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Chair of the Housing, Communities and Local Government Committee
House of Commons
SW1A 0AA

16th March 2018

Dear Chair,

Thank you for inviting us to speak to your Committee about the draft Tenant Fees Bill. We welcomed the opportunity to share this evidence and thank you and the Committee for its considered examination of the Bill. We are writing to you to give our reflections on the recent oral evidence from Minister for Housing and Homelessness about default fees, and hope you will consider our recommendations as you draft your report.

We were disappointed to hear that the government intends to retain the 'default fees' clause in its current form. Throughout the scrutiny process our organisations have raised serious concerns about the drafting of this clause. We urge the Committee to recommend in its report that the government reviews this clause before introducing the Bill to Parliament.

The current exemption for default fees creates a significant loophole which can be exploited by landlords and letting agents, as there is no limit on what can be charged for or how much these charges can be. The lack of restrictions on the level of potential fees is particularly troubling as it makes this Bill incompatible with consumer contract law. This is because it allows the landlord or agent to impose an arbitrary penalty which is out of all proportion to their actual loss or expense incurred. The Consumer Rights Act 2015 identifies as potentially unfair, a contract term that requires a consumer to "pay a disproportionately high sum in compensation". By not restricting the levels of what can be charged as a default fee, this Bill is inadvertently allowing for such unfair penalties.

Tenants are also unlikely to understand their right to challenge default fees. The expectation that tenants will be able to "understand and compare" default fees, which will be embedded within the body of individual tenancy agreements, and thus vastly more difficult to comprehend than current fee structures, is unreasonable. Evidence gathered during your scrutiny has shown how creative some agents can be when devising charges and the wide variation in how the same fees are described. The introduction of default fees, in its current form, will create a more opaque and confusing market for renters.

As the Minister acknowledged during the recent oral evidence session, many tenants will find it very difficult to challenge unfair default fees. Tenants face significant barriers to action, including fear of damaging their relationship with their landlord, being evicted for complaining, receiving a rent increase in response, or lacking the time and money required to take action. Research has shown how few tenants feel confident undertaking court action. This means many tenants, including many receiving help from Citizens Advice or Shelter, will be unable to complain to their landlord about default fees, report breaches to Trading Standards or go to court.

The risk that loopholes in the current legislation would lead to fees still being charged was openly acknowledged by the Residential Landlords Association and Placefirst during their evidence session. The Chartered Institute of Environmental Health and Bournemouth Borough Council, bodies that will be required to enforce the ban, also raised concerns about loopholes in the Bill. Evidence from Scotland has shown the importance of having a clear ban from the start and any loopholes will make the ban difficult to enforce.

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We acknowledge the Government's attempt to mitigate concerns about the default fee clause by introducing non-statutory guidance. However, we anticipate that guidance will have very limited effect in mitigating the issues outlined above.

We warmly welcomed the government's stated aim for the Bill, to create '*a fairer, more competitive, and more affordable lettings market where tenants have greater clarity and control over what they will pay*'. We have also appreciated government's efforts to balance the various interests and design a system that is as fair as possible. However, as drafted, the default fees clause risks undermining the very point of the bill and does not achieve that balance. We ask the Committee to address this issue in its report and advise the government to reconsider its position.

Please note, this letter is supplementary to the evidence already submitted by our organisations and provides an overview of the issue. For further information and evidence on default fees, please refer to our written submissions.

Yours faithfully,

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