

Banning Letting Agent Fees Paid by Tenants

Consultation by the Department for Communities
& Local Government (DCLG)

Chartered Trading Standards Institute Response

2nd June 2017

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info)

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme (www.tradingstandards.uk/advice/ConsumerCodes.cfm).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 46% in their budgets since 2010 and staff numbers have fallen by 53% in the same period.

This response has been composed by CTSI Lead Officer & Policy Executive Craig McClue. Should you have any queries or wish to discuss the response please do not hesitate to contact Craig at craigm@tsi.org.uk

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Part A – Questions for all respondents

Question 1	
Do you think that the transparency measures introduced in the Consumer Rights Act 2015 have helped to drive up standards and improve competition?	
Please include reasons	
CTSI response	Yes
<p><i>It is now a well established principle that in order for consumers to make informed purchase decisions they require material information that is clear, unambiguous and provided in a timely manner – i.e. before they are contractually committed. The price is always material information for consumer services and that includes tenancy agreements. The upfront provision of an accurate price should contain the full charge for the service(s) provided – with any optional additional costs being transparently displayed.</i></p> <p><i>By giving consumers accurate price information they are better able to compare which tenancy contracts suits their needs. This drives up standards and improves competition as consumers can make informed purchase decisions and differentiate between the various market options.</i></p> <p><i>However</i>, due to the Government failing to properly resource the enforcement of the provisions, i.e. by funding the local authority trading standards services that were given the responsibility for them - the full effectiveness of the requirements may not have been realised.</p> <p><i>Trading standards services are stretched to breaking point and have seen their budgets reduced with staff levels falling by more than 50% since 2010. Adding enforcement responsibilities without funding and prioritisation to such a system will naturally lead to examples of ineffective enforcement.</i></p> <p><i>In the case of banning letting fees it is not a solution to suggest that funding for the enforcement should come from the fines levied. There simply isn't sufficient staff capacity among trading standards services facing enforcement responsibilities across more than 250 pieces of legislation to make that effective.</i></p> <p><i>In London for example (which has a higher proportion of private landlords and letting agents than most other areas) the lack of capacity for enforcement within the trading standards system became apparent. A report from London Assembly member Sian Berry "Letting The Get Away With It" highlighted the patchy enforcement the 'letting fees' aspect of the Consumer Rights Act 2015 has endured.</i></p> <p><i>The chronic underfunding of trading standards has also been echoed in the findings of National Audit Office in their examination of the consumer protection system report "Protecting Consumers from Scams Unfair Trading and Unsafe Goods". In it they highlight that local authority spend on trading standards has fallen from £213million to £124million since 2011.</i></p>	

Question 2

Do you agree that the ban on letting fees should also include a ban on letting fees charged to tenants by landlords and third parties? Please include reasons.

CTSI Response

Yes

The costs faced by prospective tenants should be clear and unambiguous and that should be the cost of their rent and an acceptable deposit. Any system that doesn't introduce the ban sufficiently wide enough to preclude the fees being charged indirectly will be ineffective.

Question 3

Do you agree that all letting fees, premiums and charges to tenants that meet the general definition of facilitating the granting, renewal or continuance of a tenancy should be banned with the exception of:

- The rent;
- A refundable deposit;
- A holding deposit to take the property off the market whilst reference checks are undertaken; and
- In-tenancy property management service charges that directly relate to an action or service carried out at the request of the tenant or as a result of the tenant's actions?

If no, please list any fees, charges or premiums aside from those listed above that you think an agent, landlord or third party should be permitted to charge.

CTSI Response

Yes

No further comment

Question 4

Do you think that refundable deposits, payable at the outset of a tenancy, should be capped? If yes please indicate the level of the cap?

CTSI Response

Yes

The cap should be set a level that doesn't allow for exorbitantly large deposits to be required from tenants that may result in their punitive retention (thereby impeding the effective workings of the private rentals sector) however – nor should it be too low as to prevent landlords from retaining amounts sufficient to cover losses where tenants may be in breach of their agreement. This amount should be an acceptable multiple/percentage of the monthly rent.

Question 5	
<p>How can Government best support the sector to expand or develop new approaches to minimise the financial burden on a tenant at the outset of a tenancy?</p> <p>For example, enabling tenants to pay their deposit in instalments over the first few months of the tenancy or using a line of credit approach where an agreed deposit amount is blocked on a tenant's credit card.</p>	
CTSI Response –	No comment

Question 6	
<p>Do you think holding deposits, to ensure that a property is taken off the market, should be capped? If yes please indicate the level of the cap</p>	
CTSI Response	Yes
<p><i>As per the answer to question 4 - a balance needs to be struck between competing interests. The level should not be punitive to the prospective tenant nor should it be insufficient and not protect the landlord's legitimate commercial interests. The level is likely to be an acceptable multiple/percentage of the monthly rent.</i></p>	

Question 7	
<p>Agents may occasionally provide bespoke, non-standard services to tenants at the top end of the market, for example, when arranging a property for someone currently living abroad who is relocating to the UK. Do you think there are premium parts of the market where a different approach to handling letting fees may be warranted?</p>	
CTSI Response	No comment

Question 8
What do you think will be the main impacts of the ban on letting fees paid by tenants? Please include any unintended consequences that you believe may arise.
CTSI Response
<i>The ban on letting fees should lead to a clearer price payable by tenants – giving them confidence as consumers. In doing so it should also ensure the market works more effectively and lead to a corresponding increase in standards and effective competition within the sector</i>

Question 9	
Do you agree that the ban on letting fees should be enforced by Trading Standards? If not, how do you believe the ban should be enforced?	
CTSI Response	Yes
<p><i>Trading standards services are well placed to enforce the ban on letting fees as they will have an in-depth local knowledge of the landlords and letting agents within their area. This means they can communicate the new ban more effectively and take proportionate enforcement action wherever appropriate – whether that involves responding to complaints or carrying out specific projects to ensure compliance</i></p> <p><i>However</i>, the points made in our response to question one bear repeating here. <i>Trading standards services are stretched to breaking point following unprecedented cuts in local government funding - especially in the last 7 years where their capacity has more than halved. This has led to gaps in provision across the country and differing local priorities set against local, regional and national enforcement issues. The Government acknowledges that trading standards will require additional support in order to ensure the measures are effective. That should come in the form of additional funding for services to carry out the necessary work on enforcing the ban within their area. The absence of such support will inevitably lead to the ban not being consistently enforced across the country as services necessarily prioritise their very limited capacity across the myriad of their enforcement responsibilities.</i></p>	

Question 10	
Would you support greater data sharing on rogue agents and landlords across organisations in the letting sector?	
CTSI Response	Yes
<i>Intelligence led enforcement should underpin the new ban and wherever legally possible intelligence should be shared across the sector.</i>	

Question 11	
Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information? Please include reasons.	
CTSI Response	Yes
<i>In order for the proposed ban to be effective it will require specific prioritisation and funding. A lead agency/authority providing appropriate advice standards and guidance would be a necessary step to ensuring the correct coordination of enforcement by local trading standards services – provided the lead authority and local services are given the necessary support and resources from the Government.</i>	

Question 12	Answer a) b) c) and/or d)
Do you think that the penalty for non-compliance with the ban on letting fees for tenants should be (please tick all that apply):	
<ul style="list-style-type: none"> a) a civil penalty of up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015; b) a civil penalty of up to £30,000 in line with the civil penalty for committing a banning order offence; c) a banning order offence under the Housing and Planning Act; or d) Other (please list)? 	
CTSI response	b, and c.

Question 13	
Do you think further action is needed to regulate the letting and management agent sector in addition to the ban on letting fees paid by tenants? What additional action do you think should be taken to regulate the sector?	
<i>CTSI Response</i>	<i>No Comment</i>

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