

Communities and Local Government Committee

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

Monday 29 January 2018

Ordered by the House of Commons to be published on 29 January 2018.

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

Questions 147 - 202

Witnesses

I: Councillor Tony Newman, Member of LGA Environment, Economy, Housing and Transport Board, Leader, London Borough of Croydon; Sir Robin Wales, Mayor, London Borough of Newham; Councillor Simon Blackburn, Blackpool Council.

II: David Cox, Chief Executive, ARLA Propertymark; Isobel Thomson, Chief Executive, National Approved Letting Scheme.

Examination of witnesses

Witnesses: Tony Newman, Sir Robin Wales and Simon Blackburn.

Q147 **Chair:** Thank you for coming to give evidence to us this afternoon. Perhaps you could say who you are in the organisation you represent.

Cllr Blackburn: I am Councillor Simon Blackburn, leader of Blackpool Council.

Sir Robin Wales: Robin Wales. I am the elected Mayor of Newham.

Cllr Newman: Councillor Tony Newman, leader of Croydon Council and representing the LGA.

Chair: Thank you very much for coming. Before we come back to you, I will ask Committee members to put on record any interests they may have that may be relevant to this inquiry. I am a Vice President of the



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Local Government Association. I also have one property that I rent out.

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

Mike Amesbury: I employ a councillor in my staff team.

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

Jo Platt: I employ two councillors in my constituency office.

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

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

Q148 **Chair:** Thank you very much for coming to be with us this afternoon. To begin with, I would like to talk about the challenges in the private rented sector that you are facing. We are aware that different parts of the country have different challenges. In your particular areas, what are the main challenges and issues that you are currently trying to address and deal with in the private rented sector?

Cllr Blackburn: A particular issue that faces not just Blackpool but seaside towns in general, and coastal resorts, is the dramatic size of conversions from former hotels and bed-and-breakfasts into poor quality private rented flats. Almost all of that is driven entirely by the amount of rent that can be obtained through the local housing allowance through the housing benefit system. That is a particular challenge in terms of displacing people from metropolitan areas where rents are higher and it is harder to get housing at a social rent but also in terms of the amount of issues that people living in that type of accommodation are likely to face, and that can be anything from drug addiction and mental health problems to people fleeing from domestic violence, et cetera. As a consequence, there is a significant drain on the local economy.

Cllr Newman: We have seen a dramatic increase in the private rented sector; it has more than doubled in the last 10 to 12 years. In many places in London, it is 30% or more of the market. For many people, as homeownership becomes a distant dream, if not a challenge, it is the only option in terms of housing. That is why, in terms of whether it is letting fees or driving up standards or conditions, it is imperative that, collectively, we act now as local and national Governments to improve the lives of those relying, perhaps in the longer term than they would have been, on the private rented sector and actually empowering tenants in the private rented sector to give them a bit more security in terms of conditions and security of tenure. For many years to come, this will be an absolutely key part of housing supply, both in areas of high demand as well as with different challenges where the demand is not so high.

Sir Robin Wales: This has taken us by surprise. The speed of the change in the last decade has been absolutely extraordinary. There are absolutely different problems. Blackpool has a problem of people moving



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out from places like London, where they cannot afford the rent and have to move out, especially if they are on benefits. It is almost impossible, if you are on benefits, to get property in places like Newham. It is cheaper to move to some of the seaside towns and so you get a completely different problem there that has to be tackled in a different way. Licensing is an answer but it is a different problem.

In Newham, we say that 10 years ago 21% were private rented and now it is 46%. That is not true. We do not know. We do not know what it was. We know it is 46% now but we do not know what it was 10 years ago because nobody knows—I think except us—what the extent of the private rented sector is. With borough-wide landlord licensing, we are able to now identify the problems.

For Newham, the problem is quite simply shocking conditions—absolutely shocking conditions. Twenty-five people in a three-bedroom house is not unusual. You cannot have 25 neighbours living next door. We had a guy in a raid I went on who was sleeping under the stairs. If you have seen the film, there was more space in Harry Potter's cupboard than this man had. There were two people living in a walk-in freezer. It cost £500 for a bed in a bedroom with four beds—bunk beds. These are shocking conditions. There was a family living in a place that has been built with chipboard and they have a fridge and a washing machine and they are in the garden, powered from the kitchen, because they are living in the garden. That is the problem that we have.

We now know that we have 51,000 properties. We know that we have 28,000 landlords, and we have prosecuted 1,200. That tells you roughly how many good landlords we have, or landlords that are trying, and the scale of the problem. Multiply 1,200 by how many people there are in each property and it is absolutely shocking. That is why we need a response. What we need in each place may be different but it is the same kind of response. Because we had the first borough-wide one in Newham and we got the information, we can point to that and say, "That is what our country is like in large swathes of London and in large swathes, I am sure, of some of the cities, particularly inner cities". I know that some of you came on a raid recently. We think it is getting better but it is challenging. I am sure we will pick that up later. These are shocking, shocking conditions in the 21st century.

Q149 **Chair:** What about from an LGA perspective?

Cllr Newman: My own borough rapidly followed Newham in implementing what is now the last borough-wide scheme that we currently see. We have to see, in terms of local government, power devolved to local councils to take decisions about whether they wish to have a licensing scheme in their town, city or borough. They understand that the current regulation is that you can implement up to 20%. We have to go back to the Minister in two or three years' time to seek permission to carry on. We need to change the narrative. If local government means anything, surely it means local people deciding what



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they want to see where they live and in the place that they live. Of all the ideas, the idea that that can be controlled from an office in Whitehall seems, frankly, preposterous.

We want to see real devolution in this area. It will not work everywhere and there will be different solutions and different problems, as you have already heard from colleagues here, but surely you devolve it to local people to find answers locally.

Q150 Chair: We will come back to licensing and explore that in a bit more detail in due course. I want to ask about one other issue that has come to light recently, or got some publicity, which is “lockdown properties”, which seems to be getting away with the need to have planning permission to convert larger houses into what effectively are separate rooms and then charging people significant amounts of housing benefit for the privilege of living in these pretty minute spaces. Are local authorities doing all they can to actually stop this?

Cllr Blackburn: Absolutely, but local authorities are limited in terms of what they can do. We keep on top of new conversions. Wherever we see building works taking place that the local authority does not know about, either through the planning process or through the building regulation process, we will investigate and we will seek to stop those. We will insist that people apply for retrospective planning permission if works have already begun.

The wider problem is that we see premises such as former hotels and guesthouses being sub-divided into up to 20 bedsits. If that is being done under the radar, which is perfectly possible to do with very minimal, if any, external works to the property—so it is highly unlikely that, unless a neighbour or another occupant were to report it, the local authority could find out about it—under the current regulations, once the owner of that building has been breaking the law for four years, they are entitled to apply for a certificate of lawfulness to demonstrate that they have been breaking the law for four years, under which circumstances the local authority has its hands bound and has to grant a certificate of lawfulness for that use. Local authorities are doing all they can but, put simply, they cannot do very much.

Sir Robin Wales: There are two key issues here. Chair, I could hear you on “Inside Out” refer to this question. The first is to know what is happening and the second is to enforce against it. You will not know what is happening unless you have a licensing system. In our case, we have a licensing system covering the whole borough. We have then used data analytics to identify those people who have not licensed. That is the key. Without a licensing scheme, there are 50,000 properties that you cannot identify. Obviously the ones where people have not registered are the ones that we are particularly interested in, and that is where some of the greatest successes take place. You link with a very strong enforcement regime. We have 40 police officers and about 100



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enforcement officers. You have to put the effort in, which is why we have prosecuted 1,200 landlords.

As a result of the data analytics that we have done, and because we can identify where this is happening, we can go after people before those four years pass. Quite often, people will not tell you. They do not want to get involved. They do not want to tell on their neighbour. There are all sorts of reasons why you will not hear about it. Quite often, some of these properties may have been dodgy as well with people using them. To be fair, we do not have a lot of problems like that in Newham but we will identify it because we have the licensing scheme, which enables the ones that are not licensed to stand out, followed by very significant elements of enforcement.

Without enforcement, the licensing system does not work. With proper enforcement, you can go and identify them. We have had five years of the first scheme. We are starting the next five-year scheme and our plan in this five-year scheme is to spend a lot of time visiting those landlords who are licensed and saying, "Can we help you?" We do not want to be punitive to the good landlords; we want to be supportive. Quite a lot of our landlords, as we have discovered, are single landlords and want to do the right thing. If we can help them, that is great. With this system, with enforcement and with the data analytics, you can identify where this is taking place and stop it. However, there is a huge backlog. It is a big job to do this. We thought that there were 5,000 places that were not licensed in HMO terms, so it is a big job.

Cllr Newman: There are fines of £1,000 or less where people are making tens and hundreds of thousands of pounds. There need to be greater penalties around this. In some cases, to put it bluntly, it puts lives at risk.

Q151 **Chair:** Many of these properties are quite legal, are they not? You use the process of development to avoid the planning system.

Cllr Newman: It is avoiding the planning system and it is possibly avoiding even some of the current licensing structures. One of the interesting things that came out when we introduced the borough-wide licensing scheme two and a half years ago in Croydon was that we became rapidly aware that a significant amount of those applying for a licence had brand new gas safety certificates, which would suggest that they may not have had them in place before they applied for the licence. It is about the incentive of licensing, coupled with a strong regime of penalties where people are breaking the law.

Regarding the HMO issue, there needs to be greater clarity around how the system is structured, which does enable, as Robin has just said, people to work their way around it.

Q152 **Chair:** I understand that there are quite a lot of boroughs, particularly in outer London, that do not have a licensing system but have this lockdown property issue where people are literally paying a fortune for a small



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room, and lots of people are paying a small fortune in the same property for small rooms. This cannot be right. What is the LGA's position on this?

Cllr Newman: It is difficult if people are within the law of the land.

Q153 **Chair:** Do we want to change the law?

Cllr Newman: We need to see the law changed—we are seeing Karen Buck's Bill and other Bills—in terms of the standards that people are living in. A local government can enforce some of that but, if it is not illegal, then we come back to the terms of what you do or do not have in a local licence.

Sir Robin Wales: One of the problems you have there is that every piece of legislation has its own process. It is very difficult to follow through and it is very difficult to do the thing, because it is complex and slow. The advantage of licensing is that you can set licensing conditions that can often be tougher than the basic conditions that have been set; for example, we have things such as a landlord having to inspect the property every six months and having to provide gas certificates. You can put those in a licence.

There is a really interesting question and debate here. If we are going to make our places better places to live, when Parliament legislates, it needs to think really hard about how that is carried through and how it is done. The more bureaucracy you give us, the worse it is. One of the criticisms of licensing is that we have to do things that we do not want to do because we want to keep it as simple as we possibly can for landlords because we do not want to introduce bureaucracy; it also suits us to be simpler. We might argue, therefore, that ideally in terms of legislative approach, we should be saying, "We want to make the place work. You, the local authorities, are better placed to judge the sort of things you need". I would not dream of judging what Blackpool needs but I do not suppose that they would judge what I need.

Q154 **Mike Amesbury:** Which parts of the current legislative framework covering your powers to intervene with the private sector are least effective?

Cllr Blackburn: There was an issue just before Christmas with a consultation on what would and would not be covered in the future by mandatory licensing schemes. There was a real opportunity there to include section 257 HMOs within that definition, and that has not happened.

Q155 **Chair:** Could you explain more about section 257?

Cllr Blackburn: Certainly. Section 257 HMOs are effectively buildings that have been converted without complying with the 1991 building regulations standards, either before 1991 or after 1991, and they still do not meet that building regulations standard. Provided more than a third



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of those are let on short-term tenancies and there are no, strictly speaking, communal areas, they fall under what is called section 257 of the 2004 Housing Act. That sounds like a very technical explanation but it captures a large number of properties.

In Blackpool, we estimate that there are between 3,500 and 4,000 HMOs—houses in multiple occupation. Had section 257 HMOs been included, we would have captured a further 1,700 in the mandatory licensing net, whereas, as it is, the changes that were made just after Christmas bring in only an extra 100 properties. Including a much less prescriptive definition of a house in multiple occupation will make a significant difference to what local authorities can inspect on a mandatory basis.

Sir Robin Wales: There are different definitions of HMOs in different pieces of legislation for housing and for different purposes for planning. There is a lot of bureaucracy in it. It would be better if it was permissive within limits in terms of what we might do. Currently, for example, there is an arbitrary cap of 20% of a local authority area and we have just gone through the process of having to re-apply.

Can I just explain something that we did some time ago? We do quite a lot of enforcement in lots of different things. We went after trade waste and we discovered that 18% of the businesses in our borough did not have trade waste, so we called them and made sure they got it, and got it down to 2%. We stopped doing it and then we went back six months later and it went back up to 8%. If you have a licensing scheme, you cannot stop it. If you stop it, they will come back. The people that we are talking about are crooks and villains; they do not care what they do to other people. They are renting out a home of £1,400 for two bedrooms but they can get £500 putting four people in a room. That is what happens.

That comes back to what Tony said. If people are running businesses where they break the law, the punishment needs to break the business model. The example I like to give, because it is nice and clear-cut, is that, if you have somebody who breaks a packet of cigarettes up to sell individual cigarettes to children, to kill them, tell me why they should be permitted to retain their business. They are consciously doing something that we all understand is evil. It is the same with people who dump waste as part of their business model. They get caught, they pay a fine but it is all right; it is part of the business model. Landlords get caught, they pay a fine, and it is part of the business model.

If you have 25 people in a home, which is not unusual—Jeremy Heywood came down and discovered 24 in one—that is £12,500 per month. I am sorry, but we think there needs to be confiscation of the property. There needs to be a proper thing that says, “Your business model will be broken. If we catch you doing these things consciously, we will take the property.” That way, the business model will not work anymore. We have to break the business model. That means fines will have to be



properly substantial. We should give more flexibility to local authorities to say the sorts of things that we want to enforce. My fire brigade has told me that we have undoubtedly saved lives because we know that fire safety is really important and, when we go in, we try to do something. We have letters to that effect.

That is what we need to do. When legislation is drawn up, we should sensibly be saying, "How can we be permissive to local authorities?" Local authorities are not stupid; we do not want to spend money and waste our time. We just want to make things better for the people that live in our borough.

Q156 **Mike Amesbury:** Let me clarify that. What would a substantive fine be?

Sir Robin Wales: Lose your business; lose the house. If you have 25 people in a house when you should not, you lose your house. Let the banks worry about the mortgage then because the banks are lending to these people. One of the things we have said to HMRC is, "What are you doing about tax on these people?" Our understanding is that half of the landlords are not known to HMRC. At what point will HMRC do their job and tax these landlords? What about the half that are paying tax? What about them who are doing the right thing? I was just filling in my tax return yesterday and I thought I would write in and say, "I am not going to pay tax because you do not seem to be that bothered," but I do not suppose I would get away with it.

Chair: Not now that you have actually announced it.

Cllr Newman: You need the tough penalties but they are the exception. My borough has 32,500 private rented properties; over 30,000 are now licensed. A scheme that was attacked only four years ago as a tenant's tax is now embraced by most landlords who welcome it and work with us. The experience that I directly have in Croydon is of a scheme that is running and working. The evidence in some of the more extreme cases that Robin and others have talked about is that, where you bring the schemes in, it improves the quality of life for the tenants in those homes.

The question is: why would you not give the powers for other schemes to be brought in if local people vote for local politicians who say that that is what they will do? If they do not, that is the call. There is an issue in terms of the minimum standards we would want to see national Government set in terms of coming back to the HMO, whether in terms of gas safety or the very serious current issue of fire safety. However, in terms of implementation of a local scheme and what might be in it, the need will vary, as we are hearing here, depending on where you are in the country.

Cllr Blackburn: There are two other issues that go alongside that. Tony has just touched on the national minimum standards that apply at the moment. Part X of the 1985 Housing Act sets out minimum standards for buildings. That will permit a bedroom of 6.5 square metres. That is not big enough to fit a bed in, never mind a wardrobe or any of the other



things that we might expect to find in a bedroom. The housing health and safety ratings system standards need to be revisited as a matter of urgency.

The other thing that runs in parallel with that—and Robin touched on this—is the way the local housing allowance systems works at the moment, because that hugely and disproportionately benefits people who break properties up into lots of small units. There is currently no incentive there at all to operate a property as a two-bedroom flat if you can break it down into three bedsits. It is that perverse incentive that really needs to be addressed.

Q157 Mike Amesbury: You have touched upon my next question, which is around the housing health and safety ratings system. You have rightly pointed out the huge growth in the private sector. How would you update that? You have given one example, but could you give me more?

Cllr Blackburn: There needs to be a much more realistic size specification for properties, first of all. There needs to be more resource available for local authorities through the planning system, through the building regulations system and through the subsequent enforcement systems to ensure that that is being adhered to. As Robin commented on before, it is all well and good visiting these premises once—you can serve notices of works and you can go back and make sure those works have been done—but 12 months later, due to the nature of the business and the huge incentives that exist for reconvertng premises back into very small units, there will be a significant issue with that.

In terms of the current HHSRS, research by the Chartered Institute of Environmental Health found that 97% of environmental health professionals working in housing support an update to that scheme. More than half of them said that they encounter hazards that are not addressed by that scheme whatsoever. There is a huge evidence base and the wording of it is far too subjective. The best example I can give you is that the most commonly found category 1 hazard, as referred to in the guidance, is excess cold. However, the preventative measures listed that can have an effect on the likelihood and harm of that in the scoring matrix just include tick boxes that refer to appropriate levels of thermal insulation or heating systems with expressions such as “properly sized and sited ventilation.” A property can have all of those things and you can tick all the boxes but it does not mean that it is not excessively cold within that property. It does not mean that the residents will not suffer. It is a binary tick-box approach to that piece of legislation, which is from 1985. It is probably time for a mid-point review to see how that is working, and it is not.

Sir Robin Wales: We can put licensing additions that are more sensible and more rational. One of the problems is that, if Parliament were to pass legislation that is more permissive and say, “How do we learn from lessons?” a great example would be FOBTs, where Parliament passed legislation that has been an absolute disaster but there has been no



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opportunity to change that. I know the review is now going, but they have not said, "Let us see what actually happened with it. Let us look at it after a year and find out what is happening." It is a bit like this too: "Let us look and see what might happen. How do we make things more relevant?" The people on the ground are the ones doing the work. What they find in Newham, Blackpool, Croydon and so forth needs to be fed back in a way that allows us to be more sensible about the legislation we do." Permissive legislation should say, "Local authorities are not unreasonable and are not stupid; they do, by and large, sensible things and they are on the ground doing those things."

A big issue for me at the moment is that we have said, "Can we enforce the minimum wage, please?" Twenty per cent of my people do not get paid the minimum wage. That is not a big issue, I suspect, in Richmond, though you would have to ask Richmond about that. It is about seeing what is going on in places and saying, "What do you need to enable us to carry things properly through?"

Just as an aside, I was passed a note that we had a fly-tipper who was making £500,000 in profit and he got a £4,000 fine. When you do that sort of thing, how are we supposed to stop these people? Why does he not lose his business? It drives me crazy. Just lose the business. They could go to prison as well—I am not against it—but nevertheless it is about breaking the business model.

Q158 Mike Amesbury: Tony, you referred to Karen Buck's Bill earlier in the conversation. You are at the coalface. Is there anything that the key players in the local government world would like to add to that? Is there anything that could improve Karen Buck's Bill?

Cllr Newman: I hesitate to say it is perfect. The honest answer is that I would need to study more of the detail of it. The point I will come back to is the enforcement. Words are fine around decent homes and decent home standards. We have all been through that discussion on council homes, licensing schemes and so forth. However, it is about how we make sure that we as the local government—that, as you say, are at the frontline—have the resource to enforce the quality of a decent home whatever the tenure. We are all living in a world of significant cuts to our budgets and often it is our frontline services like environmental health or trading standards, rightly or wrongly, that tend to get cut back before perhaps other more statutory services.

I do not know but my take on that issue is to ensure that we have maximum devolution of the power to local government, and that has to be backed up with, where appropriate, the resources in the right areas; otherwise, we will not be able to act on even the finest of Bills.

Cllr Blackburn: There is an issue in terms of placing the onus upon the tenant to take legal action against the landlord. The people who I represent—people living at the poor-quality end of the private rented sector—are highly unlikely to have the resources or the time to know how



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to begin taking legal action against a landlord. We are all free to buy a Rolls-Royce but the vast majority of us cannot exercise that freedom. Likewise, the ability to sue a landlord is, to most of the people I represent, highly academic. It heightens the risk of retaliatory evictions by landlords, even though that is supposed to be against the law. It also does nothing to address the space and size standards that I laid out before. It adds a number of categories to the list of category 1 defects in a property but it does not address the basic standards. While the Bill in itself is not unhelpful and it draws attention to issues around buildings being fit for human habitation, it does not do anything to improve those standards and it places the onus on the tenant.

The other thing that it does not do, which is a key measure and reflects a lot of what Robin has talked about, is make the amount of money that is payable in terms of local housing allowance reflect the quality and size of the accommodation in some way. This will not do anything to tackle that. We need to be in a place whereby local authorities can pay higher rents for decent-quality and decent-sized properties and lower rents where they have an excess supply of poor-quality properties and bedsits.

Sir Robin Wales: It is a useful Bill. Our experience is that tenants will find it very difficult to exercise their powers but that does not mean that they should not have the right to do it. It is good if they are able to do it. This is again anecdotal, but whenever I have gone on a raid, by and large, the tenants are pleased to see us. They cannot say anything. They are in a very difficult position; the landlord will kick them out. We find notices up, when we go into properties, that say, "Don't let the council in," because the landlords know why we are coming. They will put pressure on tenants.

Why are people living there? Because it is what they can afford. They are mostly not on benefits. One of the indicators of a likely HMO that is not licenced is that it does not have benefit claimants there, because it is a different kind of model, and you have to go early in the morning, as some of you know, if you are going to get anybody in because they go off to work.

The Bill is to be welcomed. If it is going to work, councils should support people and that would mean resourcing us. We will always ask for more resource, but with some justification; we have taken the largest cuts and still managed to maintain services. If the Government were as good as local government, my goodness, the country would be so much better. I just offer you that as a wee thought.

One thing that annoys me is that we have substantial homelessness issues; let us be clear about that. I am not talking people on the streets here. The homelessness operation is about Government pushing housing benefit on to councils and making us pay for it. On average, we pay £3,500 for everybody we have in temporary accommodation, other than the ones that we bought some time ago. We are paying what housing benefit ought to pay, and that puts pressure on us. Essentially, it is the



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Government's way of shunting costs off. Since it has shunted off to places that are actually quite poor, it is not fully understood that homelessness and temporary accommodation ends up just being the Government making us pay for it, and it is a major problem.

I am not talking about people sleeping on the streets; that is a very different issue from homelessness where people are put into temporary accommodation. The only exception to that is that we bought 1,800 properties some time ago that people are now living in at LHA rates. 1,800 of our notionally temporary accommodation are actually full-time but the rest—3,500 on average, last time I looked—should be getting paid by housing benefit but are not. That then makes it harder to get people into properties, which means they cannot necessarily stay where they are and they end up going to Blackpool and elsewhere. The whole thing is broken badly. It is just a frustration.

Q159 Helen Hayes: I am interested in your take on the reasons that the Residential Landlords Association gave us last week for the relatively low levels—very low in most parts of the country—of local authority enforcement in the private rented sector. They gave us three reasons. They said that environmental health officers find it difficult to understand what their powers are and how to use them; that most local authorities have insufficient resources; and that most local authorities also lacked the political will to address the standards aggressively in the sector. I was just wondering if you agreed with that analysis and, if not, what reasons you would attribute to the relatively low levels of enforcement across the country.

Cllr Newman: I would agree with them on the resources, but that is a sweeping statement in terms of most authorities lacking the will, without going through the arguments again. Most authorities, in terms of these powers under the current legislation, could not bring in the borough-wide licensing scheme we brought in in Croydon, so I would be interested to know if they would have supported a rolling out of selective licensing schemes. I do not know. We all have local narratives here as well as the national issue. I gave evidence to this Committee four years ago when there was absolute opposition to what was happening in Newham and proposed in Croydon. It feels like a different climate but maybe it is in different places in different parts of the country.

I would return, within the national framework, to the need to empower politicians locally to take those decisions about what is needed in their area. Although it is sometimes easy to cast this as a very confrontational issue between local government and landlords associations—there are cases where it comes to that—in many examples, people getting around a table and working together about what is best for their area is a far more positive approach. We are starting to work with landlords—they would not have said this four years ago—who are happy to be associated with a licensing scheme, which is seen as a kitemark in terms of quality.

We can reset the debate but it does not help when a landlords association



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or whoever come out with one or two statements that are more confrontational.

Sir Robin Wales: I had the pleasure of reading the dodgy dossier that they gave you last week, and it is dodgy. I look at it and it says that one analysis showed that out of the 10 London boroughs with the highest rates of prosecution, just two operated any form of licensing scheme. However, in the top nine, after Newham, there were 152 prosecutions; we did 359, so when they say, "We will exclude the top two," what they are saying is, "We will take away 75% of all prosecutions." We do 5% of all the planning prosecutions in this country in Newham.

They also did some assessments when they removed Newham, Barking and Dagenham. I wonder why. The truth is that, if you do not enforce, you are wasting your time. It is just a tax on landlords, so why would you do it? It is not a sensible thing to do. There is an argument—and I hope HMRC will consider this—for having all landlords licensed so at least we know who is paying tax. That is really important and we should not miss that.

As far as prosecutions are concerned, we did 60% of all the prosecutions in London last year, and about half in the country. We believe that is necessary in order to make sure that we do it properly. What is interesting about that, talking to my colleagues, is that, because we were first in, talking to Waltham Forest, Barking and Dagenham and Redbridge, they are all moving into this and taking enforcement very seriously because—guess what?—the landlords that we are driving out are moving in next door. My colleagues there do not want that either, and they are also upping their game. Because we have done it properly, you are seeing, certainly in east London, a ramping up in responses from politicians.

Resources are an issue. We took a decision that it was more important to do this than most other things but we have not had any cuts so we think this is very important. We want, as I said earlier, to do minimum wage enforcement because, again, our purpose should be about people and about creating places that are good for people, and that means doing things. We have put 35,000 people into work through our Workplace scheme; we have transformed work because we think people are what matters.

My answer to you would be that you must enforce or else you are just wasting your time and it is an inappropriate system. It is so much easier for us to enforce if the fines are substantial. I do not see why the landlords who are forcing us to do this should not end up paying for the cost of enforcement. Why not? They are the ones that we are having to enforce against. We want to keep the costs for the good landlords as low as we can because we do not want to affect them. When the RLA came to you and said those things, there is no doubt that it was a piece of nonsense to exclude Newham, because we are a local authority like everybody else and excluding us skews the figures in the other way.



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However, I am now seeing evidence that it is moving on. Indeed, Tony in Croydon talked about it beginning to move out and people beginning to do things. One of our problems might be that it took so long to get our renewal of a licence, despite the fact we prosecuted 1,200 landlords, that it has created problems for us. It would help if the Government were a bit quicker to assist us but you must enforce, whatever that takes. Otherwise, I do not think you should be doing it, if I am honest, because what is the point? Unless, of course, the HMRC want to fund it because they will get all the tax back.

Cllr Blackburn: With every step forward that has been taken by local government in this field over the past seven years that I have been the leader of the council, I have had to go on the radio either as a leader of Blackpool Council or as a spokesman for the LGA and go toe-to-toe with the RLA or another trade union for landlords. At every point, they will always deploy the argument that, "Councils do not need X as a new power because they already have plenty of powers." They will then say, "And they are not utilising the powers that are available to them. They are not enforcing."

Just in terms of the first small part of Blackpool that was subject to selective licensing, there were 875 properties licensed, 752 schedules of work issued, 87 formal notices issued and 16 prosecutions. The vast majority of those were settled out of court, if you will, because the landlords did what they needed to do, but 875 properties needed 752 different schedules of work. Local authorities are enforcing. As Tony said, there is an issue around resources. Landlord licensing schemes invariably cost the local authority more than they are able to charge in fees. That will not stop the landlords from subjecting you to a barrage of freedom of information requests to try to demonstrate that we are in some way making a few quid out of this when, of course, in fact, it is costing us money.

With regards to the idea that there is a lack of political will, with all due respect, you would not be asking us these questions and we would not be answering them if there was not a cross-party agreement, both at national Government and in local government, that this is an area that desperately needs to be tackled. Irrespective of politics and irrespective of geography, this is an issue that affects all of us and our constituents to a greater or lesser degree.

Cllr Newman: That point should be reinforced. From the LGA perspective, much of the work around the private rented sector involves cross-party agreement around the challenge. It is probably still not completely cross-party in terms of Conservative colleagues around the need to have three or five-year secure tenancies but that is a work in progress. This agenda is changing, partly because it has to because so many people in this country, for years to come, will be living in the private rented sector perhaps in a longer-term way than was ever envisaged a generation ago.



Q160 Helen Hayes: Can I ask you about the depth of the impact of the enforcement that you undertake? When you undertake enforcement activity, is it essentially just dealing with the very worst of the worst, or are you finding that you are enforcing against the very worst landlords alongside other breaches? Are you finding that that impact generally is having the effect of driving up standards across the board?

Cllr Newman: We have not had the appalling issue at the level that Robin has had in Newham of the "beds in sheds" issue. We have had some of that but it has predominantly not been that. A lot of this is anecdotal but it is coming together in terms of the evidence base where people will have been in fear of a notice being issued and an eviction if they complained about condensation, damp or whatever. These are not the most serious issues but they are serious. The licensing scheme is working in as much as when that is being brought to the council's attention by the tenant or through an inspection, without resorting to prosecution, we are able to see improvements. They may sometimes be small improvements but, if you can take the condensation out of a bedroom with young children sleeping in it, you are probably doing an awful lot for their long-term health. It is therefore definitely already having an impact in "softer" areas around wider health issues.

Sir Robin Wales: This is a really difficult question. We set up our workplace scheme and got 35,000 jobs for our people and the question I was asked was, "Did it make a difference or was it just noise?" The Index of Multiple Deprivation figures showed that we had shot up in employment. Do I have such a figure for landlord licensing? No, I do not. We have done it for five years. We have tackled the ones that we know are the worst. The ones that we know are the worst are the ones that had not licensed. We put a system in place to identify them. The power of the licence system is that you can identify those bad ones. You can go and work with the other ones.

Anecdotally, my experience from visiting is that I am seeing less bad than I saw two or three years ago. It was just horrific. One of your colleagues wanted to string the landlord up when he came into the property, and we had to explain that you have to go through due process of law before you could hang the landlord. He was very angry, and quite rightly.

I am a great fan of everything being driven by evidence. We will see if we can now identify a positive change in what has happened. By going into these properties, making them do things, making it better and driving 1,200 landlords out, one would imagine that it would get better. However, all we have is the activity information, which is not the same as being able to absolutely prove that, "It was 35% bad; now it is 25% bad." That is one of the things we are working on.

We teach every kid to play a musical instrument. Does that make a difference? We cannot prove it. We know there is evidence that it should do, but how do you actually prove it? It is really difficult to do so.



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My answer to you would be that it does. We can look in terms of activity and in terms of the very worst landlords that we are driving out. Does that mean they are just going next door? There is some evidence that that has happened, so my colleagues have responded. I cannot, if I am honest, say that I have absolute proof, but we are looking to work that now in the second run of the scheme, to see if we can capture that. My answer is that the narrative looks very strong.

Cllr Blackburn: In Blackpool we have just completed our evaluation of our first collective licensing scheme. What it shows us is that it is very effective in helping us enforce minimum standards and to deal with the worst of the worst. However, as we discussed earlier, those HHSRS standards are very low indeed. All it helps you to do is to deal with the worst bits of it.

The other benefit to a licensing scheme like this is that it allows us to get behind the front door of properties that we would never otherwise have gotten into. If, as we do, you adopt a multi-agency approach to that, so you go out with colleagues from the fire and rescue service, the police, the Department for Work and Pensions and social care, it enables you to intervene in other situations that would otherwise have remained hidden. There is an additional qualitative benefit to it.

Does a licensing scheme provide the answer to poor quality accommodation? Is it the key strategic lever? No, it is not. It is part of a suite of measures that can help to improve the quality of the PRS in any one area.

Q161 **Bob Blackman:** I just want to make clear whether there is evidence yet that selective licensing schemes on their own improve the quality of accommodation. Sir Robin, you have made clear that, if you do not enforce it, they are almost not worth it. However, do you have evidence from the reviews that you have done that the quality of accommodation generally has improved? You talked about really bad landlords who are clearly criminals, but what about the general aspects of the properties that are subject to the licensing schemes? Is there evidence yet that they are improved?

Sir Robin Wales: We go back to properties to make sure that things are being done. Interestingly, in terms of the number of people we find who have not done what they were supposed to do, we are fairly comfortable that we can see something on that. Our take is that, for the last few years, we have been focusing on the very difficult criminal landlords. They are the ones we really wanted to get after. For the next five years, we are very expressly saying that we want to work with all landlords, so we put the fee up a bit in order to go and work with all landlords and drive the quality up.

I would go along with Simon; there are other things you do as well to drive quality up. We look to buy property. We have set up a company to build a lot more homes and better-quality homes. Honestly, the answer to bad property in London is to build an awful lot more homes. That



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would solve the rent issue and the problem of homelessness. If you have competition with enough properties, you would not have the difficulty.

Q162 **Bob Blackman:** That is part of the solution, but I am specifically looking at licensing because you have more experience of licensing schemes than other parts of London and the country.

Sir Robin Wales: I get that and I was going to come back to that. I would just say that, if we are going to resolve the problem of housing, it will take a lot of money, and that is not on the table. It will need tens and hundreds of billions, but that could resolve a major crisis that we have in our country.

In terms of the licensing scheme, we believe that the places that we have gone into and then gone back to have become better. I always want to see something for the whole community to say, "This has now resulted in a ratchet up," as opposed to just the 1,200 landlords or those properties. We are very confident, as we now move to visit other landlords that we have more experience with, that we can assist and be supportive. We are talking about 1,200 landlords but we have 20,000 landlords and there are tens of thousands of them that want to do the right thing. We think the answer is "yes", but, as I say, we are working on getting evidence.

We know the amount of anti-social behaviour has gone down. We know that. There are good things that have happened.

Cllr Blackburn: It is demonstrably true that the number of schedules and notices served are much higher in licensed areas as opposed to non-licensed areas.

Q163 **Bob Blackman:** Has compliance with those schedules improved?

Cllr Blackburn: Absolutely. I have some stats for that.

Bob Blackman: It would be terribly helpful, rather than taking the time now, if you could pass those stats to us because that would be helpful in terms of our report.

Cllr Blackburn: Yes. Those were covered off in Blackpool Council's submission. In addition to the statistics, which we will send again just in case you have not had them, we have hundreds of case studies, which we would be more than happy to share with you, if they would be useful, to demonstrate, almost as an aside to the living conditions, that officers, be they of the council, the Department of Work and Pensions, the fire brigade, police or others, have been able to have a positive impact on people's lives, which would not have happened had we not had the legal power to get behind the front door. I speak as a former social worker; the ability to get behind the front door is crucial to being able to start to assist people with their difficulties.

Q164 **Bob Blackman:** Tony, from an LGA perspective, irrespective of the evidence here about whether it improves or not—obviously you have experiences in Croydon—is it a requirement to have a licensing scheme to



actually prosecute rogue landlords? Given that local authorities can do that anyway, why do they need a licensing scheme?

Cllr Newman: It enhances the possibility of a positive outcome in terms of prosecution and if you are in breach of the licensing scheme. Clearly, there are some issues where you would not need it like fire regulations and other health and safety regulations. However, a licensing scheme gives a very clear focus to a set of conditions that should be met. In terms of your question to colleagues here about noticeable improvements, we are in transition from anecdotal evidence to real evidence. I touched on the gas safety certificates earlier that we suddenly saw flooding through, all renewed. We have issued 160 improvement notices in Croydon in the last year.

Interestingly, though it is not a huge number, we have refused 10 licences. If you can imagine a scheme that is rolled out nationally, it is the conditions that might have been in those properties such that, unless they do something significant about them, they will not be coming onto the renting market. A prevention agenda is starting to emerge as well about not allowing the worst quality stuff to come on to the market in the first place where the local government has the ability to act. You would not be able to do most of that without a licensing scheme. Yes, you can still make prosecutions but I do not think you have the clarity and the force that you have with a licensing scheme behind you.

Sir Robin Wales: There are two reasons why you have to have it. The first is that you can identify them.

Bob Blackman: You have made that clear.

Sir Robin Wales: That is really important. Secondly, you can then enforce different standards. You can ask for more things. One of the things I should have mentioned is that before licensing, in half the cases we served notices on, they came back and nothing had happened. It did not work. Now it is only for one in 10 that we have to go back and repeat it. It makes it visible and you can then enforce a better standard. Without it, we could not do it.

Q165 **Bob Blackman:** You are almost doubling the amount of money that you are charging landlords to register, going up from £400 to £750. How concerned are you that landlords who are not the criminals but with, as you say, one or two properties will just say, "Okay, fine. I have to pay it—fair enough—so I will just put this on the rent," which will mean that tenants who are already hard-pressed will see an increase in their rent as a result of the registration process?

Sir Robin Wales: We are putting it to £400 if you pay early; that is £400 for five years. It is not £400 per year; it is £80 per year. It is tax-deductible, which we always like to point out to landlords. They will all be paying tax, so that must be a good thing. Our view is that we will use it, as I say, to up the offer—we do not make any money out of it—to



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landlords, and then go around some of the more amateur landlords and make sure they are doing the right things in terms of safety, fire and all the rest of it, and we will see about that.

The other thing is that we were in very early; we were the first borough-wide. As a result, we did not quite know where to set the levels of charges. These charges are less than other people have set. It is £80 a year if you pay early. The tax system is more than that. I do not think that is unreasonable. We certainly increased it; that is because, when we set it, we realised that it cost us more than we actually got back.

Bob Blackman: The five-year licence will cost £750 after March.

Sir Robin Wales: If you pay before the middle of March, you will get £400. We want to encourage the good landlords who have registered early—remember, we know who many of them are now—to get in early.

Q166 **Bob Blackman:** The other issue, which I just want to cover very briefly, is this threshold to do this licensing scheme. The current threshold is 20%. Is that the right level?

Cllr Newman: No. It should be local discretion to be 100%. You could have an area of a town, a city or a borough where there is one set of regulations and conditions and then literally over the street there could be something else different in play. It potentially brings the whole thing into disrepute. The Mayor of London has argued for a London-wide approach and boroughs would work within London. As a principle, the LGA would be very clear indeed that it should be, as I have said earlier, devolved to local councils to make that decision and to justify it or not to their local population. You cannot run something like this from the centre. It simply does not make sense on any level.

Cllr Blackburn: We would say exactly the same. We recommend that that part of the process is removed entirely. It takes a very long time. It is supposed to take eight weeks. In our most recent case, it took 20 weeks, and we have anecdotal evidence from colleagues around the country of it taking a similar length of time, notwithstanding the referenda, general elections and other things intervening. In the normal run of things it can take anything up to four or five months.

Also, the Minister's decision is very heavily dependent upon the advice of their civil servants. Following a visit from the Permanent Secretary of the DCLG to Blackpool, who very specifically asked to look at the standards in our private rented sector, we found that there is a very informed attitude in DCLG, as it was then, about what the housing problems in Blackpool are. However, to expect civil servants advising Ministers to understand what the different challenges in Newham, Croydon, Blackpool or anywhere else you care to mention are, seems ludicrous. Further to that, it appears to me to be completely contrary to the spirit of localism. I can think of no sound reason why that would be a power that central Government would want to hoard in Whitehall.



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Q167 **Bob Blackman:** Is there an LGA view on what the standard should be for HMOs and the legislation? Is there a settled position?

Cllr Newman: I do not think that there is a settled position but you have heard colleagues touch on earlier that the current position is unacceptable in terms of what people are able to say is a bedroom. People can put in what ticks a box in terms of kitchen facilities with a one-ring gas appliance that is probably unsafe. There is no settled position but there is a clear, settled view that there needs to be more powers and decisions, as I have already said, devolved locally. Nationally, we need to see a change in the standards. Some of the minimum standards are too minimum.

Q168 **Bob Blackman:** Clearly, the issue of enforcement and prosecution and so on flows from what the standards are.

Cllr Newman: It does, and there is a clear view that the standards need to be improved. How you then interpret, enforce, work with, as I have already argued, is perhaps where it becomes part of the local decision-making process, but there are some standards that have to be set nationally.

Q169 **Andrew Lewer:** I have a slight change of topic. Could you tell us about some of the alternative approaches that you have taken as local authorities, or local authorities you know about more widely that have taken, to promote high-quality private rented accommodation?

Cllr Blackburn: Blackpool Council have set up a private housing company called My Blackpool Home. We were successful in attracting £28 million worth of borrowing direct from the Treasury through the Regional Growth Fund. We are using that money and that company to buy up poor-quality private rented sector housing. If I can give the Committee an illustrative example, we found a property for sale that was converted into 12 bedsits, which was on the market for £150,000. We bought it for £150,000 and spent £300,000 on it, so the total investment was £450,000. We turned it from 12 bedsits into three very pleasant, very high-quality, three-bedroom flats. We are able to rent that out to tenants and to make a return of between 6% and 7% a year. The private sector landlord who had been operating it prior to us was operating it as 12 bedsits and was making a yield of around 34% a year. It is perfectly possible for councils, given the resources. I am not quite sure how much it would cost Robin to buy a 12-bedroom block of flats in Newham—I suspect it would be slightly more than £150,000—but the ability in an area like ours is there to fundamentally change the face of the housing market.

Irrespective of property values, a particular issue for us is the fact that values are inflated by the rental income. For instance, I live in a four-bedroom detached house on the outskirts of town that is worth about £160,000. In the very centre of the town, four-bedroom terraced houses are changing hands for more than that, not because anybody wants to live there or raise a family in a four-bedroom terraced house,



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but because of the capacity of investors to break those units down into six or seven flats. The housing benefit yield therefore keeps that false market going, if you will.

Sir Robin Wales: I am going to move to Blackpool. We have done a number of things. One of them is we have introduced a letting agent rating scheme, giving agents a rating. When we were doing the private sector licensing scheme originally, one of the things that we heard from landlords was, "Please do something about letting agents, because they are getting off with quite a lot," and they are one of the problems landlords face, so we were very keen on that.

Some time ago, we set up a housing association called Local Space, which has purchased properties locally over the last 10 years and now has 1,800 properties, which are LHA rents and which homeless families are in. They are classed as temporary accommodation, but they are not; people stay there. It is buying another 800 to 1,200. We guarantee the rents and it is then able to borrow the money to buy the property, so this is having a big impact. We think it is the biggest impact almost of any authority.

We have set up two housing companies. One, Red Door, has built a block of flats and now has 800 that have gone through planning. We are using our land to build. It will build 35% affordable, which is a standard rate in London, but for the private rented it will rent them out and we will take the profits and reinvest that in housing. The plan is to build 15,000 homes and reinvest the market rents back into either affordability or more building, and in our budget we have £2 billion that we want to put into that.

We have set up then an affordable company, which will take the affordable homes. We have purchased 211 at the site of the Boleyn Ground recently, for £50 million—hardly the price of a striker, but it is the old Upton Park; it is West Ham's old ground. They are going to produce rents based on income, so whatever your income is, we will tailor the rent to that income, because we think that is a better way of providing support and assistance to people. By and large, we are aiming for 30% of your income goes on rent. At the moment, 60%, on average, is what the rent is in Newham.

We have a buying programme. Red Door has also bought a large block of flats and is buying another block, so we have quite a substantial purchasing programme as well. The aim is, again, to buy property and then try to use that to deal with the homeless issue and, at the same time, the affordability, to enable us to get people in. We also believe that you just need to build a lot. Typically, in London, 15,000 to 20,000 are built in the private sector every year. You need to build 40,000 to 50,000, and it is that gap that has not been filled for many years. Our view is we have to have companies like this to go in and build.

We think we are doing quite a lot and the plan is that the housing company, Red Door, will continue to recycle profits ad infinitum, and just



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keep putting it back into more building and more building and more building until we get the levels of building that we need to have in London. That is if we can get the land.

Cllr Newman: I have some good examples. It is probably the moment to ensure we do say that, in terms of the areas where supply is a huge challenge, lifting the HRA borrowing cap would empower local authorities in terms of supply that has seen so much of the pressure come on the private rented sector. There are large schemes like that. We launched, through an organisation of councils working together, the Co-Operative Councils' Innovation Network, in this building last week, a document I would commend to the Committee around community housing schemes. This is where local government is working with different communities—from memory, Hull, Leeds, Oldham, East Cambridgeshire—and different models, but some of them are much smaller schemes, bringing back into use five, 10, 20 properties, while some of them were bigger projects.

Some of this is around some very big schemes, but there is some very innovative work happening out there with local government on a scale, perhaps, that does not always attract the headline attention, working with different community groups up and down the country, with some quite innovative schemes. I am very happy to ensure the Committee gets a copy of that publication.

Chair: Can we now just move on to the draft Tenant Fees Bill, probably fairly briefly, because I am conscious of the time going on?

Q170 **Liz Twist:** Do you think the draft Bill will give local trading standards an appropriate level of enforcement powers, or is there a risk that the draft Bill is not compliant with the Human Rights Act?

Cllr Newman: The draft Bill has the potential to work. I have heard the point raised somewhere around the Human Rights Act; I am struggling to see that. I am much more interested in the human rights of the tenants in this situation, frankly. From what I have seen of the Bill from the colleagues who have looked at the Bill at the LGA, we are confident around the framework. Without going over the ground we covered earlier, there is a challenge when we get to the enforcement piece. If it is not happening, there is a clear role for trading standards, but then we will be back into the resources of what we have or do not have in local government. It is another one of those categories where this is absolutely the right thing to be doing, but we need to make sure collectively that it is properly resourced so it can be delivered and action can be taken when people are in breach of it.

Q171 **Liz Twist:** Is it right for trading standards to decide when to impose a penalty if it then keeps the penalty?

Cllr Newman: Yes, as long as the penalty is being reinvested in the process of enforcement, if I can put it like that. If that is what the situation is, yes.



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Cllr Blackburn: The penalty in the draft Bill, suggested at £5,000, goes back to a point that Robin made earlier on. That is a very small disincentive for letting agencies and landlords to do things properly, if that is the most that they can be fined.

Going back to your initial question, whether or not we have the right level of enforcement powers to deal with this is almost an academic question as long as we do not have the resources with which to enforce. If the Bill is going to be effective, it needs to be simplified to just very clearly state a ban on all upfront fees, which would enable us to target enforcement action. As it is worded currently, it is very difficult for the consumer to understand exactly what is and is not outlawed.

I spoke to a friend earlier on, knowing that she had recently moved house in Blackpool from one private rented sector property to another. The total fee to move in, which included an application fee, a tenancy fee, a credit check fee and a referencing fee, was £300. She was then charged a further £39 checkout fee when she left the property and a further £15 fee for that letting agency to provide a reference to the new letting agency. That came to £354, which is the equivalent of two and a half weeks' rent.

There needs to be a very explicit statement about what is banned and what is not. That would allow us to target meagre enforcement resources where they need to be targeted, but the penalties would need to be higher than they are in the draft Bill for landlords to really be concerned. Bear in mind that in a small town like Blackpool, with only 142,000 residents, we have over 100 different letting agencies operating, many of which are based in places like London and Brighton, so the cost of enforcement and pursuing recalcitrant landlords and agents will be considerable.

Sir Robin Wales: If you have to enforce, I come back to the minimum wage, 20% of people in my borough do not get the statutory minimum wage and nobody enforces, because we are not allowed to enforce against bad employers. We would if we could. We would do it for nothing, because it is something we want to do. You need to be able to enforce. Enforcement involves a cash problem.

I struggle to understand this. First of all, we think we should be licensing letting agents anyway. We think that should be a power given to local authorities, to license them. Then, if there are bad ones, you have to ramp up your enforcement, so make them pay for it. Why is everybody else having to pay for it when they, who are breaking the law or doing the wrong things, are not paying for it? Make the fines sufficient to cover the cost. Then, when people start to conform, we will reduce the enforcement and then it will not cost so much. I struggle to understand this. I quoted the £4,000 for a £500,000 business earlier. I struggle to understand why people are reluctant to say, "If you break the law and are making a profit from it, we will hit you with it."



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I genuinely struggle to understand. We are talking about people conducting businesses, deliberately breaking the law and, in that case, they should pay massive fines, the sort that would help us then enforce. If nobody breaks the law, we do not have to enforce—happy days. I struggle with this.

I do think that funding is challenging. It is a difficult time and we do more trading standards checks than most, because we think it is really important. We think enforcing and trying to change things for people is very important. I genuinely do not understand the reluctance to say that those who choose to criminally ignore what we decide to do should pay for the cost of the enforcement, rather than the other ones who are doing the right thing. I would massively increase the fines and I would give local authorities much more scope.

We have introduced a rating system. Interestingly, when we did it, we had a whole number that were zero-rated and we wrote to them. Guess what? They all got up to 1 or 2, so that was quite a useful thing to do. Give us the power to license and give us the right to be able to retain the costs. It is like everything: if you want people to not use their mobile phones, give us the right to keep the fine; you do not drive in a bus lane, because we fine you, but you use your mobile phone, because we do not fine you. It is about linking those things together, linking enforcement with the crime, with the people who are doing the enforcement having the enforcement costs. We could still do with more money, because we are local government and we always ask for more money.

Q172 Liz Twist: You were talking there about licensing letting agents. Is that something that you think would be more effective in regulating?

Sir Robin Wales: Yes. We could drive some of them out of business, which would be fantastic, and then the good ones would provide a better service. It is what Simon was saying: be clear about what you are doing. If you have clarity in it, people know where they are. Yes, there is a whole bunch of cowboys, just like there is a bunch of cowboy landlords, who need to be sorted out. That then leaves the others, who are trying to do their business properly, to do their business and that is good for the good ones.

Cllr Blackburn: Tenants tell us frequently that the artificial and rather unhelpful split between letting agent and landlord is where an awful lot of requests for repairs or upgrades go wrong. The letting agent will tell the tenant that they are only handling the letting of the property, and it is down to the landlord to deal with the repairs. That can create a two or three-week time lag where the tenant is talking to the letting agent, who is talking, no doubt at a reasonably leisurely pace, to the landlord about what they do or do not want to do about the situation. Most landlords, reputable or otherwise, will work through a letting agency. If we can deal with the agency as a whole rather than chasing individual landlords around, it is a much more efficient process, from a local authority point of view.



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Cllr Newman: It is mainly anecdotal, but bad letting agents often let down perfectly decent landlords, because of the reputational damage to the landlord and the frustration for the tenant in trying to get something resolved. They seem to have, up until now, been the one group no one has paid enough attention to, but hopefully that is changing.

Sir Robin Wales: I am told that now behaviour is changing, and that more landlords are saying to letting agents, "I just want you to find a tenant because I want to avoid tax," because tax is now becoming much more difficult for landlords. I struggle to see how it works for landlords who are borrowing money to buy property, so in order to stay off the radar they are changing their behaviour. These things change very quickly and they change very locally and if that is right, then you suddenly see a transformation in letting agents and landlords, because people are trying to stay off the radar of tax and HMRC. That is why local can respond quicker.

Q173 **Liz Twist:** If trading standards sue to recover a financial penalty, schedule 3, paragraph 7(3), which I am sure you all have at your fingertips, would prevent defendants from proving they had paid. Do local authorities need this conclusive evidence provision and is it fair to defendants?

Sir Robin Wales: It is a good question.

Cllr Newman: It is a very good question and we will give you a detailed written response.

Q174 **Jo Platt:** I want to drill down a little bit more on the enforcement. You have spoken a little about that, but is there anything else that anyone can contribute? Will the retention of money levied through civil penalties sufficiently equip local trading standards? I know, with regards to resource, you have partly answered that, but to dig deeper, are there any feasible bodies other than local authorities, or any alternative mechanisms?

Cllr Newman: There may well be, but we want to be clear that local authorities are best placed to do it, and it is quite legitimate, then, to make the case that if you are going to have a regulation system, it needs to be resourced properly financially to make it work. We have all, from different perspectives, made it clear that in terms of investing any penalties—which we have again made clear should be more than they are—back into the system, that will help, but it should not, by definition, be a system entirely based on that.

We need to start to see some different priorities in terms of funding and we need to see extra resources in this area. This is an area where you can have a far greater impact on people's life chances, their health and that of their families and children, as well as the immediate appalling conditions sometimes people are in. We think local authorities are best placed to do it, but it has to come hand in hand with the devolution of the



licensing schemes, without going through the whole piece again, to local government and let local communities, within a national framework of enhanced standards, take a lead in their communities in what then will be the different local challenges.

Q175 Jo Platt: Is that the LGA response as well?

Cllr Newman: The LGA is very keen to see local government significantly empowered in this area, because we do believe the evidence, as hopefully you have heard to a degree here today, of where that is put in place shows that it does improve people's life chances and the standards of accommodation they live in.

Cllr Blackburn: I deal with most aspects of licensing, regulatory and public protection work for the LGA. What we would say about any of those areas is that the fees ought to represent a full cost recovery model, so whatever it costs local government to enforce and police those regulations ought to equal what we are able to charge.

Also, there is a very important point, which Robin touched on earlier, around the "polluter pays" principle. If an organisation or an individual is breaking the law or is creating a set of circumstances whereby the law is broken, it is absolutely right that they should bear the burden of that. The problem with the idea of a lead enforcement agency is that, taking the fact that there are 100 different letting agencies operating in Blackpool alone, we would need to have a very clear point of contact and they would need to be super-responsive to be able to match the sort of response that our local trading standards and housing enforcement teams would be able to do. I am not quite sure how it could speed the system up.

It could have a bigger resource behind it, but would it not be much simpler just to hand that resource over to the local authority or allow them to fully recover their costs? When we see complex regulatory cases ending up in court, which can take years and years, not least in terms of trading standards cases, the costs that accrue to local authorities can be in the hundreds of thousands, if not millions, and at the moment that is proving to be a bit of a pull factor on local authorities' ability to enforce as rigidly as we would like.

Sir Robin Wales: We get into very difficult places here. Local authorities have responsibility for doing many things, and the truth is, as we have found while doing some interesting stuff on public sector reform, that unless you shine a light on something it can sit in a backwater and nothing will happen. Take trading standards. I do not know when the last time was that someone knocked on your door and said, "I want your trading standards to do this or that." The truth is that they do not, very much. We will say we want trading standards to go in and do things with kids—cigarettes, knives, alcohol—and every shop should be visited to do that. That resonates a bit with people, but try to get them to do other things, such as the replica shop down the market: do I care if Manchester



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United is being ripped off or Manchester City is being ripped off? Not really. I should, but it is their problem. Somebody has to fund it. I do not see why my residents should be funding it.

Jo Platt: It is a question of resources.

Sir Robin Wales: Yes, it is absolutely a question of resources. You have to decide what it is you are going to focus on. One of my criticisms of Government would be that there is no way of measuring and comparing local authorities. I want to know if we are the most active in this area. I want to be the most active. I do not know, because I cannot get the bloody figures to tell me. For me, that is important, because this is a moral question and so I want to do it. You should then get to a place that says, "Look, whatever you do, if you are breaking the law"—particularly in a business area, not in the criminal cases; we are talking about something slightly different here, in terms of people having a business model to operate—"you must pay and you must pay the full cost of what it costs the local authority, and if you are the only person doing it, you should pay all of the cost, because it is you that is forcing us to continue to do these things." If nobody is breaking the law, then we can ramp down a bit, and that is important.

There is no doubt about the pressure on these budgets across local authorities. We choose to put a lot into enforcement; we think it is the right thing to do. Not everybody thinks that, so they will not, and because there is no comparison or anything, it makes it very difficult. I said to my research people, "I want to compare us with local authorities," but it is really difficult to do, and that does not help us then work out if we are doing a good or bad job. I do not think the electors will necessarily care about some of the areas. They do care about licensing and housing, because they are sick to death of the bad behaviour and the antisocial behaviour you get in private rented properties from the badly run ones. They do care about that, but for others it is about where we want to do a good job. It is a really complex issue, but in terms of money, yes, I see no reason why fines should not reflect the cost to local authorities, because you are the one who is causing the problem.

I will come back again to the point that you cannot drive your car in the wrong places at the wrong times because we get the money so we enforce. People say, "You get too much." I say, "Don't break the law." It is exactly the same for all these things, so why does it work on bus lanes but it does not work on kids buying tobacco, or on landlords with 25 people in a property? Explain that.

Chair: We will have to end it there. Thank you very much for coming to give evidence to us today.

Examination of witnesses

Witnesses: David Cox and Isobel Thomson.

Q176 **Chair:** Perhaps you could just begin by saying who you are and the organisation you represent.

Isobel Thomson: I am Isobel Thomson. I am from the National Approved Letting Scheme.

David Cox: I am David Cox from ARLA Propertymark, the Association of Residential Letting Agents.

Q177 **Chair:** Thank you for coming. One thing that we have been trying to explore is the quite complicated nature of the laws and regulations that cover the whole issue of the private rented sector and, from a landlord point of view, the laws that they have to abide by or, from a local authority sector point of view, the rules and regulations they are trying to enforce. Do you think there needs to be a complete overhaul of the laws and regulations affecting the private rented sector?

Isobel Thomson: Yes. Anecdotally, there are about 150 pieces of legislation and regulation affecting agents and landlords. It is a bit like a jigsaw: we have all the pieces but we do not have the picture. We need a coherent framework of regulation. It should not be a piecemeal approach. We should not be drip-fed legislation. A worry at the moment is that we have the fee ban coming, we have mandatory client money protection coming in and we also have regulation. What we would like to see is everything wrapped up in regulation, but a more coherent structure would be the best for everyone.

David Cox: I agree with that entirely. We have a huge number of laws governing pretty much every aspect of renting out a property, they are wildly varied, they have multiple different enforcing bodies that are supposed to be going out to do it, and nobody really knows they exist. Landlords do not know, tenants do not know, agents struggle, and even enforcing officers themselves do not necessarily understand half the laws that govern the industry.

This is the problem of successive Governments over the last 20 years, in terms of trying to find individual legislative solutions to specific problems rather than looking at the private rented sector as a whole. This is not one Government, I would add; this is every colour of Government over the last 20 years. They have not looked at the sector in a coherent and strategic fashion. They have just passed law after law after law, and none of it is being enforced. However much people and the witnesses beforehand were saying that they were, they are not. They are two local authorities out of hundreds and the vast majority do absolutely nothing.



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We need a strategic approach to the sector. We have not had a strategic approach to the sector in decades, because it has been a very small sector. It has grown very rapidly over the last few years and Government, particularly, and local authorities have been struggling to keep up with how to deal with it, and instead of taking a strategic approach, they have very much taken a piecemeal approach.

Q178 Helen Hayes: 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. How effective have these been?

David Cox: They have been quite positive. It is a step forward. Both of our organisations have had that as a requirement of membership for many years before the law came into force, so we were pleased. It was a step forward in the road to a more regulated industry, but there is more that can be done. At the moment, only one of the three schemes has a code of practice; for the other two, we do not know how they adjudicate and make their decisions. The Property Ombudsman adjudicates against the TPO code, and that is something that we really need to look at. In the context of the redress schemes, we have multiple codes of practice in the sector. As the statutory code, we have the 2002 rent-only code, which is so woefully out of date it is completely unenforceable. We then have the Property Ombudsman's code; we have the PRS code, prepared by DCLG; we have the RICS Blue Book; ARLA had its own code until 2014 when it got rid of it in favour of trying to condense the number of codes. We very much believe there should be one code, overarching, which the entire industry must comply with and that should be set by a regulator. Until we get that sort of thing, we are going to continue having the sorts of problems that were described in the previous session.

Isobel Thomson: Yes, the redress schemes do a good job. The only issue is tenants identifying which redress scheme an agent is part of. That can be a difficulty, so we would welcome the statement by the Government to introduce a single ombudsman or redress scheme. The only worry there would be if one scheme has a monopoly, does that drive up costs for agents? We would want to see that as a low-cost option. There is a concern also with the tenant fee ban, in terms of whether there will be a disconnect with the tenant being able to make a complaint, because they are not paying for service. In the main, though, they do a good job.

Q179 Helen Hayes: Does the power imbalance between tenants and landlords and letting agents make it difficult for tenants to raise complaints?

David Cox: No, I do not think it does. I would say that the balance is about right between landlord rights and tenant rights. We have seen a lot of laws passed over the last few years. I would also disagree with statements that have been made to this Committee that tenants do not go forward and take cases to court. We know that is simply not true by just looking at the tenancy deposit protection situation, 10 years after it came into force. There was a huge case, *Superstrike v. Rodrigues*, which



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involved a tenant taking a landlord to court, which went all the way to the Supreme Court, reversed the spirit of the 2004 Housing Act, which required this House—and, if I recall, this Committee—to have to reverse the law back to the original position in the Housing Act 2004. The argument that tenants do not take cases to court is simply not made out when Parliament has had to restate the law on something because of a tenant taking a landlord to court.

Isobel Thomson: I do not think there is an imbalance. The fact that the Property Ombudsman scheme's last annual report reported a 32% rise in complaints did not necessarily mean that service was worse or conditions were worse, but that tenants and landlords were finding their voice, so I do not think there is an imbalance.

Q180 **Helen Hayes:** Just to push back on that a little, this Committee has evidence from several organisations representing tenants about the very low expectations that tenants have, about the extent to which many feel they put themselves and their tenancy at risk if they raise complaints, and about the poor quality of a certain segment within the private rented sector. Do you have comments to make on those points?

David Cox: You have hit the nail on the head there. It is about a certain percentage of the private rented sector and the whole sector is being tarnished by the criminal actions of a tiny minority. We will certainly not sit here, as representatives of the industry, and say that every agent and every landlord is professional. There is a criminal element in the sector and that is what we need to tackle. Blanket pieces of legislation do not work and never have. What we need is to target that sort of work.

Q181 **Helen Hayes:** That was not the evidence we heard from Shelter. Shelter said that there are, comparatively speaking, a small proportion of criminally rogue landlords, but there is also a spectrum and a huge grey area that is about landlords who are, in some cases, inexperienced, in some cases do not know their responsibilities under the law, in some cases have become landlords incidentally, and a whole range of reasons that lead to poor quality. Within that, very many tenants do not feel that they have sufficient power in that relationship to make a complaint and to know that their complaint will be dealt with without adverse consequences for themselves.

David Cox: That is a question of tenant education and tenant empowerment rather than a lack of law. The same arguments have been made about social housing tenants fearing eviction, when social housing landlords have no ability to have the no-fault possession that private landlords have. We have protection from illegal eviction; we have protection from retaliatory eviction; we have housing standards. The problem is not a lack of law; it is a lack of enforcing the law. Parliament passes law after law after law in this sector but none of it is being enforced. Passing another law to cover the same issue where a law already exists is not going to improve the situation. What we need is much greater tenant empowerment; what we need is a more effective



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court system; what we need is a more effective enforcement regime; and we need a simplification.

The previous panellists were talking about the housing health and safety rating system. Whilst theoretically perfect, it is practically impossible to implement. We support Karen Buck's Bill because it makes it a lot simpler for tenants, but you can have two local authority officers from the same council come and do an HHSRS inspection on the same property and you will get two different results, because it is so complicated. That is the problem. It is not a lack of law; it is a lack of understanding and a lack of enforcement.

Q182 Helen Hayes: In October last year, the Government issued a call for evidence on whether all letting and managing agents should be regulated in order to practise. What model of regulation should the Government follow?

Isobel Thomson: We want to see an independent regulator and, sitting under the independent regulator, we would like to see approved bodies, naturally, such as ARLA and NALS, but we would be responsible for the accreditation criteria. We want to see a cross-sectoral code of practice as well. It is an overarching regulatory framework that we would be looking at.

David Cox: I would agree entirely. The model that Isobel has just outlined is very similar to the way the legal profession is regulated, through the Legal Services Board, which approves what I believe in the legal profession they call "approved bodies"—things like the Law Society and the Bar Council—that then regulates the individuals on the ground. What we do not want to see and what we have seen is a recreation of, one, functions that already exist and, two, it becoming a massive bureaucracy.

If we look to Rent Smart Wales, where it has instituted regulation of letting agents and landlords, it has been running since 23 November 2015. Last week, it published its statistic that it had done 15 prosecutions in that time, when it estimates 177,000 rented properties. It is only 15 because it is spending all its time on administering the scheme, the bureaucracy of the scheme, rather than getting on and doing what it needs to do, which is the statutory enforcement of the rules.

I agree entirely with what Isobel has said. Take the admin and give it to somebody else and, with the best will in the world, our bodies have been doing that admin for this industry for the best part of 30 years. We know what we are doing and we know what we need to do. We check pieces of information. I am aware, with things like Rent Smart Wales, where they have to upload documents, agents have been uploading utility bills just to see whether or not they get checked and they are not being checked. What is the point in creating a bureaucracy if you are not going to do what the organisations are already doing themselves? The Scottish



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Government have learnt that particular lesson with the regulation that comes into force on Wednesday, but England can still learn lessons and make a better system for England than exists in either Wales or Scotland.

Isobel Thomson: This is not just our view. NALS operates what is called the Fair Fees Forum and we have a regulations sub-group of that forum. The forum comprises tenant, landlord and agent organisations as well as some of the major letting agents. We had this discussion about regulation within that group and they were unanimous in wanting this framework.

Q183 **Liz Twist:** You will have heard the previous panellists talking about this issue and suggesting there should be formal licensing schemes. What are your views on that?

David Cox: Licensing does not work. Licensing has never worked and never will work. If we take the rhetoric out of what the three people have just said who came before you, Newham have done 1,200 prosecutions, or 240 a year, out of 47,000 properties. That is 0.5% of properties in their area that they have done anything about and have done prosecutions. I would note that that is with 140 officers. They have 40 police officers, 100 enforcement officers and they have done 240 prosecutions a year. That is less than two prosecutions an officer. If that is what is classed as success—and it is classed across the industry as the most successful licensing scheme in the country—really what does that say? It is pitiful.

Bear in mind that I agree with Sir Robin when he said that that is 60% of the prosecutions in London and 50% of the prosecutions in the entire country. In the entire country we have done fewer than 500 prosecutions in a year. Take out Newham; the other 32 boroughs have done 160. Is that success? Is that a measure of success?

Councillor Newman said that they had licensed 30,000 properties and refused 10. Is he really suggesting that in Croydon there are only 0.03% of properties that are not up to standard? This is not success. With the best will in the world, it is a catastrophic failure and it is a litany of catastrophic failures everywhere licensing has been created. The Housing Act 2004 requires licensing schemes to lead to an elimination of the problem. If they have to re-designate a scheme five years later, it clearly has not achieved its aims, because it has not led to an elimination of the problem.

If they are getting a landlord to get a piece of paper from the council when they are not going and doing the checking, they are not going and doing the prosecutions, all they are doing is pouring catastrophically large amounts of public money into administration and bureaucracy. Just as Councillor Blackburn said, the schemes cost the councils a lot more than they generate. I do agree with that. I do believe that is true. At which point, they are diverting council resources for prosecution into administration. How on earth is that benefitting man or beast? It does



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not work; it never works; it never will work. Rolling it out further is just going to make the situation vastly worse.

What we need is education. Landlords need to be trained in what they need to do. Agents need to be trained in what they need to do. Filling in a piece of paper and giving it to the council and paying £500 is not going to teach them the 150 laws that they need to understand and, therefore, rolling it out will be the biggest backward step in improving conditions in the private rented sector in the last 20 years.

Q184 **Liz Twist:** Do you want to add anything?

Isobel Thomson: Follow that.

David Cox: Sorry.

Liz Twist: Tempting as it is to go down this path, I do not think we have time.

Q185 **Chair:** Generally speaking, in terms of relationships between letting agents and councils, does it work well in most areas?

Isobel Thomson: In most areas, councils will have landlord forums, which agents are part of. They will have joint initiatives where, in licensing schemes, they offer discounts to agents who are part of accreditation schemes or trade associations. In the main, they work well. An example of good working is Liverpool, where there is blanket licensing and both NALS and ARLA are what are termed “co-regulators” with Liverpool City Council. That is a good model. Agents who meet the standards to be part of our organisations are rewarded and their landlords are rewarded with discounts on licensing fees. Partnership working is always to be praised. That is all I have to say.

David Cox: I would agree with everything that Isobel has just said. Where local authorities and the industry work together, we get a much better approach to dealing with the issues of the industry. Liverpool is a prime example. Home Stamp in the West Midlands is another good example of where the fire service, the police service, the health service, local authorities, the landlord and the agent bodies all come together to look at the issues in their area and come up with holistic, cross-departmental working to find solutions. It is probably why the West Midlands has the lowest level of licensing of anywhere in the country, because they have taken a different approach.

I would also say the London Rental Standard, created by Boris Johnson when he was the Mayor, was a great model for regulating the industry. Again, both ARLA and NALS were supportive. We were involved in its creation and development and its ongoing existence before it was scrapped last year. The problem with it, though, was it was voluntary. If the Mayor had had the power to make it mandatory—and we are now talking about a system and model very similar to the LRS at DCLG or MHCLG—it could have worked. It could have been much more effective



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than it was, but once again, it is back to the issue that whilst it was voluntary, it was never going to pick up the people that it was designed to pick up.

Q186 Chair: Newham have developed a system for rating letting agents, giving you a score. Do you support such initiatives?

David Cox: We were involved in its creation and were assisting some of the local authority officers who were developing it, in what should go in the criteria for the various levels. It is a good initiative, but it is one of those where if it is at individual local authority level, we could end up with hundreds of different schemes, which will all have different criteria. It will make it a nightmare for agents to comply with all the various things. It is the same problem with licensing. If there is a coherent national model, we would be quite supportive.

Even if it was done at, for example, a pan-London level or a pan-region level, we would be quite supportive, but doing it at individual local authority level is so difficult for agencies that are operating across local authority boundaries. In order to comply with all the various different criteria that each local authority sets, be it a licensing scheme or a rating system such as this, it would need consistency across geographical areas.

Q187 Chair: Even if you have a national scheme, if individual local authorities are making the judgments, they could still come to different judgments about the same letting agent, could they not?

David Cox: Exactly. At which point, a single agent, if it was operating with five local authorities, could end up with five different ratings and that does not benefit anybody.

Q188 Mr Prisk: I think we are crystal clear on licensing schemes, but let me look at the draft Tenant Fees Bill and the impact on your members. There has been lots of discussion and some evidence that is quite contradictory, but from your point of view, to what extent will your members be able to absorb the costs and what other impacts might there be in terms of how services will be delivered? In particular, what do you think the likely impact will be in terms of rents?

Isobel Thomson: Taking rents, first of all, obviously the Government are always talking about unintended consequences; there are inevitable conclusions. If the cost of services is passed on to landlords, they have to recover their money from somewhere, so it has to be that rents are increased, which is very concerning, and we will come on to the impact assessment that the Government have made of any increase in rents. We have done a bit of a survey with one of the major referencing companies and, out of 250,000 references, 25% of the tenants who passed were marginal in terms of affordability, so it is a real concern for us.

In terms of service, we obviously hear, perhaps from tenant lobbying groups, of rip-off agents and all they are concerned about is money. I



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can assure you that our firms, the majority of which are small businesses, pride themselves on the service that they offer to their tenants and they go above and beyond. With the tenant fee ban, that service will have to be diluted, if not disappear, as well as getting rid of staff. They will not be able to sustain their business, because not all the service levels can just be passed in a charge to landlords. It is really serious for our firms, but it is also for tenants. We do worry about certain categories of tenants who will not be well served by this ban, and those will be tenants on housing benefit or universal credit. You can imagine, if agents have less time to deal with these tenants and they are not getting paid, tenants will be screened out and that is a real worry as well.

David Cox: Again, I would agree with everything that Isobel has just said. Last year, we commissioned Capital Economics to undertake an economic impact assessment on the ban. Letting agent fees represent about 20% of the turnover of the industry, about £700 million a year. In the most plausible situation—and at that point in time we did not know what the legislation was going to be; the most plausible situation is the Bill as it currently stands—agents will lose about £200 million a year in income. Capital Economics estimates that about 4,000 people will lose their jobs in the industry as a result of that. Landlords will see an increase in costs of around £300 million a year and tenants will see an increased rent of £103 per tenant per year. This means that if tenants move more regularly they will see a saving, but we have government policy, party-political policy arguing for longer-term tenures at this point in time. At £103 per year, the over-under is just under 2.5 years and, therefore, if tenants stay in their property for more than 2.5 years, they will end up paying more than if fees had not been banned at all.

We are already seeing consolidation in the industry, with smaller agencies selling up to the larger corporates and getting out before the ban hits. We also have to factor in, once the ban comes into force, agents going bust, agents propping up their businesses that cannot cope with the fee ban by taking their clients' money—their landlords' rent and their tenants' deposits. I would strongly urge the Committee and the Government to make sure that the mandatory client money protection that is under the Housing and Planning Act of last year comes into force before the fee ban does; otherwise we may end up in the situation where agents go bust and run off with the funds before mandatory CMP comes into force. It needs to be done first.

Q189 **Mr Prisk:** On rent, we have heard evidence that suggests that many tenants would prefer to have the cost knitted into the rent, so that they know what it is, it is easier to budget and so on and so forth. Can I just get your perspective on that? You talk about affordability particularly. What is your perspective on that? You have said that you expect rents to rise and that has been the evidence we have heard from elsewhere. What is the argument that by removing the up-front costs the ability for people to be able to access the right home is easier, even though the



total cost will be spread over the whole term?

Isobel Thomson: As David said, they will end up paying more than they would if they paid the one-off fee at the beginning of the tenancy, but it is about certain groups of tenants getting into tenancies to start with and whether it is better to pay then. Our average fee is £192 amongst our firms; they can pay that to start with to enter into a stable tenancy, having had a reference check that has looked at their affordability, rather than just having the money added on to the rent for the duration of the tenancy.

Q190 **Mr Prisk:** Just briefly, before I come on to one last point, if the service is being provided by the agent on behalf of the client, quite a few people would say, and we have seen evidence, that both the tenant and the landlord are being charged for the same service. Is this something that you recognise happening in the industry? Presumably, it is not permissible under your own codes at the moment.

David Cox: Letting fees cover three key aspects. They cover the referencing, contract negotiation and then the inventory, effectively. Each party pays their share towards it. If you think of when you are buying a house, referencing is akin to the mortgage application fee, contract negotiation would be akin to the conveyancing, and the inventory would be akin to the survey. The only difference between buying and renting, because in both cases you are taking a legal interest in land, is that when you are letting you pay it all to the letting agent; when you are buying you pay it to three different parties and you generally pay significantly more. Letting agents act in a quasi-legal capacity for the tenant, and because they are taking money from both the landlord and the tenant, they do become the servant of both masters, so they owe a legal duty to both the landlord and the tenant.

I am worried that if this law says that an agent is only serving the landlord, what is the tenant going to do if they want a pet clause or a break clause, if the agent has no duty of care to that tenant? If you do not like it, you either sign here or go and get a solicitor, who will charge a lot more than ARLA's average fee, which is £202 per tenant. For the eight hours, on average, it takes to do the work involved in setting up a tenancy, £202 is quite a reasonable sum of money for the amount that is involved.

Particularly when you look at low-income and vulnerable tenants and benefit applications, one of the things that has not been included in the Government's assessment of impact is the impact on housing benefit. At the moment, housing benefit and universal credit does not cover tenant fees. If those were rolled into the rent, it means the housing benefit budget is going to go up, because it will start including the tenant fee element. These forms are very complicated to fill out at times. A lot of letting agents will sit down with the tenant to help them fill in the application forms for the benefits that they are entitled to. If they cannot charge for those services, are they going to continue doing that further



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down the line? Therefore, I would argue that this is, again, going to put consumer rights back for tenants rather than enhance them.

Isobel Thomson: It might also be worth mentioning right to rent checks. Agents help prospective tenants with complex right to rent checks and they take the time to do that. That will not be happening once the fee ban comes in. That is consumer detriment and agents have expressed their sorrow that they will not be able to do that. Also, where you have tenants who require guarantors, the landlord is going to be paying for the reference; will they then have to pay for a guarantor? I do not think that will happen.

Q191 **Mr Prisk:** Lastly, on the impact assessment, you have mentioned already, Mr Cox, that the Government's impact assessment, as it stands, is incomplete. What is missing that we ought to be aware of?

David Cox: It is an interesting document. I would note that certain parts of it have been lifted almost verbatim out of the Capital Economics report from last year, except the finances. They have come up with a different impact on agencies and on the industry. It is almost 50% less than the assessment Capital Economics came out with in April last year.

The one point that particularly irks me in it is the familiarisation costs, where they suggest that letting agents will be able to completely amend their business models in 20 hours. This is a fundamental shift in the way the industry operates. I must say I found it quite insulting that it was suggested that agencies would be able to just up sticks and start again with just 20 hours' familiarisation. Some of the large corporates have already spent thousands of hours trying to work out how they are going to react to this. I do think certain parts of their mathematical calculations are woefully inadequate.

Q192 **Helen Hayes:** There are already letting agents who do not charge fees to tenants, including some in my constituency, so it clearly is not the case that this model results in total calamity for all those agents if some of them are choosing to do it already. I just wondered if you might comment on that and the extent to which you have evidence from your members who have already chosen to run their business model, on the basis that they have one client and they will charge fees from that one client and, as part of the service of finding tenants for their client, go on providing other services that tenants interact with, and that that business model works for them, because they still attract those clients as landlords and they still clearly are providing an attractive offer to tenants.

David Cox: You are absolutely right that there are agencies that do offer zero fees to tenants. You generally find that those agencies are at the higher end of the market. They are charging higher rents than other areas. Generally, the properties are also nicer or of a much better standard, and it is because tenants are willing to pay extra in rent than they are in other parts of the market. The prime example is the build-to-rent sector. The vast majority of the build-to-rent sector,



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although not large at this point in time, generally do not charge fees. However, they charge much higher rents than equivalent size and quality properties in the localities. I would suggest that those sorts of agencies demonstrate exactly what is going to happen going forward: they do not charge fees; they just charge higher rents.

Q193 Jo Platt: Do you think there are any loopholes or unintended consequences of the draft Bill?

Isobel Thomson: We have already mentioned redress and the disconnect in the service now between the tenant and the agent. I do not think there is anything else that I wanted to add. You probably have a list.

David Cox: I have three. The first one I would raise is the Green Deal. When Scotland banned its fees in 2012, it specifically made an exclusion for Green Deal charges. The Green Deal charge is a non-optional charge for facilitating the granting of the tenancy. The tenant has to accept the Green Deal charge in order to be granted the tenancy under the disclosure and acknowledgement regulations. This is particularly important when we factor in that the energy efficiency minimum standards come into force in April this year and landlords will have taken Green Deal finance out on properties. It is something we have raised to DCLG, but we would ask that there is a specific exclusion for Green Deal finance built in in England, in the same way that there is in Scotland.

The second one is when a tenant wants to leave a tenancy early. This one particularly comes down to the tenant default fees issue, which I am sure we will discuss in slightly more detail later in the session. We are trying to make sure that there are no loopholes in this Bill. What I am worried about is the Superstrike case happening again as a result of this. On the face of the Bill, the tenant default fees clause will allow, if a tenant leaves the property early and wants to end their tenancy before their contracted term comes to an end, it is routine at the moment that agents will charge a fee for that, in exactly the same way that every other industry charges a fee, be it a mortgage, a higher purchase agreement, a car loan, even your mobile phone contract, if you want to get out of that early you have to pay a fee; your utility bills are another example. What I am worried about is a court may, in five or 10 years' time, hold that those fees are unlawful, in exactly the same way as happened with tenancy deposit protection, which will reverse the law and could end up bankrupting agencies. What we would ask is that it is put specifically on the face of the Bill whether getting out of the contract early and getting out of your tenancy early is acceptable or not. We would strongly argue that it should be acceptable, but what I am trying to avoid is a PPI moment in the property industry in five or 10 years' time, and we would like certainty particularly on that issue.

The other issue goes to a similar sort of avoiding PPI situation in a few years' time and that is the deposit replacement insurance schemes. These are emerging in the market at the moment, where tenants pay



generally around a week's rent in lieu of a deposit and it is an insurance product. Again, under the Bill that is a non-optional fee for facilitating the granting of a tenancy, so technically is caught by the Bill. Some of the schemes have had reassurance from DCLG that, because it is optional, they can choose to take a deposit replacement insurance scheme or they can choose to pay a six-week deposit, then that will not fall foul within the provisions of the Bill. However, it does not say that anywhere in the Bill and, again, I am asking for legislative certainty on that particular topic. Also, with these deposit replacement insurance schemes, they are an insurance product, so they have to pay a renewal premium, at which point that becomes a non-optional premium for facilitating the renewal or continuance of a tenancy, which also falls foul of the Bill. Therefore, to avoid lengthy expensive court cases in five or 10 years' time, I would request that both ending tenancies early and deposit replacement insurance schemes are noted somewhere in the Bill to give agents legislative certainty.

Q194 Liz Twist: Talking about default fees, should there be restrictions on what can be considered a default fee?

Isobel Thomson: Yes, we would like to see an extension of permitted payments to include tenant referencing and to include guarantor referencing as well.

David Cox: I would agree with that one. It is an interesting one. Having listened to the evidence sessions that have come before, other witnesses have told you of the plethora of things that could be added on to the tenancy and put into the tenancy agreement. However, I would note that in neither the written submissions nor the oral evidence that you have heard has anybody been able to give you an example of that. The example the Government use is the one that we have used as well, of things like if you lock yourself out at two o'clock in the morning we will charge you a fee to come and let you in. That is a reasonable charge if somebody has to get out of bed at two o'clock in the morning, drive to the office, pick up the keys, drive to the property, let the tenant in, drive back to the office, drop the keys off, drive back home and go to bed. I would suggest that that is a reasonable fee that should be allowed. Think about the tenant; if those sorts of fees do get banned, will the agent do all of that or will they just say, "My office hours are 9.00 to 5.00; please come in during office hours"? Where does the person sleep overnight if they are locked out of their property?

What I would also say on that is that clauses in tenancy agreements are already covered by not one but five different sets of law. Under the Unfair Contract Terms Act, if an agent or landlord puts an unfair term in the contract it is completely unenforceable. UCTA, from 1977, was reinforced by the Unfair Terms in Consumer Contracts Regulations in 1999. It was then reinforced further by the Consumer Protection from Unfair Trading Regulations in 2008. That was then specifically clarified for letting agents and the property industry in the CPR guidance in 2014,



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and then further protections were added under the Consumer Rights Act of 2015. There is not a lack of law in this area. Do we really need to create a sixth piece of legislation governing the same issue?

Q195 **Liz Twist:** I am not quite clear. Are you suggesting there is a need to be clearer or that it is fine as it is?

David Cox: I would suggest it is absolutely fine as it is. Again, I agree with Isobel that excluding referencing will be much more helpful to the industry and to tenants and landlords, to avoid a lot of the unintended consequences that we are expecting from this legislation. On the face of it, it is a very sensible clause and does not really need to be amended at all.

Q196 **Liz Twist:** I want to ask about reference checks. In a press release, ARLA, Mr Cox, you described failed reference checks as grounds for not returning holding deposits. Does ARLA accept that that is not right at this stage?

David Cox: No, that is my understanding of the legislation and of the reasons for withholding the holding deposit. If the tenant has provided false or misleading information, it can be withheld. If that is not the case, I would suggest that greater clarity is required on the face of the Bill.

Q197 **Liz Twist:** You feel quite clear about those statements that you have made being correct.

David Cox: Certainly that is our understanding and reading of the Bill.

Q198 **Liz Twist:** Because we have heard from a number of other witnesses that there is quite a lot of uncertainty about that. Would you agree that needs to be clarified then?

Isobel Thomson: I would say that we do need the precise meaning of that clause "provides false or misleading information". Could I just read this out, because it is quite complicated? In our view, the issue is tied in with referencing. It needs to be clarified: "If a prospective tenant provides correct information to the agent, but is not granted the tenancy because they are 'failed' by whoever is commissioned to carry out the referencing process, there should be no deduction from the holding deposit". But "if a prospective tenant provides false or misleading information to the agent and is not granted the tenancy because they are 'failed' by whoever is commissioned to carry out the referencing process, they should lose (or incur a deduction from) their deposit". Does that make sense?

Q199 **Liz Twist:** Yes, I hear what you are saying. It sounds like there is a clear difference on this one about how people are interpreting this.

David Cox: Therefore, if there is a disagreement at this stage in the legislative process, it is absolutely essential that it does get clarified going forward. Once again, that is another example of a potential PPI issue for



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the industry going forward. If some agents take the view that it means if you fail referencing the holding deposit is forfeit, if a court then holds that that is different, agents will have been acting in good faith and it could end up causing significant detriment to businesses in the industry. If that is not the case, then we need clarity on the face of that provision.

Q200 Chair: It is the sort of situation where a tenant may believe that they have a good credit rating, then something comes out that they had a dispute with a mobile phone company 12 months ago over a £10 bill and that has suddenly affected their credit rating, which they did not realise. It is that sort of situation, which surely the prospective tenant should not be penalised for.

David Cox: County court judgments are probably the prime example, where a tenant may not know that they have county court judgments against them for unpaid bills, for example. When the referencing agencies do their work, they find out that you have a county court judgment because you did not pay your mobile phone bill for six months, but that is material information. If they did not pay one bill, what other bills were they not paying that maybe were not taken to county court? At which point that is both false and misleading information.

Q201 Chair: If the tenant does not know about something and, in good faith, comes with the information and then it subsequently comes out that, in fact, for a small disagreement over a bill some time ago that has affected their credit rating, does the tenant get penalised for that? This is the sort of area that is a bit unclear in terms of the legislation.

David Cox: I could not agree more and that is probably where we do need a little more clarity on exactly what those provisions mean and how they can work in practice.

Q202 Chair: I would just like to come back to one point, finally, on your description of the failure of licensing schemes because of the very few prosecutions. If I just take you back to Councillor Blackburn, who said that the licensing scheme in Blackpool had over 800 properties in it, putting aside the prosecutions, he said there were over 700 schedules of work that came out of that licensing scheme. Surely that is a success, is it not? It is not just the prosecutions but how much work is done to improve the properties. Surely that should be a test of whether licensing works, should it not?

David Cox: Yes, and I thought that was really interesting: that of 800 properties they did 700 inspections, because that is certainly the exception that proves the rule, I would argue. Also, it was 800 of I think he said 144,000 properties, which is a rather small scheme in the grand schemes of things.

Chair: Thank you very much for coming to give evidence today.