

Information for Landlords using an Agent to Protect Tenant Deposits



Why is it important that I read this leaflet?

This leaflet is your guide to tenancy deposit protection ("TDP") legislation. It explains the implications for you, the Landlord, when you or your Letting/Managing Agent protects your Tenant's deposit with my|deposits. This leaflet must be read in conjunction with the my|deposits Scheme Rules. A copy of the Scheme Rules can be downloaded from our website – www.mydeposits.co.uk

What is Tenancy Deposit Protection?

Under the Housing Act 2004 ("the Act") all Landlords and Agents who take a deposit from a Tenant who occupies property in England or Wales under an Assured Shorthold Tenancy Agreement ("AST") must protect that deposit with one of the Government's authorised TDP schemes. These schemes have been authorised and set up to ensure that Tenant's deposits are paid back (in whole or in part) when Tenants are so entitled.

There are two types of TDP scheme:

1. **The Custodial Scheme:** The Landlord or Agent passes the deposit to the Scheme to hold until the end of the AST.
2. **Insurance-based Schemes:** Landlords or Agents hold the deposit themselves. A fee is paid to the Scheme to protect the Tenant's deposit. If a deposit dispute is raised by the Tenant the Landlord or Agent must lodge the disputed amount with the Scheme until the dispute is resolved.

my|deposits is one of two authorised Insurance-based Schemes. Both Landlords and Agents can become members of my|deposits.

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Your Agent's responsibilities

Only a member of **my|deposits** can protect Tenant's deposits with the Scheme. Your Agent is a member of **my|deposits**. They have registered you with **my|deposits** as one of their Landlord Clients. We have been advised that your Agent has your authority to protect and un-protect your Tenant's deposits. Your Agent must also hold the deposit on your behalf in a designated and segregated Client Money Account. If **you** hold your Tenant's deposit then you must be the Member of **my|deposits** and protect the deposit yourself.

my|deposits **does not** hold the Tenant's deposit money during the term of the AST.

Your Agent pays **my|deposits** a fee to protect each deposit collected and held by them. The 'protection' lasts for the duration of the AST, subject to the **my|deposits** Scheme Rules. Any extension of the original fixed period of the AST will require your Agent to arrange a new 'protection'.

Your responsibilities explained

The instruction of an Agent to protect a Tenant's deposit **does not** absolve you from your personal responsibilities under the Act. You personally, as Landlord, must ensure that the deposit is protected and that certain '*Prescribed Information*' regarding the protection is provided to the Tenant within 14 days from the date the deposit was received by your Agent. Please refer to the **my|deposits** Scheme website www.mydeposits.co.uk for information about the '*Prescribed Information*' requirements.

The Landlord is always ultimately responsible for the deposit and its return to the Tenant at the end of the AST (if the Tenant is entitled to it), regardless of the fact that the Landlord has instructed an Agent. It is also the ultimate responsibility of the Landlord to ensure that the deposit is protected and that certain information about the protection is communicated to the Tenant.

At the end of the AST, if your Tenant disputes the amount of the returned deposit, then he can raise a dispute with us. We will require the disputed amount from your Agent who holds the deposit.

If for any reason your Agent does not provide this disputed amount when we request it, then you as Landlord are liable to us for the amount. It is important that you have selected a trustworthy Agent who holds deposit(s) in a designated and segregated Client Money account. The choice of Agent is your responsibility.

You therefore need to understand the legislation and you must ensure that your Agent correctly follows the procedures for protection.

What happens if the Landlord or Agent fails to protect a deposit with a Government-authorised tenancy deposit protection scheme?

Under the Act, the Landlord is responsible for their Agent's failure to provide protection for a Tenant's deposit within 14 days of receiving the deposit from the Tenant.

The Tenant can take the Landlord to Court if the Landlord or the Agent has failed to protect the deposit or failed to provide the '*Prescribed Information*' to the Tenant.

If the Court is satisfied that the Landlord or Agent has failed to protect the deposit or to provide the '*Prescribed Information*' to the Tenant within 14 days of receiving the deposit it may:

- (a) Order the Landlord to repay the deposit to the Tenant or pay the deposit into an authorised custodial scheme within 14 days;
- and
- (b) Order the Landlord to pay the Tenant a sum of money equal to three times the deposit within 14 days.

In addition to (a) and (b), the Landlord will be unable to obtain a Possession Order under Section 21 of the Act 1988 until the deposit is protected and the '*Prescribed Information*' has been provided.

Your Agent should not un-protect a deposit with the Scheme without informing you as, it is your name that appears on the AST. The Tenant has a contract with you. The Tenant can hold you accountable for the deposit.

How is the Tenant's deposit protected by your Agent with **my|deposits**?

Your Agent will register the details of the AST (name of Tenants, dates and the amount of deposit etc) with us and pay the appropriate protection fee. A Deposit Protection Certificate ("DPC") will then be produced by us. The DPC will be provided to the Tenant by your Agent. You may also be given a copy of the DPC by your Agent depending on your personal arrangements with your Agent. **my|deposits** will not send you a copy of the DPC. The DPC provides the majority of the '*Prescribed Information*' **but not all of it**. Your Agent will be responsible for providing the missing '*Prescribed Information*' to your Tenant. The Agent must also provide the Tenant with the **my|deposits** "**Information for Tenants**" leaflet which explains TDP to the Tenant and forms part of the '*Prescribed Information*'.

As your Agent has taken out the protection on your behalf he has authority to sign the DPC. The DPC must be signed by either you as Landlord or the Agent. Signing the DPC is to confirm that all the printed DPC details are correctly recorded. The Tenant should also sign the DPC.

my|deposits recommends that the Business Contract you have with your Agent includes robust terms to ensure that all statutory obligations for deposit protection and the 'Prescribed Information', for which you are ultimately liable, have been satisfied. Neither you nor the Tenant can hold **my|deposits** responsible for any failure to provide the 'Prescribed Information' to the Tenant.

my|deposits' Scheme Rules require all Agent Members to hold a ring-fenced 'Client Money Account' with a UK bank in which all Tenants' deposits must be held. (**my|deposits** will expel Agents who are found to have breached this Rule)

As you are ultimately responsible in regard to statutory obligations you are strongly advised to check your Agent's Client Account.

Returning the deposit to the Tenant

At the end of the AST, **my|deposits** advises Tenants to ensure that:

- The Tenant leaves the property and its contents in the same condition in which it was let (subject to fair wear and tear).
- Rent and any other expenses have been paid up to date in accordance with the AST.

my|deposits also advises Tenants that when the AST ends and upon vacating the property the Agent will agree the amount of the deposit that will be returned. If the Tenant is not able to reach agreement then he should ask the Agent (in writing) to return the deposit. Tenants should keep a copy of this formal request as proof of the request.

The Scheme tells the Tenants that the Agent is legally obliged to return the agreed or requested amount within 10 days of agreement or the written request. Once the Agent has returned the deposit (or the agreed amount) the deposit must be unprotected.

When a deposit is unprotected we write to the Tenant at the 'alternative address' advised to us by the Agent to tell them of the deposit unprotection. The 'alternative address' is the address provided by the Tenant for communications after the Tenant has left the rented property. Obtaining and recording the Tenant's alternative address at the time of taking the deposit is one of the requirements of the 'Prescribed Information'.

Please ensure, wherever practicable, that:

- (1) The Agent tells you about the return of the deposit.
- (2) The deposit is not repaid without your permission.
- (3) The deposit is not unprotected without your permission.

Some Agents render charges against the deposit at the end of the AST. These charges could form part of any dispute raised by the Tenant. The Tenant may hold you responsible for these charges.

How does a Tenant notify **my|deposits** of a dispute and what happens then?

Tenants can raise a dispute at any time up to three months after the date they vacated the property (this may be different from the actual Tenancy end-date). Under normal circumstances, **my|deposits** will not accept disputes after this period, or if the deposit ceases to be protected with the Tenant's agreement, except in exceptional circumstances.

The "Information for Tenants" leaflet supplied to the Tenant with the DPC explains the dispute procedure and confirms that the Agent must return the agreed amount of the deposit to the Tenant within 10 days following agreement between the Agent and Tenant on the division of the deposit. In the absence of any such agreement, the 10 day period starts from the date on which the Tenant formally requested the return of the deposit – but only after the Tenant has vacated the property.

If the Tenant has not received the agreed amount from the Agent within the 10 day period, or the Tenant cannot agree the amount of the deposit with the Agent, the Tenant must notify **my|deposits** of a deposit dispute. **my|deposits** will not accept notification of a dispute before the end of the 10-day period.

In the event that your Agent becomes insolvent during the AST or cannot be contacted during the dispute process, then you as Landlord must take the place of the Agent and assist the Scheme if there is a continuing deposit dispute including providing the disputed amount if we have not received it. This highlights the importance of appointing a reliable and reputable Agent.

If the above situation arises, you will be expected to co-operate fully with the Scheme's adjudication procedures and directions. If you do not co-operate with the Scheme, the Default Alternative Dispute Resolution (ADR) procedure will automatically take place. (Please see the Scheme Rules for more details). Upon successful completion of the ADR, or upon receipt of a Court Order, the Scheme will guarantee payment of the disputed amount to the Tenant if he/she is entitled to it. **my|deposits** or our insurers will then pursue your Agent first of all, but if they are unsuccessful in making such a recovery then you, as Landlord, will be responsible for any amount that **my|deposits** or the insurer have had to pay to the Tenant, and any costs incurred in recovering this money from you.

What happens if my Agent's membership is cancelled, either by you or the Agent?

We are required under the Act to continue to protect all deposits for a period of three months from the day on which the Agent leaves the Scheme or has his membership cancelled. This period allows adequate time for the Agent to make alternative arrangements for the protection of existing deposits.

We must give both you as Landlord and any Tenants at least two months notice of the date when the deposit will be no longer protected by us. You as the Landlord may then have to protect the deposit yourself if the Agent is either not intending to, or is unable to protect the deposit with another scheme. **my|deposits** does not allow transfer of deposit protection from the Agent Member to the Landlord.

During this three month extended protection period a Tenant is still able to raise a dispute with the Scheme as long as the AST agreement has ended (or they have vacated the property with your agreement). We will still look to the Agent to lodge the disputed amount with us whilst we determine the validity of the dispute, unless the Agent can prove that he has transferred the protection to another scheme. At this point, we will direct the Tenant to deal with the new Scheme.

If your Agent does not lodge the disputed amount with us for whatever reason, we will guarantee the return of the disputed amount to the Tenant after adjudication or on receipt of a Court Order if the Tenant is still entitled to it. We will then look to recover any amount we have paid firstly from the Agent, then from you as Landlord, and this may include taking Court proceedings if necessary.

How does **my|deposits** protect the deposit if my Agent goes bust or is absent?

An Agent that becomes insolvent or is not contactable by the Scheme, for whatever reason, will automatically have their Membership of the Scheme cancelled. In this scenario, the Scheme is entitled to invoke the three month clause as mentioned above. We will advise you as Landlord and the Tenant that there has been an enforced cancellation of the protection of all protected deposits under the Agent's membership.

We will provide protection to Tenants who cannot recover the deposit back when such Tenants are entitled to such a refund during the three month run-off period. The Tenant should not be penalised for the failure or refusal of an Agent or you as Landlord to return the deposit.

In the case of an insolvent or absent Agent, it is highly unlikely that the Scheme will be able to secure payment by the Agent in respect of the disputed deposit amount. If the Agent becomes insolvent or is absent we must look to you, the Landlord, for payment of the disputed amount. As we previously mentioned, you are always ultimately responsible for the payment and protection of the deposit regardless of whether you have instructed an Agent.

my|deposits does not provide a client money protection scheme, nor does it provide a deposit compensation scheme. **my|deposits** exists to ensure that each **Tenant** receives back the deposit paid to the Landlord if he is entitled to its return. Unlike the custodial scheme **my|deposits** does not physically hold any deposits.

At the end of the AST the Tenant still has to make a claim under the dispute notification procedure and the resolution process set out in the Scheme Rules. In order for the Scheme to pay the disputed amount to a Tenant, the Tenant must establish his entitlement by means of either an ADR adjudication or Court Order. If the Agent is no longer in business it is unlikely that any counter-evidence of entitlement will be submitted by the Agent. In that situation it is possible that the Tenant could establish a claim to all or part of the deposit simply because the Agent failed to provide the evidence to show that the Tenant was in fact not entitled to it.

It is important, therefore, to emphasise that if an Agent becomes insolvent or is absent, then you as Landlord must take the place of the Agent and assist the Scheme and provide the evidence in relation to the adjudication of the disputed amount. You as Landlord should co-operate with the adjudication process in every way you can, especially by complying with all instructions within the timescales that the Scheme will advise to you.

If you as Landlord fail to co-operate, and the Default ADR ends with an adjudication decision in favour of the Tenant, resulting in the Scheme making payment to the Tenant in respect of the amount awarded under the adjudication, then the Scheme or its insurers will recover any outlay from you.

If we do not receive the disputed amount after notification of a dispute, we will not pay any part of the deposit back to you the Landlord if the adjudication process results in a decision in your favour. In those circumstances, your claim as Landlord is against the Agent for the balance.

It seems unfair that **my|deposits** cannot pay the Landlord his part of the deposit held by his Agent if he is entitled to it. Why is this?

The Scheme, and the legislation that underpins it, protect the **Tenant's** interest in the deposit. Unless the Landlord successfully challenges the Tenant's right to the return of all or part of the deposit on the expiry of the AST, the deposit remains the Tenant's property.

my|deposits is not a client money protection scheme. **my|deposits** cannot involve itself in Landlord/Agent disputes.

It seems unfair that my|deposits pursues the Landlord for the disputed deposit amount that is paid to the Tenant when it was not the Landlord's fault that the Agent defaulted on the deposit?

It is a common law principle, (backed up by Section 212(9) of the Housing Act 2004) that the acts and omissions of the Agent are treated as the acts and omissions of the Landlord. The Landlord chooses his Agent and is liable for the acts and omissions of his chosen Agent. The Landlord must take responsibility for the return of the deposit if his Agent defaults for any reason.

What can Landlords do to protect themselves against defaulting Agents?

The Landlord who permits his Agent to hold deposits should undertake independent financial checks and satisfy himself that the Agent is trustworthy and financially sound. The following financial checks should be undertaken:

- Does the Agent hold deposit and rent monies in a segregated ring-fenced Client Money Account? Ask for evidence of this bank account and how it operates in writing, preferably from the bank.
- Is the letting Agent a member of a letting Agent association that has a Client Money Bonding Scheme in place? Ask for evidence of this.
- Does the letting Agent hold Client money protection insurance? Ask for evidence.

You should undertake these checks on a periodic basis as the letting Agent's association membership or insurance cover may lapse at any time.

Certain letting Agent bodies, such as ARLA, NALS or RICS, require their registered firms to hold designated Client accounts, have annual scrutiny of the operation of those accounts and also contribute to a Client Money Protection Scheme. Membership of a letting Agent association is not compulsory. There are many Agents that have no Client Money Protection Scheme in place.

Letting Agents can hold Client Monies without any form of supervision of their business or protection for their Landlords or Tenants..

If the Landlord instructs an Agent without any form of Client Money protection he may be taking a serious and costly risk with the rent and deposit monies.

If you have any concerns over the financial security of your Agent, ask to hold the deposit yourself and take your own responsibility for protecting it with a tenancy deposit scheme. Your Agent cannot refuse this request. You can also insist that rent payments are paid directly into your bank account by the Tenant.

CONTACT DETAILS

ARLA: Association of Residential Letting Agents

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick CV34 6LG

Tel: 01926 496800

www.arla.co.uk

NAEA: National Association of Estate Agents

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick CV34 6LG

Tel: 01926 496800

www.naea.co.uk

RICS: Royal Institution of Chartered Surveyors

Parliament Square, London SW1P 3AD

Tel: 0870 333 1600

www.rics.org

NALS: The National Approved Letting Scheme

Tavistock House, 5 Rodney Road, Cheltenham GL50 1HX

Tel: 01242 581712

www.nalscheme.co.uk



About my|deposits

my|deposits is the trading name of Tenancy Deposit Solutions Limited (TDSL) and has been appointed by Communities and Local Government to administer an insurance-based tenancy deposit protection scheme. TDSL is a company jointly owned by the National Landlords Association (NLA) and HFIS plc trading as Hamilton Fraser Insurance (HFI). The Scheme is sponsored by the NLA and administered by HFIS plc, a company authorised and regulated by the Financial Services Authority.

Data Protection

The Department for Communities and Local Government has appointed Tenancy Deposit Solutions Limited T/A my|deposits and/or HFIS plc T/A Hamilton Fraser Insurance as a scheme administrator to act on its behalf to gather and process the information your Agent provides together with information from other services for the purpose of providing a tenancy deposit protection scheme as regulated by The Housing Act 2004. This includes the provision of Alternative Dispute Resolution. For further information, please refer to the full Data Protection Notice at the end of the Scheme Rules, available as a download from our website, or contact my|deposits on 0844 980 0290. Alternatively, you can email dataprotectionact@mydeposits.co.uk or write to:

Customer Services Manager, Hamilton Fraser Insurance, Ground Floor, Kingmaker House, Station Road, New Barnet, Herts EN5 1NZ.

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