

Agent Audit

Testing compliance with:

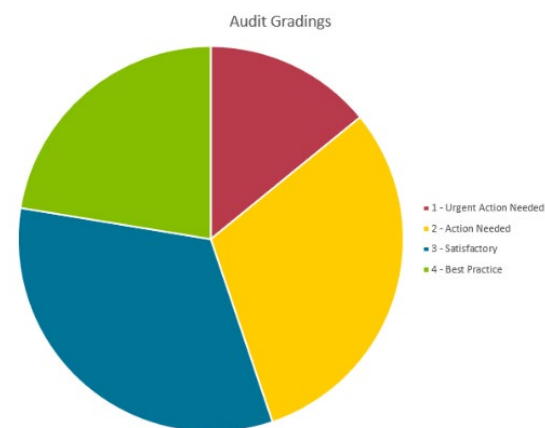
- [Licence Conditions](#),
- [The Code of Practice for Licensed Landlords and Agents](#), and
- Legislative Requirements.

Overview

Over 240 commercial agents licensed with Rent Smart Wales have now been audited. The pie chart shows the grades awarded to date.

Typically, auditors find that agents initially fall into the grading of 'action needed' and by the end of the audit process, agents move up to the grading of 'satisfactory'.

For more information on the Rent Smart Wales audit process, there is a webpage which can be accessed [here](#).



Auditor Observations

The top 6 common areas where agent's fail to prove they are operating to the required standards are:

1. Complying with legislative responsibilities in relation to **asbestos**,
2. Displaying a full list of **fees** on the agent's website and in premises,
3. Requiring or having the potential to require **payments** that would be deemed prohibited by the Renting Homes (Fees etc.) (Wales) Act 2019,
4. Not uploading a **list of managed properties** to the agent's Rent Smart Wales profile annually,
5. Not having an **Equality and Diversity Policy** in place,
6. Not having a **written agreement** with the landlord for works that are sub - contracted out.

Asbestos

Agents have legislative responsibilities in relation to asbestos to protect tenants, contractors and third parties. Auditors often find that agents are unable to provide evidence to demonstrate their compliance with these responsibilities.

What does an agent need to do, at a minimum:

- **Knowledge** - Have a basic awareness of what asbestos is and ensure that all properties within the agent's portfolio are checked for the presence or potential presence of asbestos.

Opportunities to know the presence and location of asbestos include:

- Discussions with the landlord of a property,
- At inventory stage,
- At property inspection stage,
- Discussions with contractors.

- **Training** - Ensure and demonstrate that employees / sub – contractors responsible for inventory checks and property inspections are suitably trained to identify and record the presence of asbestos.
- **Due Diligence** - Be able to demonstrate that they provide information, with regards to any asbestos together with its location, to a contractor prior to the commencement of any works at any property.
- **Housing Acts** - Ensure that properties are kept in a safe condition with no unacceptable risks to tenants and third parties.
- **HMO additional requirements** - Where Houses in Multiple Occupation are let and / or managed, ensure and demonstrate that the specific requirements under the Control of Asbestos Regulations 2012 are met.

For more detailed information, please see the:

[Rent Smart Wales Guide to Asbestos](#)

Displaying a List of Fees - Agent's Website and in Premises

Auditors sometimes find that a full list of fees and charges applicable to landlords and tenants is not published on the **agent's website**, in their **offices** and on **third party websites**.

It is a requirement of the **Consumer Rights Act 2015** for a letting agent to publish a list of their fees and charges for landlords and tenants on their website and in their offices.



More recently the **Renting Homes (Fees etc.) (Wales) Act 2019**, *Part 6 Publicising Letting Agents Fees*, 23. *Publicising letting agents fees*, made it a requirement that letting agents must publish a list of fees and charges for tenants on third party websites.

In some instances, a list of fees and charges for landlords and tenants is published; however, auditors find that the **list is incomplete** and / or inconsistent with other written materials produced by letting agents (such as the tenancy agreement).

It is important that all material published is consistent so that the fees and charges can be easily understood by client landlords and tenants, allowing them to make informed decisions.

The list of client landlord and tenant fees and charges must be published with fees calculated as inclusive of V.A.T. if applicable. Auditors often find that fees are listed as the fee with the words 'not inclusive of V.A.T / plus V.A.T.', in these instances the landlord / tenant would have to work out the total sum payable, listing as 'not inclusive of V.A.T / plus V.A.T' could be an offence under the Consumer Rights Act 2015.

For more detailed information, please see the:

Further guidance from the Competition and Markets Authority (CMA) [here](#).

Prohibited Payments under the Renting Homes (Fees etc.) (Wales) Act 2019

Requiring or having the potential to require prohibited payments is an area auditors often have to mark agents down on.

Anything which is not permitted by the Act is prohibited. This means any payments required after 1 September 2019 in relation to tenancy agreements, such as **check-in fees, check-out (or 'exit') fees, administration fees, inventory fees, guarantor fees** etc. are prohibited payments.

Permitted Payments are classed as:

- a. Rent;
- b. Security deposit;
- c. Holding deposit;
- d. Payments in default;
- e. Payments in respect of council tax;
- f. Payments in respect of utilities;
- g. Payments in respect of a television licence;
- h. Payments in respect of communication services.

During the audit process, auditors review tenancy agreements, terms of business, lists of fees and any other documents which may detail fee related information to ensure that only permitted payments are being charged.

If prohibited payments are identified, the agent will be required to refrain from requiring them and remove any reference to them in their documentation.



Non - compliance with the Renting Homes (Fees etc.) (Wales) Act 2019 can result in a fixed penalty notice of £1,000, prosecution which on conviction can lead to an unlimited fine and non-compliance can also affect the validity of a possession notice.

For more detailed information on fees, please see the:

[Letting fees guidance for landlords and letting agents \(gov.wales\)](https://gov.wales/letting-fees-guidance-for-landlords-and-letting-agents)

List of Managed Properties

Agents have an obligation to provide up to date details to Rent Smart Wales, of all the properties where they complete management activities together with the landlord details, on an annual basis.

It is a condition of an agent licence to provide the details annually or when requested by Rent Smart Wales.

The licence condition typically states:

The licensee must provide up to date details of their landlords and all the rental properties in Wales for which the licensee has letting or management responsibility. This should be completed at least once a year from the date of this licence, and on request from Rent Smart Wales. The details can be uploaded directly using the template provided in the managed properties' section of the Rent Smart Wales Agent account. Alternatively, you can contact Rent Smart Wales on 03000 133344 or by post at Rent Smart Wales, PO Box 1106, Cardiff, CF11 1UA to provide the information.

A document which details the licence conditions typically added to licences can be found here:

[Type of Licence and conditions document](#)

Auditors do find that some agents are not uploading a list of their managed properties annually. This could be deemed a breach of their licence condition, which could result in an audit grade of Action Needed.

This is a matter that the agent cannot comply with during the audit, as the list should have been uploaded every year since the licence has been held.

Therefore, it is essential that agents ensure they upload a new list of managed properties annually.

A copy of the template to use to upload a list of managed properties can be found here:

[Managed Properties Template](#)

Rent Smart Wales can only accept excel spreadsheets in the format of the template. Managed Properties Lists uploaded as a JPEG, PDF, .numbers documents or handwritten lists cannot be accepted.

Equality and Diversity Policy

One of the common areas agents fall short on during the audit process is not having an Equality and Diversity Policy in place. On some occasions, agents do have a policy, but it is not tailored to their specific business practices, or it is based on the impact to their staff solely, rather than incorporating their customers (landlords & tenants).

The purpose of the policy is to state the organisation's values on equality and diversity and show how the organisation will put these into practice. Agents should show staff, potential staff, and customers that they are serious about fairness and ensure they are complying with the Law.

In some cases, auditors have come across discriminatory language used in property adverts such as “No benefits” or “No DSS”. This wording would be deemed **discriminatory**, and not something Rent Smart Wales can accept. Auditors require that these terms are not used, together with any other discriminatory language which may have been used, and which may be an offence under the Equalities Act 2010.

Any failure to remove discriminatory wording from property adverts / terms of business or other policies / procedures endorsed by the agent would affect the agent's audit grading and may result in a referral being made to the appropriate organisation.



Having an Equality Policy in place also helps to demonstrate that the agent is complying with the **code of practice for licensed landlords and agents**, the code of practice states:

Prospective or existing tenants must not be treated less favourably than others because of their age, disability, gender, gender identity, race and nationality, religion or belief, sexual orientation or whether they have children or are pregnant.

An Equality and Diversity policy template has been developed with Tai Pawb and is available for agents to use here:

[Equality and Diversity Policy Template](#)

Written Agreement for Sub-Contracted Works

It is a requirement of Section 57 of the Consumer Rights Act 2015 that before any appointment of a sub-agent, the agent must first obtain authorisation from the landlord in a signed agreement. This signed agreement is typically found within an agent's contract / terms of business with a landlord.

The Code of Practice for licensed Landlords and Agents also states:

2.5. Unless it is contained within the original signed agreement, agents who want to appoint a sub-agent must first obtain the landlord's authorisation.

Auditors often find that letting and management activities such as referencing and inventory checks are sub-contracted out to others, however, there has been no signed agreement between the landlord and the agent to authorise this.

In addition, there may have been changes to the activities sub-contracted out since the contract / Terms of Business was originally signed and those subsequent changes had not been confirmed in writing and signed by both parties.

