



### Introductory Notes:

- The National Council of the Association of Residential Letting Agents (ARLA) has approved this Code of Practice after consultation with its membership and other stakeholders within the Private Rented Sector. Together with the Association's Byelaws it helps underpin ARLA's commitment to promoting the highest standards in the letting and management of private residential property.
- This Code of Practice 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.
- Where a formal written complaint is made against a Member Firm, any such complaint will be considered against the guidance contained within this Code of Practice combined with the Association's Byelaws, plus any relevant statutory approved codes, applicable legislation and taking account of lawful obligations and/or responsibilities set out in the pertinent Terms of Business or the Tenancy Agreement. A Member Firm following these practices, complying with the Byelaws, the law and fulfilling contractual obligations etc is therefore unlikely to be found to have acted without reasonable competence. Although it is for each practitioner to decide on the appropriate procedure to be followed in any particular circumstance. Where a Member Firm has not complied with this Code of Practice or statutory or contractual obligations mentioned above, it would be expected to justify such departures in the light of any complaint.

### Aims of this Code of Practice:

1. To help to ensure that clients, customers and staff of Member Firms are aware of the expectations of standards of service that ARLA Member Firms strive to provide.
2. To help to maintain and enhance the reputation, standing and good name of ARLA and its membership by protecting the public against fraud, misrepresentation and malpractice in the lettings industry.
3. To help ensure that there is a positive differentiation between ARLA Member Firms service standards and other letting agents.

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## **A. GENERAL**

- I. This Code of Practice (as amended from time to time) applies to Residential Letting and/or Property Management services provided by a registered ARLA Member Firm and its staff. Insofar as it can, within the limitations or restrictions imposed on their operating standards by their employment by a NON-ARLA firm, they apply to an Individual Member of the Association.
- II. Member Firms must take reasonable steps to ensure that all relevant Member Firm staff are conversant with all aspects of this Code of Practice and the Association's Byelaws and have an up to date working knowledge of their legal responsibilities and obligations in dealing with clients, applicants and tenants, appropriate to their job role.
- III. Neither this Code of Practice nor the Association's Byelaws are intended to affect the contractual relationship lawfully and freely negotiated and agreed in the ordinary course of a business between Member Firms and their clients, or other third parties insofar as such arrangements do not breach either the Law or this Code.
- IV. A Member Firm should offer equality of professional service to any person and must not discriminate regardless of race, creed, sex, sexual orientation,

disability or nationality. A Member must not knowingly be a party to discrimination by others in the performance or provision of services.

- V. A Member Firm must always act both in the best interests of the client and within the law. A Member 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.
- VI. A Member Firm must inform a client as soon as is practicable, in writing, about circumstances that give rise to a conflict of interest. This would include where any partner, director or officer of a Member Firm own, or have a financial interest of 24% or more in a business or contractor engaged to provide services to a client
- VII. If a Member Firm offers a property to let that belongs (wholly or partly) to an employee of that Member Firm (including partners or directors or officers) or a direct associate, the Member Firm must inform an applicant on the property of the relationship prior to their application being accepted in principle.
- VIII. If an application in principle to rent a property being offered by a Member Firm is received from an employee of that Member Firm (including Partners or Directors) or a direct associate, the client must be informed of the relationship prior to the application being formally accepted.
- IX. A Member must not act or behave in a way or manner that knowingly involves dishonesty or deceit.
- X. Whilst the duty and obligations of a Member Firm is to their client landlord, applicants and tenants should be regarded as consumers and customers and should therefore be treated appropriately; if there is a conflict with a Member Firm's duty to its landlord client, the applicants or tenants should be advised to seek independent advice.
- XI. A Member Firm 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 obligation without reasonable excuse is an offence.
- XII. Members who make public their personal views on matters relating to the private rented sector must not claim, or give the impression, that they are representing the official view or policy of the Association unless they have been expressly authorised to do so by an officer of the Association.
- XIII. A Member Firm must assist the Association, or any duly authorised representative or adjudicator, in its enquiries into any alleged breach of this Code or the Association's Byelaws.

## **B. DATA PROTECTION Act**

- I. A Member Firm must, as required by the Data Protection Act 1998, register their Firm's activities, as appropriate, with the Information Commissioner. ([www.dataprotection.gov.uk](http://www.dataprotection.gov.uk)).
- II. A Member Firm must be aware of 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 subject's rights; secure; not transferable to other countries without adequate protection.
- III. A Member Firm must not release confidential or sensitive personal information to unconnected third parties without permission or unless legally required to do so; including for example, on the appropriate authorised written request from the Police, Local Authority, Customs and Excise and the Inland Revenue where a crime, fraud or a breach of relevant legislation is suspected or under official investigation.

## **C. MONEY LAUNDERING Regulations – Proceeds of Crime Act**

- I. A Member Firm must establish and maintain proportionate and effective systems and controls for countering the risk that their services might be used to facilitate money laundering.
- II. A Member Firm should take reasonable steps to acquire sufficient evidence to satisfy themselves that they know that their (potential) client or an applicant or tenant is who they claim to be by, for example, obtaining and keeping a photocopy of, or recording in the file, the relevant identification produced. In exercising their responsibilities a Member Firm must consider the risk posed by existing clients or customers who have not been properly identified in the past.
- III. It is the duty of any person (or Firm) that has reason to suspect that such criminal activity (e.g. Money Laundering) has or is taking place to notify their suspicions to the National Criminal Intelligence Service (NCIS).  
[For more information or advice visit the website [www.ncis.gov.uk](http://www.ncis.gov.uk) ]

## **D. MARKET APPRAISAL**

- I. When a Member gives 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. A Member must never deliberately misrepresent the potential rental level of a property in order to gain or retain an instruction. Any figures given should within reason, be supportable by indicators in the market place, preferably by comparables of similar properties in a similar location.
- II. A Member Firm 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.
- III. A Member Firm 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.
- IV. A Member Firm should, within reason, draw to the attention of the potential client any obvious repairs or maintenance issues which the Member Firm might consider necessary in preparation for the intended letting.
- V. A Member 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.
- VI. A Member must draw to a potential client's attention the necessity and benefit of a properly prepared full Inventory/Schedule of Condition.

## **E. TERMS of BUSINESS, INSTRUCTIONS, FEES & CHARGES**

- I. A Member Firm 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.
- II. A Member Firm must give a (potential) client written details of their Terms of Business setting out what different types or levels of service are available and all relevant Fees and Charges before he (the client) is committed to or has incurred any liability. A Member should confirm in writing the client's instructions to act on his behalf and which type or level of service being provided.
- III. The Terms of Business used by a Member Firm must be clearly presented and written in plain and intelligible language and endeavour, where

appropriate, to take account of the implications of the Unfair Terms in Consumer Contract Regulations. (*Members should note that standard terms or clauses or fees and charges deemed unfair by the court under these regulations are unenforceable*).

## **F. TERMINATION of INSTRUCTIONS**

- I. The Terms of Business of a Member Firm 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.
- II. A Member Firm must give to a client appropriate written confirmation that it no longer wishes to act for him, including the date of termination, giving details of any liability for fees or charges owed by the client to the Member Firm (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.
- III. Where a Member Firm's contractual arrangement with its client is terminated and the relevant managed property is still tenanted, the Member Firm must promptly tell the tenants, in writing, of the change in arrangements. (*Note: - In such circumstances, the written authority of the tenant(s) to release their deposit to a third party must be obtained.*)

## **G. MARKETING and ADVERTISING**

- I. A Member Firm should not commence the marketing of a property until they are satisfied that they have their client's authority and have agreed the basis of their Terms of Business. (*Ideally, Terms of Business signed by the client should be held on file*). 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.
- II. A Member must take reasonable steps to make sure that all statements, whether oral or written, about a property are accurate and 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.
- III. A Member 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.

- IV. All advertisements, marketing or canvassing material used by a Member Firm must be legal, decent, honest and truthful in accordance with the British Code of Advertising and Sales Promotion.
- V. A Member Firm must not directly, or indirectly, unduly harass any person in order to gain instructions on a property.
- VI. A Member Firm may use leaflets or letters to generally canvass for new business or promote services but must not deliberately and solely target only a property (or the owner of a property) known to be either available through, or let by, another Member Firm.
- VII. A Member Firm should only erect a "To Let" (or similar) board with the client's permission. When putting up a "To Let" (or similar) board a member must comply with the relevant Town & Country Planning (Control of Advertisements) Regulations 1992 as amended, or, in Scotland the 1990 Regulations. Any board should be removed, within 14 days, from a property that has been let or where the Member Firm is no longer instructed.
- VIII. If a Member Firm's board relates to only part of a building (for example, a flat) it should indicate the part (or flat or unit) to which it relates.
- IX. A Member Firm should not remove another agent's board from a property. In such circumstances a Member Firm should ask the client to make arrangements with the other agent for its removal.
- X. A Member Firm must not knowingly erect a "To Let" (or similar) board on a property that the Member Firm has neither let, nor been instructed to let.

## **H. VIEWINGS and ACCESS to PROPERTY**

- I. A Member Firm must agree with their client the requirements regarding viewing arrangements – specifically, as to whether they are to be conducted by the client or by the Member Firm. Unless agreed otherwise with the client, all viewings of vacant properties on which keys are held by the Member Firm, should be accompanied.
- II. A Member should record any noteworthy feedback from viewings and pass this on to the client within a reasonable time or upon request.
- III. When a Member is arranging for an applicant to view a tenanted property, the existing tenant must be provided with appropriate and reasonable notice of the appointment unless other arrangements have been agreed with the occupying tenant.
- IV. When access to the property is required by the Member Firm, or an authorised third party (contractor, surveyor, client's representative etc), for

the purpose of viewing the condition, state of repair and/or to fulfil related statutory obligations; 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*).

- V. Where any applicant or third party will not be accompanied by the Member Firm, this must be made clear to the occupier beforehand.
- VI. A Member Firm must exercise due diligence to ensure that a property is left secure after any visit by a Member Firm (or at least as secure as it was prior to the visit).
- VII. A Member Firm must make sure that all keys held on behalf of clients are suitably coded and kept secure. Records of the addresses of such keys must be kept separate from the actual keys and kept safe.
- VIII. A Member Firm must maintain a record or log of when and to whom keys are issued and when they are returned. A Member Firm must take reasonable steps to ensure that keys are only given to suitably authorised people who have provided satisfactory identification.
- IX. A Member Firm must take steps to ensure that appropriate office procedures are in place to provide for the well-being of staff when on appointments away from the office. (*See ARLA leaflet "Safety and Security for Staff"*)

## **I. OFFERS – CLIENTS and APPLICANTS**

- I. It is not advisable for a Member Firm 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, a Member must be conscious of the implications of the Distance Selling Regulations 2000.*)
- II. A Member Firm must inform his client 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.

- III. A Member Firm must inform an applicant, whose offer has been confirmed as having been accepted in principle, whether or not their marketing of the property is to cease and/or if further viewings will be carried out by the Member Firm whilst the application is processed. If marketing and/or viewings are subsequently recommenced by the Member Firm, the applicant must be promptly informed.
- IV. A Member Firm 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 of a tenancy, this facility must be extended to that person.
- V. Any standard documentation that seeks to create a contractual relationship, via its standard terms or clauses, between an applicant and the Member Firm or his 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. *(Members should note that standard terms or clauses or fees and charges deemed unfair by the courts under these regulations are unenforceable.)*
- VI. Prior to an applicant's offer being formally accepted, a Member Firm 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 their application to rent the property and,
  - Their withdrawal, at any stage, of their 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 the Member Firm for the applicant to extend, renew or terminate the proposed tenancy including Inventory Check-out costs.
- VII. Details of an offer accepted in principle (albeit still subject to references etc) should be confirmed to the client as soon as administratively practicable.
- VIII. A Member 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. A Member 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.

## **J. REFERENCES – CLIENTS and APPLICANTS**

- I. In all referencing processes or procedures, a Member Firm should be conscious of the need to be diligent in identifying fraudulent applications.
- II. A Member Firm should take relevant references on an applicant appropriate to the circumstances of the applicant and/or in line with arrangements agreed with the client. A Member Firm's 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.
- III. Where references are provided directly by the applicant, a Member Firm should make reasonable endeavours to validate their authenticity.
- IV. 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 the Member Firm of a Utility Bill or Bank Statement, or Building Society passbook or Council Tax account or Driving Licence or similar etc., by the applicant.
- V. A Member Firm should take reasonable steps to verify and retain a record of the identity, and nationality (if non UK), of a successful applicant.
- VI. Where an applicant fails, in the circumstances, to meet reasonably prudent referencing criteria, a Member Firm should obtain confirmation, preferably in writing, from the client should the client wish to proceed with that applicant.

## **K. LETTING – CLIENTS and TENANTS – Inventories and Deposits**

- I. A Member Firm must take care to prepare an appropriate 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. *(Members should note that standard terms or clauses or fees and charges deemed unfair by the courts under these regulations are unenforceable.)*

- II. A Member Firm must take reasonable steps to ensure that the tenant has the opportunity to raise queries in order to clarify and understand their rights and obligations under the tenancy agreement, particularly those relating to rent, deposit or ancillary fees and charges.
- III. A Member Firm should take care, upon appropriate instructions from the client, that at commencement of a tenancy, any Inventory/Schedule of Condition prepared for the client by the Member Firm, 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.
- IV. A Member Firm must ensure that any tenancy agreement drafted includes a clause that specifies how and by whom the tenancy deposit bond is to be held (see clauses V and VI below plus section O clauses VI and VII), and whether interest is to be paid or not. It should include some information on how the tenancy deposit bond will be dealt with at the end of tenancy and the circumstances or criteria or procedure in which it will be refunded.
- V. ARLA recommends that, for the protection of the tenancy deposit bond and to help facilitate its fair and equitable disbursement at the end of the tenancy, a Member Firm should hold the deposit on behalf of the parties for the duration of the tenancy, as Stakeholder.\* [\*This may vary in Scotland]
- VI. Ideally, the relevant clause of the tenancy agreement prepared by an ARLA Member Firm, where the Member Firm is to hold the tenancy deposit bond, should include provision for an unresolved deposit dispute to be referred to an independent dispute resolution scheme, such as the Tenancy Deposit Scheme.
- VII. A Member Firm 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.
- VIII. A Member Firm 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.
- IX. At commencement of a tenancy, a Member Firm must ensure that both client and tenant are aware of the ongoing role and scope (if any) of the Member Firm 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.)

## **L. RENT COLLECTION – CLIENTS and TENANTS**

- I. A Member Firm must use reasonable endeavours to induce prompt rental payments from tenants in line with their tenancy agreement.
- II. A Member Firm 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.
- III. A Member Firm should provide a tenant, upon request, with a statement or schedule of rental payments received showing how arrears have arisen.
- IV. A Member Firm 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.
- V. A Member Firm must co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords.
- VI. A Member Firm 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.

## **M. MANAGEMENT – CLIENTS and TENANTS**

- I. A Member Firm must manage a property in accordance with the law, the clauses of the relevant tenancy agreement and the Terms of Business with the client. (*ARLA accepts that there will be times when a Member Firm will have to act as "an agent of necessity".*)
- II. A Member Firm 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.
- III. A Member Firm 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. A Member Firm 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.

- IV. A Member Firm 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.
- V. When determining the standard of repair or general maintenance required on behalf of a landlord client a Member Firm should consider the age, character and prospective life of the property (or the relevant part), and the locality in which it is situated.
- VI. Initial Contractor's quotes or estimates (and then subsequently receipts and invoices) submitted to a Member Firm 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.
- VII. The frequency (if any) of routine visits to be made to the property by the Member Firm 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, of a generally superficial nature and are neither an Inventory check nor a Survey.
- VIII. A Member Firm 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.
- IX. A Member Firm 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 the Member Firm becomes aware of.
- X. A Member Firm 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.
- XI. A Member Firm should have in place a system to ascertain, at an appropriate time, the tenants wishes and the landlord's instructions with regard to any extension and/or termination of the tenancy.

## **N. TERMINATION of a TENANCY**

- I. Upon receipt of appropriate instructions from a landlord client, a Member Firm 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.
- II. A Member Firm should inform a landlord client, in a timely manner, of the receipt of lawful notice from a tenant.
- III. On giving or receiving notice to bring a tenancy to an end, a Member Firm 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.
- IV. Where a tenant does not vacate a property on the due date, a Member Firm should take steps to ascertain the tenant's intentions and advise the client landlord as soon as administratively practicable. Where appropriate, a Member Firm 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.

## **O. End of Tenancy - DEPOSITS, DISPUTES & DAMAGES**

- I. Where appropriate to the services being provided, a Member Firm 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.
- II. 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.
- III. Where the final checkout has been completed and the parties have agreed there are no intended deductions or any dispute, a Member Firm should aim to refund the full deposit to the ex-tenant(s) within a maximum of 10 working days.
- IV. Irrespective of how the tenancy deposit bond has been held by the Member Firm; where subsequently contractually involved in negotiations between the parties at the end of the tenancy, the Member Firm 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.

- V. A Member Firm 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.
- VI. A tenancy deposit bond 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.
- VII. A tenancy deposit bond 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 such as the Tenancy Deposit Scheme. Reasonable endeavours should be made to ensure that this process is fair and equitable and supported by appropriate documentation.
- VIII. Wherever possible, once proposed deductions have initially been raised with the parties, a Member Firm 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.
- IX. A Member Firm is expected to co-operate and comply fully and promptly with any investigation and result of any independent, alternative deposit dispute resolution process (such as the Tenancy Deposit Scheme) invoked by the parties.

## **P. CLIENT'S MONEY**

- *For the avoidance of doubt, 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.*
  - *The Association's Client Money Protection Bonding Scheme (CMPBS) applies to all ARLA Member Firms and protects client money held by an ARLA Member Firm in the course of its normal business of Residential Lettings and Management of a landlord's residential property against wrongful and dishonest misappropriation of such funds by the Member Firm.*
- I. A Member Firm must promptly transfer client money to and must then hold client money in, a specifically designated "Client Account" (separate from the firm's own Office, Business or Operating account). A Member Firm must be able promptly, by means of a reconciliation, to identify all individual amounts of client money held in a pooled Client Bank Account.
  - II. A Member Firm should not deduct any fees, costs or charges from client money without having the contractual or lawful authority to do so from the person or body who has a beneficial interest in that money.
  - III. A Member Firm must pay or repay money to clients (including ex-clients), applicants, tenants (including ex-tenants) as soon as is administratively practicable and/or in line with agreed contractual arrangements.
  - IV. A Member Firm should take care when making payments to ensure that any cheque banked, against which the payment is dependent, has been cleared and will not be dishonoured. It is normal to allow five working days but this is, however, a matter for the commercial judgement of each Member Firm.
  - V. Except in an emergency, a Member Firm must not authorise expenditure on a property where not satisfied that funds either are, or will very shortly be, in place to pay the invoice when it becomes due.
  - VI. A Member Firm must only use money or funds held to the credit of an individual client to pay that particular client or invoices incurred on behalf of that client.
  - VII. A Member Firm 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.

## **Q. COMPLAINT HANDLING – Members’ Internal Procedures**

- I. As set out in the Association’s Byelaws, a Member Firm must have an in-house complaints procedure (appropriate to its size and structure) and any person wishing to make a formal written complaint about the standards of service received must be made aware (in writing) of those procedures upon request. Following the conclusion of the Member Firm’s in-house complaint process, where an impasse has been reached or a complainant remains unsatisfied; the complainant must be informed of the contact details for ARLA should they wish to pursue their complaint.
- II. ARLA Member Firms must have Professional Indemnity (PI) insurance at levels and scope of cover set, from time to time, by the Association. Where a Member Firm feels a complaint or allegation is likely to result in formal legal action/claim against the firm for professional negligence the Member Firm should promptly inform his PI Insurers in line with the arrangements between them.

## **R. COMPLAINT HANDLING – Referrals to ARLA**

*ARLA will not normally consider a complaint unless and until it is satisfied that the complainant has exhausted a Member Firm’s own internal complaints procedures, nor if the matters are subject to formal legal action.*

- I. Member Firms must comply promptly and fully with any investigation or assessment of a complaint or dispute carried out by ARLA or its appointed adjudicator, expert or arbitrator.
- II. Member Firms must, subject to any appeal process, comply with the result, recommendations or requirements of the evaluation of a complaint or dispute carried out by ARLA or it’s appointed adjudicator, expert or arbitrator.
- III. Sanctions available to ARLA are set out in the Association’s Byelaws (as amended from time to time) and within the Complaints Form leaflet. These sanctions are subject to variation but generally include: -
  - a) To recommend that the Member Firm apologise, in writing, to the appropriate person for the relevant conduct, action(s) or omission(s).
  - b) To caution the Member Firm against repeating the conduct, action(s) or omission(s).
  - c) To recommend to the Member Firm that they refund all or some part of fees or charges previously made, in recognition of the conduct, action(s) or omission(s).

- d) To impose a financial penalty or fine (which may be suspended) upon the Member Firm for the contravention, breach or infringement, according to a scale decided upon from time to time by the Association.
- e) To recommend that the Member Firm change its procedures or documentation arising from the facts disclosed by a complaint, breach or infringement, which has been upheld.
- f) To recommend that the Member Firm undertake such action as the Association considers appropriate to rectify or redress the conduct, action(s) or omission(s).
- g) To recommend to the parties other, more appropriate, ways of resolving the complaint or dispute including mediation or arbitration.
- h) To reprimand or severely reprimand the Member Firm for the conduct, action(s) or omission(s).
- i) To suspend the Member Firm from membership of the Association.
- j) To initiate the processing of a claim under the Associations Client Money Protection Bonding Scheme.
- k) Where there would seem to be sufficient prima facie evidence of misappropriation of clients funds, of fraud or corruption; to draw the circumstances of the complaint or infringement to the attention of the relevant statutory regulators or other enforcement bodies or authorities.
- l) To expel the Member Firm from membership of the Association.
- m) Any combination of the above or any other reasonable action, which the Association feels appropriate in order to support high standards within the industry and amongst its membership.

## S. GLOSSARY

**Please Note:** - These are not legal definitions and are provided simply by way of explanation to help clarify understanding and interpretation of some of the words, terms or expressions used in this document.

<p><b>The Association's Byelaws</b></p>	<p>The detailed rules of the Association which incorporate this Code of Practice; the criteria for membership of ARLA; details of the minimum level of accounting control required of members and how those processes are monitored and policed; disciplinary powers and procedures, including those relating to complaints; the requirements of member firms in regard to Professional Indemnity Insurance and Client Money Protection Bonding; the use of the ARLA logo, which is protected by trademark; and other matters.</p>
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<b>A Member Firm</b>	A firm or company, which is a current full member of ARLA (the Association of Residential Letting Agents) and thus regulated by the Association.
<b>Statutory (Legislation – Regulations)</b>	These are obligations which the law requires are carried out; failure to do so may result in prosecution.
<b>Terms of Business</b>	A document which is the basis of the contractual arrangement between the landlord client and the agent; setting out what services are available to be, or will be, provided for various fees or charges.
<b>Tenancy Agreement</b>	A legally binding document, which creates the contract between Landlord and Tenant and governs the respective obligations and responsibilities of both parties.
<b>Client(s)</b>	The person or persons (or company) who have exercised their lawful authority to instruct an agent to act on their behalf.
<b>Applicant(s)</b>	A person or persons who make a formal application to rent a property.
<b>Tenant(s)</b>	A person or persons who at any relevant time have the lawful right to occupy a property, under the terms of a tenancy agreement, for which rent is usually paid.
<b>Direct Associate</b>	A brother, sister, husband, wife, partner (co-habitee in an intimate relationship), aunt, uncle, nephew, niece, parent, grandparent, children or grandchildren.
<b>Application in principle</b>	An application to rent a property that has been provisionally agreed but which might still be subject, for example, to references, to contract and/or the landlord client's final consent.
<b>Landlord</b>	A person or persons (or company) who at any relevant time own, or have a formal interest in, the property that gives them the right to possession of that property.
<b>Non-resident or Overseas landlord</b>	Although it is common to refer to non-resident or overseas landlords it is the "usual place of abode" which determines whether a landlord benefiting from rental income of a property in the UK falls within the relevant Inland Revenue scheme or not. For individuals, an absence from the UK of 6 months or more is normally regarded as meaning that the usual place of abode is outside the UK and thus the relevant Tax regime applies to that landlord.
<b>Inventory/Schedule of Condition</b>	In the letting industry these are encompassed in, and considered to be, one document. This is a critical document in the process of letting or renting a property and helps protect landlord, agent and tenant. An Inventory is an itemised listing of the items (contents, fixtures and fittings etc) in a property and the

	integral Schedule of Condition element describes the state of the property, including walls, floors, ceilings and externally, the garden and garage; and their (the items), state.
<b>Fees &amp; Charges</b>	Money, or a share of money, due to an agent for the provision of or for the arrangement of, agreed services.
<b>Application Form</b>	A form completed by an applicant on a property which collates the relevant information about the background of a prospective tenant and which is then usually used as a basis for obtaining references.
<b>Preliminary or Pre-contract agreement; Reservation form/receipt; Holding deposit form/receipt; Terms of application.</b>	These are different types of documents or forms etc used at the time of application for a rental property which should set out the processes or procedures involved in taking a property and summarise a potential tenants current and future liability for any costs, shared fees or charges.
<b>Unfair Terms in Consumer Contract Regulations</b>	These regulations require that where there is a contract between two parties (a supplier and an individual consumer), the standard terms and clauses of that contract are in plain and intelligible language and are balanced and fair so as not to unduly penalise, mislead, or restrict the rights of the consumer.
<b>(Sub) Contractor(s)</b>	Workmen or Companies employed by an agent, on behalf of their landlord client, to provide goods or services for which they are paid.
<b>Routine Visits</b>	Visits to a property during a tenancy, by the agents, to provide the tenants an opportunity of raising potential maintenance and repair issues identified by their occupation; to identify any obvious breaches of, or failures to comply with, the tenancy agreement or, any other apparent property management matters. Such visits are of limited scope, of a generally superficial nature and are neither an Inventory check nor a Survey.
<b>Tenancy Deposit Bond</b>	Tenant's money paid by a tenant, held for the term of a tenancy, to be subsequently allocated against breaches of the tenancy agreement, in particular, damage, cleaning or non-payment of rent.
<b>Tenancy Deposit Scheme</b>	A dispute resolution process independent of agent, landlord or tenant, for promptly adjudicating over unresolved deposit disputes after the end of a tenancy.
<b>Inventory Clerk</b>	A person, usually with a degree of appropriate experience and or training, who prepares an Inventory/Schedule of Condition prior to commencement of a tenancy; checks the document at the end and prepares a summary of disrepair or damage etc; and updates the document as appropriate before re-letting.

<b>Guarantor</b>	Someone who makes a binding commitment to fulfil agreed obligations (financial or otherwise) of a tenant who reneges on, or breaches, the terms of their tenancy agreement.
<b>Rental Warranty, Legal Expenses, Legal Protection Insurance</b>	These are all different types of insurance policies available to landlords, which offer various types of cover in the event of breaches of a tenancy agreement by a tenant.
<b>Public Liability Insurance</b>	Insurance held by a person or company (e.g. a homeowner or contractor) to cover claims made for injury or damage caused to someone or something whilst in or around a relevant property.
<b>Agent of necessity</b>	The implied right of an agent to act over and above his contractual authority in taking such appropriate actions, as he believes reasonable and prudent, to protect his clients interests and/or to fulfil statutory obligations.
<b>Professional Indemnity Insurance</b>	A type of insurance cover which each ARLA Member Firm is required to hold as a condition of membership, to provide indemnity against claims for compensation by clients who sustain a financial loss arising out of professional negligence by directors, partners or employees in the conduct of their business.
<b>Client (Bank) Account</b>	A designated bank account (with the word "Client" in the title and acknowledged as such an account by the financial institution), to which money not belonging to the Firm is transferred and held; and so against which the financial institution has no ability to levy charges and is not entitled to set-off or claim against for any debts or charges which the Firm may incur against any other of its accounts.
<b>Client Money Protection Bonding Scheme (CMPBS)</b>	In the unlikely event of fraudulent or dishonest misappropriation of clients' money ARLA will reimburse such clients where it is satisfied of a genuine claim, to a maximum of £3,000,000 in any one year. The ARLA CMPBS is one of "First Resort" and so does not require all other avenues of recovery (e.g. police or criminal investigation, or successful Court prosecution) to have been exhausted by the client before reimbursement is made.
<b>Misappropriation</b>	Money rightfully belonging to clients (landlords or tenants) which has been wrongly and dishonestly used to the benefit of the Member Firm (its partners, directors, employees or any direct associate) and therefore not properly reimbursed to the client (landlord or tenant) who is lawfully entitled to it.

Landlord? ✓

Tenant? ✓

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