft Bill is clear and workable. Do you think there are any loopholes or unintended consequences in the draft Bill?

**Dan Wilson Craw:** Mette will fill in the gaps, but one thing that we noticed was around the frontloading of fees on to rent. In Schedule 1, Section 1(6), which is about differential rents, there is a clause that says that the landlord and the tenant can agree terms where a differential rent is paid. We are very concerned by that. It means that, if a tenant feels that they cannot negotiate with the landlord and they are desperate for the property, then they will take whatever terms they are presented with by the landlord just to get a roof over their head. We should try to avoid inserting clauses like that, which open up this possibility of unfair terms. We are generally opposed to including a default fee in there for similar reasons, where the letting agent or landlord could write in certain requirements.

Q109 **Jo Platt:** You want the default fee removing. There is the question then for landlords about, if something goes wrong or is broken, how they would be able to safeguard their property. I do not want to make it one against the other, but that is obviously the flipside to that.

**Dan Wilson Craw:** We recognise that there are those situations, which is why we have the security deposit that the tenant pays. We would



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expect that anything that the landlord wants to claim back should be claimed at the end of the tenancy and go through the tenancy deposit protection scheme process, so that the tenant has an opportunity to say, "No, this was not my fault", or whatever it was to mitigate it.

**Mette Isaksen:** Just to follow on from that point, there are a number of costs that might arise during the course of a tenancy that a tenant is liable for, but there are already existing mechanisms by which landlords can recoup those costs. There is the deposit that the vast majority of landlords take but, additionally, you can take a damages claim in the same way that a tenant would if the landlord breached the contract. That already exists, so we do not see any reason for this clause to be in the legislation. We think it has the potential to fundamentally undermine the Tenant Fees Bill. It introduces a massive loophole.

By its nature, the default fee clause means that, if a tenant breaches a condition within their tenancy, they can be liable for a cost. There are no set tenancy agreements in England, which means that landlords and agencies could introduce any condition that they like, and attach a fee to it as a result. Our housing lawyers at Citizens Advice have gone and looked at existing tenancy agreements to see where there might be clauses that actually exist, which would be exempt from the legislation as a result of the fee clause. There is a number of fees that are already legitimate and would be after the ban. These are things like not removing your rubbish on a weekly basis or not informing your landlord that you have updated your contact details. Things like this would definitely fall as an exemption within the current default fee clause.

Our broader concern, however, is how letting agents or landlords could abuse this clause going forward, once the legislation has been passed. By its nature, if you can add a condition and attach a fee to it, it leaves the door open to a wide range of fees. We think it would be possible for inventory fees to be charged within it, for instance. We think it would be particularly difficult to make sure that renewal fees and exit fees are not charged as a result of this. As such, the default fee clause has the potential to make the lettings market less transparent and just shift fees from an upfront cost to something embedded deep in your tenancy contract. We are hugely concerned about the impact of it and its ability to mean that tenants are charged fees, even following the passing of this legislation. In essence, it will undermine the purposes that the Government are trying to achieve.

Q110 **Jo Platt:** Can I just clarify with both of you then? Would you rather that is taken out, would you have it basically firmed up in what they can claim as a default deposit, or would you scrap it altogether?

**Mette Isaksen:** We would strongly suggest scrapping it altogether, because landlords have existing mechanisms by which they can recoup the costs that come up through the course of a tenancy. There is no positive benefit from having the clause in there. All it does is muddy the waters in terms of what a legitimate fee is. It will confuse tenants. It will



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mean that rogue agents and landlords find ways to creatively use this clause to charge a wide range of obscure fees, thus undermining the legitimate landlords and agents who try to abide by the spirit of the law.

**Dan Wilson Crow:** We would agree with that.

Q111 **Jo Platt:** You spoke earlier with Mr Prisk in regard to fees being charged through the back door. Basically, what do you think should be done to reduce this risk, if anything?

**Dan Wilson Crow:** We would need to make sure that the prohibited fees list and the permitted fees list were as clear as possible and ideally without any default fees whatsoever. If a letting agent then charged a fee to a tenant, therefore, they would be in breach of the law. Within the Bill, there are proposals for enforcing the law. One thing that we would like to see in addition to that is an entitlement for the tenant to claim back more than just the fees they have paid. Currently, with a security deposit that is not protected, they can be awarded compensation of up to three times the value of the deposit. We would apply the same principle to fees so that, if a letting agent charges someone a fee, they could be taken to court and the penalty for the letting agent would be much more than what they would be collecting in fees. That could be in addition to the powers that the local authorities will have.

**Mette Isaksen:** As well as scrapping the default fee clause, the initial definition talks about the grant renewal and continuance of a tenancy. We would want it to explicitly include exit fees within that, so that we are not just seeing a shift of fees to the conclusion of tenancies. There are lots of ways that this legislation could be enforced more actively than the current legislation sets out, and the reliance on trading standards and county court is likely to be quite ineffective, particularly because of the reasons Dan pointed out. We know that tenants are very unlikely to go to court, particularly when there is a discretionary award that they could receive. We would like to see that be mandatory, and we would like to see a penalty on top of that, as an option. There are ways; you could use redress schemes, for instance, to enable tenants to retrieve costs that way.

We can talk about all these different ways to enforce. There are lots of different ways that you could add on that would improve the Bill, but ultimately, while the default fee clause is inscribed into the legislation, enforcement is going to be fairly futile, because there will be lots of creative ways of avoiding the meaning of the legislation, and it will be very difficult for tenants to know if they even have a right to challenge it, let alone to go through that process and to do so.

It is worth pointing out what happened in Scotland. In the 1980s, they tried to ban letting agent fees, but there was some poor wording in there that meant nearly three decades later, they were back. They were amending that legislation and making it watertight. We have the



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opportunity to make this right first time; otherwise, we will be here in three decades' time, having the same conversation.

**Jo Platt:** I think you both said that holding deposits require clarification, and you spoke about that in your answer. Thank you.

**Dan Wilson Crow:** On holding deposits, I would add that we think that there is a risk that letting agents—and we hear this from renters currently—take several holding deposits from different tenants at any one time, and whichever tenant gets the property at the end of it, they will pay the rent and the deposit and everything else, and the other tenants will get their holding deposits returned to them in most cases. In some cases, they do not even get that.

This is an opportunity to prevent that sort of practice from happening, because when you are looking for a home, you do not have a week or more—15 days, I think, is specified in the Bill—to wait to find out if you have a tenancy or not. If the Government are going to be regulating letting agents and landlords through the proposals that have been announced by the Secretary of State last October, there is an opportunity there for the letting agents to say, "Okay, this property has this holding deposit on it". It is taken off the market; they can provide evidence to the tenant, who has put down the holding deposit, that no one else has an interest in that, it is theirs and it is just up to the landlord to say yes or no.

Otherwise, we might have a situation where letting agents are doing this practice even more, for whatever reason. We think this is an opportunity to specify within the Bill that this practice should not be carried out.

Q112 **Chair:** Finally, you talked about the fact that, where landlords have costs they should properly be trying to recover, they can use the deposit that they take at the beginning at the tenancy. We have also had some evidence that six weeks' rent is quite a large sum of money for a deposit. Should that be reduced to four weeks?

**Mette Isaksen:** Our evidence on the amount that tenants pay in deposits found that only 8% of renters are going to save any money if we cap deposits at six weeks. We are really talking about a small minority that would benefit from the cap as it currently stands. If anything, there is a risk that when you cap something, you will see a clustering of costs around the upper end of that cap, so you could even be increasing the average deposit as a result of capping it. We are quite concerned about that.

Our findings are that two out of three renters faced financial problems as a result of the upfront costs of renting: things like having to take out a loan, borrowing money from your family and friends, or cutting back on food or heating, and so on. This is a really big opportunity for the Government to reduce that significant upfront cost of a deposit, but at the moment they are really missing that opportunity.



**Dan Wilson Crow:** We agree that deposits should be capped at nearer to four weeks, but there is also an opportunity to revisit and review the whole deposit system. Currently, the tenant hands over £1,000, and it sits in a letting agent's account or it goes off to one of the custodial schemes for the duration of the tenancy, when it is actually the tenant's money and could potentially be earning the tenant interest for the duration of the tenancy.

What we would like to see is a new system where, instead of handing over the money, the tenant keeps it in a particular account, which is set up so that the sum of the deposit can be frozen for the duration of the tenancy. It earns interest on that. Part of the interest might then pay for the upkeep of the protection scheme, and then at the end of the tenancy, we could have a system where maybe they have built up a greater savings pot that could be then transferred to a new tenancy. There is an opportunity here for the Government to rethink how we can make the tenant's money work for them, how we can support a savings culture among private tenants, and how we can reduce the upfront costs of moving even further as well.

**Chair:** Thank you very much for coming to give evidence to us this afternoon.

## Examination of Witnesses

Witnesses: Dr David Smith, Adrian Jeakings and David Smith-Milne.

Q113 **Chair:** Good afternoon, and thank you for coming to give evidence to us this afternoon. Perhaps you could just go down the table and say who you are and the organisation you are here representing?

**Dr Smith:** Dr David Smith. I am the policy director for the Residential Landlords Association.

**Adrian Jeakings:** Adrian Jeakings. I am the newly-appointed chairman of the National Landlords Association.

**David Smith-Milne:** David Smith-Milne, from a company called Placefirst. We are a residential landlord, and we specifically build houses for market rent.

Q114 **Chair:** Thank you, all of you, for coming this afternoon to be with us. You probably heard in our previous session information about the minority of properties that have problems in terms of their fitness, tenant dissatisfaction with a minority of properties, and also a quarter of properties in the private sector not meeting the Decent Homes Standard. Why do you think it is that we have this minority of properties, and probably minority of landlords, who simply do not provide housing of an



acceptable standard?

**Dr Smith:** It is important to be clear that it is the minority and it is slowly decreasing, but it does not matter for the people who are living there. One property, in a sense, is one too many, but our perception is in part that there are a number of properties that are good, and that is an increasing number, but the properties that are bad are very bad, and increasingly worse. That seems to be partly caused by age of housing stock. The housing stock, particularly in the PRS, is exceptionally old. It was never intended to be around as long as it has been, and that has been complicated by a range of factors, but it remains the case that enforcement activity is not working.

We have looked at Freedom of Information data. Someone earlier referred to this as a postcode lottery. I do not think it is a postcode lottery, because a lottery implies that you might win occasionally. The reality is that with local housing authorities, in terms of enforcement activity, you can point to maybe five or six that are aggressively and actively enforcing, and after that the numbers just die. In fact, of those five or six, the majority is being done by two, one of which is the previously mentioned Newham.

If you take Newham and Barking and Dagenham out of the figures—because they skew the figures—only one in two HHSRS complaints are picked up. That is half. If you look at local authorities that have blanket licensing schemes, it is actually worse; it is one in three, which is almost counter-intuitive. You would expect it to be more, but it is not. The reality is, at the moment, that there is nowhere near enough enforcement, and it is extremely patchy and un-co-ordinated. Frequently, enforcement, from our perspective, is actually aimed at people whose head appears above the parapet, rather than necessarily the very worst landlords, who are becoming increasingly adept at staying well below the parapet and swimming further and further into the bottom of the mire.

**Adrian Jeakings:** That was fairly comprehensive. I will try to add a little bit of detail. First of all, I do not believe that the Decent Homes Standard was not designed to apply to the PRS; it was actually for social housing. We have the HHSRS, and hopefully the fitness for human habitation Bill coming up, which we support.

The larger proportion of older properties in the PRS—for example, 34% were built before 1919; only 6% of social housing was built before 1919—brings issues with it. The percentage has fallen. It is improving, including energy efficiency. It is probably worth pointing out as well that despite the figure for missing this number, private renters are slightly more satisfied than those in social housing, which has a higher achievement on this particular scale. It all comes back to, as David has said, enforcement; there does not appear to be enough enforcement going on.



Q115 **Chair:** Is that due to resources or willingness?

**Adrian Jeakings:** You would have to ask a local authority that, but I suspect that they would say resources.

**Dr Smith:** With my other hat on, as a lawyer—I do a large amount of consultation work with environmental health officers, and speak to them a lot—I tend to find that it is actually a mixture of three things. The legislation is too patchy and complicated, and far too much of it is cross-cutting, and so many environmental health officers have trouble understanding what their powers actually are and find it difficult to use them in practice. CLG has done some work around providing best practice guides to local authorities, but they could do a lot more in this area.

The second is resources; money is always a problem. The third issue is local political will. Not every local authority is prepared to commit aggressively to this area, which is unfortunate. People talk a lot about Newham. I find Newham is often mentioned in a licensing context. I constantly find myself speaking to EHOs, and someone from Newham is always there. Everyone goes, “Let’s be more like Newham”, but Newham have spent a fortune on housing standards and have created a proper cross-agency approach.

If every local authority did that, that would be great. The reality is that most local authorities want to do what Newham are doing but without doing all of the really hard work that Newham had to do to make that happen. It is important to bear in mind that there is a huge amount of effort that has gone on in Newham, in terms of immigration, the police, HMRC, and the TROs, building proper policies and putting a vast level of effort into really tackling these issues. Unless every local authority does that, simply throwing money at it is not enough.

**David Smith-Milne:** The issues quite fundamentally relate to the ease with which one can become a landlord. It is still the case, despite previous government intervention into encouraging institutional interest in the private rented sector, that the vast majority of people living in privately rented accommodation are renting, ostensibly, from amateur landlords. As a consequence of that, individual tenants are renting from a small-scale investor who maybe has one or two properties within their portfolio, but because of that lack any fundamental infrastructure, lack anything that gives the tenant real long-term certainty about their tenancy and their right to remain within the property, and have highly variable attitudes towards quality and safety.

The single biggest thing that the Government can do to address some of these problems is to encourage much more institutional interest in creating properly and appropriately managed neighbourhoods for private rental tenants. The instruments that have historically been used to encourage and facilitate that have ostensibly been financial. The Government have offered various bond and guarantee schemes to



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encourage more institutional capital into the marketplace, and as a kind of adrenaline shot at the very beginning of the whole ascendancy of the institutional private rented sector, that was very valuable and very worthwhile, but the sector has evolved very quickly and there is no shortage of capital whatsoever trying to find itself into the private rented sector in one form or another. We have heard today, and see every day in the press, that there is no shortage of demand for the actual housing stock.

The fundamental thing that can be done to address the landlord-tenant imbalance is to create an environment within which it makes total business sense to treat your customer as sacrosanct—as the most important person within the transaction environment that you operate in—which is what we as a business do. Our total focus is on end-user experience. We do not charge fees; we do not charge any cost whatsoever to the tenant other than the monthly rent. We can come on to some of the issues with the proposed Bill later on, no doubt, but if Government are to try to improve quality, then they need to almost improve the wider economic levers that encourage more organisations that operate on an institutional scale, with a total focus on end-user experience, to become active in this market. That is as much about land as it is about the landlord-tenant relationship and the dynamic of the law in that respect.

**Dr Smith:** I would like to briefly disagree with the characterisation of “professional landlord” as being good and “amateur landlord” as being, by definition, bad. That is not supported by the facts. I am not criticising my near-namesake here; I am sure that they are a very good professional landlord. There are also very bad professional landlords, and very bad institutional landlords. Bad institutional landlords are, in a sense, worse, because they have more tenants suffering under them.

Institutional landlords across the whole of Europe do not take up more than 50% of any substantive market in Europe, so even if the Government were to do as well as every other European country, they would achieve 50% professional landlords. That is not going to radically alter the dynamic. Simply saying that more professional landlords will improve the position of tenants is completely unsupported by any evidence.

**David Smith-Milne:** I do not want to get drawn too far into that debate, but the issue is an absence of competition at that level right now. There are a number of very poor institutional landlords, and I totally agree with that point. You are right: just because you are a corporate body does not necessarily mean that your customer service and standards are necessarily going to be any better than a very well-meaning amateur landlord, but there is still a very limited amount of competition within the professional landlord sector, and the more competition we can encourage, the more, ultimately, we will see an improvement in standards.



Q116 **Chair:** Karen Buck's Bill was mentioned, with support. Is there anything that could be done to improve the Bill?

**Dr Smith:** Our biggest ask would be for a proper specialist housing court, preferably modelled along the line of the existing first-tier tribunal. It has been rightly pointed out that tenants have a fear of going to court. I completely agree; it is the same for landlords, in practice. The first-tier tribunal is a cost-free jurisdiction, so it removes the fear of losing costs. It also has its own inbuilt specialists, so you do not need to wheel in your own personal HHSRS expert to prove your case. We think that would go a long way towards making the system work better for tenants. Inevitably, of course, we would want all housing jurisdiction moved into the single tribunal, so we think it would be productive for landlords as well. I am aware that the Secretary of State has already committed to that, so I will not belabour the point for you.

Q117 **Mr Prisk:** In looking at the current regulatory framework, it has been put to us that there are over 400 regulations today, and 145 separate pieces of legislation, which you and your members in England and Wales need to abide by at the moment. Is that regime fit for purpose? Mr Smith had talked about the enforcement end, but are the regime and the regulations themselves fit for purpose, and what needs to change?

**Dr Smith:** No, we think it is very patchy. Those figures are ones that my organisation has trotted out a few times. There are lots of pieces of legislation that do not have statutory instruments enacted under them that could make them operate effectively. We have talked about tenant fees. The Consumer Rights Act has provisions already within it for the Secretary of State to pass regulations to require agents to more clearly specify what the fees are charged for, to improve transparency. That would have an immediate, on-the-ground benefit, as opposed to a draft Bill that has not even been laid before Parliament as a body yet, which is therefore quite a long way off.

The "How to Rent" guide is now produced, by regulation. It exists. It was revised this week; it was revised this week to remove reference to the London rental standard. That is the only revision that was made to it. That does not advance the position of landlords or tenants at all. All landlords now have to go and change their procedures to make sure that they are giving the right guidance to tenants, which uses a lot of time, energy and effort across the sector, but it does not, for example, mention the Homelessness Reduction Act. It does not, in any detail, mention retaliatory eviction powers, so it does not cover a huge range of things that it could do.

A lot of the legislation is very old. Karen Buck's proposed Bill that has now been taken up by the Government is a good example. That Bill should not have been necessary, because the legislation already existed; it just has not been revised since it was first introduced in the 1880s. There are a lot of situations where we have very old legislation sitting on the statute books. I still regularly talk about the Distress for Rent Act,



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which was passed in 1780. We are sitting with ancient legislation on the statute books. We have lumped more on top without properly thinking about how it links into what already exists, how what exists could be made to work more effectively, and then how we tie that patchwork together.

If you look at what is happening in the Welsh Assembly—much as I do not want to go on about devolved assemblies here—the Welsh Government have tried to replace a whole patchwork of legislation with the Renting Homes (Wales) Act. It is actually going wrong for them to some extent, because they are having so much trouble working out all the different bits and bobs they need to repeal and amend to make it work, because it has taken so long. Unlike the Finance Acts or the Companies Acts, where we have dumped the whole system, started again and re-enacted, there is a real reluctance to do that across what is a rather patchwork system here. It is good for lawyers, I hasten to add.

**David Smith-Milne:** Speaking as a landlord, we tend not to interface particularly with the legislation, because we take our role and the level of responsibility inherent within that role very seriously, but I do agree with what David said. We are now seeing a reasonably seismic shift in tenure patterns in this country, with private renting now overtaking social renting for the first time in a generation, and that is unlikely to change. It is unlikely to reverse in the immediate term.

We have a fundamental requirement, in my view—and I agree with David—to fundamentally look at the legislation, rather than to pass Bills or component parts of legislation that interface and interplay with a whole patchwork of other things. Behind one in every four front doors is a family renting their house from a private landlord. That is a huge proportion of the population, and that necessitates a more fundamental and thorough look at the legislative environment.

**Adrian Jeakings:** Tinkering always produces perverse outcomes, as well as, occasionally, producing the outcome you wanted. It is a humongous task to rework all of this, and we do not really know whether it works that well or not, because time and time again people have asked for comprehensive reviews of licensing schemes, for example, and they have not been done, so we do not know whether that bit of the law works or not. It does seem that in some places, enforcement works if it is properly resourced, but again, there are questions around that. Yes, it is complex—it is probably too complex—but I would not rush into changing it.

Q118 **Mr Prisk:** You would stick with where we are at the moment.

**Adrian Jeakings:** It would be good if we could get some stability, because everything is moving all the time at the moment. That, in turn, makes it harder for people to be good landlords.

Q119 **Bob Blackman:** You may have heard the exchanges earlier about



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licensing agreements. You seem to be quite sceptical, to put it mildly, about the selective licensing agreements. Can you explain to the Committee why you oppose them?

**Dr Smith:** The RLA supports targeted, specific licensing but does not support blanket local authority licensing across their entire area of responsibility. There is some evidence that targeted, specific licensing in hotspots is effective, in part because it tends to break up tenant ghettos and spread tenants out across the whole area. In some ways that sounds like a bad thing, but in a sense it is more productive, because having areas that become predominantly tenanted is bad for social cohesion.

There is no substantive evidence that licensing does anything better than get people to have licences. The danger with licensing schemes is they become Al Capone-like in their nature, in that you cannot get landlords for having poor quality properties, so you fabricate something else with which to get them. In practice, of course, that works. Al Capone went to jail; hurrah.

**Bob Blackman:** He went to jail for tax evasion.

**Dr Smith:** Quite, but he did go to jail, and that is possibly the important point here. I do not think it does a lot in terms of improving standards, and, to some extent, some of the biggest proponents of licensing have tacitly admitted that. Newham has asked for its licence to be renewed. In renewing that, they said that they now felt that they had licensed most landlords, although at the same time they also, of course, said that 25% of them are not paying tax, and they have not done much about that. They also said that they have not resolved housing standards in five years, so quite clearly there is still a problem with housing standards. I understood the objective was to sort out housing standards, not to give people pieces of paper.

There are other justifications for licensing, but, to my mind, the objective was to give everyone a decent home to live in. I am not convinced that blanket licensing schemes necessarily achieve that.

**Adrian Jeakings:** Because the fees are often high, good landlords often end up paying for the poor ones, which does not seem fair. Beyond that, again, there has not been a comprehensive review, so do they work or not? The jury is out.

Q120 **Bob Blackman:** It is worth pointing out that the more tightly-focused schemes in particular areas could be advantageous.

**Adrian Jeakings:** They may be.

**Dr Smith:** I think there is one academic study that suggests that they do that, for the reasons that I have outlined, but it is very hard to build evidence bases.

Q121 **Bob Blackman:** There is no evidence yet of them having an effect on the



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quality of housing, which is the key, as you have said.

**Adrian Jeakings:** There is also a risk of unintended consequences: higher rent, shorter tenancies, fewer properties available to vulnerable groups, et cetera.

**Dr Smith:** You also end up with evasion structures. I have had plenty of landlords phoning me up, asking how they can become for-profit housing associations, because for-profit housing associations are exempt from licensing. There is certainly an aspect in which some for-profit housing associations that have sprung up are simply there to bypass licensing.

**David Smith-Milne:** We operate within a tightly-defined licensing area with one of our projects, and I totally agree: there has been no evaluative evidence as to whether or not it has been successful. Irritatingly, it has been renewed, and in its five years of operation it has cost us a considerable sum of money, which initially we did not mind paying for, because you could see that the quality of private rented property in the immediate vicinity needed substantial improvement. Throughout its lifetime, there have been nine convictions under the scheme, but they were all for not being licensed. Only one-third of the entire stock of properties within the licensing scheme have actually been surveyed. Without any evaluative evidence, that scheme has been renewed, and we have seen no discernible improvement in the behaviour and standards of other private landlords in the neighbourhood. In fact, we have seen almost a perverse subsidy arrangement, whereby our fee has contributed to free things for other landlords, including free smoke detectors, carbon monoxide detectors and everything else.

We have worked especially hard to regenerate housing stock in this neighbourhood, create very high quality homes for families to rent, and create public play facilities and parks, all of which we maintain and everything. What we have seen in the immediate vicinity is not an improvement in comparable property stock; we have seen more of a race to the bottom amongst some of the worst landlords, who are now actively targeting households with serious social problems, such as addiction problems and all sorts of issues. On the way here today, I thought, "I will just see how many evaluations of the effectiveness and performance of these schemes we can discover", because the KPIs are relatively straightforward to define and measure. The lack of evaluative evidence is a real concern.

**Dr Smith:** Even in that evidence that you have just heard, that local authority concerned has two breaches of statutory duty. They are under a statutory duty to review all of the housing stock in their area for the purposes of the HHSRS, and they have not. They are under a statutory duty to inspect every single property that they have licensed within five years, and they have not. That is a consistent problem across larger licensing schemes.



**David Smith-Milne:** It is not just capacity. It is confidence in the legislation; it is basic awareness of what powers local authorities have, and the capacity gets diverted towards the wrong things.

Q122 **Bob Blackman:** What about Scotland? In Scotland, the position is that there is a very different regime. Would that work instead, if that were introduced throughout England?

**Dr Smith:** The Scottish regime is radically different, because that was a landlord registration—not licensing—scheme. It initially started as a landlord registration scheme, and then had to be revised because they realised that they could not actually take away anyone's registrations. The second point to bear in mind is that when that scheme was created, the Scottish Government discovered that they had 10 times as many landlords as they believed they had. They were not just a power of two out; they were a full power of 10 out, so these schemes tend to find unexpected problems.

In a sense, even today, after changes, the Scottish scheme is not the same, because it does not have an underlying code of practice; it does not have a set of standards. It is not a property inspection scheme; it is an individual inspection scheme. I would suspect that a more accurate potential collective scheme is the one that has just been introduced in Wales, under Rent Smart Wales, which is more directed and has better powers to reject people, but even there, the Welsh Government have only just about reached issuing licences to two-thirds of the applicants.

The problem with these big schemes is that superficially, they seem like an excellent idea, but you actually have to sit down and build a scheme to license and register that number of people. More to the point, of course, it is not registering the people, because the people who come forward are not really the people who you are remotely interested in to begin with. It is the people who will not come forward. It is when you have to build that scheme to register those people efficiently, make decisions about them legally, in a reasonable manner, and then find the people who never came forward in the first place, that things start to become very difficult.

Q123 **Bob Blackman:** Here is your opportunity now: given that you have been quite critical of the schemes, what schemes would you like to see introduced? What would be the ideal way of ensuring that we get the property improvements that we want to see out of such schemes, and try to drive out the bad landlords that exist, while at the same time getting tenants the decent living conditions that I think every landlord would prefer to offer, rather than getting the problems that currently exist in the ways that have been tried already?

**Dr Smith:** Banning orders are, of course, due to finally appear in April. That is a long-overdue improvement to ban criminal landlords. I detest the word "rogue landlords"; they are criminal landlords, so if you do not mind, I will use "criminal landlords". I want criminals removed from the



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sector. Banning people effectively, if it is done, is a big step towards potentially changing the dynamic.

The RLA has proposed a scheme—I know that it is not entirely supported—whereby the private sector does more of the work, in the same sense as tenancy deposit schemes are, in fact, private sector schemes, albeit via contracts with the departments. We think that a similar thing could be done in terms of licensing schemes. Local authorities can have licensing schemes, but landlords would call what we call a co-accreditation scheme that would be run by the private sector, which would provide alternative dispute resolution; would be responsible for making sure that tenants knew about their rights and knew about who their landlord was; would provide first-port-of-call dispute resolution, in the same way as tenancy deposit schemes do; and would then leave local authorities to enforce against the worst landlords.

Local authorities would still gain money from a much lower licensing fee. Landlords would pay a lower fee overall, because a lot of the problems with all of this is all the paperwork that is generated. It is a cottage industry, really. If you think about it, you are talking about 30 different local authorities in London, each of which has its own separate licensing scheme, and if I own two properties in two different boroughs—which is fairly likely, if you are a multiple landlord in London—I have to do the whole thing twice. It would be much better to have a single, national, front-point scheme that landlords could join that potentially would provide other advantages, not dissimilar to a landlord association, but would provide them with other advice and support.

**Q124 Bob Blackman:** It sounds almost as if you want everyone to become a member of your trade body, where you would offer a wonderful service.

**Dr Smith:** We refer to it as an “education body”, I think, rather than a “trade body”.

**Bob Blackman:** As do we, incidentally. We could have competition, by having two competing bodies.

**Dr Smith:** They must be independent from the current representation, and set up in the same way as the deposit schemes are, as not-for-profit companies, with dedicated purpose to providing this. The point is that a lot of the paperwork could be done more efficiently if it were done on a larger scale by an organisation that was dedicated towards doing it. The private sector is quite good at doing that kind of stuff; doing admin and doing computerised admin. It is something that it does fairly well, and does all the time across lots of organisations. If I can insure cars all over the country, it should not be desperately hard for me to register landlords all over the country.

**Q125 Bob Blackman:** I cannot remember the figures off the top of my head, but a very large proportion of the private rented sector is small-sector tenancies—landlords having one or two properties, or whatever. Given



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those sorts of circumstances, what would be the impact on the private rented sector from the kind of scheme you have suggested?

**Dr Smith:** We think it would be better, because the reality is that fees for licences are very high. We would expect licence fees to go down dramatically, because a lot of the cost element of that would be taken away, because all of the processing cost ends up being most of the cost of a licensing scheme. That would leave local authorities to concentrate on what they do best. At the end of the day, EHOs did not sign up to be EHOs to process paperwork for licensing schemes. They signed up to be EHOs to inspect properties and to make properties better, so let them do their job and get the private sector to do the administration.

Of course, if you have alternative dispute resolution sitting there as a first port of call, you automatically filter out a segment of the lower-level, easy-to-resolve disputes, and landlords who are prepared to act officially. When things are passed to local authorities, that is landlords who have declined to engage with an ADR scheme, and local authorities—instead of doing what they do at the moment, which is sending lots of letters asking people to get involved and to do something, and usually getting fobbed off quite heavily by bad landlords—can move straight to active enforcement. The current regime allows them to recover their costs as soon as they move straight to active enforcement.

Q126 **Liz Twist:** You were talking about the fact that blanket schemes, in your view, do not work—they create a lot of paperwork—but some smaller schemes can address some problems. Have I got that right?

**Dr Smith:** I have not seen evidence of that. Our view is that smaller, targeted schemes, where they are targeted against specific problems, can be effective.

Q127 **Liz Twist:** Are we talking about two different kinds of bodies, then? You have just been talking about a national registration scheme.

**Dr Smith:** No, I was not talking about a national registration scheme. I was talking about a system that overlies the existing system, so that if local authorities want to set up a licensing scheme, then landlords will be grandfathered into that licensing scheme by virtue of being a member of a more national body.

Q128 **Liz Twist:** Right, so a very selective licensing scheme, then, might work with the landlords in that parent body. Is that what you are suggesting?

**Dr Smith:** Yes, because the more selective licensing schemes become, the worse the economics become.

Q129 **Liz Twist:** The economics become worse, but is there a greater improvement in the aims of the selective scheme?

**Dr Smith:** We think so, yes. The more selective a scheme becomes, to justify its existence, the more it has to set out what its aims and objectives are, and then satisfy them. The difficulty is that these things



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are not pushed enough, but the requirement, when you set up a selective scheme, is that you have to set out exactly what the objectives are, how other things are not meeting them, and how the scheme is going to resolve it. The more targeted a scheme becomes, the more obvious those steps are. As soon as the scheme becomes blanket, you are talking about so many different problems. It becomes quite difficult to say, "These are the ones we are going to tackle in this way", and the focus is lost.

**Q130 Liz Twist:** Does anyone else want to say anything?

**David Smith-Milne:** I just have a very simple point, which is that if a scheme is introduced, it should be introduced with a mandatory obligation for evaluation.

**Dr Smith:** It should be a last resort. There are plenty of other mechanisms for sorting things out.

**Q131 Liz Twist:** That could take us down a whole different path about what the requirements would be, but I will not go there. My next question is about local authorities and the relationship with landlords of different sizes. Do local authorities work well with landlords when trying to resolve problems?

**Adrian Jeakings:** It is highly variable. It depends on the local authority and the landlord. There are some very good examples of landlords working with local authorities: for example, using accreditation to reduce licensing fees; joint landlord-local authority fora; discounts on services; or making services available that often are not available to landlords, like business parking or waste removal, which is a perennial problem. There are things like the Leeds Rental Standard, and another example is Havering, which had a programme for redevelopment of social housing, trying to encourage private-sector landlords to get involved in that process that they wanted to further. It is variable. As I said, it depends on the authorities.

**Dr Smith:** I think it is actually more variable than that. It depends on the officer. In practice, because of funding problems, you tend to find that a lot of practising EHOs are acting as consultants. There are relatively few in full, direct employment with the local authorities. As one of the few lawyers who acts for landlords being prosecuted by local authorities, I see the same names again and again and again on prosecution papers—exactly the same names. You tend to find that consultants move between different boroughs, taking views with them. Some of those consultants are excellent; do not get me wrong. Some of them are moving for other reasons, and may not be as high quality, and you tend to find the same problems cropping up, following individuals around.

**Q132 Liz Twist:** Are there geographical aspects to that, or are you noticing that trend nationwide?



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**Dr Smith:** The vast amount of prosecution activity is in and around London and the Midlands, so not so much, because geographically that is not a huge distance. I am certainly well aware of EHOs that commute from the south-east up to the Midlands on a weekly basis to do their jobs, and vice versa.

**David Smith-Milne:** We find a high degree of variability in the capacity, attitude and confidence with which local authorities engage with tackling the worst kinds of private landlords. I agree with David's point: that variability is largely contingent on the individuals, sadly. The same powers exist, the same legislation exists, the same broad licensing arrangements and objectives generally exist, but the teeth with which they are employed tend to vary monumentally?

Q133 **Liz Twist:** Why do you think that is?

**David Smith-Milne:** It is leadership: the quality and calibre of the leadership within the local authorities, and the critical role that this task has on proper place-making, and on creating genuine neighbourhoods where families that rely on the private rented sector can settle. If you get this right, it saves you a whole load of money and hassle in a whole host of other areas. If you get this wrong, then it has catastrophic collateral effects elsewhere, and the local authority leaders and chief executives who acknowledge and recognise that will apply themselves to this agenda, whereas with those that do not, this tends to be applied in a way that is, in some cases, quite futile.

Q134 **Liz Twist:** If I can follow up on that, do local authorities require new powers, more resources or both to better support landlords and tenants?

**Dr Smith:** It is to do with training and support. CLG produced a guidance document on tackling bad landlords—actually, as an adjunct—and local authorities seized on it. It ended up being the cornerstone of a number of local authorities' policies.

The difficulty is that the legislation is complex, and, to some extent, it is always going to be, because property is complex, but because local authorities do not have the resources locally to build those policies, they tend to grab whatever they can and just use it. In areas where CLG has published decent guidance, it is being used effectively. Where that guidance is outdated—and we should bear in mind that the HHSRS guidance was supposed to be updated when it was introduced back in 2007, and has not been, and the statistics in it are, in some cases, now 20 years out of date—the quality of activity in relation to poor quality guidance tends to be worse. There is a very direct correlation, from what I have seen.

Q135 **Helen Hayes:** The Government have said that they intend to bring forward measures to rebalance the relationship between tenants and landlords, and ensure tenants have access to effective redress. We heard earlier in the evidence session some of the evidence around the problems



that some tenants experience with making complaints against their landlord and retaliatory evictions. What legislative or policy changes would your organisations support that would give tenants greater power to pursue complaints and protect them from retaliatory evictions?

**David Smith-Milne:** I believe that the legislation is biased in favour of the landlord. The whole Section 21 legislation is, as a landlord, very easy to work with, and we can apply that legislation freely and with absolute confidence, providing that we adhere rigidly to the process. What it fundamentally lacks is any critical critique as to why we are applying it.

When a tenant has a complaint about a landlord, its ability to do anything that has a financial consequence to the landlord in the short term is very limited. You cannot stop paying your rent, or otherwise you run the risk, as you said, of a retaliatory eviction. In our view, the whole system, and the residents that make up the private rented sector, would benefit substantially from a much stronger voice, and the proposals for some sort of ombudsman scheme would be something that we, as a responsible landlord, would totally welcome.

**Dr Smith:** We do not tend to think that an ombudsman scheme will be effective, because you are trying to compare housing with other types of consumer relationship, which just are not the same. Ombudsmen are limited. They can only award money. That is all they can do. In practice, if my house is in disrepair, it is not about money. I want my house repaired. Ombudsmen do not fix that, and so we would much prefer to see a much more accessible and effective housing specialist court that tenants could access more easily, to resolve those issues.

In terms of retaliatory eviction, it is hard to really address it, because powers were introduced that should have resolved retaliatory eviction, but they founder on the fact that the HHSRS is not enforced. The reality is that local authorities simply do not serve HHSRS enforcement notices. The only reason why we are in this situation is because they have not enforced the HHSRS in the past. What has consistently happened is that a local authority writes to a landlord and says, "We are unhappy with the condition of your property. We are going to serve you a formal notice". The landlord evicts all the tenants and says, "Well, I am no longer using it as a tenanted property", and the local authority then does not serve any formal enforcement notices, but they are supposed to.

The regime that was set up under the Housing Act 2004 was meant to be occupier-agnostic. It is meant to operate whether there are people in the property or not. If a local authority says, "I am going to serve you an enforcement notice", me turning around and saying, "Well, I have evicted the tenants. Why bother?" is not meant to be an answer. The answer is, "We are going to make you fix the property regardless". If local authorities followed through, and always followed through, and said, "We want you to fix the property, and we do not care what you do; we are still going to make you fix the property", then the issue of retaliatory eviction for disrepair almost certainly would not have got as bad as it has got.



**Adrian Jeakings:** I would just add that clearly, the objective is to get the appropriate enforcement in place so that property quality does improve, and retaliatory evictions do not happen. We do support the redress and ombudsman proposals as they are, but we do have some concerns over how much it might cost.

Q136 **Helen Hayes:** As a final follow-up, the HHSRS is widely regarded to be too complicated to implement and not fit for purpose, particularly in relation to the resources that local authorities have to enforce it. It is one thing to say, "There is a system that hypothetically, on paper, works fine, and that is what we want to see", but it is another question in the cold light of day to look at that system and acknowledge that perhaps it is not fit for purpose. I just wondered if I could press you on that, and the need for reform for a system that the evidence across the board shows quite clearly is not working.

**Dr Smith:** It is largely, I would suggest, not working because it is not effectively utilised. The reality is—I say this from speaking to EHOs, and training these guys—that they do not understand it, and they do not use it effectively. That is partly, perhaps, because it is complex, and I would agree that there are complexities, but if the guidance were updated and brought into proper effect, it could be a lot simpler.

A lot of the time the problem is that EHOs, for example, will go and inspect a property against 29 housing hazards, and will obsess about one hazard that is not of great importance, whereas if they restricted themselves to inspecting against four or five key hazards that really matter to the occupier, they would be more likely to achieve an end objective. People get lost in the bureaucracy of it, because they choose to. They do not have to.

There are local authorities that enforce HHSRS extremely effectively, but I saw a case recently on the south coast where a local authority served 22 prohibition orders in respect of a property. It was so bad that no one could live there at all, and they were threatened with an appeal in the tribunal, and they withdrew all of them. Either the property was so bad that no one should be living there, in which case they should carry it through, or there was nothing wrong with it in the first place. The problem is that there is a lack of understanding of the scheme, and I do not think it is entirely the fault of the system. I am sorry; I do not agree.

Q137 **Chair:** I am going to move on now to the draft Bill, and ask one or two questions about that. Some concern has been expressed that if tenants are not charged fees, the fees for the landlords will go up and the landlords will then find a way of passing the fees on to the tenants. Is that your feeling about what will happen with the Bill?

**Dr Smith:** If you are asking if there are loopholes in legislation, then yes, there are vast loopholes in legislation, but it is a draft Bill. The first point I would make is that CLG said that they would not allow the situation that has occurred in Scotland to happen, which is where all fees are



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post-loaded. Fees are still charged in Scotland; I do not know why people think they are not. They are just post-loaded, so tenants do not pay for check-ins, but they do pay for check-outs. If you want to get a reference for your next property in Scotland, you can expect to pay for it from your existing agent. I expect many people will do the same thing here.

Mr Wilson-Craw raised one particular current error in Schedule 1—and it is clearly a mistake—where it says that you cannot charge a higher rental in the first month, and then it goes on to say that you can if it is in the tenancy agreement. Obviously, if I am going to charge a higher rental in the first month, it is going to be in my tenancy agreement. Why would it not be? There are some mistakes in it.

The other point to bear in mind is that you are trying to treat the whole PRS as if it is the same. I have agents who get 5% of their turnover out of fees. I have agent clients who get 30% of their turnover from fees. If you take 30% of your turnover from fees and fees are banned, you have two choices. One of them is going out of business, so that is probably not a realistic choice. The other is to pass that cost to somebody else, or find a way to defeat the system, and most of those agents are outside London as well, so this becomes very dangerously London-centric.

Agents in London do not need fees as much, because they get more money off commission because rents are higher. Their costs are also lower, which seems counter-intuitive because their businesses costs more to situate, but if I want to view five properties in Kensington, I can do it in an hour and a half on foot. If I want to view five properties in Wiltshire, it is car time and it is going to take me a day, so the business economics do not stack up the same.

Fees are employed in different ways around the country to deal with different issues, and banning all of them will not change that underlying economic structure. The money has to come from somewhere, and it will come from landlords or it will come from loopholing in the Bill. You will end up with both, realistically, because it is almost impossible to write a piece of legislation that does not have a loophole in it, as I am sure most of you have noticed over the years, one way or another. Stuff is always getting amended. It is the reality of it.

**Adrian Jeakings:** Clearly, there are some real costs that are incurred somewhere in the chain at some point, whether it is referencing or whatever, and those are not going to go away. They will still be there. Banning upfront fees means that they will probably pop up somewhere else, or some people will go out of business. There was talk earlier about increased competition as a result of this Bill. It could lead to reduced competition in letting agents in certain markets.

It could also reduce the quality of service that people get from their agents, and it could lead to increased rents. If you increase rents to cover the cost of what was previously charged as an upfront fee, and



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your tenant stays for more than six months—which, of course, we all seem to want to do, including landlords, incidentally—that means that overall those tenants are going to be paying more money than they were before, albeit time-shifted.

**David Smith-Milne:** We banned fees some time ago, for two reasons. The first is that it is good marketing—a good competitive advantage—but the other was in anticipation of the proposed legislation. I will say with candour that the very first question that my finance director asked me was, “Can we put the rents up now?” We did not, but we are not necessarily like everybody else. It is wrong to assume that the cost associated with the tenant procurement, vetting and selection process will not be borne by the process. Those costs will still exist, and consequently those costs will ultimately be borne by higher rents.

The truth of it is that if you are a letting agent outside of high-value rental markets, your income model will rely quite importantly upon your fee structure, and if your rental commission is a percentage of a small number, then clearly you are going to be increasingly reliant on fees. It is wrong to assume that there will not be any collateral damage as a result of the proposed fee structure, and part of that collateral damage will be inflation on rents.

Q138 **Chair:** We have heard from many tenants who would prefer to pay a bit more over a period of time than have to find extra up front, which often is a real challenge for them.

**David Smith-Milne:** Yes. Rents going up is not necessarily a fundamentally bad thing, because you have heard today that the cost being borne by somebody just moving into a property can run into several thousands of pounds, which is difficult to find at that point in your life. The fact that there are some inflationary effects may not necessarily be fundamentally a bad thing, but it is wrong to assume that they will not exist.

Q139 **Chair:** Do you think that many landlords will decide that managing agents, in future, are not for them, and will simply manage the properties themselves? Would that be a concern?

**Dr Smith:** A significant percentage of our members have suggested that that is where they will go if they need to save money, or if agent fees rise. We think it is likely that agents’ commissions will have to rise in some areas as a result, and we are concerned about that, because, yes, some self-managing landlords are very good, but some are not, and it is really hard to predict upfront which ones will be good. By definition, landlords who are using agents did so for a reason. They did not just do it because they felt like it, and they probably do not have the expertise to take on those properties themselves, or may not be suitably situated to do so.

Q140 **Chair:** Fundamentally, given that the landlord has the contract with the



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managing or letting agent, and they choose who that is going to be, should they not be the ones who pay, rather than the tenant, who has no choice at all over that arrangement?

**Dr Smith:** If that were the basis, you already get quite a lot of agents who claim to have 0% commission. Agents who have 0% commission make all of their money right now on fees, so the money always comes back somehow, or they make it from sucking their teeth every time something is broken in the property, and putting in a new boiler.

The reality is that, yes, there will be some competition, but if agents cut their commission, they will have to make the money in some area, from somewhere else. Some of that will come, for example, from commission deals on Sky TV, broadband or utilities, all of which have been pushed out in the market, which will ultimately come back to tenants. They will always end up having to pay the net money, because either profits go down within the sector somewhere—and in some areas, there is not very much profit to go down—or more money has to come into it from the bottom end.

Q141 **Chair:** Finally, from me, before I pass over to Liz, there has been no full impact assessment of the legislation. Are you concerned about that?

**Adrian Jeakings:** Yes. Everything that we have said would suggest that there needs to be one, to make sure that we do not have any perverse impact from the legislation.

Q142 **Liz Twist:** You have covered some of my question, really. It was about those loopholes and unintended consequences, and you have talked quite a lot about the financial bit. Are there any other areas that you would like to mention?

**David Smith-Milne:** There is one point here around the tenancy deposit—and I am no expert in reading these documents, so I apologise if this is wrong or misplaced. As an organisation, we are very mindful of the fact that financing the deposit and then the rent and moving cost and everything else associated with a move can be particularly expensive for a low-to-middle-income household. One of the things that we are exploring is whether or not we can exchange the concept of a deposit per se for an insurance policy, and I wonder whether or not that is captured by the proposed legislation.

The other thing was around the actual deposit being capped at six weeks. We, as a landlord, have a wide variety of tenants. You might think that this is a small thing, but it is actually quite an important point: tenants who tend to have pets often struggle to get properties in the private rented sector, because their landlords have a zero pet policy. We as a landlord are happy to take tenants with pets, but often pets cause quite a lot of damage in a property, and capping a deposit at six weeks' rent in an area where the rent is not particularly high—say, £400 to £500 a month—may not necessarily cover the cost of, say, re-carpeting a house after a tenant has moved out.



**Q143 Liz Twist:** Equally, we have heard that there is some concern from tenants about it being as high as six weeks.

**David Smith-Milne:** Yes, we have heard that.

**Dr Smith:** The current industry standard is about six weeks because if you make it a month, if the tenant does not pay the last month's rent—which does happen too often—then there is no money available to fix any damage to the property. Our view on this Bill is that it is almost certainly not a particularly effective use of parliamentary time. We would much prefer something to be done about the deposit situation. The reason why tenants do not pay the last month's rent is that they need to have a new deposit for the next property—an extra, second deposit, because one of them is still tied up—and the first month's rent.

We think that the time has now come to convert the existing tenancy deposit schemes around—get them to hold tenants' deposits for tenants, instead of for landlords—and to provide a guarantee to landlords that they are holding that money, and then to have a small insurance scheme that covers the transition period when there is potentially a deduction from one deposit, but when you need another deposit, as tenants move properties. That would probably be funded by the interest on the deposits you were holding, and then you continue to operate the ADR to try to get rid of the issue of two deposits.

The fact is that a deposit is much more than the average fees, and some of the fees are actually because of the deposit in the first place, because they are paying deposit schemes, insurance fees and things like that. If we were to look more at the deposit issue, this Bill could deal with that far better, and also deal with problems like non-payment of the last month's rent because somebody needs the money for the next deposit and things like that.

**Adrian Jeakings:** I think there is a de facto cap, anyway, at two months, because anything above that ends up being a premium on the lease and gives tenants certain additional rights, which landlords would tend not to want. There are also market forces that put a limit on it.

The point that David made about flexibility is important, as well. Landlords deal with a large range of different potential tenants, and some of them are much higher-risk. All of the deposit judgment and the referencing is around risk management. Pets, in particular, are a case where landlords tend to ask for increased deposits, because there is a much higher risk of damage to the property. The other point is that deposit figures, as far as we can see, have barely changed since 2011; they are 4.9 weeks, so capping the deposit may be solving a problem that does not exist.

**Q144 Liz Twist:** There are a lot more questions that we could ask if we had time, but can I ask you about default fees more widely? Is there a risk that these become back-door fees for landlords looking to increase their



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earnings?

**Dr Smith:** It is quite well drafted in this area. It says quite clearly that the default fee is where the tenant is in breach of a term of the tenancy. That does not allow you to manufacture a random term, because you still have to be in default of it and it has to be reasonable, and that is covered by existing legislation.

You should also bear in mind that default fees give contractual certainty, because if I simply say, "You have to pay the cost of replacing the keys", that could be anything from £5 to £500, depending on how much effort I have to go to to get replacement keys and what they are. If I fix contractually that it will be £25, then the tenant knows upfront what their cost is going to be from a default, so there is an element whereby default fees are a well-used device across a whole range of contracts, both in the consumer and commercial spaces, precisely because they give contractual certainty.

There is already a substantial amount of case law, mostly around parking charges, in terms of what an excessive default fee is. If I want to create a default fee of £500 for losing your keys, I am not going to get it; there is clear court authority that I will not get it, and it will not be enforced by deposit schemes either. I am not sure that default fees are the biggest problem in the Bill.

**David Smith-Milne:** It is a complex area. We heard a different view from the two individuals earlier. We have to bear in mind the fact that the vast majority of citizens living in rented houses are not necessarily highly financially or legally literate, and that the industry is not known for being the most effective at staying on a moral high ground, so there is the potential for default fees to be used perversely. Equally, in contracts every day default fees exist. My personal view is that, providing those default issues are very clearly-defined and ring-fenced, they ought not to be a major problem.

**Liz Twist:** The question is one of definition.

**David Smith-Milne:** Absolutely, yes.

Q145 **Liz Twist:** In your view, Mr David Smith, as opposed to David Smith-Milne, you think that it is sufficiently well-drafted already. Is that right?

**Dr Smith:** I think that the default fee definition is good. That is one of the bits that is quite clear and well drafted in the Bill. There are other things that are not so well drafted.

Q146 **Liz Twist:** As we have heard earlier, others have a different view about it.

**Dr Smith:** I completely accept that.

**Chair:** Thank you all very much for coming to give evidence this



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afternoon.