

# Boost *and* Build

## Between a rock and a hard place?

The Property Ombudsman (TPO) has just renewed its warning to agents about discrimination. The move came after two tenants, supported by Shelter, received out-of-court settlements against agents who operated a 'no DSS' policy.

The statistics on discrimination are worrying. This is 2020, yet 17% of all complaints to TPO last year were about discrimination. The TPO code states that consumers must be treated fairly regardless of race, religion, sexual orientation, gender, disability, pregnancy or nationality. In clause 1f, it further states that special care should be taken when dealing with those disadvantaged by their economic circumstances.

Now, this clause – although perfectly clear – can leave agents in a tricky position. On one hand, they cannot advertise or operate a 'no DSS' policy without getting in trouble with the TPO. On the other, they cannot easily satisfy the needs of those landlords whose mortgage providers or insurers place restrictions on suitable tenants.

No DSS policies arose for a very simple reason. Landlords wanted to be sure they would receive their rental income. The policy might have been crude, but it was a basic measure of affordability and one that was widely relied upon. The problem with the code of practice from the TPO is that, while having a laudable intent, it ignores a fundamental concern of landlords. Even with this clause about economic circumstances, landlords will still want to minimise their risk. That's only natural.

In fact, minimising risk is something we urge landlords to do all the time. That's why rent protection policies and insurance products are so popular. It's why tenant referencing exists. Landlords want to check that the rent is affordable before they allow their asset to be utilised. This isn't discrimination, it's business sense and common sense.

What's more, agents have a duty of care to their landlords, and it's easy to see where the two principles clash. The agent is caught between the proverbial rock and the hard place, trying to keep everyone happy while meeting all their legal obligations.

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Discrimination on grounds of economic circumstances infringes the code of practice, yet the whole of the credit, mortgage and insurance industry considers economic circumstances at every turn. Is this discrimination?

In the recent cases which prompted TPO's warnings, settlements were made out-of-court, but it would have been interesting to see how the legal system coped with the cases, the subsequent appeals and ruminations. When is it discrimination and when is it minimising risk? When does protecting tenants' rights to fair treatment mean that landlords are no longer treated fairly?

These are the debates that we should be having because we have a real issue here.