



# Code of Professional Practice for Residential Letting Agents in Scotland

Effective from 31 January 2018

This Code of Professional Practice (hereafter referred to as the Code) is mandatory for all TPO Members who are entitled to display the above logos and who offer residential letting and/or management services. Copies of this Code and the TPO Consumer Guide should be made available in all your offices. You should prominently display the logo in the window of all your offices.

This Code makes reference to regulations and acts which are included for reference and learning purposes. Potential breaches of legislation are investigated and enforced by regulatory authorities.



## The Property Ombudsman

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## 1. General Provisions

### Applicability

**1a** This Code applies to letting agency services in Scotland, provided by a person or organisation who has agreed or is required to comply with it, for the letting or property management (\*) of residential property (\*). This Code does not replace the obligations set out in The Letting Agent Code of Practice (Scotland) Regulations 2016 (hereafter referred to as the Mandatory Code) which applies to all letting agents operating in Scotland. However, this Code does impose additional best practice obligations on TPO agents who have voluntarily agreed to abide by it. There is a separate Code of Practice for sales of property in Scotland.

### General Obligations

**1b** You (\*) must comply with this Code of Professional Practice. You must comply with all laws relating to the letting and management of residential property and in particular to The Letting Agent Code of Practice (Scotland) Regulations 2016, the Private Housing (Tenancies) (Scotland) Act 2016, the Housing (Scotland) Acts 1988, 2001, 2006, 2010 and 2014, Tenancy Deposit Schemes (Scotland) Regulations 2011, Data Protection Act 1998, Competition Act 1998, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), Business Protection from Misleading Marketing Regulations 2008 (BPRs), Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Energy Act 2011 (Green Deal), Immigration Act 2014, Rent (Scotland) 1984 and all other current and relevant primary, secondary and devolved legislation.

- 1c** You must ensure that all staff are fully conversant with all aspects of the Code and their legal responsibilities. Such staff must observe the Code and their legal responsibilities in all their dealings with consumers. You must comply with all laws relating to the letting of residential property and all other current and relevant legislation.
- 1d** You should provide a service to both landlords and tenants consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit or misrepresentation. You must avoid any course of action that can be construed as aggressive behaviour (\*) or harassment (\*).
- 1e** You must treat consumers equally regardless of their race, religion or belief, sex, sexual orientation, gender reassignment status, disability or nationality. Unlawful discrimination includes giving less favourable treatment because someone is perceived to have one of these personal characteristics or because they are associated with a person with such a characteristic.
- 1f** You should take special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement.
- 1g** You must not release or misuse confidential information obtained during the process of the letting or property management of a residential property without appropriate permission, unless legally required to do so. Private information must be handled sensitively and in line with legal requirements such as the law relating to data protection.
- 1h** You must keep clear and full written (\*) records (\*) of your relationship with landlords and tenants for at least five years in accordance with the Prescription and Limitation (Scotland) Act 1973. Those records must be produced when required by the Ombudsman.
- 1i** As a TPO Member (\*) you must not take or be involved in any action which would bring the scheme into disrepute.

## **Publicity**

- 1j** In accordance with the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, you must include TPO's name and website address on your website, within your terms of business and within any other sales or service contract you agree with a consumer.
- 1k** You must use and display such material promoting the Code as provided by TPO. You must prominently display the TPO logo on your website, the window of all offices, and on relevant documentation such as marketing literature, property advertisements, and on your letterheads. You must make consumers aware of the Mandatory Code, provide a copy on request and include your letting agent registration number in all relevant documents and communication in line with your legal requirements.
- 1l** You must have available, free of charge, copies of the Code to give to consumers on request. You must also prominently display copies of the TPO Consumer Guide leaflet in all your offices.

## **2. Duty of Care and Conflicts of Interest**

- 2a** You must treat all those involved in the proposed letting including tenants and landlords fairly and with courtesy.
- 2b** You must avoid any conflict of interest. You must disclose at the earliest opportunity in writing (\*) to your client (\*) or any relevant third party, any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.

- 2c** Customer requirements are key and this applies to the tenant as well as the landlord. You should complete a customer fact find to ensure that any specific requirements of the landlord or tenant may be taken into consideration.
- 2d** You must tell the landlord in writing as soon as reasonably possible after you find out that a tenant, who has made an offer, has applied to use any service provided by an associate (\*) of you or connected person (\*) in connection with the letting and/or management of a property (for example, but not only, in circumstances where a commission or referral fee could be earned). Any fee earned should be declared. Where you are legally authorised to offer insurance products, costs must be clearly explained and any commission, fee, rebate or other payment or benefit to you must be disclosed to landlords and tenants on request. Where applicable, you must have a procedure in place for making insurance claims.
- 2e** If an employee or an associate (or an associate of the employee of your firm) is intending to rent a property which your firm is instructed to let you must give all the relevant facts in writing to the landlord (or the landlord's representative) before negotiations begin.
- 2f** If you or an employee or an associate is intending to rent a property which your firm is instructed to let, that person must take no further direct part in the letting of that property on behalf of your business.
- 2g** If you are letting a property that is owned by you, an employee or an associate (or an associate of an employee) or in which you an employee (or an associate of an employee) has an interest, you must, before negotiations begin, immediately make this known in writing to the tenant.

## **3. Advertising for New Business (Canvassing)**

- 3a** You must not use either "ghost" advertisements or canvassing material for properties or applicants that do not exist, in order to attract either new applicants or new clients.
- 3b** In your canvassing material, if you seek to use a property you have recently let or managed, you must seek the owner's prior written permission.
- 3c** When you advertise for new business your fees should be shown inclusive of VAT.
- 3d** You must not use unfair methods when seeking properties or applicants by unsolicited approaches. Advertising material must be truthful, not misleading and fully explain who the message is from, its purposes and how the applicants or new client's interest can be followed up.
- 3e** You must take decisions on the content of your advertisements independent of your competitors, including whether to advertise your fees, charges or any additional costs, or any special offers, discounts or other value offering.
- 3f** You must act promptly if a landlord or tenant asks you to stop canvassing them.

## **4. Market Appraisal**

- 4a** When you give advice to someone intending to let their property, any figure you advise as a recommended rent must be given in good faith, reflecting current market conditions. You must never knowingly misrepresent the potential rental level of a property in order to gain or retain an instruction.
- 4b** Any figures given should, within reason, be supportable by indicators in the market place, preferably by comparables of similar properties in a similar location.

- 4c** You must keep your marketing strategy under regular review with your client.
- 4d** You must advise the landlord of the need to obtain any necessary consent (for example from joint owners, mortgage lender or someone holding a legal charge against the property, superior landlord (\*) and/or freeholder, etc.) prior to formal creation of a tenancy; inspect the necessary consents; advise of the need for the landlord to assess relevant buildings and contents insurance.
- 4e** You must advise the landlord of the need to comply with the obligations and requirements of relevant Health and Safety legislation and regulations that apply to rented property; and you should verify the validity of the necessary certificates. Where you are instructed to manage a tenancy, the obligation to inform the landlord of known non-compliance issues remains ongoing.
- 4f** You must advise the landlord of the need to comply with the requirements of the Repairing Standard (\*) and, within reason, draw to their attention any obvious repairs or maintenance issues which appear necessary in preparation for the intended letting. Where you are instructed to manage a tenancy, the obligation to inform the landlord of known non-compliance issues remains ongoing.
- 4g** You must, where appropriate, make the landlord aware of the requirement to adhere to the Finance Act 1995 and the special rules relating to the deduction of tax from rental income, applying to landlords considered as non-resident or overseas.
- 4h** You must draw the landlord's attention to the necessity and benefit of a properly prepared full inventory and a schedule of condition. If you are responsible for managing the check-in process, you must produce an inventory.
- 4i** You must advise the landlord of the need to comply with mandatory landlord registration requirements, in accordance with their responsibilities under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 and, where necessary, the requirements under the Housing (Scotland) Act 2006 relating to houses in multiple occupation.
- 4j** If you are aware that a landlord client is not meeting their legal obligations and is refusing or unreasonably delaying complying with the law, you must not act on their behalf and inform the appropriate authorities of the non compliance.
- 4k** You must notify the appropriate authorities (for example the police or the National Crime Agency) if you suspect any person using your services is engaged in any criminal activities.

## **5. Instructions, Terms of Business, Fees, Charges and Termination of Client Agreement**

### **Instructions and Terms of Business**

- 5a** You must, at the point of instruction, inform the landlord in writing that you are a Member of the TPO scheme, and subscribe to this Code. Your Terms of Business must reconfirm this, advise that copies of this Code and the Mandatory Code are available on request and clearly set out how a complaint can be referred to TPO and the Tribunal (\*).
- 5b** You must not directly or indirectly harass any person in order to gain instructions. Nor must you repeatedly try to gain instructions in a way likely to cause offence.
- 5c** You must not instruct other agencies to assist you in letting a property without the landlord's permission. If the landlord gives permission, as the instructing agent, you are liable at law for the actions of the sub-instructed agent and will be held responsible for any failures to comply with this Code by that other agent even if that sub-agent is not a TPO Member. Notwithstanding this, if you are instructed as a sub-agent or share listings via a website,

you must continue to act in accordance with all relevant provisions of this Code.

- 5d** You must ensure that the landlord understands your Terms of Business, that all fees and charges are clearly stated and are drawn to the attention of the landlord.
- 5e** The landlord must be given sufficient time to read your Terms of Business before agreeing to instruct you. The landlord should be required to sign a copy which you should hold on file and the landlord must be given a copy to retain.
- 5f** Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party. When a contract is signed by a landlord during a visit by you to their home, at their place of work, away from your premises or online, then they must be given a right to cancel that contract within 14 calendar days of signing. The client should be given a 'Notice of Right to Cancel'. Where the landlord wishes the contract to begin before the end of the 14-day cancellation period, you must obtain confirmation of that request in writing. Where you intend to recover costs incurred during this cancellation period, you must obtain the landlord's agreement in writing to those specific costs before work commences.
- 5g** You must give the landlord written confirmation of your instruction to act in the letting and/or management of properties on their behalf before they have committed any liability to you. You must give the landlord written details of your Terms of Business which should include what different types or levels of service are available, for example letting only, rent collection, full management including any relevant fees and expenses. You must give the client these details before the client is committed or has any liability towards you. Your Terms of Business must not contain provisions which are inconsistent with the provisions of this Code. You must not require payment of a commission in circumstances where the tenant agrees to purchase the property unless this is subject to a separate sales agreement.
- 5h** Your Terms of Business must clearly set out the basis of your authority to act on the landlord's behalf; who (either you or the landlord) will lodge any deposit with an approved scheme; any level of delegated authority (for example, financial thresholds for instructing repairs and purchasing replacement goods); the situations where you may act without seeking authorisation (for example, urgent repairs); expected and reasonable timescales for responses to landlord or tenant enquiries; confirmation that you hold professional indemnity insurance (or equivalent protection) and client money protection arrangements with details available on request.
- 5i** You must take reasonable steps to check the identity of the landlord and establish that they are either the legal owner of the property or have the appropriate permission to act on behalf of the owner and/or co-owners or power of attorney. Your reasonable steps must be appropriately recorded and include details of the documentation checked (e.g. passport, proof of ownership, Land Registry information).
- 5j** You must confirm in writing the landlord's instructions to you and which type or level of service is being provided.

### **Fair Contracts**

- 5k** Your Terms of Business must be transparent in relation to the landlord's commitments and liabilities. They must be written in plain and intelligible language and comply with all requirements of Part 2 of the Consumer Rights Act 2015. You should not use terms that may be deemed unfair, and consequently unenforceable, by virtue of the above Act.

Your Terms of Business must not contain terms which are inconsistent with the provisions of this Code.

### **Fees and Charges**

- 5l** Where the fee is a percentage it should be quoted inclusive of VAT. Any example amount should be based on the rental asking price. However, you must make it clear that, should the agreed rental be higher or lower than the example price, your commission fee will be correspondingly higher or lower.
- 5m** Where you charge a fixed fee, you should state the actual amount payable including VAT in the contract and ensure that the landlord understands that the fee will not vary whatever the rental income.
- 5n** The method and timescales for collection of fees and charges must be clearly set out, alongside any charges for late payment (where applicable).
- 5p** Where applicable, your Terms of Business must include a statement explaining that details of any financial interest in providing third-party services (including contractors) are available from you on request.

### **Termination of Client Agreement**

- 5q** Your Terms of Business must include clear and accurate information regarding the circumstances under which either party to the contract may cancel or terminate the arrangement and they must actively flag what liability for fees or charges (inclusive of taxes) may be incurred in those circumstances. Termination charges and the related terms must not be unreasonable or excessive.
- 5r** Whether you or the landlord terminates the instruction, you must give the landlord appropriate written confirmation that you will no longer be acting, including the date of termination, and giving details of any liability for fees or charges owed by the landlord to you (or any credit or funds owed to the landlord) and confirming any arrangements for the handover of the property, appropriate documentation, keys, etc., to the landlord or their appointed representative. This action must be taken promptly to enable a timely handover.
- 5s** Where your contractual arrangement with the landlord is terminated, and the relevant managed property is still tenanted, you must promptly tell the tenants, in writing, of the change in arrangements, including where it is proposed the deposit will be held. In such circumstances and subject to tenancy deposit regulations, the written authority of the tenant(s) to release their deposit to a third party must be obtained.

### **Subsequent Changes**

- 5t** Any change to the Terms of Business must be:
- mutually agreed by you and the landlord;
  - promptly confirmed in writing;
  - where appropriate, contained in a new Terms of Business signed and dated by the landlord.

## **6. Marketing and Advertising**

- 6a** You must not commence the marketing of a property until you are satisfied that you have the landlord's authority and have agreed the basis of your Terms of Business. You must

not knowingly offer a property on the market without an appropriate Energy Performance Certificate (EPC) and permission from the owner/ landlord or, alternatively, from the owner/ landlord's properly appointed and authorised representative. It is accepted that for portfolio landlords (\*) it may be impractical to hold individual instructions on a property-by-property basis; in such circumstances you should ensure that you hold a satisfactory letter of authority from the landlord.

### **Letting Boards**

- 6b** You must not erect any form of letting board at a property unless you have been instructed to market that property for rent.
- 6c** You can only erect a letting board with the specific permission of the landlord.
- 6d** Any board you do erect must be appropriate for the occasion.
- 6e** When you put up a board you must by law comply with the Town and Country Planning (Scotland) Act 1997, the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended) and any other relevant regulations and legislation. You must accept liability for any claim arising under these Regulations in connection with the board.
- 6f** If your board relates to part of a building in multiple occupation, it should indicate the part of the building to which it relates.
- 6g** You must not replace another agent's board with your own, hide it or remove it from a property, without the landlord's permission or without notifying the other agent.
- 6h** You must comply with relevant legislation in relation to erecting and removing your boards.

## **7. Published Material and Information about a Property**

- 7a** You must by law comply with the Consumer Protection from Unfair Trading Regulations 2008 (or the Business Protection from Misleading Marketing Regulations 2008 where applicable). The Consumer Protection from Unfair Trading Regulations 2008 require you to disclose any information of which you are aware or should be aware of in relation to the property in a clear, intelligible and timely fashion and to take all reasonable steps that all statements that you make about a property, whether oral, pictorial or written, are accurate and are not misleading.
- 7b** All material information (\*) must be disclosed and there must be no material omissions which may impact on the average consumer's (\*) transactional decision (\*) and where information is given to tenants or their representatives, it is accurate and not misleading. In particular, you must accurately describe whether the property is being let as furnished, part furnished or unfurnished and whether facilities are shared so that tenants are not misled as to what fixtures, fittings, etc., will be included. You must be diligent in compiling the particulars.
- 7c** All advertisements must be legal, decent, honest and truthful in accordance with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing. Manipulating internet portals (and other channels of marketing) to give the impression a property is new to the market, when it is not; inflating your market share by listing properties multiple times; listing properties that are not currently available to rent; or claiming to have let a property which was let by another agent, is misleading.
- 7d** If you intend to include material produced by a third party, you must obtain that party's

permission to do so prior to the commencement of marketing.

- 7e** You must take all reasonable steps to ensure that your letting agent registration number and your TPO membership are included in all property advertisements and communications.
- 7f** You must include the landlord's registration number (or clearly state 'landlord registration pending') and the energy performance indicator from the EPC in your property advertisements.
- 7g** You must give prospective tenants all known relevant information about renting the property as soon as is practical. Such information should include length and type of tenancy; the rent; the deposit; other financial obligations such as council tax arrangements; potential guarantor requirements and the pre-tenancy checks that will be conducted.

## **8. Viewing and Access to Premises**

### **Viewings**

- 8a** You must take the landlord's instructions regarding viewings, specifically, whether or not they should be conducted by you.
- 8b** You must record any feedback from viewings and pass this to the landlord within a reasonable time. If this feedback is an offer to rent, you should refer to Section 9 below.
- 8c** Before arranging any viewing, you must tell the tenant if an offer has already been accepted by the landlord.

### **Access to Premises**

- 8d** Where you are arranging for a tenant to view a tenanted property, the existing tenant must be provided with appropriate and reasonable notice, as prescribed by law, of the appointment unless other arrangements have been agreed with the occupying tenant. You should accompany all viewings unless an unaccompanied viewing has been agreed by the existing tenant.
- 8e** You must make sure that all the keys to a landlord's property that are in your possession are coded and kept secure. You must maintain records of when you issue keys and to whom; when they are returned and by whom. These records must be kept secure and separate from the actual keys. You must only give keys to people providing you with satisfactory identification and who can demonstrate a legitimate purpose.
- 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, 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. If a tenant refuses access, you, the landlord or any third-party have no right to enter the property using the retained keys without a warrant.
- 8g** When you are unable to accompany any third party, this must be made clear to the tenant or other occupier beforehand.
- 8h** You must exercise reasonable diligence in ensuring that, after any visit by you or an authorised third party, a property is left secure.

## **9. Offers**

- 9a** It is not advisable for you to accept, or recommend a landlord to accept, an offer on a property that has not been viewed either by the prospective tenants themselves or by a suitably authorised representative of the prospective tenants, for example, an appointed relocation agent or direct associate. Exceptions might be made when a prospective tenant who is resident overseas is willing to be contacted by letter, fax or electronic means, but, in such circumstances, you must be conscious of the implications of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- 9b** You must inform the landlord, in writing as soon as is reasonably practicable, about formal offers received on a property up to the point where tenancy agreements are signed unless the landlord has instructed otherwise, or, unless the offer is of an amount or type that the landlord has indicated previously (in writing) is unacceptable. Details of all formal offers made on a property including the name of the tenant, the amount, the date and the response given must be recorded. Where you are instructed as a sub-agent you must inform the principal agent of any offers received.
- 9c** Where an offer has been made to a landlord and the landlord declines the tenancy other than because the tenant has failed referencing, if appropriate and agreed within your terms of business, the landlord should be advised of any additional liability for your costs incurred in pursuing the references.
- 9d** A tenant, whose offer has been confirmed as having been accepted in principle, must be given written confirmation as to whether or not the marketing of the property is to cease and/or if further viewings will be carried out by you whilst their tenancy application is processed. If marketing and/or viewings are subsequently recommenced by you the tenant must be promptly informed.
- 9e** You must provide the parties with a draft or specimen tenancy agreement. Where there is to be a guarantor for the applicant for the tenancy, this facility must be extended to that person.
- 9f** Any standard documentation that seeks to create a contractual relationship, via its standard terms or clauses, between a tenant and you or the landlord must be clear about the commitments of each party. Such documentation must be fair, clearly presented and written in plain and intelligible language so as to comply with Part 2 of the Consumer Rights Act 2015. Such documentation includes application form, preliminary agreement, reservation form or terms and conditions of an application.
- 9g** It is against the law for an agent or a landlord to charge or receive any premium (\*) or require the making of any loan to a tenant as a condition of granting, renewing or continuing a tenancy. Requiring a tenant to use a third party service that charges them a fee as a condition of granting, renewing or continuing a tenancy is also prohibited. Only rent and a refundable deposit of two months' rent at the most can be charged to a tenant.
- 9h** Details of an offer accepted in principle (albeit still subject to references, etc.) should be confirmed to the landlord as soon as practicable and ideally in writing.
- 9i** You must take reasonable steps to keep tenants who have made an offer and which has not already been rejected informed of the existence (but not the amount) of other offers submitted. You must not misrepresent to either the landlord or the tenant the existence of, or any details of, any other offer allegedly made or of the status or circumstances of any other person who has made an offer.

## 10. Referencing

- 10a** In all referencing processes or procedures, you must be diligent in identifying fraudulent applications.
- 10b** You must take references on a tenant or guarantor appropriate to the circumstances of the application, with their written permission and in line with arrangements agreed with the landlord. Tenants must be informed of the outcome of their application as soon as possible. Your own referencing procedures should usually be by way of a Referencing Service provider or by direct application to third party referees or any combination of the above.
- 10c** Where references are provided directly by the tenant or guarantor, you must be diligent in validating their authenticity.
- 10d** Where the current existing address of the tenant or guarantor is not evidenced via the Electoral Roll, such an address must, wherever practical, be verified by the tenant or guarantor providing you with a utility bill or bank statement, or Building Society passbook or Council Tax account or driving licence or similar.
- 10e** You must be diligent in verifying the identity and nationality of a tenant or guarantor including verifying the nature of any visa, status of residency and work permit and you must retain a record of steps you have taken.
- 10f** Where a tenant or guarantor fails, in the circumstances, to meet prudent referencing criteria, you must obtain confirmation in writing from the landlord whether they wish to proceed with that application. Where the acceptance of the tenant or guarantor is conditional you must ensure those conditions are met and/or advise the landlord accordingly.
- 10g** You must provide the landlord with all relevant facts (subject to data protection restrictions) relating to the application to enable the landlord to make an informed decision, regardless of whether the tenant has met, or failed to meet, the referencing criteria.

## 11. Tenancy Agreement, Inventories and Deposits

### The Tenancy Agreement

- 11a** Should you not use the Scottish Government's Model Private Residential Tenancy Agreement, you must provide the tenant with a copy of the Private Residential Tenancy Statutory Terms Supporting Notes and take care to prepare an appropriate written tenancy agreement which includes the mandatory terms set out in the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017 and any agreed or specially negotiated clauses or terms particular to the property or the circumstances of the parties to the letting including prescribed information in accordance with Housing (Scotland) Act 1988 and other relevant legislation. You should ensure tenancy agreements are transparent in relation to the commitments of each party and are provided to tenants by the end of the first day of the tenancy. The tenancy agreements must be clearly presented, written in plain and intelligible language; and that any standard terms and clauses take account of the implications of Part 2 of the Consumer Rights Act 2015. You should note that standard terms deemed unfair by the Courts under this Act are unenforceable.
- 11b** You should ensure that any tenancy agreement drafted by you includes the landlord's registration number where appropriate.
- 11c** You should take the landlord's instructions, in the event that the tenancy rolls over the fixed term, whether the new tenancy period will be for the same length of time as the

fixed period. Where it is for a different period (for example the tenancy renews itself on a monthly basis after a fixed six month period), the appropriate clauses must be included in the tenancy agreement. Where the tenancy is a Private Residential Tenancy, there is no set term and the tenancy is open ended.

- 11d** You must advise the landlord of their legal duty to provide the tenant with a Tenant Information Pack before the tenancy start date. Where instructed to provide or assist in providing the Pack, you should do so promptly to ensure the landlord meets their obligations.
- 11e** You must give the tenant the opportunity to raise queries in order to clarify and understand their rights and obligations under the tenancy agreement, particularly those relating to rent and the deposit. Whilst you should not seek to vary the tenancy agreement during the period of your agreement with the landlord, there may be occasions where this may occur. In such circumstances the tenant and the landlord must be given the opportunity to see and confirm the changed tenancy agreement. A document explaining the updated terms of the tenancy agreement must be issued to the tenant and landlord within 28 days of the change coming into effect.
- 11f** You must ensure that tenants are provided with relevant and appropriate documentation, statutory or otherwise, prior to their occupation of the property or commencement of the tenancy, whichever is the sooner.
- 11g** By law you must, within 21 days of receipt of formal written request from a tenant, provide that tenant with the name and address of their landlord.
- 11h** At the start of a tenancy, you must ensure that both landlord and tenant are aware of your ongoing role and scope, if any, in the continuing collection of rent and/or management of the property. This should include clear information about who will manage repairs and maintenance, the relevant contact details and arrangements for out of hours emergency repairs. In circumstances where the tenant is to be paying rent direct to a non-resident or overseas landlord, even where that is into a UK bank account, the tenant should be made aware of a tenant's obligations to HM Revenue and Customs in respect of a non-resident or overseas landlord's tax liability.

### Inventories and Schedules of Condition

- 11i** Any inventory and/or schedule of condition prepared by you, or an appointed sub-contractor, must be sufficiently detailed and up to date to allow it to be used as a fair measure at the end of the tenancy. Where appropriate, the inventory may include a photographic record and record all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example, marks on walls, carpets and other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.
- 11j** You should arrange for a tenant to be checked in to the property accompanied either by an Inventory Clerk or other representative of the landlord or the landlord's agent. Wherever this is not practical, the tenants must be provided promptly with the Inventory and/or Schedule of Condition and advised of the need to formally raise in writing any notable discrepancies, deficiencies or differences identified, within a specified period of time.
- 11k** The tenant must be given sufficient time, up to 7 working days from receipt, to read and comment upon and sign the check-in report and inventory, and given a copy of the final document. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant fails to sign and return the inventory within the time frame the

tenant can be deemed as to have accepted the inventory as accurate. You must hold a copy on file. You must actively flag and specifically draw to the attention of the tenant that their failure to sign and return the inventory will result in the relevant documentation being accepted as accurate. If the tenant refuses to sign within the relevant timescale they should be asked to explain why and the reason recorded.

## Deposits

- 11l** Deposits taken for any tenancy or 'replacement' tenancy must be protected by a recognised Tenancy Deposit Protection Scheme duly authorised under the Housing (Scotland) Act 2006 and in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011. Tenancy deposits must be protected within the timescales and otherwise in accordance with the relevant scheme rules.
- 11m** Deposits belong to the tenant and where they are passed to the landlord for protection under paragraph 11l above, any charges due from the landlord for fees, etc., must be dealt with as a separate issue and not deducted from the funds passed to the landlord.
- 11n** You must ensure that the tenancy agreement drafted includes a clause that specifies how and by whom the tenancy deposit is to be held, and whether interest is to be paid or not. It should include some information on how the tenancy deposit will be dealt with at the end of tenancy and the circumstances or criteria or procedure by which it will be refunded.
- 11p** The relevant clause of the tenancy agreement must include provision for an unresolved deposit dispute to be referred to an independent dispute resolution scheme. This is via one of the statutory Tenancy Deposit Protection Schemes and there is a requirement by law to inform the tenant under which scheme the deposit is protected and how to seek resolution of a dispute over the return of the deposit should one arise.

## 12. Bonds

- 12a** Where the deposit is in the form of a Bond (for example, provided by a local authority) you must advise the landlord.

## 13. Rent Collection

- 13a** You must use legally acceptable methods to obtain prompt rental payments from tenants in accordance with their tenancy agreement and, when received, transfer those monies to the landlord promptly. Where rent is received in cash, the tenant must be provided with a receipt.
- 13b** You must have procedures in place to notify both landlord and tenant (and guarantor if relevant) in a timely manner, of rent that has become appreciably overdue. These procedures must set out the reasonable steps you will take to recover unpaid rent, to notify rental warranty insurers (if appropriate), to deal with disputed debts and to seek clear instructions from the landlord.
- 13c** You must provide a tenant, upon request, with a statement or schedule of rental payments due and received.
- 13d** You must co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, landlords or tenants.
- 13e** You must have in place suitable processes and accounting procedures for fulfilling the obligations placed upon an agent for the deduction, if appropriate, of tax from rent received on behalf of a non-resident or overseas landlord and subsequent payment and

reporting to the HM Revenue and Customs in accordance with the Finance Act 1995.

- 13f** Rent collection procedures must be in writing, made available on request and include the reasonable steps that will be taken to fulfil the obligations set out in paragraphs 13a to 13e.
- 13g** Where the landlord requests that the rent is increased, a suitable notice compliant with the provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (chapter 2) should be issued to the tenant. If the tenant indicates that they wish to challenge the notice, you should provide appropriate advice to them (and the landlord) that reflects the prescribed procedure set out in chapter 2 of the Private Housing (Tenancies) (Scotland) Act 2016.

## 14. Management

- 14a** You must manage a property in accordance with the law, the relevant tenancy agreement, and the Terms of Business with the landlord. It is accepted that there will be times when you will have to act as to act as "an agent of necessity" (\*).
- 14b** You must have written procedures and processes in place to allow tenants and landlords to notify you of any repairs or maintenance required (including arrangements for emergency and out of hours incidents where applicable). Your procedures must include target timescales for carrying out routine and emergency repairs. You must respond promptly and appropriately in the circumstances to reasonable communications from landlords and tenants or any other authorised or appropriate third party, particularly where these relate to statutory repairing or maintenance obligations or safety regulations. Tenants should be informed of the action you intend to take (if any) and the likely timescale.
- 14c** You must be prudent in the selection, appointment and use of contractors engaged to carry out work on behalf of, or to provide advice to landlords. You should take reasonable steps to ensure such contractors hold relevant professional indemnity and public liability insurance and possess suitable experience or applicable professional or trade qualifications where required. Copies of relevant documents should be held on file.
- 14d** You must keep suitable records of repairs, maintenance, etc., carried out on behalf of the landlord, and should ensure that instructions to contractors or suppliers indicate both any urgency required in carrying out jobs and, within reason, the scope or scale of the works needed. Where a delay in carrying out works becomes known, this must be communicated to the tenant and the landlord.
- 14e** When determining the standard of repair or general maintenance required on behalf of a landlord, you should consider the age, character and prospective life of the property or the relevant part, and the locality in which it is situated.
- 14f** Initial contractors' quotes or estimates and subsequent receipts and invoices submitted to you should be required to provide a sufficiently detailed breakdown to clarify what work is needed to be, or has been, carried out in which areas of the property and at what cost. You must take reasonable steps (and record those steps) to pursue the contractor or supplier to remedy defects in any inadequate work or service provided.
- 14g** The frequency of any routine visits to be made to the property by you during a tenancy must be agreed with the landlord in advance, normally within the Terms of Business. The landlord should be made aware that such visits are of limited scope, are of a generally superficial nature and are neither an inventory check nor a survey.
- 14h** You must keep records of when, or if any, routine visits are carried out during a tenancy; record any significant findings and be diligent in bringing such findings to the attention



of both landlord and tenant, including any corrective actions suggested or required.

- 14i** You must communicate promptly to the landlord and tenant on any important issues or obligations relating to the use and occupation of the property, including significant breaches of the tenancy agreement that you become aware of.
- 14j** You should be prepared to provide a reasonable degree of guidance and sympathetic support to tenants of a managed property who are being harassed or victimised, or are the target of persistent anti-social behaviour.
- 14k** You should have in place a system to ascertain, at an appropriate time, the tenant's wishes and the landlord's instructions with regard to any extension and/or termination of the tenancy.

## **15. Termination of a Tenancy**

- 15a** Upon receipt of appropriate instructions from a landlord, you must take steps to serve a notice in accordance with all relevant legislation in writing upon a tenant to terminate the tenancy; either in line with the landlord's instructions or at the earliest time the law allows, taking account of the landlord's requirements.
- 15b** You must inform a landlord, promptly and in writing, of the receipt of lawful notice from a tenant.
- 15c** On giving or receiving notice to bring a tenancy to an end, you must provide a tenant with general written guidance as to what steps need to be taken relating to the preparation of the property for the final checkout, handover of keys and other matters. You must actively flag and draw the tenant's specific attention to any specific clauses or obligations within the tenancy agreement relating in particular to proposed deductions from the tenancy deposit, but also for example, to specified standards of cleaning, etc.
- 15d** Where a tenant does not vacate a property on the due date, you should take steps to ascertain the tenant's intentions and advise the landlord as soon as practicable. Where appropriate, you must take steps to notify any legal protection or expenses insurer and co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, landlords.
- 15e** You must have clear written procedures for managing the ending of a tenancy. These must include the steps taken in the circumstances set out in paragraphs 15a to 15d, and in circumstances where notice is received from a joint tenant, a landlord is seeking eviction or where a property has been abandoned.

## **16. End of Tenancy – Deposits, Disputes and Damages**

- 16a** Where appropriate to the services being provided and unless you have instructions to the contrary, you must arrange for, or carry out, the final check-out as soon as is reasonably practicable after the tenants vacate and at the lawful end of the tenancy, preferably during daylight hours. The outgoing tenants should always be offered the opportunity of being present to observe the final checkout.
- 16b** The check-out must be conducted thoroughly and a sufficiently detailed report or summary prepared with specific reference back to the inventory and schedule of condition prepared prior to the tenancy.
- 16c** When the final check-out has been completed and the parties have agreed there are no intended deductions or any dispute, you must arrange for the refund of the full deposit to the ex-tenant(s) through the relevant deposit protection scheme. Where a dispute occurs, you must advise the parties of the procedures of the relevant deposit protection

scheme and act on any instruction given to you.

- 16d** Irrespective of how the tenancy deposit has been held by you, where you are subsequently contractually involved in negotiations between the parties at the end of the tenancy, you must communicate promptly, regularly, politely and fairly. Major pertinent details and recommendations or suggestions must be confirmed in writing and copies of relevant significant information (such as quotations or invoices) provided.
- 16e** You must ensure that instructions to contractors or suppliers and, subsequently, contractors' or suppliers' quotations or receipts provide a sufficiently detailed breakdown to clarify precisely what work is to be/has been carried out in which areas of a property. It should then be simple for all parties to assess and understand what portion of the work and costs can lawfully be allocated to the landlord or tenant in the light of the inventory check-out report or tenancy agreement obligations.
- 16f** You are expected to co-operate and comply fully and promptly with any investigation and the result of any independent, alternative deposit dispute resolution service, such as a Tenancy Deposit Protection Scheme, invoked by the parties.

## **17. Clients' Money**

- 17a** You must at all times keep clients' money in a separate designated clients' account held in a financial institution appropriately authorised under the Financial Services and Markets Act 2000, and where relevant comply with your regulatory bodies' rules or byelaws in relation to the handling of clients' money. The landlord should be advised that monies will be held in a designated client account and written confirmation must be obtained from the bank/building society confirming that all of any credit balance is client money and that the account will not be combined or set-off or counterclaimed against in relation to any sum owed on any of your other accounts.
- 17b** You must transfer monies due to a landlord and provide an appropriate, regular statement of income and expenditure in accordance with agreed terms. Other than for minor amounts, adequately detailed invoices or receipts should support payments made on behalf of a landlord and copies provided to the landlord upon request.
- 17c** Clients' money must be made promptly available to them on request or promptly repayed as soon as there is no longer any need to retain the money. Unless agreed in writing, credit interest earned should also be provided to the appropriate client.
- 17d** You must be a member of a client money protection scheme or have a valid client money protection insurance policy. Details must be provided to tenants and landlords on request.
- 17e** You must have written procedures for handling client money and keep appropriate records and accounts to show all dealings with client money. Accounts must be reconciled monthly and you must be able to immediately account to landlords and tenants for all of the money held on their behalf.

## **18. In-house Complaints Handling**

- 18a** You must maintain and operate an in-house complaints procedure. Such procedures must be in writing; explain how to complain to your business, to the Ombudsman and to the Tribunal; be readily available in each office and your website for consumers; and be available for inspection by both the Ombudsman and/or TPO Scotland Limited. Procedures must also set out how you will handle complaints against contractors and third parties.

- 18b** All verbal and written complaints must be recorded by you at the time they are made.
- 18c** You must agree to deal with any properly appointed representative of a Complainant (\*). No charge must be made for handling a complaint.
- 18d** All written complaints must be acknowledged in writing within 3 working days and a proper investigation promptly undertaken. A formal written outcome of your investigation must be sent to the Complainant within 15 working days of receipt of the original complaint. A senior member of staff or designated complaint handler not directly involved in the transaction should deal with the complaint. In exceptional cases, where the timescale needs to be extended beyond this limit, the Complainant should be kept fully informed and an explanation provided.
- 18e** If the Complainant remains dissatisfied, the Complainant must be told how the complaint can be further pursued within your business. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. Such a review must be sent to the Complainant within 15 working days.
- 18f** Following the conclusion of your investigation, a written statement expressing your final view, and including any offer made, must be sent to the Complainant. This letter must also tell the Complainant how the matter can be referred to the Ombudsman, pointing out that any such referral by the Complainant must be made within 12 months of your final view.
- 18g** You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

## 19. Referrals to the Ombudsman and Tribunal

- 19a** You must co-operate with any investigations by the Ombudsman being conducted in accordance with the Ombudsman's Terms of Reference. You must comply with any Tribunal request to provide information about an application made to it from a landlord or tenant.
- 19b** You must:
  - comply with any award and/or direction made by the Ombudsman against you and accepted by the Complainant and which is binding upon you under the Terms of Reference; and
  - pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

## 20. Compliance Monitoring

- 20a** You must comply with the requirements of any code compliance monitoring or compliance survey procedure used by TPO Limited.
- 20b** You must seek consumers' permission for their contact details to be used in any monitoring/survey process to ensure compliance with the Data Protection Act 1998.

## 21. Non-Compliance with the Code

- 21a** Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.
- 21b** The DSC will consider those cases brought to its attention by the Ombudsman, acting

within the Ombudsman's Terms of Reference, where the Ombudsman considers there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent.

- 21c** The DSC will also consider cases of non-compliance where there may have been a single flagrant breach and/or any persistent breaches of the Code, failure to complete compliance monitoring, where it is considered that the Member has brought the scheme into disrepute or where the Member has seriously failed to comply with their membership obligations in another way.
- 21d** The DSC will determine any disciplinary action in accordance with its terms of reference as defined from time to time.
- 21e** Any Member issued with a warning or sanction has the right to make a representation to the DSC and after the final decision of that body, shall, if necessary have the right to put the matter before an Appeals Committee made up of two independent Council members (one of whom will act as Chair) and one Board member. Such appeal must be made within 4 weeks of the issue of the warning or sanction. Expulsion or suspension from full TPO membership will not necessarily result in loss of registration under the Consumers, Estate Agents and Redress Act 2007.

## 22. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 22a Agent of Necessity.** Someone who represents another person in an emergency, but who has not officially been given the right to do so.
- 22b Aggressive Behaviour.** Here are some illustrative examples of aggressive behaviour or practices. It is not an exhaustive list. In each case, the test is whether the average consumer's freedom of choice or conduct is (or would be likely to be) impaired and, as a result, they take (or would be likely to take) a different transactional decision. When you gain new landlord clients and instructions, when you market property for rental, when you negotiate rents and arrange tenancies you should not:
  - Impose onerous or disproportionate requirements which prevent a landlord client from exercising rights to terminate an agreement or switch to another agency.
  - Refuse to allow a landlord to cancel their contract with you, where a cancellation period applies and has not expired.
  - Pressure a landlord or tenant to use associated services, for example to take out an insurance policy through an associate.
  - Pressure (for example by persistent and/or aggressive telephone calls/emails) the prospective tenant to act quickly to put in a rental offer or finalise the tenancy agreement.
  - In order to make commission quickly, pressure a landlord client to accept a rental offer at a lower rate than is reasonable for their property, for example by telling them that they cannot get a better offer.
  - Pursue commission or other fees from the prospective or existing tenant/landlord to which you are not entitled.
  - Intimidate, pressure or coerce landlords or tenants into dropping complaints against your business, for example, by using threatening or abusive language or actions when you deal with complaints.

**22c Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

**22d Average Consumer.** The 'average consumer' is someone who is reasonably well-informed, and reasonably observant and circumspect. For example, an average consumer would pay some attention to documentation given to them, but not necessarily to the small print unless key points in it are brought to their attention. An average consumer would check out publicly available facts for themselves where this is straightforward to do, although what checks they actually make will be influenced by the information that you have given them. The CPRs do, however, provide for where a commercial practice is targeted at a particular group of consumers. In these cases, the 'average consumer' will refer to the average member of that group, not the average consumer generally. This will be relevant to you if you are targeting your commercial practice at a particular group of consumers.

**22e Client.** A person who has instructed you to let a property on their behalf, in Scotland. Where appropriate, this definition includes a client's properly appointed representative.

**22f Clients' Money.** Money held or rent collected for and on behalf of client landlords, including ex-clients is considered as client money and this will include deposits or money held for and on behalf of an applicant, tenant or ex-tenant.

**22g Complainant.** Someone who is an actual or potential landlord or tenant or former landlord or former tenant of residential property, or a third party impacted by the actions of a Member Agent, making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant's properly appointed representative.

**22h Connected Person.** Includes:

- Your employer or principal.
- Your employee or agent.
- Any associate including the term "business associate" as defined within Sections 31 and 32 of the Estate Agents Act 1979.

**22i Harass/Harassment.** Unwanted conduct which has the purpose or effect of:

- violating a person's dignity;
- creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.

**22j Material Information.** In the most straightforward lettings, the material information that you should give to potential renters may be quite basic, although you should bear in mind the requirements of paragraph 7a.

**22k Member.** An agent who is a Member of the TPO scheme and who has undertaken to abide by all provisions of the Code of Practice.

**22l Portfolio Landlord.** A landlord with a number of properties that are being let, often through the same letting agent.

**22m Premium.** A 'premium' includes any fine or other sum and what the law calls any other 'pecuniary consideration' (e.g. money that has to be paid in the present or in the future). It includes service or administration fees or charges. It excludes, however, charges connected to the UK Government's Green Deal that are attached to a privately rented property.

**22n Property Management.** In this Code, property management means the management of a property on behalf of a landlord. It does not relate to 'block' management.

**22p Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.

**22q Repairing Standard.** As contained in the Housing (Scotland) Act 2006.

**22r Residential Property.** Means property (land and/or buildings or part thereof) used, last used, or to be used for residential purposes. Excluding holiday lets.

**22s Superior Landlord.** The owner of a superior interest in the property as a freeholder or leaseholder or intermediate landlord.

**22t Transactional Decision.** Informed decisions made by consumers, which include:

- A decision to find out more about your services, or to rule out using the services of one of your competitors.
- A client's decision whether and on what terms to sign or renew an agreement with you, or their decision to end an agreement.
- A prospective tenants decision whether to view an advertised property, or whether and on what terms to make an offer on a property or renew a tenancy.

**22u Tribunal.** The First-tier Tribunal Housing and Property Chamber where breaches of the Mandatory Code (established under The Letting Agent Code of Practice (Scotland) Regulations 2016) can be considered, following exhaustion of your complaint process or a direct referral from the Scottish Government.

**22v Written, in Writing.** Includes typed or hand-written letters, records or notes, emails and faxes. Electronic signatures are acceptable.

**22w You.** Applies to all those Letting Agents, their staff and any sub-contracting agents providing letting services bound by this Code.

