

## Primary Authority Partnership

### Warwickshire County Council Trading Standards & National Federation of Property Professionals

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#### Primary Authority Advice

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#### **Advice requested:**

- 1) Are letting agreements entered into between landlords and agents for the letting of a property covered by the 2013 Regulations?
- 2) Are tenancy agreements covered by the 2013 Regulations?
- 3) Is an individual agreeing to act as a guarantor for a tenant covered by the 2013 Regulations?
- 4) Is the marketing of properties for sale covered by the 2013 Regulations?
- 5) What is the format for the notice to cancel?
- 6) When should the notice to cancel be given to the consumer?
- 7) What happens if an agent leaves the service contract (unsigned) at the consumer's home, then the consumer either signs and posts back or drops back into the office?

#### **Legislation considered:**

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("*CICAR*")

#### **Other Material considered:**

BIS - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations Implementing Guidance [December 2013] ("*BIS Guidance*")

TSI – A guide for traders selling goods, services and digital content from their premises [February 2014] ("*TSI on premises Guidance*")

TSI – A guide for traders selling goods, services and digital content off premises [February 2014] ("*TSI off premises Guidance*")

OFT – Foxtons Q&A (online) <http://www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/foxtons/qandas#named5> ("*OFT Guidance*")

#### **Assured Advice Issued:**

In preparing this assured advice, we have answered each question in turn:

- 1) The CICAR regulations **will** apply to contracts for the services a letting agent provides to a consumer landlord, e.g. marketing a property for let, vetting potential tenants, undertaking checks etc.

A consumer landlord was defined in the case Office of Fair Trading v Foxtons Ltd [2009] EWHC 1681

The OFT guidance states:

### **Who is a 'consumer landlord'?**

Firstly, the landlord must be an individual and not a company. Secondly, in letting the property the landlord must be acting 'for purposes outside his trade, business or profession.' Consumer landlords include individuals

- i. who let out their property whilst travelling abroad
- ii. who let out part of their property in order to fund their mortgage
- iii. whose property investment represents part of their pension plan or other long term saving.

2) The CICAR do not apply to tenancy agreements between landlords and tenants due to the exemption in Regulation 6(1)(d).

3) An individual that is named in the tenancy agreement as a guarantor would not be covered by CICAR due to the fact that they are themselves not entering into a service or sales contract, as defined in regulation 5.

4) A contract for the marketing of properties would be covered by CICAR. It is important to bear in mind where & when the contract is entered into.

Some examples:

A - Consumer visits an estate agency to form a contract for the agent to market their property. (On Premises Contract)

The agent must provide all the information to the consumer as set out in schedule 1 of CICAR, as required by regulation 9. There is no right to cancel.

B – Agents visits consumer in their home to form a contract to market the property. (Off premises Contract)

The agent must provide all the information as set out in schedule 2 of CICAR, as required by regulation 10, and must also provide the cancellation form as set out in Part B of schedule 3.

5) The instructions for cancellation can be found in Schedule 3, part A.

The format for the cancellation notice can be found in Part B of Schedule 3, as set out below:

## B. Model cancellation form

To [here the trader's name, geographical address and, where available, fax number and email address are to be inserted by the trader]:

I/We [\*] hereby give notice that I/We [\*] cancel my/our [\*] contract of sale of the following goods [\*/for the supply of the following service [\*],

Ordered on [\*/received on [\*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[\*] Delete as appropriate.

6) The cancellation form must be given to the consumer with the information relating to the contract before the consumer agrees and signs the contract (regulation 10).

7) When the contract is left with the consumer and the agent leaves the premises, we would consider that the contract will be an on-premises contract (thus no right to cancel) if the consumer either posted or hand delivered the contract back to the agent at a later date.

However, if the consumer returned a contract to the agent immediately, following the visit by the agent to the consumer's home, then this would be considered an off-premises contract (cancellation rights would apply).

In our opinion, in the absence of case law, we would say that any action taken by the consumer within a period of one hour starting from the time the agent left the consumer's home, would be considered an immediate action.

### **Date Advice is Effective from:**

17 04 2014 (The legislation takes effect from 13<sup>th</sup> June 2014)

### **Reference and renewal:**

The reference for this advice is: WTS/NFOPP/3

This advice shall be reviewed in 12 months from the issue date.