

# HOW TO CHOOSE A LETTING AGENT

## Contents

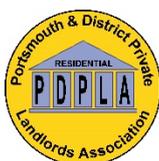
Scope & Objectives .....	1
What do letting agencies do? .....	2
The big BUT (Will using an agent keep you out of trouble?).....	2
How to find a reliable letting agency.....	3
Are Agents Regulated? .....	3
SAFE agent .....	3
Questions to ask letting agencies .....	4
Deposits .....	5
Tenancy Agreement.....	5
What do Agents charge? .....	5
Letting agreement checklist .....	6
Additional Information .....	7
Will new compulsory redress schemes make any difference?.....	7

## Scope & Objectives

This guide aims to

- Help you understand what an agent will and will not do for you
- Provide you with the knowledge and questions you should be asking a prospective agent
- Help you decide whether or not this is the correct route for you

**Recently a number of Portsmouth landlords have lost thousands of pounds and may face prosecution themselves as a result of agent malpractice and an agent ceasing to trade.**



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**And remember, currently letting agents do not even have to keep client money – i.e. tenancy deposits and rents – in separate accounts, let alone insure them.**

You may have heard about Government plans that will protect landlords and think you do not need to worry, our view is that until these are clearly defined you should assume that they are of little help. Further information on these schemes can be found here: [Will new compulsory redress schemes make any difference?](#)

This guide applies to England and Wales as agent legislation differs in Scotland.

## What do letting agencies do?

Letting agencies act on behalf of landlords, not tenants. In most cases they are paid by the landlord, but they also charge the tenant fees. These fees can be high and cover items you thought you were paying for.

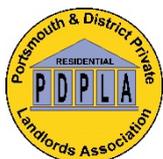
Different types of letting agencies provide different services. Some just find tenants for properties: these are sometimes known as accommodation agencies. Others manage properties on behalf of landlords and the tenants may never have any direct contact with the landlord. It is common for estate agents to also have a lettings department. There are also online agents with no shop front. These may only find tenants but are now tending to offer other management services too. Someone managing property for friends or family is acting as their agent.

Letting agencies often:

- find a tenant for a property
- arrange the tenancy, including providing reference and credit checks
- collect rent and tenancy deposits
- manage the property for the landlord
- arrange repairs
- provide tenancy agreements and inventories.

## The big BUT (Will using an agent keep you out of trouble?)

The legal principle is that the agent is the agent of the person who appoints him (known as the Principal, which in this case will be you, the landlord) and the Principal is responsible for all the actions and defaults of his agent, acting in the normal course of business (which may or may not be outside the terms of his instructions from the Principal; that is not the concern of a third party).



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So in simple English, the agent is doing what he does for you and if he gets it wrong, you are liable for any of his/her mistakes because legally, you ought to have made sure he was doing everything correctly on your behalf.

## How to find a reliable letting agency

### Are Agents Regulated?

There is currently no overarching statutory regulation of private sector letting or managing agents in England nor any legal requirement for them to belong to a trade association, although many letting and managing agents submit to voluntary regulation.

Select an agent who is regulated by ALRA, NALS, RICS, UKALA or a Landlord Accreditation Scheme run by a council or university, or has been recommended by others from reliable personal experience.

Using a regulated or accredited agent does not guarantee good service to the tenant or landlord but it may give you financial security in the event of the agent defaulting with rents and deposits, and also, someone to complain to when things go wrong.

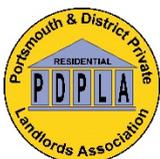
Meeting the requirements of these organisations does cost, so agents not regulated or accredited may offer what looks like better deals. This does not mean that a non-accredited agent will not deliver good service.

### SAFE agent



SAFE Agent is an easily identifiable logo and government supported campaign signposting letting agents which are subscribed to a Client Money Protection Scheme [CMP Scheme]. This means that if an agent closes or absconds with client funds, landlords' and tenants' monies will be safeguarded.

Only letting agents which are members of professional bodies such as the National Approved Letting Scheme (NALS), Royal Institute of Chartered Surveyors (RICS) or the Association of Residential Letting Agents, (ARLA) as well as one of the two ombudsman schemes, The Property Ombudsman or Ombudsman Services - Property, can join SAFEagent. Always check to see if your letting agent is signed up. <http://www.safeagents.co.uk/home> - Do not take their word for it.



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## Questions to ask letting agencies

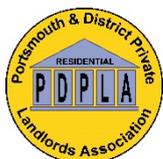
Before you go any further ask to see their agency agreement and read it very carefully including the small print.

Check the agent;

- has client money protection insurance. (Ask who with and if you can see certificate)
- has professional indemnity insurance
- is local to your property
- is contactable for routine business at convenient hours
- has a readily available out of hours service for tenant or landlord emergencies
- if your property is subject to 'Additional' or 'Mandatory' HMO Licensing, will the agent accept full responsibility as licence holder? If not are you a competent licence holder?

You also need to ask:

- What are their fees and when are they payable?
- How do they advertise and market the property?
- Do they advertise online on Rightmove (essential) and Zoopla?
- Do they have a waiting list of suitable tenants who are emailed/texted whenever a suitable property comes up?
- What are your credit checking and referencing procedures? Can I see the references?
- What are their upfront tenant charges?
  - Deposit (This is a tenant matter but is useful to understand and varies from one agent to another)
  - Administration fee which may include
    - Inventory
    - Credit checks
    - Seeking guarantors
    - Collecting references from the tenant's employer, bank and/or previous landlord
    - Issuing a Tenancy agreement.
- Will there be more charges later to the tenant or landlord if the tenancy is renewed?
- How often do you visit properties?
- How are any emergency and routine repairs reported and dealt with?
- Is the landlord charged at cost or marked up to cover admin?
- Does the agent issue copy invoices?
- Will the agent use the landlord's preferred contractors?
- Who will the deposit be protected with?
- Will I be informed of all deposits protected on my behalf? (The landlord is ultimately responsible.)



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## Deposits

Some letting agents ask prospective tenants to pay a holding deposit to 'reserve' a particular property while references are checked and the tenancy agreement is drawn up.

Any holding deposit may be deducted from the tenancy deposit once the tenant moves in, but check this with the letting agent. Any tenancy deposit should be protected in an authorised tenancy deposit protection scheme and the tenant advised of this within 30 days of paying it by the serving of the 'prescribed information'.

If you are only using the agent to find the tenant and you do not know them well it is a good idea to get the deposit, and protect it yourself remembering to serve the 'prescribed information'. The ultimately responsibility rests with the Landlord. If the agent goes bust without protecting deposits correctly:

- you may have to pay back a deposit you have never received
- you cannot serve notice to regain possession of the property using a 'notice only' grounds under a section 21
- the tenant may take court action requiring you to pay them up to 3 times the amount of the deposit.

## Tenancy Agreement

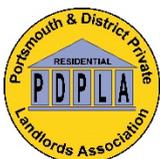
Ask to see the written tenancy agreement to be used and the agency agreement well before you have to sign it. Is the tenancy agreement used the agents or the landlords or that of a recognised association? If you are not happy with either agreement get advice. Agents usually prefer to use their own agreements as staff then know the details. (See the check list below: Letting agreement checklist)

## What do Agents charge?

'Tenant find only' arrangements vary considerably. They may charge from two weeks to two months' rent. (Be warned that some agents may keep their best tenants and offer those that may be less reliable for the landlord to manage themselves.)

Agents may also charge the landlord for renewal of a tenancy. An AST from an agent will normally be for 6 or 12 months. There are two reasons:

- They get paid for checking tenants and issuing tenancies
- CML, the Council of Mortgage Lenders restricts tenancies to facilitate possession of a property if the landlord defaults on repayments



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Full management usually works on a percentage commission of the rent. This usually ranges from 8% to 12%. The rate will depend on exactly what services are included and how many properties you place with the same agent. Lower cost agents may not be members of the associations that have strict membership criteria so should be checked more thoroughly. Based on recent local experience agents charging only 5% cannot cover their costs and often go bust.

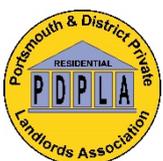
The full and good management of an HMO is more work so if you are offered what looks like a very good deal ask yourself, if they will be able to offer the required service to you and the tenants. If the price is too good to be true, it probably is. But don't blame anyone but yourself if the agent subsequently goes bust because they couldn't make a profit.

## Letting agreement checklist

The following pieces of information should be in an AST agreement. If you can't find them, make sure you have the agreement checked by a legal specialist in lettings.

- **Details of the parties involved.** Includes the contact details of the landlord/tenant and anyone else involved in the let, such as a letting agent and/or guarantor.
- **Date of the contract.** This is normally the start date of the tenancy.
- **Data protection.** Ensures a tenant's details can be shared only with parties relevant to the let, for example an inventory clerk or utility company. Read more about your data protection rights in our guide.
- **The property.** Refers to the fixtures and fittings within the property (such as kitchen or a fireplace) and the outside space, and normally includes items recorded in the inventory.
- **The deposit.** This is an essential clause that should detail how much deposit the landlord/agent will take and which tenancy deposit protection scheme is used to protect your deposit should there be a dispute.
- **The rent.** This records how much the rent will be, when it's due and how it is to be paid, for example by standing order. It should also state what happens if you default on the rent and how the rent can be increased during your stay.
- **Possession and notices.** These clauses set out the notice you have to give the landlord/agent if you want to leave the property, and how the landlord can regain possession of their property.
- **Tenant's obligations.** This sets out everything a tenant should - or shouldn't - do while renting the property. This will include things like keeping it in good order and notifying the landlord/agent if there is a problem, such as a leak. They can be quite extensive so make sure you read them very carefully and understand each one.
- **Fair wear and tear.** This explains that some parts of the property may naturally deteriorate with age, such as carpets, and that the tenant should not be liable for this.
- **Signatures.** This is where the tenant and the landlord (or letting agent) sign the agreement, which makes it binding.

\*\*\* END \*\*\*



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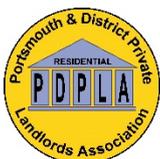
## Additional Information

Will new compulsory redress schemes make any difference?

These are due later in 2014. The Government say “Compulsory redress schemes .... will ensure agents can be investigated where they have not been clear about fees or other issues, and will provide a cheaper, easier way to pursue compensation if there is a complaint.” It is not yet clear how these will help landlords. It will depend on whether the new schemes will protect landlords or only facilitate complaints.

Two redress schemes currently available are The Property Ombudsman (TPO) and Ombudsman Services. However, the Government is currently weighing up whether this is sufficient before implementing the rule, which will apply in England only.

Some agents already belong to one of these schemes, either voluntarily or because it is a condition of membership of a trade body.



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