

## **Notes on the Terms of Business pack.**

Please read and understand these notes carefully. Terms of Business form the legal contract between you and your client, the landlord. This is therefore probably one of the most important documents you use.

If you don't use the TDS (The Dispute Service) scheme then you can strip out all the clauses that relate to that scheme (Appendix C). If you do use that scheme exclusively or only sometimes, then you should leave these clauses in.

Terms of Business are very "personal" to each individual business. This is because this is where you are agreeing how you will manage a particular property. Therefore, it is essential that you read and understand what you are committing to and then, if necessary, edit the agreement to make sure it does accurately reflect the way you conduct your business. In tailoring your Terms of Business or Agency Agreement it is also important to consider the code of practice of any Professional Body of which you are a member to ensure that any additional requirements are included.

With each update we will tell you which clauses we have edited (in the changes for revision X.X document). You are therefore advised to keep a record of any changes you make to this agreement using the paragraph numbers document so that you can see if our next changes have overwritten your own amendments. It seems a pain to do this now but in the long run it will make integrating future updates much easier.

As provided, the Terms of Business includes four levels of service from Introduction Only, Let Only, Letting and Rent Collection, and Full Management. If you don't want to offer any level of service, be sure to copy any relevant bullet points to the next section down, as the levels of service "build" on the previous levels. For example, if you don't want to offer Introduction Only, you need to copy the first three bullet points into the Let Only service. You will also need to edit the first line (delete it) and then re-number accordingly.

These Terms of Business are designed to be used by agents seeking to provide quality properties and a good standard of management. It is important that the document is edited accurately to make sure it is exactly how you want it to be.

Previously, the Scale of Charges was kept separate from the Agency Agreement. The Property Ombudsman prefers to see the Scale of Charges included within the Agency Agreement; as a result, we have incorporated them in the Agency Agreement but have also kept a separate copy.

On completion of the agreement, and before you start your service, both parties should have a signed copy of the agreement.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 outline some significant requirements about different situations in which you sign up the landlord and Appendix A and B are designed to help you with this compliance but is not a substitute for knowing the law. The legislation can be read at [legislation.gov.uk](http://legislation.gov.uk)

Please check where the tildes are (~) for edits that may be needed (specifically in the Scale of Charges).

If you are using an electronic signature system you may remove the requirement for the landlord to initial the footer in applicable documents.

## **Scale of Charges**

Tenant fees remain on the Scale of Charges on the basis that tenant fees may still be charged on some tenancies; for our purposes they will largely be in respect of Contractual tenancies (Company lets etc.). If as a business you decide that you are not going to charge tenant fees at all then the relevant section may be removed. If, alternatively, you are going to continue to charge tenant fees where you can then the fees must be advertised accordingly.

Tenant & Guarantor referencing have been included on the Landlord charges for those tenancies that will be affected by the Tenant Fees Act 2019. If the tenancy is to be a Contractual tenancy then either the tenant or the landlord would pay for referencing.

Your Scale of Charges has to be displayed where you are likely to have meetings with clients which are typically in your front office or meeting rooms. The charges have to be displayed where they can easily be seen. As a result of amendments to the Consumer Rights Act 2015 those displayed fees must now include a statement that you have client money protection and you must also give the scheme name. Similarly, there is now a requirement to state not only that you are a member of a redress scheme but also you must state the name of the scheme.

Guidance from Trading Standards indicates that a statement on the scale of charges stating that VAT is included is sufficient rather than after each individual figure requiring 'inclusive of VAT'. You should therefore ensure that the £ prices and % figures quoted are inclusive of VAT

## **Referral Fees**

Under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) the National Trading Standards Estate and Letting Agency Team (NTSELAT) have disclosure of referral fees in their sights although initially it is directed at Estate Agency. The relevant department now includes Letting Agency Team in their title. We therefore anticipate that their attention will turn to Lettings Agents and as such we are aiming to help agents demonstrate openness.

The Property Ombudsman in the code of conduct reminds letting agents that they are liable under the CPRs to disclose any arrangements where the agent is rewarded for a referral in the form of money, a gift or other benefit.

The Referral Disclosure Form produced by NTSELAT for sales does not easily transfer to lettings and the number of contractors and service providers used by letting agent is far greater than used by an estate agent. It is not unusual to use a number of, for instance, plumbers or even to stop using one plumber and start using another with whom the arrangements are different.

If any of the providers or contractors is a subsidiary or part of the letting agency group then you should ensure that you declare this.

On the scale of charges we suggest that the £ / % figure should be followed by the frequency i.e. per job sheet, per referral, per month, per annum.

Where the value of the benefit is unclear or within a range you may either include the range or 'up to a maximum value of £.....'

If you do not receive or require referral fees you could edit the section to say so.