

# Distance selling regulations and how they apply to agency deals

Distance selling regulations could impact agents, particularly lettings agents in the event that a tenant does not see a property before moving in. **Christopher Hamer** explores the details and possible consequences.

**T**he Consumer Protection (Distance Selling) Regulations 2000 (DSRs) would, to most people, be something that affects purchases over the internet and mail order transactions.

However, the world of internet and mail order sales may be closer to agency than property market practitioners think, especially for those in lettings, who can undertake their whole transaction with a tenant who has never seen the property involved, and who subsequently rejects it when they come to take occupation.

Applicants cannot always view a property before they decide to rent it, and many actually choose not to, which means that they tend not to meet the letting agent until they are about to move in. Their property choice will therefore be largely or entirely based on what the agent has told them through their advertising, telephone conversations and correspondence.

Alternatively, an applicant may have viewed the property, but then taken their interest forward without meeting the letting agent at their office, and so the reservation paperwork is dealt with entirely by post or email.

Such applicants may later decide that they do not want to take the tenancy, which is when the question can arise about whether they have a right to pull out of the arrangement by exercising cancellation rights under the DSRs.

## Cancellation

This wish to cancel will typically arise after a tenant has seen the property for the first time, just

before they plan to move in and after the landlord has withheld the property from the market to allow the applicant to proceed. The agent will have incurred the cost of referencing checks and preparing the tenancy agreement. In such circumstances, it is probable that the applicant will ask the agent for the return of their reservation fee. The contract between applicant and agent under which that reservation fee was paid may, in the circumstances outlined above, be caught by the DSRs.

The DSRs may apply in the circumstances mentioned above if the applicant for the tenancy reserves the property as a result of such distance selling, and pays a reservation fee and holding deposit to the agent. This contract between applicant and agent is the one to which rights to cancel potentially arise under the DSRs.

However, the right to cancel may be curtailed if the reservation form, which should be signed by the applicant, so states and makes it clear that the agent will be undertaking the services commissioned in that form, usually referencing checks, as soon as it is returned using the holding deposit for payment.

## Action

On receipt of a complaint, I will look to see if the agent has been mindful of the DSRs in handling the application without determining whether the regulations have been breached. I will also look at how the applicant's interest has been handled, generally having regard to the provisions and ethos of The



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Property Ombudsman Code of Practice, in particular paragraph 1d, which expects agents to act with integrity, fairness and in accordance with best practice.

Obviously, it is always difficult dealing with someone who has reserved a property before viewing it. Paragraph 6a of the TPO Code specifically states that it is inadvisable for an agent to recommend acceptance to a landlord client in such circumstances, but expressly countenances the situation where the applicant is abroad. That paragraph of the Code specifically refers to the DSRs. Whilst the buyer beware principle applies, there is also the issue of greater reliance placed on the agent for information about the property if the applicant is unable to see it for himself, and I will expect to see evidence of full disclosure of all material information.

## Terms

Terms and conditions of the tenancy should be accurately and clearly explained, the condition of the property itself described fairly, pre-let undertakings established and the terms of the holding deposit fully set out, so

that no applicant can be under any misapprehension about the condition of the property, the rental terms, what will be done before they move in and what they could expect from the agent once they pay the holding deposit.

I will expect the reservation form to state that the agent will begin referencing checks as soon as the holding deposit is received and provide that, by paying the holding deposit, the applicant agrees to this and understands that he will lose any rights to cancel once those checks have begun. I will look to see if it states clearly – i.e. not in the small print – that the holding deposit will not be returnable in specified circumstances, which would extend to where the applicant changes their mind.

As with all matters referred to me, I approach complaints from the perspective of what seems fair and reasonable in the circumstances. Where an applicant has been clearly warned that their money will at once be put to use on referencing checks, or whatever else the payment covers, and that this will affect their right to cancel in law in that the agent will retain the money to cover their costs, I am likely to support the agent's right to retain the deposit against the stated costs. I have, however, been known to award the return of the holding deposit in cases where the agent has not undertaken any further administration applicable to the letting and the proposed retention.

In all cases, it is a question of looking at all the circumstances to determine what is a fair and reasonable outcome.