

THE DISPUTE SERVICE

TENANCY DEPOSIT SCHEME FOR REGULATED AGENTS

MANAGEMENT AND ADMINISTRATION

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INTRODUCTION: What is the Tenancy Deposit Scheme for Regulated agents?

- In the private sector many tenants give their landlords a deposit against possible non-payment of rent or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause much hardship and inconvenience to both the landlord and the tenant.
- The Tenancy Deposit Scheme for Regulated Agents (TDSRA) has been introduced to ensure that tenancy deposits are securely held and that disputes about their return are resolved quickly, cheaply and fairly. It is based on the pilot Tenancy Deposit Scheme run by Independent Housing Ombudsman Limited on behalf of the Office of the Deputy Prime Minister from 2000 – 2003.
- Deposits will be protected during the tenancy so they are available to be returned to the tenants if they have met the terms of the tenancy agreement. Where there is no dispute at the end of the tenancy, the deposit will be returned promptly. Where there is a dispute about the allocation of the deposit it will be dealt with fairly and quickly by the Independent Case Examiner (ICE).
- TDSRA will be managed by a company limited-by-guarantee, The Dispute Service. If there is a dispute the agent will transfer the deposit to TDS Ltd, who will pay it out to the parties on the basis of the ICE's adjudication. The Company will also manage a special fund to make these payments should the agent fail to transfer the deposit on time.
- This document sets out how TDSR is managed and administered.

DEFINITIONS

"**TDSRA**" means the Tenancy Deposit Scheme for Regulated Agents run by the Company for the resolution of disputes between landlords/agents and tenants as to the return of deposits at the end of tenancies;

"**Approved Body**" means an organisation, trade or professional body which meets the requirements set from time to time by the Board of The Dispute Service and has signed a contractual agreement with The Dispute Service so that its members can be considered eligible to join TDSRA;

"**The Dispute Service, The Dispute Service or the Company**" means TDS Ltd a company limited by guarantee registered in England and Wales with registered number;

"**the Board**" means the board of directors of the Company;

"**Bonding**" or "**bonded**" means that the Approved Body has arranged and maintains Client Money Protection Insurance on behalf of all it's members which will reimburse the public in the event of fraudulent or dishonest misappropriation of clients' money and that the extent of cover meets the minimum criteria set from time to time by the Board of The Dispute Service.

"**Deposit**" means any sum collected from the tenant at the start of the tenancy as prescribed in the agreement and held by the agent on behalf of the tenant as security against performance of obligations under the tenancy agreement, any damage to the property etc., and/or non-payment of rent during the tenancy period;

"**the ICE**" means the Independent Case Examiner;

"**Member Firm**" means a regulated and bonded agent, who is a member of an Approved Body, and who has joined TDSRA

"**Office(s)**" means a branch or branches operated by a Member Firm and that are registered with the Approved Body as providing Lettings and/or Management services.

MANAGEMENT AND ACCOUNTABILITY OF TDS LTD

1. General

- 1.1. The Company is limited by guarantee and does not trade for profit. Its current Memorandum and Articles of Association are available on request free of charge.
- 1.2. The principal purposes of the Company are to:
 - 1.2.1. administer TDSRA and other Schemes approved by the Board;
 - 1.2.2. to determine the annual budget of the Company and ensure that the ICE is appropriately resourced to carry out his work;
 - 1.2.3. set the level of TDSRA subscriptions, and collect them from members;
 - 1.2.4. set the level of TDSRA contributions, and collect them from Approved Bodies;
 - 1.2.5. handle other financial aspects of TDSRA and any other Schemes approved by the Board;
 - 1.2.6. take appropriate action concerning members who abuse or ignore the rules of TDSRA and any other Schemes operated by the Company on the recommendation of the ICE.
- 1.3. The Board shall use its best endeavours to protect and maintain the independence of the ICE and shall not play any part in the investigation and determination of disputes submitted to the ICE.
- 1.4. The ICE must not be required to report to the Board on any individual dispute made to him or determined by him. It will have no role in the resolution of disputes or in the day-to-day management of The Dispute Service. The only exception to this is that a member of the Board (as defined in the Articles of Association of the Company) may under paragraph 5.5 below independently review how an original dispute has been handled. This does not, however, allow for a dispute against the ICE's determination.

2. Reporting

- 2.1. The ICE will prepare an annual report on the conduct of the administration of TDSRA and other Schemes managed by the Company, including such summaries of his determinations and any conclusions which he wishes to bring to the attention of a wider audience.
- 2.2. The ICE may from time to time publish other reports arising from his work or research.

3. Access to information and confidentiality

- 3.1. The ICE will publish his procedures for giving public access to information held by him; how he handles information he obtains and its confidentiality; and his practice in publishing determinations or reports.
- 3.2. Unless they have already so consented, the ICE must ask the parties to a dispute whether or not they consent to:
 - 3.2.1. their personal details being given to any research organisation commissioned by the ICE to carry out surveys into the performance of his service;

3.2.2. the ICE making information provided by the parties to support, or in response to, a dispute available at his discretion to the following people, who will be required as a condition of receiving it to maintain its confidentiality:

- others involved in resolving it, such as his adjudicators;
- others carrying out genuine research into the service who agree to abide by the ICE's requirements for confidentiality;
- anyone else providing information to the ICE about that party or parties in relation to the dispute.

3.2.3. The ICE may include in a determination or report in whole or in part any statements, communications, reports, papers, or other documentary evidence obtained during his adjudication.

3.2.4. In publishing any determination or report, the ICE will bear in mind the need to exclude, as far as practicable, any matter which:

- relates to the private affairs of an individual where publication would seriously and prejudicially affect the interest of that individual; and
- relates specifically to the affairs of a landlord or agent where publication would seriously and prejudicially affect the interests of the landlord unless the inclusion of that matter is necessary for the purposes of the determination or report.

OPERATION OF TDSRA

4. Financing TDSRA

4.1. TDSRA will be financed by a periodic subscription decided by the Board and payable on demand by each member to the Company.

4.2. The total amount to be recovered by subscription will be the amount that the Board may decide is enough to meet all the expenses of TDSRA. The Board will have regard, among other things, to forecasts of the likely demand on TDSRA and the performance targets set by the Board, past and future liabilities, any grants or surpluses and the provision of such prudent and reasonable reserves as it considers necessary. The Board will publish each year a business plan for TDSRA.

4.3. The Board will make such general administrative arrangements as it considers appropriate for collecting the subscription. The Company may recover sums payable by landlords and agents as if they were debts due to the Company.

4.4. The Company must keep and have audited such accounts as are required by the Companies Acts and appropriate good practice.

4.5. The Approved Bodies will contribute to an assurance fund set up to cover repayment of the deposits when members fail to transfer them to The Dispute Service on time. The Company will invoice each Approved Body at least quarterly for the amounts it owes to the fund, payable on the date specified in the relevant demand.

5. Calculation and payment of the subscription

5.1. The basic principle for calculating the subscription is that each member must pay an amount decided by reference to the number of offices it has for its business in the UK.

- 5.2. The **unit charge** will be calculated by dividing the amount to be recovered under paragraph 5.6.2 by the total number of members' offices.
- 5.3. The **subscription** for each member will be calculated by multiplying the total number of its offices by the unit charge.
- 5.4. The Company reserves the right to appoint auditors to carry out checks on the information provided by members under this section of TDSRA. If the Company asks members to do so, they must without charge provide copies of or allow its representatives to examine any records and documents which the Company considers may be relevant to the calculation of its subscriptions. All landlords and agents agree to provide such other reasonable help as the ICE may request from time to time.
- 5.5. The subscription will be due and payable on the date specified in the relevant demand. The Company may require payment of interest calculated at the rate of 2% above the base rate (or its replacement) of a clearing bank nominated by the Company from the date that such sums become due until payment.
- 5.6. Member Firms joining in the first quarter of the year will pay the full subscription pertaining to them for that year. Those joining later in the year will be charged a proportion of the subscription for that year according to the quarter in which they join:

Quarter in which join	% reduction
second	25
third	50
Fourth	75

- 5.7. Member firms must tell The Dispute Service when they open or close an office by completing form TDSRA 5. Subscriptions for new offices will be calculated as in paragraph 5.6. There will be no refund for offices which are closed, as disputes may have arisen during the year to date, or may arise in the remainder of the year, on tenancies for which they were responsible.
- 5.8. The Dispute Service may carry out an audit at the Member Firm's expense if it reasonably considers that it is necessary to verify the accuracy of its returns for the purpose of calculating its subscription.
6. **Calculation and payment of contributions to the assurance fund** (see also TDSRA C *Terms and conditions for Approved Bodies*)
- 6.1. The basic principle for calculating the assurance fund is that each Approved Body must pay an amount decided by reference to the number of offices those of its members in TDSRA have for its business in the UK.
- 6.2. The **unit charge** will be calculated by dividing the amount of the fund under paragraph 5.6.5 by the total number of offices covered by an Approved Body.
- 6.3. The **contribution** to be paid by each Approved Body will be calculated by multiplying the total number of its offices by the unit charge.
- 6.4. The Company reserves the right to appoint auditors to carry out checks on the information provided by Approved Bodies under this section of TDSRA. If the Company asks Approved Bodies to do so, they must without charge provide copies of or allow its representatives to examine any records and documents which the Company considers may be relevant to the calculation of its subscriptions. Approved Bodies agree to provide such other reasonable help as the Company may request from time to time.

6.5. The contribution will be due and payable on the date specified in the relevant demand. The Company may require payment of interest calculated at the rate of 2% above the base rate (or its replacement) of a clearing bank nominated by the Company from the date that such sums become due until payment.

7. Handling deposits and other funds

7.1. The Dispute Service will receive disputed deposits from agents and put them in a special client account. The interest earned on this account will be retained by The Dispute Service for the development of TDSRA and other initiatives.

7.2. Where a member has not sent the deposit within 10 working days, The Dispute Service will inform, and recover the money from, the member's Approved Body.

7.3. The Dispute Service will manage and account for an assurance fund established with contributions from the Approved Bodies to cover the failure of members to transfer disputed deposits to the Company on time.

7.4. A deposit will be released by The Dispute Service to the parties in accordance with the ICE's instructions within 5 working days of it receiving the award.

7.5. In respect of the deposits, The Dispute Service will put them into a client account separate from subscription income, the assurance fund or any other funds.

8. Timescales

The Company will do its best to meet the timescales contained in the Rules and Procedures. But circumstances may arise which prevent this. The Company will have no liability in respect of any such delay.

9. Withdrawal from TDSRA

9.1. Any member may withdraw from TDSRA if it complies with the following conditions. It must:

9.1.1. give at least 6 months' notice in writing to the ICE and to its Approved Body of its intention to withdraw and not offer TDSRA to new or renewed tenancies;

9.1.2. give notice to its tenants in a manner approved by the ICE, stating its reasons for withdrawal;

9.2. It must give an undertaking, in a form to be decided by the Board:

9.2.1. to comply with the ICE's decisions in respect of all outstanding disputes whether or not they are completed by the date of withdrawal; and

9.2.2. pay any outstanding sums which the Company may certify as due in respect of its membership of TDSRA, whether or not such a certificate is given before membership ceases.

10. Removal from TDSRA

10.1. The Board may end the membership of a member if, in the Board's reasonable opinion, it has not complied with TDSRA or with undertakings given to the Company as a term of admission. The Board must:

- 10.1.1. give notice to the member and its Approved Body that it proposes to end the membership and why;
 - 10.1.2. allow the member to make representations within such a period (of at least 28 days) as the Board may decide;
 - 10.1.3. take all reasonably practicable steps to bring the fact of removal from TDSRA to the attention of the member's tenants;
 - 10.1.4. consider any representations before reaching a decision on whether to end the membership.
- 10.2. If the Board maintains its decision to end the membership, it must give written notice to the member explaining its reasons and:
- 10.2.1. the ICE must not accept disputes concerning tenancies entered into after the date specified in the notice;
 - 10.2.2. the member must do those things specified in paragraph 4 as if it had itself given notice of withdrawal;
- 10.3. If the Board decides to end an agent's membership the ICE may publish the fact and circumstance of its removal from TDSRA, naming it in his annual report or otherwise as he thinks fit. The ICE may also notify the member's trade association, local authority or any other body of their removal from TDSRA.
- 10.4. The terms and conditions of the TDS will continue to apply to all tenancies covered by TDSRA as long as the existing tenancy agreement remains in place, including renewals, despite the member's withdrawal.

11. Complaints about TDSRA

- 11.1. The ICE must make arrangements for receiving and dealing with complaints from landlords/agents or tenants about how a dispute was handled and must publish such arrangements.
- 11.2. The arrangements must provide that:
- as far as practicable the complaint is dealt with independently within the ICE's office, or by an officer of ARLA;
 - if the complainant remains dissatisfied, the Chair, or another Director of the Board (as defined in the Articles of Association of the Company) whom s/he may nominate, may review how the original dispute was handled - but not the ICE's determination.
 - the ICE must publish a summary of the number and nature of any such complaints in his Annual Report.

12. Amendments

- 12.1. These rules may be amended from time to time by resolution of the Board and all such amendments shall be deemed incorporated into these rules with effect from the date on which such changes are notified to Scheme members.
- 10.1. If in the reasonable opinion of the Board, any proposed changes to these rules are significant, it shall consult with Scheme members to the extent and in the manner it deems appropriate. If any changes incorporated into these rules are in the reasonable opinion of

any Scheme member material and unreasonable, such member may notify The Dispute Service of its intention to withdraw from TDSRA in accordance with the provisions of paragraph 6. In that event, the rules in force immediately prior to such amendment shall continue to apply to the relevant tenancies of such member.

Appendix Documents and forms available from The Dispute Service

Documents

TDSRA A	Rules of Membership for Agents
TDSRA B	Management and administration of the Tenancy Deposit Scheme for Regulated Agents
TDSRA C	The obligations of Approved Bodies
TDSRA D	Operational procedures and advice for Member Firms
TDSRA E	Consumer Leaflet " <i>What is the tenancy deposit scheme for regulated agents?</i> "
TDSRA F	Procedure for complaining about the way the ICE handled your case

Forms

Form TDSRA 1	Application for a regulated agent to join TDSRA
Form TDSRA 2	Notification/Referral of a deposit dispute
Form TDSRA 3	Report of adjudication
Form TDSRA 4	Consent to submit to adjudication disputes on tenancies which started before the agent joined TDSRA
Form TDSRA 5	Notification of an office opening/closure

They may also be downloaded from the website

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