

**Response to the OFT consultation on  
Guidance for lettings professionals.**

**Compliance with relevant consumer  
protection law.**

## **1. Introduction**

Housing Rights Service (HRS) was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We work to achieve positive change by protecting and promoting the rights of people who are in housing need in Northern Ireland. Our policy work is based on the experience of our clients. Our services are delivered throughout Northern Ireland and focus on key areas of preventing homelessness; accessing accommodation; tackling affordability and poor housing conditions.

HRS welcomes the publication of this document for consultation as the Private Rented Sector (PRS) is set to play a larger role in providing accommodation for many sections of our community, including some of the most vulnerable and disadvantaged members in society and this role is set to become even more important under Welfare Reform.

## **2. Summary**

HRS has identified through its casework many difficulties and issues relating to the management practice of letting agencies and we remain to be convinced that the many problems encountered with the lettings industry will be solved by simply encouraging letting agents and landlords to become better informed and equipped to comply with existing consumer protection legislation. We believe greater regulation is necessary to raise professional standards and improve the reputation of the lettings industry in Northern Ireland.

HRS believes that the evidence from a mystery shopping survey of lettings agents conducted in March 2013 supports this call for greater regulation of the letting agent industry and, in particular, that no upfront charges should be imposed on private tenants for functions which are part of the routine letting and landlord management process as is the current position in Scotland. We believe there is also a need to clarify the scope and effectiveness of existing legislation as contained in the Commission on Disposals of Land (Northern Ireland) Order 1986 which relates to the charging of 'commission' by letting agents in Northern Ireland.

We believe the impact of the guidance document needs to be monitored and evaluated and close liaison should be developed with the Housing Division of the Department for Social Development (DSD) if problems continue to exist with the operation of the lettings industry in Northern Ireland

Although the draft guidance document is 110 pages long and not particularly accessible, we appreciate this initiative on the part of the Office of Fair Trading (OFT) to clarify how

the law applies to property letting and the practical steps that can be taken by lettings professionals to comply with consumer protection legislation. However we believe this legal framework, as presently stands, will not provide adequate protection for vulnerable tenants in the largely unregulated lettings market in Northern Ireland. Be that as it may, we welcome the provision of this detailed guidance and look forward to working with OFT, DSD and Trading Standards in Northern Ireland for greater consumer protection in private rented accommodation.

### **3. Background**

In recent years the Private Rented Sector (PRS) in has grown dramatically and it now constitutes 17% of the occupied housing stock in Northern Ireland reflecting the increasing affordability problems faced by first time property buyers and the lack of social housing available to people experiencing housing stress. There is now a greater policy focus on the role that the PRS can play as a route to social inclusion; in meeting the needs of those who do not qualify as statutory homeless; and who need to move on from supported housing or who need greater choice than the social housing sector can offer.

This consultation exercise is therefore important as lettings agents are key intermediaries in the PRS, providing important services to tenants and landlords alike. They are a prime gateway for people seeking to rent a home and are the key custodians of service quality during a tenancy. If agents perform their jobs properly, they can make rental markets work effectively and improve both landlords' investments and tenants' living experiences. The lettings industry is a competitive one and its scale in the UK is now extensive with an estimated annual turnover of £1 billion plus with an impact on many thousands of private renters.<sup>1</sup>

A report published by OFT in February 2013 identified several consumer protection issues in the lettings market.<sup>2</sup> The report sets out a number of recommendations for Government, industry, enforcers and others in order to make the market work better for tenants. The recommendations and next steps include:

- Better compliance with legislation and in particular better up front information. The OFT would like fees to be set out in a clear tariff of charges.
- A general redress mechanism so landlords and tenants can sort out problems when they occur.
- More consistency within the industry so that common principles are applied throughout the industry, such as what information is used for pre-tenancy

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<sup>1</sup> Which? (November 2012). *Renting Roulette. Consumer experience of the lettings market.*  
<http://www.which.co.uk/documents/pdf/renting-roulette-consumer-experience-of-the-lettings-market-303394.pdf>

<sup>2</sup> See <http://www.of.gov.uk/OFTwork/markets-work/othermarketwork/lettings>

checks.

- Government, industry, enforcers and consumer bodies to agree a national strategy.
- Agree an enforcement strategy for traders who do not comply with the law.
- Initiatives which make it easier for landlords and tenants to assess quality, such as recognised logos.
- Working with industry and consumer bodies to develop joint educational material such as 'quick guides' to help tenants and landlords understand their rights.

Housing Rights Service would have welcomed a full consideration of these recommendations and next steps as part of this consultation exercise. We would be particularly pleased to work with OFT in the development of educational and promotional materials for tenants in Northern Ireland.

#### **4. Northern Ireland issues and upfront fees**

Housing Rights Service has identified through its casework many difficulties and issues relating to letting agencies particularly in regard to the practice of charging upfront fees or premiums in the PRS. Following the publication of a number of recent reports in GB, HRS decided to investigate this practice by conducting a mystery shopping exercise of the fees charged by letting agencies. Members of the NI Private Tenants' Forum helped carry out the phone survey.

A sample of 40 letting agents across Northern Ireland was telephoned in March 2013 and asked for details of a 2 bedroom property. All letting agents were chosen at random through an internet search. They had not been highlighted as agents who had been previously identified as making high charges. The following specific information was sought:

- The rent per month for the property
- The amount payable for the deposit
- Details of any upfront charges such as administration and/or credit reference charges
- Any other charges/fees to pay

We also examined the websites of the sampled agents (where available) to see if they contained information on additional fees and membership of professional bodies. Members of the NI Private Tenants' Forum conducted the majority of the short interviews.

#### **Findings**

The majority of letting agencies (60%) contacted in the survey charge upfront fees with a wide variation both in the level of additional fees levied by agents and the services that are

being charged for. These charges range from £25 to £100 with the average fee being £47.69. The majority of Belfast agents charge an upfront fee – the average being £50.38. Those agents sampled in Derry/Londonderry charge slightly higher fees – an average of £52.50. Most agents that don't charge are based in rural locations.

The types of upfront fees included charges for general administration costs; tenancy deposit protection costs; credit checking fees (for tenants and guarantors); tenancy renewal fees and check in inventory charges.

The average charge for administration costs charged by 13 lettings in our sample is £40.36 with the average fee for tenant reference checks being £40 (charged by 12 agents) and credit checks for guarantors (5 letting agents) costing on average £35. We found that two agents are considering charging a fee in association with their costs under new tenancy deposit protection arrangements and one agent charged £25 for check in inventory costs with another charging £25 as a tenancy renewal fee. One agent charges a standard £25 for each letter sent informing tenants of rent arrears.

**Table 1: Average upfront fees**

Average upfront fee – all charges	£47.69
Average administration charge	£40.36
Average credit checking fee for tenants	£40
Average credit checking fee for guarantors	£35
Average upfront fee charged by Belfast agents	£50.38
Average upfront fee charged by L'Derry agents	£52.50

Most charges are not advertised on agents' websites – only 3 agents (7.5% of the sample) made references to these costs. On a number of occasions probing questions had to be asked by our volunteers before the information on fees was provided over the phone.

All agents surveyed charge a deposit (normally equivalent to one month's rent) and also request a month's rent in advance. The average rent for a 2 bedroom property we found was £484.37 with the average deposit amounting to £479.87. The highest rent and deposit we found for an advertised 2 bedroom property was £650 per month and £575 deposit for a letting in Belfast. One agent required a holding deposit of £100 which could be included as part of the normal tenancy deposit if the tenant was successful in securing the property.

In regard to the largest financial outlay expected from tenants taking on a PRS letting, we found one Belfast agent charging a non-returnable fee of £50 for both a tenant and guarantor credit reference check, on top of a deposit and rent in advance (both £550), therefore requiring an initial upfront payment of £1,200 for the tenant to move in.

Only 15 (37.5%) of the 40 lettings agents surveyed are members of professional bodies such as RICS, ARLA, the Property Ombudsman, IPAV and NAEA. The majority of these (7) are members of the Property Ombudsman.

### **Casework Examples**

HRS also collected a number of case studies from our clients regarding fees and charges imposed on tenants or would-be tenants by letting agents. A selection of these is provided below:

- Two separate clients reported being charged £150 by an estate agent, in Belfast, for amending names on a tenancy agreement. No explanation or breakdown of this fee was provided by the letting agent. The clients feel this is unfair as the initial agreement was drawn up on the advice of the agent and they believe landlords should cover these fees as part of their arrangement for management services with the estate agent.
- A client reported that a letting agent in Larne, as standard practice, charges a £100 administration fee per tenancy allocated.
- A client reported that a letting agent in Belfast was charging foreign nationals who have been in the UK for less than six months, a non-refundable credit reference fee of £95, while charging £40 for all other applicants. This difference in practice was felt to be a possible breach of the Race Relations (Northern (Ireland) Order 1997. This issue was referred to the Equality Commission NI for follow up and we understand this differential practice has now ceased.
- A client reported that a letting agency in Belfast charges £40 to check the reference of every guarantor provided as a condition of taking on a tenancy. If the reference check fails, the fee is non-refundable and the applicants have to provide another contact and pay the fee again.

### **Recommendations**

HRS believes that the evidence from this survey supports the call for regulation of the letting agent industry and that no charges should be imposed on tenants for functions which are part of the routine letting and landlord management process. There is also a need to clarify the scope and effectiveness of existing legislation as contained in the Commission on Disposals of Land (Northern Ireland) Order 1986 which relates to the charging of 'commission' by letting agents in Northern Ireland.

In addition, we believe consideration should be given to:

- Letting agents in Northern Ireland should be brought under the Estate Agents Act (1979), thereby conferring on OFT (and ultimately CMA) powers to ban agents who act improperly.
- All letting agents in Northern Ireland should be required to become members of an

ombudsman service, giving tenants the opportunity to pursue redress in cases of poor practice as detailed in the UK Government's proposed Redress Schemes for Lettings Agency work and Property Management Work.

- It should be a legal requirement, not just industry good practice, for letting agents to present landlord and tenant fees on their websites, in adverts and in all promotional material in a way that is easily comparable across agents.
- The impact of the above measures, if implemented, on the level of fees should be monitored by the Department for Social Development (DSD) with an option to ban the practice of charging upfront fees, as is the current position in Scotland, if problems with opaque and disproportionate fees persist in Northern Ireland.

## **5. Responses to consultation questions**

### *1. Overall, is the draft guidance sufficiently clear and helpful?*

We found the draft guidance to be much too lengthy and complex for such a briefing document and overly focussed on legislation in England and Wales. The extensive information provided in the document is quite technical and should be simplified. The inclusion of more summary information and a FAQ section could be considered. We would also have welcomed a consideration of the current relationship between Trading Standards Northern Ireland, DETI and OFT and how this could change under the Competition and Markets Authority (CMA).

### *2. Does the draft guidance have any significant omissions? If so, what's missing?*

We believe there are a number of significant omissions in regard to Northern Ireland considerations such as the failure to specify important legislation such as the Housing (Amendment) (Northern Ireland) Act 2011. On the other hand, we were pleased to see the Commission on Disposals of Land (Northern Ireland) Order 1986 referenced on page 34 of the consultation document as this is often overlooked in treatments of this kind.

There is a considerable body of existing housing law in Northern Ireland including five major pieces of primary housing legislation enacted in the past decade. The Housing (Northern Ireland) Order 2003 introduced a number of fundamental changes to housing law following a major review. Other legislative initiatives include the Private Tenancies (Northern Ireland) Order 2006; the Housing (Amendment) (Northern Ireland) Order 2006; and the Housing (Amendment) Acts 2010 and 2011 - all of which have clarified housing law in a number of important respects.

### *3. Do any parts of the draft guidance need clarification and, if so, in what respect?*

More detail on the section relating to paragraphs 5.19-5.22 ‘Information about charges’ would have been helpful, particularly in regard to how lettings agents are treated under the provisions of the Commission on Disposals of Land (Northern Ireland) Order 1986. In paragraph 5.22 references could be made to charges levied by lettings agents for tenancy renewal, tenancy deposit protection costs, references checking and the issue of letters informing tenants about rent arrears and other circumstances. In addition there are a number of references to the Accommodation Agencies Act 1953 in the guidance document which could be usefully qualified with a footnote clarifying that it does not extend to Northern Ireland. See paragraphs 5.21 and 5.37 for example.

*4. Are any parts of the draft guidance unnecessary?*

Versions of the draft guidance could be produced for each jurisdiction which would allow for a more concise and relevant discussion of the issues directly relevant to regions such as Northern Ireland. This would considerably reduce the length of chapter 2 which we believe provides an overly extensive overview of legislation (35 pages) in the consultation document. Instead, this detail could be usefully included as an appendice.

*5. Are the illustrative examples useful? Are there better ones that we should use instead or as well?*

We find the illustrative examples to be helpful.

*6. Are the practical steps we recommend lettings professionals take reasonable? What changes would you suggest?*

We believe these steps are well laid out and comprehensive in scope.

*7. Are there any parts where you disagree with our understanding of the law? If so, please state which and give your reasons.*

We have no disagreements in this regard.

*8. Does this document provide sufficient guidance in relation to professionals' treatment of vulnerable consumers, and in particular those covered by Equalities and Anti-discrimination legislation?*

It would have been useful to examine the specific requirements of Northern Ireland’s equality legislation particularly in regard to the key grounds of sex (including gender reassignment and pregnancy/maternity), disability, race, religious belief or political opinion, and sexual orientation. In Northern Ireland, protection from discrimination in accessing goods, facilities, services and in the disposal and management of premises is provided in the following legislation:

- Sex Discrimination (NI) Order 1976 (as amended)



- Disability Discrimination Act 1995 (as amended)
- Special Educational Needs and Disability (NI) Order 2005 (as amended)
- Race Relations (NI) Order 1997 (as amended). It should be noted that Irish Travellers are explicitly covered in the Order which recognises them as a specific racial group.
- Fair Employment and Treatment (NI) Order 1998 (as amended)
- Equality Act (Sexual Orientation) Regulations (NI) 2006 (as amended).

We would suggest that there should be a particular focus on the Government's proposal to require private landlords to carry out immigration checks on potential tenants. There is a concern that prospective tenants, who are perceived to be foreign nationals, may be discriminated against by landlords and lettings agents fearful of being prosecuted under these proposals. Landlords and agents may well prefer to let to tenants who can readily produce UK passports in order to avoid any risk of prosecution.<sup>3</sup>

*9. Is the draft guidance in the right format and length for the intended audience?*

We believe the document is too long and some of the content is repetitive. See comments for question 4.

*10. Is the draft guidance sufficiently user friendly for the intended audience?*

We believe there is a danger the guidance will be too technical even for lettings professionals. As we have suggested in our response to question 1 the inclusion of a FAQ section would be helpful.

*11. What suggestions do you have on ways to improve the guidance?*

We believe a more concise, region specific, publication should be produced.

*12. Do you agree with the proposal to put this guidance for lettings professionals to the CMA Board for adoption by the CMA?*

Yes.

*13. What do you suggest will be the best ways to disseminate the final guidance to those who need to see it?*

We believe the final guidance should be disseminated through relevant landlord and lettings industry professional networks and to the wider public. Private tenants will also be interested in the publication and should be alerted to its availability through public advertisements and on Government websites such as NI Direct and through the Northern

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<sup>3</sup> See more at: <http://www.housingrights.org.uk/news/concerns-over-landlords-checking-immigration-status#sthash.VqQcoq5r.dpuf>

Ireland Housing Executive. Local councils could also play a role in circulating the guidance and DSD can assist this dissemination process through the forthcoming register of private landlords. The organisation of information seminars for stakeholders in the PRS should also be considered. HRS can also publicise the final guidance through its popular website [Housing Advice NI](#).

*14. Are there any further comments you wish to make?*

We would welcome information on how the guidance document will be evaluated and how its impact will be measured. Details of the resources that will be made available to publish and disseminate the publication(s) would also be most welcome. We are conscious of the workload and reduced funding impacting on Trading Standards/DETI in Northern Ireland and we would appreciate a consideration on how this particular initiative will be resourced and prioritised within future business plans for the regional division of CMA. We would like to thank OFT and Trading Standards for organising the Northern Ireland consultation event on 7 November 2013.

## **6. Conclusion**

Housing Rights Service welcomes the opportunity to respond to this consultation paper. We trust you will find our comments helpful. If there is any further way in which we can contribute to this process we would welcome the opportunity to do so.

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