

Unfair Lettings Fees; a Guide for Agents and their Tenants



Unfair Lettings Fees

Unfair or Excessive Agent fees are one of the most common consumer complaints raised with the Property Redress Scheme.

In general, the average Consumer is expected to pay attention to fees listed in documentation, make their own enquiries about charges they do not understand and check out any publicly available facts about average prices for themselves. However, the average Consumer is also likely to trust in the Agent (as the lettings professional) and rely upon the integrity of any information provided or fee charged. As such, complaints can often arise when Consumers believe they have been misled by their Agent about the charges incurred for using their service.

It is not the role of the redress scheme to prescribe or prohibit any fee in general. However, the Agent must be able to provide evidence to support the fees that they charge. A Scheme Ombudsman may choose to make an award to the Consumer if it is decided that the Member's fees are unfair or have not been presented in a clear and transparent way.

This guide is designed for both Agents and Tenants to explain what may be deemed as an obscure, unfair or unjustifiable fee. It has been summarised from the Competitions and Markets Authority Guidance for Lettings Professionals on Consumer Protection law. If you would like to read this guide in full, you can do so [here](#).

Tenant Fees

It is currently legal in England to charge Agent fees to the Tenant. These are fees that are in addition to any rent or deposit paid. This is not a legal practice in Scotland.

When advertising or explaining fees and services to potential Tenants it is important for the Agent to remember that they may not be familiar with the renting process and may require further guidance. All terms should be in plain English, and should not use property-specific jargon or terminology without explanation. The Agent should **not** seek to mislead Tenants or play upon their limited knowledge of legal rights and/or a lack of experience. This may include leaving out important information, or providing information that is unintelligible or ambiguous.

Any advertised charges should be inclusive of VAT. An advertised tariff that excludes VAT is more likely to mislead Tenants about how much they will actually have to pay for the service. Agents should ensure that the prospective Tenant has sufficient time to familiarise themselves with the agreement before agreeing to any charges.

Agents should also explain the extent and service being provided in return for any fee. For example, an Agent might charge a substantial fee for drawing up a tenancy agreement. In some circumstances, this may involve a good deal of work and be commensurate with the fee charged. However, the same fee may also be charged when little or no work is done (for example merely printing off a standard contract).

Such an action could mislead consumers by misrepresenting the scale of the work involved, and the complexity of the task, such that it could cause a consumer to agree to pay more than they would have done had they known what work was actually involved.

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Optional/Non-Optional Fees

The Agent should be upfront about all non-optional and optional/variable fees that may be chargeable throughout the tenancy; regardless of whether they can be calculated in advance. This is to enable the Tenant to compare the full cost of renting one property against another. Non-optional fees that can be calculated in advance (e.g a fixed administrative fee) must be included with the quoted asking rent (e.g £1500pcm + £150 admin fee per Tenant).

If a non-optional fee cannot be calculated in advance, relevant advertisements must make the existence of the charge clear, note that it is excluded from the advertised asking rent and provide information to allow Consumers to establish easily how the charge is calculated. It will aid clarity if the Agent provides worked examples of calculations of this kind.

Any optional or variable fee should be clearly outlined in the tenancy agreement and not merely in small print or hidden on a website. Non-optional and optional/variable fees that may be charged in addition to rent and a security deposit may include (but are not limited to):

- application processing fees such as reference and/or credit checks
- fees for the initial setting up of the tenancy, including inventory costs or other administration fees
- fees which must be paid in certain circumstances, such as charges for additional Tenants, the use of a guarantor or pets
- any future fees likely to be incurred by the Tenant, for example, costs to extend, renew or terminate the tenancy and inventory check out fees.
- Money for a 'holding deposit' including the sum that is required and the circumstances in which it will/will not be refunded - it will however be deemed unfair if a holding deposit is deemed to be non-refundable in any circumstance.

Repair and Maintenance Fees

If the Agent becomes aware of damage to the property that needs to be repaired and the Tenant will be liable for the work or cost, the Agent should point this out to the Tenant as soon as possible, highlighting the relevant terms of the agreement, so that they can take the necessary remedial action.

Where the Landlord or his Agent carries out repair work during the life of the tenancy that is the Tenant's responsibility, and for which the Tenant will be asked to pay, this should be done only with the Tenant's agreement. Terms that require a Tenant to pay any price the Agent chooses to charge for a repair are likely to be considered unfair.

It may also be an unfair term to try to make the Tenant responsible for repairs that it is the Landlord/Agent's duty to carry out. For example, informing the Tenant they are responsible for checking and testing gas and electrical appliances when it is not the Tenant's legal responsibility to do so.

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Renewal Fees

Where a Tenant wishes to remain in the property, they should **not** be charged any additional fee for holding over under a statutory periodic tenancy, or given the impression that they are obliged to agree to a new fixed term agreement.

It may be an unfair term and aggressive practice to seek to charge a tenant to renew a tenancy where this fee was not set out in the original tenancy agreement and brought to potential Tenants' attention in the pre-tenancy advertising and other materials.

Introducing a new charge may take advantage of the tenant's limited security of tenure – they effectively have no choice about whether to pay the renewal fee if the alternative is to be given a Notice Requiring Possession.

Termination and Cancellation Fees

On termination of the tenancy, the Agent should act consistently with information already given to the Tenant on fees for exiting a tenancy agreement. For example, charges for checking the inventory or for cleaning should have been brought to the Tenant's attention before they committed to the tenancy.

Introducing a new charge with no contractual basis at this stage may be both a misleading action and an aggressive practice if it gives the Tenant the impression that they cannot leave the property, or receive their security deposit back unless they contract to pay a further sum.

At the end of the tenancy, the Agent should avoid misleading the Tenant about whether they propose to retain any money from the security deposit for repair and damages. In making deductions, regard should be had to appropriate guidance such as that produced by the authorised tenancy deposit schemes. If the Tenant does not agree with the proposed deductions to their security deposit, they must contact the scheme where their deposit is protected – redress schemes are not authorised to handle complaints regarding deductions from security deposits.

General Guidance to Agents

The **Terms of Reference** of the Property Redress Scheme make it clear that we can make an award to any consumer if it is decided that our Member's fees are excessive, lack transparency or are misleading. If a Member continues to charge unfair fees or does not communicate their fees adequately they could face expulsion from our scheme. The consequence of this would be that, as membership of an authorised scheme is compulsory, expelled Members can no longer trade as a Letting or Property manager.

Agents may wish to seek legal advice to satisfy themselves that their fees, charges and commissions are structured and presented in a fair and transparent way.

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