

Housing, Communities and Local Government Committee

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

Monday 26 February 2018

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

Questions 265 - 381

Witnesses

I: Mrs Heather Wheeler MP, Minister for Housing and Homelessness, Ministry of Housing, Communities and Local Government; Becky Perks, Private Rented Sector Policy Lead, Ministry for Housing, Communities and Local Government; Anne Frost, Deputy Director, Private Rented Sector Division, Ministry of Housing, Communities and Local Government.

Examination of witnesses

Witnesses: Mrs Heather Wheeler MP, Becky Perks and Anne Frost.

Chair: Before I come over to you, I will just ask members of the Committee to put on record any interests that we may have. This is our final evidence session on the two inquiries we are doing into the private rented sector and the draft Tenant Fees Bill. Thank you very much for coming this afternoon.

I am a vice-president of the Local Government Association. I own one property, which I rent out. Can we just go around the table?

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

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

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

Bob Blackman: I employ a councillor in my office.



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Andrew Lewer: I am a vice-president of the LGA and I also have a small property portfolio.

Matt Western: I am a county councillor in Warwickshire and I also have a shared property that I rent out with my sister.

Mary Robinson: I employ a councillor in my staff team.

Mr Prisk: I am a fellow of the Royal Institution of Chartered Surveyors.

Q265 **Chair:** Minister, thank you very much for coming on that side of the table for the first time. I was almost anticipating it to be like the football manager who comes back to their old club, having gone to manage elsewhere, and they get in the wrong dugout when they start. On this occasion, you got the right seat first time. You are very welcome in your first appearance before the Committee. Congratulations on your new role.

Mrs Wheeler: Thank you, Chair. That is very kind. Seeing as we are declaring interests, I also employ a councillor, I employ the husband of a councillor, my husband is a councillor and my daughter has one rented-out property. That is everything, I think.

Q266 **Chair:** Right, that is nearly as much as the rest of us put together. Perhaps you could introduce your staff members.

Mrs Wheeler: Indeed, yes. I have a phalanx of people around me. The A-team are here for you and your lovely Committee. I have Anne and Becky, who you have already met before. They have given evidence to you. They are guys from the private rented sector team and the Bill team as well in HCLG.

Q267 **Chair:** You indicated that you would like to make an opening statement to the Committee before we ask questions of you. That is okay.

Mrs Wheeler: Yes, very briefly, Chair. Thank you very much indeed. I am very grateful for you giving me the opportunity to briefly set out what the Government have done to increase the effectiveness of the private rented sector. Can I particularly thank the Committee for the detailed inquiry you have undertaken, the individuals and organisations you have spoken to and all those who have participated?

It is absolutely clear that everyone shares our ambition to deliver a fairer, good-quality private rented sector. It is particularly important now. One in five households in England now live in a private rented sector. There are a range of challenges that determine and drive policy interventions. We support the majority of good landlords and agents, who provide decent, well-managed homes. I want to work with them to ensure that tenants have access to good-quality, affordable accommodation.

Nearly finishing, Chair, we have already taken action that recognises that more needs to be done. Just to give you a snapshot, we support Karen Buck's Private Member's Bill. We are introducing banning orders on the worst rogue landlords. We have launched a consultation on mandatory



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electrical safety checks. We are extending mandatory licences for HMO properties. We have committed to a review of the selective licensing regime.

We want to protect tenants and ensure they have access to effective dispute resolution when things go wrong. On 18 February, just last week, we launched our consultation on strengthening redress in the housing market. We want to work with Parliament and all the sectors to deliver these changes coherently.

Again, to repeat, we are very grateful for the work that your Committee have done on the private rented sector now and then, later on, when we get to talk about it, the draft Tenant Fees Bill and the scrutiny you have kindly been giving that.

Q268 Chair: Thank you, Minister, for that. I am sure we will come back to pick up many of those particular issues that you have highlighted for us there.

From the evidence we have had, it is pretty clear that there has been some general improvement in standards and quality in the private rented sector, say, since the turn of the century, but there is still an element of very bad landlords and very bad properties, which I know the landlords' associations are as anxious as we are to see action taken against. In some senses, some of those properties may be getting worse as the opportunities for exploitation make themselves apparent to some of the worst landlords—the criminals in the business. Do you have any sense of the scale of that particular problem that exists?

Mrs Wheeler: Certainly, allegorically—is that the right word?—we have heard that, but actually the statistics do not really show that to be the case. We welcome very much the close working relationship with the Residential Landlords Association, and it is helpful that they are looking into standards too, but we do not agree with the assertion that things are getting worse.

Overall, the proportion of non-decent homes in the private sector has declined from 47% in 2006 to 27% in 2016. We are determined to continue to drive up standards in the PRS, and the overall quality of private rented sector housing has improved rapidly over this past decade, but an unacceptably high number of people still live in non-decent accommodation.

Q269 Chair: That is not quite what the RLA said to us, and the NLA as well. They said, yes, those figures were right: the percentage of decent homes is improving, so general standards may be going up, but the very bad properties and the very bad landlords, are still there. There is no indication at all that they are going away and that that sector of the market is improving at all. That is the case, is it not?

Mrs Wheeler: I hear what you say. Again, we do hear these comments out there. The difficulty is that, because we have the housing health and safety rating system now, which is working really, really well, properties



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with the hazards have declined from 31% to 2008 to 17% in 2015. Those are the latest years that data is available. We have not seen a decline in standards, but, if the RLA would like to send the evidence to us, then we would be very happy to look at it.

Q270 Chair: That is going back to the same issue, is it not? It is not the 83% that we are concerned about in some ways. It is that 17%. The 17% may be smaller than it was, but within that 17% are still some really bad cases. There are some really bad landlords and some criminals. Do the Government have any sense of the scale of that particular element of the extreme problem of really bad landlords managing really bad properties in an awful way?

Mrs Wheeler: To be frank, that is one of the reasons why we were happy to support Karen Buck's Bill: because we think there are new opportunities for tenants to feel empowered on the 11¹ issues of hazard, to either go to the environmental health officers and make them do something about it or indeed to go to court straightaway.

Q271 Chair: But do the Government have any idea of the scale of the problem of really bad properties and really bad landlords?

Mrs Wheeler: Yes. Anne, please go ahead.

Anne Frost: We had heard that the landlords' associations had talked about these figures. We have not seen those figures. The thing we have coming in that should help with this across the board is the banning orders and the rogue-landlord database. That will help local authorities and ourselves to focus and get a real scale of how many really bad landlords there are out there and focus our actions on them.

Chair: We will probably come back on that. I want to ask one or two questions about enforcement in due course and what authorities are doing. Can I just ask about the local housing allowance? This is, again, some evidence we had. We had it from some of the London authorities, but also from Blackpool in particular. They said there was almost a perverse incentive now to split what might be quite reasonable accommodation into smaller accommodation—into small flats and bedsits—rather than larger accommodation, because the local housing allowance means they can get more money by letting three small units instead of one larger unit. Is that a problem the Government recognise? If the Government recognise it, are the Government determined to do anything about it?

Mrs Wheeler: Yes, we are not happy that any tenant should be made to use housing benefit to drive down standards. That is something we would not accept ought to be happening in the market. It is not an intended consequence of where we are with housing benefit. Equally, when it comes to housing benefit, we all have to cut our cloth accordingly. Just because I might like another extra bedroom and so I

¹ The Minister later corrected this figure to 29.



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have to increase my mortgage, you have to have what you can afford from the housing benefit that is there. The difficulty is that people are clever about getting around rules. That is not acceptable. When we get to the letting agents Bill later on, that would be a really interesting area where we can drive down with HMRC about where standards ought to be.

Q272 Chair: The Government are not happy that housing benefit and the Local Housing Allowance could perversely be encouraging landlords to subdivide properties in a way that makes them really poor accommodation. If they are not happy, are the Government going to do anything about it?

Mrs Wheeler: I know you have mentioned Blackpool, but it is particularly more of a London issue, with the lockdown rules—

Q273 Chair: We will come on to lockdown in a minute. But Blackpool specifically mentioned it in terms of what was happening there with the old guesthouses being subdivided and subdivided into tiny accommodation, because that was the way landlords were making a lot of money from poor accommodation.

Mrs Wheeler: Clearly when it comes to licensing and HMOs, that is about driving standards. That is something we would expect housing authorities to be able to use their powers to act on.

Q274 Chair: Do local authorities have powers to stop the subdivision of properties?

Mrs Wheeler: If it is not acceptable, then you do not get the housing benefit. You do not get it if it is not an acceptable property.

Anne Frost: They also have a range in their licensing powers. For this one, the one that would probably apply most would be additional licensing. This is where you would focus into areas if you thought this was a particular area in the locality. That would be the way of ensuring this. This is a standards issue, in the main, and that would be a way of ensuring the standards in that particular situation.

Q275 Chair: But you would have to use licensing to get into those powers.

Anne Frost: There is a range of options open to them, but I would have thought in this case it would be additional licensing that would be the most suitable.

Chair: If there are a range of powers, perhaps you could let us have a note of what all the powers might be, as well as the additional licensing powers.

Anne Frost: Sure, yes.

Q276 Helen Hayes: Do you agree, Minister, that the power imbalance between tenants and landlords makes it very difficult for tenants to pursue complaints out of fear of retaliatory eviction and rent increases?



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Mrs Wheeler: That was one of our concerns. That is why we are committed to rebalancing the relationship between tenants and landlords. We have recently announced a number of changes to help ensure that tenants have the ability and confidence to make a complaint about the standard of their accommodation.

We are going to make it mandatory for every landlord to be subject to a redress scheme, and we are exploring whether a single housing ombudsman could simplify access to redress for tenants.

Q277 **Helen Hayes:** Some witnesses have told us that the Deregulation Act 2015, which made retaliatory evictions illegal, while a step in the right direction, does not provide sufficient protection for tenants from retaliatory evictions. I was wondering whether you have data on how often that power has been used.

Mrs Wheeler: I do not have that data. I do not know whether one of my gang has. The interesting thing about the 2015 Act is that it has been incredibly important for giving protection to tenants on retaliatory eviction. We want to link the effectiveness of those provisions to the work we are taking forward to improve the redress system in the sector. We do recognise that more needs to be done to protect tenants, and we are committed to improving the redress for people who experience problems with their housing and to empower them to challenge poor practice.

Q278 **Helen Hayes:** There are a series of measures around redress, of which the housing ombudsman proposals are the key element. Then there is the question of revenge evictions and how tenants can be given sufficient security to know that they can raise a complaint about a serious issue in their property without themselves being directly subject to that.

There is a different question about redress once it has happened, but could you say a little bit more about whether the Government have any plans specifically to protect tenants further from retaliatory evictions, and also the rent increases that can come all too often if a tenant raises a complaint?

Mrs Wheeler: Getting back to basics on that, the important thing, again, is that since April 2017 we have extended rent repayment orders. Tenants can recover the rent paid where they have been illegally evicted, where a landlord has failed to comply with an improvement notice served by a local authority. Not only is there redress, but there is rent repaid to that tenant, who will have been evicted illegally.

Q279 **Helen Hayes:** If they have lost their home, it is helpful to get the money back but it is cold comfort if you are then in whatever the homelessness sector has to offer you. If you have lost the home you were in and there is only redress after that point in time, that is limited protection. It might give redress but it is limited protection for tenants, is it not?

Mrs Wheeler: Absolutely. I hear what you are saying. It is interesting.



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There has been a lot of conversation about whether we ought to have a housing court. We are consulting with the judiciary on that. That would help with the current system. We are requiring all letting agents to be regulated and to belong to a client money protection scheme, which will also help tenants. Finally, we are obviously also supporting Karen Buck's Bill, giving tenants an alternative means of redress. Those are the things the Government are going to do.

Q280 Helen Hayes: I appreciate the consultation on the single housing ombudsman was only launched last week and you are consulting at the moment. Could you say something about the powers you imagine the new ombudsman might have to protect tenants in the private rented sector specifically?

Mrs Wheeler: Yes. We have found that with the three best known ombudsman schemes there are at the moment that help within the housing area, there are gaps. What we are trying to do is close those gaps and also address any confusion with landlords and tenants as well. Frankly, we will only be in a position to set out the next steps once we have had the consultation and when we have looked through the replies we have got in. In the consultation, we have asked for views on the powers of redress. Should they include powers to make financial awards, to expel members or to refer cases to relevant enforcement authorities and regulators?

The other thing not to forget, please, is that since April 2017 we have introduced civil penalties of up to £30,000 as an alternative to prosecution. That is a very strong statement from the Government.

Q281 Helen Hayes: Is it likely that all private landlords will have to be a member of the ombudsman?

Mrs Wheeler: Yes, indeed, whichever ombudsman system we go for in the end. Whether it is a single portal and there are others behind it is to be decided, but yes.

Becky Perks: I should just qualify that.

Mrs Wheeler: It is a redress scheme.

Becky Perks: I was just going to say that there is a question in the consultation around whether or not a landlord will have to join the redress scheme if they are a member of an agent. That is one of the questions in the consultation. The tenants of all landlords will need to be covered by a redress scheme, but it might be through the agent if the landlord chooses to do it that way. There is that slight clarification.

Q282 Chair: You have said in answer there that you do not have any figures about how often the powers under the Deregulation Act have been used with regard to stopping retaliatory evictions. Is that because the Department does not collect the figures or do you simply not have them with you today?



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Mrs Wheeler: I do not have them with me today.

Chair: The Department does have them.

Mrs Wheeler: I do not know.

Becky Perks: It does not collect those figures.

Mrs Wheeler: Does it not?

Becky Perks: It is the local authorities who collect those figures.

Q283 **Chair:** Does somebody have the figures?

Becky Perks: The local authorities will have them.

Mrs Wheeler: The individual local authorities have them.

Q284 **Chair:** There is no overview of whether the Act is working or not.

Becky Perks: We are going to do a review of the Deregulation Act, but we are going to take it forward as part of the mandatory landlord consultation provisions and looking at how that is all working together.

Q285 **Chair:** What is the timing for that?

Becky Perks: The legislation was introduced in 2015, and we are now doing the consultation on mandatory landlord redress now.

Q286 **Chair:** As part of that redress, are you doing a review of whether the Deregulation Act is working?

Becky Perks: We are not doing a specific review on that, because obviously it has been sort of overtaken by the commitment to mandate landlords to join a redress scheme. As part of taking that work forward, we would look at the protections that tenants have.

Q287 **Chair:** It would be helpful to the Committee to find out whether anybody knows whether this piece of legislation is working.

Becky Perks: We can take that away.

Chair: You will come back to us.

Becky Perks: Yes.

Chair: You will come back to us, having asked local authorities what is happening, with some figures.

Mrs Wheeler: We are happy to do that, Chair.

Q288 **Mike Amesbury:** You touched upon this already, Minister. We heard evidence about the increasing growth of lockdown properties, particularly in the London boroughs, where basically small family housing is turned into multiple flats to maximise the housing benefit. What more can the Government do to help local authorities, particularly the London



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boroughs, tackle this issue?

Mrs Wheeler: We did mention that before. You are quite right. We think it is a way to try to get around HMO licensing. The changes we are bringing in will not just be five people or more on three floors; it will be five people on two floors. That will be a major difference. That will be another 1,600 properties at least that will come into the HMO licensing arrangement. The local authorities will have to step up and deal with that.

We genuinely expect all local authorities to ensure they use the powers available to them to robustly tackle abuse of the system and enforce property standards. This is about property standards as opposed to just the knock-on effect on housing benefit as well.

Q289 **Mike Amesbury:** You do not feel it requires a change in the law. It is basically using the current provisions available to local authorities in a more robust way.

Mrs Wheeler: That is right. We honestly think the Housing and Planning Act 2016 has an enforcement tool for local authorities and also, from London's point of view, the Greater London Authority Act 1999 also helps them out with powers they have.

Q290 **Mike Amesbury:** Shelter gave evidence suggesting that actually a new band for LHA would be useful. Is that something you would consider for studio flats?

Mrs Wheeler: We use housing benefit to help cover rental housing costs; it is not actually used to cover quality. Introducing a link between housing benefit and the quality of accommodation could have unintended consequences. Having said that, we are working very closely with the DWP to see what other levers we have to incentivise quality. We expect local authorities to crack down on rogue landlords.

This is where it really comes back to what we want to do in the first place: we want to be even-handed with the good landlords and we want to crack down on the rogue landlords. This would be an area where we feel there is opportunity for local authorities to do that, particularly with the civil penalties of up to £30,000. It is not putting a new extra financial burden on local authorities to do that when they know there is that opportunity for civil penalties.

Q291 **Helen Hayes:** I wanted to follow up on that. You said, Minister, that housing benefit is used to cover costs, not quality. Because there is a cap with the LHA, there becomes an inevitable link between quality and the LHA. In the local authority areas I represent, for example, they are on a very swift trajectory to a situation where there will be no properties in either borough that will be fully covered by the LHA cap. What that means is that you end up with a larger and larger number of tenants chasing the poorest quality accommodation, because that is all they are able to access in the market.



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I would argue that, if the LHA is there to cover costs, that is one thing, but a capped LHA inevitably has a much more complicated relationship with quality than that. I wonder whether you could comment on that.

Mrs Wheeler: Sure. Of course, you do not mention the discretionary housing benefit allowance. Councils can top that up.

Q292 **Helen Hayes:** That is shrinking and running out. Lambeth has no more DHP available until the end of the financial year.

Mrs Wheeler: It is practically the end of February, so there are four weeks left before the new financial year. Normally in December local authorities know how at risk they are of going to the wire on that, and local authorities are in a position where they can write to the Department about it. I certainly know other councils have done that.

Q293 **Helen Hayes:** Will the Department grant additional funding in those circumstances?

Mrs Wheeler: It certainly did for my council.

Chair: There is an open chequebook. Thank you, Minister, for that.

Mrs Wheeler: That was before I got here, I hasten to add.

Q294 **Bob Blackman:** Minister, this is not just related to London, but it is clearly a very big London-wide issue. Of course, right now there is a perverse incentive on landlords to break up these properties and let to single people and then claim housing benefit on the properties, which enormously increases the rental income. The quality can be very good, but the size of the property is pokey, to put it mildly. I understand completely that it is not necessarily your decision to make, because it may be a DWP decision on housing benefit, but are you looking, with the DWP, to reduce or eliminate this perverse incentive to create these properties in the first place?

Mrs Wheeler: Yes. As part of a bigger picture, it is one of the areas we are looking at, and we are working very closely with them. Particularly, I need to reinforce that this is part of the work that we are doing on rogue landlords. The public would expect us to protect the public purse at the same time as looking after tenants in the private rented sector, as the lady says. I am not allowed to call you Helen, am I? It is very difficult for tenants in the private rented sector, who quite often are guided there by the private rented sector staff in the local authority housing team.

It is almost like a "Catch 22", is it not? We have to make sure the quality is there, and that is why we feel that having civil penalties for environmental health officers is the right way to go on this.

Q295 **Bob Blackman:** I come back to the issue: it is not always the quality. The quality can be very good, but it is the space and the space standards that are being applied. It allows a property that maybe would have one level of rent to suddenly have quadruple the amount of rent, or even



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more, by splitting up into smaller units specifically for single homeless people. This is the perverse incentive. I am trying to make sure we are going to see some action from Government. It might be quite right that we provide housing benefit for people in those conditions or positions, but we are enacting a deliberate perverse incentive on removing family housing and putting in accommodation for single homeless people, which has all sorts of implications but, in particular, leads to a huge profit for landlords.

Mrs Wheeler: You are a person who managed to steer through a very special Bill to become an Act in this Parliament, looking after potentially single homeless people. It is an issue that we will look at again.

Chair: Are you going to write a note on that at some point?

Mrs Wheeler: Chair, you are getting my people to write a lot of notes.

Chair: I am sure that is what they enjoy doing. It would be very helpful if we could have that. Thank you very much indeed.

Q296 **Mr Prisk:** Minister, can we look at the regulatory framework for the private rented sector as a whole? Certainly through this inquiry, oral evidence and written evidence has shown that there is actually a lot of legislation. The problem is that it is not necessarily interwoven; it is not necessarily coherent. One person described it as like a ship having a lot of barnacles. Do the Government have any plans to overhaul the legislation so that it is more coherent and integrated and therefore easier for both tenants and landlords to understand and apply?

Mrs Wheeler: I do appreciate why you ask that question. We have heard the evidence that has come to the Committee that there is this piecemeal legislation or it seems as though it is piecemeal legislation. You have to be a little bit more careful there and be a bit more nuanced. The existing legislation is delivering results in terms of improving standards and quality. We want to work with the sector to ensure this is a coherent way forward. Equally, this is not just about working with the good landlords. It is a key issue for tenants to understand their rights. We feel a way forward is to support people more so they understand and use the legislation effectively. That is the sort of action we are taking.

Chairman, what we are looking to do is to explain the legislation that is out there rather than introducing new overarching primary legislation to bring it all together. We do not think there is a real appetite for that out there.

Q297 **Mr Prisk:** Can I follow that up? The housing health and safety rating system is in many ways based on data that goes back 12 years in terms of the quality or the assessment of the actual properties, so a lot of it is out of date. Is this not somewhere where the Government could usefully update this? That does not necessarily mean passing primary legislation, but it could actually make sure the way in which that legislation operates relates to houses and standards as they are today.



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Mrs Wheeler: You are absolutely spot on. This is one of the jobs I have had to sign off on in the last three and a half weeks or however long it is I have been here. We have these "how to" guides, and we are updating the new "how to" guide for tenants, landlords and people in the profession, if you like.

One of the things here is that, as you know, many landlords in the private rented sector are almost accidental landlords. They inherit granny's house or whatever it is, and so they make mistakes because they do not really know what they are doing. This is about things like the deposit. They do not realise that it actually has to be not just in a separate bank account but actually in an accredited scheme. If they get that wrong, there is a massive fine they can have, which is automatic. There is no way you can say, "Honestly, I did do the right thing and they were going to get it back". That does not cut the ice. The law is written as it is written. That is now going to be on the front page of the "how to" guide for landlords. It will say, "Which protection scheme is the deposit in?" It will not ask, "Have you done it?" but, "Which one is it in?" We are updating things like that, and they are going to be out very soon.

I had a briefing over the weekend, and I thought they were going to be launched this Sunday. I do not know why we launch things on Sunday. I was going to say something else. It is my day of rest. I am listening to *The Archers*. I am not launching "how to" guides on Sundays. Anyway, it was a bit of a misunderstanding. We are going to be doing that around about Easter-time instead.

Mr Prisk: Okay, so it will be a slightly different Sunday.

Mrs Wheeler: Yes, an even more important one.

Q298 **Mr Prisk:** It will be an even more important Sunday. You are looking to do the clarification now rather than necessarily waiting for the Tenant Fees Bill. You are going to something now and perhaps then redraft that again maybe later in the year.

Mrs Wheeler: We will see how this goes. They are actually updated regularly. Becky and I have been talking about it quite a lot. I did not realise quite how regularly the "how to" guides are updated. We will come on to the Tenant Fees Bill a bit later.

Q299 **Mr Prisk:** Do you recognise the need for the HHSRS?

Mrs Wheeler: Yes, absolutely. Karen Buck's Bill is going to do that.

Anne Frost: I recognise that you asked the question specifically about the HHSRS. You know it is going to be constantly under review. We are constantly looking at that. At the moment, we have Dame Judith Hackitt looking at fire safety. Our commitment is to wait until we have seen her report and then work through whether we need to review the HHSRS off the back of that. It would be strange to do it beforehand.



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Q300 **Mr Prisk:** Coming on to Karen Buck's Bill, Minister, one of the issues here is that obviously most of us applaud the importance of giving tenants greater power or a sense of greater power. Looking at the practicalities, as you said, it is quite difficult for tenants to know what their rights are and what the law is. The idea that tenants will have the right to take landlords to court themselves sounds great, but the challenge is then how that works in practice? We heard quite sceptical views, including from local authorities, as to whether tenants will be able to do that. What are the Government thinking about this as to how tenants will be able to do that? One person suggested that having a criminal test as part of discussions actually makes it a harder thing for tenants to engage with, and that there may be an argument for having a lower test in addition.

What is the Government's view about enabling tenants to take that right and make that a practical reality?

Mrs Wheeler: This is a bit carrot and stick. In terms of these new opportunities for tenants to go directly to court, it will not get that far in 99 out of 100 cases. Most tenants will decide whether they are going to bring cases, but there will be clear visual evidence that there is a serious hazard in the property. That will incentivise the environmental health authorities to actually act on behalf of the tenants, with the incentive that the civil penalties will actually be kept by the local housing authority.

Similarly, if there are any issues with the rent, then the payment back can go to the tenants as well. It is almost like another opportunity for the housing authority to actually use its muscle. It does empower the tenants, if they want to. Ultimately if a tenant is eligible, they will get legal aid.

Q301 **Mr Prisk:** Right, so your expectation is that most cases will not go to court.

Mrs Wheeler: Yes.

Q302 **Mr Prisk:** But rather you see this as a way in which local authorities can have properties highlighted to them to as being problematic.

Anne Frost: Could I clarify? The key thing in Karen Buck's Bill is that tenants themselves can take the initiative—that is what it is supposed to be about—and that they can enforce this. I agree with the Minister. The way it is currently drafted, in terms of relying on the HHSRS, means in our view that they will be able to see if there is a hazard that is applicable. Assuming the Bill goes through, we would provide guidance to tenants in any case, but our expectation is that that power provided to tenants will mean that landlords are less likely to want to go to court, because they know that proof is there up front.

Q303 **Mr Prisk:** Obviously, after Dame Judith Hackitt's report, those regulations will be updated in that context.

Anne Frost: Yes, we will look to see whether we need to off the back of that, yes.



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Q304 Liz Twist: I just wanted to come back to the HHSRS. You were being asked about whether or not that would be updated, and you said you regularly update things. We heard from some of the chartered institutes last week, and some of the local authorities, about some of the difficulties of working with the current HHSRS. My understanding is that it was published in 2006 but the data actually predates that. Will the Department be looking at a thorough review of those standards to make them applicable to today's housing market and today's standards?

Mrs Wheeler: We have actually said quite categorically that a decision on whether or not the guidance on the HHSRS will need to be updated will be taken following the Judith Hackitt review, and we are not going to pre-empt that at all.

Q305 Liz Twist: I understand that point. I absolutely take that point on board, but of course there will be much in those safety standards as well. What I am seeking is whether there is an acceptance that there is a general need for an update, given the changes in the housing market and housing stock in the meantime, to ensure tenant safety. You talked specifically about building regulations and Karen Buck's Bill. Will there be a thoroughgoing review?

Anne Frost: It depends what you mean by "thoroughgoing". Obviously, we want to keep this under review. Obviously, we want to make sure that this is something that is easy to use for everybody who needs to use it. It is really difficult to say now exactly how that review will progress, not least because we need to wait for the Hackitt review to be published, but we will be looking at this with an eye on how useful it is.

Q306 Liz Twist: Is there an acceptance that the information contained in the HHSRS is out of date?

Mrs Wheeler: No. The 11 tests are very straightforward. They are as strong today as they were in 2004, so I do not agree with you.

Liz Twist: It is not really me.

Mrs Wheeler: I beg your pardon.

Liz Twist: It is the chartered institutes telling us they found them difficult to use in today's context. That is why I am asking the question.

Mrs Wheeler: That is very interesting.

Q307 Matt Western: Minister, through the English Housing Survey I understand that there are an estimated 720,000 properties in the private rented sector that have one or more category 1 issues with them. Yet in 2016 there was a survey done that showed that six out of 10 local authorities had failed to prosecute landlords for these sorts of conditions. Why is enforcement in local authorities so low?

Mrs Wheeler: It is shockingly surprising. That will give you the headline for the day, which is wonderful. What is important is that the Government have recognised this, which is why in April 2017 it brought



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in the change in the civil penalties and the extension of the rent repayment orders. There is an opportunity there for environmental health officers to really get to grips with these sorts of things.

We all know it is an expensive thing for a council to enter into these sorts of enquiries. Having the civil penalty actually rest and stay with the local authority is a big incentive. Particularly if it is housing benefit rent as well, that housing benefit rent will be repaid by the rogue landlord as part of that penalty. That money then goes straight back into improving housing in that area. That is a massive incentive for councils to do more.

Q308 Matt Western: It is interesting. Last week, we heard from the Bournemouth, Boston and Wandsworth authorities. They had very different experiences and seemingly very different approaches for how they went about enforcing and what levels of prosecution they had. Of the six in 10 that failed to prosecute, which I was just referring to, the statistic was something like that Newham accounted for half of all prosecutions. There is a real disparity between those authorities that are going after it and those that are not.

What we were hearing in evidence last week was that, clearly, it is quite expensive for cash-strapped authorities. That is not a political point; it is just the reality. In all sorts of enforcement, like licensing or whatever it may be, authorities are saying, "Is it really worth going after that landlord for very little return?" even though, as you say, the money can go back into the pot.

Mrs Wheeler: I would be frankly appalled if that is what they said. Secondly, I would be hugely disappointed if that is what they said. It is their duty to do it. The difficulty is that it was only April 2017 when these new powers were introduced, with the money staying with the authority and particularly the rent payment staying with the authority and going specifically into the housing area. It is relatively new, is it not?

Q309 Matt Western: It is about cost. It is cost versus benefit or cost versus return. They are saying the returns are just not there. The fines going through are just paltry.

Mrs Wheeler: Again, I hear what you are telling me but I do not accept that. It is that council's duty to do that. I am sure that if any leader of any council heard their officers talk about a cost-benefit analysis on this, that would be outrageous. It is their duty to do this on behalf of clearing rogue landlords out of it. This is why one of the important things that is coming along is the banning orders. That is going to be a really massive change. But it is for the local authorities to do their job.

Q310 Matt Western: I certainly hear what you say. I just have a further point. The Controlling Migration Fund has made £100 million available over four years to the 2019-20 financial year for local authorities to tackle local service pressures associated with recent migration, including tackling criminal landlords. How effective has this funding been and will the Government make available any additional funding to support local



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authorities to make use of the new powers they have been given in recent years?

Mrs Wheeler: That is a really good question. Again, this is all the way around the country. Different local authorities have different issues with this. Out of the £100 million that is available, £53 million has been allocated already. As most of these projects run for two years, it is too soon to say how successful the actual project has been, but we are commissioning an evaluation into the programme and we are funding individual evaluation projects where the money has already been allocated. Certain councils have actually already started the work.

We do want to make sure we are getting value for money for this, and that it is actually doing what it is meant to do. With the £53 million out of £100 million that has already been allocated, we are putting it on pause. We want to do these evaluations. Later in the summer, we will open up the scheme again for other councils and other projects. There is more money coming along, if councils want to apply.

Q311 **Matt Western:** I am fairly new to this. How does that budget divide up by all the authorities there are out there? How much would they have on average each?

Mrs Wheeler: No, it is for local authorities to apply. It is a bidding process.

Q312 **Bob Blackman:** Minister, moving on to licensing systems, it is fair to say that this Committee has heard conflicting evidence about the benefits of selective licensing. Clearly, you have already announced that you are going to be looking at what you are going to do on selective licensing. Could you just explain to the Committee what the review will cover and when your review will take place?

Mrs Wheeler: We agree that selective licensing has been an interesting new tool. We do want to see where it is targeted to address particular problems in areas associated with the private rented sector. Where it is working well, we want to make sure that this good practice spreads out to other areas that are similar. It is very different across the country. It really is. Where we review selective licensing, we are launching this review after the Easter recess. The plan for the review is to undertake research into the effectiveness of selective licensing, and the findings will determine whether any changes need to be made or not.

Q313 **Bob Blackman:** Specifically, will you be looking at the quality improvements where selective licensing has been implemented?

Mrs Wheeler: It is really more about whether the licensing has been used as a tool to attack the problems the councils at the time came to us saying they wanted it for. There are four different types, so it could be about antisocial behaviour, rogue landlords, students, the Controlling Migration Fund or whatever it might be. We need to drill down into those four areas, because it is not a catch-all.



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I was recently looking at some councils that have put in for selective licensing. Each time, I have to balance the evidence they have given to me that it applies or it does not apply. I might agree to it on an HMO basis, but I would not agree to it on an antisocial behaviour basis. It is very much a jigsaw across the whole of the country.

Q314 **Bob Blackman:** One of the issues that has been raised with us, notably by Newham, was the issue of landlords paying the due tax on rent they receive. Is that going to be included in your review?

Mrs Wheeler: We are working with HMRC, but they are actually leading on this work. They are leading on the work considering whether more should be done to encourage landlords subject to licensing to comply with tax laws. HMRC have actually opened up a consultation on this. It is their piece of work, rather than ours. That consultation is not closed yet, so it is at an early stage.

Q315 **Bob Blackman:** At the moment, there is almost no requirement for a landlord to declare they own a property or to declare to a local authority that they own a property. Are you considering that change?

Mrs Wheeler: Not to have a national register, no. It would be hugely bureaucratic.

Q316 **Bob Blackman:** Are you considering a local register?

Mrs Wheeler: Different councils do it in different ways. Many councils have a voluntary register, and that works very well because that helps them with grants and things like that. What we will also probably do is, again, use my favourite carrot-and-stick approach. When we get to the banning orders and we have this list of rogue landlords, that will be very important for local authorities.

Q317 **Bob Blackman:** You have mentioned the process you go through in terms of determining selective licence applications. There has been criticism from several local authorities saying that the process is very slow and very bureaucratic. They believe it is unnecessary. As we sit here, the rules require local authorities to apply if it is for 20% of their area. Are those rules correct? Should they be deregulated? Should local authorities have more freedom over what they do or are you going to tighten the rules?

Mrs Wheeler: The difficulty is that because there are four tests we look at and each area is genuinely different, it would not be appropriate to change the rules right now. It is sensible that it does rest with central Government on the licensing side of things. Equally, we are doing a review and evaluating where we have got so far with areas that have been licensed. I will want to see the evidence that comes out of that review. It is not appropriate to say more until I have actually seen the evidence from that review.

Q318 **Bob Blackman:** How many local authorities have had requests refused



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for selective licensing schemes?

Mrs Wheeler: I know they have. I do not have that figure now. Does anybody have that figure? It is more not that they have been turned down 100%, but they have been turned down on one aspect of the four or two aspects of the four. In the last one I signed off, they wanted 100% of the area; it ended up being 52% of the area. They wanted it on four reasons, including antisocial behaviour. On one area I granted antisocial behaviour, because there was evidence for it; on two other areas I did not grant the licensing on antisocial behaviour. It was more individually drilled down areas rather than a blanket.

Q319 **Bob Blackman:** From your perspective, what are the alternatives available to local authorities that do not have selective licensing schemes?

Mrs Wheeler: They can go back to Article 4, can they not, for planning, if that is what they wanted to do? I know many councils do not want to do that—I appreciate why—but it is a power that they have. Even so, if they present me with the evidence, I will grant that licence.

Q320 **Bob Blackman:** The landlords' associations have been quite critical about licensing schemes. They say there are positive alternatives. Will you look at those positive alternatives as a means of enforcing the improvements to quality we all want to see?

Mrs Wheeler: I am always happy to look at new evidence. The difficulty is, as ever, that it is the rogue landlord we want to get at; it is not the good landlord. The Residential Landlords Association or whoever can work with their local council. As I say, I know a number of councils have a voluntary list and voluntary scheme. If you can do that, that is fantastic, and that is how it ought to be.

Q321 **Chair:** I just want to pick up on a couple of points there. I knew you when you used to be a localist. Do you really think you know better than the councillors on Blackpool Council about what is best for their area?

Mrs Wheeler: Believing in localism, they will come to me with the evidence, and the evidence will say whether it is acceptable or not. There has to be a high threshold. If we are bringing in very strong laws and a quite bureaucratic workload for different groups, which therefore will have a knock-on effect on cost, let alone the licence to register at all, then it has to have a high threshold. That is appropriate.

Q322 **Chair:** If you are not prepared to allow local authorities to make the decisions, as part of your review will you have a look at the process they have to go through in order to get a selective licensing scheme? Everyone complains that it is bureaucratic, burdensome and costly. We have talked about the cost pressures on local authorities. Will you have a look at that as well as part of your review?

Mrs Wheeler: I am very happy to, Chair.



Q323 Chair: I just have one other point that Bob Blackman raised. It is this issue about finding out who actually owns property so we can start taxing them on their rental income. There was a discussion not in this Parliament but the one before last about this. Angela Watkinson brought in a Private Member's Bill about requiring local authorities to collect information from residents about who owned the properties they lived in. The Government drew attention to the fact that local authorities do have the power to do that as part of council tax returns. They even issued some guidance to local authorities explaining what the power was.

Would you have another look at that? I do not think that many local authorities do it, and it is a very cost-effective way of collecting information that can enable local authorities to know who owns properties but also, actually, the revenue to know as well. It is a win all around.

Mrs Wheeler: The private rented sector is 20% of all properties. It has grown exponentially, has it not, over the last 20 years? It has changed the way local authorities ought to be running their businesses, for want of a better word. This is important where you have got certain types of housing where you might have vulnerable people. Whether it is to do with flooding or whether the electrics go out and the team have to go into action and take around electric fires or whatever it is, it is important for those councils to know who their loyal subjects are and to look after them. Certainly, looking at the advice that came out after the Angela Watkinson Private Member's Bill or ten-minute rule Bill, that will be something very interesting that we could look at.

Chair: Maybe you could write to local authorities to say what their powers actually are, because a lot of them simply do not use them. That would be helpful, Minister. Thank you.

Q324 Helen Hayes: The Government announced a year ago, in February 2017, that they would introduce a new affordable private rent policy, to be set out in the forthcoming revised National Planning Policy Framework. Can you explain what this policy will cover, how it will apply and the difference it will make over and above the current affordable housing policies that local authorities are able to apply?

Mrs Wheeler: Yes. There are two or three things, so let us set the base for starters. The single most important thing we can do to help with affordability is to increase supply. We have delivered over 346,000 new affordable homes since 2010, including 248,000 affordable homes for rent. In 2012, the Government launched a £3.5 billion PRS guarantee scheme to help grow the sector.

We want to drive better practice in the sector. Build-to-rent operators do not charge tenancy fees. Quite often, they offer three-year, family-friendly tenancies, which give renters stability and security, but of course there is no obligation on a tenant to take that up if they want the flexibility of a six-month or a 12-month one.



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We are looking at where build-to-rent has affordable rents—certainly at 80% of the local housing-market rent. As a part of the planning issues and as part of the negotiations with the good old-fashioned 106 agreements, it could be that local councils could ask for that rent to be even lower as a percentage of the area. That is something we are asking councils to look at for the future.

Q325 Helen Hayes: Essentially, it is an extension of the policies on affordable housing.

Mrs Wheeler: That is right. This is specifically about build-to-rent.

Q326 Helen Hayes: Do you have any plans, therefore, to look at the viability assessment regime? We already have a situation where many developers are able to deliver far less than the council's stated planning policy level of affordable housing, even at a level of up to 80% of market rent, because they are able to argue on grounds of viability—and it is not always accessible in the public domain—that they cannot afford to do so. What I am struggling to imagine is how any private sector organisation specifically delivering rented property in the private sector would accept any reduction in the level of market rent they were able to charge, and how, therefore, the policy would work in practice.

Mrs Wheeler: I completely understand why you have a level of scepticism. However, the good news is that the big, national, long-term investors are actually looking at this as a solid-return investment for them. The big pension funds and things like that are exactly the sorts of groups who are coming in to this and having 200 units at a time. It is a real game-changer.

Q327 Helen Hayes: Why would they be prepared to do that at less than market rent? How will you equip local authorities to be able to force them to do that? That is my question. It is very different to rented accommodation provided by the social rented sector.

Mrs Wheeler: I suppose you and I are starting from different points on this. It is not a matter of forcing people, and it is not a matter of waving a magic wand. It is a very good return for them, and they know that as a matter of public policy it is a good thing to invest in. I am not having to make people do it; businesses are making the choice to do it.

Helen Hayes: But my question is specifically about the affordable private rents.

Mrs Wheeler: No, I appreciate that. This is build-to-rent; it is build-to-rent at affordable prices. That is what they are doing.

Q328 Helen Hayes: I will leave that there. We have received evidence from lots of local authorities about the ways in which they are currently trying to intervene in the private rented sector, including rent deposit schemes and incentives to owners of empty properties to rent out their homes. Do you support these initiatives and do you consider them to be a good use



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of local authority resources?

Mrs Wheeler: Absolutely, yes. I know councils who have been doing it for 20 years, and I am amazed other councils have not. Every council gives it a different name, but it is key money. It is the deposit money to go in. That is a huge incentive.

If there are, again, accidental landlords who have inherited granny's house and do not know what to do, the council can actually manage it for you, if that is what you would like. I am amazed that more councils do not do that. It is not a London thing; it is maybe a regional thing. There is more opportunity to do it. I know loads of councils do it. In effect, they will not charge the 8% that a letting agent or a management agent might charge, and they will be looking after the tenants whilst they are there. They will know the rent is going to get paid to the amateur landlord.

Q329 **Helen Hayes:** Are you actively monitoring the areas of the country—like London but not only London—where there is this intense pressure on the level of rent in the private sector bumping up against the LHA cap? There is evidence from the National Audit Office and elsewhere that that is increasing homelessness. Are you keeping that situation under active review? Do you have plans to argue with the Treasury for an increase in resources, under Bob's Act and through other means, to stop the increase in homelessness that we know is happening as a consequence of the inability of local authorities to intervene in that way?

Mrs Wheeler: Yes, and as some London prices are coming down as the supply goes up, that is going to be quite an interesting problem to attack going forward.

Anne Frost: I just want to reiterate something the Minister said before. We are looking at the evidence with DWP about the interaction between housing benefit and the private rented sector. We do not have all that information yet and we need to look at the different impact across the country, but we will pull that together and see if there is anything we need to do as a result.

Mrs Wheeler: That is important, because—I would say this, would I not?—I find it hard to accept the premise of your question. It might be a bit of a London thing and you have one of the highest private rented sector groupings of any of the MPs around this Select Committee, so I do appreciate why it is such a personal cause for you.

Chair: Can we move on now to the draft Tenant Fees Bill?

Mrs Wheeler: This is the exciting one, Chair. Let us go for this.

Chair: It is all of your own making, Minister.

Q330 **Mr Prisk:** Minister, let us start with the even more exciting part of default fees. It was quite interesting, from witnesses on both sides of the



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argument, tenants and indeed landlords, that there is a nervousness about the definition of default fees. There are pros and cons about how specific you are and we have had discussions with your officials in a previous evidence session. Why does the draft Bill not seek to now specifically define those terms, so that everyone knows exactly where they stand?

Mrs Wheeler: Genuinely, we do not think it is practical to impose that. We think the comprehensive list of the different types of permitted default fees is very problematic and may lead to difficulties in the future, owing to the list being incomplete or insufficient. We do intend to provide non-statutory guidance for landlords that addresses the appropriate level of those charges that are permitted, and the guidance notes really are very helpful about what is permitted and what is not permitted.

Q331 **Mr Prisk:** When you say “what is permitted and what is not permitted”, is that an intention where something comes up and you look at it and think, “That particular activity we will now say is not permitted”, or is it that you are going to establish clear principles on which they will be judged?

Mrs Wheeler: Yes, it is that way round. This is a draft Bill and, again, Chair, I should have said straightaway that we really are very grateful for the scrutiny that you have given this; it is most helpful, and there are all sorts of opportunities for rethinks, from what you have been able to dig down into and the evidence that you have taken from everybody else. There will be almost the minimalist of areas where anything could be possibly charged, but basically the rule is that there is no charge.

Q332 **Mr Prisk:** Right, so there will be a list of specific items but there will also be a set of principles?

Becky Perks: No, there will not be a list of specific default fee charges for the reason the Minister explained. We want to put this on the face of the Bill and, in terms of getting a list correct or exhaustive, we do not want to be in the place where we are amending primary legislation in a year or so’s time. The Bill will set out that when the tenant agrees their contract with the landlord and they are made aware that they would be liable for such a fee in the instance of a default, then that would be a default fee. The agent or landlord would need to be clear with the tenant at the time the tenancy agreement is agreed as to whether or not the tenant would be liable for paying that fee and what the amount is that would be charged.

What we intend to put in the guidance is examples of what we see to be the most common, so very much that list that you were describing, but so that we do not have a position where we cannot add to it with a suggested level of the type of the fee that we would consider to be appropriate in those situations. That will be non-statutory guidance to help landlords and tenants to understand those types of default fee.

Q333 **Mr Prisk:** As you rightly say, Minister, one of our roles in trying to



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pre-scrutinise is to work out where problems may come up, and therefore make the legislation better. One of the examples that has come up a number of times is where things happen that are not necessarily a change in the tenancy but nevertheless may allow someone to slip a charge in of some sort. A good example is joint tenancies, two names. The question is: do you consider a fee for a change of sharer? If one of the names changes in a joint tenancy, do you consider that a default fee should be able to be included under that, or is that something where, as far as you are concerned, there is no change in the tenancy, therefore there is no fee chargeable?

Mrs Wheeler: Interestingly, this is something that we have listened to as the evidence has been given, and Becky and Anne have been working very hard on this, particularly Becky. We have listened and we think that this is an area where further clarity is needed. We intend to permit a charge for a variance on the tenancy and charges related to a change of sharer, where these are requested by the tenant. Such fees are not classed as default fees, so it would be appropriate.

Mr Prisk: Let me just clarify that.

Mrs Wheeler: It would be appropriate to charge a fee for a change of tenancy for a sharer when the tenant is asking for that.

Q334 **Mr Prisk:** Right, okay, so where Mr and Mrs Prisk are the two names on the tenancy and Mrs Prisk, for whatever reason, is no longer on the tenancy—we will not go there—in those circumstances, you are saying that that, of itself, is a legitimate charge.

Mrs Wheeler: Yes. In effect, you are bringing in a new name.

Becky Perks: Can I just qualify that? That is not in the Bill as drafted at the minute but we have heard the need for clarity, so, as part of the revision of the Bill, that is an area we are going to change so that it is clear; it is not as drafted at the minute. We recognise it is unclear as to whether or not that would be a default. What we plan to do is, in the revised Bill, make it clear in the legislation that that is a permitted charge.

Q335 **Mr Prisk:** The other half of this is if you have set those out in guidelines, the ability of trading standards to be able to then enforce this effectively. This comes round to the old lawyers' phrase, "reasonableness". Do you feel at the moment, as the Bill is currently set up, that trading standards is going to have the right powers to be able to strongly enforce this, or is this, again, something that, having listened to what we have been looking at, you are recognising that actually there is a bit of change needed to be there?

Mrs Wheeler: "Yes" is almost the answer to that question. That is not very good grammar, is it? We have listened and, again, we think that trading standards does have the powers and the capabilities for coping with where there is not a breakdown, but where they have overstepped



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the mark and need to be brought back into account. Again, it is a matter of civil penalty and for trading standards to deal with that. We think that the non-statutory guidance should be strong enough and clear enough that it would be rare for that to be the case, but it is trading standards that would deal with it.

Q336 Mr Prisk: Reasonableness both in terms of the type of activity being charged for and, indeed, the type of charge—in other words, how much. One of the discussions we have been having is should you just cap fees rather than ban them. Is what you have just described going to apply both to the nature of the activity being charged for and the level of charge as well?

Becky Perks: The guidance is intended to cover the type of charge and the level of charge. It is worth pointing out that already there are protections in existing consumer protection legislation around unfair contract terms. Charging something like £500 for a lost key would obviously qualify as an unfair contract term. What we are going to set out in the guidance is types of default fees. We have gained evidence through the consultation that we did around what types of fees would qualify in that section and what level would be appropriate for that type of fee, to give landlords and tenants guidance, essentially.

Going on to your point about local authorities, we also intend to work with the lead enforcement authority to provide guidance to local authorities, to support them in carrying out their enforcement duties and to ensure there is consistency in the way they are enforcing the provisions.

Mrs Wheeler: Very much to back up what Becky says and to really underline it, in terms of this business about the Consumer Rights Act 2015, agents have a duty to show prominently in their offices and on their website. Again, we have worked out that if you do something on the Zooplas of this world, they also—not Zoopla per se but the letting agents—must have on that advert as well all their fees and charges, so that they are set out clearly from day one. What we have found so often is that you think you are going to be renting a place for £600 a month, £1,000 a month, £2,000 a month or whatever it is, but you do not realise from the first advert that you see the fees and charges that are there. That is why we have come to this point where we just do not think that that is acceptable anymore.

Q337 Chair: Moving on, overall, we are trying to make sure that the intention we share that tenants should not be paying these fees is maintained in practice. Tenants can be asked to pay a holding deposit when it is being considered that the tenancy is appropriate, but is it your understanding that, as drafted in legislation, if tenants fail a reference check they can lose their holding deposit?

Mrs Wheeler: No, I do not think so. It is if they lied about other issues that would mean the landlord would not have gone to that stage in the



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first place. The only fee that the landlord can retain is the cost of the Experian check or whatever it is that they have used. The rest of that holding fee would come back to the potential tenant.

Becky Perks: To clarify, the Minister is right in that if you fail a reference check it does not mean that the landlord can retain the holding deposit. It is to do with providing false or misleading information that then materially affects the tenant's ability to rent the property. It is in those instances that the landlord can retain the holding deposit. Again, we will be providing guidance to say, as the Minister sets out, that that should only really be the amount of the cost to the landlord of carrying out the reference check. If a tenant was to provide factually correct information and had done everything as they should have done, but failed a reference check, the landlord would not be able to retain the holding deposit in those instances.

Q338 **Chair:** "False and misleading information" is a nice phrase, but sometimes that can be innocently provided; someone may not know that they have a black mark on Experian because they had a dispute over a £4 mobile phone bill a few months before, for instance. Under those circumstances, even when the tenant has not knowingly done it but has done it innocently, they can still end up paying, can they?

Becky Perks: That is our position, yes.

Q339 **Chair:** Yes, so it is not intention; it is simply if the information is wrong that the tenant provides.

Becky Perks: And if that materially affects the landlord's ability to let. I should say this has been a really difficult issue to balance in terms of what is fair to the landlord and what is fair to the tenant. We did consider whether we should put "where the tenant has knowingly provided false or misleading information", and we did really explore that option, but then the burden of proof would still sit with the landlord and it is very difficult for a landlord to prove in a court of law whether or not a tenant has done something knowingly. What a landlord can do is demonstrate whether the information the tenant provided seriously affected their decision to let the property. Given that the landlord is going to be liable for a serious fine if they do not return the holding deposit, we thought the way to balance this in the fairest way to both tenant and landlord was not to include the "knowingly" test.

I recognise that that will create some situations, like you say, where, unfortunately, a tenant might in all good faith provide some false or misleading information and lose their holding deposit. With the greatest respect, that would already happen now and we are not, unfortunately, going to be able to solve every ill, but we are hopefully going to make the situation better for 99.9% of tenants.

Q340 **Chair:** The element of the deposit that is withheld can only be that amount that relates to the cost of the reference check.



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Becky Perks: That is not what the legislation stipulates, but we have heard that suggested in the oral evidence and we are considering that. At the minute, the way the legislation is drafted is the landlord can retain part or all of the holding deposit if the tenant provides false or misleading information.

Chair: But you are having a think about it.

Becky Perks: We are having a think about it as a result of the evidence, yes.

Q341 **Mary Robinson:** On that, I have spoken to some letting agents in my area and they are really concerned. They think that this is a London-based Bill, if you like, and they are low-cost and good-value. Around this issue of getting the fee right, how would the cost of a reference check be set? That might be set at a different rate in London than it would in Cheadle.

Mrs Wheeler: It is literally the cost of the reference check. That is the difference. The holding fee is only that you are saying, "I really want to go for that house", and stops everybody else bidding for it; it is that sort of thing. That is what a holding fee is for. If it then turns out that, unless they have knowingly misled, it finishes for whatever reason, then the costs that the landlords have paid for those reference checks—it could be that the prospective tenant will do their own reference checks and then present that, in which case it is up to the landlord whether he accepts that or not.

Q342 **Mary Robinson:** Okay, so the costs that are involved intrinsically in running an office and having somebody carrying out the reference checks are not going to be part of this at all.

Becky Perks: No. Again, this is something I am aware that a lot of landlords and letting agents have raised—that they think the cost of a reference check should be allowed under the ban. It is not something we agree with. Landlords make the decision as to what level of referencing they want to carry out; that is part of them being a landlord.

Going back to the point that was raised earlier about whether the fee should be capped or about there being different fees in different areas of the country, none of that gets away from the fact that the tenant does not have a choice in paying these fees and what the level of fees are. The letting agent is chosen by the landlord. The fees that are negotiated between landlord and letting agent and the level of charges around them is very much within the landlord's gift to negotiate, not the tenant's. We really do think that the ban is the best way of achieving a more fair functioning market in lettings, as is seen in other areas, i.e. the party that contracts the service pays for the service, be that referencing or other types of fees. That is why we have taken the decision that reference fees should be included within the ban. As the Minister says, if a tenant chooses to go out and procure their own services, the ban does



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not prevent them from doing it. It is only where the landlord requires them to go out and pay for them as a condition of the tenancy.

Chair: Mary, your point about different areas of the country probably applies to the default fee as well, which probably you were seeking to get in on as well.

Q343 **Mary Robinson:** It is, yes. In London the cost would be quite different from other areas of the country. Is that going to be taken into account?

Mrs Wheeler: It is an interesting premise, because I have a colleague who is looking to rent a property at the moment and with different letting agencies it is between £200 and £600. This is in regional Derbyshire, so it is more nationwide than some people might think.

Becky Perks: Specifically on reference checks, it is worth pointing out that the holding deposit is a week's rent and so where the reference checks are more, the holding deposit is likely to be more as well, because the amount of rent per week is likely to be higher.

Q344 **Chair:** Moving on to the security deposit, we have had different evidence on whether six weeks might be too long. Shelter and Citizens Advice have said that four weeks is the norm, so why are you extending it to six? Landlords are saying that four weeks would only be the amount of a regular rent payment and if a tenant leaves without paying the rent, you have nothing left beyond it. How are you thinking about that in terms of looking at the evidence so far?

Mrs Wheeler: The evidence really is very mixed. As it happens, the average deposit taken currently is five weeks. We are expecting it to go to six weeks because of specifically the issue of walking away on that last month. I have said this a number of times: it is my complete intention to be even-handed to the good landlords as well as to the good tenants, and we think that six weeks is the right level.

Q345 **Chair:** You have made your mind up about that, have you, in terms of your position so far?

Mrs Wheeler: I think I have made my mind up.

Becky Perks: This has very much been informed by the consultation. We did a long public consultation that had just under 5,000 responses. Sixty-eight percent of people agreed that deposits should be capped. The most popular responses were four or six weeks. Tenants and tenant organisations tended to be less than that, around two or three weeks. Landlords were more than that, around two months. Letting agents preferred six weeks. We did explore looking at both four and six weeks. We very much heard the feedback from landlords around their concern that four weeks' rent left them with less flexibility to let to tenants with pets or things like that. We also heard, as the Minister said, the concern about tenants walking away without paying their final month's rent, which is the reason why we have gone for six weeks.



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What I should say is that we still expect, as happens now, for landlords to consider, on a case-by-case basis, the appropriate amount of deposit to be taken. By setting a cap at six weeks we are not automatically saying all landlords should do that, and the evidence shows they are not doing that. The average is around five weeks and they can set whatever they want. What we are trying to do is prevent landlords from setting unreasonably high deposits, which has a serious impact on tenants' ability to afford a property.

Q346 Matt Western: Was there any disparity between furnished and unfurnished in their responses?

Becky Perks: We did not ask that specific question. The responses did not come out as to whether there was a difference. The deposit data that we have is from the three tenancy deposit schemes and the overall average is around five weeks' rent, and that has been fairly stable.

Q347 Matt Western: The security deposit you are saying is six weeks in amount, but in terms of going back to the holding deposit—

Mrs Wheeler: It is one week.

Q348 Matt Western: Is there a maximum length of time between the holding deposit being taken and the start of a tenancy? I may have missed something previously.

Mrs Wheeler: If it does not go through, they have to pay it back in seven days minus the amount.

Q349 Matt Western: Irrespective of whether it goes through or not, is there a maximum term of the advance payment in holding a property? There are many cases where people have to put down a holding deposit way in advance of the start of a tenancy, particularly, say, in high-churn accommodation, such as student, accommodation.

Becky Perks: I cannot remember the numbers off the top of my head, but yes, the Bill does set out the period that it should be held for. Basically, taking a holding deposit is saying, "I will let this property to you unless something goes wrong", or whatever. The landlord and tenant should agree a date upon which the tenancy agreement will be entered into. It is a period of 14 or 15 days, but the landlord and tenant can extend that mutually. For example, if something had happened and the tenant needed to provide extra information, the landlord could say, "Okay, can we extend this period?" and the Bill gives them the flexibility to do that.

Q350 Matt Western: With student property, 10 months is quite typical, is it? Is that what you have found?

Becky Perks: Students are an odd case in that, yes, they do tend to agree the tenancy up to a year in advance.

Q351 Matt Western: Is that viewed as acceptable?



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Becky Perks: The holding deposit is essentially until the tenancy is agreed. With students, they tend to agree the contract. It is not that they are holding the holding deposit. They will take the security deposit and if they take it into the tenancy, the holding deposit will be refunded or taken off the amount of security deposit that is taken from the tenant. What is happening is the tenant is entering into the contract 10 months in advance of it commencing.

Q352 **Matt Western:** That is acceptable, is it?

Mrs Wheeler: Yes. It is a completely different thing. Also, it is one of those things where, if the landlord gets it wrong, there is a huge fine on the landlord. If he gets it wrong twice within five years, the banning order comes in and it is hugely draconian, so they are not going to get this wrong, or rather they would be completely stupid to do so.

Q353 **Liz Twist:** The mention of pets has reminded me that the Committee has previously considered the issue of what a default payment is and what is coming out of the security deposit. Has any more thought been given to that, about clarifying that position?

Becky Perks: We have, yes. We have provided further evidence to the Committee to say that we are grateful to you for raising that point. We want to make sure that any money that comes through the security deposit at the end of tenancy would also be what is recoverable as a default fee. We want to make sure there is consistency across those two things.

Mrs Wheeler: That was really helpful as a piece of evidence part way through this scrutiny, so thank you for that.

Q354 **Liz Twist:** Moving on to a different question, Dr David Smith from the Residential Landlords Association told the Committee—you might want to write this down—that Schedule 1, sub-paragraph 6, which permits a drop in rent levels if it is the result of an agreed or contractual variation, was clearly a mistake. Is it a mistake?

Becky Perks: It was not a mistake, no.

Mrs Wheeler: The sensible answer is to say that we are working with parliamentary counsel to ensure that the Bill achieves its intention of preventing front-loading of the rent without prohibiting an agreed rent decrease later in the tenancy.

Q355 **Liz Twist:** Will that be clarified in the Bill?

Becky Perks: This is a concern that was raised in the consultation, essentially: that because rent is a permitted payment, the way that it could be charging fees by the backdoor is to front-load the front months' rent. This is what Schedule 1(6) is all about, to try to prevent that behaviour. Where the concerns have been raised is that sub-clause 2 of Schedule 1(6) would render that unnecessary. That specific part of the clause was intended to enable the landlord and tenant to agree a rent



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decrease later in the tenancy. We can be quite clear about our policy intention, which is that we do not want landlords to front-load the rent. We are just checking with our parliamentary counsel to make sure that the legislation absolutely does achieve that.

Liz Twist: That has been considered.

Becky Perks: Yes, it has, thank you very much.

Q356 **Bob Blackman:** Can I just clarify? We are very keen—I think the Committee would be united on this—to see longer tenancies in operation. A tenant signs a tenancy agreement, but the market determines that rent levels generally are going down and so the landlord agrees to reduce the rent on a property. Are we saying that in this draft legislation, as it stands, they would or would not be permitted to reduce levels of rent under those circumstances or others?

Mrs Wheeler: They can and it is to reflect market changes. That ability will be there. That is the second Section 2 bit that Becky was talking about.

Q357 **Matt Western:** Minister, without legal aid or recoverable legal costs, is there any realistic prospect of tenants taking landlords to county court to enforce their legal right to these unlawful fees?

Mrs Wheeler: The straightforward answer is yes. A longer answer is that we did consider whether the first tier tribunal would be an appropriate route for tenants to recover their fees, but tribunals are unable to enforce their decisions, which is why we go back to the county court level. The Bill makes provision for local authorities to support tenants to recover their fees, and tenants are also able to recover their fees through trading standards taking enforcement action. That is the route we would imagine it would take if it got to that stage.

Q358 **Matt Western:** Do you accept that there are many people in the private rented sector—they might be vulnerable people—who are perhaps less familiar with these sorts of processes and will just see this as a huge barrier to taking it that far?

Mrs Wheeler: I appreciate what you are saying about some tenants being vulnerable. This is where Citizens Advice works very well, hand in hand, and helps vulnerable tenants in particular. There are standard letters that it uses to help them draft those and writes them on behalf of the vulnerable tenants. Even more importantly, there are issues now about trading standards, as the lead authority, being able to recover and keep those fees, subject to whatever the tenant ought to be allowed, which means that there is more incentive for local authorities to work hand in hand, particularly with vulnerable tenants. We do not think it is going to get to that stage though. We think that the risk of the county court issue will be so high that landlords will liaise more appropriately.

Q359 **Matt Western:** I admire your optimism. I am not so sure that I share it.



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From my experience in my area, there are a great many people who feel the power is very much with the landlord. I appreciate that this legislation is working to change that balance, but they do see the prospect of challenging landlords as too difficult. They do not feel confident to do it. They feel very weak or disadvantaged in the potential exchange with the landlord. Do you not accept that?

Mrs Wheeler: I understand what you say and, absolutely, there will be certain groups in society who consider themselves more vulnerable and less able to undertake this, but the changes we are making, particularly the April 2017 changes as well, mean that trading standards will be on their side.

Becky Perks: There is also the wider commitment about redress and requiring landlords to join a redress scheme. That will help ensure that landlords are aware of what they should be doing. With tenant-led enforcement it is much clearer for a tenant that they should not be charged these fees and not accept the premise of the fees in the first place. We will be encouraging that through the guidance in the "how to" guides that the Minister mentioned earlier as well.

Mrs Wheeler: Although it may only seem like another piece of paper, exactly as Becky said, the "how to" guides are going to be quite crucial to this in the future, in empowering people and pointing them in the right direction.

Q360 **Matt Western:** We have heard that if the Bill stopped a landlord from getting possession until any unlawful fee has been repaid, this would be more effective for tenants than having to pursue their own claims in the county court. Do you not agree?

Becky Perks: Not allowing a landlord to send a Section 21, essentially. It is an interesting suggestion. It is something that we use in other areas of private rented sector legislation, for example, around gas safety and so forth. Obviously, as the Minister has explained, the enforcement route that we have taken here is very much that it sits with trading standards, and we would be encouraging tenants to understand that they should not be charged fees in the first place. That is the enforcement mechanism we have chosen. We have not gone down the Section 21 route there, in this instance.

Q361 **Matt Western:** With typical authorities that have responsibility for housing, does trading standards also sit within those authorities? If you have a three-tier local authority structure, does it differ?

Mrs Wheeler: It does. It is with the upper tier authorities; there is no getting around that. It is a conversation I have been having with the civil servants, but this is consumer protection law. They will work hand in hand with environmental health or whatever on the 11 hazard areas, but this is consumer protection law, which is why trading standards is the appropriate body at this moment in time.



Matt Western: At this moment, interesting.

Q362 **Mary Robinson:** In terms of the recovery through county courts, would it be anticipated that that would be the small claims procedure largely?

Becky Perks: Yes.

Q363 **Mary Robinson:** My understanding is that the small claims procedure can be quite difficult for some people but has been made more straightforward. Is it then anticipated that trading standards would be able to give a steer towards that and therefore that would be part of the guidelines and the explanation?

Becky Perks: Yes. We have put provision in the Bill for local authorities to help them and we will again. What we tend to do is almost a "how to use the Bill" for tenants and landlords, providing help on all these areas.

Mary Robinson: Any way that that could be made more simple in explaining to people would be really beneficial. Thank you. That is very helpful.

Q364 **Mr Prisk:** Ms Perks referred to landlords now being expected to be registered. This is a huge number of people; this is several hundred thousand people. Are you satisfied this is not going to turn out to be what Sir Humphrey would consider a "brave" decision on your part?

Mrs Wheeler: The truth is that the private rented sector is so big now that we have a duty to make sure that tenants live in safe accommodation and we have reached the stage where it is the right thing to do. I will leave it at that.

Q365 **Mr Prisk:** The law-abiding, decent landlord will do what the law says. The rogue, the crook, the person who is probably also involved in human-trafficking and lots of other grim things, is going to hide around the corners of this in all sorts of ways. The concern a lot of landlords have expressed is that they will do the decent thing, but how realistic is it that the way in which landlords are going to be asked to license themselves and all the rest of it is going to deal with those rogues? Is it not the other elements to this that really matter?

Mrs Wheeler: I live in a semi-rural area but I neighbour a city, and in terms of the issues that the police, environmental health and the local housing authority deal with on things like people-trafficking and, outside more rural areas, the gangmasters and things like that, they have had some astonishingly good results. I do not want to see those issues becoming the norm anywhere across our country, but in terms of the incentive for the local officials to really bite into that, I have been astonished at the enthusiasm to get into it. These prospective new rules and this new Bill will really kick on with local officials, who have pride where they live and pride where they represent, and this will strengthen their arm in those areas. I do not think any of us want to read the



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dreadful stories that we read about with rogue landlords, but it will give the incentive for the authorities to really kick on.

Q366 **Chair:** On the issue of the unlawful fees and how tenants may get them back, county courts and the like can be quite off-putting, in terms of the whole process. We looked at the first tier tribunal as the way of doing it. There is a problem about enforcing borders there, but I understand it is possible for a judgment in the first tier tribunal to be registered in the county court, to be enforced with a county court order even if it is made by the first tier tribunal. Has that been looked at as a way?

Becky Perks: We did look at that. As you say, it is just the time that would take to get the decision to be enforced by the county court. We considered it more expedient to enable the tenant to go directly to the county court.

Q367 **Chair:** There is no way that your colleagues in the Ministry of Justice could make sure that that happened seamlessly.

Mrs Wheeler: We strive for joined-up government, do we not, Chair?

Q368 **Chair:** In saying that, you do not believe that will work then.

Becky Perks: Essentially, this is the same mechanism that we take with regard to the enforcement of the tenancy deposit legislation, so we are mirroring that to support tenants to understand what action they can take in instances where they are charged unfair fees or a landlord does not do what they are supposed to do. I am happy to go and have another conversation with the Ministry of Justice to explore that option for you.

Q369 **Liz Twist:** I want to ask about resources. The LGA told the Committee that the retention of civil penalties will not sufficiently address funding pressures. The Chartered Trading Standards Institute said that keeping the money from the fines does not even cover a proportion of the cost. Will you provide direct funding to local authorities for these duties?

Mrs Wheeler: First and foremost, the idea of the ability to keep these fines up to £30,000 has only been going since April 2017. Similar is true of the fines of £5,000 and the banning orders; they are relatively new business as well. I am sorry that they feel that way, but our view is it will cover it and, even more importantly, getting the rent back as well, particularly as that, in a number of cases where it is housing benefit, is public money and so they will go after that.

Becky Perks: We have set out an assessment of the impact of the costs on local authorities, as we perceive them to be, and we believe that allowing them to keep the civil penalties will fund the enforcement. We believe it will be self-financing. We also believe that it should be the responsibilities of the landlords and agents who flout the law to fund the enforcement. As set out in the explanatory notes in the financial section of those notes, we have said that we will be funding a lead enforcement



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authority to provide support and guidance in that way. We will, as we finalise the policy position, undertake the full new burdens assessment, and that will inform the question as to whether or not there needs to be any additional funding.

Q370 Liz Twist: I guess I sound a bit like a broken record to those who have been before, but where authorities take a proactive approach and one that avoids the need for going to court, do you acknowledge that doing that work will mean that the retention of civil penalties does not recover the cost of that work? If you are not going to court because you are a good local authority and you have talked to your landlords and whatever, you are doing the work without the money.

Becky Perks: That is why we are proposing to create the lead enforcement authority and to create the guidance to help local authorities do some of that. We are also looking at the tenant-led enforcement, to make sure that if none of these fees are charged in the first place and do not need to be recovered, that reduces the amount that the local authority has to do and enables them to focus their resources on tackling the real criminal element, rather than the people who might just be doing it wrong because they do not know better, where they do not have any criminal intent; they just do not understand what they should be doing. We have heard the points around proactive enforcement and it is something we will consider through the new burdens assessment.

Mrs Wheeler: To repeat, there is this thing called the new burdens assessment, and that is quite important; we are open to that.

Q371 Liz Twist: Yes, good. Although this approach to funding is mirrored in the 2016 Housing and Planning Act, is there a risk that authorities will be seen as judge, jury and executioner in recouping the costs from fines?

Mrs Wheeler: That is a very interesting question. If a landlord has done something wrong and if they have broken the law, then they should pay the penalty. If it is particularly to do with any of the 11 tests, then they should pay up straightaway and fix things. As this is about consumer protection law, the trading standards people will know the appropriate level of fine and that is appropriate too, and that is how it should be.

Becky Perks: I should also just qualify that the landlord or agent will have a right to appeal. It is not that trading standards is saying, "This is the fine", and that is categorically it. There will be a right to appeal for the landlord and agent if they feel that trading standards has imposed an unfair fine or imposed a fine in a situation where there should not be one. Also, part of the lead enforcement authority's duty will be to issue guidance to ensure that the level of fines charged in certain instances do relate to the crime committed.

Q372 Liz Twist: Do we have any experience from the Housing and Planning Act provisions as to whether this is working out in practice, or the experience there?



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Mrs Wheeler: It is very early days, is it not? That is the problem. We do want to keep a weather eye on that, because this is now a potential extension of what came in in April 2017, and so we will be keeping that under review.

Becky Perks: It is fair to say local authorities have been very supportive of that though. The evidence the Committee has heard throughout this session has welcomed the additional fines. A lot of people have felt that it was not a significant enough deterrent, and that was definitely the evidence we heard from the consultation: that fees of up to £5,000, for example, which is present in underletting agent regulations, was not sufficient. That is why we specifically consulted on it and the vast majority of consultation responses said that a £30,000 fine, not just to enable local authorities to retain the money but going back to your earlier point about helping them to proactively prevent it, was more of a deterrent to landlords and agents from doing it wrong, i.e. it will not just be a cost of business and hoping you do not get caught.

Q373 **Jo Platt:** In the Bill, why is there not a duty to issue guidance about enforcement, only a power?

Becky Perks: We have listened to the Committee on this and this is very much something we intend the lead enforcement authority to do, so we are looking at making sure that that is a duty. We are looking, with lawyers, at how best we achieve that through the Bill.

Mrs Wheeler: Very importantly, we are very grateful for the work of the Committee and the evidence that has come up so far. We have listened to the Committee and we do intend to place a duty on the lead enforcement authority, so thank you for that.

Q374 **Jo Platt:** Can I just clarify then as well, obviously, about the disproportionate penalties that would occur if there was no guidance and it was just a power and it becoming a bit of postcode lottery, if you like, if one area was disproportionately high compared to another area?

Becky Perks: That is very much what would be part of the lead enforcement authority's purview, to ensure that there is that consistency. That is an approach that, again, was very heavily supported in the consultation, because it happens in the estate agency sector. It is about recognising on the ground that your estate agent might well also be your letting agent and trying to marry up how that works across the two sectors. Having that lead enforcement authority to provide that consistency is an approach that has worked well, and that is what we are seeking to replicate.

Q375 **Jo Platt:** Is the idea that authorities should be allowed to take into account their funding needs as well when setting the financial penalty in an individual case?



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Mrs Wheeler: Not their funding needs. Their costs, definitely. This is not meant to be topping up the general support grant. This is covering their costs.

Q376 **Jo Platt:** It goes back to Liz's earlier question, does it not, about if there are areas that are not adequately resourced or have funding difficulties for whatever reason? Some of the evidence that we have got back relates to that. It goes back to that. If they do not have the resources or the capacity to be able to do that—

Mrs Wheeler: It is interesting, because one of the pieces of evidence you had was that a particular council had already taken on a new member of staff in anticipation of the income they are going to get from doing this.

Q377 **Jo Platt:** Are you sure the right of appeal against financial penalties, as drafted, is comprehensive enough to safeguard the penalty scheme against challenge under the Human Rights Act?

Mrs Wheeler: Definitely, yes. Becky has gone into this in great detail.

Becky Perks: We have, and we are grateful to the Committee for raising this point and the evidence you have heard. Obviously, we are going to ensure that the Bill is fully compliant with European human rights legislation. The Minister cannot sign it off unless we do so, so that is something that we are very keen to make sure.

Mrs Wheeler: I am poised. Thank you very much.

Q378 **Matt Western:** You were just talking about consistency being one of the advantages of having a lead enforcement authority, but what other values or benefits are there to local trading standards? What help or assistance is local trading standards going to be getting from the lead enforcement agency?

Becky Perks: This is partly not just to provide guidance around how to carry out their role, but also we have heard concern—and the Committee has heard concern—about local trading standards resources, so the lead enforcement authority has the ability to step in and carry out enforcement action. I should be clear that is only if the local trading standards wants them to. The primary enforcement responsibility does sit with the relevant local trading standards, but if it requires additional support, particularly, for example, if it is a national agent—and that is, again, why trading standards is quite well placed to undertake the enforcement of this Act, because it tends to spread larger areas and letting agencies, as businesses, tend to operate more across boundaries than, perhaps, landlords—then the lead enforcement authority would be able to step in and support the local trading standards to take action.

The lead enforcement authority also would have the ability to provide guidance to the public and landlords, and give advice to the Secretary of State about how this is working, in order to inform any improvements or



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changes that are needed to ensure that the policy delivers the intention that it is being proposed to meet, essentially.

Q379 **Bob Blackman:** Finally, this issue was raised near the beginning of our inquiry, I suspect, and it relates to the lack of an impact assessment, as opposed to what you actually did, which was an assessment of impact. Can you explain why you have not followed Cabinet Office guidelines and why you produced the document you did?

Mrs Wheeler: This is a draft Bill. There is no duty on us to do what you have suggested with a draft Bill. When it gets to the point of being the Bill, we will have a duty at that point and that is exactly what we will do.

Q380 **Bob Blackman:** You have not followed the template, for example, for the impact assessment in the assessment of impact that you made. That suggests to the Committee that there is a lot more work that has to be done.

Mrs Wheeler: We do need to have independent verification of the work and that is when we will then have the Bill ready. There is no duty now to have that work done at this point.

Q381 **Bob Blackman:** The issue is not about duty, especially given that you are subjecting the draft Bill, very wisely, to pre-legislative scrutiny so that we can help improve it before it is the final version. There just does not seem any logic as to why you did not follow the complete template? I accept completely, Minister, you were not in post when this was done.

Chair: Blame somebody else then.

Mrs Wheeler: No.

Becky Perks: Blame me.

Mrs Wheeler: No, certainly not.

Becky Perks: Our approach is very much in line with Better Regulation Executive guidance on this. As the Minister says, there is no requirement on us to complete a regulatory impact assessment in that format. We will do that and we intend to do that, but we think it is sensible to do it once we have a finalised policy position. We are not hiding anything. The analysis that is contained in the assessment of impact is exactly the same analysis that we will be looking to include in an impact assessment. The template we used was different because we were not going through the independent verification. We really wanted to make it clear that we had not gone through that process yet. We will be looking to send an impact assessment to the Regulatory Policy Committee. That is not something we are trying to avoid; it is just that we wanted to do that at the most appropriate time, and we did not consider that it was sensible to do it while the Bill was still in draft and the policy position was not finalised, because otherwise we would have a number of different impact assessments floating around verified by the RPC. We thought it was



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most sensible to do it once we had the policy position finalised, but it is something we will do.

Chair: Minister, we thank you and your officials for coming this afternoon to answer quite a wide range of questions on the two separate areas that the Committee is looking at. We would also thank your officials for the dialogue they have been entering into with us over the last few weeks, because we all want to make sure that we get the details of the legislation right to put into practice the principles that we all want to see. Thank you for coming this afternoon.