**Charging of Premiums in the Private Rented Sector Consultation**

**Heriot Watt University Student Union Response**

**May 2012**

**Introduction**

Heriot-Watt University Student Union is the representative body for students who study at Heriot-Watt University, and we represent approximately 7000 students. We exist to empower our student community to engage in and shape every aspect of student life. We work in collaboration with our University to create effective contributors to society now and for the future. We provide advice and representation on a range of student issues and deliver campaigns and activities focused on improving the student experience.

The Union has responded to this consultation because we believe that premium fees should NOT be introduced to the private rented sector. We believe that these fees will target young people, especially students, more and the Scottish Governments own statistics show this. Students tend to be more transient in the housing market, meaning they are more likely to be taking out a new tenancy each year. If premium fees were introduced we believe this would impact unfairly on students who may have limited funds.

Premium fees should continue to remain illegal, and improved enforcement against these fees being charged should be paramount in future dealings with letting agents and landlords. These fees are currently illegal but some agencies are clearly getting around the legislation somehow. The Scottish Government should close any legislative loopholes, and hold the entire sector to a higher standard.

**CONSULTATION QUESTIONS**

**QUESTION 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 Scottish Government should definitely embark on a consumer focussed communications exercise to clarify the definition of a premium charge and to communicate this information to tenants and prospective tenants. The Union believes that these extra charges should remain illegal for the sustained future. Further to this, industry guidelines and regulations should ensure landlords and letting agents are fully aware of what premium charges are. Some agencies have clearly been getting around the legislation somehow. The Scottish Government should close any legislative loopholes, and hold the entire sector to a higher standard.

It is unfair to expect students to pay premium fees for any tenancy agreement. Students are particularly transient in the housing market as they are more likely to change flats and tenancies annually, or on a fairly regular basis. Premium fees will take money from student’s pockets and the lack of transparency so far has resulted in a failure for some potential tenants knowing upfront what they will be charged. Not all students have family who can help pay for these types of charges so poorer students will be affected more by this policy and be forced into debt. Additional premium fees are a burden and some students have turned to commercial debt to cover the costs. In extreme circumstances, some students might not even be able to afford decent accommodation and could be priced out of the market. Students need to know in advance exactly what they will be charged upfront for their tenancy agreement, and premium fees should not form part of this charge. We believe that the introduction of premium fees will just extract further profit from students who can ill afford them, and many students may be unsure of their full rights as tenants and prospective tenants.

The current a housing crisis has resulted in more people from all walks of life having to rent as they cannot afford to buy, meaning competition among prospective tenants is high. This has helped to cause a shortage of suitable affordable housing for students. We have grave concerns for students who take out a tenancy in a HMO property as these properties are predominately rented by students and young professionals, especially if letting agents and landlords charge each student premium fees for each service when a HMO tenancy is taken out. This could result in students being charged multiple disproportionate fees for services that do not cost the industry a lot of money. We believe this is extremely unfair and unjustified.

When a tenant moves out of property and into another dwelling, deposits are not always paid back in a timely manner. Therefore, a student could be waiting on a deposit to be returned while at the same time excessive charges are sought when they take on a new tenancy agreement. It is extremely unfair to put this burden on any student.

Some landlords and letting agents think it is acceptable to charge premium fees by calling such charges ‘admin fees’. We are deeply concerned because some landlords and letting agents have told students to go and find a property elsewhere if they do not agree to pay these additional charges that they have wrongly enforced. Conversely, if a tenant is part way through a tenancy agreement and they challenge the past charging of premium fees and seek to reclaim them, the Union is worried that landlords and letting agents will not renew tenancy agreements if the tenant wishes to stay on. The Scottish Government should take measures to ensure that this does not and cannot happen.

**QUESTION 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?**

First and foremost the Scottish Government needs to ensure proper enactment of current legislation and impose penalties, fines or sanctions on letting agents and landlords who flout this legislation.

This will help to make sure this policy is taken seriously and adhered to. A set of industry regulations and guidelines should be produced, and spot checks could be carried out on the industry. Working with organisations such as Shelter will help to ensure tenants are at the heart of any further enforcement. An independent complaints procedure should be set up which tenants can use if they are being charged premium fees.

To make sure tenants know their rights, information on premium fees should be included in their Tenancy Packs and letting agents should be made to display this information in their offices. Targeted adverts and press releases should also relay the information that premium fees are illegal, and how tenants can complain if they are still being charged these fees. It also needs to be made easier for tenants to reclaim any premium fees that they have paid unfairly and this should also be communicated effectively.

**QUESTION 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**

The Union does not agree with the Scottish Government introducing secondary legislation which would allow the introduction of premium fees, even if a maximum limit was set for each charge. As stated before, these charges will hit students especially hard, and we do not believe they are a fair charge for a service that should be included during the administration of a tenancy agreement. If this policy is introduced, maximum fees will become the norm. We believe that most letting agents and landlords will charge the maximum amount allowed. This will add considerable costs for students when they can ill afford it.

**QUESTION 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**

Absolutely not. The Union does not agree with the Scottish Government introducing secondary legislation which would allow the introduction of premium fees without a maximum fee level. The Union believes that this suggestion is disgraceful and open to abuse from letting agents and landlords who will be able to charge any cost for a service that should already form part of a tenancy agreement. The Union believes services such as credit checks and reference checks are a necessary part of their business. Therefore, premium charges, especially unlimited premium charges, should not be added.

**QUESTION 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.