



# Code of Practice for Letting Agents

This Code of Practice is mandatory on all firms involved in residential Letting and Property Management who have a Principal, Partner or Director who is an NAEA member (but not those who are also RICS members) – and on any letting agent who is a registered member of the Ombudsman for Estate Agents (OEA) Scheme for lettings.

It is not intended to be a step-by-step guide to the letting and management of a property, but purely to set down what good practice should be in some of the key areas. Specific processes, procedures, obligations or responsibilities may vary depending on individual Terms of Business and the relevant Tenancy Agreement.

Relevant Letting Agents must display the OEA logo; and must also have available, free of charge, copies of this Code of Practice to give to consumers on request. Relevant Letting Agents have agreed to be subject to the Ombudsman's powers of redress as defined in his Terms of Reference.

The National Association of Estate Agents (NAEA) and the Association of Residential Letting Agents (ARLA) approved this Code of Practice – which sets the highest standards in the letting and management of private residential property.

With effect from 3 April 2006

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*All references to the masculine include the feminine, and to the singular include the plural.*

*Terms marked (\*) – the first time they appear – are defined in a Glossary of Terms at Section 18.*

## 1. General Provisions

### Applicability

- 1a This Code applies to letting agency services in the United Kingdom – 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 (\*).

### General Obligations

- 1b You (\*) must comply with this Code of Practice. You must ensure that all staff are fully conversant with all aspects of the Code of Practice and their legal responsibilities. Such staff must observe the Code and their legal responsibilities in all their dealings with consumers. Staff must have a good working knowledge of the law of agency, the law of contract, and all relevant legislation.
- 1c You must always act within the law in the conduct of your business.
- 1d You are expected to provide a service consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit, misrepresentation or harassment (\*).
- 1e You must offer equality of professional service to any person, regardless of their race, religious belief, gender, sexuality, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, religious belief, gender, sexuality, disability or nationality.
- 1f You should not take advantage of consumers – because of their age, infirmity, lack of knowledge, lack of understanding of English or bereavement; nor should you follow any course of action that can be construed as harassment.
- 1g You must not release or misuse confidential information given by your client during the process of the letting or property management of a residential property (\*) without your client's permission – unless legally required to do so.
- 1h You must keep clear and full written (\*) records and produce them when required to by the Ombudsman.

### Publicity

- 1i You must use/display such material promoting the Code of Practice as provided by OEA Ltd. You must display the OEA logo on the window of all offices, on marketing literature on all property advertisements, and on your letterheads.
- 1j You must display copies of the leaflet "A Consumer Guide" in all your offices. You must also have available, free of charge, copies of the Code of Practice to give to consumers on request – and a notice to this effect must be displayed with the Consumer Guides.

## 2. Market Appraisal

- 2a When you give advice to someone intending to let their property, any figure provided either as a recommended marketing rent or as a possible acceptable contract rent must be given in good faith, reflecting current market conditions and the perceived needs or circumstances of the client. You must never deliberately misrepresent the potential rental level of a property in order to gain or retain an instruction.
- 2b Any figures given should within reason, be supportable by indicators in the market place, preferably by comparables of similar properties in a similar location.
- 2c You must keep your general marketing strategy under regular review with your client.
- 2d You must advise a potential client of the need to obtain any necessary consent (for example: joint owners, mortgage lender, superior landlord (\*)/freeholder etc) prior to formal creation of a tenancy and of the need for the client to assess relevant buildings and contents insurance.
- 2e You must advise a potential client of the need to comply with the obligations and requirements of the various safety legislation and regulations that apply to rented property.

- 2f You should, within reason, draw to the attention of the potential client any obvious repairs or maintenance issues which you consider necessary in preparation for the intended letting.
- 2g You must, where appropriate, make a potential client aware of the special rules relating to the deduction of tax from rental income, applying to client landlords considered as non-resident or overseas.
- 2h You must draw to a potential client's attention the necessity and benefit of a properly prepared full Inventory/Schedule of Condition.

### **3. Instructions, Terms of Business, Fees, Charges and Termination**

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

- 3a You must, at the point of instruction, inform your client in writing (\*) that you are a Member (\*) of the OEA Scheme, and subscribe to this Code of Practice for Letting Agents.
- 3b 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.
- 3c You must not instruct other agencies to assist you in renting a property without your client's permission. If the client 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 the Code of Practice by that sub-instructed agent.
- 3d You must give your client written confirmation of his instruction to act in the letting and/or Management of properties on his behalf. You must give the client written details of your Terms of Business which should include what different types of levels of service are available including relevant fees and expenses. You must give the client these details before he is committed or has any liability towards you.
- 3e You should confirm in writing the client's instructions to act on his behalf and which type or level of service is being provided.

#### **Fair Contracts**

- 3f Your Terms of Business should be written in plain and intelligible language and comply with other requirements of the Unfair Terms in Consumer Contracts Regulations 1999. You should not use clauses that may be deemed unfair, and consequently unenforceable, by virtue of the above Regulations. Your Terms of Business must not contain terms which are inconsistent with the provisions of this Code of Practice for Letting Agents.

#### **Fees and Charges**

- 3g All fees and charges must be included in your Terms of Business; they must be fully explained, and clearly and unambiguously stated in writing. Fees should clearly state whether VAT is chargeable; and where practicable they must be expressed inclusive of VAT.

#### **Termination**

- 3h The 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 what liability for fees or charges may be incurred in those circumstances.
- 3i Whether you or the client terminates the instruction, you must give the client appropriate written confirmation that you will no longer be acting for him, including the date of termination, and giving details of any liability for fees or charges owed by the client to you (or any credit or funds owed to the client) and confirming any arrangements for the handover of the property, appropriate documentation, keys etc to the client or his appointed representative.
- 3j Where your contractual arrangement with your client is terminated – and the relevant managed property is still tenanted – you must promptly tell the tenants, in writing, of the change in arrangements, including who will now hold the deposit. *(Note: – In such circumstances, the written authority of the tenant(s) to release their deposit to a third party must be obtained.)*

**Signing**

- 3k The client must be given sufficient time to read your Terms of Business before agreeing to instruct you. The client should also be asked to sign a copy which you should hold on file and the client must be given a copy to retain.
- 3l You must satisfy yourself that the client understands your Terms of Business, and is entitled to instruct you and to sign on behalf of all co-owners as necessary.

**Subsequent Changes**

- 3m Any change to the Terms and Conditions must be:
- Mutually agreed by you and your client.
  - Promptly confirmed in writing.
  - Where appropriate, contained in a new Terms of Business signed and dated by your client.

**4. Marketing and Advertising**

- 4a You should not commence the marketing of a property until you are satisfied that you have your client's authority and have agreed the basis of your Terms of Business. You must not knowingly offer a property on the market without permission from the owner/client or, alternatively, from the owner/client'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 a Member Firm should ensure that they hold a satisfactory letter of authority from the client.

**Letting Boards**

- 4b You can only erect a To Let (or similar) board with the client's specific permission. When you put up a board you must comply with the Town and Country Planning (Control of Advertisements) Regulations 1992 as amended; or in Scotland, the Town and Country Planning (Control of Advertisement) Regulations 1990. You must accept liability for any claim arising under these Regulations in connection with the board, unless the action arises as a result of a further board being put up by another person. Any board should be removed promptly where you are no longer instructed, or, within 14 days from a property which has been let.
- 4c If your board relates to only part of a building (for example a flat) it should indicate the part (or flat or unit) of the building to which it relates.
- 4d You must not replace another agent's board with your own, hide it or remove it from a property. Where appropriate you should ask the client to make arrangements with the other agent for the prompt removal of any existing board.
- 4e You must not erect a To Let board or similar on a property that you have not been instructed to let.

**Published Material and Information about a property**

- 4f You must take all reasonable steps to make sure that all property details and statements, whether oral or written, about a property are accurate and are not misleading. In particular, reasonable care should be taken when describing property as Unfurnished, Part Furnished, Furnished or Fully Furnished so that applicants are not misled as to what fixtures, fittings etc might be included.
- 4g All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion.
- 4h There is no obligation on you to disclose information to potential tenants that may adversely influence them. However, you must take all reasonable steps to ensure that where information is given to potential tenants or their representatives, it is accurate and not misleading. Answers to questions must be truthful and not misleading.

**Advertising for New Business (Canvassing)**

- 4i You must not use either "ghost" advertisements or canvassing material for properties that do not exist or for applicants that do not exist, in order to attract either new applicants or new clients.

## 5. Viewing and Access to Premises

### Viewings

- 5a You must take instructions from the client as to his requirements regarding viewings – specifically, whether or not they should be conducted by you.
- 5b You must record any feedback from viewings and pass this to the client within a reasonable time. If this feedback is an offer to rent, you should refer to Section 6 below.
- 5c Before arranging any viewing, you must tell the applicant if an offer has already been accepted by your client.

### Access to Premises

- 5d Where you are arranging for an applicant 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.
- 5e You must make sure that all the keys you have are coded and kept secure. You must maintain records of when you issue keys and to whom, and when they are returned. 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.
- 5f If access to a property is 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 you hold the key but are not able to accompany that person – the occupying tenant must be provided with the appropriate minimum notice, prescribed by law, of the appointment unless agreed otherwise with the occupying tenant beforehand. (*Except in cases of genuine emergency*).
- 5g When you are unable to accompany any applicant or third party, this must be made clear to the occupier beforehand.
- 5h You must exercise due diligence to ensure that, after any visit by you, a property is left secure (or at least as secure as it was prior to the visit).

## 6. Offers

- 6a It is not advisable for you to accept, or recommend acceptance by a client, an offer on a property that has not been viewed either by the applicants themselves or by a suitably authorised representative of the applicants, for example, an appointed relocation agent or direct associate. (*Exceptions might be made in respect of applicants resident overseas and willing to contract by letter, fax or electronic means, but, in such circumstances, you must be conscious of the implications of the Distance Selling Regulations 2000.*)
- 6b You must inform your client, (ideally confirmed 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 client has instructed otherwise, or, unless the offer is of an amount or type that the client has indicated previously is unacceptable. Details of all formal offers made on a property (including the name of the applicant, the amount, the date and the response given) should be recorded.
- 6c You must inform an applicant, (ideally confirmed in writing) whose offer has been confirmed as having been accepted in principle, whether or not the marketing of the property is to cease and/or if further viewings will be carried out by you whilst the application is processed. If marketing and or viewings are subsequently recommenced by you the applicant must be promptly informed.
- 6d You must provide (other than in exceptional circumstances) an applicant with a reasonable opportunity to see and study a draft or specimen tenancy agreement prior to the applicant becoming liable for fees or charges associated with the rental of the property. Where there is to be a Guarantor for the applicant for the tenancy, this facility must be extended to that person.
- 6e Any standard documentation that seeks to create a contractual relationship, via its standard terms or clauses, between an applicant and you or your client (such as an Application form, Preliminary agreement/letter, Reservation form/receipt or a Holding Deposit form/receipt, terms and conditions of an Application etc) should be fair, clearly presented and written in plain and intelligible language so as to comply with the Unfair Terms

in Consumer Contract Regulations. *(You should note that standard terms or clauses or fees and charges deemed unfair by the courts under these regulations are unenforceable.)*

- 6f Prior to an applicant's offer being formally accepted, you must set out in written form any significant pre-conditions for the letting, including the circumstances in which the applicant may have any potential financial liability for fees, charges or penalties relevant to:
- The processing of his application to rent the property.
  - His withdrawal, at any stage, of his application for the tenancy or the client's rejection of it.
  - The initial setting up of the tenancy including Inventory/Check-in costs.
  - Any ongoing or future liability for fees or charges payable to you for the applicant to extend, renew or terminate the proposed tenancy including Inventory Check-out costs.
- 6g Details of an offer accepted in principle (albeit still subject to references etc) should be confirmed to the client as soon as administratively practicable and ideally in writing.
- 6h You must take reasonable steps to keep applicants 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 client or an applicant 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.

## 7. References – Clients and Applicants

- 7a. In all referencing processes or procedures, you should be conscious of the need to be reasonably diligent in identifying fraudulent applications.
- 7b You should take relevant references on an applicant appropriate to the circumstances of the applicant and/or in line with arrangements agreed with the client. Your own referencing procedures should usually be by way of a recognised Referencing Service provider or by direct application to third party referees or any combination of the above.
- 7c Where references are provided directly by the applicant, you should make reasonable endeavours to validate their authenticity.
- 7d Where the current existing address of applicants is not evidenced via the Electoral Roll, such an address should, wherever practical, be verified by the provision to you of a Utility Bill or Bank Statement, or Building Society passbook or Council Tax account or Driving Licence or similar etc., by the applicant.
- 7e You should take reasonable steps to verify and retain a record of the identity, and nationality (if non UK), of a successful applicant.
- 7f Where an applicant fails, in the circumstances, to meet reasonably prudent referencing criteria, you should obtain confirmation, preferably in writing, from the client should the client wish to proceed with that applicant.

## 8. Letting – Clients and Tenants, Inventories and Deposits

- 8a You must take care to prepare an appropriate written tenancy agreement that includes any agreed or specially negotiated clauses or terms particular to the property or the circumstances of the parties to the letting. Efforts should be made to ensure tenancy agreements are clearly presented, written in plain and intelligible language and that any standard terms and clauses or fees or charges endeavour, where appropriate, to take account of the implications of the Unfair Terms in Consumer Contract Regulations. *(You should note that standard terms or clauses or fees and charges deemed unfair by the courts under these regulations are unenforceable.)*
- 8b You must take reasonable steps to ensure that the tenant has the opportunity to raise queries in order to clarify and understand his rights and obligations under the tenancy agreement, particularly those relating to rent, deposit or ancillary fees and charges.
- 8c You should take care, upon appropriate instructions from the client, that – at the start of a tenancy – any Inventory/Schedule of Condition prepared for the client by you, or an appointed sub-contractor, is sufficiently detailed and up to date to allow it to be used as a fair measure at the end of the tenancy.

- 8d You must ensure that the tenancy agreement drafted includes a clause that specifies how and by whom the tenancy deposit is to be held (see Clauses 8e, 8f, 12f and 12g), 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 in which it will be refunded.
- 8e You must hold deposits on assured shorthold tenancies as stakeholder (the legislation prohibits the holder of the deposit from disbursing the deposit without the agreement of the landlord and tenant. A disputed deposit can only be paid out following a decision by an adjudicator or the courts). It is not compulsory to do so in respect of non - Assured Shorthold Tenancy deposits where you may continue to hold deposits as agents for the landlord. However, it is recommended that for the protection of the tenancy deposit and to help facilitate its fair disbursement at the end of the tenancy, you should hold the deposit as stakeholder where possible [This may vary in Scotland]
- 8f The relevant clause of the tenancy agreement should include provision for an unresolved deposit dispute to be referred to an independent dispute resolution scheme. From 6 April 2007 this will be via one of the statutory Tenancy Deposit Protection Schemes. From this date there will be a requirement by law to inform the tenant by which scheme his deposit is protected and how to seek resolution of a dispute over the return of the deposit should one arise.
- 8g You should endeavour to arrange for a tenant to be checked-in to the property accompanied either by an Inventory Clerk or other representative of the landlord or his agent. Wherever this is not practical, the tenants must be promptly provided with the Inventory/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.
- 8h You must take reasonable and appropriate steps to ensure that tenants are provided with relevant documentation (statutory or otherwise) prior to their occupation of the property or commencement of the tenancy, whichever is the sooner.
- 8i At the start of a tenancy, you must ensure that both client and tenant are aware of your ongoing role and scope (if any) in the continuing collection of rent and/or management of the property. (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 the Inland Revenue in respect of a non-resident or overseas landlords tax liability.)
- 8j The tenant must be given sufficient time to read and comment upon the check-in report and inventory. The tenant should also be asked to sign a copy which you should hold on file and the tenant must be given a copy to retain. You must make it clear to the tenant that their failure to sign and return the inventory can be taken as their agreement that it is accurate.

## **9. Rent Collection – Clients and Tenants**

- 9a You must use reasonable endeavours to obtain prompt rental payments from tenants in line with their tenancy agreement.
- 9b You must have procedures in place to notify both client and tenant (and guarantor if relevant) in a timely manner, of rent that has become appreciably overdue – and take suitable steps to notify rental warranty insurers (if appropriate) as necessary.
- 9c You should provide a tenant, upon request, with a statement or schedule of rental payments received showing how arrears have arisen.
- 9d You must draw a client's attention to a build up of serious rental arrears and should seek appropriate instructions from the client or his professional advisers.
- 9e You must co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords.
- 9f 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 Inland Revenue.
- 9g 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; failure to comply with this legal obligation without reasonable excuse is an offence.

## 10. Management – Clients and Tenants

- 10a You must manage a property in accordance with the law, the clauses of the relevant tenancy agreement, and the Terms of Business with the client. *(It is accepted that there will be times when you will have to act as “an agent of necessity”)*
- 10b You must respond promptly and suitably in the circumstances to reasonable communications from clients and tenants or any other authorised or appropriate third party – particularly where these relate to statutory repairing or maintenance obligations or safety regulations.
- 10c 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 clients. You should take reasonable steps to ensure such contractors hold relevant professional indemnity and/or public liability insurance and possess suitable experience or applicable professional or trade qualifications where required.
- 10d You must keep suitable records of repairs, maintenance etc carried out on behalf of the client – and should ensure that instructions to contractors/suppliers indicate both any urgency required in carrying out jobs and, within reason, the scope or scale of the works needed.
- 10e When determining the standard of repair or general maintenance required on behalf of a landlord client, you should consider the age, character and prospective life of the property (or the relevant part), and the locality in which it is situated.
- 10f Initial Contractors’ quotes or estimates (and subsequently 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.
- 10g The frequency (if any) of routine visits to be made to the property by you during a tenancy must be agreed with the client in advance, normally within Terms of Business. The client 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.
- 10h You must keep suitable records of when (if any) routine visits are carried out during a tenancy; record any significant findings and take reasonable steps to bring such findings to the attention of both landlord and tenant, including any corrective actions suggested or required.
- 10i You must communicate promptly to client 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.
- 10j 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.
- 10k 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.

## 11. Termination of a Tenancy

- 11a Upon receipt of appropriate instructions from a landlord client, you should take steps to serve a lawful notice 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.
- 11b You should inform a landlord client, in a timely manner, of the receipt of lawful notice from a tenant.
- 11c 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 etc. Attention should be drawn to any specific clauses or obligations within the tenancy agreement relating – for example, to specified standards of cleaning etc.
- 11d 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 client landlord as soon as administratively practicable. Where appropriate, you must take steps to notify any legal protection/expenses insurer and co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords.

## 12. End of Tenancy – Deposits, Disputes and Damages

- 12a Where appropriate to the services being provided, you should arrange for, or carry out, the final checkout as soon as is reasonably practicable after the tenants vacate and at the lawful end of the tenancy, preferably during daylight hours. Where practical, the outgoing tenants should be offered the opportunity of being present to observe the final checkout.
- 12b The checkout should be done thoroughly and a sufficiently detailed report or summary prepared with specific reference back to the Inventory/Schedule of Condition prepared prior to the tenancy.
- 12c Where the final checkout has been completed and the parties have agreed there are no intended deductions or any dispute, you should aim to refund the full deposit to the ex-tenant(s) within a maximum of 10 working days.
- 12d Irrespective of how the tenancy deposit has been held by you, where subsequently contractually involved in negotiations between the parties at the end of the tenancy, you should communicate promptly, regularly, politely and fairly. Major pertinent details and recommendations or suggestions should be confirmed in writing and copies of relevant significant information (such as Quotes or Invoices) provided.
- 12e You should ensure that instructions to contractors/suppliers and, subsequently, contractors' /suppliers' quotes/receipts provide a sufficiently detailed breakdown to clarify precisely what work is to be/was 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 checkout report or tenancy agreement obligations.
- 12f Where an agreement has been signed prior to 6 April 2007 and a tenancy deposit already taken the deposit held by any agent "as **agent for the landlord**" has, ultimately, (unless subject to an alternative independent dispute resolution process such as the Tenancy Deposit Scheme) to be refunded or apportioned on the client landlord's instructions or by the agent under his authority as a contracted Agent on behalf of a Principal (the landlord client). Reasonable endeavours should be made to ensure that this process is fair and equitable and supported by appropriate documentation.
- 12g Where an agreement has been signed prior to 6 April 2007 and a tenancy deposit already taken, the deposit held by any agent "as **stakeholder between the parties**" [this may vary in Scotland] is being held in a quasi-trustee position on behalf of both parties. Whenever possible the agreement of both parties (Landlord and Tenant) should be obtained (in writing) as to how the deposit is to be disbursed. In the event of a dispute an agent as stakeholder is entitled to retain the deposit (or the disputed part of it) until the dispute is settled and in such circumstances consideration should be given to alternative independent dispute resolution processes. Reasonable endeavours should be made to ensure that this process is fair and equitable and supported by appropriate documentation.
- 12h Wherever possible, once proposed deductions have initially been raised with the parties, you should allocate and pay over to each relevant party any amount/portion of the deposit that is not subject to a dispute, as soon as administratively practicable.
- 12i The Tenancy Deposit Protection Scheme came into operation from 6 April 2007. After that date you must adhere to the relevant sections of the Housing Act 2004, specifically Chapter 4, Sections 212 - 5 and Schedule 10. Deposits taken for any Assured Shorthold Tenancy or 'replacement' tenancy must be covered by a recognised Tenancy Deposit Scheme.
- 12j 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.

For information in relation to legislation about Tenancy Deposit schemes you should refer to the following websites: [www.naea.co.uk](http://www.naea.co.uk) [www.arla.co.uk](http://www.arla.co.uk)

### 13. 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,*

- 13a You must comply at all times with your regulatory bodies' rules or byelaws in relation to the handling of clients' money.
- 13b You must provide a client with an appropriate, regular Statement/Invoice detailing Income and Expenditure. Other than for trivial or minor amounts, adequately detailed invoices or receipts should support payments made on behalf of a client and copies provided to the client upon request.

### 14. Conflict of Interest

- 14a Whilst your duty and obligations are to your client landlord, applicants and tenants should be regarded as consumers and customers – and should therefore be treated appropriately. If there is a conflict with your duty to your landlord client, the applicants or tenants should be advised to seek independent advice.
- 14b You must tell your client in writing as soon as reasonably possible after you find out about circumstances that give rise to a conflict of interest. This would include where any of your partners, directors or officers own, or have a financial interest of 24% or more in, a business or contractor engaged to provide services to a client.
- 14c If you or an employee is intending to make an application to rent a property which your firm is instructed to market, that person must take no further direct part in the letting of that property on behalf of your company – and the client must be informed of the relationship prior to the application being formally accepted.
- 14d If you are offering to let 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 inform an applicant on the property of the relationship prior to their application being accepted in principle.
- 14e You must always act both in the best interests of the client and within the law. You must offer advice considered suitable, in the circumstances, to meet the client's aims and needs. Where the law and the interests of the client conflict, adherence to the law must prevail.

### 15. In-house Complaints Handling

- 15a You must, where practical, provide consumers with a named point of contact who will assist in dealing with queries that may arise in connection with any aspect of your service and Terms of Business.
- 15b You must maintain and operate an in-house complaints procedure. Such procedures must be in writing, and readily available for inspection by the Ombudsman.
- 15c All complaints, oral and written, should be noted in writing.
- 15d You must agree to deal with any properly appointed representative of a complainant.
- 15e All written complaints must be acknowledged within 3 working days – and a proper branch investigation promptly undertaken. A formal written outcome of the branch investigation must be sent to the complainant within 21 days. If longer is needed, the Complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the Complainant within such timescale.
- 15f If the complainant remains dissatisfied, he must be told how he can further pursue his complaint within your company. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. In the case of a single-office Agent, a member of staff not directly involved in the transaction should deal with the complaint.
- 15g Following the conclusion of your In-House Review, a written statement – expressing your final viewpoint, 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 six months of your final viewpoint.

## 16. Referrals to the Ombudsman

- 16a You must co-operate with any investigations by the Ombudsman pursuant to, and in accordance with, his Terms of Reference.
- 16b You must:
- comply with any award which, in accordance with his Terms of Reference, is 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 within the period for payment required by the Ombudsman's Terms of Reference.

## 17. Non Compliance of the Code of Practice

Cases of non-compliance will be dealt with the OEA Council.

The Council will consider cases of non-compliance with the Code of Practice and will also consider those cases brought to its attention by the Ombudsman acting within his Terms of Reference, where he considers there has been a breach, breaches or non-compliance by any Member firm.

The Council could issue:

- An informal warning.
- A formal warning.
- A notice of dismissal from OEA Ltd in writing.
- Any Member Firm issued with a warning or notice shall 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 – if such appeal is made within four weeks of the issue of the warning/notice.

## 18. Glossary of Terms

In this Code, the following interpretations and definitions apply:

**Associate** – includes a brother, sister, husband, wife, “partner” – ie co-habitee in an intimate relationship – aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

**Client** – a person who has instructed you to market their property for renting on his or her behalf, in the United Kingdom – excluding the Channel Islands and the Isle of Man. Where appropriate, this definition includes a client's properly appointed representative.

**Complainant** – someone who is an actual or potential landlord or tenant of residential property (or their representative) making a complaint against an Agent covered by the OEA scheme. Where appropriate, this definition includes a Complainant's properly appointed representative.

**Harass** – means to act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.

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

**Residential Property** – means property (land and/or buildings or part thereof) used, last used, or to be used for residential purposes.

**Superior Landlord** – the owner of a superior interest in the property.

**Written, in writing** – including typed or handwritten letters or notes, emails or faxes.

**You** – applies to all those Letting Agents bound by this Code.

With effect from 3 April 2006

Amended 1 September 2007