



**TERMS OF BUSINESS AND LANDLORD INFORMATION**

**Edition 3**

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Pewleys Lettings opened in January 2018 and have fast become a successful part of the already well established Pewleys brand.

We are a local Independent Estate Agency run by Richard Prynne

At Pewleys we aim to give you a calm, considered and refreshing approach to agency and giving you an honest and reliable service so that you will feel valued.

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## Types of Tenancy

### **Tenancy Agreements**

We will prepare a comprehensive Tenancy Agreement setting out the rights and obligations of each party. The type of Tenancy will depend on your prospective Tenants, but this is typically an Assured Shorthold Tenancy Agreement (AST). If you wish to use your own Tenancy Agreement, there will be an administration cost of £50 including VAT for using your Tenancy Agreements, if amendments need to be made. We cannot advise on any Agreement that we have not prepared.

We will use a Company Let Agreement if your Tenant is a company and a Non-Housing Act Tenancy if your Tenancy or situation falls outside of the Housing Act 1988. This could be, for example, if you are resident in the Premises or if annual rent is above a certain threshold. We will aim to add additional clauses when agreed, but cannot alter the main body of the Agreement. We recommend that you seek independent legal advice on the Tenancy Agreement.

### **Break Clauses**

Sometimes a break clause is included into the Tenancy Agreement allowing you or your Tenant to give notice before the end of the fixed term. You are required to give at least two months' notice. If your Tenant gives notice, we will refund any letting fees you have paid which cover the period after the notice ends. If you give notice to your Tenants and we can remarket as sole agents and successfully relet the Premises, we will change our fees for the new Tenancy to ensure you are not paying your fees twice for the same period. However if you give notice to your Tenant and we are not given the opportunity to relet the Premises, we will not refund the fees.



## Service of notices

Pewleys Lettings will serve Notice to end the Tenancy if requested in writing and you do not wish to renew or extend the Tenancy. If the Management Service is not used this will be subject to an administration fee of £125. You must provide us with at least ten weeks written warning that you want to end the Tenancy either at the end of the fixed Term or according to a break clause. We cannot be held liable for any delay in getting possession if you provide insufficient time for service of the Notice.

### **Section 13 notice**

You must serve this notice to the Tenant if the Tenant has a statutory periodic Tenancy rather than agreeing a new fixed Term and you wish to increase the rent. The rent can only be lawfully increased, in the absence of a written agreement by both parties, on an annual basis if you serve the Tenant with a valid Notice under Section 13(2) of the Housing Act 1988. This notice advises the Tenant has a right to challenge the increase by serving you with a counter notice and ultimately referring the increase to the First Tier Tribunal ("FTT"). This could result in a hearing.

### **Section 21**

Since October 1 2015 the Deregulation Act 2015 applies which states that if the Tenant has complained in writing of a lack of repair and has not received an adequate response in writing; or more importantly a complaint has been made to the Environmental Health Officer and an Order served on the Landlord to repair a Section 21 Notice will not be valid for six months. The work specified in the Order must also be completed. If we manage the Premises we will endeavour to carry out all repairs and maintenance provided we are in receipt of sufficient cleared funds. However if we carry out the Let Only or Rent Collection Service it will be the responsibility of the Landlord to ensure the Premises are kept in repair and order. We have no liability if he fails to do so and a Section 21 Notice is invalid.

Other changes from the Act include a Landlord not being able to serve a valid Section 21 within the first 4 months of the Tenancy and to ensure the Tenant has a valid Gas Safety Certificate, valid Energy Performance Certificate and the Department for Communities and Local Government 'How to rent' guide.

### **Section 47 and 48 of the Landlord and Tenant Act 1987**

You are required to provide your Tenants with your address and if this address is not in England and Wales, then an alternative address within England and Wales for the Tenants to serve notice on you in accordance with the Tenancy Agreement. This information will be stated in the Tenancy Agreement but you must inform both us and your Tenants of any change in your address.

### **Section 8 Notice**

If you want to seek possession of the Premises prior to the fixed term coming to an end due to breach of Tenancy Agreement, then you will need to serve a Section 8 Notice. We recommend that you get independent legal advice on serving these notices and commencing legal proceedings.

# **Let only service**

## **Marketing**

When instructing Pwleleys Lettings will provide an indication of the current market rent achievable. We will then market the Premises at the agreed price and will erect a To Let board. You must notify us in writing if this is not permitted.

We will contact prospective Tenants, including companies and relocation agents, as appropriate, along with advertising your Premises on Rightmove, On the Market, Zoopla and other local publications.

Pwleleys Lettings will accompany all viewings and will arrange a time that is suitable for you or your current Tenants. We will hold a set of keys for your Premises which will be securely tagged.

## **References**

Once an offer has been received we will give all details to you and negotiate all terms of the offer. We will ensure that references are taken up through our online exterior referencing agency. This will include a credit check, contacting the previous Landlord (if appropriate) and employment details. The references will be sent to you for your approval. As we are no longer permitted to charge tenants for this fee, we will include this in our administration fee.

## **Right to rent checks**

The Immigration Act 2014 imposes an obligation on the Landlord to check the passport or other identity documents with the applicant present and to check that any person who requires a visa or work permit holds the valid authorisation and is complying with its terms. We will check this information on your behalf at the start of the Tenancy but if we do not manage the Premises it will be the responsibility of the Landlord to ensure that the work permit or visa are renewed and checks carried out prior to the due date. It will also be the legal responsibility of the Landlord to check any new person forming the Tenant or any additional occupier over the age of eighteen years. Failure to do so could result in a penalty. We have no liability if the Landlord fails to do so.

## **Rent**

We will collect the first months' rent to pay our commission, together with the Deposit which is equivalent to 5 weeks' rent and request the Tenants send proof they have set up a standing order online to pay subsequent months' rent directly to your bank account. We will send an invoice for any remaining fees and these will be payable within 14 days.

## **Deposits**

We hold the Deposit paid by the Tenant as Stakeholder against damage, breach of the Tenancy Agreement or any other outstanding charges owed by the Tenant. We will register the details of the Deposit and the two parties to the Tenancy Agreement with the TDS and serve the Prescribed Information. We will protect the Deposit and serve the Prescribed Information within thirty days and ensure the relevant Prescribed Information and Deposit is renewed upon any renewal term. We do not pay interest on any Deposits we hold.

Should you want to hold your own Deposit then you will need to protect this within one of the Government approved schemes within 30 days of Pwleleys Lettings receiving the Deposit. We cannot pass Deposits over to a Landlord without confirmation of the scheme details. It will remain your responsibility to ensure that the Deposit is protected and the Prescribed Information served on the Tenant and any Relevant Person from time to time throughout the

Tenancy. Under no circumstance do we accept liability for your failure to register the Deposit and serve the Prescribed Information for each Tenancy.

## **Inventories**

At the start of the Tenancy it is strongly advisable that a check in of the Inventory take place and a check-out report of the Inventory be carried out at the end of the Tenancy to reduce the risk of a dispute arising about the Deposit. Our Tenancy Agreement makes it clear that the Landlord will pay for the check in report and the Tenant will pay for the cost of compiling the check-out report. We can organise an Inventory compilation and check-in on your behalf and if the Premises are managed, we will also arrange for the check-out at the end of the Tenancy. The cost of compiling the Inventory and the check in is to be borne by the Landlord; and as the tenants are no longer able to be charged for the check out, this cost will also need to be paid for by you.

## **Gas Safety Certificate**

We can arrange for a Gas Safe engineer to check the gas appliances and installations and provide a Gas Safety Check ("GSC"). If we have not received a copy of a current GSC five days before the Tenancy commences we will organise and the cost will be deducted from the initial payment of Rent. If we do not manage the Premises it is the legal responsibility of the Landlord to arrange all future gas checks. We have no liability if you fail to do so. If there is not a valid GSC any section 21 Notice will be invalid.

## **Professional cleaning services**

We strongly recommend that you have the Premises professionally cleaned prior to a Tenant moving in. This means they are responsible to leave the Premises the same on exit. There is a difference between domestic and professional cleaning and this is a common cause of dispute at the end of the Tenancy. We can organise this for you pre-Tenancy.

## **Keys**

You are expected to provide the Tenant with 1 full set of keys per occupier over 18. Additional keys maybe required, these should be made available, we may have to get these cut and these will be deducted from your account.

If we are managing the Premises, we will need to keep an additional set in our office throughout the Tenancy. We do not hold keys in the office for unmanaged properties, so you would need to collect these from us upon commencement of the Tenancy.

## **Utilities**

It will be your responsibility to notify the electricity, gas, water and telephone companies and the local authority when the Tenant occupies your Premises. If you fail to do so the liability for the utilities may remain in your name.

## **Landlord tips**

**It is very helpful for you to provide a file to the Tenant with useful information such as rubbish collections, utility providers, the area and instruction manuals.**

**Even if letting your Premises furnished, you should remove all valuable and personal belongings.**

**Although not a legal requirement to provide gardening equipment if you expect Tenants to maintain the garden we strongly advise doing so. However heavy pruning remains your responsibility**

### **At the end of the Tenancy**

Pewleys Lettings will contact you towards the end of the initial fixed term to find out if the Tenancy should be renewed and to agree any renewal instructions. We will review the rent and advise you if a rent increase is possible or desirable depending upon current market conditions. You must confirm to us in writing if you wish the Tenancy to be renewed, continue as a periodic Tenancy or notice served. We do not serve notice on the Tenant unless you instruct us to do so in writing. If we are not managing the Premises, service of notice is subject to a charge as shown in our fees section.

We will negotiate between the two parties if requested and prepare the extension document for both parties including drafting any new or special clauses agreed between the parties. The extension documents will be sent to both parties for signature.

We try to ensure both parties sign the documentation by the start date of the new period of the Tenancy. However if the Tenant fails to return the extension documents the Tenancy will continue as a periodic Tenancy until either party gives notice in writing. Our commission will be payable whether the Tenancy continues as a fixed Term or a periodic Tenancy, whether or not we are instructed to act on your behalf. While we will make every effort to obtain the signed extension documents we have no liability if the Tenant fails to return them.

### **Rent Collection Service**

In addition to the Let only service above we offer a rent collection service. We will receive the rental depending on how rent is to be paid in the Tenancy Agreement and send this to you as soon as possible to a UK bank account requested by you, less our agreed fees and expenses.

We will chase rent if not received and will notify you as soon as possible that rent is late and advise appropriate next steps in order to recover the rent and seek possession of the Premises. We cannot issue court proceeding on your behalf and all costs to any third party solicitors are to be covered by you. We would remain in communication with you throughout to make you aware of any changes.

### **Full Management**

In addition to above services, we offer a fully managed service where we would deal with your Tenants directly throughout the Tenancy.

#### **Repairs**

Pewleys Lettings will deal with day-to-day management matters, including minor repairs up to a maximum figure for any one item of £500 including VAT. Except In the case of an emergency or to enable you to comply with statute, wherever practical, an estimate is obtained and submitted to you for approval for works of redecoration, renewal or repair likely to cost more than £500 including VAT. By signing this Agreement you agree that we can instruct contractors on your behalf and deduct the cost of repairs and maintenance from the rent or the management float.

We can use a particular contractor if requested by you provided we have copies of their professional qualification, public liability insurance and the person is readily available. If any damage is caused by the negligence or failure of tradesmen specified by the Landlord we, the Agent, will not be liable for any loss suffered.

If major works are required over the cost of £1000 (for example redecorating/ refurbishment) we charge 10% of the total job cost

which will cover supervision and inspections. You may have to pay for any professional fees from third parties, for example structural engineers, on top of this.

#### **Payment of outgoings**

We can pay current outgoings such as ground rent if applicable, any service charge and/or maintenance charge or similar contribution to shared expenses and account to you regularly provided we hold sufficient funds. Although we will do our best to query any obvious discrepancies, we are entitled to accept and pay, without question, demands and accounts that appear to be in order. In particular, we cannot accept responsibility for the verification of any service or maintenance charge demands or estimates where applicable. We have no liability for any discrepancy in any invoices paid on your behalf to or any dispute with any third parties unless the loss is due to our negligence or breach of contract. It is the responsibility of the Landlord to ensure that invoices and demands are sent direct to us.

#### **Management Float**

We hold a management float of £500 including VAT throughout the Tenancy and this will be topped up as and when necessary from rents received. If a job total is quoted higher than this amount, we will request advance funds from you prior to the job commencing. We cannot organise works that cost more than the money we have on your account, or rely on rent to cover this cost. We cannot accept any liability for any loss or damage suffered by you due to insufficient funds or the Tenant refusing access, unless the loss or damage is due to our negligence or breach.

#### **Management inspections**

We will carry out at least two inspections annually, or more frequently if requested in writing and deemed necessary which will be subject to a charge in our fees section. If the Tenant does not grant access, we will inform you and it would be your responsibility to take legal advice and advise us of the appropriate action. These visits are of a limited nature in order to verify the general good order of the Premises and the proper conduct of the Tenancy by the Tenant. A visit will not constitute a complete check of every part of or every item in the Premises but enable us to note any visible lack of repair or maintenance which should be brought to your attention. A visit will only note repairs of which we are informed, or which are clearly visible. We are not liable for any loss or damage due to hidden or latent defects.

#### **Empty Premises management**

Supervision of the Premises is not part of our management function when it is unoccupied. If you wish us to manage your Premises during a void period, we will gladly do so subject to the charges specified in the fees page which are payable in advance together with your written instructions. We will visit the Premises once a month during office hours being Monday to Friday between 9am and 6pm. We will inform you of any lack of repair or maintenance but will not instruct a contractor unless we hold cleared funds, you confirm in writing we may deduct the cost of the contractor from those funds, and you agree in writing to pay our empty management fee.

#### **Notice to end Premises management**

If you no longer require our management service, you can end the agreement by giving us 3 months written notice. Pewleys Lettings may end the management service without notice if you are in breach of your obligations under the Tenancy Agreement or do not provide us with instructions or funds to fulfil our obligations. Our letting fees will remain payable.

## **Legislation**

You have a legal obligation to ensure the Premises is safe for Tenants in every regard. Some are detailed below but you should also consider trip hazards, security on doors and windows, ventilation and the appropriate use of safety glass.

### **The Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1988; and Consumer Protection Act 1987**

It is a criminal offence to let Premises with upholstered furniture or soft furnishings containing foams that cannot be proven to comply with the above Regulations. The Regulations require that specified items must be match resistant, cigarette resistant and carry a permanent label or be removed from the Premises prior to letting.

### **Electrical Equipment (Safety) Regulations 1994**

You are responsible for providing instruction books for all items of electrical equipment and for ensuring that all electrical appliances within the Premises comply with the above Regulations. You should also ensure that all electrical installations are safe and have them checked regularly. If we need to arrange for a safety check under these Regulations or are told of a fault mid Tenancy we will take whatever steps necessary to make the Premises safe and cost will be deducted from your account. If we are not managing the Premises, there will also be an administration charge for organising this mid Tenancy or at the point of renewal, details on the fees section. If the Premises is a House in Multiple Occupation ("HMO") the Landlord has a legal duty to have all the wiring inspected every five years.

### **Gas Safety (Installation and Use) Regulations 1998**

It is a criminal offence to let Premises with gas appliances, installations and pipe-work that have not been checked by a Gas Safe Registered Engineer. You will need to provide us with a copy of a Landlord's Gas Safety Certificate ("GSC") carried out no more than twelve months previously and will need to be renewed at twelve monthly intervals. If we are managing the Premises we will arrange for a new GSC automatically at your expense. If we cannot gain access to a Premises, we cannot be held responsible for not being able to do so. No Tenancy can commence until we are in receipt of a valid GSC. If we are not managing the Premises it is the legal responsibility of the Landlord to arrange for the gas safety check and for a copy of the Gas Safety Certificate being given to the Tenant annually. We have no liability if the Landlord fails to comply with the Regulations. If a valid GSC is not held by the Tenant a Section 21 Notice will be void.

### **Smoke Alarms and Carbon Monoxide Alarms**

It is the law that all newly built Premises from June 1992 must have mains fitted smoke alarms with battery back-up. From October 1 2015 the Landlord has the legal obligation to fit smoke alarms on each storey of the Premises and a carbon monoxide detector in any room with a solid fuel appliance which includes wood burning stoves before entering into any new Tenancy or for any existing Tenancy. In addition, the Landlord is required to have the detector and alarms tested prior to the start of any new Tenancy commencing from October 1 2015 and to hold records of such tests. We can arrange fitting or testing of the alarms and detector if required prior to the start of the tenancy or during the Tenancy for any properties that we manage at the Landlord's expense. Maintenance of the appliances is the Landlord's responsibility during the Tenancy regardless of the start date of the Tenancy. The Tenant will be responsible for testing the alarms and detector during the Tenancy, replacing all defective batteries and informing the Landlord or the Agent of any defect in the alarm or detector.

### **Energy Performance Certificate ("EPC")**

All properties going on the market for letting must have an EPC with a minimum of E rating otherwise the Premises cannot be marketed. If you do not have a valid EPC then we can arrange this for you and deduct from your account. If the Tenant does not hold a valid EPC or declare an exemption formally, the Section 21 Notice will be void. The Agent has no liability if the Landlord fails to provide an EPC.

### **Legionnaires' Disease**

In order to comply with the Health and Safety Executive's Code of Practice the Landlord must carry out a risk assessment at the Premises prior to letting especially if there are open water tanks, cooling systems, a hot tub, pond, or a swimming pool. By signing these Terms of Business the Landlord acknowledges his responsibility for the safety of the Tenant at the Premises, confirms he has considered all risks regarding Legionnaires' Disease and has carried out a risk assessment. If we think a further assessment is required it will be carried out at the Landlord's expense.

### **Internal Blinds and European Safety Standards**

New European Regulations now apply to the installations for raising and lowering blinds; and the movement of curtains across windows. This means that new blinds and curtains being installed by a contractor will have fixed cords or ball bearing pulls to prevent any danger of asphyxiation to a young child; and a warning notice with the purchasing material. Existing blinds and windows may need to be fitted with safety features to ensure compliance to ensure safety. We have no liability if such precautions are not carried out.

### **Housing Act 2004**

Due to this Act certain types of Premises may require a licence before they can be let. It is your responsibility to determine whether you need a licence and to obtain that licence. You agree to keep us fully indemnified against all losses, costs or damages we might incur, whether criminal or civil, due to your failure to obtain an adequate licence for the letting of your Premises. If we become aware that the Premises are let in a manner which requires a licence and you refuse to obtain one we reserve the right to terminate our instruction immediately and to inform any occupiers of the Premises and the Local Housing Authority of the situation.

Also as part of the Housing Act 2004 private dwellings must comply with the Housing Health and Safety Rating System ("HHSRS") which is a means of measuring hazards and risk of injury at the Premises. The responsibility for ensuring the Premises comply is entirely that of the Landlord. If we accept an instruction to let the Premises and subsequently an order is served to comply with the HHSRS or if we incur any costs for compliance due to an order being served upon us you agree to reimburse us within fourteen days of written demand or by way of deduction from monies paid to us by the occupier or from any other Premises owned by you where we collect or hold sums on your behalf.



## Fees

When we find a successful Tenant for your property, we charge a percentage of the gross rent for the term of the Tenancy, This Letting fee is either payable at the start of the Tenancy, or monthly depending on what is agreed. Renewals are charged at the same percentage of the Letting fee and are payable at the beginning of the extension fee or monthly, depending on what is agreed, whether or not we are the effective cause of said extension or renewal.

By signing this Agreement the Landlord gives us the authority to deduct our Commission, fees, expenses and any other costs from any monies belonging to the Landlord or any deductions from the Deposit agreed by the Tenant for any property owned by the Landlord where we are or were acting on the Landlord's behalf.

### **VAT**

Commission is chargeable including VAT at the prevailing rate (currently 20%).

	INC VAT	EXC VAT
<b>Lettings Only service</b>	<b>12%</b>	<b>10%</b>
<b>Lettings and rental collection</b>	<b>14.4%</b>	<b>12%</b>
<b>Lettings and property management</b>	<b>18%</b>	<b>15%</b>
Property management only service	6%	5%
Short term letting service	30%	25%
Minimum letting fee	£720	£600
Empty property management – per quarter	£420	£350
Overseeing works for insurance claim	£500	£416.67
Additional property visits	£95	£79.17
Works in between tenancies (of job total)	12%	10%

### **Other fees**

<b>Administration fee*</b>	<b>£450</b>	<b>£375</b>
<b>Protection of Security deposit with the TDS</b>	<b>£50</b>	<b>£41.66</b>
Extension agreement	£200	£166.67
Serving a Section 21 Notice on unmanaged properties	£200	£166.67
Arrangement fee for instructing contractors mid Tenancy for unmanaged properties	£50	£41.66
Amendments to non-Pewleys agreement	£50	£41.66
Non UK resident admin fee for tax retention (per month)	£25	£41.66
Court appearance fee	£500	£416.67

Quotes available upon request for inventories, cleaning, key cutting, redecorating or any other minor building works.

\*The Tenant fees act came in on the 1<sup>st</sup> June 2019 meaning Tenants can no longer be charged most agency fees. This includes Tenants admin fees, Reference fees or Tenants renewal admin fees. Rather than increasing our % as most agents are doing, we have slightly increased our administration fee and will include the referencing within this fee. if you are using our Rent collection or Fully managed services, we offer the admin fee at a slightly reduced cost and spread this out monthly at £35 per month.

## General information

### **Mail Redirect**

We are happy to forward mail to any UK postal address, subject to the Tenants giving this to us. However, as Tenants do not always do so, we strongly advise that you set up a mail redirect with Royal Mail. We cannot forward post overseas.

### **Court appearances**

If you would like us to attend court on your behalf, we are able to do so at a cost of £500 including VAT. We cannot represent you in court but can act as a witness.

### **Taxation**

You will be liable for tax on income arising from letting the Premises and you must inform Her Majesty's Revenue and Customs ("HMRC") that you are letting the Premises. The HMRC has special rules regarding the collection of tax on rental income if you are a Landlord who is resident overseas for a period of more than six months in any tax year, or you subsequently move abroad. If you fall into this category it is your responsibility to obtain a tax approval number from HMRC. The relevant form and guidance notes can be downloaded from [www.hmrc.gov.uk](http://www.hmrc.gov.uk). Until that approval number is given to us by the HMRC we are legally obliged to deduct tax from your rental income at the prevailing rate, which is currently 20%. For any period during which we deduct tax from your lettings income due to you not providing us with an Approval Number or you are not being accepted into the Non Resident Landlord Scheme we shall make an administration charge as shown on our fees page. This money is forwarded to HMRC on a quarterly basis. As agents we are not qualified to check the accuracy of your accounts at the end of each tax year or give advice. You can find out more at [www.hmrc.gov.uk](http://www.hmrc.gov.uk). If the Tenant pays you direct, you are non-resident in this country and he has not received approval from HMRC to pay the Rent gross he must deduct tax and forward that to HMRC on your behalf. No person or organisation is exempt from this scheme.

### **Refund of commission**

We will not make any refund of our commission if the Tenancy terminates before the originally agreed date if for any reason, the Landlord permits the Tenant to terminate the Tenancy (apart from by use of a break clause); releases the Tenant from the their obligations specified in the Tenancy Agreement; the Tenant terminates the Tenancy early due to the actions or lack of action of the Landlord; due to an agreed surrender, repudiation, rescission, frustration or forfeiture of the lease, through any Court proceedings, or if your interest in the Premises is assigned to another party; for any period prior to the earliest date upon which the Tenant could have exercised a break clause.

If you give notice to your Tenants, we will not refund your fees unless we are successful in reletting the Premises and will then reassess the fees onto the new Tenancy.

We will not refund fees if the Tenant stops paying the rent, whatever the reason.

No additional charges are added for marketing of properties.

## **LETTINGS CHECKLIST – Landlord Obligations**

- 1. Complete and sign the Agency Agreement and ‘Property Marketing Questionnaire’**
- 2. Organise the Energy Performance Certificate (or we can arrange this for you)**
- 3. Arrange a date with us to take some photos and collect 1 set of keys (please note we will need more sets later)**
- 4. Provide us with your ID and proof of residency.**
- 5. Organise for a Landlords Gas Safety check to be carried out (or we can organise this for you)**
- 6. Ensure you have the permission for your mortgage provider or head lease (let us know if there are any special conditions they request for the Tenancy Agreement)**
- 7. Provide us with a copy of your home insurance (Buildings and we also advise a minimal contents insurance)**
- 8. If you decide to use our Property Management service- complete the ‘Property Information Form’**

If we receive a Deposit for an AST on your behalf, we will serve the prescribed information and comply with the initial requirements of the Tenancy Deposit Scheme, unless you give us prior written instructions to the contrary before we receive the Deposit.

If you do not want us to protect the Deposit on your behalf, it will be your responsibility to protect it as required by law. A valid notice seeking possession under Section 21 of the Housing Act 1988 cannot be served on a Tenant whose Deposit is not protected. A Tenant or any Relevant Person may apply through the courts for compensation of at least the amount of the Deposit, and between one and three times the Deposit, if the Landlord (or someone acting on the Landlord’s behalf):

- a. fails to give prescribed information within the Statutory Time Limit; or
- b. fails to comply with the initial requirements of an authorised scheme within the Statutory Time Limit; or
- c. notifies the Tenant or Relevant Person that the Deposit has been protected in a scheme, but the Tenant or Relevant Person cannot obtain the scheme’s confirmation that the Deposit is protected.

If you do not give us written instructions that you want to make your own arrangements for deposit protection, we will hold the Deposit relating to your properties under the terms of the Tenancy Deposit Scheme. We must comply with the rules of the Scheme, and this means that we will not be able to act on your instructions with regard to the Deposit if those instructions conflict with the Scheme rules.

The Scheme rules are available to view and download from [www.tds.gb.com](http://www.tds.gb.com). A very important point for you to bear in mind is that we must hold the Deposit as “stakeholder”. This means that we can only pay money from the Deposit if:

- a. both the Landlord and the Tenant (and any Relevant Person) agree; or
- b. the court orders us to do so; or
- c. the Tenancy Deposit Scheme directs us to do so.

## **Deposit Handling**

### **Assured Shorthold Tenancy Deposits**

If a Tenant pays a Deposit in connection with an Assured shorthold Tenancy (“AST”) the Deposit must, from the moment it is received, be dealt with in accordance with a Government-authorised tenancy deposit protection scheme.

The Landlord must give the Tenant and any Relevant Person “prescribed information” about the Deposit and comply with the initial requirements of an authorised scheme within the Statutory Time Limit.

We are a member of the Tenancy Deposit Scheme, which is a government-authorised tenancy deposit protection scheme, administered by:

The Dispute Service Limited  
PO Box 1255  
Hemel Hempstead  
Herts HP1 9GN

Phone: 0845 226 7837  
Web: [www.tds.gb.com](http://www.tds.gb.com)  
Email: [deposits@tds.gb.com](mailto:deposits@tds.gb.com)  
Fax: 01442 253193

### **During the Tenancy**

We will hold the Deposit as Stakeholder in our client account (separate from the money we use to run our business).

Interest earned on the Deposit will belong to the person entitled to it under the Tenancy Agreement.

If the Tenancy Deposit Scheme directs us to send the Deposit to them, we must do that within 10 days of receiving their direction. The Scheme will not normally direct us to send them the Deposit unless there is a dispute about how it is to be paid at the end of the Tenancy.

### **Where there is NO dispute about the Deposit at the end of the Tenancy**

At the end of an AST we will liaise with you to ascertain what (if any) deductions you propose to make from the Deposit, or have already agreed with the Tenant. [We will help you to try and resolve any areas of dispute within a reasonable time obtaining quotations, estimates or arranging contractors on your behalf in accordance your instructions if we manage the Premises].

Once you and the Tenant have agreed how the Deposit should be allocated, we will ask you both to confirm your agreement in writing. We will then pay the Deposit according as you and the Tenant have agreed, within 10 days of receiving written confirmation of agreement from both parties. We cannot pay until we have the Tenant’s consent. If you have joint persons forming the Tenant, all of them must agree.



### **Where there IS a dispute about the Deposit at the end of the Tenancy**

You must use reasonable efforts to reach a sensible resolution to the dispute as soon as practicable after the Tenancy ends.

A tenant can ask us to repay the Deposit at any time after the Tenancy has ended. You must agree to us releasing promptly any part of the Deposit that does not need to be held back to cover breaches of the Tenancy Agreement. We will take your instructions at the time regarding the amount to be withheld.

If the Tenant asks us to repay some or all of the Deposit, and we do not do so within 10 days from and including the date of the Tenant's request, the Tenant can notify the Tenancy Deposit Scheme of a dispute. The Scheme will then direct us to pay the disputed amount to the Scheme. We have 10 days, from and including the date we receive the Scheme's direction, to send in the money.

If we protect a Deposit with the Scheme on your behalf, you hereby authorise us to pay to the Scheme as much of the Deposit as the Scheme requires us to send. We will contact you to keep you informed, but we will not need to seek your further authority to send the money to the Scheme.

The Tenancy Deposit Scheme will review the Tenant's claim and decide whether it is suitable for independent alternative dispute resolution. Usually, this will take the form of adjudication, but it may involve assisted negotiation or mediation. "Alternative" in this context means an alternative to court proceedings. It is intended to be a faster and more cost-effective way of resolving disputes. The Scheme does not make a charge to Landlords or Tenants for using the alternative dispute resolution service if it relates to an AST.

If the Tenant's claim is referred for alternative dispute resolution, we and you will be invited to accept or contest the claim. You must notify the Scheme whether you agree to submit the dispute for alternative dispute resolution within 10 working days from (but not including) the date of the Scheme's communication to you. If you do not respond to the Scheme by the deadline, you will be treated as having given your consent to alternative dispute resolution.

Agents and Landlords are permitted to refer a dispute about the Deposit to the Tenancy Deposit Scheme. If you or we refer a Deposit dispute to the Scheme, the Scheme will contact the Tenant to confirm whether the Tenant will agree to alternative dispute resolution. If there are joint persons forming the Tenant, all the joint persons must agree. A tenant who does not reply to the Scheme is NOT deemed to consent to alternative dispute resolution. If the Tenant (or all joint persons forming the Tenant) do not agree to alternative dispute resolution, and do not agree to the Deposit deduction(s) you claim, you will need to begin court proceedings if you wish to pursue your claim.

If the parties agree to adjudication, the adjudicator's decision is final and there is no right of appeal. Further information about adjudication is available free to download from [www.tds.gb.com](http://www.tds.gb.com)

The Tenancy Deposit Scheme will pay the disputed amount to the person(s) entitled within 10 days beginning on the date the Scheme receives notice of (a) the adjudicator's decision; or (b) an order from the court that has become final; or (c) an agreement being reached between you and the Tenant. If you order any work to be done at the Premises before a dispute has been resolved, you do so at your own risk. There is no guarantee, if you incur expense, that a dispute will ultimately be resolved in your favour.

### **Where the Tenancy is not an AST**

The Deposit does not have to be protected by law. However, the Tenancy Deposit Scheme will make its independent alternative dispute

resolution service available to you as our client, because we are a Member of the Scheme.

If a dispute arises you, we or the Tenant will contact the Scheme. Then:

- a. the Scheme will propose what they consider to be the most effective way of resolving the dispute (assisted negotiation, mediation, adjudication or arbitration);
- b. you, we and the Tenant must consent in writing to the proposed method if we all want to proceed (if we don't, the options are to negotiate or litigate);
- c. the parties will have to pay a fee of £600 including VAT (or such other minimum fee as the Scheme may set from time to time) or 10% of the Deposit plus VAT, whichever is the larger amount.
- d. The Scheme will not start the dispute resolution process until all parties have agreed in writing to use the Scheme and paid the applicable fee and the disputed Deposit to the Scheme.

### **Joint Landlords**

If there is more than one person forming the Landlord, any of you will be able to participate in alternative dispute resolution. TDS does not accept liability to any one or more joint persons forming the Landlord by acting on the instructions of any other joint person forming the Landlord. TDS does not accept directions from joint persons forming the Landlord to deal only with instructions agreed unanimously by joint persons. If you want all decisions to be made jointly, this is something that should be agreed between the persons forming the Landlord prior to requesting adjudication. It will then be a matter for the persons forming the Landlord to resolve among themselves if one or more of them have not complied with that agreement.



## **Additional Notes**

**If we successfully introduce a Tenant, we will assume you have accepted the terms and conditions in this booklet.**

The minimum letting fee is £720 including VAT

### **Consent for Letting**

By signing our Agency agreement you warrant to us that you are the owner of the Premises, or otherwise lawfully entitled to enter into a Tenancy Agreement. You may be asked to provide us with sufficient documentary evidence to satisfy us and the Occupier that you are entitled to do so. You will be liable to provide us with a full indemnity for any costs, losses, or other expenses we may bear due to you not having the right to enter into a Tenancy Agreement.

### **Mortgage and Sub-letting**

If the Premises are subject to a mortgage, you will need your mortgagee's written consent to the proposed letting. By signing our Agency contract you confirm that you have your mortgagee's consent to grant a Tenancy. The mortgagee may charge you a fee for giving their permission. If your mortgagee has any special conditions relating to the tenancy or type of Tenant you must provide them to us prior to the start of the Tenancy to be included within the Tenancy Agreement. Conditions cannot be imposed upon a Tenant at a later date.

If you are a leaseholder, you will normally require the consent from your Superior Landlord, freeholder or their managing agent before you can sub-let the Premises to an applicant. We will need a copy of any sections of the head lease that impose restrictions on the behaviour of the occupier so that we can attach a copy of this to the Tenancy Agreement. If the occupier is not given a copy of the relevant sections of the head lease you cannot impose any obligations contained in it upon them. By signing our Agency contract you confirm you have the leaseholders consent to grant a Tenancy.

You will be liable to provide us with a full indemnity for any costs, losses, or other expenses we may bear due to you not having the proper consent from your Superior Landlord or mortgage company to enter into a Tenancy Agreement.

### **Insurance**

It is essential that the Premises and the contents included in the Inventory and Schedule of Condition are adequately insured and that your insurers are aware that the Premises are let. Failure to do so may invalidate your insurance. You must inform your insurers whenever the Premises remain vacant for a period greater than specified in your insurance policy. You should also check that your insurance policies include third party liability to protect you if the Tenant or a visitor to the Premises is injured. You must give us copies of any section of your insurance policies that impose restrictions on the behaviour of any occupier of the Premises to attach to the Occupancy Agreement at its commencement, including any conditions for vacant Premises. If these are not given to the occupier then they have no obligation to comply, which could be breach of your insurance contract rendering any claim void. We cannot be responsible for the renewal of your insurance cover. We strongly recommend you arrange for an insurance policy that includes amongst others cover for loss of rent, contents, and legal expenses. The Tenants are responsible for insuring their own belongings.

### **Acts of Third Parties**

We will not be responsible for any loss or damage that you suffer through the act, default or negligence of any third party which may arise other than through our negligence, omission or failure.

The Contract (Rights of Third Parties) Act 1999 does not apply to this Agreement.

The Landlord agrees not to take action by bringing any claim in respect of loss or damage suffered by the Landlord arising out of or in connection with this Agreement against any individual partner consultant, employee or agent even where any of those persons have been negligent. This restriction will not operate to exclude any liability that cannot be excluded at law or to exclude the liability of the Agent for the acts or omissions of any of their partners, consultants, employees or agents.

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction in respect of any dispute under it.

### **Termination**

Either party has the right to terminate this Agreement in writing:

- a. upon the Occupier's vacation of the Premises;
- b. if we break any important term or condition of this Agreement during the Term of an Occupancy Agreement where thirty days written notice of the breach has been given by the other party, the breach has not been remedied and monetary compensation is wholly inadequate;
- c. if you are in major breach of any of the terms contained in this Agreement or if you do or do not do something which makes it impossible, impracticable or illegal for us to continue to perform our obligations under this Agreement.
- d. either party carries out or suggests that the other should carry out any form of unlawful discrimination.

If we terminate this Agreement for any reason you will remain liable for our Commission at the Let only Percentage as described in Schedule 1 and for any Fees or Costs we might incur on your behalf in transferring our obligations to you or to someone you might nominate.

### **Assignment**

We reserve the right to assign our rights and or obligations under this Agreement upon giving you 1 months' written notice.

### **Data Protection**

In order to comply with data protection regulations, to prevent any unauthorised access to or use of personal data we have the responsibility to keep your information and that of any Tenant or occupier confidential and will only use it if fees are not paid and we will to refer the matter to a debt collector or solicitor; or if we are specifically required do so by law; or to pass it to a government agency by law; when instructing solicitors; to change account details for utility suppliers and the council tax into or out of your name; or when a contractor's invoice has not been settled by you.

### **Interest on Clients' Monies and Commission**

Any interest accrued on monies that we hold on your behalf will be retained by ourselves to cover bank and administration charges etc. Any commission earned by us while acting on your behalf will be retained to cover costs. We do not pay interest to Landlord or Tenants on any monies we hold.

### **Variation**

The Terms of Business may only be varied if agreed between the Landlord and the Agent and confirmed in writing, with the exception of any new laws, regulations or new advice. You will be told about these changes by email or post as they occur.

### **Consumer Protection from Unfair Trading Regulations 2008**

The Agent and the Landlord must comply with the Consumer Protection from Unfair Trading Regulations 2008 (“the Regulations”). Statements must be factually correct in all communications and must not give a potential Tenant the wrong impression about the Premises to be let. If any information is incorrect the Landlord must inform the Agent in writing. If during the marketing of the Premises the approved particulars become incorrect the Landlord must notify the Agent immediately in writing. Prior to marketing the Landlord should disclose to the Agent any material information that might affect a prospective Tenant’s decision to rent, including details of any restrictive covenants, known proposed developments, planning applications or permissions in the immediate vicinity of the Premises that might affect the enjoyment of the Premises, or any maintenance or major repairs to be carried out to the Premises or to the building of which the Premises form part. Failure to do so could lead to a claim being made against the Landlord. The Agent in turn is required under the above Regulations to disclose this information to interested parties.

### **Joint and severally liable**

If the Landlord forms more than one person all persons forming the Landlord are liable for our Fees, Commission and Disbursements until all outstanding sums are paid in full; and each person forming the Landlord is liable for payment of all Fees, Commission and Disbursements until all outstanding sums are paid in full. Any instructions or advice we received from any named Landlord or their representative are deemed to be received from all named Landlords.

### **Withdrawal from an Agreed Offer**

If a formal offer has been made by a prospective Tenant and you then inform us that you wish to withdraw from the proposed Tenancy, it may not be possible to withdraw the offer if it has been accepted. If you refuse to proceed the Tenant could take legal action against you for any losses suffered. If a prospective Tenant agrees to accommodate your request you should expect to meet reasonable costs and expenses incurred by him or her.

If you have instructed us to proceed with a proposed Tenancy and subsequently withdraw your instructions you agree by signing this Agreement to meet some of our costs and the expenses incurred up to the sum of £720 including VAT. This clause does not affect any statutory rights to cancel that may arise under the Cancellation Regulations. If you have a right to cancel under the Cancellation Regulations, this clause will apply if you withdraw your instructions at any time after the 14 day cancellation period, or at any time after we have received a written request for us to market the Premises.

### **Rent Arrears or Breach of Covenant**

It is your responsibility to take all necessary steps to ensure that actions are taken to protect your interests, including instructing solicitors and commencing legal proceedings to preserve your rights and recover arrears of Rent and to defend all actions or other legal proceedings and arbitrations that may be brought against you in connection with the Premises. All costs and disbursements incurred including legal costs and disbursements will be payable by you.

### **Sub-Contractors**

Any other party, including but not limited to, external inventory clerks, gas, electrical or water engineers, builders or surveyors, Domestic Energy Inspectors, or solicitors who we instruct will be instructed on your behalf. This means that you are the contracting party and that you have the primary liability for the payment of that sub-contractor’s invoices, fees, charges or other expenses and that they, and not we, owe you a liability for the quality of their work. Any Commissions, interest or other income earned by the agent while carrying out its duties, including without limitation any interest on deposits held or referrals to solicitors, EPC providers, contractors or inventory clerks will be retained by the agent.

### **Indemnity**

If you ask us to do anything which we consider to involve a higher risk to us or to you or which is outside our normal procedure we may ask you for a written agreement to indemnify us against any loss, damage or other costs which we might incur as a result of following your instructions. If you refuse to provide this to us then we reserve the right to refuse your instructions and to terminate this Agreement.

### **Change of ownership**

If the Premises is sold or passed on with a Tenant that we have introduced and the new owner does not agree to our terms and conditions, we will ask you, the original Landlord, to pay our fees for the entire term of the Tenancy. Tenants must be advised if a Landlord’s details change.

### **Warranty – Incorrect Information**

The Landlord warrants that all the information he has provided to the Agent is correct to the best of his knowledge and belief. If the Landlord provides incorrect information to the Agent which causes the Agent to suffer loss or causes legal proceedings to be taken the Landlord agrees to reimburse and compensate the Agent for all losses suffered.



### **Complaints and the Ombudsman**

We are committed to providing a professional service to all our clients and customers. When something goes wrong, we need you to tell us about it. This will help us to improve our standards.

If you have a complaint, please put it in writing, including as much detail as possible. We will then respond in line with the timeframes set out below (if you feel we have not sought to address your complaints within eight weeks, you may be able to refer your complaint to the Premises Ombudsman to consider without our final viewpoint on the matter).

What will happen next?

- We will send you a letter acknowledging receipt of your complaint within three working days of receiving it, enclosing a copy of this procedure.
- We will then investigate your complaint. This will normally be dealt with by the office manager who will review your file and speak to the member of staff who dealt with you. A formal written outcome of our investigation will be sent to you within 15 working days of sending the acknowledgement letter.
- If, at this stage, you are still not satisfied, you should contact us again and we will arrange for a separate review to take place by a senior member of staff.
- We will write to you within 15 working days of receiving your request for a review, confirming our final viewpoint on the matter.

If you remain dissatisfied, you can then contact The Premises Ombudsman to request an independent review:

**The Premises Ombudsman Ltd**  
**Milford House**  
**43-55 Milford Street**  
**Salisbury**  
**Wiltshire**  
**SP1 2BP**  
**01722 333 306**  
[www.tpos.co.uk](http://www.tpos.co.uk)

Please note the following:

You will need to submit your complaint to The Premises Ombudsman within 12 months of receiving our final viewpoint letter, including any evidence to support your case.

The Premises Ombudsman requires that all complaints are addressed through this in-house complaints procedure, before being submitted for an independent review.

#### Service information

Pewleys Lettings trade as a Limited company registered at Companies House (Reg No 11039754)

Our VAT number is 281 6842 80

We are members of the dispute and compensation scheme operated by The Premises Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk)) and our registration number is: D5669

Client money protection is with ARLA PropertyMark and registration number is C0129909

We are members of the Association of Residential Lettings Agent and subscribe to the code of conduct of that organisation.

We are members of the Tenancy Deposit Scheme.

#### Jurisdiction and Service

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction in respect of any dispute under it.

The provisions for the service of notices are that if either party deliver by hand any Notices or documents which are necessary under the Agreement, or any Act of Parliament to the other party by 5.00pm or the last known address of the other party; the documents or Notices will be deemed delivered on the next working day which excludes Saturdays, Sundays and Bank Holidays or if any documents or Notices are sent by registered, or recorded

delivery post the documents will be deemed delivered upon proof of delivery being obtained or if the documents or Notices are sent by ordinary first class post addressed to the other party or the last known address of the other party the documents or Notices will be deemed delivered two working days later, which excludes Saturdays, Sundays and Bank Holidays or by e mail at the e mail address supplied from time to time by either party. The address for service for the Landlord will be the contact address specified in the Terms of Business and the address for service for us will be **249 Epsom road, Merrow, Guildford, GU1 2RE**

#### Definitions

In this Agreement the following Definitions and Interpretations apply:

- a. Use of the singular includes the plural and use of the masculine includes the feminine and vice versa.
- b. "Agent" "Pewleys" or "we" means Pewleys Lettings
- c. "Jointly and severally liable" means that each person will be responsible for complying with the obligations of and paying all charges and costs under this Agreement, both individually and together.
- d. "Landlord" "you" or "your" means the Landlord as described in the Agency Agreement and any other person owning a reversionary interest in the Premises whether freehold or leasehold, entitling them to possession of it upon the termination or expiry of the Tenancy and anyone who later owns the Premises.
- e. "Tenant" means anyone entitled to possession of the Premises under a Tenancy Agreement.
- f. "Premises" means any part or parts of the building boundaries fences garden and outbuildings belonging to the Landlord at the Premises address set out in the Agency Agreement. When the Premises is part of a larger building the Premises includes the use of common access ways and facilities.
- g. "Inventory" or "Inventory and Schedule of Condition" means the document drawn up prior to the commencement of the Tenancy by the inventory clerk which includes the fixtures and fittings in the Premises.
- h. "Term" or "Tenancy" means the fixed Term of the Tenancy Agreement and any extension or continuation of the Tenancy whether fixed Term or periodic arising after the expiry of the original Term.
- i. "Superior Landlord" means the person company or organisation to whom ownership of the Premises reverts at the end of the lease.
- j. "Deposit" means the money held by the Agent in a stakeholder capacity during the Tenancy in case the Tenant fails to comply with the terms of the Tenancy Agreement.
- k. "Stakeholder" means that deductions can only be made by the Agent from the Deposit at the end of the Tenancy with the written consent of both parties.
- l. "Tenancy Agreement" means the contract drawn up between the Landlord and the Tenant specifying the obligations of the two parties.
- m. "TDS" means The Dispute Service whose details are shown in the Tenancy Agreement.
- n. "ICE" means the Independent Case Examiner of The Dispute Service Limited.
- o. "Brochure" and "Agreement" means this Terms of Business and all attachments signed between the [insert company name] and the Landlord.