

# Byelaws of



## Byelaw 8 (Miscellaneous)

### (A) GUIDANCE on FEE SHARING/JOINT AGENCY

#### General principles

##### 8.1

In normal circumstances it is preferable that a Member should only conduct business with another ARLA agent as this provides both consumer and client with appropriate financial safeguards and service standards. Where the other agents or company are not members of the Association, then the Member Firm should co-operate with them only when they have good reason to believe that the other firm operates to similar standards to the ARLA Byelaws and rules of membership, including the Code of Practice.

**Please note** : ARLA itself will not become involved in resolving fee sharing or similar interagency disputes as such arrangements are a purely business-to-business contractual relationship and are outside the remit of the Association.

[For the purposes of this guidance note the following definitions apply: - “ *Head Agent* ” means the agent who has been directly instructed on a property and has given details of a property to a sub-agent. “ *Sub-Agent* ” means an agent or company who has not been directly instructed on a property and who has received details of a property from a head agent. “ *Agent* ” means a business or company involved in letting property. “ *Applicant* ” means a person or business seeking to rent property.]

#### Guidance on the general Duties of the Head Agent

##### 8.2

1. The head agent should confirm in writing to the sub-agent the proposal for the terms of any fee sharing or joint agency arrangements prior to providing details of any relevant properties or applicants to the sub-agent.
2. A head agent should only give to a sub-agent details of properties on which he has been directly instructed and where the client had been informed of the intention to sub instruct.
3. Once a head agent has received the name of an applicant from one sub agent he should not, in normal circumstances, accept an enquiry about the same applicant from another sub-agent or from the applicant himself. (Subject to 5 below)
4. The head agent should present all offers to its landlord client, whether from his own applicant or through a sub-agent, with equal speed and diligence. Where the head agent is making the decision on behalf of his landlord client, he should be objective and consider his client’s best interests.
5. A head agent who has previously received details of an applicant through a sub-agent but is subsequently contacted by the applicant himself on an unsolicited basis, e.g. in response to a newspaper advertisement and such an approach is in relation to a property or properties other than those previously offered to the sub-agent, the head agent shall be at liberty to deal directly with the applicant.

#### Guidance on the general Duties of the Sub-Agent

##### 8.3

1. The sub-agent should confirm in writing to the head agent the acceptance of the terms of any fee sharing or joint agency arrangements prior to offering any relevant properties to their applicants or vice versa.



## Byelaw 8 (Miscellaneous)

2. The sub-agent should inform the head agent of the name of the applicant.
3. A sub-agent seeking to share fees with a head agent should, at the outset, disclose fully to the head agent any contract agreement or arrangement (whether recorded in writing or not and whether in return for financial reward or not) which the sub-agent may have with the applicant.
4. Once a sub-agent has received details of a property from one head agent he should not in normal circumstances accept details/sub-instructions on the same property from another head agent.
5. A sub-agent should not give details of a head agents property to any other applicant, relocation company or agent without first obtaining the consent of the head agent.
6. The sub-agent should never try to solicit the landlord of the head agent or try to get directly instructed on the head agent's property. The sub-agent should not leave his card or any literature at a property viewed through a head agent.
7. Following the acceptance of an offer from an applicant introduced via the sub-agent he/she (the sub-agent) should confirm in writing to the head agent the terms of that offer and include reference to the fee sharing or joint agency arrangement which had previously been agreed.

### Terms and Conditions – Fee sharing/Joint Agency

#### 8.4

Members who co-operate with a non-ARLA firm or company on a fee sharing or joint agency basis are recommended to agree in writing, in advance, the methodology and parameters of arrangements. Such a document or letter should include, as a minimum, reference to the key topics set out below.

- **The basis for fee sharing or joint agency**

For example: Both head and sub agents should agree and promptly confirm in writing the basis (amounts and or percentages) for sharing fees between themselves prior to the giving or acceptance of details of properties or applicants

- **The respective obligations or services to be provided by either party**

For example: Whose responsibility it is to take up references, prepare inventory, draft tenancy agreement, collect monies and seek any further information which is required at the time that the offer is presented.

- **The length of time that the agreement (fee sharing/joint agency) will be in existence**

For example: Is the agreement to share fees is to be continued throughout the period of a tenancy, including any extension to the tenancy.

- **The liability or otherwise to refund fees**

For example: If the head agent refunds fees to a client, is the sub-agent obliged to return to the head agent pro-rata fees received for the same period.



## **Byelaw 8 (Miscellaneous)**

- **The method of paying fees**

*For example* : Is the head agent only paying fees (to the sub-agent) on the basis of actual fees received? by him; what if extra costs are incurred by the head agent in recovering fees, are those costs to be deducted before paying the agreed proportion to the sub-agent? Within what timescale is the head? agent obliged to settle the sub-agent's properly submitted invoice?

### **(B) GUIDANCE on SEEKING BUSINESS/CANVASSING**

#### **General Principles**

##### **8.5**

**See The Property Ombudsman Code and Guidance.**

#### **General Marketing and Canvassing**

##### **8.6**

**See The Property Ombudsman Code and Guidance.**

#### **Unprofessional Conduct (Touting)**

##### **8.7**

**See The Property Ombudsman Code and Guidance.**



## Byelaw 8 (Miscellaneous)

### (C) TENANCY DEPOSIT SCHEME for REGULATED AGENTS [TDSRA]

Information about the Tenancy Deposit Scheme for Regulated Agents, including details of how to join can be obtained by visiting the website [www.tds.gb.com](http://www.tds.gb.com) by emailing [info@tds.gb.com](mailto:info@tds.gb.com) or by telephoning 0845 2267837.

#### General

##### 8.8

ARLA is an “Approved Body” under the scheme and this status entitles its Member Firms to sign up to, and benefit from, the Tenancy Deposit Scheme for Regulated Agents in facilitating disputes over the apportionment and refund of tenancy deposit bonds after the end of a tenancy. ARLA has a contractual arrangement with TDS Ltd (which operates and manages the Tenancy Deposit Scheme for Regulated Agents) that requires the Association to monitor and enforce compliance issues, relating to the Scheme, upon its Member Firms.

### Co-operation with the Tenancy Deposit Scheme for Regulated Agents (TDSRA)

##### 8.9

ARLA Member Firms that subscribe to the Tenancy Deposit Scheme for Regulated Agents (TDSRA) must: -

1. Co-operate fully with the processes, procedures and rules of the Scheme in their (the ARLA Member Firms’) operation of it, and,
2. Comply with the subsequent outcome of any adjudication following the Scheme’s assessment of a tenancy deposit dispute.

### Non-compliance with the Tenancy Deposit Scheme for Regulated Agents (TDSRA)

##### 8.10

A failure by a Member Firm to fulfil its obligations (referred to in 8.9 above) to the Tenancy Deposit Scheme for Regulated Agents will be considered by the Association as a serious breach of these Byelaws and so subject to sanctions set out in Appendix E and Appendix F. In particular, a failure relating to the provision (to the Scheme) or disbursement of client’s money may result in a claim under the ARLA Client Money Protection Bonding Scheme.

### (D) DATA PROTECTION ACT

##### 8.11

The Association is registered with the Information Commissioner under the Data Protection Act. Its registration number is Z5247871.

- The Association complies, in the handling of information about its Members, their clients and customers, with its obligations relating to the obtaining, recording, holding or disclosing of personal data and have suitable systems and controls to comply with the eight general principles of the Act which say that such personal data must be: - fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the data subjects rights; secure; not transferable to other countries without adequate protection.

##### 8.12

A Member Firm must, as required by the Data Protection Act, register their Firm’s activities, as appropriate, with the Information Commissioner. ( [www.dataprotection.gov.uk](http://www.dataprotection.gov.uk) )