Guidance for TPO Members: Letting Agents
Arranging Access to a Tenanted Property

TPO has received a number of queries from agents regarding the obligations set out in the TPO Lettings Code (2016) which specifically concern obtaining express consent from a tenant before accessing a property. The queries have followed a number of third party interpretations of the amended paragraph, which have stated that express consent must be obtained. This is incorrect.

The relevant paragraph of the TPO Lettings Code states:

8f Access to a property may be required by you, or an authorised third party on behalf of the landlord (e.g. a surveyor, builder, tradesman etc) for the purpose of viewing the condition, state of repair and/or to fulfil related statutory obligations and/or to carry out repairs. If you hold the key but are not able to accompany that person, the tenant must be given the appropriate minimum notice of 24 hours or that prescribed by law, of the appointment (unless agreed otherwise with the tenant beforehand), except in cases of genuine emergency. Notwithstanding providing the tenant with reasonable notice to access a property, express consent from the tenant to do so should be obtained.

What does this mean in practice? Put simply, an agent must provide written confirmation of their request to access the property to the tenant. Within that written request, the tenant must be asked for their confirmation of whether or not access is acceptable. The request must be issued in good time to allow the tenant a reasonable period of time to respond – the minimum period being 24 hours.

In reality, it is often the case that a tenant will not respond to an access request and, in those circumstances, provided the tenant has been provided with the opportunity to respond, the agent is entitled to make the assumption that access is permitted. However, the tenant must be given the opportunity to refuse access, if they so wish. It therefore follows that express consent should, rather than must be obtained.

The change was made to the TPO Code following a number of cases whereby agents were giving tenants the minimum 24 hours’ notice, often sent by text, before entering the property (sometimes to the surprise of the tenant). Whilst legal, this was clearly not good practice and not the manner in which we would expect agents, who had voluntarily chosen to follow the TPO Code, to behave.

Sales agents should be aware that the TPO Sales Code also requires access to be pre-arranged with the occupier. In this respect, estate agents must be mindful of occupier’s rights under any tenancy agreement and arrange viewings accordingly.