Guidance Note for Agents: Lettings Agency Agreements

The following guidance is provided for agents to help ensure that their agency agreements meet the requirements of the TPO Code of Practice for Residential Letting Agents and their obligations under the law. The guidance does not set out to determine what is legally acceptable but all agents should be aware of the need to avoid using any unfair terms (as defined by the Unfair Terms in Consumer Contracts Regulations 1999) and to avoid misleading information/omissions or ambiguity which would go against the principles of the Consumer Protection from Unfair Trading Regulations 2008.

The fundamental approach in any agreement should be to define clearly the commitments the landlord has taken on as a result of entering into a legally binding contract and to define the commitments you as agent have made to that landlord.

This document does not specify model wording of individual terms but rather lays down what are the terms that should be included in any agreement under which a landlord will agree to engage your services. This guidance does not specify the format of your agency agreement and recognises that there will be local variations or particular matters that you will want to include.

The overriding principle is that your agreement must be easy to understand by the consumer and this guidance recommends that certain key features of the agreement should be highlighted so that they are specifically drawn to the client’s attention.

The principles or heads of agreement which should be included in any agency agreement are as follows:

• Who you are.
• Who the client is including their contact address and contact details (and any other address for service of notices).
• Details of the property to be let.
• The agreed rental asking figure (valuation figure) and how that is calculated (for example per month).
• Whether you are instructed on a tenant find only basis, rent collection, and/or property management basis or another agreed arrangement.
• The duration of the agreement and how it can be terminated and the period of notice required. This should include a cautionary note about any on-going liability for the client after you have been instructed.
• Details of all other charges that the client will incur in setting up the tenancy such as the initial set up fee, management charge (where applicable and the basis of that charge), inventory preparation, renewal fees, check-in and/or check-out fees, EPCs and any other admin fees. Where the tenant is liable for a proportion of the costs you must make clear how the split is calculated. Dependent on how your charges are quoted (see paragraphs 5k and 5l of the Code of Practice), you must also make clear whether VAT is included or not and how these charges will be collected (i.e. invoiced or deducted from rent received).
• The requirement for you to obtain a taxation declaration for non-resident landlords to satisfy their HMRC obligations.
• Clear explanation of how you will meet your responsibilities under the agreement in terms of referencing, drawing up the tenancy agreement, arranging rental payments, managing the property etc.
• Clear definition of how the tenancy deposit is to be protected, how that will be administered and an explanation of the risks that the client will face if that is not done in accordance with the law.
• Clear explanation of the client’s legal responsibilities in terms of safety legislation, including but not limited to furniture and furnishing, electrical appliances, gas safety etc.
• Formal notice of the right to cancel the agreement within 14 days in relevant circumstances according to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
• The fact that you are members of TPO and a recognised client money protection scheme.
• The procedures by which any complaint against the service you have provided can be actioned including the right of referral to TPO if the matter is not resolved between the parties.
• A clear declaration that by signing the document, the client is entering into a legally binding agreement, that they are entitled to let the property, that they have obtained any necessary consents and/or licences and that they have read and understood the terms of that agreement.

In drafting an agency agreement the above principles should be considered in conjunction with the standards and approach detailed in the TPO Code of Practice for Residential Letting Agents.

Agents are encouraged to use this guidance to contribute to consistency in approach, for ease of consumer understanding and avoidance of complaint.