OFT Letting Agents Intelligence Report

Response from The Property Ombudsman (TPO)

July 2012
The Property Ombudsman’s response to the OFT’s Letting Agents – Intelligence Report

Summary

The findings of the OFT’s Intelligence Report, in general, mirror TPO’s experience and views relating to letting agents and the current problems facing the private rented sector.

TPO welcomes the OFT’s Intelligence Report and is supportive of its aim of producing a practical, comprehensive guidance document to be used as an informative resource by letting agents, enforcers and other stakeholders.

To assist the OFT, this response includes data and commentary concerning the disputes referred to TPO by consumers in 2011 which related to letting agents registered with the scheme. 2011 saw TPO receive 11,253 different issues from complainants about letting agents. In addition the Ombudsman formally investigated 1,817 letting issues and made a judgement in each instance.

In responding TPO have also taken the opportunity of reiterating the anomaly which persists between sales agents who are obliged under law to join a redress scheme and letting agents who are free to operate under their own set of standards and who are not required by law to offer their consumers any route to redress if things go wrong.
1. TPO overview

1.1 The Property Ombudsman Limited is a ‘not for profit’ company limited by guarantee which provides an alternative dispute resolution service to consumers within the property sector.

1.2 The Ombudsman's current jurisdiction covers disputes relating to sales agents, letting agents, commercial property agents, residential leasehold management agents, international agents (based in the UK) and valuers and auctioneers conducting chattels auctions.

1.3 The Property Ombudsman (TPO) scheme was originally established in 1990 as the Ombudsman for Corporate Estate Agents. In 1997 the scheme was renamed as the Ombudsman for Estate Agents and then changed to TPO to reflect its broader jurisdiction in relation to the resolution of disputes relating to sales, lettings, personal search organisations, residential leasehold management, chattels auctions and commercial property. In June 2008 TPO was the first redress scheme to gain the status of an OFT Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007. Both the TPO Code of Practice for Residential Estate Agents and the TPO Code of Practice for Residential Letting Agents have received OFT approval under its Consumer Codes Approval Scheme (the latter being Stage 1 in July 2011 with Stage 2 remaining under consideration by the OFT).

1.4 TPO provides consumers with a free, impartial and independent alternative dispute resolution service for complaints against registered firms (TPO scheme members). The Ombudsman’s resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party. The Ombudsman can, where appropriate make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered firm.

1.5 The Ombudsman provides redress, where appropriate, to consumers whose complaints are supported after consideration on a case by case basis. Redress is intended to put the consumer back into the position they were before the complaint arose. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a registered firm. The Ombudsman does not have the power to impose fines or dictate the way in which firms conduct their business.
1.6 Whilst the scheme charges its members an annual subscription and the fees collected by the Board of TPO, the Ombudsman reports to the independent Council, the majority of which is made up of non-industry members. It is the Council who appoints the Ombudsman and sets his Terms of Reference, i.e. how the complaint process operates. The Ombudsman is accountable to the Council.

1.7 The Ombudsman can only investigate disputes relating to registered firms. However, as at 1 July 2012, over 11,785 sales offices and 9,389 lettings offices were registered with TPO. We estimate that these figures represent approximately 95% of sales agents and 64% of lettings agents operating within the UK.

1.8 TPO is a member of the Ombudsman Association (previously named the British and Irish Ombudsman Association - BIOA) and adheres to the organisation’s principles of good governance for ombudsman schemes.

2. Methodology and Headline Findings

2.1 From 1 January to 31 December 2011 TPO received 7,641 letting agent complaint enquiries and the Ombudsman undertook 756 formal investigations (reviews) of disputes relating to registered letting agents.

2.2 The 7,641 complaint enquiries covered 11,253 different issues.

2.3 The 756 formal investigations examined 1,817 different issues.

2.4 Unlike the data from Consumer Direct (CD), the Ombudsman’s investigations recorded the letting agent’s response to the complaints and made a judgement on each issue.

2.5 Where the complainant had previously referred the matter to the letting agent prior to an enquiry being made, the agent’s responses were also recorded.

2.6 The complaint categories used by TPO differ from that used by the OFT in its Intelligence Report. TPO complaint categories have been considered in relation to the five point Grouping system used by the OFT in order to align and clarify TPO data where possible.
Commentary relating to differences between TPO's and OFT's complaint categories is provided later in this document.

2.7 Using the OFT Grouping system, TPO data relating to complaint enquiries and formal reviews are displayed in Tables 1 and 2:

### Table 1 – Complaint Enquiries

<table>
<thead>
<tr>
<th>OFT Groups</th>
<th>Issues</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1 – Fees and charges</td>
<td>1,933</td>
<td>17.18%</td>
</tr>
<tr>
<td>Group 2 – Agents providing poor service</td>
<td>5,816</td>
<td>51.67%</td>
</tr>
<tr>
<td>Group 3 – Security deposits</td>
<td>766</td>
<td>6.81%</td>
</tr>
<tr>
<td>Group 4 – Delayed and substandard repairs</td>
<td>681</td>
<td>6.05%</td>
</tr>
<tr>
<td>Group 5 – Unfair business practices</td>
<td>1,467</td>
<td>13.04%</td>
</tr>
<tr>
<td>Other</td>
<td>590</td>
<td>5.24%</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>11,253</td>
<td>100%</td>
</tr>
</tbody>
</table>

### Table 2 – Formal Investigations (Reviews)

<table>
<thead>
<tr>
<th>OFT Groups</th>
<th>Complaints</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1 – Fees and charges</td>
<td>394</td>
<td>21.70%</td>
</tr>
<tr>
<td>Group 2 – Agents providing poor service</td>
<td>877</td>
<td>48.28%</td>
</tr>
<tr>
<td>Group 3 – Security deposits</td>
<td>162</td>
<td>8.92%</td>
</tr>
<tr>
<td>Group 4 – Delayed and substandard repairs</td>
<td>160</td>
<td>8.82%</td>
</tr>
<tr>
<td>Group 5 – Unfair business practices</td>
<td>118</td>
<td>6.51%</td>
</tr>
<tr>
<td>Other</td>
<td>106</td>
<td>5.83%</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>1,817</td>
<td>100%</td>
</tr>
</tbody>
</table>

3 **OFT Group Commentary**

**Groups 1 and 2**
3.1 Page 7, Point 6 of the OFT Report categorises “Consumers fail to receive the level of service they expected under the contract” as a Group 1, Fees and Charges complaint. Expectation of the level of service is often different to that formally agreed with a consumer within, for example, the agent’s Terms of Business. Invariably, TPO’s experience of investigating service level issues indicates that the consumer was expecting a higher level than that actually agreed. This heightened expectation may arise through conversations with the agent or with other third parties.

3.2 The expectation of the level of service does not always relate to a fee or a charge. For example an agent may fail to provide regular updates relating to the marketing to a landlord. The agent may fail to inform the tenant about the scope of their instruction from the landlord (Management / Tenant Find Only / Rent Collection). The agent may fail to communicate that the tenant had a pet or children or that they intend to visit the property. Due to the nature of these issues, we group these under ‘Communication Failure’ and include this data under Group 2.

3.3 There were 2,518 complaint enquiries in 2011 where a communication failure was reported which made up 22.38% of the issues received by TPO.

3.4 There were 181 issues relating to communication failure investigated by the Ombudsman which made up 9.96% of the total issues reviewed.

**Group 3**

3.5 Page 28, Point 14 of the OFT Report includes disputes about notices served by letting agents within Group 3.

3.6 Notices can be served by letting agents for a variety of reasons and they are not all necessarily linked to the security deposit. A Section 8 notice may be issued (amongst other specific reasons) for the non-payment of rent. However, that rent could then be paid and the tenancy continues and, therefore, has no bearing on the security deposit. Other notices could be issued in relation to the condition of the property. Again the tenant could take the appropriate action to rectify the situation and the tenancy continues.
3.7 Notices which directly affect rental payments could be included under Group 1, given that these would be viewed by tenants as fees and charges. However, other notices could be included under Group 2 given that they may not directly relate to the termination of the tenancy and the security deposit. TPO does not use a ‘Notice’ complaint category for these reasons. Instead, the issue(s) which instigated the notice being issued is recorded (e.g. ‘Rent’).

3.8 It is noted that complaints relating to holding deposits have been categorised by the OFT under Group 1. Accordingly, we have also included complaints relating to holding deposits under this Group.

Group 4

3.9 We have included complaints relating to the Gas Safety and Electrical certificates under Group 4.

Group 5

3.10 We have included issues relating to the marketing material produced by the letting agent in Group 5. However, issues relating to viewings and conversations held during those viewings are included under Group 2.

4 TPO responses to OFT questions

4.1 Do the findings of the OFT Intelligence Report mirror your views/understanding of the current problems in the letting sector?

4.1.1 Subject to our comments about the grouping of complaints, the findings of the OFT’s Intelligence Report mirror TPO’s understanding and views of the current problems within the letting sector.

4.2 Do you have any data, intelligence or other evidence you can share?

4.2.1 Included in Appendix 1 is data relating to the 7,641 complaint enquiries received by TPO and 756 formal investigations of registered letting agents carried out by the Ombudsman during 2011.
4.2.2 In summary, 11,253 letting issues were reported and 1,817 letting issues were formally investigated by the Ombudsman who made a judgement in each instance. The average award made against a letting agent in 2011 was £307 and 67.4% of all lettings cases were either supported in whole or in part by the Ombudsman.

4.2.3 The 2011 figures represent a 26.2% increase in letting complaint enquiries and a 42.1% increase formal letting reviews compared with 2010 figures. Similar percentage increases upon the 2011 figures have already been recorded for the first six months of 2012.

4.2.4 It should also be noted that, despite the increases in complaint enquiries and formal reviews, the number of complaints supported (as an overall percentage) decreased by a small margin. Given the buoyant letting market predictably leading to a greater number of complaints being generated, these figures could indicate that the standard of service amongst registered firms is generally improving.

4.2.5 Last year saw the average lettings award decrease, providing further indication that overall standards for registered letting firms could be rising. That said, there was also a 47.3% increase in £500+ awards which pointed to an increased severity of the nature of the complaints made against a small number of registered firms.

4.2.6 A full breakdown of the specific issues investigated is contained in Appendix 1.

4.3 Are there any other problem areas not included in this Intelligence Report, which you consider to be significant? If so, please provide evidence of the types of problems.

4.3.1 TPO estimates that 64% of letting agents trading in the UK have voluntarily registered with the scheme and follow the TPO Code of Practice for Residential Letting Agents. However, this leaves approximately 36% of letting agents who are operating under their own set of standards and which, therefore, present a greater risk to consumers. Consumers who use non-registered letting agents are not afforded a route to free and independent redress should things go wrong.
4.3.2 Sales agents are required by the Consumers, Estate Agents and Redress Act (CEARA) 2007 to be registered with an OFT Approved Redress Scheme and are now used to working in such a regime.

4.3.3 Since CEARA, the customer satisfaction and compliance surveys carried out by TPO have shown a year upon year increase in consumer (buyers and sellers) satisfaction with registered firms and the firms’ compliance with the TPO Code of Practice for Residential Estate Agents.

4.3.4 As many sales agents have broadened their business into lettings, it can be argued that making CEARA applicable to every letting agent would not present (for the majority of firms) anything different and it would remove a clear inconsistency for consumers.

4.3.5 We believe this inconsistency could be resolved through an amendment to the Estate Agents Act 1979 to encompass the work of letting agents.

4.3.6 The consequences of amending the Estate Agents Act 1979 would mean that the obligations of the CEARA would become applicable to every agent operating a lettings business, forcing them to join an approved redress scheme and obliging them to act in accordance with a Code of Practice. As is currently the case for sales agents, those letting agents who continued to operate outside the law would be subject to individual enforcement action by Trading Standards.

5. **Next steps**

5.1 The OFT Report indicates that this information will be fed into the next stage of their process which will be to produce a practical, comprehensive guidance document to be used as an informative resource by letting agents, enforcers and other stakeholders.

5.2 The document intends to consider identified problem areas and set out information in relation to:

- Existing industry solutions
- Routes to redress, where available
- OFT’s views/position
- Enforcement options
5.3 The OFT will formally consult on this document in accordance with HM Government ‘Code of Practice on Consultation’ in Autumn 2012.

5.4 Given TPO’s prominent position in providing alternative dispute resolution services in the lettings sector, we would be pleased to contribute to the OFT’s further consideration, with our experience of complaints and industry issues.

6. TPO Recommendations

6.1 We recognise that the Coalition Government is opposed to the introduction of regulation generally and, therefore, that regulation in the property sector will not be a priority.

6.2 For the reasons already stated, TPO would strongly recommend, however, amending the Estate Agents Act 1979 to bring letting agents within the scope of CEARA to oblige all agents to join a redress scheme and follow a Code of Practice. This would ensure that all letting agents would have to operate to industry recognised standards and consumers would be provided with access to a redress scheme.

6.3 In the absence of a formally structured regulatory regime, the Ombudsman (in his 2011 Annual Report) raised the concept of an Industry ‘Council’ with the key objective of ensuring that consumers understand why they should avoid letting agents who refuse to sign up to independent redress through TPO, or who do not seek out membership of the Association of Residential Letting Agents (ARLA), the National Approved Letting Scheme (NALS), the Royal Institution of Chartered Surveyors (RICS) or another recognised industry body.

6.4 The industry bodies who may make up the Council (with a consumer stakeholder contribution) could ensure that firms within their membership or influence could attract the consumer because they display certain confidence measures, specifically:

- Membership of an independent redress (Ombudsman) scheme.
- Licensing of firms’ representatives by an appropriate body.
- Proper facilities for the protection of client money.
- Common standards, applied through adherence to Codes of Practice.

- Legal analysis where appropriate
6.5 In addition, the Council’s role could extend to consumer education, by putting in place a structured and consistent approach to the information provided by firms to consumers who fall within its influence.

6.6 TPO would, therefore, recommend that all letting agents clearly inform the consumer (preferably in writing) whether or not they belong to an Ombudsman scheme and, if so, which one, at the outset of the transaction.

6.7 TPO also recommend that letting agents inform the consumer about which Code of Practice or set of rules they abide by and make available those documents to the consumer at the outset of the transaction, free of charge.

6.8 The OFT’s approach under CEARA has been to approve two schemes for redress provision. The current arrangements under which TPO and Ombudsman Services: Property effectively compete in that provision, work without detriment to the consumer (because both schemes set out to ensure consistency of treatment etc). However, there is always a danger of agents seeking to use the threat of transferring to another scheme as a lever to influence decisions. No Ombudsman would be swayed by such an approach but the ensuing exchanges between scheme and agent simply delay redress for the consumer. A single scheme could also avoid any potential confusion in the mind of the consumer about who to contact when they have a dispute against and agent.

6.9 TPO has considerable experience in the field of dispute resolution within the lettings sector and would be happy to provide additional information, clarification or any further assistance to the OFT throughout its consultation process.

Christopher J Hamer
Property Ombudsman
Appendix 1

The Property Ombudsman

Lettings Workload

1 January 2011

to

31 December 2011
Summary

<table>
<thead>
<tr>
<th>TPO Lettings Workload 2011</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint Enquiries</td>
<td>7,641</td>
</tr>
<tr>
<td>Issues Reported</td>
<td>11,253</td>
</tr>
<tr>
<td>Formal Reviews</td>
<td>756</td>
</tr>
<tr>
<td>Issues Reviewed</td>
<td>1,817</td>
</tr>
<tr>
<td>Complaint Supported*</td>
<td>67.4%</td>
</tr>
<tr>
<td>Average Award</td>
<td>£307</td>
</tr>
</tbody>
</table>

* Complaint supported either in whole or in part.

<table>
<thead>
<tr>
<th>Lettings Offices Registered with TPO</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>As at 1 January 2011</td>
<td>7,851</td>
</tr>
<tr>
<td>As at 31 December 2011</td>
<td>8,701</td>
</tr>
</tbody>
</table>

N.B. Case Studies and further statistics can be found in the 2011 Annual Report
## COMPLAINT ENQUIRIES AGAINST MEMBER AGENTS - LETTINGS

1 January – 31 December 2011

### TOTAL LETTINGS COMPLAINT ENQUIRIES

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number</th>
<th>Percentage</th>
<th>OFT Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication Failure</td>
<td>2,518</td>
<td>22.38%</td>
<td>2</td>
</tr>
<tr>
<td>Duty of Care</td>
<td>946</td>
<td>8.41%</td>
<td>5</td>
</tr>
<tr>
<td>Management Failure</td>
<td>798</td>
<td>7.09%</td>
<td>2</td>
</tr>
<tr>
<td>Deposit</td>
<td>766</td>
<td>6.81%</td>
<td>3</td>
</tr>
<tr>
<td>Administration</td>
<td>647</td>
<td>5.75%</td>
<td>2</td>
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<tr>
<td>Repairs and Maintenance</td>
<td>612</td>
<td>5.44%</td>
<td>4</td>
</tr>
<tr>
<td>Rent</td>
<td>586</td>
<td>5.21%</td>
<td>1</td>
</tr>
<tr>
<td>Complaints Handling</td>
<td>463</td>
<td>4.11%</td>
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<tr>
<td>Not known</td>
<td>383</td>
<td>3.40%</td>
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<tr>
<td>Holding Deposit</td>
<td>371</td>
<td>3.30%</td>
<td>1</td>
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<tr>
<td>Tenancy Agreement</td>
<td>340</td>
<td>3.02%</td>
<td>1</td>
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<tr>
<td>Check In/Check Out</td>
<td>283</td>
<td>2.51%</td>
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<tr>
<td>Other Fees</td>
<td>274</td>
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<td>References</td>
<td>239</td>
<td>2.12%</td>
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<tr>
<td>Instruction Failure</td>
<td>215</td>
<td>1.91%</td>
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<tr>
<td>Rudeness</td>
<td>209</td>
<td>1.86%</td>
<td>5</td>
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<tr>
<td>Other</td>
<td>207</td>
<td>1.84%</td>
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<tr>
<td>Inventory</td>
<td>206</td>
<td>1.83%</td>
<td>2</td>
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<td>Inspections</td>
<td>195</td>
<td>1.73%</td>
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<tr>
<td>Management Fees</td>
<td>164</td>
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<tr>
<td>Let Details/Advertising/Marketing</td>
<td>152</td>
<td>1.35%</td>
<td>5</td>
</tr>
<tr>
<td>Management Agreement</td>
<td>114</td>
<td>1.01%</td>
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</tr>
<tr>
<td>Keys</td>
<td>111</td>
<td>0.99%</td>
<td>2</td>
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<tr>
<td>Viewing</td>
<td>71</td>
<td>0.63%</td>
<td>2</td>
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<tr>
<td>Renewal Fees</td>
<td>63</td>
<td>0.56%</td>
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</tr>
<tr>
<td>Harassment</td>
<td>53</td>
<td>0.47%</td>
<td>5</td>
</tr>
<tr>
<td>Gas Safety Certificate</td>
<td>50</td>
<td>0.44%</td>
<td>4</td>
</tr>
<tr>
<td>Unfair bias toward other Party</td>
<td>41</td>
<td>0.36%</td>
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<tr>
<td>Energy Performance Certificate</td>
<td>35</td>
<td>0.31%</td>
<td>2</td>
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<tr>
<td>Conflict of Interest</td>
<td>33</td>
<td>0.29%</td>
<td>5</td>
</tr>
<tr>
<td>Eviction</td>
<td>23</td>
<td>0.20%</td>
<td>2</td>
</tr>
<tr>
<td>Lease Agreement</td>
<td>21</td>
<td>0.19%</td>
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<tr>
<td>Discrimination</td>
<td>19</td>
<td>0.17%</td>
<td>5</td>
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<td>Electrical Test</td>
<td>19</td>
<td>0.17%</td>
<td>4</td>
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<tr>
<td>Let Board</td>
<td>10</td>
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<tr>
<td>Racial</td>
<td>8</td>
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<tr>
<td>Disability</td>
<td>3</td>
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<td>5</td>
</tr>
<tr>
<td>Gender</td>
<td>3</td>
<td>0.03%</td>
<td>5</td>
</tr>
<tr>
<td>ID</td>
<td>2</td>
<td>0.02%</td>
<td>2</td>
</tr>
</tbody>
</table>

### TOTAL ISSUES REPORTED

11,253
### NATURE OF FORMAL REVIEWS (INVESTIGATIONS) - LETTINGS

1 January – 31 December 2011

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number</th>
<th>Percentage</th>
<th>OFT Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Handling</td>
<td>191</td>
<td>10.51%</td>
<td>2</td>
</tr>
<tr>
<td>Communication Failure</td>
<td>181</td>
<td>9.96%</td>
<td>2</td>
</tr>
<tr>
<td>Deposit</td>
<td>162</td>
<td>8.92%</td>
<td>3</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>152</td>
<td>8.37%</td>
<td>4</td>
</tr>
<tr>
<td>Rent</td>
<td>127</td>
<td>6.99%</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>100</td>
<td>5.50%</td>
<td></td>
</tr>
<tr>
<td>References</td>
<td>97</td>
<td>5.34%</td>
<td>2</td>
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<tr>
<td>Tenancy Agreement</td>
<td>89</td>
<td>4.90%</td>
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<tr>
<td>Management Failure</td>
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<td>Check-in/Check-out</td>
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<tr>
<td>Inspections</td>
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<td>3.96%</td>
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<tr>
<td>Administration</td>
<td>67</td>
<td>3.69%</td>
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<tr>
<td>Other Fees</td>
<td>60</td>
<td>3.30%</td>
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<tr>
<td>Management Agreement</td>
<td>39</td>
<td>2.15%</td>
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<tr>
<td>Inventory</td>
<td>42</td>
<td>2.31%</td>
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<tr>
<td>Duty of Care</td>
<td>37</td>
<td>2.04%</td>
<td>5</td>
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<tr>
<td>Lettings Particulars/Advertising</td>
<td>30</td>
<td>1.65%</td>
<td>2</td>
</tr>
<tr>
<td>Holding Deposit</td>
<td>34</td>
<td>1.87%</td>
<td>1</td>
</tr>
<tr>
<td>Management Fees</td>
<td>29</td>
<td>1.60%</td>
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**Discrimination:**

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**TOTAL ISSUES INVESTIGATED** 1,817
Contact

Christopher J Hamer
The Property Ombudsman
Milford House
43–55 Milford Street
Salisbury
Wiltshire
SP1 2BP

Tel: 01722 333306
Fax: 01722 332296
Email: admin@tpos.co.uk
Twitter: @TPOmb

The Ombudsman’s Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the scheme are available on our website (www.tpos.co.uk), together with previous annual and interim reports, further explanation of governance arrangements and a full list of registered firms.
[Via email]

Office of Fair Trading

17 July 2012

RICS RESPONSE TO OFT LETTINGS CHARGES INTELLIGENCE REPORT.

This letter is by way of follow up to Jason Freeman’s letter of 26 June about the above. RICS welcomes the opportunity to comment on the above report. My earlier letter of 12 January 2012, the RICS response to the OFT “Fairness and Transparency in Lettings Agents Charges” Event of 8 September 2011, is at Annex One. The comments below follow on from that earlier response.

RICS is the leading organisation of its kind in the world for professionals in property, construction, land and related environmental issues. As an independent and chartered organisation, RICS regulates and maintains the professional standards of over 100,000 qualified members (FRICS, MRICS and AssocRICS) and over 50,000 trainee and student members. It regulates and promotes the work of these property professionals throughout 146 countries and is governed by a Royal Charter approved by Parliament which requires it to act in the public interest.

RICS Regulation monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted, and our specific comments below should be taken in this context.

1. Do the findings of the OFT Intelligence Report mirror your views/understanding of the current problems in the letting sector?

RICS considers the OFT Intelligence Report is an accurate analysis of the source of consumer complaints about lettings agents, and recognises that there are lessons to learn from this analysis in terms of identifying the principal sources of consumer detriment in the lettings sector that will inform the OFT’s forthcoming guidance for lettings agents, enforcers and other stakeholders.

Promoting the highest professional and ethical standards and acting in the public interest are core values of the RICS. That is why RICS will use the Intelligence Report to help inform the next review of the RICS UK Residential Property Standards (commonly referred to as the ‘Blue Book’). The Blue Book outlines the duties and responsibilities that those practicing as estate, lettings and managing agency practitioners owe to their clients and consumers. It is a useful source of reference not only for RICS members, but also others practicing in this field, and clients and customers as well.
The OFT Intelligence Report does not, however, mirror the RICS view of the current major problems that need addressing in the lettings sector. The major problems centre around the inconsistency between the statutory framework governing lettings agents and managing agents compared with sales agents. In particular, the absence of statutory minimum professional and ethical standards, and no requirement for lettings agents and managing agents to be members of a redress scheme that is free for consumers to access, means there is huge inconsistency between agents on the quality of service they provide to consumers. The direct involvement of agents – an increasing number of whom now work exclusively on-line – with monies held on behalf of landlords and potentially more vulnerable tenants, should also be borne in mind.

This inconsistency has significant implications for consumer protection, where it is often difficult for consumers to discern until it is too late the difference between top quality agents who communicate well and have few complaints from other agents who offer a sub standard, cut price service.

RICS notes that a number of Local Authorities, the Welsh Assembly Government and the Greater London Authority, are looking to introduce, some form of licensing or registration of landlords, lettings agents or both, along similar lines to the landlord registration arrangements already in place in Scotland. This is resulting in a piecemeal approach which is confusing for consumers and agents alike. Clearly there is a perceived need for greater regulation of the lettings sector. RICS believes this is better dealt with centrally to stop this confusion and increase standards, The pressing need to address the existing complex, and inconsistent regulatory framework governing the UK residential sales and lettings market is explored further in the answer to question 3 below.

2. **Do you have any data, intelligence or other evidence you can share?**

RICS notes this OFT Intelligence Report has identified that complaints about fees and changes was the main area of concern for landlords and tenants, making up 30% of all complaints in the study. The 2009 RICS report “Transparency in Professional Fees” (see detail at [http://www.rics.org/transparency](http://www.rics.org/transparency)) following a RICS consultation exercise noted there should be transparency around the service firms are providing to their clients; the scope of the service on offer; charges and the circumstances under which they become payable; and that agents should also be entirely transparent about what other monies they receive and from whom.

This RICS consultation identified there was almost universal support for landlords, lettings agents and managing agents to be regulated. In addition, the majority view arising from this consultation was there needs to be greater consistency across the industry, in particular any codes of practice need to have the backing of statute.

3. **Are there any other problem areas not included in this Intelligence Report, which you consider to be significant?**

In order to fully understand the lettings sector, and ensure a balanced approach in the development of the OFT’s forthcoming guidance for letting agents, enforcers and other stakeholders, RICS suggests OFT needs to consider the challenges that landlords and their agents face in letting property, not just the issues facing tenants. For example,
Landlords want to keep their properties occupied while tenants want maximum flexibility in terms of moving between properties;

Landlords want to minimise expenditure on property maintenance; tenants often don’t look after the properties they rent and resist paying to repair damage they have caused;

Agents who are regulated by a professional body or members of a trade association appear similar to low quality agents who are not. Landlords and tenants do not differentiate between them when deciding which agent to use. The risks of using such low quality agents are high, not least since they are sometimes cheaper as they avoid the costs of regulatory compliance and best practice.

In addition, it is disappointing that the Intelligence Report does not distinguish between the nature and scale of complaints against lettings and managing agents who are regulated by a professional body and members of a trade association, compared with those who are not. RICS argues that the OFT should undertake such additional analysis to help inform the development of guidance for agents, enforcers and other stakeholders in the lettings sector.

More fundamentally, RICS considers there are problems with the current legislative framework that need to be addressed. Whilst residential sales agents are currently required under the terms of the Consumer, Estate Agents and Redress Act 2007 to provide consumers with access to a free redress scheme, lettings agents are not subject to the same statutory requirements. Lettings agents who are members of the RICS are required to have such a redress framework in place as part of compliance with RICS rules of conduct for firms. However, this is part of the RICS self-regulatory framework, not a statutory requirement.

RICS published a new Residential Policy document on 31 May 2012 that indicates, amongst other things, that RICS is working to encourage the UK Government to remove the artificial distinction between sales and lettings. The RICS is recommending reform of the Estate Agents Act 1979 to ensure lettings/managing agents need to have Client Money Protection, Professional Indemnity Insurance and clear redress mechanisms. Lettings agents would also then come within the scope of the money laundering regulations too. RICS also considers that Section 22 of the 1979 Act, requiring minimum professional standards for Agents to start trading, should also now be enacted to create a statutory level playing field for all sales, lettings and managing agents operating in this field.

Many businesses operate in both sales and lettings, and the regulatory arrangements should reflect that fact. Such an approach would both ensure minimum levels of consumer protection, and provide businesses operating in sales and lettings a clear, simple and consistent approach that is lacking in the current unnecessarily complex regulatory arrangements. In summary, there is potential here to enhance consumer protection and minimise burdens on business. RICS made this point in response to the Housing and Construction theme consultation on the Red Tape Challenge, recognising that we have a role to play, in particular the development of industry-wide standards that are recognised by property professionals, business and consumer alike, including common minimum standards of entry and practice.
RICS stands ready to work with Government and other industry/consumer representatives to reduce regulatory complexity and deliver the one touch regulatory framework outlined above that the UK residential property market so desperately needs to aid business growth, improve informed consumer decision making, and strengthen consumer protection.

In the meantime, RICS is developing a technical advice note in the form of an addendum to the Blue Book to help our members comply with current UK consumer and business protection legislation. Timed to coincide with the publication of the OFT’s forthcoming guidance for Estate Agents on compliance with that legislation, the advice note will cover both sales and lettings to reflect common practice in the UK residential property market where businesses cover both those aspects. This is a step towards the joined up approach that RICS argues is now urgently required for the reasons outlined above.

Concluding remarks

RICS hopes this input is useful. We would welcome the opportunity of continuing engagement with the OFT as it considers how best to move forward on this subject. In any event, we look forward to hearing from you on the issues we have raised here.

Please contact me in the first instance if you have any questions about these comments. Alternatively, please contact Rachel Atkinson, Head of Global Communications and Policy at RICS Regulation on T. +44 (0) 207 334 3785, or E.ratkinson@rics.org).

Yours sincerely,

Paul McCormack  
RICS Regulation Policy Manager  
T. +44 (0) 207 695 1762, E. pmccormack@rics.org
RICS RESPONSE TO OFT “FAIRNESS AND TRANSPARENCY IN LETTINGS AGENTS CHARGES” EVENT OF 8 SEPTEMBER 2011

This letter is by way of follow up to the above event, in particular to respond to some of the points made in the note of the event that was circulated in late October.

RICS is the leading organisation of its kind in the world for professionals in property, construction, land and related environmental issues. As an independent and chartered organisation, RICS regulates and maintains the professional standards of over 91,000 qualified members (FRICS, MRICS and AssocRICS) and over 50,000 trainee and student members. It regulates and promotes the work of these property professionals throughout 146 countries and is governed by a Royal Charter approved by Parliament which requires it to act in the public interest.

RICS Regulation monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted, and our comments below should be taken in this context.

General comments

1. The lettings market is a growing area, and one with a poor reputation amongst some consumers, especially when using agents offering cheap but poor quality services (often via the internet). RICS supports the OFT’s overall aim of creating a level playing field in lettings agents charges, with transparency as the underpinning key principle. Unfortunately, the current absence of a clear, joined up and comprehensive approach to regulation in the UK residential property sector means that overall objective is difficult to realise. This work on lettings charges needs to have a clear direction of travel to contribute to the development of such an approach. There is also a need for a related policy objective of improving overall quality of service in the lettings market, not just encouraging greater competition based on price.

2. RICS considers there is a need for joint guidance covering not only lettings, but also residential property sales. This point was made in the RICS response to the recently closed OFT estate agents guidance consultation. A copy of that response is at Annex A for ease of reference. You will see from General Comment 3 of that response that RICS recognises the challenges of developing such guidance, but considers it is an essential step in developing
a single joined up approach to regulation that property professionals, consumers and trading standards officers alike desperately need in the UK residential property sector. Joint guidance will also reflect better the current nature of that sector with an increasing proportion of property professionals operating in both aspects of the market.

3. In developing any written guidance on lettings charges, many of the comments RICS made to OFT about the development of guidance for residential sales apply equally well. In particular:

   a. Such guidance needs to be written in a way that will be readily understood by not only agents, but consumers, trading standards officers and other property professionals too;
   b. The guidance needs to accurately reflect the nature of transactions in lettings and property management. This context is crucial in determining whether a particular commercial practice is unfair under the CPRS/BPRs;
   c. The guidance needs to articulate clearly the specific offences created by the CPRs in lettings and property management, including the defences available to agents to demonstrate compliance with the regulations, including how to demonstrate due diligence in ensuring accuracy of information supplied by landlords;
   d. The guidance needs to articulate clearly how the 'average consumer test' should be applied in lettings and property management to demonstrate whether a particular consumer practice affects the transactional decision making of the average prospective tenant. Agents needs to understand the principles to follow in judging whether they have supplied prospective tenants with sufficient information about a rental property and/or the letting agents'/managing agents' services and associated fees, on which the prospective tenants can make an informed decision.
   e. The guidance needs to give a strong message about the sanctions associated with non-compliance to avoid the potential unintended consequence of creating a market distortion whereby those agents who comply lose business to less scrupulous counterparts.

4. Following on from paragraph 3d above, RICS considers the key test here is for Agents to show they have supplied information in sufficient detail and in a format that enables the average prospective tenant who is reasonably well informed, reasonably observant, and circumspect to make an informed decision. RICS is concerned from the meeting note of the 8 September event that the current work on lettings charges does not seem to acknowledge the importance of these principles in developing a fit for purpose regulatory framework.

5. Following on from 3e above, RICS recognises the challenges for OFT in reaching the whole of the lettings market, but it is essential to find ways to do so to minimise the potential for the market distortion described.

6. The joint guidance proposed by RICS needs to be developed with a wide range of industry representatives and stakeholders, not just agents and the TPO mentioned in paragraph 3 of the meeting note.
7. Any guidance produced by OFT on lettings charges needs to include a cross reference to the Unfair Contract Terms Act 1977 as this piece of legislation is an existing safeguard that protects consumers who enter into legally binding agreements, including tenancy agreements.

8. RICS supports the OFT’s desire to see more widespread application of best practice in the lettings market. We consider existing non-statutory best practice guidance, such as the RICS UK Residential Property Standards (the Blue Book) should be the starting point in identifying what best practice looks like in the sector, and how best to encourage it to become commonplace.

Specific comments

1. RICS accepts that landlords should be able to change lettings/managing agents in a reasonable time period shown clearly in the contract at the outset. RICS is concerned however, that the current wording of paragraph 13 of the meeting note implies that contracts should give consumers greater flexibility to change property manager/agent to avoid paying agreed fees based on the occupancy of the tenant.

2. Paragraph 16 of the meeting note mentions the concerns expressed by agents about the then existing wording of paragraph 3(j) of the TPO code for lettings agents on renewal and sales commission as ‘gold plating’ the Foxton’s judgment. RICS notes that in the light of the comments received, OFT has agreed to revise that paragraph of the code. RICS welcomes this revision.

3. Paragraph 24 of the meeting note states that agents should not charge for things that are free or are for little cost. This seems to contradict an earlier statement in the meeting note that OFT are not price fixing (paragraph 3).

4. Paragraph 24 also refers to a “tripartite agreement” between landlord, tenant and agent”. RICS is not aware of such a concept in Agency law. Can OFT clarify please? Agents are not usually a party to a tenancy agreement and if mentioned it is in the capacity as agent for the landlord or stakeholder of a deposit.

5. RICS has concerns about the proposed approach by OFT to the lettings market implied by the wording of paragraph a of the concluding remarks section of the meeting note. As outlined above, the market currently has a complex and confused regulatory and legislative framework which is challenging for the average consumer to understand satisfactorily to make informed decisions. As a result, average consumer expectations are not necessarily correct. RICS considers a better aspirational statement would be along the lines “consumers should get the product they want at a reasonable price determined by an open, competitive and free market operating on a level playing field”.

Concluding remarks

RICS hopes this input is useful. We would welcome the opportunity of continuing engagement with the OFT as it considers how best to move forward on this subject. In any event, we look forward to hearing from you on the issues we have raised here.
Please contact me in the first instance if you have any questions about these comments. Alternatively, please contact Georgiana Hibberd, Associate Director, RIICS Residential Professional Group (T. +44 (0)207 695 1635, e. ghibberd@RICS.org).

Yours sincerely,

Paul McCormack
RICS Regulation Policy Manager
T. +44 (0) 207 695 1762, E. pmccormack@rics.org
Transparency in professional fees
The recommendations made by the Transparency Working Group (TWG) in its final report on transparency in professional fees are set out below.

Declaration of insurance remuneration and commissions

**Recommendations**

- That the appropriate authorities should undertake to review whether there is consumer detriment in the consumer/retail insurance market. Depending on whether there is detriment and its extent those authorities should look to take appropriate action.

- That the FSA should be invited to review the current different approaches to disclosure of commission regimes that it operates. This information and lack of consistency should be brought to the attention of the EU.

- That there should be greater emphasis placed on making sure clients, especially consumer clients, are made aware of the relevant remuneration, commission and any other payments paid through purchasing insurance.

- That regulators should impose requirements to improve transparency in relation to insurance and that they should review the advice provided to clients, especially consumer clients, to ensure it is sufficiently informative and is provided to clients when needed.

Commercial

**Recommendations**

- That RICS consults all those with an interest in the 2006 Service Charge in Commercial Property: RICS Code of Practice with a view to updating it.

- That RICS works with other appropriate bodies to try and increase the use of the Code.

- That the RICS Service Charges in Commercial Property – a guide for occupiers should be promoted to clients by appropriate organisations and professionals.

Commission on letting renewals

**Recommendations**

- That all relevant professional bodies and other relevant authorities should bring to the attention of their members the High Court decision in the case the OFT brought against Foxtons Ltd and any future appeal outcomes. They should provide information about what the decision means and what letting agents need to do in order to comply with the ruling.

- That professional organisations should consider the scope for providing their members with model terms of reference that they can follow.

- That professional and consumer organisations should look at the consumer information they make available and ensure that it is updated in the light of the High Court ruling and any appeal decision.

- All agents, in particular residential letting agents, should review their terms to make sure that they are clear and transparent and can be easily understood by all clients, particularly, consumer clients.
Commission on Home Information Packs (HIPs) and the Energy Performance Certificates (EPCs)

Recommendations

• Appropriate bodies, such as government departments and agencies, regulators, professional bodies, consumer organisations and others with an interest in this area should ensure that the advice they provide to consumers on this issue is up to date and clear. Also, that it is provided at the appropriate time when the consumer needs it most.

• When new requirements are introduced within the property sector, by statute, the relevant government department or agency responsible for implementing that legislation should provide clear guidance to those who might be affected. This includes consumers, professionals and other interested parties.

• Good practice suggests that agents should make clear to the consumer that there are a number of ways that they can commission a HIP and EPC and that the consumer might wish to look into those.

• That any fees quoted to consumers should be open and transparent and that includes whether or not the firm in question receives a commission. Ideally the level of commission should be disclosed.

Valuation fees

Recommendations

• That RICS works with relevant authorities to ensure that there is greater transparency and clarity in the description of mortgage and valuation fees for mortgage applicants.

• That RICS shares with the FSA the main findings on the valuation fees issue that have come out of this project.

• That the appropriate authorities look at the current information, help and advice that they provide to consumers [mortgage applicants], and consider whether the issue of valuation fees is clearly and appropriately explained, easily accessed and available to the consumer when they need them the most.

• That best practice suggests that fees and commissions that are charged by the various agencies involved in the process are appropriate and reflect the added value provided by those parties.

The agreement of fees for commercial loan security valuations

Recommendation

• That RICS’ relevant Professional Group should work with others, in particular with lenders, regulators and relevant professional bodies, to look at developing and implementing an industry wide protocol to be followed in this area.

Dilapidations

Recommendation

• That RICS seeks independent legal advice around the suitability and coverage of its guidance note on dilapidations.
Advancing standards in land, property and construction.

RICS is the world’s leading qualification when it comes to professional standards in land, property and construction.

In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining RICS status is the recognised mark of property professionalism.

Over 100 000 property professionals working in the major established and emerging economies of the world have already recognised the importance of securing RICS status by becoming members.

RICS is an independent professional body originally established in the UK by Royal Charter. Since 1868, RICS has been committed to setting and upholding the highest standards of excellence and integrity – providing impartial, authoritative advice on key issues affecting businesses and society.

RICS is a regulator of both its individual members and firms enabling it to maintain the highest standards and providing the basis for unparalleled client confidence in the sector.

RICS has a worldwide network. For further information simply contact the relevant RICS office or our Contact Centre.
Which?
Citizens Advice Bureaux Complaints Analysis
August 2012

Methodology

Citizens Advice Bureaux (CABs) record every client enquiry they advise upon onto a single database. In 2011/12 CABs in England and Wales advised on 5,181 enquiries relating to letting agents. CABs staff also record qualitative case studies about cases which they consider highlight an underlying social policy problem.

Which? looked at a selection(181) of these qualitative cases stories which related to enquiries about letting agents, recorded between May 2011 and May 2012. This analysis pulls out the key themes in complaints against letting agents amongst both landlords and tenants, with supporting examples.

We did not attempt to quantify the incidence of particular types of enquiries from the qualitative evidence, as CABs staff submit detailed cases stories which they consider to be indicative of a wider problem, and not for every client. However, the thematic areas are set out starting with those where complaints were most numerous.

Tenants

1) Failure to carry out repairs
   Failure to carry out repairs was the most frequent complaint of tenants about letting agents. This includes both before moving in to the property (Case G) and during the tenancy (Case H). There is also a common apprehension amongst tenants that they are unable to complain about repairs for fear that they will be evicted by the landlord (Case I).

Case G
South West

Student tenant has rented a property with 5 other students from letting agency X. They each paid £180 to the agency as an administration fee. On entering the property the tenants found it to be severely affected by damp and mould in nearly every room and consider the property to be a health risk. The letting agents said that the condition of the property is a matter for the landlord. The landlord is aware of the problem but unwilling to provide any assistance. Tenants feel that the letting agency has some responsibility to vet the properties that they are letting out, especially when they charge the tenants a large fee for finding them a suitable property.

Case H
South West

A tenant shares a property with three other students, which is under the management of letting agency X. The tenants had experienced poor service from the letting agent from the start including not being able to move in to the property on the specified date due to the possessions of previous tenants not having been moved out. On moving in, the tenants discovered and reported a gas leak which resulted in the heating being shut down for 6 weeks. They also discovered that the gas meter was faulty. One of the tenants wrote a
letter to the letting agency requesting compensation but this was declined on the basis that repairs had been carried out as soon as practicable. They also have a major problem with mould on the walls, pillows and other furnishings. One of the tenants is asthmatic; they have been refused a dehumidifier by the letting agent and cannot afford to buy one themselves.

Case I
South East

A tenant rents a property on a month-by-month basis through letting agency X. Nine months ago they noticed a leak in the corridor and a damp patch in the reading room. Many emails were sent to the letting agency but no action was taken. The water leak has since worsened and there is mould throughout the house, as well as water dripping onto the electrics. Inspectors were sent round by the letting agency but no repairs have been made. Tenant is trying to get a mortgage to buy her own property and is reticent to make any more complaints to the letting agency for fear she will be evicted.

2) Fees

a) Refusal to refund holding deposit or admin fees

The most common complaints under this heading were where the tenant perceives that failure to go ahead with the tenancy was not within their control and therefore the holding deposit should be returned, or that a service has not been delivered by the letting agent (e.g. a suitable property has not been found) and therefore charges or level of admin charges by letting agent are not justified, for example:

- Landlord pulls out of the tenancy (Case A).
- Tenant withdraws because promised repairs to property were not carried out before moving in (Case B).
- Tenant withdraws because of excessive delays to securing a property that were not anticipated and were not the tenant’s fault (Case C).
- Tenant withdraws having not been given a copy of the T&C at the time that the deposit was made and subsequently disagrees with the terms.
- Tenant withdraws within a short period of time before the deposit has been processed (e.g. 24 hours).

CASE A
South East

A tenant wanted to move into private rented accommodation sourced by letting agent X. She paid a deposit of £1,000 plus an admin fee of £360. The landlord of the property subsequently changed his mind and the offer was withdrawn. The tenant’s deposit was returned but not the £360 admin fee. When the client queried this, the agent told her that she would have to take it up with the landlord and not them as it was not their fault. The tenant feels this is unfair as she paid a considerable sum of money to the letting agent in good faith and it was not her fault that the tenancy was not completed, therefore the full amount handed over including admin fees should be refunded.

CASE B
London

A tenant entered into an agreement with letting agent X to rent a property and paid a £300 holding deposit. The tenant agreed to rent the property on the promise by the letting agent that extensive repairs would be carried out before she was due to move in. The
tenant then made two further payments of £1,500 to complete the full £3,000 tenant deposit. The tenant had keys to the property but did not move in as the repairs had not been carried out and the tenant considered the property to be uninhabitable. The tenant wrote to the letting agent asking for the deposit to be returned but has not received a written response. The letting agent directed her to the landlord who in turn directed her back to the letting agent. The tenant has since moved into another rented property but is suffering considerable financial hardship and is unaware of her rights with regards to reclaiming her tenancy and holding deposits.

CASE C
South East

A tenant approached letting agency X to find a property for himself and his family in a new town a considerable distance from their current home. The letting agent found the tenant a suitable property and tenant paid a £300 holding deposit. The tenant then sent for his family to join him in the new location. The letting agent received good references and the tenant was told they would receive the keys to the property in one week, during which time they stayed with friends. When the tenant attended the letting agent's offices with the full deposit money he was told that the landlord had changed his mind and decided to rent to a relative. The tenant was shown other properties and agreed to go ahead with one. The tenant asked if he could move into the property as soon as possible but was told his family would have to wait a week because they had to wait for his references. The tenant questioned this as he believed they had already received adequate references but he was told that the letting agents had changed reference companies and there would now be a delay in preparing them. The tenant and his family were delayed by a further week and a half despite frequent assurances from the letting agency that they would be able to move in the next day. During this time the tenant's family had been staying in a hotel incurring significant costs. Tenant eventually had to pull out of the tenancy due to spiralling hotel costs and family moved back to their home town. Tenant has only received £50 of his deposit back. He believes he is entitled to be refunded the full deposit and hotel costs by the letting agency.

b) Excessive or unexpected fees
The most common complaints under this heading were cases where fees for services seem unnecessarily high or fees for some services were unexpected, including:

- Admin fees
- Reference fees
- Credit check fees
- Inventory fees
- Check out fees
- Contract renewal fees
- Fees for minor contract amendments (e.g. removing one tenant’s name).
- Cleaning fees

CASE D
South West

A couple about to get married applied to rent a property to move into after their wedding. The couple were shocked by the high level of upfront fees they had to pay. They were charged with a Tenancy Agreement and Referencing Fee (incl. VAT) of £270 and a Check-in Fee (incl. VAT) of £210. This was in addition to their security deposit of £550 and one month’s rent in advance of £550. The tenant was previously unaware that he would need a
guarantor but was told that as his job was on a renewable 6 month rather than permanent contract he would in fact need one and was charged an additional £90 by the letting agent for providing this. The couple were at the time living in separate residences so were having to pay rent on two additional properties on top of all the landlord fees and costs for the new property, causing considerable financial strain. The tenants believe that fees charged by the letting agent (a total of £1,670 including the deposit and first month’s rent) are exorbitant.

CASE E
East

Tenants were told by their letting agency that they would have to take out contents insurance arranged via the letting agency for a full year regardless of the length of their tenancy. When they moved out they were hit with an unexpected fee for an inventory check of £143 + VAT. They were also told that for any repairs by contractors that would need to be arranged by the letting agency following the inventory check, an additional charge of £35 + VAT would be due.

CASE F
North West

A group of 6 students took out a shorthold tenancy agreement with letting agent X. The letting agent charged each of the 6 students a £95 administration fee for setting up the tenancy. On top of this, each student was charged an additional £75 cleaning fee, which they were told was to cover the costs of cleaning once the students moved out of the property. On moving in to the property, the tenants found that it was in a poor condition, with mould in the kitchen and bathroom, a shower that did not drain and dirty curtains and furniture, some to the point of being unusable. The tenants consider the fees charged to be excessive, and question why they are charged for a cleaning fee when they have not benefitted from any cleaning services themselves that should have been carried out after the previous tenants left.

3) Unwillingness to rent to housing benefit recipients
A common complaint is the refusal of letting agents to rent to tenants who receive housing benefit, despite this often being a more secure form of rent. Related issues are the refusal to rent to low income or contract workers or those with poor credit ratings, or making the requirements so high as to effectively disqualify these people from the market (e.g. paying 6 months’ rent in advance, unachievable guarantor requirements).

4) Deposit protection schemes failing to protect tenants
These complaints relate to the requirement for tenants’ deposits to be protected by a deposit protection scheme either not being enforced or not operating effectively, e.g.:

- Agents not complying with the law by protecting a deposit.
- Lack of understanding between landlords and letting agents as to who is responsible for protecting the deposit (Case J).

Case J
South East

A tenant had signed up for a 12 month tenancy with a six month break clause with letting agency X. The tenant gave proper notice and vacated the property within the terms of the contract. The landlord has subsequently informed her that the letting agency has gone out
of business and her £600 deposit has been lost. The landlord claims no responsibility for
the deposit and gave the tenant no information about where or if the deposit was lodged
with any deposit protection scheme. The landlord is unwilling to negotiate the return of
the deposit. The tenant is at a loss to know how to go about recovering the deposit
without lengthy court action.

5) Misleading or unclear information from letting agency
Examples include:
   - About the property.
   - About a guarantor’s liability (Case K).

**Case K**
**South West**

An individual had agreed to act as guarantor for his ex-wife when she rented a property on
a 6 month lease. The individual was under the impression that his liability as guarantor
would be applicable only for the period of the agreed tenancy that was signed. However in
this case a clause was entered in the tenancy agreement that says ‘This guarantor shall
continue throughout the period that the property is occupied by the tenant or any licensee
and is not limited to the term specified in the agreement’. The individual is therefore still
liable as guarantor for his ex-wife’s rent as long as she continues to be a tenant in the
property. The individual has been placed under severe financial strain due to his ex-wife’s
failure to keep up payments and has recently been made unemployed meaning he cannot
meet his obligations as guarantor. The letting agency says he cannot remove himself as
guarantor given that the tenant is in arrears. The individual believes this was an unfair
clause in the contract that was not made clear to him.

6) Refusal to refund security deposit
This includes:
   - Disputes over liabilities for repairs (Case L).
   - Delays in retuning security deposits even if a full refund has been agreed
     with the landlord (Case M).

**Case L**
**West Midlands**

A tenant was in the process of moving out of a property let through a landlord using a
letting agency service. The tenant had paid a £900 deposit which was placed in a Deposit
Protection Scheme. The agency informed the tenant that the check-out inventory had been
completed and that everything was fine and the tenant filled in the relevant forms. The
agency then carried out another check-out inventory with the landlord who found an ink
stain on the carpet which she said needed to be replaced at a cost of £230. The tenant
agreed to this charge, but since then the landlady keeps adding other things that she finds
to the check-out inventory. The tenant is concerned that she cannot get her deposit back
even though she has been told on more than one occasion that the check out inventory was
complete.

**Case M**

A tenant was renting a property on a periodic tenancy agreement from a landlord through
a letting agency. The tenant gave the required one month’s notice to the letting agency to
move out of the property. Subsequently, there was a dispute with the letting agency over whether he had to pay an early release fee, with the tenant receiving conflicting advice from different letting agency staff as to whether this was necessary. The landlord of the property had confirmed to the tenant that he was happy with the condition in which the flat was left and said that the letting agency should refund the tenant’s deposit in full. To the date of the complaint the letting agency has yet to return the deposit.

7) Illegal practices
   This includes all practices by letting agents that appear to be a clear breach of the law, including:
   • Illegal evictions.
   • Fraudulent outfits creating false contracts (Case N).
   • Agent disappearing with tenant’s money (Case O).

Case N
London

Tenant had applied for a crisis loan in order to pay a deposit of £866 for a flat with letting agency X. Tenancy of the flat was supposed to start on a particular date but letting agent informed the tenant that the landlord was out of town so they could not have the keys. The tenant believes that the letting agent is not a true agency and that they just find a property on the internet and then persuade the landlord to let them take over management of the property for a percentage. The landlord said that it was not his signature on the tenancy agreement given to the tenant by the letting agent. Tenant says that when she goes to the letting agents they will not open the door to her and have called the police when she visited with her brothers to ask for the money back. Police have said that they cannot get involved unless the tenant can prove that the letting agent is not a registered company.

Case O
London

A tenant paid a £2,350 deposit to letting agency X for a private rental property. When he spoke to the landlord of the property, he said that he was not using that agent. The tenant has had great difficulty attempting to get the money back from the letting agency. The agency told the tenant that they would return the money in 3-5 days but nothing has been forthcoming. The tenant now believes that the agency has since changed address and company name. The tenant believes that this agent has done the same thing to other families and is unsure how he can recover the money without expensive legal fees.

Landlords

1) Letting agent not carrying out their responsibilities
   This includes:
   • Not carrying out monthly checks on the property (Case P).
   • Not adequately vetting tenants (Case Q).
   • Not passing on rent (Case R).

Case P
East
A landlord decided to rent out her house using letting agency X. The agency found a tenant to rent the property for one year. The landlord paid 10% of the rent as a management fee to the agency every month. The tenant caused considerable damage to the property and even took the curtain rails with them when they moved out. The letting agency failed to produce an inventory when the tenant moved in. They did not carry out any inspections and returned the tenant’s deposit without inspecting the property. The landlord complained to the agency, which admitted negligence but failed to offer compensation or mediation. In addition to the fees paid to the agency for a management service she considered to be sub-standard, the landlord has had to pay £7,897 in repair bills to restore the property to a rentable condition following damage by the tenant.

Case Q
South East

A landlord hired a letting agency to manage a new intake of tenants to her property, including carrying out reference and ID checks. The landlord discovered that the reference checks had clearly not been carried out correctly as the tenant’s stated previous address was in fact a shop. The tenant has now sublet the property to at least two other people, the landlord is no longer receiving rent for the property and it is in a state of disrepair. He is now faced with the prospect of legal procedures to get his property back due to the negligence of the letting agent.

Case R
South East

A landlord owns a house that he rents out using letting agency X. For the last 3 months, tenants have been making payments to letting agency X, but the landlord has not been receiving any rent. She sent emails to the agent, phoned them and visited their offices. They have not responded and the office is always shut. The landlord is out of pocket on rent by up to £2,400 and is liable for the tenants’ deposit of £1,200.

2) Fees

This includes renewal commission fees (Case S).

Case S
South East

A landlord and his brother own a house jointly in London which they rent out. They used an agency to find the original tenant but have found all successive tenants themselves. They continued to use the agency to issue tenancy agreements. They now want to terminate this arrangement but the agency wants to continue to charge them. The landlord sent a letter to the agency more than a year ago giving 1 year’s notice to terminate the contract but the agent is still trying the charge fees for the current year.

3) Problems with deposit protection schemes

This includes the landlord not being able to get money back from the deposit protection scheme if the letting agent did not fill in the paperwork correctly (Case T).

Case T
South East
A landlord lets several properties through a letting agent and believed the deposits were protected through MyDeposits. The landlord suspects that the letting agent is about to go bankrupt but has been unable to reclaim any of the deposits from MyDeposits who say that she needs to get advice regarding the trading position of the agency. MyDeposits said that they are not responsible for the deposits in this case as the letting agency did not complete all the necessary procedures and they have no liability in the case of fraud. The landlord believed that the agency had protected the deposits but now finds she is personally liable given that this was not the case.

4) **Unresponsiveness of letting agent/ poor customer service**
   In relation to all the types of complaints reviewed, for both landlords and tenants, the central complaint is often compounded by poor customer service by the letting agent. This includes not responding to attempts by the tenant/landlord to clarify the situation, being rude or unreasonable in their behaviour or in the worst cases being not at all contactable (e.g. Case R).
An Investigation into Letting Agents in Tower Hamlets

Interim Report – May 2012

Contents

1. Introduction
2. Method
3. Deposit Protection
4. Fees
5. Conclusion
6. Other Observations
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1. Introduction

The following investigation into Tower Hamlets letting agents was based on complaints about deposits and fees received by Trading Standards from January 2010 to January 2012.

Of the 30 Letting Agents about whom deposit complaints were received, 1 was being investigated by another Authority, 8 had closed or moved out of the area and 4 did not respond, which left 17.

2. Method

The agents were interviewed using a questionnaire, 6 responded by post, the rest were seen personally. See Appendices 1 & 2. The questionnaire was based on the Code of Practice for Residential Letting Agents which governs members of the Property Ombudsman Lettings scheme (see Appendix 3).

The aim was to test compliance with s212 of the Housing Act 2004 which instituted a scheme to safeguard tenancy deposits paid in connection with short-hold tenancies and facilitate the resolution of disputes.

The other aim was to find out if agents were engaging in unfair commercial practices in breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), either by contravening the requirements of professional diligence (reg 3 (3) (a)) or by contravening Regulation 6 and 9, misleading actions and misleading omissions about material facts in relation to safeguarding deposits and the levying of fees.

3. Deposit Protection

3.1 Are tenants’ deposits being protected?

Letting Agents operate as “Let only” or “Full Management”. “Let only” means that the agent is only responsible for finding the tenant and that is where their involvement ends, unless the landlord orders another service such as rent collection. “Full management” means that the agent is responsible for managing the property from the onset of the tenancy to its conclusion.

In this investigation I looked at agents’ full management contracts, but this is further complicated by the fact that under the legislation, the Landlord or the letting agent (delegated by the Landlord) can register the deposit. Some agents always register, some never register and some register if requested to do so by the landlord. Two stated that they never registered and did not belong to any scheme. (see later).

Deposit Registration - Legal Requirements

The Housing Act 2004 makes it clear that the deposit remains the property of the tenant throughout the term of the tenancy.

There are three approved protection schemes which are My Deposits (MD), Tenancy Protection Scheme (TPS) and Tenancy Deposit Scheme (TDS).
The Tenancy Deposit Scheme was transparent about membership and answered enquiries about membership promptly.

The other 2 schemes requested a Section 29(3) Data Protection Act 1998 notice to disclose information about membership. To date, no response has been received.

The TDS is the only custodial based scheme so it holds the deposits in a separate bank account. The other 2 schemes are insurance based so the landlord or the landlord’s agent holds the tenant’s deposit and pays a fee to insure it (against the landlord illegally keeping the deposit). “My Deposits” insists members hold deposits in a separate bank account. The Tenancy Deposit Scheme insists that deposits are held in a ring fenced client account. If the landlord fails to pay the tenant the amount they are owed at the end of the tenancy, the insurer will pay the tenant and try to get the money back from the landlord.

The landlord has a statutory obligation to supply the tenant with details of the deposit scheme used within 14 days or 30 days for tenancies commencing after 6th April 2012 of the receipt of the deposit. Where the landlord, as opposed to the letting agent, registered the deposit, all letting agents but one insisted on receipt of these details as well. The one that did not claimed that they had no power to insist on this, that they did not belong to any scheme as they never registered deposits. It is our opinion that this obligation comes within the remit of “professional diligence” under CPRSs. See Appendix 4

Of the agents surveyed, 2 did not belong to any scheme, 6 belonged to TDS, 4 belonged to MD and 5 belonged to TFS. See Appendix 2

Outlined below are examples of the types of complaints received by Trading Standards, our interpretation of the law in respect to each type of complaints and an outline of how we have sort to deal with such issues under this project

3.2 Example Complaints

Complaint A

Tenant gives deposit to Letting Agent and Letting Agent tells landlord to register it without passing it on. Letting Agent uses money to pay landlord’s fees, and the landlord has to register a deposit they have not received.

The legislation prohibits the holder of the deposit from disbursing the deposit without the agreement of the landlord and tenant (Housing Act 2004 s 212-5). All scheme rules state that they are governed by the laws of England and Wales and the Tenancy Deposit Scheme rules further state s 5.4:

“The 2004 Act prohibits the holder of the deposit from disbursing the deposit without the agreement of the landlord and tenant”.

This practice may be a breach of the requirement of professional diligence in CPRs; it may also be a misleading action and is in breach of the Code of Practice and of the rules of all three Deposit schemes. There is also the possibility of offences under the Fraud Act for dishonestly appropriating the tenant’s deposit.
Complaint B

The Landlord does not register the deposit

If the Landlord registers the deposit most agents make it a term of the contract that they are informed of the registration details within 14 days. This is a requirement under the Code of Practice for Residential Landlords which requires information on how and by whom the tenancy deposit is to be held. Unfortunately there is a significant minority of agents who do not belong to the Property Ombudsman lettings scheme and therefore feel that they are not required to comply with its rules. (See App 2).

CPR’s state that a commercial practice is unfair if it contravenes the requirement of professional diligence. The government decided against the compulsory regulation of private sector letting agents in favour of encouraging voluntary accreditation schemes and membership of the Property Ombudsman Lettings scheme. The Association of Residential Landlords uses the Code of Practice, therefore if can be argued that this is the standard for “professional diligence” under s 8 (1) & (2) CPRs (see above). This would require all agents to make it a term of the contract that the landlord registers the deposit and gives them details within 14 days. For a discussion of the position with the National Landlords Association see later.

Complaint C

*Letting Agent disappears/goes into liquidation*

All schemes protect deposits and so this should not be a problem, however not all Letting Agents belong to a scheme, how does a tenant find out?

1. If a Letting agent belongs to a scheme
2. If a Letting agent belongs to the scheme they claim to belong to

Section 213 (5) and (6) of the Housing Act 2004 require agents to give tenants details of the scheme used to protect their deposits. This must be done within 14 days of the receipt of the deposit.

Most tenants assume all Agents have to belong to a scheme. This is not the case; there were 2 in the survey that admitted that they did not as they stated that they never took deposits for landlords. If an agent claims to belong to a scheme it is difficult to find out from the scheme if this is the case, although there is an enquiry form on each schemes’ web site, they admit that not all agents are correctly listed. If a prospective tenant wanted to compare agents two of the schemes will not release this information. The web site http://www.allagents.co.uk/ which compares reports of letting agents has a Registered with tab but it does not seem to be ever filled in.

3.3 Recommendations

Letting agents should be advised that:

- They must either protect deposits themselves under one of the approved schemes or ensure that the landlords are protecting them.
- They must pass deposits on to a landlord if the landlord is responsible for registering the deposit, and cannot make deductions from it.
• Where the landlord registers the deposit, details must be given within 14 days to both them and the tenant.
• Where the agent belongs to one of the recommended schemes they must publicise this registration.

4. Fees

4.1 What other fees are tenants being charged?

Letting Agents were questioned about the following fees:

Rent in Advance – 15 of the 17 agents charged this, and it ranged from 4-6 weeks, deductible from the first months’ rent.

Holding deposit – This is usually one week’s rent and it is taken so that the property is kept for the prospective tenant who wants it and not marketed any longer. 12 agents stated that they charged this.

Deposit Administration fees - 4 agents charged this to tenants, 2 said that they charged the landlord. As this is a paper transaction, it is hard to see how more than a nominal charge can be justified.

Check in/out fees - this is to pay for an inventory of the property, the landlord normally pays the check in and the tenant the check out if the full management service is used which it is not in all cases.

Tenancy renewal Fee – this is to continue with the tenancy after the tenancy period has ended.

Fee to put another name on the tenancy.

Referencing fees – these ranged from £50 - £150 per person.

Other fees

Holding Deposit and Rent in Advance

The holding deposit was normally 1 weeks’ rent and Rent in Advance ranged from 4-6 weeks rent, or up 3 months if the tenant was coming from out of the country, and a holding deposit of one week. This was deducted from the first weeks’ rental obligations. This prevents it becoming subject to protection as part of the deposit under the Housing Act 2004 s212 (8) which states:

“tenancy deposit” ... means any money intended to be held by the landlord or otherwise as security for
(a) the performance of any obligations of the tenant or
(b) the discharge of any liability of him.

Of the two agents who did not charge, one claimed not to charge any fees, and one charged a one off fee at the beginning of the tenancy of £120.
Check in and checkout fees

These are charged for the service of conducting an inventory, some firms have an in house service and some outsource. The landlords were normally charged for the check in fee and the tenants for the check out, however many agents complained that landlords did not want to pay for inventories and chose to “do it themselves”.

Where the agency arranged a checking in and checking out service, the landlord paid for the inventory at the beginning of the tenancy, the tenant was expected to pay for the checking out. One agent charged tenants for both the checking in and the checking out service. However 25% of letting agents did not provide this service. Where it was provided, many agents complained that some landlords would not use it.

Agents preferred to use a professional check out service and stressed that this was important in order to protect both the landlord and the tenants. It was their opinion that in the past it was the major cause of dispute at the end of the tenancy and a frequent cause of part of the deposit being withheld. Several agents stated that unless a professional checking out service was used, in the event of a deposit dispute, the relevant scheme would always find for the tenant.

There are rules in the Code of Practice about inventories but they are qualified by “unless you have instructions to the contrary”. (s8f)

Tenancy renewal fee & fee to put another name on the tenancy

The real variation in fees was with the tenancy renewal fee and the fee to put another name on the tenancy. Where a tenancy renewal fee was charged the standard rate seemed to be £150, the fee to put another name on the tenancy ranged from £50-£250. However 7 agents stated that they did not charge a tenancy renewal fee, and 6 stated that they did not charge a fee to put another name on the tenancy.

Other Fees

One agent charged £150 “moving fee” at the end of the tenancy, and three charged “admin fee” of one of £150, & two of one week’s rent. Two charged a “tenants’ reference” fee of £70. Several charged late payment fees of £30. One charged a credit check of £25 per person. (£35 for non UK residents). One charged a “Tenancy Administration charge” of £250 and another an “Agreement fee” of £150.

Under s11 Unfair Contract Terms Act a term in a contract should be reasonable and under Unfair Terms in Consumer Contract Regulations 1999, where a contract has not been individually negotiated “the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded”.

Two agents stated all the fees were on their web site, but in fact only one had them fully outlined.

Example Complaints

Complaint D
Something goes wrong and the tenant cannot move into the property and the letting agent will not refund the holding deposit.

There is no legal requirement to protect the holding deposit but once the tenancy commences the holding deposit becomes a tenancy deposit and must be protected within the scheme. If the terms and conditions do not state that the holding deposit incorporates other fees it should be returned or defrayed against the first months’ rental obligations.

Complaint E

The holding deposit is extortionate

A holding deposit which is not refunded at the commencement of the tenancy becomes part of the tenancy deposit and should be protected (see earlier).

Complaint F

Other fees were too high and did not reflect the work done

Some examples from complaint in 2011 were: £384 “admin fee”, £150 + VAT “renewal charge”, £300 “management fee” (paid by the tenant), and £50 per person “renewal fee” £110 “renewal”.

Complaint G

Tenants were not informed about the fees until they came to sign the contract, or not at all. Most agents questioned claimed that the fees were in the contract, and that indeed seemed to be the case. Only 4 agents gave information about fees on their web sites. See App 3

S3a of the Code of Practice for Residential Letting Agents states: “You must ensure that the client understands your terms of Business that all fees and charges are clearly stated and drawn to the attention of the client... S3b “the client must be given sufficient time to read your Terms of Business before agreeing to instruct you”.

If the tenant only finds out about the terms when they sign the contract, after the arrangement to rent has been made, this would not comply with that section.

A pattern emerged of agents being very reluctant to disclose charges despite claiming that they were available for tenants. There was also a wide variation of charges for the same service and some agents charged for things that others did not. For example, a deposit administration fee was only charged by 6 out of the agents surveyed. 2 agents did not charge a holding deposit.

CPRs state that failure to give any consumer all relevant material information to enable them to make an informed choice is a misleading practice.

Clause (i) Schedule 2 to The Unfair Terms in Consumer Contracts Regulations 1999 in effect provide that a contract term shall be deemed to be unfair where it irrevocably binds the

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consumer to terms with which he had no real opportunity of becoming acquainted before the
collection of the contract;

4.3 Recommendation

*Letting agents to be advised that they must ensure that all fees and charges are clearly stated:*

*On the site*
*On the premises where premises are used*
*In the contract and drawn to the attention of the client and that the client must be given sufficient time to read the contract and terms of business before signing.*

5. Conclusion

5.1 Deposits

A significant minority of agents are ignoring their professional obligations in relation to
deposits. However the consensus seems to be that the deposits protection schemes are much
more proactive than they used to be and that abuse in this area has significantly decreased.

5.2 Fees

There needs to be far more transparency of fees and fees must be fair. It would be helpful if
the three schemes and the Code of Practice came out with a definitive statement of what can
be charged for, at present there is no consistency over the sector, fees are random and
unjustifiable and tenants are in the position of a diner who goes to a restaurant and finds they
are being charged to use the seat or the knife and fork.

5.3. Professional behaviour

*The Property Ombudsman Lettings Scheme & the Code of Practice for Residential Landlords*

Plans for compulsory registration were abandoned in 2011 (*see Appendix 5*). The reason
given was that membership of the scheme is relatively high in the sector. Of the agents
surveyed, only 4 did not belong to this (*see Appendix 2*).

Even if agents do not belong to the Property Ombudsman Lettings Scheme, the fact that they
are clearly expected to do so by the minister, would in our view make the Code of Practice
the benchmark for professional diligence under the CPRs (*see appendix 3*).

Furthermore, agents should be advised that if they do belong to this scheme, they should
make their clients aware of it.

6. Other observations

The National Landlords Association, which is another professional association for landlords,
has a very brief Code of Practice which is not as detailed or comprehensive as the Property
Lettings Code of Practice for Residential Landlords (also used by ARLA).
The Property Ombudsman Letting Scheme Code of Practice 8f inserts the qualification “unless you have instructions to the contrary” to its terms for the proper conduct of inventories, this means that inventories are not a requirement.

7. **Further action/investigation**

The agents who were surveyed will be written to and thanked for their co-operation. All membership claims will be checked. Agents will be advised on any examples of extortionate or unnecessary fees. Agents will also be advised on any examples of good practice in their firm.

In addition to the various ‘Recommendations’ set out elsewhere in this report it is recommended that the next phase of the project should include the following actions:-

- All agents to be checked for scheme membership and separate financial arrangements
- Tenancy agreements for unfair terms
- Test purchasing of “bait & switch”
- Some level of fees standardisation to be recommended

**APPENDICES**

1. Questionnaire
2. Survey Results
3. Code of Practice for Residential Letting Agents
4. Legislation
5. Regulation of Agents – House of Commons Report
**LETTING AGENT'S SURVEY**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>1. Does the trader ensure that the tenant is given a full inventory and a schedule of condition of the property?</td>
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<td>2. Is the tenant checked into the property by an inventory clerk or other representative of the landlord or his agent?</td>
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<td>3. Is the tenant given 5 working days to read and comment on the check in report and inventory?</td>
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<tr>
<td>4. Is a copy held on file and a copy given to the tenant?</td>
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<tr>
<td>5. Which of the following fees are charged to the tenants?</td>
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<td>Deposit</td>
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<td>Rent in advance</td>
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<td>Holding Deposit</td>
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<td>Deposit Administration fee</td>
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<td>Check out fee</td>
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<td>Tenancy renewal fee</td>
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<td>Fee to put another name on the tenancy</td>
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<tr>
<td>Other fee</td>
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<td>6. How is the tenant given details of the fees?</td>
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<tr>
<td>Available on the agent's web site</td>
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<tr>
<td>Agent informed the tenant when contacted</td>
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<td>Tenant finds out when signing the contract</td>
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<td>7. Is the tenant given written details of the Terms of Business including all fees and charges correctly stated?</td>
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<td>8. Does the trader ensure that any standard documentation is transparent in relation to the commitment of each party and is fair, clearly presented and written in plain language so as to comply with the Unfair Terms in Consumer Contracts Regulations 1999? (Such documentation includes application form, preliminary agreement reservation form or holding deposit receipt, terms and conditions of an application).</td>
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<tr>
<td>9. Does the trader belong to a recognised Tenancy Deposit Scheme?</td>
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<td>If so which one?</td>
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<tr>
<td>If the trader does not belong to a recognised Tenancy Deposit Scheme what steps are taken to ensure that the landlord protects the tenant's deposit?</td>
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<td>10. At the end of the tenancy, is the tenant required to use professional cleaners and produce a receipt, regardless of the state of the premises?</td>
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<tr>
<td>Question</td>
<td>Answer 1</td>
<td>Answer 2</td>
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<tr>
<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>11. At the end of the tenancy does the trader arrange for, or carry out, the final check in as soon as is reasonable practicable after the tenants vacate and at the lawful end of the tenancy during daylight hours?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>12. Are the outgoing tenants offered the opportunity to observe the final check out?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>13. At the end of the tenancy, is the deposit subject to any deduction?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>14. Is the deposit refunded by the trader, or the landlord or tenant's deposit holder on the instruction of the trader, within a maximum of 10 working days?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>15. Is there an in-house complaints procedure?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>16. Are all complaints recorded at the time they are made?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>17. Does the trader keep records of their relationship with landlords and tenants for 6 years?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>18. Does the trader belong to the Property Ombudsman Lettings Scheme?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>19. If so does the agent display the logo and have copies of the Consumer Guide and the Code of Practice for Residential Letting Agents to give to tenants?</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
Appendix 1: Charts

Scheme Membership

<table>
<thead>
<tr>
<th>No. of Agents</th>
<th>DPS</th>
<th>TDS</th>
<th>MD</th>
<th>None</th>
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<tr>
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<td></td>
<td></td>
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</tr>
<tr>
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Property Ombudsman Lettings Scheme Membership

<table>
<thead>
<tr>
<th>Members</th>
<th>Others</th>
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</thead>
<tbody>
<tr>
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</table>

Tenancy Renewal Fee

<table>
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<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>8</td>
</tr>
</tbody>
</table>
Appendix 1: Charts

Fee for adding another name

☑ Yes
☒ no
17 July 2012

Office of Fair Trading
By email: lettingsagents@oft.gsi.gov.uk

Dear Ms Fisher

Introduction

The National Federation of Property Professionals (NFOPP) is an umbrella organisation for a number of trade bodies/self regulatory organisations, which have a combined membership of just under 14,000 property professionals.

NFOPP's over-arching aims are to support its members by promoting the highest standards of professionalism and integrity amongst those working within the property industry, and to encourage members of the public to proactively choose its members when they are involved in any kind of property transaction.

The NFOPP's divisions are:

- National Association of Estate Agents (NAEA)
- Association of Residential Lettings Agents (ARLA)
- Institute of Commercial Business Agents
- National Association of Valuers and Auctioneers.

Lettings are undertaken by all members of ARLA, and by some members of NAEA.

NAEA and ARLA impose a range of professional obligations on their employee members and members who are Principal Partners or Directors (PPDs). Enhanced obligations apply to PPDs. Some examples of these obligations are:

- A requirement for PPD members to contribute to a Client Money Protection Scheme. I have attached a table which details recent claims. When there has been enforcement action in respect of the particular agent or agency this is mentioned;
• A requirement that all Terms of Business with landlords and tenants are clear and transparent;

• Compliance with client money rules including the provision of an annual independent accountants report;

• Requirement to belong to a redress scheme such as the Property Ombudsman;

• Education attainment to VRQ Level 3;

• Annual Continuing Professional Development

NFOPP Awarding Body also provides a suite of higher level qualifications to complement agents increasing experience as they progress in their careers.

These holistic obligations and opportunities are intended to address the risks posed by the sector. We continually encourage the OFT and the government generally to consider the introduction of a mandatory regulatory framework for both letting agents and landlords. Only comprehensive legislation can effectively tackle the issues being faced by consumers.

I have also attached a sheet which answers the specific queries that have been posed about the Intelligence Report.

Yours sincerely

[Signature]

Ian Potter
Managing Director ARLA

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1 Subject to grandfathering.
2 Subject to grandfathering for NAEA members.
NATIONAL FEDERATION OF PROPERTY PROFESSIONALS (NFOPP)

Q1. Do the findings of the OFT Intelligence Report mirror your views/understanding of the current problems in the lettings sector?

Yes. The Intelligence Report raises issues which were already well known. The issues identified have been part of the argument we have repeatedly put forward for the regulation of letting agents and landlords. The Department for Business Innovation and Skills are currently considering amendments to the Estate Agents Act 1979 concerning online services. This review could provide a rare opportunity for the underlying issue of lack of control of lettings agents and landlords to be addressed. The Intelligence Report should also help inform the OFT’s work on guidance for lettings agents concerning the Consumer Protection from Unfair Trading Regulations (2008).

Q2. Do you have any data, intelligence or other evidence you can share?

Some of our more serious disciplinary findings are published in the Complaints areas of our web sites. Given the breadth of property disciplines practised by members of our different divisions the hearings may relate to sales, lettings, auctioneering, etc\(^1\). On this basis please let us know if you would like further details of any particular case.

As indicated in our covering letter, we protect consumers using a Client Money Protection scheme. Please find attached a table of recent claims which all arose from the lettings sector. We feel that the information we have gathered about enforcement indicates that an inconsistent approach is taken by different enforcement agencies in different parts of the country.

The Property Ombudsman’s Annual Report contains some useful information about lettings.

Q3. Are there any other problems not included in this intelligence report which you consider to be significant?

(a) Notice periods. There is wide spread misunderstanding that if a tenant gives notice the notice period will automatically commence immediately, but this is not the position. This problem should be tackled by legislation;

(b) Serving notice. We are unsure whether different paperwork is necessary for different stages of a tenancy. If there could be only one form of notice this may prevent courts from having to deny landlords their rights because of procedural errors;

(c) Money laundering. In our response to HM Treasury’s Review of the Money Laundering Regulations 2007 we recommended that lettings agents were covered by the Regulations. We see this as potentially beneficial to landlords, as well as potentially very beneficial to the wider objective of trying to control the sector and fight crime. Given the OFT’s role as AML supervisor for estate agents were disappointed that the OFT did not cover this important issue in its own response;

(d) The contractual paperwork exchanged between landlords and tenants should explain the legal processes required to achieve the rights covered in tenancy agreements.

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\(^1\) Hearing notes should refer to at least one division of NFOPP which the member either belonged to, or continues to belong to. The division’s acronym may form part of their post nominal. If a note refers to ARLA then the case related to lettings. If a note refers to NAEA then the case may relate to sales or lettings.