

# NAVIGATING THE FEES BAN



Fixflo

# EXECUTIVE SUMMARY

On 23rd November 2016 the Chancellor, Philip Hammond, announced that all letting fees paid to an agency by tenants in England would soon be banned - a statement which sent shockwaves through the entire Private Rented Sector. Although no timeline had been set and details were scarce, the industry immediately began to make preparations.

Seven months later, on the 21st June 2017, the Queen's Speech confirmed that a draft Tenants' Fees Bill had been drawn up and would be introduced this Autumn. To assist our clients in navigating this change, we have created this guide to help them (and the wider industry) to not only survive but to thrive in the new "tenant fee free" world that is looming.



This guide has pulled on insights from industry leaders to:

- **Investigate the current fee charges to understand why the Government will implement the ban**
- **Analyse the real economic impact on residential lettings activity in England**
- **Evaluate the impact of the 2011 Scottish fees ban on their PRS**

With our analysis pointing to the probability that the measures outlined in the Tenants' Fees Bill will result in letting agencies having to absorb the majority of the costs with a limited ability to recover additional fees from landlords, we set out implementable action points that can improve operational efficiencies and boost service levels.

I hope you enjoy the read,  
Rajeev Nayyar,  
Managing Director, Fixflo

01

**WHAT DOES THE  
DRAFT TENANTS'  
FEES BILL PROPOSE  
AND WHEN WILL IT  
COME INTO EFFECT?**





On 23rd November 2016 the Chancellor, Philip Hammond, announced that a government ban on all letting fees charged to tenants would be rolled out across England (a similar ban already exists in Scotland). Since then it has been confirmed in the 2017 Queen's Speech that a draft Tenants' Fees Bill will be published this Autumn.

To prepare for the upcoming changes we have built an agent's playbook in which we will look at what the ban is likely to include, the Government's motivation for implementing it, what impact it is likely to have on the industry and the best ways for letting agents to combat the potential loss of income. Because in this instance, forewarned really is forearmed.

## WHAT IS THE DRAFT TENANTS' FEES BILL LIKELY TO INCLUDE?

The Queen's Speech confirmed that the draft Tenants' Fees Bill will include:

- **A full ban on administration fees charged by agents for the initiation or renewal of tenancies. These fees include charges for tasks such as:**
  - Drawing up a tenancy agreement
  - Reference checks
  - Ensuring a tenant has the 'Right To Rent'
  - Drawing up and carrying out an inventory
  - Renewal and exit fees
- **A cap on holding deposits at no more than one week's rent and security deposits at no more than one month's rent.**

However, to much industry surprise, the announcement also included points that were NOT referenced in the initial consultation. These being:

## A POSSIBLE COMPENSATION CLAUSE

Tenants who feel they that they have been charged an 'unfair fee' may be able to claim that cost back. This is not definite however, given the inclusion of other surprising points, it is a possibility.

## THE CAPPED REFUNDABLE DEPOSIT

The current average deposit is equal to 6 weeks' rent, which is claimed to not be enough to cover issues such as unpaid rent. It is expected that the deposit will still be treated in line with the Housing Act 2004, meaning that it will only be refundable if deductions do NOT need to be made.

## THE CAPPED REFUNDABLE HOLDING DEPOSIT

This had been briefly mentioned in the initial consultation but it had been posed as a suggestion only. Susie Crolla of The Guild of Letting and Management points out the main concerns of such a proposal, these being:

- How can you refund a holding deposit if the tenant withdraws from the let?
- How do you cap a holding deposit when there is a disparity between London and, for example, Gateshead?
- Will the terms on which a holding deposit can be held be clear and transparent?
- When will a letting agent be able to retain the holding deposit?

Agents are expected to still be able to charge tenants:

- Fees for late rental payments
- Fees for management services carried out as a result of their actions; such as repairs due to deliberate damage to the property, breach of tenancy or the issuing of replacement keys.

## WHY IS THE GOVERNMENT IMPLEMENTING THE TENANTS' FEES BILL?

The Government, which announced the draft Tenants' Fees Bill without any prior industry consultation, argues that the industry needs greater regulation and transparency to tackle the 'unfair fees' charged to tenants. It hopes that by banning fees it will force higher standards within the industry. Further, it aims **'to improve competition in the private rental market and give renters greater clarity and control over what they will pay'**. Critics argue the ban will cripple agents and lead to a lower service level for tenants who will, ultimately, bear the cost in the form of higher rents.

## WHEN IS IT LIKELY TO COME INTO EFFECT?

The public consultation opened on the 7th April 2017 by the Department of Communities and Local Government (DCLG) but was shortly closed on the 2nd June. Feedback was due to be published shortly after the closing date but has since been cancelled.


Confirmation of the ban came on the 21st June 2017 when the Queen's Speech confirmed that a draft Tenants' Fees

Bill had been prepared and is due to be published in Autumn 2017.

A concrete implementation date was not named however, industry experts are now speculating that due to the complex nature of the legislation required, the ban is unlikely to be put into effect before the end of next year.

Policy director of the Residential Landlords' Association, David Smith, notes on the RLA website: **"The ban will need primary legislation and so the actual implementation date is not clear but is unlikely to be before late 2018."** What is clear, however, is that the policy shows no signs of going away, which means that letting agents need to be prepared for it, whatever the time frame.





# HOW WILL THE PROPOSED BAN IMPACT LETTING AGENTS?

**£0.2 BILLION**  
LOSSES IN LETTING  
AGENCY TURNOVER

**£0.3 BILLION**  
LOSSES IN LANDLORD  
INCOME

## THE GOVERNMENT'S ARGUMENT

First, let's take a look at the Government's argument in greater detail. They believe that the proposed letting fees ban will create a **"strong, private rented sector, which provides security and stability for both tenants and landlords"**. They go on to argue that tenants have very little control over the fees that they're charged (which vary considerably) and believe that a letting fees ban will enhance transparency within the industry and facilitate a greater ease of movement across the sector because tenants will know exactly what costs to pay and won't be subject to any hidden charges.

However, experts argue that under the Consumer Rights Act 2015, letting agents were legally obliged to publish a full tariff of all their fees to bring about greater transparency and allow tenants to see exactly what they're paying for. Outlawing fees entirely won't increase that; instead it could push agents to recoup losses through other charges, wipe millions of pounds off agents' profitability and threaten the future of the rental sector instead.

The CEO of industry body ARLA Propertymark, David Cox, said: **"A ban on letting agents fees is a draconian measure, and will have a profoundly negative impact on the rental market. It will be the fourth assault on the sector in just over a year, and do little to help cash poor renters save enough to get on the housing ladder. This decision is a crowd-pleaser, which will not help renters in the long-term."**

## WHAT WILL THE REAL IMPACT BE?

### Agents could lose money

A report by Capital Economics - commissioned by ARLA Propertymark - indicates that agents could lose £200 million in turnover, the equivalent of 1/5th of the total revenue made from residential lettings activity. Slashing revenue will hit the industry hard and lead to the loss of up to 3,000 jobs.

### With lost income comes increased costs and lost jobs

In keeping with this dire prediction, 40% of agents believe banning letting fees will result in a decrease in employment in the medium to long term as they grapple with lower revenues at the same time as facing an increase in training costs to meet ever-changing legislative requirements.

### The fees will be passed onto landlords, who will pass them onto tenants

The money to carry out necessary services will have to come from somewhere, and most industry bodies believe the fees will be passed onto landlords, who in turn will pass them onto tenants, negating the intention of the ban. 90% of letting agents surveyed by ARLA Propertymark admitted that they expect the cost to be passed on to landlords, who in turn, will pass it onto tenants in the form of higher rents, which even the government consultation accepts as a possibility. An excerpt from the consultation

read: **“Landlords will need to set a rent that considers their costs whilst still being attractive to prospective tenants. Some landlords may absorb some or all of the increased fees charged however, others may choose to reflect the increase in the headline price for the property i.e. the rent.”**

### **Standards will decline, leading to safety concerns**

ARLA Propertymark also reports that six in ten letting agents report that the quality of properties will deteriorate as a result of the letting fees ban, because reduced revenue and headcount will have a detrimental effect on the ability to manage a property. Squeezed landlords may also have reduced funds available to maintain the condition of their property.

### **HOW BIG WAS THE PROBLEM – HOW HIGH ARE THE FEES BEING CHARGED?**

Tenants pay on average £200 to £300 in letting fees; although the government is right when it says the letting fees vary considerably. An ARLA Propertymark protected agent charges an average of £202 per tenant, although the English Housing Survey 2014-15 found that the mean average fee paid by a household in 2014-15 was £223, while the median was £200. By contrast, the National Approved Letting Scheme found that the average fee charged is £172 with costs ranging from £30 to £500 (inclusive of VAT). But there are regular instances of fees

ranging much higher. The highest instance the DLGG found of fees was £747, while Shelter found that one in seven renters pays £500 or more in letting fees.

Clearly fee reform is required but, as evidenced above, a total ban is unlikely to solve the problem.

What the Government fails to take into account is that the services the agents charge for do need performing and somebody has to pay for them. Although they have been subject to inflation in the past, in principle letting fees are, as ARLA Propertymark puts it: **“fair, reasonable and far from exploitative for the services tenants receive.”** This includes “completing various critical checks on tenants before letting a property.” Without them, somebody else will simply end up footing the bill.

### **6/10 AGENTS REPORT THAT THE QUALITY OF PROPERTIES WILL DETERIORATE IN TERMS OF THE MANAGEMENT AND THE CONDITION**





# WHAT HAPPENED IN SCOTLAND?



Advocates of the letting fees ban have pointed north of the border to Scotland, where fees were banned under the Rent (Scotland) Act 1984, with the legislation clarified by the Private Rented Housing (Scotland) Act of 2011. Despite the fees ban, rents for most one to three bedroom flats in Scotland rose by less than inflation in the period 2010-2016 after the fees ban legislation was clarified; a sign, according to the Scottish Government, that the ban has worked.

But, if you scratch beneath the surface of those figures, the positive impact of the ban across the industry becomes less clear-cut.

### WHAT KIND OF BAN WAS INTRODUCED? IS IT THE SAME AS THE ONE PROPOSED FOR THE UK?

In Scotland, fees which range over and above the rent paid by tenants to letting agents (known as 'premiums') have been banned since 1984. However, due to an unclear definition of 'premiums' many fees were still being charged. In 2011 the Scottish Government clarified the position and ruled that only rent and the deposit was owed by the tenant; every other charge was to be paid by the landlord.

This differs from the proposed legislation for England and Wales where, under the proposed letting fees ban, agents would still be able to charge for certain services (see Section 2).

### HOW DID AGENTS REACT?

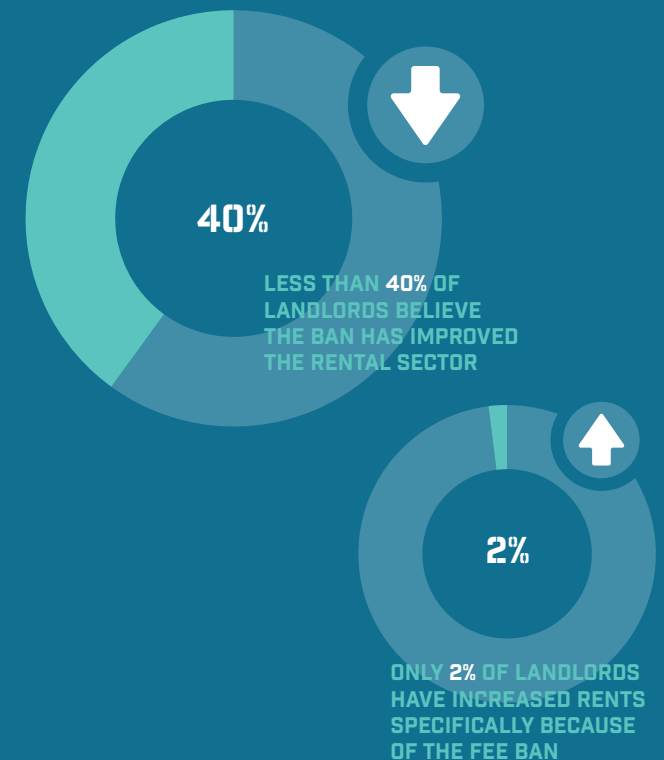
The reaction varied across the country with some agents being able to absorb the costs, others trying to pass them on and some folding entirely due to loss of revenue. Most worryingly, the evidence suggests that in some areas agencies decreased the services they offered because they couldn't afford to carry them out. One in four surveyed said they no longer undertake credit checks as standard, which has worrying implications for safety and industry standards.

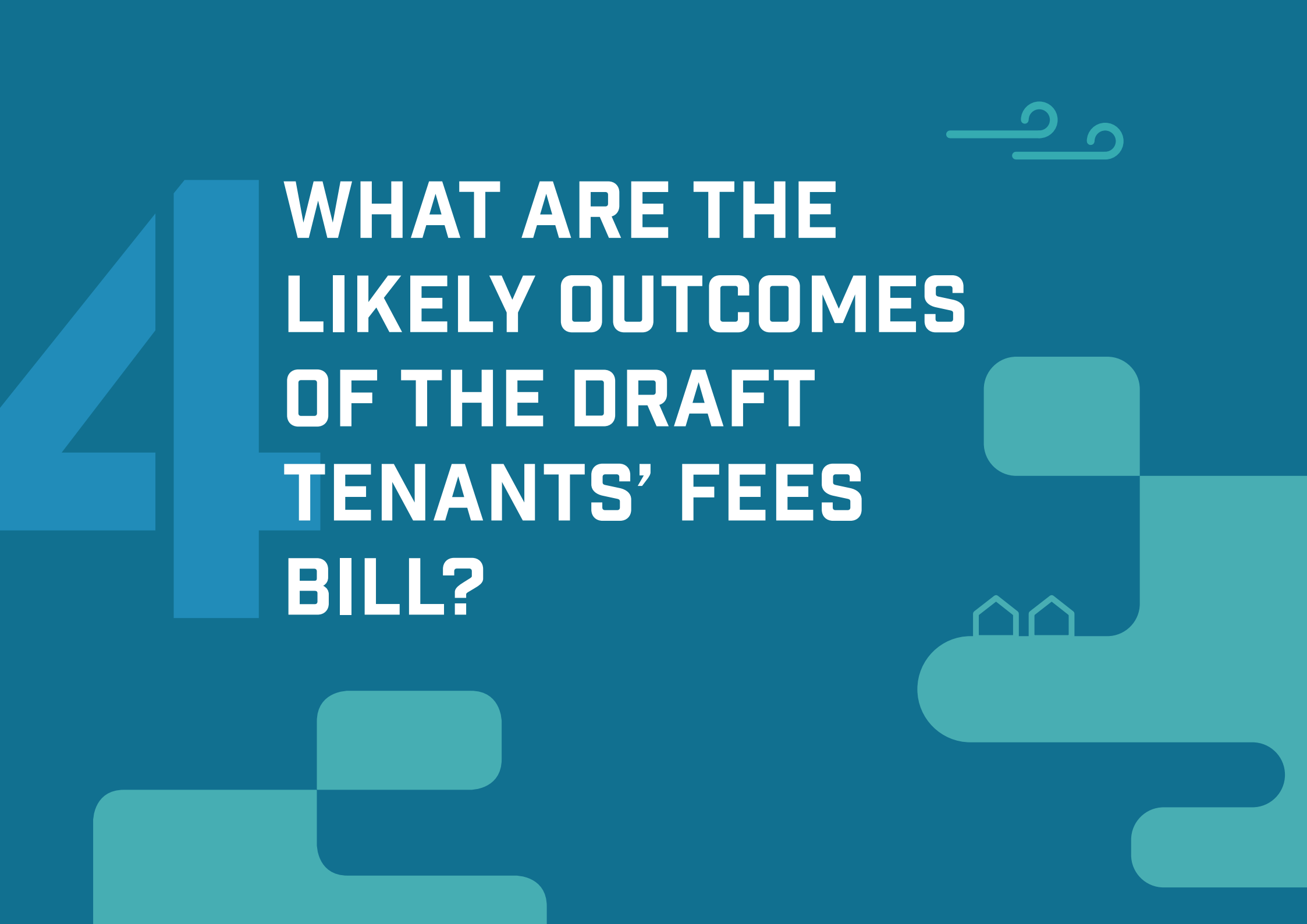
### WHAT WAS THE NET IMPACT ON THE SCOTTISH PRS?

Again, it's a little early to tell. Proponents of the ban argue that banning fees hasn't caused the rent rises that critics feared. They point out that Scottish rents rose by just five per cent in the years from 2012 – 2016, compared to the nine per cent rent increase English tenants have experienced (figures from the ONS). But this argument doesn't take into account the heavy Scottish dependence on the oil industry and the impact that the depressed oil price has had on housing in oil towns like Aberdeen, which have seen their rents tumble, skewing the national figures.

The reality is that, despite the findings of a Shelter report commissioned in 2013 showing that just two per cent of landlords had increased rents specifically because of the fee ban, a poll by the Council of Letting Agents

(CLA) found that 20 per cent of its members reported an increase in rent as a result of the change and nine per cent reported the introduction of other fees instead. These ranged from increased management fees to additional fees to landlords. Unsurprisingly, less than 40 per cent of landlords agreed that the clarification had improved the rental sector. The conflicting statistics prove it's too early to draw any firm conclusions, but it is clear that the implementation of the ban hasn't been as smooth a process as some have claimed.



A large, stylized number '4' in a medium blue color is positioned on the left side of the slide. To its right, the text 'WHAT ARE THE LIKELY OUTCOMES OF THE DRAFT TENANTS' FEES BILL?' is written in white, bold, uppercase letters. The background is a solid dark teal. In the top right corner, there are two light teal curved lines. On the right side, there are several light teal geometric shapes, including a rounded rectangle and a large L-shaped block. Near the bottom right, there are two small white house icons.

# 4 WHAT ARE THE LIKELY OUTCOMES OF THE DRAFT TENANTS' FEES BILL?

Although it's unclear as to what format the lettings fee ban will take, or when it will be put into effect, from the evidence presented so far, two likely scenarios are emerging and from these, three possible outcomes.

## 1) LETTING AGENTS ABSORB THE COSTS

Taking on the extra costs of administrative tasks as well as swallowing the loss of revenue (developer CBRE estimates that tenant fees form 20% of revenue per property let across England, with figures rising to 24 per cent in the North East) will force branch closures and thousands of job losses.

## 2) AGENTS PASS THE FEES ONTO LANDLORDS

Faced with additional charges; landlords have two choices – to pass the costs on in higher rents or to take the hit themselves.

### a. Landlords take the hit themselves

It's estimated there are around 1.8 million landlords across the U.K., which means that it's difficult to predict how they will react as a group. These numbers also make the rental sector a competitive one, which could stifle individual landlord's abilities to raise their rents.

If landlords absorb the additional costs themselves, there's no change in outcome for tenants or letting agents; landlords would bear the brunt of the ban and the resulting loss of income.

### b. Landlords increase their rents accordingly

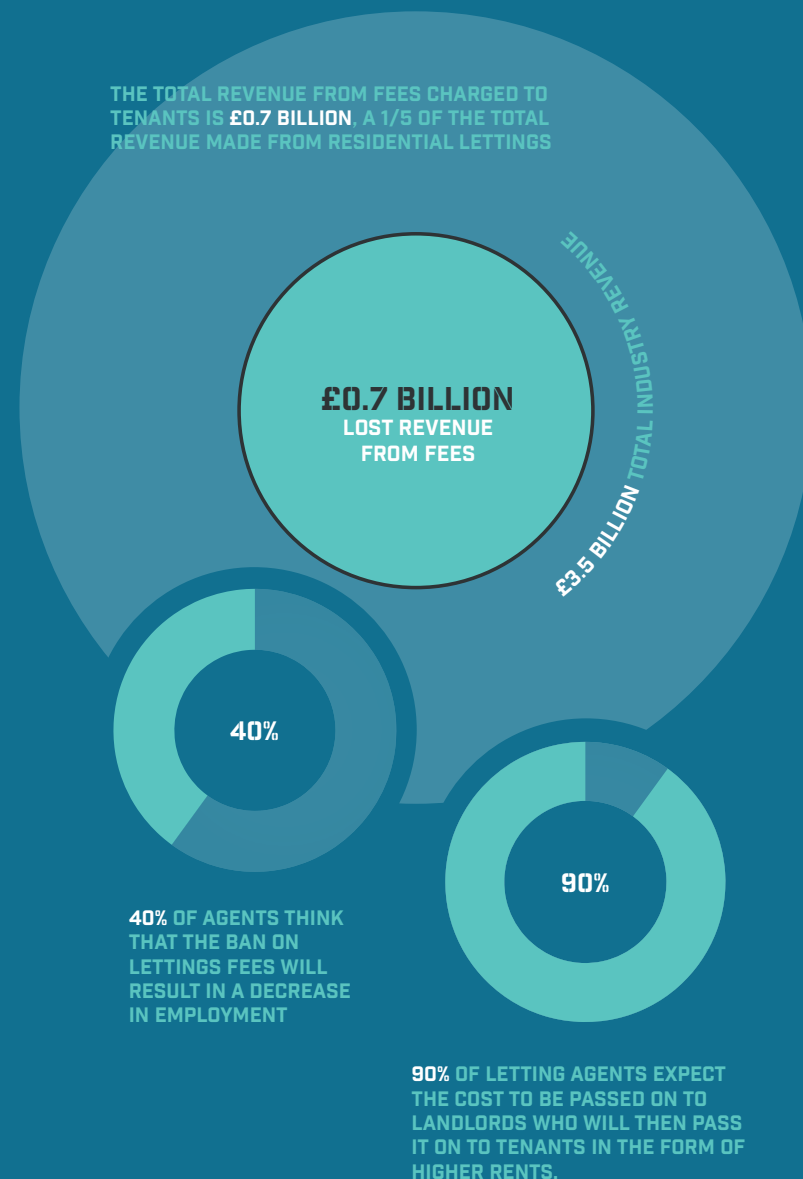
If landlords attempt to offset the reduction in their income by raising rents, the administration costs will be passed directly to the tenant.

The Government's consultation paper states:

**"The Government announced at the 2016 Autumn Statement that it would consult on introducing a ban on letting agent fees paid by tenants in England, to improve competition in the private rental market and give renters greater clarity and control over what they will pay."**

**"Tenants will be able – at a glance – to see what a given property will cost them in the advertised rent level without any additional hidden costs; this should help to make entering and moving around in the private rented sector easier and less costly."**

However, as the extra charges will be parceled up into an increased rental tariff, the transparency of these charges will actually be reduced. This repackaging will be worsening the issue that the letting fees ban was set up to tackle, negating both its purpose and its impact.



The background is a solid dark blue. On the left, there are large, light blue geometric shapes, including a vertical bar and a large 'S' or '5' shape. In the upper right, there is a light blue hot air balloon with horizontal stripes and a wavy line representing a cloud. In the lower right, there is a light blue stylized landscape with a building, a tree, and a small boat with two figures. In the lower left, there is a light blue stylized landscape with three houses and a small boat with two figures.

# WHAT ARE THE OPTIONS AVAILABLE IN THE PLAYBOOK?

Now is the time for agents to critically evaluate their business and make the necessary changes. Even though many agencies intend to pass the cost of the letting fees ban onto the landlord, in today's market it's not enough to simply dodge the bullet; the ban could be the first in a series of punishing legislation and agents must start future-proofing their businesses now.

Managing Director of Northwood, Eric Walker said:

**“Agents should work on a ‘worst case scenario’ basis and assume you can’t charge anything to a tenant, though it is believed there may be some allowable charges where there is a breach of the tenancy agreement. Once you have taken stock, you know what is needed. Many agents haven’t done this as they still think a ban is subject to consultation.”**

Following on from a worse case scenario, there are still options to make up lost revenue and push business forward in the face of the ban:

## 1. AN IMMEDIATE OPTION IS TO CHARGE MORE FOR THE SERVICE PROVIDED.

Along the same short-term lines as passing the cost on to landlords, charging more can be difficult without providing a demonstrably better service at the point of your pitch. Agents looking to make pricing adjustments should also be aware that the CMA are showing a keen interest in price fixing (with a price fixing cartel in Somerset fined £370,000 for fixing earlier this year) and it's critical that companies set their prices without collusion.

## 2. A MORE PRACTICAL SOLUTION IS TO THINK ABOUT CUTTING COSTS.

As Mr Walker puts it: **“Agents need to work out the cost of the services they provide; if they undertake in-house referencing, how much does this actually cost in terms of staff time, calls, letters etc. It’s more than you think and makes a case for outsourcing.”**

In many cases, around-the-clock repairs and maintenance software can streamline what can be a painful process and free up staff time for better utilisation elsewhere.

When it comes to cutting costs, merging with other agents to achieve economies of scale for purchasing and reducing overheads is another way to streamline processes, but agents should be aware that unless they reduce the number of physical offices, the centralisation may not pay off.

Mr Walker also warns against wielding the axe too vigorously – there are some areas that will always require investment.

He said: **“Revisit costs but don’t think that cutting advertising is a good idea. As Henry Ford said: ‘A man who stops advertising to save money is like a man who stops a clock to save time.’”**

## 3. IN ADDITION TO REDUCING COSTS, AGENTS SHOULD CONSIDER EXPANDING

## THE PRODUCTS ON OFFER.

They can encourage a higher proportion of landlords to opt for a fully managed service by offering additional services; access to a contractor base or networking club in addition to other services that make landlords' lives easier. Actively selling landlord and tenant insurances not only makes their lives easier and their livelihoods safer, it also provides a separate income stream for the agent. Remember every commission or introductory fee must be disclosed.

## 4. INCREASE SALES

While margins may suffer because of the fee ban, if agents can increase their capacity (without increasing costs) through implementing technology they can offset some of the negative impact of the fee ban. More ideas and suggestions for how to win landlords are contained within our free eBook, packed full of tips from industry leaders. **[Click here to download.](#)**

## 5. NOW IS THE TIME TO REVIEW STRATEGIC OPPORTUNITIES

Even in the face of adversity, there are always opportunities to grow business. Agents should assess their competitors – perhaps those who are not so well hedged may be unable to continue to trade. Or perhaps the fees ban is encouraging them to shut up shop or sell their business on? This is the market environment

in which smart agents approach those around them that are flagging and offer to buy their lettings book. The lettings book is often acquired at a multiple of the annual revenues but there are brokers who specialise in the acquisition and disposal of agents' businesses – so it can be worth registering with them to keep up with opportunities.

As with many things when it comes to business, the way to get ahead will rarely be just one action, it will be a combination of several things. But the best way to tackle the letting fees ban is to know the numbers, take a hard look at the business and the opportunities available and not be afraid to diversify. Agents who commit to this process should find that when the time comes to finally implement the ban, their business is ahead, not behind.

## 6. WHAT TO DO NEXT?

When it comes to the draft Tenants' Fees Bill and its' accompanying fees ban, there is a lot to digest and even more to consider. Here are the most important action points to take away:

- Have you examined the financial impact of the fees ban and calculated the likely loss of revenue to your business, making sure to consider the worst case scenario? If you're still unsure of the figures, it's always worth speaking to your accountant or another business advisor.

- Do you have the capacity to increase sales? Rather than increasing your headcount, are there members of your team who can have their roles expanded?
- Can you create more capacity in order to generate profit? Now is the time to start looking at streamlining your processes, outsourcing where possible and improving the efficiencies of your property management department.
- Are you utilising technology? For a fraction of the cost of taking on new personnel, you can employ repairs and maintenance software to assist with the management of tenant issues and speed up the repairs process. This kind of software can also chase contractor quotes, issue invoices and audit your communications process.
- Whatever your chosen path, don't forget the importance of keeping morale high. This is an uncertain time in the industry and taking the time to reassure and engage with your team will pay dividends.

Finally, if you're planning any major changes to your business or are considering any significant increases in investment we can't emphasise enough the importance of knowing your numbers (and factoring in that worst case scenario in terms of the restrictions of the ban). If Excel spreadsheets aren't your thing, make sure you seek help in laying out your future strategy. Changes made now could have a serious financial impact on the future, regardless of the ban.



# SOURCES

**ARLA Propertymark** - "Letting the market down - assessing the economic impacts of the proposed ban on Letting Agent fees"

**BBC** - Letting Fees Ban: How It Works In Scotland

**BBC** - Somerset estate agents fined £370,000 for price-fixing

**CBRE** - Banning Letting Agent Fees To Tenants - Impact of Implementation

**DCLG** - English Housing Survey 2014 - 2015

**DCLG** - Banning Letting Agent Fees Paid By Tenants

**GOV.UK** - The Queen's Speech 2017

**NALS** - NALS Response To Letting Agent Fee Ban Consultation

**Office of National Statistics** - Index of Private Housing Rental Prices in Great Britain: May 2017

**Property Industry Eye** - Will letting fees ban prompt rental inflation? How the Scottish market reacted

**Shelter** - Letting Agencies - The Price You Pay

**Shelter** - Lessons From The Scottish Lettings Market





# WHO IS FIXFLO

Fixflo is a market leading repair reporting software which is guaranteed to streamline your Maintenance workflow.

With over 40 languages to choose from, tenants can use their mobile device to report repairs through Fixflo's picture based system. Inbuilt guided advice educates tenants of their responsibilities, allowing them to fix small issues themselves.

A clear, concise repair report is then sent to the right property manager in seconds, saving time and money for everyone involved! Including all the benefits of Fixflo, Fixflo Plus features a centralised dashboard which provides you with a detailed overview of your entire portfolio. Fixflo Plus also automates reminders to contractors, ensuring swift issue resolution.

50,123

REPAIRS REPORTED  
MONTHLY

450,000

UNITS ACROSS 14  
TIME ZONE

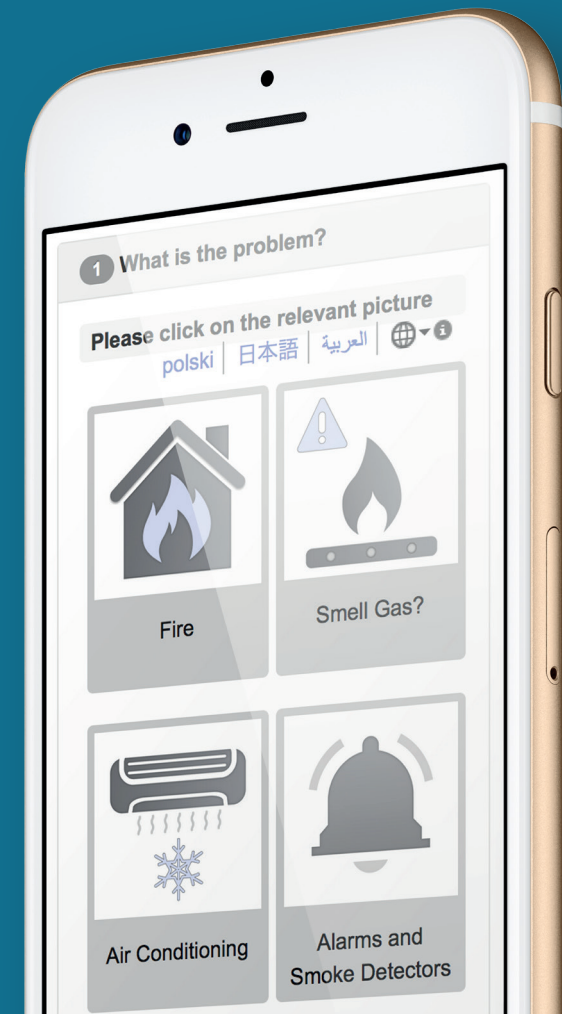
4,000

LETTINGS BRANCHES

Fixflo Plus also provides agents with clear, concise repair reports which contain all the information needed to manage a repair to resolution. Because Fixflo repair reports contain all the detail needed, contractors can prepare for the specific issue at hand, meaning that most issues can be resolved in first contractor visit.

A complete audit trail of all communication and documentation is safely stored in the system, ensuring that no issue slips through the cracks.

**If you'd like to find out more about the Fixflo product range you can book your free demo here.**





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Give us a call:

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