

Grow your letting agency with UKALA

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UKALA CODE OF PRACTICE

Effective from 01 November 2016

CONTENTS

1. General Provisions
2. Market Appraisal
3. Instructions, Terms of Business, Fees, Charges and Termination of Client Agreement
4. Marketing and Advertising
5. Viewing and Access to Premises
6. Offers – Clients and Applicants
7. References – Clients and Applicants
8. Letting – The Tenancy Agreement, Inventories and Deposits
9. Rent Collection – Clients and Tenants
10. Property Management – Clients and Tenants
11. Termination of a Tenancy
12. End of Tenancy – Deposits, Disputes and Damages
13. Clients' Money
14. Duty of Care and Conflict of Interest
15. In-house Complaints Handling
16. Glossary of Terms
17. Acknowledgements

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 16.*

1. General Provisions

Applicability

- 1a. This Code applies to Members (*) of UKALA, and their employees and Sub-Agents (*) who let Residential Property (*) and/or undertake Property Management (*) in England, Wales, Northern Ireland and Scotland. You (*) must have available, free of charge, copies of this Code of Practice to give to consumers on request.
- 1b. This Code cannot and does not supersede the normal operation of the law.

General Obligations

- 1c. 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. You must comply with all laws relating to the letting of Residential Property and all other current and relevant legislation.
- 1d. You must always act within the law in the conduct of Your business. In particular You must ensure that in Your dealings with consumers You avoid misleading practices or misleading omissions.
- 1e. You should provide a service consistent with honesty, fairness, integrity and best practice, and not use methods that could be construed oppressive or Harassing (*).
- 1f. You must offer equality of professional service to any person, regardless of their race, religious belief, gender, sexuality, age, disability or nationality.
- 1g. You must not release or misuse confidential information given by Your Client (*) unless legally required to do so. You must be registered for Data Protection.
- 1h. You must keep clear Records (*) of Your relationship with Clients and Tenants (*) for at least six years. Those Records must be produced when required by the UKALA complaints process, set out in the UKALA Scheme Rules.

2. Market Appraisal

- 2a. 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 deliberately misrepresent the potential rental level of a property in order to gain or retain an instruction.
- 2b. You must advise a potential Client in Writing (*) 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. Advise the Client to access relevant public liability, buildings and contents insurance.
- 2c. You must advise a potential Client of the need to comply with the obligations and requirements of safety legislation and regulations that apply to rented property; and You should satisfy Yourself that any certificates or documentation are in date and appear genuine.
- 2d. You should, within reason, draw to the attention of the potential Client any obvious repairs or maintenance issues which appear necessary in preparation for the intended letting.
- 2e. You must, where appropriate, make a potential Client aware of the special rules relating to the deduction of tax from rental income, applying to Clients considered as non-resident or overseas.
- 2f. You must draw to a potential Client's attention the necessity and benefit of a properly prepared full inventory and a schedule of condition.

3. Instructions, Terms of Business, Fees, Charges and Termination of Client Agreement

Instructions and Terms of Business

- 3a. You must take reasonable steps to ensure that the Client understands Your Terms of Business, that all fees and charges are clearly stated and are drawn to the attention of the Client and You must satisfy Yourself that the Client is entitled to instruct You and to sign on behalf of all co-owners as necessary.
- 3b. The Client must be given sufficient time to read Your Terms of Business before agreeing to instruct You. The Client should be required to sign a copy which You should hold on file and the Client must be given a copy to retain.
- 3c. 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 Client during a visit by You to his home or his place of work or away from Your premises, then he must be given a right to cancel that contract within 7 days of signing. He should be given a formal 'Notice of Right to Cancel'.

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3d You must, at the point of instruction, inform Your Client that You are a Member and subscribe to this Code of Practice.

3e Any changes in terms and conditions are not effective until signed by both parties.

Fair Contracts

3f Your Terms of Business must be transparent in relation to Client commitments. They must be Written in plain and intelligible language and comply with other requirements in law, where applicable. You should not use terms that may be deemed unfair, and consequently unenforceable. Your Terms of Business must not contain terms which are inconsistent with the provisions of this Code of Practice.

3g Your Letting Terms of Business must not include any terms requiring the Client to pay commission in circumstances where the Tenant agrees to purchase the property.

Fees and Charges

3h Where VAT is applicable this must be made clear.

3i Fees (if any) that are to be charged to the Client in the event that a fixed term tenancy is renewed by the same Tenant must be made clear.

3j 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 they must actively flag what liability for fees or charges may be incurred in those circumstances.

3k Scotland: You must not charge a Tenant or prospective Tenant any fees, other than rent and a refundable deposit.

Termination of Client Agreement

3l Upon termination of the instruction by either party You must give the Client appropriate Written confirmation that You will no longer be acting for him. This should include the date of termination, details of any liability for fees or charges owed by the Client to You (or any credit or funds owed to the Client) and confirmation of any arrangements for the handover of the property, appropriate documentation, keys etc to the Client or his appointed representative.

3m 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 where it is proposed the deposit (if any) will be held. In such circumstances, the Written authority of the Tenant(s) to release their deposit to a third party must be obtained.

4. Marketing and Advertising

4a You must 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. 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. You must not knowingly offer a property on the market without an appropriate Energy Performance Certificate (EPC), or unless an EPC has been applied for.

Letting Boards

4b You can only erect a letting board with the Client's specific permission on a property You have been instructed to let. When You put up a board You must comply with the relevant statutory regulations. Any board should be removed promptly from a property where You are no longer instructed, or, within 14 days of the Tenant taking up occupation.

4c You must not erect a letting board or similar on a property that You have not been instructed to let. Nor replace another agent's board unless expressly instructed to do so in Writing by the Client.

Published Material and Information about a Property

4d You must by law comply with the relevant Consumer Protection statutory regulations and take all reasonable steps to make sure that all statements that You make about a property, whether oral, pictorial or Written, 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.

4e All advertisements must be in accordance with the British Codes of Advertising and Sales Promotion.

4f You must not use unfair methods when seeking new properties or applicants by unsolicited approaches. Any leaflet must be truthful and must fully explain who the message is from, its purposes and how the applicants or new Client's interest can be followed up.

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4g 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

- 5a 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. You should accompany all viewings unless an unaccompanied viewing has been agreed by the existing Tenant.
- 5b You must make sure that all the keys to a Client’s property that are in Your possession are coded, logged and kept secure. You must exercise due diligence to ensure that, after any visit by You or an authorised third party, a property is left secure.
- 5c Except in cases of genuine emergency if access to a property is required by You, or an authorised third party on behalf of the Client or 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 the occupying Tenant must be provided with the appropriate minimum notice of 24 hours or that prescribed by law, of the appointment unless agreed otherwise with the occupying Tenant.

6. Offers – Clients and Applicants

- 6a An applicant, whose offer has been confirmed as having been accepted in principle must be promptly informed if marketing and/or viewings are subsequently recommenced by You.
- 6b You must provide applicants 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.
- 6c Any standard documentation that seeks to create a contractual relationship, via its standard terms or clauses, between an applicant and You or Your Client must be transparent in relation to the commitments of each party. Such documentation must be fair, clearly presented and Written in plain and intelligible language so as to comply with any relevant statutory regulations.
- 6d Prior to an applicant’s offer being formally accepted, You must set out in Written form and must actively flag any significant tenancy pre-conditions and terms for the letting, including the circumstances in which the applicant may have any potential financial liability for fees, or charges relevant to:
- the processing of his application to rent the property, including the cost of any credit checks to be made by You or the Client;
 - his withdrawal, at any stage, of his application for the tenancy or the Client’s rejection of it; consumers are entitled to a refund of a fair proportion of any prepayments made under a contract that does not go ahead, or that ends before they have enjoyed any significant benefit.
 - 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.
- 6e Details of an offer accepted in principle (albeit still subject to references etc) should be confirmed to the Client as soon as practicable and ideally in Writing.
- 6f Where You take a holding deposit from a prospective Tenant this deposit must be treated as Clients’ Money (*) (See Sec. 13) except insofar as it will be used to meet the costs of referencing and other reasonable administration charges. You must provide that person with a Written receipt detailing the charges and fees that will be offset against the deposit, if any, and the terms of repayment or forfeiture should the tenancy not proceed. Any deductions from the deposit must be reasonable and must take account of the circumstances of the situation (for example where the Client declines the tenancy application or the prospective Tenant decides not to proceed and notifies You promptly after payment of the holding deposit). Any holding deposit due to be returned must be repaid within 10 working days.

7. References – Clients and Applicants

- 7a In all referencing processes or procedures, You must be diligent in identifying fraudulent applications.
- 7b You must take references on an applicant appropriate to the circumstances of the applicant and in line with arrangements agreed with the Client.

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- 7c Where references are provided directly by the applicant, You must be diligent in validating their authenticity. In cases when You take or examine references and/or make a charge for them, the charge must be fair and reasonable for the work undertaken.
- 7d Where the current existing address of applicants is not evidenced via the Electoral Roll, such an address must, wherever practical, be verified by the applicant providing You with a utility bill or bank statement, or Building Society passbook or Council Tax account or driving licence or similar.
- 7e You must be diligent in verifying the identity and nationality (usually by sight and study of their passport) of a successful applicant and You must retain a record.
- 7f You must provide the Client with all relevant facts (subject to data protection restrictions) relating to the applicant to enable the Client to make an informed decision.
- 7g Where an applicant fails, in the circumstances, to meet prudent referencing criteria, You must obtain confirmation in Writing from the Client they wish to proceed with that applicant. Where the acceptance of the applicant is conditional You must ensure those conditions are met and/or advise the Client accordingly.
- 7h Should a Client instruct an agent to take on a Tenant against the better judgement of the agent then the tenancy may proceed but the Client should be informed in Writing that despite misgivings the letting can continue at the request of the Client.

8. Letting – The Tenancy Agreement, Inventories and Deposits

The Tenancy Agreement

- 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 including prescribed information in accordance with statute. You should ensure tenancy agreements are transparent in relation to the commitments of each party. The tenancy agreements must be clearly presented, Written in plain and intelligible language; that any fees and other charges are actively flagged; and that any standard terms and clauses take account of the implications of the Unfair Terms in statute. 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 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. If the terms of the tenancy agreement are changed during the period of Your agreement with the client, the client must be given the opportunity to see and confirm the changed tenancy agreement.
- 8c 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.
- 8d By law You must provide the Tenants with the name and address for service of their landlord. This may be care of (c/o) the agent's office.
- 8e 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 HM Revenue and Customs in respect of a non-resident or overseas landlords tax liability.

Inventories and Schedules of Condition

- 8f You must ensure at the start of a tenancy that any inventory and/or 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.
- 8g You should arrange for a Tenant to be checked-in to the property accompanied either by an inventory clerk or other representative of the Client or his agent unless instructed to the contrary by the Client.
- 8h The Tenants must be provided promptly with a copy of the inventory and schedule of condition and advised of the need to formally raise in Writing any notable discrepancies, deficiencies or differences identified, within five working days from moving in or receipt. You must actively flag and specifically draw to the attention of the Tenant that their failure to respond within the time frame will result in the relevant documentation being accepted as accurate. You must hold a copy on file.

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Deposits that must be protected by statute

- 8i England and Wales: All deposits taken in relation to an Assured Shorthold Tenancy must be protected with a government authorised tenancy deposit protection scheme.
- 8j Scotland: All deposits taken in relation to an assured and short assured tenancies, university accommodation and other types of occupancy agreements must be protected with a government authorised tenancy deposit protection scheme.
- 8k Northern Ireland: All deposits taken in relation to a tenancy must be protected with a government authorised tenancy deposit scheme.
- 8l You must comply with the relevant statutory requirements and the scheme rules of government authorised tenancy deposit scheme to which You belong.

Other deposits

- 8m Where a deposit is held by any agent 'as stakeholder' between the parties, it is being held in a quasi-trustee position on behalf of both parties. Whenever possible the agreement of both 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.

Prescribed Information (England)

- 8n If creating an Assured Shorthold Tenancy, You must provide the Tenant with the following where appropriate, as prescribed in law:
 - How to rent: The checklist for Renting in England
 - Energy Performance Certificate
 - Gas Safety Certificate
 - Tenancy Deposit Protection Certificate and prescribed information

Tenant Information Pack (Scotland)

- 8o You must provide the Tenant with a Tenant Information Pack, as prescribed in law.

9. Rent Collection – Clients and Tenants

- 9a 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.
- 9b You must provide a Tenant, upon request, with a statement or schedule of rental payments received showing how arrears have arisen.
- 9c If relevant 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 HM Revenue and Customs.

10. Property Management (*) – Clients and Tenants

- 10a You must manage a property in accordance with the law, 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 appropriately 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 and appointment of contractors engaged to carry out work on behalf of Clients. You should take reasonable steps to ensure contractors have suitable experience and applicable professional or trade qualifications where required.
- 10d You must upon request provide Your Client with suitable Records of repairs, maintenance etc carried out on behalf of the Client which should include relevant instructions to contractors or suppliers indicating both any urgency required in carrying out jobs and, within reason, the scope or scale of the works.

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- 10e The frequency of any routine visits to be made to the property by You during a tenancy must be agreed with the Client in advance, normally within the 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.
- 10f You must keep Records of when any routine visits carried out during a tenancy; record any significant findings and be diligent in bringing such findings to the attention of the Client, including any corrective actions suggested or required.
- 10g 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.
- 10h You should have in place a system to ascertain, at an appropriate time, the Tenant's wishes and the Client'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 Client, You must take steps to serve a lawful notice in Writing upon a Tenant to terminate the tenancy; either in line with the Client's instructions or at the earliest time the law allows taking account of the Client's requirements.
- 11b You must inform a Client promptly of the receipt of lawful notice from a Tenant, in Writing unless agreed otherwise in Your terms of business.
- 11c On giving or receiving notice to bring a tenancy to an end, You must provide a Tenant with 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 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.
- 11d Where a Tenant does not vacate a property on the due date, You should advise the Client 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, the Client.

12. End of Tenancy – Deposits, Disputes and Damages

- 12a Where appropriate to the services being provided and unless You have instructions to the contrary, You must 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. The outgoing Tenants should always be offered the opportunity of being present to observe the final check.
- 12b The checkout must be conducted thoroughly and a sufficiently detailed report or summary prepared with specific reference back to the inventory and schedule of condition.
- 12c In the case of deposits protected under one of the authorised deposit protection schemes, You must comply with the relevant scheme rules.
- 12d In the case of deposits which were not subject to being protected, when the final checkout has been completed, and the parties are not in dispute, You must refund any agreed amount within a maximum of 10 working days.
- 12e In the event of a dispute where the deposit was not subject to being protected, any undisputed amount must be refunded within a maximum of 10 working days.
- 12f 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.

13. Clients' Money (*)

- 13a You must at all times comply with the UKALA Accounting Standard.
- 13b You must provide a Client with an appropriate, regular statement of income and expenditure. Other than for 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. Duty of Care and Conflict of Interest

- 14a Your duty of care and obligations are to Your Clients to whom You must offer suitable advice to meet their needs and aims. All parties involved in the transaction, both applicants and Tenants, must be treated fairly and with integrity. If there is a personal conflict of interest with Your duty to Your Client, or the applicants or Tenants they should be advised accordingly and recommended to seek independent advice.

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15. In-house Complaints Handling

- 15a You must maintain and operate an in-house complaints procedure. Such procedures must be in Writing; explain how to complain to Your business and to the UKALA appointed redress provider; be readily available in each office for consumers; and be available for inspection by both the UKALA appointed redress provider and/or UKALA.
- 15b All complaints must be recorded by You at the time they are made.
- 15c You must agree to deal with any properly appointed representative of a Complainant (*).
- 15d All Written complaints must be acknowledged in Writing within five 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. Where practical a senior member of staff not directly involved in the transaction should deal with the complaint.
- 15e Following the conclusion of Your investigation, a Written statement expressing Your final view must be sent to the Complainant.
- 15f If the Complainant remains dissatisfied, he must be informed in Writing, how he can further pursue his complaint within Your business if possible.

16. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.
- **Client.** A person who has instructed You to rent a property 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.
- **Clients' Money.** Clients' money is any money received and held by a firm that does not solely belong to it. Examples may include:
 - Tenants' deposits
 - Rents
 - Service charges
 - Interest (if in an interest bearing Client account)
 - Arbitration fees
 - Fee money taken in advance
 - Clients' Money held but due to be paid to contractors
 - Money held by Members appointed as a Receiver
 - Sale proceeds
- **Complainant.** Someone who is an actual or potential landlord or Tenant or former landlord or former Tenant of Residential Property making a complaint against a Member agent. Where appropriate, this definition includes a Complainant's properly appointed representative.
- **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.
- **Harass/Harassment.** Means to act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.
- **Member.** An agent who is a Member of UKALA and who has undertaken to abide by all provisions of the Code of Practice.
- **Portfolio Landlord.** A landlord with a number of properties that are being let, often through the same letting agent.
- **Property Management.** In this Code, property management means the management of a property on behalf of the landlord, generally following the finding of a Tenant. It does not relate to 'block' management.
- **Records.** Means all Written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.
- **Residential Property.** Means property (land and/or buildings or part thereof) used, last used, or to be used for residential purposes. Excluding holiday lets.

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- **Sub-Agent.** Means a person or business instructed by the agent, not landlord.
- **Superior Landlord.** The owner of a superior interest in the property as a freeholder or leaseholder or intermediate landlord.
- **Tenant.** A person who occupies a property by agreement with the landlord subject to the payment of rent.
- **Written, in Writing.** Includes typed or hand-written letters or notes or electronic communications including, emails or faxes.
- **You/Your.** Applies to all those Letting Agents and their staff providing letting services bound by this Code.

17. Acknowledgements

This Code of Practice was based on and adapted from the Code of Practice for Residential Letting Agents published by The Property Ombudsman.

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