

OFT Wins Challenge on Letting Agents

On 10th July 2009, the High Court issued a landmark ruling affecting letting agreements which would entitle the letting agent to claim extra commission from landlord customers.

In February 2008 the Office of Fair Trading (OFT) issued proceedings against Foxtons Limited challenging terms in their letting agreement. Foxtons required landlords to pay significant sums in commission to them, where tenants originally found by the agency continued to occupy the property after the end of the management agreement between Foxtons and the landlord.

Letting agreements had also required landlords to pay commission to Foxtons similar to estate agent's commission. This is where a tenant had bought the property, even though Foxtons had played no part in arranging or negotiating the sale.

The Judge accepted that all of the terms brought before the court were unfair including the charging of routine repeat renewal fees. The Judge described such conditions as a "trap" for consumers and warned that such important terms should not be hidden in the small print. The Judge also found that the language Foxtons used in their agreements with landlords was not readily "plain and intelligible".

Although the case was brought against Foxtons Limited only the OFT expects the letting industry generally to comply with the ruling, and will take steps to enforce it when appropriate.

The Unfair Terms and Consumer Contracts Regulations 1999, protects consumers against unfair standard terms in contracts that they make with businesses. A term is likely to be found unfair if it causes a significant imbalance in the parties' rights and obligations under that contract, to the detriment of consumers. If such a term is found to be unfair, the regulations say that the consumer will not be bound by a standard term in a contract.

The OFT believe that there are around 15,000 letting agency businesses in the UK, which are made up of a number of well known national and multi-national companies in addition to many smaller independent businesses.

Some letting agents are members of the Association of Residential Letting Agents (ARLA). Before landlords sign letting or management contracts, it is a good idea to check that the agency is registered with ARLA. ARLA regulates members who must work within a code of practice covering key stages in letting and managing a property. ARLA will also deal with complaints about members from landlords.

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