

Policy report



# Letting agencies: The price you pay

Shelter

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# Summary

Nine million people rent their home from a private landlord, a number which has grown rapidly over the past ten years. But renting is not fit for purpose, and in particular it is failing to meet the needs of the increasing number of families with children who have no other option but to rent from a private landlord. Shelter is proposing a range of measures to improve the private rented sector, including action against rogue landlords who fail to keep properties in adequate and safe conditions, and promoting the Stable Renting Contract to give families more predictability. Given the high level of unavoidable contact that renters have with letting agencies, and growing concerns over the poor service and high fees that many face, action to support private renters must consider the role of lettings agencies.

For many renters, letting agencies are an inescapable part of finding and keeping a home. Letting agencies are contracted by landlords to find suitable tenants, and in many cases to manage their properties. As such they act as gatekeepers to a large proportion of the private rented sector and renters have little choice over the agency attached to a property, and little power to negotiate terms with the agency chosen by the landlord. They become locked in a triangular relationship – between letting agency, landlord and tenant – where the interests of all three are often in conflict, and renters are confused by the different roles and responsibilities of agencies and landlords.

There are widespread complaints that some letting agencies fail to provide an adequate basic service to landlords and renters. Agencies claim to professionalise the private rented sector, but there are no minimum requirements in order to become a letting agency, and the industry is largely unregulated.

Renters are also concerned at the high cost of using letting agencies and complain of hidden or unclear fees; one in four people in England and Wales felt they have been charged an unfair fee<sup>1</sup>. Although agencies are contracted by landlords, it has become routine for them to charge renters for elements of the core service. For many, this creates a financial burden, adding to more general affordability problems for private renters.

In response to these concerns, a number of voices – including parliamentarians, consumer groups, the Office of Fair Trading and letting agencies themselves – have called for the industry to be improved. There is widespread support for increased regulation of the industry, and an increasing acknowledgement that some action is required on the fees that letting agencies charge to tenants.

The government has now taken the first steps towards addressing these concerns, with the promise that all renters should have access to independent redress. A recent ruling by the Advertising Standards Authority will also go some way towards improving transparency around the cost of using a letting agency. But there is more that needs to be done to improve standards.

- This report endorses industry-wide calls for increased regulation. The commitment to redress is a welcome first step but the government must go further and bring letting agencies under the same regulatory framework as estate agents. This is a light touch approach which would end the existing legal anomaly and provide increased protection for renters and landlords.
- Renters also need a better understanding of what they can expect from agencies, and the landlord's and agent's responsibilities should be made clear to renters at the outset of the tenancy.

Tackling poor practice alone is not enough. It is clear from Shelter's research that the burdensome cost of using letting agencies is causing widespread concern among renters. Increased transparency of how fees are set and what work they pay for is a necessary starting point, but is not an end in itself. This report questions how far transparency alone can properly address renters' concerns. Rather than wishing they knew what they were paying for, most renters complain about the fundamentally unaffordable cost of fees and the income shock associated with moving. Fees may become harder for tenants to absorb when combined with the additional costs of moving, including rent in

advance and deposits. More than half (54%) of people who have used a letting agency reported experiencing one of a range of financial difficulties and sacrifices to cover fees, including: depleting their savings, cutting down on food and fuel costs and borrowing money<sup>2</sup>.

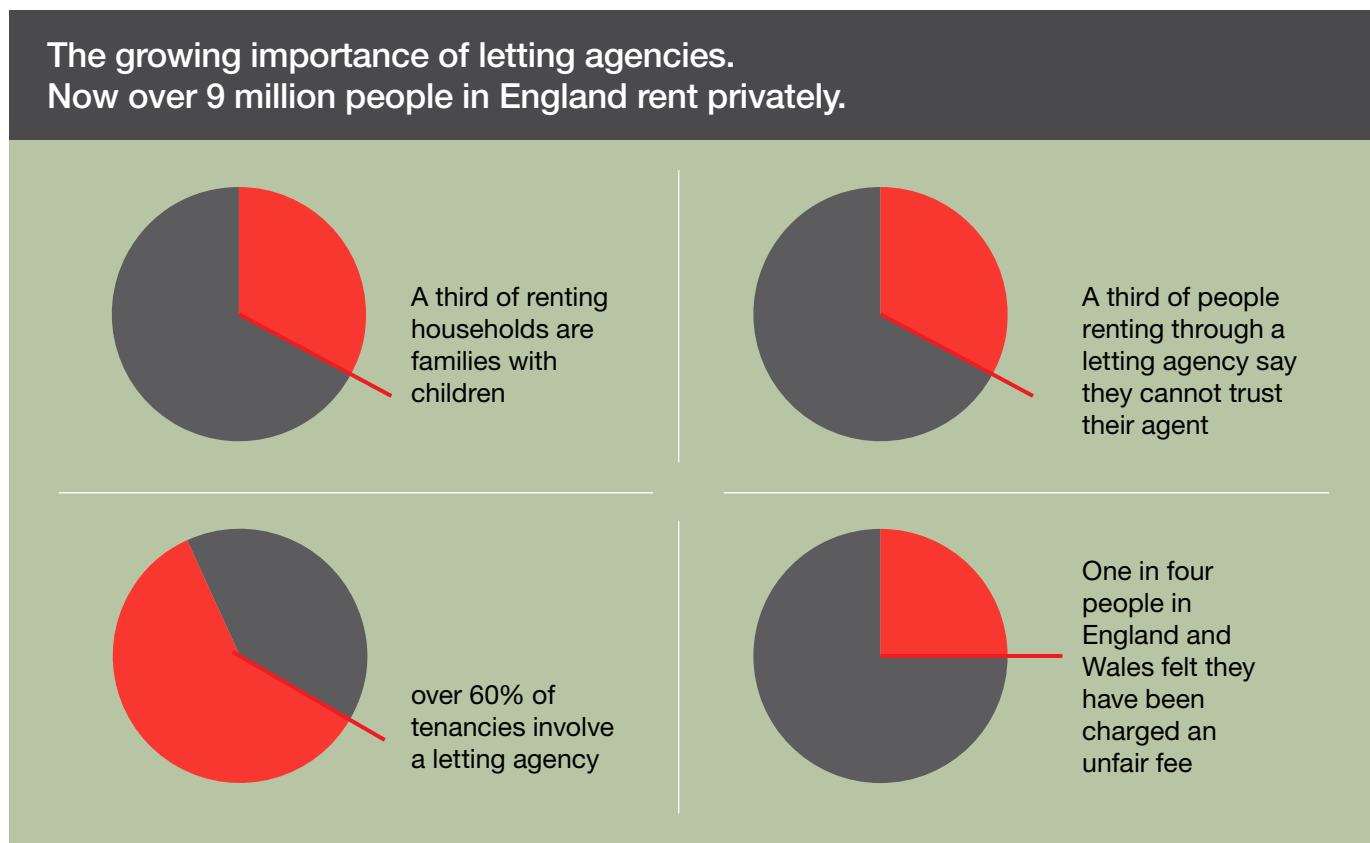
Arguments in favour of transparency assume that tenants will be able to shop around in favour of the most keenly priced agencies, and predict that this increased competition will drive fees down. This is unrealistic and ignores competing pressures created by the lettings market. In a high-pressure, fast-moving and expensive rental market, tenants are motivated to secure a particular property that meets their needs and fits their budget, and have to accept the agency the landlord has contracted.

The tripartite landlord-agency-renter relationship weakens renters' consumer power even further. Agencies price the fees they charge to landlords competitively in order to attract business, but it is all too easy for agencies to compensate by transferring additional costs on to renters. Agencies are contracted by landlords to perform a service on their behalf – but these dysfunctions in the market mean that renters have increasingly been asked to subsidise this service through high fees for services that are often not explained. Measures to improve affordability must recognise the complexities created by the tripartite nature of the lettings industry.

- For this reason this report calls for new legislation to ensure that renters cannot be charged for the costs of setting up a tenancy. This is part of the core service provided by agencies for landlords and should be factored into their pricing accordingly.

This would rationalise consumer pressure, giving landlords – the key actor with real choice in the market – increased consumer power. It would leave landlords in a strong negotiating position that would improve affordability across the rental market, and landlords would be expected to take letting agency costs into consideration when agreeing rents for a property.

Taken together, these measures would improve renters' experience with letting agencies, and restore healthy competition to the industry by clarifying the relationship between agencies and tenants and underscoring that landlords are the real beneficiary of the services that letting agencies provide. They would begin to drive out the worst excesses in the industry, by providing a clear backstop against poor standards and reducing the incentives for profit-seeking amateur agencies to enter the industry. This would mark a significant milestone towards improving the private rented sector for the nine million people living in it.



Sources: English Housing Survey, Rugg & Rhodes; footnote 10, YouGov; footnote 12, YouGov; footnote 1

# Introduction

## Why lettings agencies matter to Shelter

Shelter is committed to helping families find and keep a home. For increasing numbers this will be in the private rented sector, which has become the new normal for a generation of young people and families priced out of any hope of homeownership or access to social housing. The private rented sector has grown by 72% since 2001<sup>3</sup> and there are now over nine million people in England renting privately<sup>4</sup>. The renting<sup>5</sup> population has also changed. A third of renting households are families with children, and half of households renting are 35 or older<sup>6</sup>. Many have not actively chosen to rent privately but have settled in the tenure by default due to high house prices and a shortage of social housing.

Public policy on private renting has generally not kept pace with these changes. Discussion is typified by an underlying assumption that the private rented sector is mainly a transitory home for people who may be more likely to tolerate poor standards. With more people expected to rent privately for increasing periods of their life, there needs to be a greater policy focus on how well the market is functioning and responding to renters' changing needs.

Renting is typically insecure with most renters in England receiving short term contracts of six to twelve months, despite the fact two thirds of renters would like the option of staying in their tenancy longer<sup>7</sup>. And private renting is the most expensive tenure, with private rents on average double social rents and higher than the cost of mortgaged homeownership, even after accounting for homeowners' repair and maintenance costs<sup>8</sup>.

These figures paint a picture of a growing rental market that is increasingly unaffordable and out of touch with people's long-term needs from a home. At its most severe, problems in the private rented sector are fuelling homelessness, with the loss of an assured shorthold tenancy now the leading trigger for a local authority re-housing a household<sup>9</sup>. A disproportionate number of Shelter's clients are housed in the private rented sector. Shelter is therefore committed to improving private renting.

All private renters have a landlord – but the majority (over 60%) also engage with letting agencies<sup>10</sup>, so efforts to improve the sector need to look beyond tenants and landlords and examine the role of agencies.

The lettings industry has been described by its own representatives as akin to the “Wild West”<sup>11</sup>. Regulation is weak – even by the light-touch standards of the private rented sector – and tenants have no guarantee of receiving a professional service. Nearly a third of people currently renting through an agency do not think that they can trust their letting agent<sup>12</sup>. Despite this costs are high and one in four feel they have been charged unfair fees<sup>13</sup>. Landlords are also dissatisfied and complain of agencies not performing tasks effectively<sup>14</sup>.

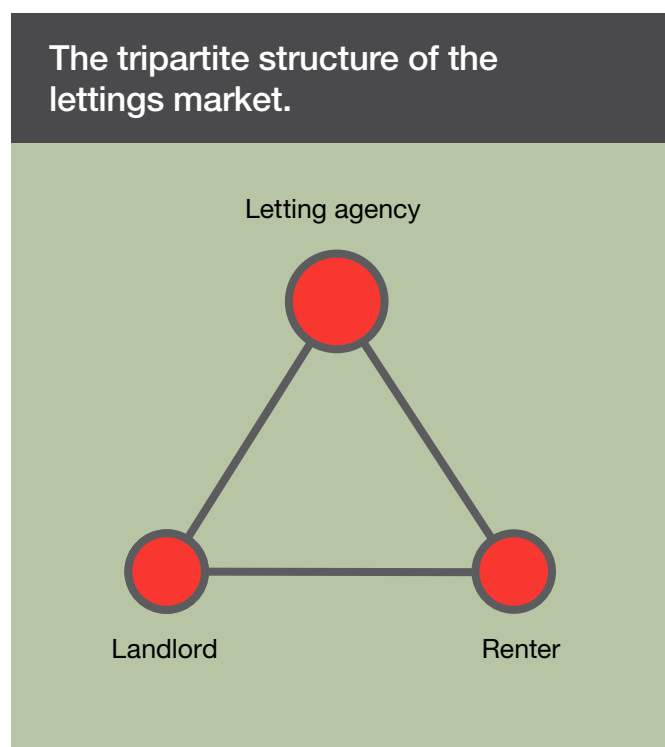
The evidence points to widespread dissatisfaction at the industry, with many complaints relating to routine substandard practice such as poor communication. This suggests the problem is not with a minority of rogue agencies, but a broader problem with the lettings market, stemming from weak consumer power and a lack of regulation and enforceable action against poor performing agencies<sup>15</sup>. To improve the experience of the nine million people renting privately there is an urgent need to improve the lettings market.

Survey evidence and insights from Shelter's clients and supporters confirm that private renters are dissatisfied with the service they are receiving – and paying for. This report builds on this evidence base to examine how the lettings agency market is failing renters and explore what can be done to restore fairness and trust in the industry.

Unlike other consumer markets, the lettings market locks renters, landlords and letting agencies in an atypical tripartite relationship, characterised by competing interests. Agencies are contracted by landlords to perform a service on their behalf and connect them with suitable renters. Landlords are

the client in the relationship and have the opportunity – which is often not fully realised – to discriminate in favour of better performing or more professional agencies. Renters have more limited ability to shop around in favour of better performing or more competitively priced agencies. Worse, letting agencies' attempt to attract landlords in a crowded market may inadvertently be increasing problems for renters, as costs can easily be transferred to them, as the third party. Even though renters have no contractual relationship with an agency it has become routine for agencies to charge renters for the service they provide to the landlord and many renters are unclear of the responsibilities owed to them by the agency.

With unclear expectations and competing interests it is not surprising that so many renters and landlords feel let down by the industry. We believe our proposals will increase consumer confidence, and empower renters and landlords alike to help the lettings industry provide the best service to private renters.



## Recent activity in the sector

Numerous stakeholders, including consumer groups, parliamentarians and letting agencies themselves, are examining how the industry operates and how the experience of both landlords and renters could be improved. This follows widespread concerns about high and unexpected fees to renters, and significant variation in practices and lack of professionalism in some sections of the industry.

In response to growing unease, Shelter launched an investigation into renters' experiences of the lettings market in September 2012. We found numerous examples of poor standards, and high and unpredictable fees levied on renters. Renters and landlords complained about a lack of responsiveness, misleading statements, and agencies withholding rents or deposits. They also told us that they felt let down by the service provided. This complements research conducted by other organisations.

Citizens Advice identified problems in contacting agencies, serious delays in repairs, inadequate client money protection, and additional fees and charges<sup>16</sup>. Problems often only emerge after a tenant has moved in and is locked into a contract. Unprofessionalism, loss of contact and disorganisation are also common issues recorded in our research and others.

The Resolution Foundation highlighted the high cost of using letting agencies, with affordability problems compounded by associated costs of moving including deposits and rent in advance<sup>17</sup>. The think-tank's report highlighted a wide variation in fees with no discernible difference in service provided and identified a lack of transparency as hampering effective competition.

Research by Which? found that consumer satisfaction with letting agencies is poor compared to other consumer markets, with agencies the second least popular sector with renters<sup>18</sup>. Which? also raised concerns around the fees charged to renters and called for greater transparency around costs from the outset of the lettings process.

The Office of Fair Trading (OFT) has identified several problems with the industry. Analysis of complaints to Consumer Direct by OFT revealed that fees and charges as well as post standards account for over half of all complaints<sup>19</sup>. The OFT also highlighted the unique features of the tripartite lettings industry and raised concern at the misaligned interests of landlords and renters and practices such as drip-pricing.

The industry itself has raised criticisms of some of the worst practices and has frequently led calls for increased regulation. For example, the Royal Institute of Chartered Surveyors (RICS) has actively lobbied for statutory minimum requirements and the Association of Residential Letting Agents (ARLA) has called for mandatory regulation overseen by a single industry regulator.

The UK government is now beginning to consider meaningful action in this area. The House of Lords amended the Enterprise and Regulatory Reform Bill in April 2013 to extend estate agent legislation to letting agencies. This amendment was rejected by the government, but ministers did put forward an alternative amendment to require all letting agencies to belong to an approved redress scheme. These powers are due to be consulted on and the detail of how they will operate is yet to be decided.

In March 2013 the Advertising Standards Authority (ASA) ruled that all letting agencies need to make clear what compulsory fees are charged when letting a property. If the fee cannot be calculated in advance because of, for example, an individual's circumstances, then the adverts must make clear that compulsory fees and charges are excluded and provide adequate information for consumers to establish how additional fees are calculated<sup>20</sup>. The ASA will produce guidance on how agencies should adapt to this ruling.

Significant progress has already occurred in Scotland. In 2012 the Scottish government clarified the existing law which made it illegal for a letting agency to charge renters "premiums" above a deposit and rent in advance when setting up a tenancy. This clarification was prompted by evidence collected by Shelter Scotland of widespread ignorance and flouting of the law. As the legislation was already in place, renters were able to retrospectively reclaim their fees from offending letting agencies. Despite this, Shelter Scotland reports that many agencies are still continuing to flout the law and charge fees<sup>21</sup>. In response Shelter Scotland is continuing to raise awareness of the law and support renters to reclaim illegal fees.

## Angelique – renter from Basingstoke



**Angelique and her partner had to relocate for work from Southampton to Basingstoke. They started their search a few months before needing to move, but struggled to find an affordable home. They finally found somewhere in their price range but were then stung with high and unexpected fees.**

**"We were told we had to pay £540 in purely administration fees, this did not include any holding fee. We were then expected to pay a £1440 deposit and the £900 up front, within a month. We have never really received justification for these sky-high fees; they were very blasé about the whole thing".**

**Like many renters Angelique felt she had nowhere to turn and had no route to complain. She says that despite being charged over £500 in administration fees the paperwork took less than an hour to complete. Angelique, like many renters, complains the industry is not transparent and capitalises on renters' powerlessness.**

## Why renters are concerned: standards

Many renters face a poor standard of service from their letting agency and feel they don't have a guaranteed way of having their complaints heard or resolved. These concerns are not unreasonable, as there are no minimum requirements a letting agency must meet before setting themselves up in business. This means an agency can begin practising with no knowledge of housing or consumer law, and – unlike estate agents – no insurance or client money protection. This is particularly worrying when agencies are often used by amateur landlords who may not feel able to navigate the private rented sector unaided.

Shelter's investigation into letting agencies found examples of tenants responding to adverts for properties that did not appear to exist, and being shown inadequate but more expensive alternatives. Renters also complained that letting agencies promised improvements on behalf of landlords in order to secure a letting, but that these were not carried out once the tenancy began.

These anecdotes are reinforced by Shelter's Private Rented Sector Census – the largest survey of private renters ever conducted, with over 4,600 responses. This survey found that less than half (40%) agreed that their letting agency was fair in handling and allocating their property. Only 28% of renters thought that their letting agency responded to repairs quickly and to a satisfactory standard<sup>22</sup>. In many instances fault may in fact lie with the landlord, but this reflects renters' general confusion at the roles and responsibilities in the lettings market.

Complaints about letting agencies are increasing. In 2012 the Property Ombudsman (TPO) recorded over 8,000 enquiries about how to complain about letting agency practice and behaviour, an annual increase of 9%. The majority of the work carried out by the Property Ombudsman now focuses on lettings, despite homeowners continuing to outnumber renters.

The Property Ombudsman reports that poor communication by agents is a noticeable cause of complaint from landlords and tenants alike. TPO has identified a "common thread" in disputes of "misunderstanding and miscommunication"<sup>24</sup>. TPO reported that agencies often fail to understand their obligations or communicate adequately with clients<sup>25</sup>.

These figures themselves underestimate the scale of the problem, as many renters are unaware that they can complain to the two ombudsman bodies (the Property Ombudsman and the Ombudsman Services: Property). Lack of regulation of the sector also means that many agencies will fall outside the jurisdiction of the Ombudsman, meaning a complaint cannot be brought against them. A quarter of the letting agency users we surveyed told us that they did not complain about their letting agency when they wanted to because they did not think anything could be achieved<sup>26</sup>.

Although there is no statutory benchmark that agencies must meet, there are several professional bodies and trade associations that set standards in the sector, including RICS, the Association of Residential Lettings Agents (ARLA) and the National Approved Lettings Scheme (NALS). Agencies can also independently sign up as members of the Property Ombudsman (TPO) to provide access to independent redress. These schemes are voluntary, and vary significantly in the requirements they place on their members; how actively they are enforced; and the penalties for non-compliance. There is also poor consumer awareness and understanding of the various schemes, undermining the ability of consumer power to drive up standards<sup>27</sup>.

This creates a confusing market, with a multitude of accreditation marks offering differing levels of service. The exact level of membership of accreditation schemes and trade bodies is unknown but is estimated at around 60% of all lettings agencies<sup>28</sup>.

Evidence suggests tenants do not discriminate in favour of agencies who belong to such schemes. Instead they are – naturally – heavily motivated to secure a particular home (normally tied to one agency) in a particular area (normally only served by a specific pool of agencies). This reflects renters' position in the lettings market tripartite relationship: their interest is in securing the appropriate home for their needs and letting agencies are an intermediary they must traverse. Research by Shelter found that people using letting agencies overwhelmingly search for a new home based on location and rent levels; just three per cent said that whether an agency was accredited or not was one of their top two considerations in their search for somewhere to live<sup>29</sup>. Separate research found that less than one in five tenants have even checked whether their agency is a member of a professional body, and that nearly two thirds do not know if their agency is a member<sup>30</sup>.



## Abdul – landlord from London



**Abdul is a landlord who let his property via an agency in Maida Vale. The agency has withheld his rent and deposit. They are not responding to his calls or letters. He has lost £7,500 and has struggled because of the withheld money; he has had to borrow to cover the costs. This agency has also been the subject of a number of complaints from tenants, with several reporting that they have signed a contract, been charged three months' rent and deposit, more than £9,000, and then the agency refuses to honour the agreement and withheld the money.**

More worryingly landlords do not actively discriminate in favour of accredited agencies either. This is despite their privileged position in the lettings market affording them the ability to actively shop around when selecting an agency for their property. Fewer than two in five checked whether their current agency was a member of a professional body. Nearly half (45%) of landlords have no idea if their agency belongs to a professional body or not<sup>31</sup>.

Overall, efforts to raise standards across the sector and prevent problems occurring in the first place are patchy, and a similar story can be told about the opportunities for redress when something does go wrong. Unlike estate agents, letting agencies cannot be barred from operating for bad practice, and are not yet required to belong to an independent redress scheme. This means that until now private renters have had no recourse to independent complaints resolution, unless their agency is a member of a voluntary accreditation scheme or independently signs up to the Property Ombudsman.

This lack of regulation is in sharp contrast to the rules governing estate agents. Under the Consumers, Estate Agents and Redress Act (CEARA) 2007 all estate agents must be members of an independent redress scheme, as well as provide client money protection and hold professional indemnity insurance. The Estate Agents Act 1979 also gives the Office of Fair Trading (OFT) powers to ban the worst estate agents. However, legislative loopholes left letting agencies out of scope. Arguably the risks arising from a shoddy letting agency are higher, given their ongoing role in managing homes, the large sums of client money they handle and their close involvement with more vulnerable or less financially experienced households. The fact that letting agencies and estate agencies often employ exactly the same individuals who work for the same companies on the same premises, emphasises the illogicality of this situation. Customers are currently protected by regulation if an estate agent treats them badly in buying or selling a property – but not if the same agency mistreats them when letting a home.

## Why renters are concerned: fees

The majority of renters using letting agencies are charged some fees: Which? found just 3% of tenants had paid no fees<sup>32</sup> and Citizens Advice found that 94% of agencies imposed fees on top of rent and a deposit/rent in advance<sup>33</sup>. Citizens Advice's research summarised why this is cause for concern, finding that some agencies hide their fees, double-charge landlords and renters and that fees for some services are unrelated to the actual cost of providing this service<sup>34</sup>.

Shelter's Private Rented Sector Census found fees were common but not as universal as previous studies indicated. Tenants renting from a letting agency are most likely to be charged an admin fee (70%), initial contract fee (62%), or credit check (52%). Only a minority of tenants reported being charged fees for references (35%), protecting a deposit (14%), and contract renewals (26%) – although these services may have been covered by a generic "administration" fee<sup>35</sup>.

There are widespread concerns that fees are not made clear enough to tenants early enough in the lettings process. Fewer than half (43%) of all renters surveyed for Shelter said that their letting agency was open and transparent about the fees they would be asked to pay<sup>36</sup>. Mystery shopping by Which? found no letting agencies who displayed a breakdown of fees on their website. This means that renters are unlikely to be given the full details of the fees they are liable for until they have invested considerable time in viewing and deciding on a home to rent<sup>37</sup>. As a result, such charges are not exposed to the competitive pressures typical found in other consumer markets<sup>38</sup>. This situation may improve following the ASA's ruling, but it remains to be seen how the industry responds to this.

There is also evidence of drip pricing, which is fuelled by unclear fee structures and increases overall costs. Tenants are charged an average of three fees each by letting agencies and 38% pay four or more separate fees<sup>39</sup>. Tenants are unable to compare letting agencies' costs if fees are not disclosed early on in the process and in full. This means an agency have little incentive to compete on costs to tenants, or apparently reasonable headline fees may be undermined by additional costs that only emerge after the tenant is committed to their new home.

As well as unexpected fees, a frequent concern of renters is that the fees charged are out proportion to the service received. Levels of charges certainly vary widely. Mystery shopping research commissioned

by Shelter found examples of fees for reference checks ranging from £30 to £220 and of renewal fees ranging from £35 to £150<sup>40</sup>. The Office of Fair Trading has also noted the wide range of fees charged and argued that this could be indicative of problems in the market<sup>41</sup>.

Even if fees are transparent, renters may struggle because of the high cost involved. The Shelter Private Rented Sector Census revealed that letting agency fees are variable but high, costing £355 on average<sup>42</sup>.

### Kate – renter from Stockwell



**Kate had to move out of her house share in Clapham when she changed job. She moved in with three new people, all young law students.**

**Soon after they moved in it emerged there was a dispute over ownership of the house. Two men came to their home with crow bars and tried to force their way in. The tenants moved out but the agency kept the £750 in fees and they've still not received their £3,000 deposit. Kate was starting a new job at the time and the others were doing bar exams; they were all made homeless and had to borrow money to move.**

This compares to a typical weekly private rent of £164<sup>43</sup>. Coupled with insecurity in the private rented sector, this exposes tenants to the risk of high costs on a frequent basis. One in seven (15%) renters using a letting agency have paid very high fees of more than £500<sup>44</sup>. The financial challenge this creates is made more acute because of the concurrent need for renters to provide a deposit and rent in advance when moving.

It may be expected that letting agencies catering to the higher end of the market charge higher fees. But it is notable that lower income tenants are paying higher fees on average. Lower income tenants are also less likely to feel that fees are fair and transparent<sup>45</sup>.

There is widespread suspicion that many agencies are charging both landlords and tenants fees for the same service, such as drawing up a tenancy. This has led to concerns that agencies may be exploiting their unique market position between tenants and landlords to maximize their fee income. This double pricing occurs even though it is the landlord that has contracted the agency to perform a service on their behalf. A transfer of some of this cost to renters has become common and it may be that agencies are fairly splitting costs between landlords and tenants. But this cannot be demonstrated without a) clear benchmarks for the actual cost of services charged for and b) transparency of fee structures.

Even resolving this does not address the greater question of whether renters should be paying for a service contracted by and provided for the benefit of landlords, especially when they have no say over the choice of letting agency attached to their home. Coupled with poor landlord awareness of tenant fees<sup>46</sup>, there are strong grounds that greater transparency is needed to protect both landlords and tenants.

More generally, the Office of Fair Trading (OFT) has raised concerns that the ability of agencies to charge both renters and landlords fees creates a potential conflict of interest<sup>47</sup>. Landlords assume agencies are working solely in their interest and the OFT has identified possible legal risks if an agency has not informed a landlord about tenant fees. Separate research among landlords suggests that many are unaware tenants are also being charged<sup>48</sup>. Additionally, a survey of over a thousand landlords shows that of those that have enough knowledge to answer, half (51%) disagreed that the fees letting agencies charge tenants are value for money<sup>49</sup>. The OFT and others also note that high tenant fees may act against the interest of landlords if they deter potential tenants, creating voids. Given landlords' low awareness of tenant fees

## Vince – renter from Woking



**Vince needed to move, so went to a letting agency. He found a property he liked and was about to complete when he discovered there was over £750 in fees to be paid. Vince asked them to breakdown and explain the fees being charged, but no satisfactory justification was forthcoming. Vince questioned the high charges as the reference was an email to his former landlord and employer, the inventory was already prepared by the landlord, and the contract was a template which was simply printed off with a name inserted.**

**Like many renters Vince asked “aren’t these costs covered by the landlords’ fees?” Vince decided not to proceed with the property and states he will never use an agency again. Sadly others in the lettings market do not have this option.**

it is not at all certain that they would identify this as a cause of void periods and consequently will not be able to challenge letting agencies on their pricing structures.

Agency fees may also be acting to undermine competition and suppress standards in the private rented sector. High and non-transparent fees can deter renters from moving despite poor agency or landlord behaviour, with 60% of renters stating that they worry about high fees each time they have to move<sup>50</sup>. But agencies also have too little incentive to retain renters who voice concerns, due to the fees that can be charged when establishing a new letting. Fee structures may therefore encourage churn in the sector, thereby decreasing stability in a tenure that already lacks security.

Fees are a cause of financial stress and can cause cashflow problems for renters. Four in ten adults who have dealt with a letting agency in the past three years say that letting agency fees were a factor in the money worries they experienced when moving<sup>51</sup>. More than half (54%) of people who have used a letting agency reported experiencing one of a range of financial difficulties and sacrifices to cover fees, including: depleting their savings, cutting down on food and fuel costs and borrowing money<sup>52</sup>. Fees may become harder for tenants to absorb when combined with the additional costs of moving, including rent in advance and deposits. Upfront fees are preventing households from being able to adequately predict and meet the costs of renting, and whilst rental costs can at least be anticipated and paid over time, high and unpredictable letting agency fees leave many in unanticipated financial difficulty.

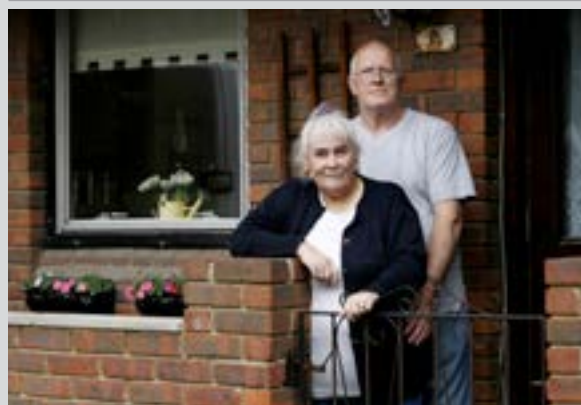
More than half (54%) of people with recent experience of using a letting agent agreed that the cost of letting agents' fees should be spread over the course of a tenancy, included in the rent, rather than tenants having to pay them at the start of a tenancy, outnumbering those that disagreed (21%) by more than two to one<sup>53</sup>.

### Natalie – a renter from Brighton



**“I used to rent in a three bed house share in central Brighton. We had no choice but to have six month tenancy contracts where every six months each person had to pay £40 each to renew the contract. I lived there for three years. This was a waste of money and unfair because we couldn't refuse to pay without being made homeless. I cannot understand why we were supposed to pay a renewal fee every six months when the landlord pays fees and we pay rent, just so we can stay in our home.”**

### Mary – renter from Coventry



**Mary and her husband decided to sell their house to avoid repossession when they began struggling with their mortgage payments. Mary says: “We came out with a £2,000 debt, and we had a week to find somewhere new to live”.**

**With difficulty, they found a three bed house, but then realised they needed to find money to pay the bond and the letting agency fees – £1800 in total. They had to borrow it from Mary's 75 year old brother in law who gave them some of his savings.**

**Mary and her family pay £66 every six months to renew the tenancy but question what it is for and how it costs so much. They've been in their house eighteen months and want to move on, but are stuck as they can't afford to pay for new fees until they get their old deposit back. Mary says: “you think it must be much easier to rent than to own your own home, it was a bit of a shock realising how difficult it is with all the costs”.**

## Reducing financial burdens on renters

### Existing mechanisms

Renters have few existing legal tools to challenge what they see as unfair fees. There are scant restrictions on what letting agencies can charge a fee for, and the legal protections that do exist are weak and difficult to access.

The Accommodation Agencies Act 1953 makes it a criminal offence for an agency to charge a fee specifically to:

- Register someone's name or requirements
- Provide a list of available properties to let
- Advertise a property to let without the owner's agreement.

People can attempt to challenge fees under the Unfair Terms in Consumer Contract Regulations 1999; however, this requires a court order, making it a difficult course of action for most renters, who may find themselves unable to secure the tenancy or exposed to the risk of retaliatory eviction.

The Consumer Protection from Unfair Trading Regulations 2008 requires businesses to display the price and characteristics of a product alongside the 'invitation to purchase'. It warns that failure to provide information on price before a transactional decision is made could amount to a misleading omission<sup>54</sup>. The OFT argues that agencies risk falling foul of these regulations by not highlighting their fees at the start of the letting process, a stance endorsed by the Advertising Standard Agency. However, there is little evidence that Trading Standards are taking action against agencies for failure to disclose fees.

Voluntary schemes, which are supposed to improve standards, differ in their approach to fees, with some issuing guidance on transparency for renters.

- The ARLA Code of Practice requires agents to set out in writing details of all fees and charges before their landlord client is liable. Agencies should also provide prospective renters with a "reasonable opportunity" to see and study a draft tenancy agreement prior to them becoming liable for fees or charges. In addition, prior to the applicant's offer being formally accepted ARLA members should set out in writing any fees and charges.

### The impact of letting fees



One in seven renters who used a letting agency paid fees of more than £500.



The average fee paid by those with a household income of less than £25,000 per year was £401, compared to £338 for households with over £25,000 income



27% of renters using letting agencies had to borrow money



17% of renters using letting agencies cut down spending on food or heating

Sources: YouGov; footnote 44, YouGov; footnote 45, YouGov; footnote 52.

- NALS Service Standards make no mention of fees to renters.
- RICS' Blue Book requires agents to provide full written details of fees to potential landlord clients. Prospective renters should be informed in writing of all costs for which they will be responsible, including referencing and check-in costs.
- The Property Ombudsman's Code of Practice requires all fees and charges to be clearly stated and drawn to the attention of landlord clients. Prospective renters must have a reasonable opportunity to study a draft or tenancy agreement prior to becoming liable for fees or charges. Before an offer is formally accepted agents should set out in writing and actively flag any fees.

Current guidelines focus on improving transparency to renters and landlords and do not adequately consider the size of fees or encourage agencies to ensure that fees are proportionate to the work carried out. They also assume that is reasonable for renters to subsidise the contractual relationship between agents and landlords.

Even these standards only apply to the 60% of agencies who are members of accreditation schemes. And the differences between the standards required by these voluntary schemes mean that renters cannot be reassured by the fact that an agency may have an accreditation badge.

## The case for more transparency?

Despite the existence of consumer protection regulations and the above voluntary codes, many agencies are not currently displaying the fees they charge to renters on their websites or providing a breakdown of costs at initial viewings. Renters complain that this information is also not available when initial enquiries are made. Which?, the Resolution Foundation and the OFT are among those calling for increased transparency of fees and argue that this would address cost concerns<sup>55</sup>. The aspiration is that increased transparency would allow tenants to compare fees, chose an agency according to price, and question charges that appear disproportionate to the activity.

Transparency is a worthwhile goal but Shelter questions the assumption that it will significantly tackle the real issue, which is the high level of upfront fees charged to tenants. The lack of transparency is not the limit of renters' dissatisfaction with letting agency fees. High and unaffordable fees are a bigger problem than non-

transparent fees; one in ten (11%) renters surveyed by Shelter actively disagreed that their letting agency had been open and transparent about fees, but three in ten disagreed that fees are fair and proportionate to the work carried out. This implies that at least two in ten felt fees were transparent, but were not fair or proportionate<sup>56</sup>. Separate research reinforces tenants' dissatisfaction with fees: more than a third (36%) do not think fees are value for money and 41% think upfront fees are unfair<sup>57</sup>.

## A remedy that works for a unique market

Advocates of transparency argue that it will allow tenants to shop around for the best deals on fees. However, this is based on a flawed understanding of the lettings sector and renters' motivations and consumer power. The problems in the letting agency sector can only be understood and resolved by exploring the unique tripartite relationship between agencies, landlords and tenants. The dysfunctional competing interests of all three parties are currently a barrier to improving standards and applying effective competitive pressure to prices.

Agencies are contracted by landlords to find suitable tenants and set up a tenancy on their behalf. The tenant is not the consumer of letting agency services and has no contractual relationship with the agency. But they are expected to pay fees to cover core elements of this service. Many of the fees charged to tenants, for example for extensive credit or referencing checks, are for the ultimate benefit of landlords. This tendency to split costs between renters and landlords is in marked contrast to the estate agent industry, where sellers bear the full cost.

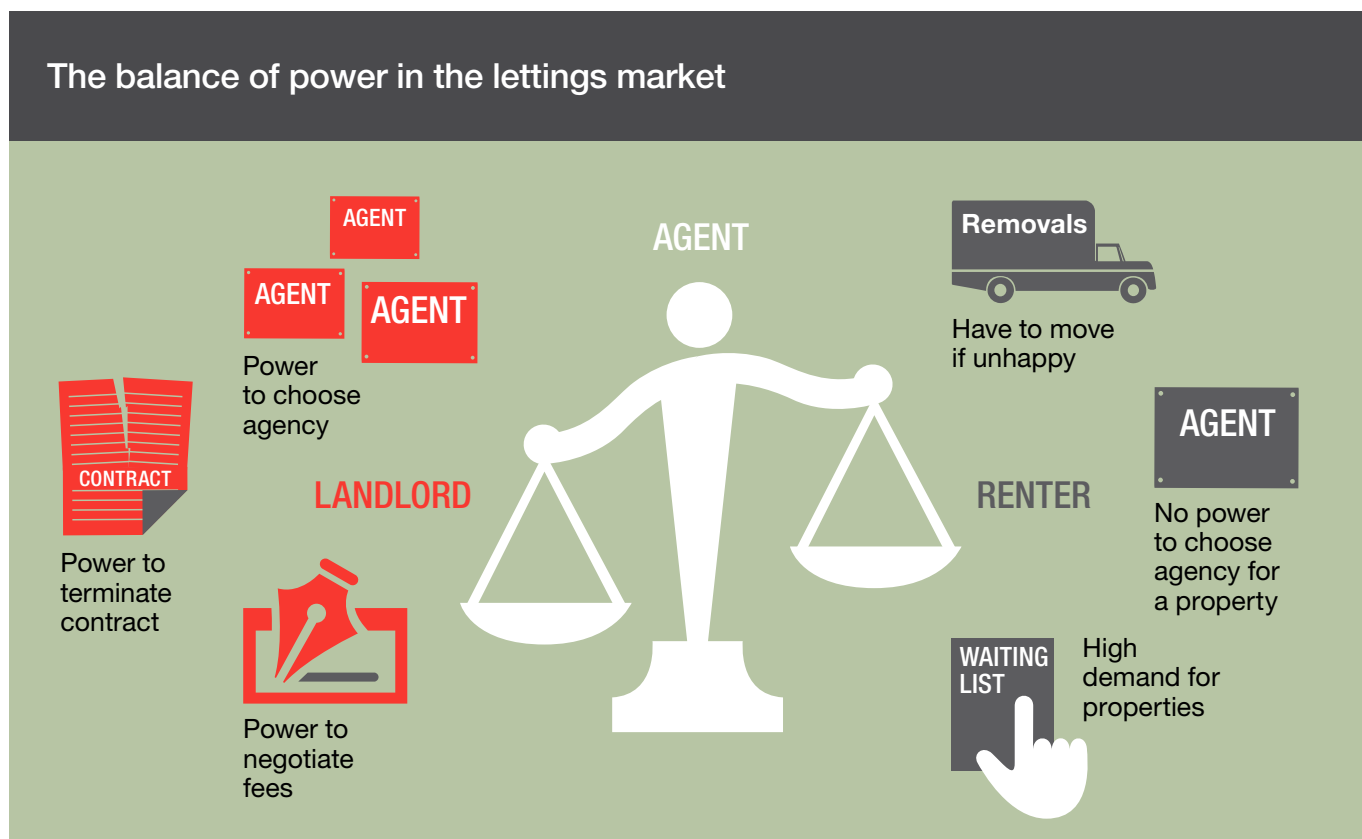
We know renters search for the right home for them – predominantly determined by rent and location – and not the 'right' agency. They cannot really shop around in favour of cheaper or better agencies without unreasonably distorting their choice of home. Although agencies are numerous, they effectively hold a monopoly on each property instruction: if you want to rent that home you have no choice over the letting agency, and may be restricted to a limited pool of agencies in a particular area. The current imbalance of supply and demand in the private rented sector means that several potential tenants chase every available property, further weakening their negotiating position.

The lettings industry has grown rapidly in recent years. This is in part because of the slump in property sales, which caused many estate agents to diversify into lettings. Low barriers to entry and perceived quick returns have also encouraged new entrants into the sector. Although the number of landlords has also increased there are a large number of letting agencies competing for a limited pool of properties.

Insufficient data and commercial sensitivity makes detailed analysis difficult, but industry insiders have told Shelter that these market trends have encouraged letting agencies to compete aggressively on direct costs to landlords. As a result two-thirds of landlords say that they are in a position to negotiate on agency fees, compared to only a quarter of tenants<sup>58</sup>. Competition among agencies for landlords may therefore disadvantage tenants while advantaging landlords. Agencies are incentivised to offer low headline prices to landlords in order to attract business. This is compensated for by higher charges to tenants, who have significantly less scope to negotiate. This may explain why nearly two-thirds (62%) of landlords feel agencies are good value for money, compared to just a quarter of tenants<sup>59</sup> – a split that mirrors each group’s reported ability to negotiate with agencies. The

tripartite relationship between agencies, landlords and renters makes the lettings industry one of the few sectors where increased competition appears to be detrimental to one group of consumers.

Left unchecked, and amid a buy-to-let boom and downturn in the sales sector, the lettings industry has evolved to demand ever higher fees from tenants for the broadest range of activities. Unless clear restrictions are placed on the level and type of fees that may be charged there is a risk that the market will continue to broaden demands for fees from tenants. For example, letting agencies have told us that fees for repeat credit checks when renewing tenancies are likely to become more prevalent. Shelter has even heard of tenants being charged a fee to rearrange furniture at the end of a tenancy.



# Recommendations

## Improved standards

Few would deny that some letting agencies urgently need to improve standards. The sector is a rare example of industry bodies themselves calling for more regulation in recognition of the unacceptably poor standards that mar the reputation of the entire industry.

The industry urgently needs to foster a culture change to increase the professionalism of lettings agencies. Many of the complaints heard by Shelter and others do not stem from complicated malpractice but day-to-day incompetence and poor practice. Greater take up of voluntary schemes should go some way towards embedding a more professional ethos, but the various accreditation schemes have to do far more to show that they are effectively raising standards.

A legal framework is also required in order to reinforce the expectation that this is a professional sector and to provide statutory safeguards against the worst offences. As a first step, it would be sensible to bring letting agencies under the same legislative framework as estate agencies, ending the current anomaly which evolved more by accident than design.

**The government should extend the Consumers, Estate Agents and Redress Act (CEARA) to cover letting agencies. This would:**

- Guarantee all tenants access to independent redress
- Require all agencies to have to hold client money protection
- Require all agencies to hold professional indemnity insurance

It would also encourage take-up of voluntary accreditation schemes (in order to secure professional indemnity insurance) which would bring more agencies into these schemes' codes of practice.

Including letting agencies within the scope of the Estate Agents Act 1979 would also allow the Office of Fair Trading to ban the worst performing agencies, as it already does with estate agents.

Combined, these outcomes should go some way towards improving basic standards of professionalism and customer service. Recent announcements by the government will go some way towards achieving these aims, but are a preliminary step only.

A legislative framework around tenant charges – as outlined below – would also help ease the sector's reputation as a "Wild West" by placing clear boundaries on the limits of acceptable behaviour. A raised bar for entry and fewer opportunities for instant profiteering would discourage fly-by-night agencies from setting themselves up in the hope of quick returns.

These changes would be popular with renters: six in ten renters (61%) want greater regulation of letting agencies, with just two per cent opposing<sup>60</sup>.

Tenants also need a better understanding of what they can expect from their letting agency. Many renters do not know if their agency only provides letting services, lets and collects the rent, or provides full management services. This means they do not know who is responsible if something goes wrong within the property, and may unfairly blame the letting agency when it is the landlord failing to take action, or vice versa.

**To remedy this Shelter recommends that all tenancy agreements make clear the contract that the landlord holds with a letting agency.**

This would require primary legislation to first make it a requirement to provide a written tenancy agreement, and for landlords to disclose their use of letting agencies. In the interim it should be promoted as best practice when landlords are providing written tenancy agreements.



## An end to tenant fees

In a well functioning, balanced market healthy competition would normally be expected to improve standards. However, Shelter does not believe that encouraging renters to shop around will be sufficient to improve standards and reduce costs, given the unique and inherently unbalanced tripartite relationship between landlords, renters and lettings agencies.

Numerous stakeholders have argued that transparency of fees should be improved and that this would address cost concerns, as increased transparency would allow renters to compare fees and question disproportionate charges. Transparency is a worthwhile goal but cannot significantly tackle the real issue, which is the charging of unaffordable fees to renters. Advocates of transparency argue that renters could shop around for the best fee offers, but the current imbalance of supply and demand places renters in a very poor negotiating position. Even in a transparent market agencies will continue to compete for landlords' contracts and attractive fees quoted to landlords will be subsidised by increased costs to renters.

**Shelter believes all costs relating to finding tenants and setting up a tenancy should be negotiated between landlord and agency and charged to the landlord as the client.**

Landlords contract agencies to let and manage their properties, and are far better placed than prospective tenants to exercise consumer choice between different agencies. Ending fees to tenants would rationalise the market by concentrating costs – and competitive pressures – on landlords. Combined with increased transparency, landlords will be in a strong negotiating position to seek out the best deals and overall costs will fall. If letting agencies do not absorb the costs they currently charge to tenants, landlords may be justified in increasing rents to reflect their additional costs.

A small increase in rent spread across the tenancy is preferable for renters, who otherwise have to deal with sudden one-off costs to secure a tenancy. Over half of people who have dealt with a letting agency in the past three years support spreading costs over the course of a tenancy, rather than paying fees up-front<sup>61</sup>. It is easier for households to budget for regular, predictable costs than be hit with unexpected high levels of fees every time they move, particularly as tenants moving home will also have to budget for rent in advance, deposits and moving costs.

Combined with the benefits of improved competition we would expect overall costs to tenants to be lower than in the current market once letting agency fees are shifted to landlords.

Action on fees must be combined with the above efforts to improve standards across the sector to guard against a race to the bottom, to the cheapest, least-professional agencies. Some landlords may also choose to let and manage their own properties if agencies are unable to offer sufficiently attractive deals.

We believe this would be popular with renters: two thirds of people who have dealt with a letting agency in the last three years support a ban on fees to tenants<sup>62</sup>.

This change would require primary legislation. A ban on fees to renters would need to be introduced to outlaw premiums charged to renters for costs associated with granting or renewing a tenancy.

There is no one silver bullet that will overhaul the private rented sector and make it fit for the nine million people housed within it. But real improvements are both achievable and long overdue. Taken together, these simple legislative changes will send a clear signal of the professionalism expected from the lettings market and curb the worst excesses which negatively impact on renters and landlords alike.

# Notes

1. YouGov survey for Shelter. Sample size for England and Wales was 4724 adults. Fieldwork was undertaken between 10th – 14th August 2012. The survey was carried out online. The figures have been weighted and are representative of all English & Welsh adults (aged 18+), 24% have been charged unfair fees by a letting agent in England & Wales, equivalent to 10.6 million people. The figure for GB was 23%.
2. YouGov survey for Shelter. Total sample size was 1528 adults who had dealt with a letting agent, as a tenant, in the last three years. Fieldwork was undertaken between 26th April – 1st May. The survey was carried out online. The figures have been weighted and are representative of all English and Welsh adults (aged 18+). 54% of the sample had experienced at least one of the following, due to letting agent fees, in the last three years: It caused me/us stress/money worries; I/we used my/our savings/ ate into savings for a deposit on my/our own home; I/ we borrowed money from friends/family; I/we had to cut down on food costs; I/we cut down on fuel/heating; I/ we went into an unauthorised overdraft; I/we borrowed money on a credit card; I/we missed other bills/ payments; I/we took out another type of loan; I/we took out a short term payday loan (borrowing money for 30 days); I/we borrowed money in another way.
3. Department for Communities and Local Government (DCLG) English Housing Survey Headline Report 2011–12.
4. DCLG English Housing Survey Headline Report 2011–12.
5. Throughout this report the terms ‘renting’ and ‘renter’ are used to refer exclusively to the private rented sector, not social tenants.
6. DCLG English Housing Survey Headline Report 2011–12.
7. YouGov survey for Shelter. Sample size was 541 adults in Great Britain living in the private rented sector. Fieldwork was undertaken between 2nd – 5th December 2011. The survey was carried out online. The figures have been weighted and are representative of the British private rented sector (aged 18+).
8. Halifax, 2012. Buying vs Renting Review 2012.
9. Department of Communities and Local Government (DCLG), live tables on homelessness table 774, March 2013.
10. Department of Communities and Local Government (DCLG), Rugg J & Rhodes D ‘The Private Rented Sector: its contribution and potential’ Centre for Housing Policy, University of York, 2008.
11. Royal Institute of Chartered Surveyors, Renting: Property’s Wild West, 2012.
12. YouGov survey for Shelter. Sample size was 4646 adults in England and Wales living in the private rented sector. Fieldwork was undertaken between 16th November and 10th December 2012. The survey was carried out online. The figures have been weighted and are representative of the English and Welsh private rented sector (aged 18+). 31% of those renting through a letting agency disagreed that they could trust their letting agent.
13. YouGov survey for Shelter, August 2012 – see footnote 1.
14. Which? Renting Roulette, Consumer experience of the lettings market, Nov 2012.
15. Department of Communities and Local Government (DCLG), Rugg J & Rhodes D ‘The Private Rented Sector: its contribution and potential’ Centre for Housing Policy, University of York (2008), pg 64.
16. Citizen’s Advice Bureau, Let Down, 2009.
17. Resolution Foundation, Renting in the Dark, 2011.
18. Which? Renting Roulette, Consumer experience of the lettings market (Nov 2012).
19. Office of Fair Trading, The Lettings Market – an OFT report, 2013.
20. Advertising Standards Authority, 6th March 2013: <http://www.asa.org.uk/News-resources/Media-Centre/2013/ASA-clamps-down-on-hidden-letting-agent-fees.aspx>
21. Shelter Scotland, Briefing: Regulating letting agents in Scotland, 2013.
22. YouGov survey for Shelter, November/December 2012, see footnote 12.
23. The Property Ombudsman, Annual Report 2011, 2012.
24. The Property Ombudsman, Annual report 2012, 2013.
25. TPO response to the OFT intelligence report, July 2012.
26. YouGov survey for Shelter. See footnote 2. 24% said ‘I have wanted to complain but didn’t think anything would get done’.
27. Which? Renting Roulette, Consumer experience of the lettings market, Nov 2012.
28. The Property Ombudsman, 2012.
29. YouGov survey for Shelter, see footnote 2.
30. Which?, Renting Roulette: Consumer experience of the lettings market, 2012.
31. Which?, Renting Roulette: Consumer experience of the lettings market, 2012.
32. Which? Renting Roulette, Consumer experience of the lettings market, Nov 2012.
33. Citizen’s Advice Bureau, Let Down, 2009.
34. Citizen’s Advice Bureau, Let Down, 2009.
35. YouGov survey for Shelter, November 2012 –

- see footnote 12.
36. YouGov survey for Shelter, November 2012 – see footnote 12.
  37. Which? 5 March 2013: <http://www.which.co.uk/news/2013/03/letting-agents-not-upfront-about-fees-says-which-312536/>
  38. Citizen's Advice Bureau, Let Down, 2009.
  39. YouGov survey for Shelter, November 2012 – see footnote 12.
  40. Shelter commissioned the independent research agency Mystery Shoppers Ltd to carry out mystery shopping of 58 letting agents in Watford, Leeds, Sale, Wimbledon, Rutland and Gravesend in May 2013. Researchers asked letting agents for details of the fees charged to tenants, asking if the fees they were quoted were the only ones that had to be paid. The average was £350.97.
  41. Office of Fair Trading, 2013.
  42. YouGov survey for Shelter, November, 2012 – see footnote 12.
  43. CLG, English Housing Survey: Headline report 2011–12, 2013.
  44. YouGov survey for Shelter, November 2012 – see footnote 12.
  45. YouGov survey for Shelter, November 2012 – see footnote 12. The average fee paid by those with a household income of less than £25,000 per year was £401, compared to £338 for households with over £25,000 income. 39% of those with a household income below £25,000 agreed that fees were transparent, compared to 47% of those with household incomes above £25,000.
  46. Which? Renting Roulette, Consumer experience of the lettings market, Nov 2012.
  47. Office of Fair Trading, The Lettings Market – an OFT report, 2013.
  48. Which? Renting Roulette, Consumer experience of the lettings market, Nov 2012.
  49. YouGov survey for Shelter, sample size 1004 landlords in England & Wales. Fieldwork was undertaken between 28th February and 6th March 2013. The survey was carried out online. When asked 'The fees letting agents charge tenants are good value for money', 25% did not know enough about fees to answer, 9% did not know for another reason, of the rest, 19% agreed, 30% were neutral and 51% disagreed.
  50. YouGov survey for Shelter. Sample size was 541 adults in Great Britain living in the private rented sector. Fieldwork was undertaken between 2nd – 5th December 2011. The survey was carried out online. The figures have been weighted and are representative of the British private rented sector (aged 18+).
  51. YouGov survey for Shelter, April 2013 – see footnote 2. 14% of the total sample said letting agency fees were 'a major factor' in the financial difficulties or concerns caused by moving, 25% said fees were 'a moderate factor'. 22% had not moved and 14% moved but had no financial difficulties or concerns.
  52. YouGov survey for Shelter, April 2013, see footnote 2. 27% of the sample had experienced at least one of the following, due to letting agent fees, in the last three years: I/ we borrowed money from friends/ family; I/ we went into an unauthorised overdraft; I/we borrowed money on a credit card; I/ we took out another type of loan; I/ we took out a short term payday loan (borrowing money for 30 days); I/ we borrowed money in another way. 17% of the sample had experienced at least one of the following, due to letting agent fees, in the last three years: 17% had I/ we had to cut down on food costs I/ we cut down on fuel/ heating. 16% answered I/ we used my/ our savings/ ate into savings for a deposit on my/ our own home.
  53. YouGov survey for Shelter, April 2013 – see footnote 2.
  54. The Consumer Protection from Unfair Trading Regulations, 2008: <http://www.legislation.gov.uk/ukSI/2008/1277/made>
  55. Which?, 2012, Resolution Foundation 2011, Office of Fair Trading 2013.
  56. YouGov survey for Shelter, November 2012, 30% disagreed that the fee charged by their letting agent was fair and proportionate – see footnote 12.
  57. Which?, 2012.
  58. Which?, 2012.
  59. Which?, 2012.
  60. YouGov survey for Shelter, November 2012 – see footnote 12.
  61. YouGov survey for Shelter. Total sample size was 1874 adults, of whom 347 had dealt with a letting agent, as a tenant, in the last three years. Fieldwork was undertaken between 26th April – 29th April. The survey was carried out online. The figures have been weighted and are representative of all English & Welsh adults (aged 18+). 54% agreed and 21% disagreed.
  62. YouGov survey for Shelter, see footnote 61. 66% agreed strongly or tend to agree, 10% disagreed strongly or tended to disagree.

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