



Ministry of Housing,
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23 January 2018

Dear Clive

Thank you for your letter of 10 January to Dominic Raab on the issue of the draft Tenant Fees Bill. I am responding as Minister for Housing and Homelessness. I am delighted to have taken on this new portfolio and look forward to working with you and the CLG Committee going forward.

As a Department, we are committed to transparent evidence based policy making and value the role of the CLG Committee in pre-legislative scrutiny of this Bill.

It is important to note that the Tenant Fees Bill remains a draft Bill and therefore may not reflect our final policy position. As you are aware, an assessment of impact for the draft Bill was published as part of the Department's written evidence, which was submitted to the Committee on 14 December. The assessment contains detailed analysis about the potential impacts of the Bill in its draft form, including the monetised and non-monetised costs and benefits to both businesses and society more widely. At this stage, we invite all stakeholders to read the detailed assessment of impact and come to their own views on the draft Bill.

At the point the Bill is finalised and introduced in Parliament, we will take appropriate steps to provide further supporting analysis of its overall expected impact – including, where necessary, independent verification of that analysis – in accordance with our legal obligations under the Small Business, Enterprise and Employment Act 2015.

I would like to assure you that I have given due consideration to the impact of the ban on groups with protected characteristics, in line with my duties under the Equalities Act 2010. An Equalities Assessment has been completed and is attached at Annex A for your reference.

Finally, I understand that my officials have been in contact with Committee staff to arrange for me to give evidence to the Tenant Fees Bill inquiry on Wednesday 21 February. I look forward to discussing the Bill in more detail with you then.

A handwritten signature in black ink, appearing to read 'Heather Wheeler', with a long horizontal flourish extending to the right.

HEATHER WHEELER MP

DCLG Equality Analysis **Ban on letting agents' fees paid by tenants**

What is this document for?

This document records the analysis you have undertaken in order to comply with the public sector equality duty contained in s149 of the Equality Act 2010. You should keep it updated as the policy develops.

The questions set out in this document will help you to consider s149 carefully. If you have done that, and relevant considerations under questions 2 and 3 below do not arise, you don't need to complete this template. But you should record the fact that you have asked these questions, and do not consider that relevant considerations arise.

What does the public sector equality duty (PSED) require?

The PSED is contained in s149 of the Equality Act. It requires public authorities, in exercising their functions (including policy-making) to have **due regard** to the need to:

- ***Eliminate unlawful discrimination, harassment, victimisation*** and other conduct prohibited by the Act;
- ***Advance equality of opportunity*** between people who share a protected characteristic and people who don't; and
- ***Foster good relations*** between people who share a protected characteristic and people who don't.

The PSED is not a requirement to achieve a specific outcome, and it doesn't require a specific decision to be taken. Instead, it's:

- a ***procedural*** duty, which means the above considerations must be taken into account in reaching a decision. Policy-makers must *consciously* think about opportunities to meet the s149 criteria, including by avoiding or mitigating negative impacts, so that action can be taken where appropriate.
- a ***proportionate*** duty, which means that the depth of analysis will depend upon the relevance of the s149 criteria to the circumstances.

The duty applies to the decision-taker (in most cases the Minister), and it can't be delegated. This means that considerations which need to be taken into account must be put before Ministers – usually by summarising them in your submission: note that any summary must accurately capture negative and positive issues. Where proportionate, you should direct the Minister's attention to a fuller analysis such as this completed form.

How do I complete this form?

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Consider the questions raised and note your analysis in the empty boxes provided, including the sources of information you have used. PSED is a continuing duty, so keep this document updated. Keep a copy as a record of your analysis.

What about human rights and unlawful discrimination?

The PSED applies in addition to human rights laws and other laws which prohibit discrimination. You should seek separate legal advice where these laws are likely to be relevant. Your PSED analysis is likely to be useful when considering these wider issues.

1. Brief outline of policy proposal

What are you proposing?

Why are you proposing it?

What are you hoping to achieve?

We are proposing legislation to ban landlords and letting agents from requiring private sector tenants and licensees to make any payments (as a condition of granting, renewing or continuing a tenancy (or of arranging for those things) with the exception of the rent, a capped refundable security deposit, a capped refundable holding deposit capped and tenant default fees (such as replacing a lost key or late rent payment fine). In this note, 'tenant' includes licensee and such payments are referred to as 'letting fees'.

The purpose of the policy is to improve transparency, affordability and competition in the private rental market. The Government recognises the valuable service that good letting agents provide to both landlords and tenants in ensuring that properties are safe, compliant and professionally managed. However, concerns associated with letting fees charged to tenants are prevalent across the sector.

Letting agent fees charged to tenants are currently not clearly or consistently explained with the result that many tenants are unaware of the true costs of renting a property. The competitive pressure on tenant fees is very weak as agents are chosen by landlords. Letting agents can therefore impose unfair or excessive fees because tenants have a very limited ability to negotiate or opt-out.

The legislation will ban landlords from charging tenants letting fees and also bans agents and landlords from requiring tenants to make payments or loans to third parties. This

DCLG Equality Analysis **Ban on letting agents' fees paid by tenants**

mitigates the risk of tenants being charged agent fees through other routes and avoids creating a situation where landlords are encouraged to self-manage their properties purely on financial grounds.

The legislation will cap security deposits at no more than six weeks' rent and cap holding deposits at no more than one week's rent to improve affordability at the outset of a tenancy. The legislation also sets out the requirements on landlords and agents to return a holding deposit to a tenant.

The enforcement of the ban will be carried out by local authorities (Trading Standards) with a provision for the designation of a Lead Enforcement Authority to provide guidance and support to enforcement authorities regarding the operation and enforcement of the fee ban. An initial breach of the ban will be a civil offence with a fine of £5,000. Subsequent breaches will be a criminal offence but with the provision to issue a civil penalty of up to £30,000 as an alternative to prosecution. There will be provision for tenants to recover any unlawfully charged fees.

There is evidence that letting agent fees paid by tenants have increased significantly in recent years. The English Housing Survey 2014/15 reports that median fees charged by agents increased by 60% between 2009-10 and 2014-15 (14% increase in mean). The mean average fee amount paid in 2014-15 was £223, while the median was £200. Shelter found that one in seven renters pay £500 or more in letting fees.¹ In the Government's recent consultation on banning letting fees paid by tenants, agents responses suggested that average fee charged at the start of a tenancy is £238 per tenant, whilst tenants said it is £327.²

Finding the money to pay for letting agent fees can be an additional barrier to securing a home and can deter a tenant from leaving a poor quality rental property. High up-front letting fees can significantly impact on ordinary working people's ability to move and secure the right home. When private renters were asked in the English Housing Survey 2014-15 whether fees would affect their decision to move, 35% said that it would be something they would have to think about and 34% said that it would stop them moving to a new home.³ Responding to the Government's consultation on banning letting fees, 69% of tenants reported that letting agent fees have affected their ability to move to a new rented property and 85% reported that letting agent fees have affected a decision in the past to use an agent.⁴ Citizens' Advice found that 64% of tenants experienced problems paying letting agents' fees, and 42% had to borrow money.⁵

¹https://england.shelter.org.uk/_data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf

² <https://www.gov.uk/government/consultations/banning-letting-agent-fees-paid-by-tenants>.

³ <https://www.gov.uk/government/statistics/english-housing-survey-2015-to-2016-private-rented-sector>

⁴ <https://www.gov.uk/government/consultations/banning-letting-agent-fees-paid-by-tenants>.

⁵ https://www.citizensadvice.org.uk/global/migrated_documents/corporate/still-let-down-final.pdf

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Fees are not a one-off cost for tenants. Given that the majority of tenancies are granted for either six and twelve months initially, tenants can expect to pay letting fees regularly either to secure a new tenancy or renew an existing one. These repeated and often significant charges can have a real and detrimental impact on individual finances, particularly for those tenants on low to middle income.

Banning letting fees paid by tenants is intended to make entering and moving around in the private rented sector more affordable, reducing the risk of homelessness for households struggling to cover their rental alongside these additional costs. Tenants will only be required to pay their rent and capped deposit when securing a property. They will be able to see – at a glance – what a given property will cost them in the advertised rent level with no hidden costs. This will result in clearer choices available to tenants over what they will pay, improving transparency and affordability as well as facilitating better movement into and around the private rented sector.

The time of, and services provided by, letting agents should be reimbursed but this should be by landlords rather than tenants. Landlords are better able to shop around for the agent offering the service that they are seeking at the price they want to pay. It is also worth noting that landlords, unlike tenants, can claim tax relief on letting agent fees.

Good letting agents, providing services that represent value for money to landlords, will continue to play an important role in the market. Furthermore, such letting agents will be on a fairer footing to compete for landlords' business since it will be much harder for rogue agents to exploit their position between landlords and tenants. The measure will sharpen agents' incentives to compete for landlords' business resulting in lower overall fees and a higher quality of service for all consumers in the private rented sector.

2. Foreseeable impacts of policy proposal on people who share protected characteristics

Protected characteristics are: Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation (and see below in relation to Marriage and Civil Partnership).

What are the foreseeable impacts of the policy proposal on people who share protected characteristics compared with those who don't? These will be either or both of the following:

Direct impacts on people who share protected characteristics – i.e. impacts which the policy is intended to achieve.

Indirect impacts on people who share protected characteristics compared with those who don't – i.e. the policy advantages or disadvantages people who have a protected characteristic even though it is not directly aimed at those people. Impacts could include

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

their ability to participate, the numbers of people with protected characteristics who might be affected, or the different way that an impact might be felt by a person with a protected characteristic.

The PRS has doubled over the last decade. There are 4.5 million households in England, with the PRS representing 20% of all households. There are now more people renting in the PRS rather than in the social rented sector, including 945,000 more families with children. Protected groups are represented in the Private Rented Sector as tenants, landlords and agents.

Homes in the PRS are provided on the open market covering a very wide spectrum of housing from luxury homes to shared homes in multiple occupation, and this range is important in considering the policy impacts.

Work has been underway with the sector following the announcement of the ban at the Autumn Statement 2016 to discuss the impact. This has included meetings with tenant representative groups such as Shelter and Citizens Advice, landlord representative groups as well as the leading professional bodies representing letting agents. We have also participated in cross sector groups such as the Fair Fees Forum and the Lettings Council. Consideration of the potential impact of the policy proposal on people who share protected characteristics has been an important part of this engagement.

An 8 week public consultation seeking views on how best to implement the ban was carried out from 7 April to 2 June 2017. The consultation sought views on the potential impacts of the ban and this has informed the development of the policy and this equality analysis. We received 4,724 responses to the consultation from a range of individuals and representative bodies. 48% of responses were from tenants, 33% were from letting agents, 11% were from landlords and 8% were from other interested stakeholders. This has provided helpful information on the potential impacts.

In general, the consultation responses showed that tenants overwhelmingly believed that the impact of the ban would be positive resulting in better affordability and flexibility for tenants as well as improved transparency and competition in the sector. More than one third of tenants believed that rents would rise, but one quarter of that group explicitly said that a rise in rents was preferable to upfront fees as it would be more affordable and transparent.

The potential benefits of the policy identified through the consultation cannot be identified as impacting upon a particular group with protected characteristics.

We outline below the impacts, both positive and negative, of the policy on the protected groups as identified under the Equality Act 2010.

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Direct impacts

There are no foreseeable direct impacts on groups who share a protected characteristic.

The purpose of the policy is to eliminate barriers to entry into, and movement within, the private rented sector, providing a more transparent and fairer system for all.

The intended impact is for all tenants to see at a glance what a given property will cost them in the advertised rent level with no hidden costs. This will result in improved transparency and affordability for all tenants irrespective of whether they share a protected characteristic or not.

All agents will need to consider their business models in light of the ban and consider how they should charge for their services. Similarly, all landlords will need to set a rent that takes into account their costs whilst still being attractive to prospective tenants. The policy intent is for this to result in a fairer and more competitive market, and will not directly impact any groups with protected characteristics. The ban will have the same impact on all agents and landlords irrespective of whether they share a protected characteristic.

Indirect impacts

Having regard to the three goals set out in the Equality Act, and having assessed the evidence above, the protected characteristics that have been identified as having the potential to be negatively impacted by the policy are **age** and **race**.

The proportion of Black and minority ethnic groups is greater in the private rented sector than in owner-occupation. According to the English Housing Survey 2015-2016 18% of private rented sector households have a black and minority ethnic 'household reference person' as opposed to 8% in owner occupied. Of households that have a black and minority ethnic 'household reference person' 31% are in the private rented sector.

Similarly, there is a greater proportion of younger people private rented sector than in owner-occupation. According to the English Housing Survey 2015-2016 10.4% of households in the private rented sector are aged 16-24 as opposed to 0.5% in the owner occupied sector and 4.7% in the social sector. Of households with a 'household reference person' aged 16-24 64% of them live in the private rented sector.

[N.B. Household Reference Person is the member of the household with the highest income or, in the event of a tie in income, the oldest member].

Groups who share a protected characteristic of disability; gender reassignment; pregnancy and maternity; religion or belief; sex; and sexual orientation are not found to be indirectly or disproportionately affected by this policy.

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Particular impacts on those sharing protected characteristics of age/race.

There is a risk that groups who share a protected characteristic of age or race could be negatively impacted by the ban. This is because under the ban landlords will be responsible for covering the costs of taking references for a prospective tenant whereas currently this cost is often borne by the tenant. References that are undertaken at the outset prior to the signing of a tenancy agreement include credit or other financial checks to ensure that the prospective tenant can afford the rental and Right To Rent checks. Right to Rent checks have been required by law since February 2016 under the Immigration Act 2014, to ensure that the prospective tenant has a right to reside legally in the UK, and therefore a right to rent property.

In terms of the protected characteristic of age: under the ban, there is a risk that some landlords will choose not to make their properties available if they perceive there to be a higher risk of younger tenants failing the credit check. Landlords may similarly perceive a higher risk of incurring additional costs, for example, where additional checks are required such as a guarantor reference check for lower income tenants. This could therefore lead to landlords discriminating against such tenants when marketing properties and indirectly impact on young tenants who are potentially less likely to be financially secure and more likely to require a guarantor.

Similarly, the ban could have an indirect impact on groups that share the protected characteristic of race if a landlord perceives that a tenant is likely to fail a Right to Rent check. This again could lead to landlords discriminating against such tenants and could indirectly negatively impact non-white and non-British tenants.

In the Government's consultation on Banning Letting Fees charged by tenants concerns were raised that agents and landlords would potentially be encouraged not to let to less financially secure tenants in order to mitigate the risk of losing money. This concern was raised by about 5% of agents and landlords but by less than 1% of tenants. Consultation responses show that for tenants and their representative groups the impacts of the ban would be overwhelmingly positive in terms of increased affordability and access to the private rental sector. Tenant representative groups reported that discrimination already exists in the private rented sector, with landlords requesting higher deposits and fees from tenants perceived to be 'high risk'. They believed that the ban rather than increasing the discriminatory practices in the sector will help to advance the equality of opportunity.

The ban is intended to help all tenants by improving transparency and choice, whether they possess a protected characteristic or not, and promote equal opportunities amongst all, by facilitating equal access the private rented sector market. There are no foreseeable impacts on relations between groups with protected characteristics and others who do not possess such characteristics, such that the policy would need to be reframed to tackle prejudice and promote understanding.

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Consider your policy in light of each of the goals set out in section 149 (underlined below). Do any other impacts or opportunities arise which are not set out above?

The need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

The Act prohibits such conduct, which includes making policies which have this effect. Your lawyer can provide further advice. Note that, for the purpose of this particular consideration only, **marriage and civil partnership** is a protected characteristic.

The need to advance equality of opportunity between people who share a protected characteristic and people who don't.

This includes removing or minimising disadvantages suffered by people due to their protected characteristics, taking steps to meet any different needs they might have, and encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The need to foster good relations between people who share a protected characteristic and people who don't.

This includes tackling prejudice and promoting understanding.

3. Do you need any more information to assess Q2 above? If so, how will you obtain it?

Consider whether obtaining more information is proportionate in the circumstances.

No further information is needed to assess the foreseeable impacts of policy proposal on people who share protected characteristics.

As set out above, since the commitment to ban letting agent fees paid by tenants was first announced at the Autumn Statement 2016, we have been working closely with the sector to consider the potential impact of the policy proposal on all those affected, including tenants, landlords and letting agents. The Government's 8 week formal consultation, which received over 4,700 responses, has been a helpful source of information that has shaped the development of the policy and informed this analysis.

The impact of the ban and the equality analysis will remain under review throughout the pre-legislative scrutiny and passage of the Bill and implementation. We will continue to engage with key stakeholders: tenants, landlords, letting agents, their representative groups as well as other sector experts as the policy develops and is implemented.

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

4. In light of the overall policy objectives, are there ways to avoid or mitigate any negative impacts you have noted in Q2 above?

Mitigations

To mitigate the potential indirect impact of the ban against individuals who may be judged likely to fail a reference check, notably young individuals and non-white and non-British individuals we intend to permit landlords and agents to continue to collect capped holding deposits. The holding deposit will enable a tenant to demonstrate a financial commitment to renting a certain property subject to passing the reference checks. The landlord/agent, upon receipt of the holding deposit, should remove the property from the market and start the process of referencing the tenant and negotiating the tenancy agreement. The acceptance of the holding deposit would therefore confirm the landlord's intention to accept the individual as his/her tenant and mean that the property is not offered to any other potential tenants.

A holding deposit could be offset against the first month's rent should the tenancy agreement be signed as anticipated or returned to the tenant if the landlord does not sign the tenancy agreement. The landlord could retain the deposit if he/she were prohibited from entering into a tenancy with the tenant by section 22 of the Immigration Act 2014, or the tenant, when providing references, provided false or misleading information that is material to the landlord's decision to let the property.

The fact that a holding deposit can be retained by the landlord or agent will mean that no agent or landlord will be financially penalised from referencing a tenant that fails a check in such circumstances. This should therefore reduce the risk of landlords or agents being unwilling to reference young or non-white or non-British tenants.

A further mitigation is that the ban does not prevent tenants from undertaking their own reference checks to demonstrate they are financially and legally able to meet the terms of their tenancy.

Finally, we will continue to ensure that landlords and agents are aware of their legal obligations, including the avoidance of unlawful discrimination, through communications and will take further action through creation of a 'How to Let' guide, which will also promote and encourage best practice.

These mitigations will reduce any potential negative impact and is proportionate with achieving the aims of this policy. The ban will ensure that the PRS works in a more fair, affordable and transparent way for the whole sector.

We therefore believe that the risk of an indirect negative impact on young tenants or non-white and non-British tenants is outweighed by the benefit of the positive direct impacts of the policy.

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

Family test

Families account for 36% of households in the private rented sector; 10% of those are lone parents with dependent children. The policy is likely to have a positive impact on families by improving affordability and potentially offering greater security by encouraging longer term tenancies.

Currently, letting fees can be charged at the outset, the renewal and conclusion of a tenancy, with little to no opportunity for a tenant to opt out of payment. This, arguably, creates an incentive for a short term let since the repeated churn in tenancies prompts business for an agent, and the opportunity to charge fees. The ban on tenant fees may therefore help to promote longer term tenancies by reducing the financial incentive of short term lets. This will benefit families who are looking for greater security, for example those with children in school.

The fee ban will ensure that families, as for all tenants, have greater transparency and control over their rental costs and movement in the sector. This will not only bring greater security but will also help families navigate times of change where they may need to seek alternative accommodation (due to caring responsibilities, relationship breakdown etc.) and alleviate some of the financial pressures that can lead to family breakdown.

5. In light of this analysis, what is recommended and why?

Set out your policy recommendations in light of the above analysis. This could be to adjust the policy, mitigate negative impacts for people with protected characteristics, or continue with the policy despite noting specific impacts, on the basis that these impacts can be justified (note that direct discrimination cannot be justified. In other cases, you may wish to discuss possible justifications with your policy lawyer).

This policy is intended to deliver positive impacts for all private sector tenants, including where tenants may be people with protected characteristics, by achieving a more competitive and transparent sector where tenants have greater clarity and control over what they will pay. Having carried out initial analysis of the potential impacts that the policy could have on people with protected characteristics and families, and in the context of the intended mitigations, our assessment is that the Government will be able to demonstrate that it has shown due regard to its duties under all the relevant sections of the Equality Act 2010. Specifically:

- There is no foreseeable impact on relations between groups with protected characteristics and others who do not possess such characteristics, such that the policy would need to be reframed to tackle prejudice and promote understanding;

DCLG Equality Analysis
Ban on letting agents' fees paid by tenants

- The policy is intended to help all groups whether they possess a protected characteristic or not and promote equal opportunities amongst all, to promote access the private rented sector market;
- The policy may be indirectly detrimental to certain individuals with protected characteristics as it may increase the risk of some landlords choosing not to let to certain groups, but is nevertheless a proportionate means of achieving the legitimate aims set out above. This risk will be mitigated by the proposal for landlords to continue to be able to charge potential tenants a holding deposit. This will be kept under review.

Our recommendation is to proceed with the policy as framed including the proposed mitigations, noting potential specific impacts.

6. Where impacts are or could be significant, when and how will they be reviewed?

Reviewing the actual impacts on people with protected characteristics will help you to understand whether they were as predicted. If they are not, you may want to consider the reasons and if additional mitigation is required.

The impact of the ban on people with protected characteristics will remain under review throughout the pre-legislative scrutiny process, passage of the Bill and implementation. We will continue to engage with key stakeholders: tenants, landlords, letting agents, their representative groups as well as other sector experts as the policy develops and is implemented and consider additional mitigations if required.

This analysis was undertaken by: Becky Perks

Name/Title	Becky Perks, Letting Fees Policy Lead
Directorate/Unit	Private Rented Sector
Date	August 2017

SCS Sign off Jane Everton

I have read the available evidence and I am satisfied with the above analysis

Please keep a record of this analysis for audit purposes and send a copy to [REDACTED] for his records