

SCHEDULE

Letting Agent Code of Practice

SECTION 3

Engaging landlords

Before taking instructions

29. In your dealings with potential landlord clients you must:

Services provided and fee charges

- (a) provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them;

Advice

- (b) offer accurate and unbiased advice on the rental valuation and appraisal of the property. You must not knowingly misrepresent the potential rental valuation;
- (c) inform the landlord that they need to get consent or delegated authority from all owners, mortgage lenders or other relevant parties before letting the property and the need to ensure relevant insurance cover is in place;
- (d) if you become aware in the course of your business that a property does not meet appropriate letting standards (e.g. repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this;
- (e) if a landlord is not already registered, inform them of the landlord registration requirements under the Antisocial Behaviour etc. (Scotland) Act 2004(1) and, where necessary, the requirements under the Housing (Scotland) Act 2006(2) relating to houses in multiple occupation;

Conflict of interest

- (f) if you intend to act for clients who have competing interests or your personal interests conflict, or could potentially conflict, inform the clients as soon as you become aware of it;

Identity checks

- (g) take reasonable steps to check the identity of each landlord to ensure that they are who they say they are and that they are the legal owners of the property or have permission from the owner or power of attorney – for instance, asking for an official form of identification; proof of address; proof of ownership and, where applicable, landlord registration number or company registration number.

Terms of business

30. You must agree with the landlord what services you will provide and any other specific terms of engagement. This should include the minimum service standards they can expect and the target times for taking action in response to requests from them and their tenants.

31. If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these

(1) 2004 asp 8.

(2) 2006 asp 1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.

32. Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

Core services

- (a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

Duration

- (b) the duration of the agreement and the date it commences;

Authority to act

- (c) a statement about the basis of your authority to act on the landlord's behalf;
- (d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods;
- (e) situations in which you may act without checking with the landlord first, for example urgent repairs;

Fees, charges and financial arrangements

- (f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;
- (g) how you will collect payment including timescales and methods and any charges for late payment;
- (h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;

Tenancy deposits

- (i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;

Communication and complaints

- (j) that you are subject to this Code and give your clients a copy on request. This may be provided electronically;
- (k) how you will communicate (including the use of electronic communication⁽³⁾) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;
- (l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;
- (m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

Conflict of interest

- (n) a declaration of any conflict or potential conflict of interest;

(3) See sections 7 and 15 of the Electronic Communications Act 2000 (c.7).

Professional indemnity insurance

- (o) confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

Handling client money

- (p) how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

How to change or end the terms of business

- (q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive.

33. You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature⁽⁴⁾.

34. In line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013⁽⁵⁾, in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises.

35. Any subsequent changes to your terms of business should be agreed by both parties and confirmed in line with your agreement (see paragraph 32 (q)).

36. If a landlord or tenant (including former landlord and tenant) applies to the Tribunal because they think you have failed to meet your Code obligations, the Tribunal may, depending on the nature of the circumstances, expect you to show how your actions meet your agreed terms of business as part of complying with the Code.

Ending the agreement

37. When either party ends the agreement, you must:

- (a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.
- (b) if tenants are still living in the managed property or properties, inform the tenants you will no longer be acting as an agent for the landlord and inform them of the landlord's name and contact details if these have not already been provided, or where relevant, those of any new agent. You must also inform the tenants of any resulting changes that affect them.

(4) See sections 7 and 15 of the Electronic Communications Act 2000.

(5) [S.I. 2013/3134](#); to which there are amendments not relevant to this instrument.