

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux  
www.cas.org.uk



## Consultation on the Charging of Premiums in the Private Rented Sector

### Response from Citizens Advice Scotland

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- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 560,000 new issues in 2010/11 – more than 1,500 new issues for every day of the year. Over 230,000 clients brought new issues to a bureau over the year.
- In 2010/11, Scottish bureaux achieved a financial gain of almost £126million for clients based on funding of £16.3million (including £7.6million in core funding). This means that CAB clients were better off by £8 for each £1 of funding given to bureaux.

## **Summary**

Case evidence from citizens advice bureaux show that many clients have been asked to pay premiums by letting agents. These charges can have a significant impact on the individual's finances and can put their tenancy at risk.

The issue dealt with by this consultation should not be whether these premiums should be allowed. The law is clear that they are not. The issue should be how to ensure that letting agencies are not charging premiums that prove prohibitive to entering a tenancy in the private rented sector. We therefore support a communications exercise to ensure that both letting agents and tenants are absolutely clear about their rights and responsibilities when it comes to premiums.

## **Introduction**

Citizens advice bureaux in Scotland advised on more than 10,000 new issues related to the private rented sector in 2010/11 – this type of issue is more of a problem for our clients than those regarding owner occupier or the social rented sector.

The private rented sector appears to be particularly problematic for bureau clients. Housing issues make up 13% of the issues that private renters seek advice on at bureaux, but only 6% of all issues for owner occupiers and 4% of issues for council rented tenants. It is clear that there are issues in the private rented sector that are creating a significant advice need.

## **Evidence from citizens advice bureaux on premiums**

Around 2,700 new issues related to problems with a letting agency or with private rented fees/charges. That's more than 50 new issues each week. This is therefore a significant area of concern for many clients.

Case evidence from citizens advice bureaux shows the types of premiums that are being charged by letting agents and the impact that they can have on the individual. These premiums include charges for:

- Credit checks
- Holding fees
- Extending a tenancy
- Other administration charges, such as reference checks

## Credit checks

Prospective tenants are often told that they must pay a fee for a credit check to be carried out. Sometimes this fee is payable (and non-refundable) whether a client is offered the tenancy or not. In the following cases, the clients were asked to pay between £75 and £200 for a credit check. This is despite the three main credit reference services offering a statutory credit file for £2.

A West of Scotland CAB reports of a client who was told by a letting agency that she would be required to pay a £75 fee for a credit check to be carried out before they would help her rent a property. The bureau advised that the only fee that the client should pay before moving into a property should be a tenancy deposit.

A West of Scotland CAB reports of a client who was told that she must pay £75 for a credit check to be carried out before they could look at renting a property to her. The client wanted to know if she should pay the fee. The bureau advised that it is against the law for a letting agency to charge for a credit check. The adviser also pointed out that most credit agencies charge a statutory amount of £2 for a credit check.

A West of Scotland CAB reports of a client who was advised that he would need to pay £200 for a credit check to be carried out in order to rent a property. The client is aware that there are three other parties interested in the property. This means that the letting agency could be charging a total of £800 for credit checks which do not cost more than a few pounds. The client has been told that the charge is non-refundable whether he gets the property or not.

Similarly, tenants can be asked for significant up-front fees to have their references checked prior to taking up the tenancy.

An East of Scotland CAB reports of a client who paid £100 to have his references checked. The client is also being asked for £1,200 deposit with £600 needed as a 'holding fee' as the tenancy is not available until next month.

## Holding fees

Clients often report that they have been asked to pay a 'holding fee' in addition to their deposit and rent. It is a common occurrence for clients to pay the holding fee, change their mind about the tenancy, and then find that the letting agency refuses to refund the charge. This can result in the client being out of pocket and unable to afford the deposit for another tenancy.

An East of Scotland CAB reports of a client who was looking to rent a property with four friends. All five were asked to pay a £75 'holding fee', amounting to £375 in total, to secure the property. The clients decided not to proceed with the tenancy and requested that their payments be refunded. The letting agent refused to refund the 'holding fee' claiming that this would be retained to cover 'admin costs'.

A West of Scotland CAB reports of a client who paid a £650 holding fee to a letting agency to secure a tenancy. The client decided not to go forward with the tenancy and asked for the money back, but the agency refused to return the £650.

A West of Scotland CAB reports of a client who paid a 'holding and admin fee' to a letting agency to hold a property for two weeks. After one week, the client changed her mind about renting the property, but has been advised that the letting agency will not be returning the £355 that she paid.

A West of Scotland CAB reports of a client who paid a £200 holding fee to a letting agency with the proviso that the agreed problems with the property would be fixed before they moved in. However, the client discovered that none of the problems had been sorted and that there was no running water in the flat. The client doesn't want to move in and hasn't signed a lease, but the letting agency is refusing to return the client's £200 holding fee or £500 deposit.

### **Extending a tenancy**

Clients report that they can be charged a fee each time they choose to extend their tenancy. In these circumstances, tenants who are only offered six month tenancies can find that they are required to pay substantial fees each year just to renew their tenancy.

A West of Scotland CAB reports of a client who is being charged £60 to cover the cost of extending a tenancy. The client is concerned that this extra charge will be added every six months when her lease is due to be renewed. The client is only being allowed a six month lease due to being in receipt of benefits.

A West of Scotland CAB reports of a client who is being charged a £60 administration fee every time he renews his six month rolling lease. The client is aware that this may not be proper practice but is concerned that complaining will create friction between tenant and landlord.

An East of Scotland CAB reports of a client whose letting agency wishes to levy a 'lease renewal fee'. When the client suggested that this is illegal in Scotland, the agency changed the terminology to 'administration charge'. The client is a student and claims that she has faced numerous requests for similar fees in the past.

All of the premiums in the case studies can have a significant impact on the tenant, in terms of the effect on their finances and ultimately on their ability to afford this or another tenancy. Many of the fees being charged are far above the actual cost to the letting agency, which makes them unreasonable as well as illegal.

It is important to note that there are many letting agencies that are run successfully without having to charge premiums. The actions of agencies that do charge premiums affects not just their tenants, but also good letting agents who are not competing on a level playing field as a result.

## Consultation questions

**1a.** Should the Scottish Government embark on a consumer focused communications exercise to clarify that the definition of premium in section 90 of the 1984 Act (once amended, as set out in paragraph 2.5) is clear that any fine, sum or other pecuniary consideration (and this includes any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent, is a premium.

Yes  No

Please explain why.

The Shelter Scotland report on Premiums in the Private Rented Sector found that there is very little awareness amongst tenants that premiums are challengeable. As a result, many tenants feel they have no option but to pay these charges. Greater tenant awareness of their rights when charged a premium, particularly the routes of recourse they may have, would play a role in enforcing the law.

Equally, a communications exercise must be used to ensure that letting agencies are aware of their responsibilities. The law is clear on the upfront fees that they can charge and this should be communicated to those making the charges.

**1b.** If you have answered 'yes' to question 1a, what is your assessment of the impact to the industry? If you are in a position to provide such information, please include indication of likely costs to businesses, where appropriate.

There are many letting agencies that are successfully run without charging premiums. The actions of other agencies in charging premiums actually impact negatively on their business. By ensuring that premiums are not being charged, the Scottish Government would create a level playing field that would benefit good letting agencies.

**1c.** If you have answered 'yes' to question 1a, can you provide examples of successful business models that letting agents could adopt to ensure that the removal of such charges will not result in financial difficulties for their organisation?

N/A

**1d.** If you have answered 'yes' to question 1a, how could we ensure that this amendment to the definition of premium is clearly and effectively communicated to the industry and that any charges which would fall within the definition of premium, as amended, must stop?

The definition needs to be clearly communicated to both tenants and letting agencies/landlords to ensure that all parties know their rights and responsibilities. This information could be included in the proposed Tenant Information Pack.

**2a.** Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to tenants and set maximum amounts for such charges?

Yes  No

Please explain why.

Evidence from citizens advice bureaux and Shelter Scotland clearly shows the detrimental impact that premiums have on clients and their ability to afford housing. We do not believe that any of these premiums should be made legal, while setting maximum amounts for such charges would only encourage agents to charge the maximum amount each time. There is also the chance that the agent would make multiple charges that would amount to a significant total. If certain charges were to be implemented, the cost of charges must be proportionate to the true cost to the agent rather than purely profit making.

**2b.** If you have answered 'yes' to question 2a, please identify what tenant charges you believe should be permitted, along with a clear explanation as to why.

N/A

**2c.** For those charges you believe should be permitted, please provide a maximum amount that should be applied to those charges – providing a clear explanation as to how you identified that amount.

CAS does not believe that any upfront charges should be permitted other than the tenancy deposit and rent.

**2d.** How can Scottish Ministers ensure that such a list of permitted charges (along with associated maximum costs) reflects market changes?

N/A

**2e.** What is the likely business impact of your proposals? Please include an indication of likely costs to the industry, where appropriate.

N/A

**3a.** Should Scottish Ministers make secondary legislation that will identify categories of sums that are permitted to be charged to a tenant, without setting maximum amounts for such charges?

Yes  No

Please explain why.

Evidence from citizens advice bureaux and Shelter Scotland clearly shows the detrimental impact that premiums have on clients and their ability to afford housing. We do not believe that any of these premiums should be made legal. We are strongly against legalising any charges without setting maximum amounts for such charges.

**3b.** If you have answered 'yes' to question 3a, please identify what charges you believe should be permitted, along with a clear explanation as to why.

N/A

**3c.** In your view, why should no maximum amounts be set in relation to each permitted charge?

CAS does not believe that any upfront charges should be permitted other than the tenancy deposit and rent.

**3d.** What is the likely business impact of your proposals? Please include an indication of likely costs to the industry, where appropriate.

N/A

**4a.** What is your preferred option?

- Option One:** Embark on a consumer focused communications exercise to clarify that the definition of a premium in section 90 of the 1984 Act (once amended, as set out in paragraph 2.5) is clear that any fine, sum or other pecuniary consideration, other than rent and a refundable deposit of not more than two months' rent, **is a premium.**
- Option Two:** Develop secondary legislation under the new section 89A of the 1984 Act, specifying categories of sums that are permitted to be charged when providing services to a tenant, with maximum allowable amounts set for each such charge.
- Option Three:** Develop secondary legislation under the new section 89A of the 1984 Act, specifying categories of sums that are permitted to be charged when providing services to a tenant, without maximum allowable amounts being set for each such charge.

**4b.** Please provide any additional, relevant information that has not been covered in the consultation questions.

See cases studies earlier in the response for evidence on the impact of premiums.

### **Partial Business Regulatory Impact Assessment (Annex C)**

**c1:** Please provide any comments or feedback in relation to the partial Business Regulatory Impact Assessment contained within the consultation document.

### **Draft Equalities Impact Assessment (Annex D)**

**d1.** From your knowledge of the diverse needs and experiences of private tenants, can you provide any further information that you think we should know for the purposes of this consultation? How or where should we find this information?

Based on a sample of 3,259 clients that sought advice on a private rented housing issue at citizens advice bureaux, we can see that they have a number of

characteristics that potentially make them more vulnerable to disproportionate charges. Based on this sample:

- Clients with private rented housing issues tend to be young and may therefore be less knowledgeable about their rights – a quarter are under the age of 25 and 58% are under the age of 35.
- More than six out of ten clients are female
- Half of clients are single, divorced, separated or widowed
- Almost half (45%) of clients have caring responsibilities, while 6% of clients care for somebody with a disability
- 54% of clients live in a single adult household; 18% live in a single parent household
- 25% of clients are either unemployed or unable to work

Clients with private rented housing issues therefore have a number of characteristics that mean that they and their finances could be more vulnerable to poor letting agency practices. These clients tend to be young, often female, are likely to have caring responsibilities, and live on their own.

**d2.** In addition, is there any other information that you think we should obtain? How or where should we find this information?

N/A

**d3.** Do you think the proposed changes to the charging of premiums in the private rented sector will have a proportionately negative impact on particular groups of people in our target audience? If so, please explain why.

Our evidence on clients with private rented problems shows an insight into the type of person that is affected by this type of issue. As already stated, these clients tend to be young, often female, are likely to have caring responsibilities, and live on their own. These are the types of tenants who are and would be affected by premiums.

**d4.** What positive impacts do you think the proposed changes would have on particular groups of people?

A clarification to the law to ensure that all parties are aware that a deposit and rent are the only legal up-front charges would have a positive impact of the types of people outlined in the previous question. This would eliminate much of the poor practice outlined in the case studies earlier in the response.

**d5.** What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

We believe that Option 1 is sufficient to ensure clarity and better practice in the sector.

**d6.** When we complete our impact assessment of the proposed change to the law in relation to the charging of premiums, are there any other significant issues we need to consider in relation to:

- age
- disability
- gender
- sexual orientation
- gender reassignment
- pregnancy or maternity
- race
- religion and belief

Please explain why

Evidence from bureaux suggests that young people, women, and those in single adult households – many of whom have caring responsibilities - are those most affected by problems in the private rented sector. The impact of proposals on these types of tenants should be borne in mind.

Equally, the Scottish Government's *Review of the Private Rented Sector* showed that many migrant workers live in the private rented sector. Evidence from bureaux shows that it is often migrant workers who experience the worst practice in the sector, partly due to their real or perceived lack of knowledge of their rights.

# CONSULTATION ON PREMIUMS IN THE PRIVATE RENTED SECTOR



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Citizens Advice Scotland

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Dryburgh

Forename

Keith

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### 3. Permissions - I am responding as...

<b>Individual</b>	/	<b>Group/Organisation</b>
<input type="checkbox"/>	<i>Please tick as appropriate</i>	<input checked="" type="checkbox"/>

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

*or*

Yes, make my response available, but not my name and address

*or*

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

Yes

No