

Housing Rights

Policy Briefing
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Policy Briefing

Letting Fees in Northern Ireland

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1.0 INTRODUCTION

Housing Rights is Northern Ireland's leading independent provider of specialist housing advice. For over 50 years we have been helping people to find and keep a home. We believe that prevention is better than the cure, and work to prevent homelessness wherever possible.

Housing Rights' policy work is based on the views and experience of the people who contact us for advice. A significant number of our clients live in the private rented sector and contact us for advice regarding letting fees.

1.1 Letting Fees

Letting fees are payments charged by estate agents. They include application fees and administration fees for carrying out credit and employment checks. These fees are usually charged at the start or renewal of a tenancy. Letting fees also include inspection charges and change of tenancy fees. These charges are usually levied during the course of the tenancy.

Housing Rights has produced extensive policy briefings on letting fees.¹ In 2013, we conducted a mystery shopping exercise across the 40 letting agents in Northern Ireland. Our exercise confirmed that tenants across Northern Ireland were being charged upfront fees by letting agents and landlords.

In Northern Ireland the law on letting fees was clarified in 2017 following the judgment of the County Court in *Loughran*.² The case confirmed that letting fees charged at the start or renewal of a tenancy, where the tenant is being charged for services that they have carried out on behalf of the landlord, are illegal and can be claimed back by the tenant.

On the 5th March 2020, a joint statement on letting fees was issued by the Department of Finance and the Department for Communities. Both Departments stated that illegal fees were still being charged by estate agents despite the Loughran judgment. The Departments stated, ***'that the court rulings reaffirm the guidance to all those involved with the granting of a lease or letting of land, and that a landlord, or an agent of the landlord, cannot oblige a tenant to pay for the professional services provided by their agent.'***³

2.0 HOUSING RIGHTS' POSITION

Housing Rights welcomed the judgment in the Loughran case and the Joint Ministerial Communiqué, both of which make it clear that that fees should not be passed on to tenants for services that a letting agent carries out on behalf of a landlord. **Disappointingly, despite the court and the efforts of the Departments, Housing Rights is still contacted, on a regular basis, by tenants who have been charged illegal letting fees.**

Housing Rights believes that the continued practice of charging unlawful letting fees illustrates that the case law and communiqué have not been sufficient to curb this

¹ Housing Rights briefings on letting fees from 2013-2016:

<https://www.housingrights.co.uk/sites/default/files/policydocs/Counsumer%20Council%20Response%20March%202016.pdf>. (Accessed on the 18th November 2020).

² Paul Loughran v Piney Rentals Limited & F5 Property Limited [2017] NI Cty.

<https://judiciaryni.uk/sites/judiciary/files/decisions/Loughran%20v%20Piney%20Rentals%20Limited%20%26%20F5%20Property%20Limited.pdf>

³ Joint Ministerial Communiqué on Letting Agency Fees: <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-joint-ministerial-communicue-on-letting-agency-fees-mar20.pdf>. (Accessed on the 16th November 2020).

practice. It is imperative, in our view, that legislation is brought forward to remove any ambiguity and to ensure that this unlawful practice is brought to an end.

3.0 THE LEGAL CONTEXT

3.1 The Commission on Disposal of Land (Northern Ireland) Order 1986

The Commission on Disposal of Land (Northern Ireland) Order 1986 is the relevant legislation in respect of letting fees. Under s, 3(1) it is stated that:

“3.(1) Where, on a disposal of land, an agent acting for the person making the disposal is entitled to be paid a commission, any stipulation made on the disposal to the effect that the person acquiring the land shall pay the whole or any part of the commission shall be void.”

3.2 Paul Loughran v Piney Rentals Limited & F5 Property Limited [2017] NI Cty 2⁴

Between 2014 and 2016 Paul Loughran, a student at Queen’s University Belfast, applied to rent properties advertised with Piney Rentals Limited and F5 Property Limited in Belfast. In both cases Mr Loughran was asked to pay an application fee. Following payment, a request was made for the fees to be returned without success. In 2017, Mr Loughran commenced action in the County Court. Housing Rights provided evidence to the court to support Mr Loughran’s case.

In his judgment, Justice Gilpin considered the effect of the 1986 Order in respect of the validity of charging letting fees to tenants. The court found that the fees were imposed and a precondition of the tenancy. The court further held that Mr Loughran was paying for work that the letting agents were carrying out on behalf of the landlord.

In light of the above, the court ruled that the application fees were void under the provisions of the 1986 Order. Mr Loughran was entitled to recover the money he had paid to both estate agents.

As a result of *Loughran*, ***no fee can be levied by a letting agent on a tenant at the start or renewal of a tenancy where that fee is a condition of the tenancy and the fee charges the tenant for services that the carries out on behalf of the landlord.*** Fees that charge tenants for services rendered to the landlord are unlawful and can be recovered by the tenant.

4.0 IMPACT OF THE LOUGHRAN CASE

Following the judgment, the *Loughran* case received prominent coverage in the media and press. Despite its publicity, Housing Rights is regularly contacted by tenants who have been charged unlawful letting fees. Since December 2017, Housing Rights has been contacted 250 times about letting fees.

Housing Rights’ research shows that letting fees are a barrier to accessing the PRS for low income families.⁵ Letting fees are an additional cost on top of a deposit and rent in advance. Participants in Housing Rights research said they felt that they had to pay the letting fees or they would lose their tenancy. One participant told Housing Rights that, ‘the odds were stacked against tenants.’⁶

⁴<https://judiciaryni.uk/sites/judiciary/files/decisions/Loughran%20%28Paul%29%20v%20Piney%20Rentals%20Limited%20%26%20F5%20Property%20Limited.pdf>

⁵ McAuley (2020, Preventing Homelessness and Sustaining Tenancies in the PRS: scoping project,

⁶ McAuley et al, p.g 28.

In June 2019, BBC Northern Ireland contacted fifty-two agencies about their fees. Out of the fifty-two, thirty-five were still charging letting fees.⁷ In the Joint-Communique, the Department of Finance and the Department for Communities state that, “*We had hoped that the court judgment would have made clear the lines of responsibility but unfortunately some recent practice show that some agents are not complying with the law.*”

At present however, there is no effective way for Loughran to be enforced in Northern Ireland. Local Councils do not have the power to investigate or fine letting agents for unlawful fees.

The lack of enforcement is a real concern for tenants as there is a power imbalance between estate agent and tenant. An estate agent may withdraw an offer of a tenancy if the tenant refuses to pay an unlawful letting fee. Despite the unlawful nature of the fee the tenant, short of going to court, has no recourse against such a practice. See below case study as an example:

Selina contacted Housing Rights in July 2020. Selina applied for a private tenancy in Belfast. The Estate Agent asked Selina to pay a deposit and £65.00 administration fee. The estate agent told Selina that the administration fee was a condition of his tenancy. When Selina contacted Housing Rights, she wasn't clear about the law and what she could do to challenge the fee. Selina was advised about the Loughran judgement and that she could refuse to pay the fee. Selina was further advised that if she paid the fee, she could claim his money back from the agent. Selina was however concerned that she might lose his tenancy if she challenged the estate agent.

Loughran confirms that tenants can claim back a letting fee from their estate agent. If the agent does not return the fee, the tenant can apply to the Small Claims Court. The process of applying to court, filling out forms and appearing in front of a judge can be a daunting prospect for tenants.

4.1 Letting fees not covered by the Loughran case

The Loughran judgement doesn't extend to a range of other fees charged by agents during the tenancy. An example of this is an inspection fee, a change of tenancy fee or an additional key fee. There also remains ambiguity in relation to fees for third party services such as Home Let.⁸

These charges are often hidden and unknown to the tenant when they take on the tenancy. Few agents in Northern Ireland advertise their full fee arrangements on their websites. Sometimes the fees are made a condition of the tenant's contract. See case study example below:

Housing Rights was contacted by a tenant regarding their tenancy agreement. When we reviewed the tenancy agreement, we discovered that the contract stipulated that the tenant was liable for £15 for the replacement of a light bulb. The contract also stipulated that the tenant would be charged £36.00 for refusing to allow an inspection.

⁷ <https://www.bbc.co.uk/news/uk-northern-ireland-48785255>

⁸ <https://homelet.co.uk/>

Change of tenancy fees are an added burden on tenants experiencing a relationship breakdown or domestic violence. See case study example below:

Maria, endured an increasingly violent relationship because she could not afford to pay the rent on her own. When her partner moved out, she decided to try to maintain the tenancy on her own. Maria's estate agent then charged her a £200 change of tenancy fee.¹

Letting fees are another barrier to accessing and sustaining tenancies in the private rented sector. These fees are another financial burden for tenants, particularly those with a low income. Given the lack of regulation of the sector, estate agents can currently set these fees at whatever rate they want. Tenants often feel that they have to accept these charges as they are not prohibited by law.

5.0 LEGISLATIVE POSITION ON LETTING FEES IN OTHER JURISDICTIONS

5.1 Legislation on letting fees in other jurisdictions within UK/Ireland

England	Wales	Scotland	Northern Ireland	Republic of Ireland
Tenant Fees Act 2019	Renting Homes (Fees etc.) (Wales) Act 2019	Rent (Scotland) Act 1984 Private Rented Housing (Scotland) Act of 2011	The Commission on Disposal of Land (Northern Ireland) Order 1986	s, 90 of the Property Services (Regulation) Act 2011

5.2 England

Following the passage of the Tenant Fees Act 2019, agents and landlords are restricted from charging fees and will only be able to charge fees in restricted circumstances.⁹ Tenant fees can only be charged in connection with the rent, the deposit, a change of tenancy, early termination of the tenancy, utilities and late payment of rent.¹⁰ The amount that can be charged for a 'change of tenancy' fee is capped at £50.00. Tenancy deposits are capped at no more than five weeks rent. Holding deposits are capped at no more than one week's rent. Fees charged outside the permitted circumstances are prohibited. The Tenant Fees Act 2019 also amends the Consumer Rights Act 2015 to specify that transparency requirements should apply to third party websites.

The Tenant Fees Act 2019 grants local trading standard authorities the power to enforce the provisions against letting agents and landlords. Agents and landlords can be fined if they charge prohibited fees.¹¹ An offence is committed if the fine is not paid.

⁹ <https://www.legislation.gov.uk/ukpga/2019/4/contents/enacted>

¹⁰ Tenant Fees Act 2019: A guide for landlords and letting agents, p.g 4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922898/Tenant_Fees_Act_2019_-_Guidance_for_landlords_and_agents.pdf. (Accessed on the 18th November 2020)

¹¹ S, 6, s7,s8,s9,10 of the Tenant Fees Act 2019.

<https://www.legislation.gov.uk/ukpga/2019/4/crossheading/enforcement/enacted>. (Accessed on the 18th November 2020)

5.3 Scotland

In Scotland, letting fees have been illegal since 1984.¹² However, similar to the position in NI, the practice of charging letting fees continued for many years following the passage of the legislation. The Scottish government moved to clarify the law in 2012 via the Private Rented Housing (Scotland) Act of 2011.¹³ The legislation bans letting agents from charging 'premiums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.'¹⁴ The Scottish Letting Agents Code of Practice states that the only lawful fees are, 'rent and a refundable deposit of no more than two months' rent.'¹⁵ The code of practice further states that, 'You must not, as a condition of granting the tenancy, require tenants to use a third-party service that charges them a fee.'

Under the 1984 Act, a person is guilty of an offence if they receive a premium. Anyone receiving a premium under the act can be fined.¹⁶

Letting agents in Scotland were concerned that the ban on letting fees would have a negative impact on their businesses. Research from Shelter indicates that impact of banning fees has been 'minimal.'¹⁷ In 2014, the majority of agents said that the clarification in the law had no impact on their business.¹⁸ There was concern that rents would increase after legislation was introduced but there is little evidence to show this happening.¹⁹

5.4 Wales

The Renting Homes (Fees etc.) (Wales) Act 2019 came into operation on the 1st September 2019. From that date it is an offence to require a 'prohibited payment' to be made to a landlord or agent or *any other person* in consideration of the grant, renewal or continuance of a standard occupation contract (AST), or pursuant to a term which purports to require the payment to be made.

Like England, any fee in Wales is prohibited unless it falls into one of the categories of 'permitted payments.' The permitted payments are; money payable by a landlord to a letting agent in respect of lettings work or property management work carried out by the agent on behalf of the landlord; rent; security deposits; holding deposits; default payments; council tax; payments in respect of utilities; TV license fees; payments in respect of communication services.²⁰

Under the 2019 Act, it is an offence to require a prohibited payment to be made to a letting agent or a landlord. Local authorities have powers to enforce the legislation and can issue fixed penalty notices.

¹² Rent (Scotland) Act 1984

¹³ s, 32 of the Private Rented Housing (Scotland) Act 2011 <https://www.legislation.gov.uk/asp/2011/14/section/32>

¹⁴ S, 32 of the Private Rented Housing (Scotland) Act 2011

¹⁵ Letting Agents Code of Practice: <https://www.gov.scot/publications/letting-agent-code-practice/pages/4/>. (Accessed on the 18th November 2020).

¹⁶ S, 82 Rent (Scotland) Act 1984

¹⁷ https://england.shelter.org.uk/__data/assets/pdf_file/0010/834832/6636_Scottish_letting_fees_report_v9.pdf

¹⁸ https://england.shelter.org.uk/__data/assets/pdf_file/0003/834834/Shelter_-_Rental_Market_Analysis_Final_Report_March_2014_Final_Version.pdf

¹⁹ Ibid

²⁰ S, 4 of The Renting Homes (Fees etc) (Wales) Act 2019. <https://www.legislation.gov.uk/anaw/2019/2/part/2/enacted>. (Accessed on the 18th November 2019).

5.4 Republic of Ireland

Under s90 of the Property Services (Regulation) Act 2011 letting fees ‘in respect of the sale or letting of land’ are banned. The legislation is very clear cut but not as expansive as the British examples. Letting agents in the Republic are also required under law to be licenced by the Property Services Regulatory Authority and abide by a code of practice.²¹ Those who are members of a professional body, such as the Institute of Professional Auctioneers and Valuers²² or the Society of Chartered Surveyors Ireland²³ are obliged, under the terms of their membership, to hold a current licence and they too must abide by a code of practice.

6.0 CONCLUSION

The charging of letting fees by agents restricts access to the PRS and places a heavy burden on low income households. This is occurring in a context where the PRS is increasingly relied upon to house individuals and families who are on limited incomes.

Despite earlier legislation (1986), the judgement obtained in the *Loughran* case (2017), confirming certain letting fees are unlawful and the more recent (March 2020) joint communique from the Department of Communities and Finance, there is clear evidence that illegal fees are still being charged by letting agents in NI.

Housing Rights believes there is a need to strengthen the legislation governing the charging of these fees and to ensure adequate penalties and enforcement arrangements are in place to deter those who continue to seek to break the law in this regard.

Key features to be addressed in the legislation should include:

- **Letting fees should be banned in all but prescribed circumstances. Said circumstances should include deposits and rent in advance.**
- **The amount of rent in advance and deposit that can be charged by a landlord/letting agents should be capped at a reasonable amount.**
- **Letting agents should be required by law to be transparent about their fee arrangements and charges. There should be no requirement for tenants to use third party services.**
- **Appropriate penalties should be introduced to deter letting agents from charging unlawful fees.**
- **Enforcement of the legislation should be carried out by local councils across Northern Ireland.**

For further information on this briefing, please contact our Policy and Public Affairs Coordinator Kerry Logan by email at kerry@housingrights.org.uk

²¹ <http://www.psr.ie/>

²² <https://www.ipav.ie/>

²³ <https://www.scsi.ie/>