

# Code of Practice for Residential Letting Agents

Effective from 1 August 2011



This Code of Practice is mandatory for all TPO Members offering residential letting and/or management services. TPO Members must display the above logo and must make copies of the Consumer Guide available to the public. TPO Members must also have available, free of charge, copies of this Code of Practice to give to consumers on request and a notice to this effect must be displayed with the Consumer Guides. TPO Members have agreed to be subject to the Ombudsman's powers of redress as defined in his Terms of Reference.

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# Code of Practice for Residential Letting Agents

All references to the masculine include the feminine, and to the singular include the plural. Terms marked (\*) - the first time they appear, are defined in a Glossary of Terms at Section 19.

## 1. General Provisions

### Applicability

- 1a This Code applies to letting agency services in the United Kingdom, provided by a person or organisation who has agreed or is required to comply with it, for the letting or property management (\*) of residential property (\*). There is a separate Code of Practice for sales of property.

### General Obligations

- 1b You (\*) must comply with this Code of Practice. You must ensure that all staff are fully conversant with all aspects of the Code of Practice and their legal responsibilities. Such staff must observe the Code and their legal responsibilities in all their dealings with consumers. You must comply with all laws relating to the letting of residential property and all other current and relevant legislation.
- 1c You must always act within the law in the conduct of your business. In particular you must ensure that in your dealings with consumers you avoid any banned practices, misleading practices or misleading omissions as defined by the Consumer Protection from Unfair Trading Regulations 2008.
- 1d You should provide a service consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit, misrepresentation or harassment (\*).
- 1e You must offer equality of professional service to any person, regardless of their race, religious belief, gender, sexuality, age, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, religious belief, gender, sexuality, age, disability or nationality.
- 1f You should take special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement; and you must avoid any course of action that can be construed as harassment.
- 1g You must not release or misuse confidential information given by your client (\*) during the process of the letting or property management of a residential property without your client's permission, unless legally required to do so.
- 1h You must keep clear and full written (\*) records (\*) of your relationship with landlords and tenants for at least 6 years. Those records must be produced when required by the Ombudsman.
- 1i As a TPO Member you must not take or be involved in any action which would bring the scheme into disrepute.

### Publicity

- 1j You must use and display such material promoting the Code of Practice as provided by TPO. You should prominently display the TPO logo on the window of all offices, and on relevant documentation such as marketing literature, property advertisements, and on your letterheads.
- 1k You must have available, free of charge, copies of the Code of Practice to give to consumers on request. You must also prominently display copies of the Consumer Guide leaflet in all your offices.

## 2. Market Appraisal

- 2a When you give advice to someone intending to let their property, any figure you advise either as a recommended rent must be given in good faith, reflecting current market conditions. You must never deliberately misrepresent the potential rental level of a property in order to gain or retain an instruction.
- 2b Any figures given should within reason, be supportable by indicators in the market place, preferably by comparables of similar properties in a similar location.
- 2c You must keep your general marketing strategy under regular review with your client.
- 2d You must advise a potential client of the need to obtain any necessary consent (for example from joint owners, mortgage lender or someone holding a legal charge against the property, superior landlord (\*) and/or freeholder etc) prior to formal creation of a tenancy; inspect the necessary consents; advise of the need for the client to assess relevant buildings and contents insurance.
- 2e You must advise a potential client of the need to comply with the obligations and requirements of the safety legislation and regulations that apply to rented property; and you should verify the validity of the necessary certificates.
- 2f You should, within reason, draw to the attention of the potential client any obvious repairs or maintenance issues which appear necessary in preparation for the intended letting.

- 2g You must, where appropriate, make a potential client aware of the special rules relating to the deduction of tax from rental income, applying to client landlords considered as non-resident or overseas.
- 2h You must draw to a potential client's attention the necessity and benefit of a properly prepared full inventory and a schedule of condition.

### **3. Instructions, Terms of Business, Fees, Charges and Termination of Client Agreement**

#### **Instructions and Terms of Business**

- 3a You must ensure that the client understands your Terms of Business, that all fees and charges are clearly stated and are drawn to the attention of the client and you must satisfy yourself that client is entitled to instruct you and to sign on behalf of all co-owners as necessary.
- 3b The client must be given sufficient time to read your Terms of Business before agreeing to instruct you. The client should be required to sign a copy which you should hold on file and the client must be given a copy to retain.
- 3c Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party. When a contract is signed by a client during a visit by you to his home or his place of work or away from your premises, then he must be given a right to cancel that contract within 7 days of signing in accordance with the Cancellation of Contracts Regulations 2008. He should be given a formal 'Notice of Right to Cancel'. Where you intend to recover costs incurred during this cancellation period you must obtain the client's agreement in writing to those costs. Where the client wishes the contract to begin before the end of the 7 day cancellation period you must obtain that request in writing.
- 3d You must, at the point of instruction, inform your client in writing (\*) that you are a Member (\*) of the TPO scheme, and subscribe to this Code of Practice for Letting Agents.
- 3e You must not directly or indirectly harass any person in order to gain instructions. Nor must you repeatedly try to gain instructions in a way likely to cause offence.
- 3f You must not instruct other agencies to assist you in renting a property without the client's permission. If the client gives permission, as the instructing agent, you are liable at law for the actions of the sub-instructed agent and will be held responsible for any failures to comply with this Code of Practice by that sub-instructed agent even if that sub-agent is not a TPO Member. Notwithstanding this, if you are instructed as a sub-agent or share listings via a website, you must continue to act in accordance with all relevant provisions of this Code of Practice.
- 3g You must give your client written confirmation of his instruction to act in the letting and/or management of properties on his behalf. You must give the client written details of your Terms of Business which should include what different types or levels of service are available for example letting only, rent collection, full management including any relevant fees and expenses. You must give the client these details before he is committed or has any liability towards you. Your Terms of Business must not contain provisions which are inconsistent with the provisions of this Code.
- 3h You must confirm in writing the client's instructions to act on his behalf and which type or level of service is being provided.

#### **Fair Contracts**

- 3i Your Terms of Business must be transparent in relation to client commitments. They must be written in plain and intelligible language and comply with other requirements of the Unfair Terms in Consumer Contracts Regulations 1999. You should not use terms that may be deemed unfair, and consequently unenforceable, by virtue of the above Regulations. Your Terms of Business must not contain terms which are inconsistent with the provisions of this Code of Practice for Letting Agents.
- 3j Your Terms of Business must not include any terms requiring the client to pay commission where another agent or any other third party renews the tenancy of a property which you were previously instructed to let; or which requires the client to pay commission in circumstances where the tenant agrees to purchase the property.

#### **Fees and Charges**

- 3k Where the fee is a percentage you should clearly state whether VAT is chargeable and must express it as an actual amount plus VAT. The example amount should be based on the rental asking price. However, you must make it clear that, should the agreed rental be higher or lower than the example price, your commission fee will be correspondingly higher or lower.
- 3l Where you charge a fixed fee you should state the actual amount payable including VAT in the contract and ensure that the client understands that the fee will not vary whatever the rental income.

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- 3m The Terms of Business must include clear and accurate information regarding the circumstances under which either party to the contract may cancel or terminate the arrangement and they must actively flag what liability for fees or charges may be incurred in those circumstances.

## Termination of Client Agreement

- 3n Whether you or the client terminates the instruction, you must give the client appropriate written confirmation that you will no longer be acting for him, including the date of termination, and giving details of any liability for fees or charges owed by the client to you (or any credit or funds owed to the client) and confirming any arrangements for the handover of the property, appropriate documentation, keys etc to the client or his appointed representative.
- 3p Where your contractual arrangement with your client is terminated, and the relevant managed property is still tenanted, you must promptly tell the tenants, in writing, of the change in arrangements, including where it is proposed the deposit will be held. In such circumstances, the written authority of the tenant(s) to release their deposit to a third party must be obtained.

## Subsequent Changes

- 3q Any change to the Terms of Business must be:
- mutually agreed by you and your client;
  - promptly confirmed in writing;
  - where appropriate, contained in a new Terms of Business signed and dated by your client.

## 4. Marketing and Advertising

- 4a You must not commence the marketing of a property until you are satisfied that you have your client's authority and have agreed the basis of your Terms of Business. You must not knowingly offer a property on the market without an appropriate Energy Performance Certificate and permission from the owner/client or, alternatively, from the owner/client's properly appointed and authorised representative. It is accepted that for portfolio landlords (\*) it may be impractical to hold individual instructions on a property-by-property basis; in such circumstances a Member Firm should ensure that they hold a satisfactory letter of authority from the client.

### Letting Boards

- 4b You can only erect a letting board with the client's specific permission. When you put up a board you must comply with the Town and Country Planning (Control of Advertisements) Regulations 2007 or in Scotland, the Town and Country Planning (Control of Advertisement) Regulations 1990. You must accept liability for any claim arising under these Regulations in connection with the board, unless the action arises as a result of a further board being put up by another person. Any board should be removed promptly from a property where you are no longer instructed, or, within 14 days of the tenant taking up occupation.
- 4c If your board relates to only part of a building (for example a flat) it must indicate the part (or flat or unit) of the building to which it relates.
- 4d You must not replace another agent's board with your own, hide it or remove it from a property. Where appropriate you should ask the client to make arrangements with the other agent for the prompt removal of any existing board.
- 4e You must not erect a letting board or similar on a property that you have not been instructed to let.

### Published Material and Information about a Property

- 4f You must by law comply with the Consumer Protection from Unfair Trading Regulations 2008 and take all reasonable steps to make sure that all statements that you make about a property, whether oral, pictorial or written, are accurate and are not misleading. In particular, reasonable care should be taken when describing property as unfurnished, part furnished, furnished or fully furnished so that applicants are not misled as to what fixtures, fittings etc might be included.
- 4g All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion.

### Advertising for New Business (Canvassing)

- 4h You must not use either "ghost" advertisements or canvassing material for properties that do not exist or for applicants that do not exist, in order to attract either new applicants or new clients.
- 4i You must not use unfair methods when seeking new properties or applicants by unsolicited approaches. Any leaflet must be truthful and must fully explain who the message is from, its purposes and how the applicants or new client's interest can be followed up.

## 5. Viewing and Access to Premises

### Viewings

- 5a You must take instructions from the client as to his requirements regarding viewings, specifically, whether or not they should be conducted by you.
- 5b You must record any feedback from viewings and pass this to the client within a reasonable time. If this feedback is an offer to rent, you should refer to Section 6 below.
- 5c Before arranging any viewing, you must tell the applicant if an offer has already been accepted by your client.

### Access to Premises

- 5d Where you are arranging for an applicant to view a tenanted property, the existing tenant must be provided with appropriate and reasonable notice as prescribed by law of the appointment unless other arrangements have been agreed with the occupying tenant. You should accompany all viewings unless an unaccompanied viewing has been agreed by the existing tenant.
- 5e You must make sure that all the keys to a client's property that are in your possession are coded and kept secure. You must maintain records of when you issue keys and to whom; when they are returned and by whom. These records must be kept secure and separate from the actual keys. You must only give keys to people providing you with satisfactory identification and who can demonstrate a legitimate purpose.
- 5f If access to a property is required by you, or an authorised third party on behalf of the landlord (e.g. a surveyor, builder, tradesman etc) for the purpose of viewing the condition, state of repair and/or to fulfil related statutory obligations and/or to carry out repairs, and you hold the key but are not able to accompany that person, the occupying tenant must be provided with the appropriate minimum notice of 24 hours or that prescribed by law, of the appointment unless agreed otherwise with the occupying tenant beforehand except in cases of genuine emergency.
- 5g When you are unable to accompany any third party, this must be made clear to the tenant or other occupier beforehand.
- 5h You must exercise due diligence to ensure that, after any visit by you or an authorised third party, a property is left secure.

## 6. Offers – Clients and Applicants

- 6a It is not advisable for you to accept, or recommend a client to accept, an offer on a property that has not been viewed either by the applicants themselves or by a suitably authorised representative of the applicants, for example, an appointed relocation agent or direct associate (\*). Exceptions might be made when an applicant resident overseas is willing to be contacted by letter, fax or electronic means, but, in such circumstances, you must be conscious of the implications of the Consumer Protection (Distance Selling) Regulations 2000.
- 6b You must inform your client, in writing as soon as is reasonably practicable about formal offers received on a property up to the point where tenancy agreements are signed unless the client has instructed otherwise, or, unless the offer is of an amount or type that the client has indicated previously (in writing) is unacceptable. Details of all formal offers made on a property including the name of the applicant, the amount, the date and the response given should be recorded. Where you are instructed as a sub-agent you must inform the principal agent of any offers received.
- 6c Where an offer has been made to a landlord and he declines the tenancy other than because the prospective tenant has failed referencing, he should be advised that the prospective tenants holding deposit will be refunded in full to the tenant (see 6j below) and that the landlord may be liable for costs incurred by the agent in pursuing the references.
- 6d An applicant, whose offer has been confirmed as having been accepted in principle, must be given written confirmation whether or not the marketing of the property is to cease and/or if further viewings will be carried out by you whilst the application is processed. If marketing and or viewings are subsequently recommenced by you the applicant must be promptly informed.
- 6e You must provide the parties with a reasonable opportunity to see and study a draft or specimen tenancy agreement prior to the applicant becoming liable for fees or charges associated with the rental of the property except where such opportunity is declined or where you hold an instruction to the contrary. Where there is to be a guarantor for the applicant for the tenancy, this facility must be extended to that person.

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- 6f Any standard documentation that seeks to create a contractual relationship, via its standard terms or clauses, between an applicant and you or your client must be transparent in relation to the commitments of each party. Such documentation must be fair, clearly presented and written in plain and intelligible language so as to comply with the Unfair Terms in Consumer Contract Regulations 1999. Such documentation includes application form, preliminary agreement, reservation form or a holding deposit receipt, terms and conditions of an application. You should advise your client that standard terms or clauses or fees and charges deemed unfair by the Courts under these regulations are unenforceable.
- 6g Prior to an applicant's offer being formally accepted, you must set out in written form and must actively flag any significant tenancy pre-conditions and terms for the letting, including the circumstances in which the applicant may have any potential financial liability for fees, charges or penalties relevant to:
- the processing of his application to rent the property, including the cost of any credit checks to be made by you or the landlord;
  - his withdrawal, at any stage, of his application for the tenancy or the client's rejection of it. Consumers are entitled to a refund of a fair proportion of any prepayments made under a contract that does not go ahead, or that ends before they have enjoyed any significant benefit;
  - the initial setting up of the tenancy including inventory check-in costs;
  - any ongoing or future liability for fees or charges payable to you for the applicant to extend, renew or terminate the proposed tenancy including inventory check-out costs.
- 6h Details of an offer accepted in principle (albeit still subject to references etc) should be confirmed to the client as soon as practicable and ideally in writing.
- 6i You must take reasonable steps to keep applicants who have made an offer and which has not already been rejected informed of the existence (but not the amount) of other offers submitted. You must not misrepresent to either the client or an applicant the existence of, or any details of, any other offer allegedly made or of the status or circumstances of any other person who has made an offer.
- 6j Where you take a holding deposit from a prospective tenant this deposit must be treated as clients' money (see Section 13) except insofar as it will be used to meet the costs of referencing and other reasonable administration charges. You must provide that person with a written receipt detailing the charges and fees that will be offset against the deposit if any and the terms of repayment or forfeiture should the tenancy not proceed. Any deductions from the deposit must be reasonable and must take account of the circumstances of the situation (for example where the landlord declines the tenancy application or the prospective tenant decides not to proceed and notifies you promptly after payment of the holding deposit). Any holding deposit due to be returned must be repaid within 10 working days.

## 7. References – Clients and Applicants

- 7a In all referencing processes or procedures, you must be diligent in identifying fraudulent applications.
- 7b You must take references on an applicant appropriate to the circumstances of the applicant and in line with arrangements agreed with the client. Your own referencing procedures should usually be by way of a Referencing Service provider or by direct application to third party referees or any combination of the above.
- 7c Where references are provided directly by the applicant, you must be diligent in validating their authenticity. In cases when you take or examine references and/or make a charge for them, the charge must be fair and reasonable for the work undertaken.
- 7d Where the current existing address of applicants is not evidenced via the Electoral Roll, such an address must, wherever practical, be verified by the applicant providing you with a utility bill or bank statement, or Building Society passbook or Council Tax account or driving licence or similar.
- 7e You must be diligent in verifying the identity and nationality of a successful applicant and you must retain a record of steps you have taken.
- 7f Where an applicant fails, in the circumstances, to meet prudent referencing criteria, you must obtain confirmation in writing from the client they wish to proceed with that applicant. Where the acceptance of the applicant is conditional you must ensure those conditions are met and/or advise the client accordingly.
- 7g You must provide the landlord with all relevant facts (subject to data protection restrictions) relating to the applicant to enable the landlord to make an informed decision.

## 8. Letting – The Tenancy Agreement, Inventories and Deposits

### The Tenancy Agreement

- 8a You must take care to prepare an appropriate written tenancy agreement that includes any agreed or specially negotiated clauses or terms particular to the property or the circumstances of the parties to the letting including prescribed information in accordance with the Landlord and Tenant Act 1987. You should ensure tenancy agreements are transparent in relation to the commitments of each party. The tenancy agreements must be clearly presented, written in plain and intelligible language; that any fees and other charges are actively flagged; and that any standard terms and clauses take account of the implications of the Unfair Terms in Consumer Contracts Regulations 1999. You should note that standard terms or clauses or fees and charges deemed unfair by the Courts under these regulations are unenforceable.
- 8b You must ensure that the tenant has the opportunity to raise queries in order to clarify and understand his rights and obligations under the tenancy agreement, particularly those relating to rent, deposit or ancillary fees and charges. If the terms of the tenancy agreement are changed during the period of your agreement with the client, the client must be given the opportunity to see and confirm the changed tenancy agreement.
- 8c You must ensure that tenants are provided with relevant and appropriate documentation, statutory or otherwise, prior to their occupation of the property or commencement of the tenancy, whichever is the sooner.
- 8d By law you must, within 21 days of receipt of formal written request from a tenant, provide that tenant with the name and address of their landlord.
- 8e At the start of a tenancy, you must ensure that both client and tenant are aware of your ongoing role and scope, if any, in the continuing collection of rent and/or management of the property. In circumstances where the tenant is to be paying rent direct to a non-resident or overseas landlord, even where that is into a UK bank account, the tenant should be made aware of a tenant's obligations to the Inland Revenue in respect of a non-resident or overseas landlords tax liability.

### Inventories and Schedules of Condition

- 8f Unless you have instructions to the contrary you must ensure at the start of a tenancy that any inventory and/or schedule of condition prepared for the client by you, or an appointed sub-contractor, is sufficiently detailed and up to date to allow it to be used as a fair measure at the end of the tenancy.
- 8g You should arrange for a tenant to be checked-in to the property accompanied either by an Inventory Clerk or other representative of the landlord or his agent. Wherever this is not practical, the tenants must be provided promptly with the inventory and/or schedule of condition and advised of the need to formally raise in writing any notable discrepancies, deficiencies or differences identified, within a specified period of time.
- 8h The tenant must be given sufficient time, up to 5 working days from receipt to read and comment upon and sign the check-in report and inventory, and given a copy. If the tenant fails to sign and return the inventory within the time frame and before they take occupation the tenant is deemed to have accepted the inventory as accurate. You must hold a copy on file. You must actively flag and specifically draw to the attention of the tenant that their failure to sign and return the inventory will result in the relevant documentation being accepted as accurate.

### Deposits

- 8i Advance payments of rent taken as a holding deposit to secure a tenancy cannot be treated as a substitute for a tenancy deposit taken to safeguard the landlord against breakages and damages during the period of the tenancy and must not be retained for use other than as advance payment of rent.
- Pre 6 April 2007 (or where the Housing Act 2004 of England and Wales does not apply; or where the provisions of the Housing (Scotland) Act 2006 have not been implemented).
- 8j Where an Assured Shorthold Tenancy was signed prior to 6 April 2007 and a tenancy deposit has already been taken, the deposit held by any agent "as agent for the landlord" has, ultimately, (unless subject to an alternative independent dispute resolution process such as the Tenancy Deposit Scheme) to be refunded or apportioned on the landlord's instructions or by the agent on behalf of the landlord. Reasonable endeavours should be made to ensure that this process is fair and equitable and supported by appropriate documentation.
  - 8k Where an agreement was signed prior to 6 April 2007 and a tenancy deposit held by any agent "as stakeholder between the parties" (this may vary in Scotland) it is being held in a quasi-trustee position on behalf of both parties. Whenever possible the agreement of both landlord and tenant should be obtained (in writing) as to how the deposit is to be disbursed. In the event of a dispute an agent as stakeholder is entitled to retain the deposit (or the disputed part of it) until the dispute is settled and in such circumstances consideration should be given to alternative independent dispute resolution processes. Reasonable endeavours should be made to ensure that this process is fair and equitable and supported by appropriate documentation.

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- 8l In England and Wales you must adhere to the relevant sections of the Housing Act 2004, specifically Chapter 4, Sections 212 - 5 and Schedule 10. In relation to Tenancy Deposit Protection deposits taken for any Assured Shorthold Tenancy or 'replacement' tenancy must be covered by a recognised Tenancy Deposit Scheme. The Housing (Scotland) Act 2006 makes provision for similar deposit protection and when that legislation is implemented you must follow the relevant provisions. If you make voluntary use of a Tenancy Deposit Scheme established under the Housing Act 2004 in respect of a Scottish tenancy you must follow the rules of the scheme.
- 8m You must ensure that the Assured Shorthold Tenancy agreement drafted includes a clause that specifies how and by whom the tenancy deposit is to be held (see Clauses 8k and 8n), and whether interest is to be paid or not. It should include some information on how the tenancy deposit will be dealt with at the end of tenancy and the circumstances or criteria or procedure by which it will be refunded.
- 8n Where relevant you must hold deposits on Assured Shorthold Tenancies as stakeholder (the legislation prohibits the holder of the deposit from disbursing the deposit without the agreement of the landlord and tenant. A disputed deposit can only be paid out following a decision by an adjudicator or the Courts). It is not compulsory to do so in respect of non Assured Shorthold Tenancy deposits where you may continue to hold deposits as agents for the landlord. However, it is recommended that for the protection of the tenancy deposit and to help facilitate its fair disbursement at the end of the tenancy, you should hold the deposit as stakeholder where possible (this may vary in Scotland). Any deposits not covered by a recognised Tenancy Deposit Scheme must be treated as clients' money (see section 13).
- 8p The relevant clause of the tenancy agreement must include provision for an unresolved deposit dispute to be referred to an independent dispute resolution scheme. This is via one of the statutory Tenancy Deposit Protection Schemes and there is a requirement by law to inform the tenant under which scheme his deposit is protected and how to seek resolution of a dispute over the return of the deposit should one arise.

## 9. Rent Collection

- 9a You must use legally acceptable methods to obtain prompt rental payments from tenants in line with their tenancy agreement.
- 9b You must have procedures in place to notify both client and tenant (and guarantor if relevant) in a timely manner, of rent that has become appreciably overdue and take suitable steps to notify rental warranty insurers (if appropriate) as necessary.
- 9c You must provide a tenant, upon request, with a statement or schedule of rental payments received showing how arrears have arisen.
- 9d You must draw a client's attention to a build up of serious rental arrears and should seek appropriate instructions from the client or his professional advisers.
- 9e You must co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords or tenants.
- 9f You must have in place suitable processes and accounting procedures for fulfilling the obligations placed upon an agent for the deduction, if appropriate, of tax from rent received on behalf of a non-resident or overseas landlord and subsequent payment and reporting to, the Inland Revenue in accordance with the Finance Act 1995.

## 10. Management

- 10a You must manage a property in accordance with the law, the relevant tenancy agreement, and the Terms of Business with the client. It is accepted that there will be times when you will have to act as "an agent of necessity".
- 10b You must respond promptly and appropriately in the circumstances to reasonable communications from clients and tenants or any other authorised or appropriate third party, particularly where these relate to statutory repairing or maintenance obligations or safety regulations.
- 10c You must be prudent in the selection, appointment and use of contractors engaged to carry out work on behalf of, or to provide advice to clients. You should take reasonable steps to ensure such contractors hold relevant professional indemnity and public liability insurance and possess suitable experience or applicable professional or trade qualifications where required.
- 10d You must keep suitable records of repairs, maintenance etc carried out on behalf of the client and should ensure that instructions to contractors or suppliers indicate both any urgency required in carrying out jobs and, within reason, the scope or scale of the works needed.

- 10e When determining the standard of repair or general maintenance required on behalf of a landlord client, you should consider the age, character and prospective life of the property or the relevant part, and the locality in which it is situated.
- 10f Initial contractors' quotes or estimates and subsequently receipts and invoices, submitted to you should be required to provide a sufficiently detailed breakdown to clarify what work is needed to be, or has been, carried out in which areas of the property and at what cost.
- 10g The frequency of any routine visits to be made to the property by you during a tenancy must be agreed with the client in advance, normally within the Terms of Business. The client should be made aware that such visits are of limited scope, are of a generally superficial nature and are neither an inventory check nor a survey.
- 10h You must keep records of when or if any routine visits are carried out during a tenancy; record any significant findings and be diligent in bringing such findings to the attention of both landlord and tenant, including any corrective actions suggested or required.
- 10i You must communicate promptly to client and tenant on any important issues or obligations relating to the use and occupation of the property, including significant breaches of the tenancy agreement that you become aware of.
- 10j You should be prepared to provide a reasonable degree of guidance and sympathetic support to tenants of a managed property who are being harassed or victimised, or are the target of persistent anti-social behaviour.
- 10k You should have in place a system to ascertain, at an appropriate time, the tenant's wishes and the landlord's instructions with regard to any extension and/or termination of the tenancy.

## **11. Termination of a Tenancy**

- 11a Upon receipt of appropriate instructions from a landlord client, you must take steps to serve a lawful notice in writing upon a tenant to terminate the tenancy; either in line with the landlord's instructions or at the earliest time the law allows taking account of the landlord's requirements.
- 11b You must inform a landlord client, promptly and in writing, of the receipt of lawful notice from a tenant.
- 11c On giving or receiving notice to bring a tenancy to an end, you must provide a tenant with general written guidance as to what steps need to be taken relating to the preparation of the property for the final checkout, handover of keys and other matters. You must actively flag and draw the tenant's specific attention to any specific clauses or obligations within the tenancy agreement relating in particular to proposed deductions from the tenancy deposit but also for example, to specified standards of cleaning etc.
- 11d Where a tenant does not vacate a property on the due date, you should take steps to ascertain the tenant's intentions and advise the client landlord as soon as practicable. Where appropriate, you must take steps to notify any legal protection or expenses insurer and co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords.

## **12. End of Tenancy – Deposits, Disputes and Damages**

- 12a Where appropriate to the services being provided and unless you have instructions to the contrary, you must arrange for, or carry out, the final check-out as soon as is reasonably practicable after the tenants vacate and at the lawful end of the tenancy, preferably during daylight hours. The outgoing tenants should always be offered the opportunity of being present to observe the final checkout.
- 12b The check-out must be conducted thoroughly and a sufficiently detailed report or summary prepared with specific reference back to the inventory and schedule of condition prepared prior to the tenancy.
- 12c When the final check-out has been completed and the parties have agreed there are no intended deductions or any dispute, you must refund the full deposit to the ex-tenant(s) or instruct the landlord or tenant's deposit holder in respect of Assured Shorthold Tenancies within a maximum of 10 working days. Where practical the agent should use fast payment schemes.
- 12d Irrespective of how the tenancy deposit has been held by you, where you are subsequently contractually involved in negotiations between the parties at the end of the tenancy, you must communicate promptly, regularly, politely and fairly. Major pertinent details and recommendations or suggestions must be confirmed in writing and copies of relevant significant information (such as quotations or invoices) provided.

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- 12e You must ensure that instructions to contractors or suppliers and, subsequently, contractors' or suppliers' quotations or receipts provide a sufficiently detailed breakdown to clarify precisely what work is to be/had been carried out in which areas of a property. It should then be simple for all parties to assess and understand what portion of the work and costs can lawfully be allocated to the landlord or tenant in the light of the inventory check-out report or tenancy agreement obligations.
- 12f Wherever possible, once proposed deductions have initially been raised with the parties, you must pay over to each relevant party any amount of the deposit that is not subject to a dispute, as soon as administratively practicable.
- 12g You are expected to co-operate and comply fully and promptly with any investigation and the result of any independent, alternative deposit dispute resolution service, such as a Tenancy Deposit Protection Scheme, invoked by the parties.

## 13. Clients' Money (\*)

- 13a You must at all times keep clients' money in a separate designated clients account held in a financial institution appropriately authorised under the Financial Services and Markets Act 2000 and where relevant comply with your regulatory bodies' rules or byelaws in relation to the handling of clients' money. The client should be advised that monies will be held in a designated client account.
- 13b You must provide a client with an appropriate, regular statement of income and expenditure. Other than for minor amounts, adequately detailed invoices or receipts should support payments made on behalf of a client and copies provided to the client upon request.

## 14. Duty of Care and Conflict of Interest

- 14a Your duty of care and obligations are to your client landlords to whom you must offer suitable advice to meet their needs and aims. All parties involved in the transaction both applicants and tenants must be treated fairly and with integrity. If there is a conflict with your duty to your landlord client, the applicants or tenants should be advised accordingly and recommended to seek independent advice.
- 14b You must tell your client in writing as soon as reasonably possible when you find out about circumstances that give rise to a conflict of interest. This would include where you or any connected person (\*) own, or have a financial interest in, a business or contractor engaged to provide services to a client.
- 14c If you or an employee or an associate is intending to make an application to rent a property which your firm is instructed to market, or then becomes a tenant of such a property, that person must take no further direct part in the letting of that property on behalf of your company. The client must be informed of the relationship prior to the application being formally accepted or when the tenant becomes an employee or associate, at the earliest opportunity.
- 14d If you are offering to let a property that is owned by you, an employee or an associate or any connected person, or in which you, an employee or an associate of an employee has an interest, you must inform an applicant for the property of the relationship prior to their application being accepted in principle.
- 14e You must always act both in the best interests of the client and within the law. You must offer advice considered suitable, in the circumstances, to meet the client's aims and needs. Where the law and the interests of the client conflict, adherence to the law must prevail.

## 15. In-house Complaints Handling

- 15a You must maintain and operate an in-house complaints procedure. Such procedures must be in writing; explain how to complain to your business and to the Ombudsman; be readily available in each office for consumers; and be available for inspection by both the Ombudsman and TPO Limited.
- 15b All complaints must be recorded by you at the time they are made.
- 15c You must agree to deal with any properly appointed representative of a Complainant (\*).
- 15d All written complaints must be acknowledged in writing within 3 working days and a proper investigation promptly undertaken. A formal written outcome of your investigation must be sent to the Complainant within 15 working days. A senior member of staff not directly involved in the transaction should deal with the complaint.

- 15e If the Complainant remains dissatisfied, he must be told how he can further pursue his complaint within your business. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. Such a review must be sent to the Complainant within 15 working days.
- 15f Following the conclusion of your investigation, a written statement expressing your final view, and including any offer made, must be sent to the Complainant. This letter must also tell the Complainant how the matter can be referred to the Ombudsman, pointing out that any such referral by the Complainant must be made within 6 months of your final view.
- 15g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

## **16. Referrals to the Ombudsman**

- 16a You must co-operate with any investigations by the Ombudsman being conducted in accordance with his Terms of Reference.
- 16b You must:
- comply with any award and/or direction made by the Ombudsman against you and accepted by the Complainant and which is binding upon you under the Terms of Reference; and
  - pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

## **17. Compliance Monitoring**

- 17a You must comply with the requirements of any code compliance monitoring procedure used by TPO Limited.
- 17b You must seek consumers' permission for their contact details to be used in any monitoring process to ensure compliance with the Data Protection Act.

## **18. Non-Compliance with the Code**

- 18a Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.
- 18b The DSC will consider those cases brought to its attention by the Ombudsman, acting within his Terms of Reference, where he considers there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent.
- 18c The DSC will also consider cases of non-compliance where the monitoring process at 17 above shows any single flagrant breach and/or persistent breaches of the Code, failure to complete monitoring or where it is considered that the Member has brought the scheme into disrepute.
- 18d In these cases above the DSC could issue:
- An informal warning.
  - A formal warning.
  - A notice of dismissal from TPO Limited in writing.
  - Levy a fine.
- 18e Any Member issued with a warning or sanction has the right to make a representation to the DSC and after the final decision of that body, shall, if necessary have the right to put the matter before an Appeals Committee made up of two independent Council members (one of whom will act as Chair) and one Board member. Such appeal must be made within 4 weeks of the issue of the warning or sanction. Expulsion or suspension from the TPO letting scheme will not necessarily result in loss of Consumers, Estate Agents and Redress Act registration.

# Code of Practice for Residential Letting Agents

## 19. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 19a **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.
- 19b **Client.** A person who has instructed you to rent a property on his or her behalf, in the United Kingdom, excluding the Channel Islands and the Isle of Man. Where appropriate, this definition includes a client's properly appointed representative.
- 19c **Clients' Money.** Money held or rent collected for and on behalf of client landlords, including ex-clients is considered as client money and this will include deposits or money held for and on behalf of an applicant, tenant or ex-tenant.
- 19d **Complainant.** Someone who is an actual or potential landlord or tenant or former landlord or former tenant of residential property making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant's properly appointed representative.
- 19e **Connected Person.** Includes:
- Your employer or principal.
  - Your employee or agent.
  - Any associate including the term "business associate" as defined within Sections 31 and 32 of the Estate Agents Act 1979.
- 19f **Harass/Harassment.** Means to act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.
- 19g **Member.** An agent who is a Member of the TPO scheme and who has undertaken to abide by all provisions of the Code of Practice.
- 19h **Portfolio Landlord.** A landlord with a number of properties that are being let, often through the same letting agent.
- 19i **Property Management.** In this Code, property management means the management of a property on behalf of the landlord, generally following the finding of a tenant. It does not relate to 'block' management.
- 19j **Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.
- 19k **Residential Property.** Means property (land and/or buildings or part thereof) used, last used, or to be used for residential purposes. Excluding holiday lets.
- 19l **Superior Landlord.** The owner of a superior interest in the property as a freeholder or leaseholder or intermediate landlord.
- 19m **Tenant.** A person who occupies a property by agreement with the landlord subject to the payment of rent.
- 19n **Written, in Writing.** Includes typed or hand-written letters, records or notes, emails and faxes.
- 19p **You.** Applies to all those Letting Agents and their staff providing letting services bound by this Code.