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Dear Dianne,

**Estate Agents – Charging Both Buyer and Seller in Residential Property sales -
“Double Charging”.**

At Report Stage of the Consumer Rights Bill I undertook to advise Noble Lords when The Property Ombudsman’s (TPO) guidance for estate agents on this practice would be published.

I am pleased to advise that the guidance has today been published on the TPO’s website and to notify you that I have laid a copy in the library of the House. The guidance can be found under “Members Information –General Guidance Documents” at http://www.tpos.co.uk/members_index.htm.

I hope this is helpful.

Kind regards

Lucy

Baroness Neville-Rolfe DBE CMG

Amendment 44ZA

Moved by Baroness Hayter of Kentish Town

44ZA: Before Clause 81, insert the following new Clause—

“Protection of consumer interests in the housing sector

Schedule (Protection of consumer interests in the housing sector) has effect.”

Baroness Hayter of Kentish Town: My Lords, Amendment 44ZA seeks to bring some trust into the overheated housing market and to ensure that tenants are treated fairly. We start with the simple proposition that estate agents should not charge both buyers and sellers for the same service and that letting agents should not charge landlords and tenants for the same thing. That sounds obvious. An estate agent surely can have only the seller or the buyer as his client, not both. It is unethical, not simply being paid twice for the same job but to have a conflict of interest since the seller wants the highest price and the buyer the lowest. The estate agent is selected and paid by the seller to represent his interest. It is therefore indefensible to take money from the buyer and de facto have him also as a client and owe him a duty of care. The amendment would therefore outlaw a contract which allowed agents to charge both buyer and seller or indeed both landlord and tenant.

It is particularly important to deal with estate agents as they are not covered by the Government’s own amendments requiring letting agents to disclose their fees. Furthermore, with instances of estate agents charging buyers up to 2.5% of the house price, that is thousands of pounds not going into the housing market but to those who prey on its consumers. These rip-off

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charges—and there is no other word for them—which exploit buyers and tenants and breach the client relationship with a vendor or with a landlord must be stopped. We know that the Minister has serious concerns about double charging as she said so in Committee. However, instead of doing something about it, she worried about what she called “unjustified new burdens” and the risk of damaging this important industry. It was unclear whether she was referring to the estate agency industry or to housing. However, it can surely only help the housing market if agents are trusted and act ethically.

The second part of Amendment 44ZA would ban letting agents from taking a finder’s fee from tenants. This is a new and growing—and I think unacceptable—practice. Again, as we mentioned in the earlier amendments, letting agents are chosen by and work for landlords who are seeking tenants. The client is therefore the landlord to whom by contract and law obligations and duties are owed. The letting agent is paid by the landlord to find a tenant though often does other things such as collecting the deposit, handing over keys and collecting rent. It is done on behalf of the landlord who pays for the service. However, what we are now seeing, especially where young people are desperate to find somewhere to live, is that potential tenants are being charged by the letting agent to show them a flat. Alex Hilton, the director of Generation Rent, says that a ban on the “abusive practice” of charging fees to tenants is long overdue. He says:

“Tenants are being milked by agents taking advantage of a housing market that’s failing to provide enough homes”.

It is bad business where one person has a duty of care to both sides of a contract. Whose interests, after all, are they then representing? Traditionally, it has been the landlord, but once money has been taken from a potential tenant, there is surely an obligation to that tenant, who under the Bill will have rights because they have paid for a service. However, there is a clear conflict of interest for the agent. Under the Bill, tenants will get these new consumer rights if they pay an agent, so it is hard to see how the agent can square that with the obligation he has to his original client, the landlord.

We have no problem with letting agents charging tenants for an individual service, such as obtaining the credit reference for a landlord to accept them. However, letting agents should not be paid twice for the same work. Furthermore, just when we are keen for more landlords to enter this market and provide more accommodation—but where tenants, needless to say, have fixed amounts to spend on their housing—a chunk of money out that is going to neither the landlord nor the tenant is being leached of the housing market if letting agents are charging this extra amount to the tenant.

Scotland made charges to tenants, other than for rent and deposits, illegal in 2012, so letting agents can no longer charge tenants, since when this Government have tried to argue that this meant increased rents in Scotland. One study, admittedly from an estate agent, purported to show this. However, that study by LSL Property Services, which claimed that a 2.3% a year increase in Scottish rents had proved that that was because of the ban on fees to tenants, did not actually

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prove that—partly because that figure was only marginally higher than that same organisation’s own figures for the increase in rents in England and Wales, but even more because the Scottish figure was lower than for the north-west of England. Furthermore, the Scottish increase started a whole year after the ban on fees to tenants, which suggests that other factors were at play.

Meanwhile, Shelter commissioned two independent reports, by Rettie & Co and by BDRC Continental, which found that landlords in Scotland were no more likely to have increased rents since 2012, when the ban on letting agents charging tenants was introduced, than landlords elsewhere in the UK. Indeed, fewer than one in five agents had increased their fees, even to landlords, while 70% of landlords had not noticed any increase in their fees paid to letting agents.

There is an issue of principle here. The renter is not the consumer of letting agents’ services and has no contractual relationship with the agent. The renter cannot shop around or negotiate on price. These fees must stop.

Finally, I turn to Amendment 50E in this group, which would help protect tenants against retaliatory eviction—that is, having made a complaint about their landlord, being evicted under a Section 21 notice, which does not require the landlord to give any reason. We do not seek to outlaw Section 21 altogether but to stop it being used to stop tenants getting necessary repairs done. Our amendment would require the Government to issue guidance on how

tenants can be protected from such retaliatory evictions. Sadly, Citizens Advice and tenants cite far too many cases of retaliatory eviction or threats of it for this simply to be a rare occurrence. As the *Observer* reported yesterday, when a tenant told the landlord,

“our shower was dangerous, his response was to evict us”.

Shelter says that about 200,000 people a year—about 2% of renters—are subject to revenge evictions. In preparing its report on creating a better private rented sector, the all-party parliamentary group heard from witnesses of fears that inhibited tenants from expressing concerns, because these sorts of evictions, sadly, are not illegal.

The Government undertook to outlaw revenge evictions and ensure that tenants could not face losing their homes simply because they asked for essential repairs to be made. The Government have given their backing in principle to a Private Member’s Bill in the other House to stop rogue landlords who, rather than meet their legal duty to keep properties up to standard and get rid of safety hazards, instead evict tenants who complain. As the Communities Minister, Stephen Williams, acknowledged, there is a “minority of spiteful landlords”. He said that he wanted to ensure that hardworking tenants are,

“not afraid to ask for better standards in their homes”.

We concur with those views. If the Government want to see progress, Amendment 50E is a natural first step. I beg to move.

Earl Cathcart (Con): My Lords, I will confine my remarks to Amendment 50E:

“Protection of tenants against retaliatory eviction”.

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As a landlord in the private rented sector, I am firmly against any landlord who engages in such practices as retaliatory eviction. In my 30 years or so of being a landlord, I have never had to resort to issuing—or come close to issuing—a Section 21 notice.

I have three points to make. First, the definition of a retaliatory eviction in this amendment is too broad. It would create massive uncertainty about what is and what is not an unreasonable eviction. A much clearer definition is needed that makes it abundantly clear that it does not include failure to pay rent or committing frequent anti-social behaviour, to give just two examples.

Secondly, we are being asked to agree to this amendment without knowing the extent of the problem. Responding to a Question, my honourable friend Brandon Lewis, the Housing Minister, said that the Government did not hold data on the extent of the problem, and nor did anybody else. That was true until Shelter conducted a YouGov poll that found that just 1% of private sector tenants had been evicted or served with a notice to evict in the last year because they complained to their council about a problem with their home that was not their responsibility. Only 7% of tenancies are ended by landlords, mostly because they need to take possession in order to sell or to move into the property themselves or to undertake

refurbishment—or because the tenants are not paying their rent or are committing frequent anti-social behaviour.

My third point is that there are already existing laws in place that give tenants all the protection that they need. In June, the Competition and Markets Authority issued guidance on the relationship between landlords and tenants. This guidance states that, under the terms of the Unfair Trading Regulations 2008, derived from the Consumer Protection Act, it is a breach of these in the case of,

“any commercial practice that, in the context of the particular circumstances, intimidates or exploits consumers such as to restrict (or be likely to restrict) their ability to make free or informed choices in relation to a product, and which cause or are likely to cause the average consumer to take a different transactional decision. These are known as aggressive practices”.

In the examples of what constitutes aggressive practices, the guidance includes,

“threatening the tenant with eviction to dissuade them from exercising rights they have under the tenancy agreement or in law, for example where they wish to make a complaint to a local authority about the condition of the property, or seek damages for disrepair”.

Likewise, evicting a tenant as a punishment for a complaint is unfair practice, as the Competition and Markets Authority recognises. In either case, a Section 21 notice should not be enforced by the courts.

What is needed is not more law, but better information for tenants to understand their rights. Simply put, there is already ample protection for tenants, as I have tried to explain. In too many cases, they do not know that it exists.

Baroness Bakewell of Hardington Mandeville: My Lords, I will speak in support of Amendment 44D. Like others before me, I have recently been engaged in trying to find alternative accommodation in London. I spent mornings going around the letting agencies looking for suitable properties. The difference in the

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range of fees and expectations of me were enormous, but it was only by asking that I found out what fees the agents would be charging and at which stage. Rarely was this information volunteered.

Once I had found a property that I thought would suit, I was told I would need to put down a holding deposit. Not having previously been involved in renting a flat, this was a new experience for me. Obviously those of us who hail from the country are not used to your London ways. I did some research and found that, unless I put down this deposit, I would be unlikely to secure the flat while the necessary references and checks on me were taking place. I was assured that on completion date the holding deposit would be deducted from the rental deposit required, but I did blanch somewhat at being asked for six weeks' rent upfront in addition to the first month's rent. However, this is how things are done and so I will be complying. I move at the beginning of December.

8.30 pm

People who live in London are well used to agents fees but they do not find them acceptable. A gentleman from London has made contact with us. He is moving homes on 15 December and will have been charged over £300 in agency fees between two property agents. In his view, these fees are totally unconnected to any actual letting costs and are unnecessary and unjust. I agree with him. He and his flatmates are all fortunate people. They all work for a living and consider themselves a hard-working family. Despite this, none of them could ever afford to own the rental home they live in and they have little choice but to rent privately in London.

This is a depressing prospect for many families and working individuals. If people have no option but to rent, it is unreasonable that they should be charged large fees just for being “introduced” to a property. The agents will also be charging the landlord a fee for effecting the introduction. This could be a double whammy, as the landlord passes this fee on to the tenant through the rent, although, as we have heard, this has not happened in Scotland.

While I accept that fees may, in some cases, be necessary, far more transparency is needed. I would very much like to see an end to the practice of agency fees in England and Wales and I hope that my noble friend the Minister will agree with me.

Baroness Neville-Rolfe: My Lords, I am grateful to the noble Baroness, Lady Hayter, for her comments and to my noble friend Lady Bakewell of Hardington-Mandeville for sharing her experiences.

The Government have already taken the opportunity of this Bill to increase transparency in the lettings market—an important change. In addition, a letting agent is already required to be a member of an independent complaints scheme. Now is not the right time to introduce yet further regulation on lettings, which will introduce greater costs into the sector. Instead, we have agreed to review these measures a year after introduction. That is the time to see whether the changes are working and whether further measures are required.

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I turn to Amendments 44ZA and 44D. While I share the concerns expressed about the practice of charging both parties for a transaction by estate agents and lettings agents, I do not believe that regulation is the right way to tackle this issue. Many letting agents do share the cost of providing a service between tenants and landlords where both benefit from the service. This is consistent with standard practice in other industries—for example, auction houses—and is not considered to be double charging.

Letting agents are commercial operations and it is important that they are able to set their own terms and conditions without interference from government. Restricting these terms and conditions risks perverse consequences, such as increased fees for one party or an increase in fees for other services, such as property management and property searches. Mandating transparency, as we propose, will enable landlords and tenants to shop around, encouraging competition between agents on fee levels. Agents with the best-value services will prevail in the market, and that is what is best for tenants and landlords.

Turning to the possible prohibition of fees to tenants proposed in Amendment 44D, we see this as yet another example of a demand for blanket regulation which will only introduce costs, put off new providers, and ultimately reduce choice for tenants and deter lettings. Banning letting agents from charging fees to tenants is not necessary; transparency is a low-cost measure which will promote competition on fees. Transparency encourages agents to be competitive on their fees, and ensures that tenants and landlords are able to make informed choices.

Amendments 44ZA and 44D, concern a different strand of business but with some similarities. In fact, the local estate agent in my village has just sold her lettings business. The noble Baroness, Lady Hayter, expressed concern that estate agents are not covered by our amendments. I think she feels that they do not have to be transparent about their fees. I can assure the House that this is not the case. Under existing legislation, including the Consumer Protection from Unfair Trading Regulations 2008, estate agents must make fees and charges clear. She also talked about unethical agents but, in addition to the 2008 regulations, estate agents are regulated by the Estate Agents Act and they have their own industry standards.

Since concerns were raised in Committee about charging buyers as well as sellers, I am glad to say that we have continued to work with the Property Ombudsman, who has confirmed that updated guidance will be in place early in December. This guidance will address concerns raised by noble Lords at that time in relation to charging by estate agents and the need to avoid conflicts of interest. It will ensure that agents understand their obligations to make charging arrangements clear and avoid such a conflict.

In Committee, noble Lords also raised concerns that this non-legislative solution does not go far enough. However, estate agents must belong to a redress scheme. If they are removed from a scheme for breach of the code, including a breach of this new guidance, they would effectively not be able to work as an estate agent. That puts a considerable bite behind

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the obligations set out by these schemes. I would be happy to update noble Lords when the guidance is published.

As regards Amendment 50E, I agree that retaliatory eviction is a problem within the private rented sector. As the noble Baroness said, we have given support to action in the other place. I was very pleased to hear from my noble friend Lord Cathcart that as a landlord he is completely against the practice. He expressed concern and pointed out the circumstances in which tenancies normally end, bringing his experience of the sector to our proceedings. On 11 September, the Government announced their support, in principle, for the Tenancies (Reform) Bill, a Private Member's Bill, which is designed to outlaw retaliatory action. As has been said, that Bill is due to have its Second Reading on 28 November. Our support is subject to the proviso that safeguards are put in place to ensure that the reforms do not bring in excessive red tape and so make it harder for landlords to evict tenants who should be evicted, for example, for non-payment of rent in circumstances as described by the noble Lord, and that the legislation does not impose unfair burdens on good landlords because of spurious or unfounded complaints.

We will produce a guide for tenants to help them understand how to identify health and safety hazards in the home.

Lord Harris of Haringey: If the Government are in support of this Private Member's Bill in the Commons, which may or may not pass, why are they not prepared to see similar provisions written on the face of this Bill, in legislation that will get through Parliament?

Baroness Neville-Rolfe: I thank the noble Lord for his intervention and I will come to that point.

Perhaps I may pick up on the point about health and safety, which I know is another concern that I share with the noble Lord. There will be a guide for tenants to help them understand how to identify health and safety hazards in the home and what to do if the landlord does not take action to make the necessary repairs. Furthermore, our *How to Rent* guide, which was published in June, makes it clear to tenants that if a property is in an unsafe condition and the landlord will not repair it, they should contact their local authority, which can make the landlord deal with serious health and safety hazards.

We agree with the need to tackle the problem of retaliatory eviction, but we do not think that this amendment will add anything further to the guidance that is already available and which we have committed to. I am aware that some are concerned that the Tenancies (Reform) Bill is unnecessary as existing consumer law already provides protections. I have listened to the comments of my noble friend Lord Cathcart and his description of good practice, but the Government are clear that legislation is necessary: hence our support, in principle, for tackling this problem through the Tenancies (Reform) Bill. The noble Lord, Lord Harris, asked why we could not simply write this into the Consumer Rights Bill before us today. I have explained our attitude to the Private Member's Bill. There are certain aspects of it that need to be debated

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and we are not happy simply to write it into the legislation as it is. We would like to see it debated in Parliament and we will obviously give it our support.

In the circumstances, I ask the noble Baroness to withdraw her amendment, and I look forward to her party's support for the Tenancies (Reform) Bill.

Lord Rooker: The Minister has been very positive about the Private Member's Bill and therefore it should be quite easy for her to give a commitment to the House that in any wash-up prior to the general election, the Government will move to salvage the good parts of that Bill if they are at risk of not getting through.

Baroness Neville-Rolfe: I thank the noble Lord, Lord Rooker, for his—

A noble Lord: Helpful intervention.

Baroness Neville-Rolfe: What I was going to say is that the wash-up is a little above my pay grade. However, I note the point made by the noble Lord and I can confirm that we are supportive of that Bill on the terms that I have set out.

Baroness Hayter of Kentish Town: My Lords, my noble friend has made a good suggestion but it seems to me that the response could have been, "Let us have the debate in the Commons on Friday", so that it could either come back here at Third Reading with the

correct wording or, indeed, when this Bill goes back to the other place, as it has to do. I think that we have retaliatory eviction in the pocket; one way or another, we look forward to seeing it before May.

I do not understand some of the Government's responses. Their idea is that this legislation could put off new providers. I do not know about everyone else's high street, but we have quite enough in the way of estate agents and letting agents. The notion that they will not be set up because we legislate for them to provide decent treatment for tenants and landlords, and indeed for buyers and sellers, is not one that I accept. I thank the noble Baroness, Lady Bakewell, for her support because there we have it from a real consumer who went to a letting agent and saw what happened. Basically, you keep on paying but you are not sure what it is that you are paying for.

Our amendment would do two things. It would stop estate agents from charging sellers and buyers for the same service and it would stop letting agents from charging tenants what they have already charged landlords for. I wish to test the opinion of the House.

8.43 pm

Division on Amendment 44ZA

Contents 113; Not-Contents 156



SALE BY TENDER/BUYER PAYS FEE GUIDANCE SUPPORTING THE CODE OF PRACTICE

1. Background – sale by tender/buyer pays fee process

Sale by tender/buyer pays fee is an alternative commercial practice that has developed across the industry with a number of agencies employing it as a way of attracting business. It is not clear as to how many (if any) smaller agencies have adopted it as an alternative approach to the traditional sales practice under which agents charge the seller their commission fee.

Under this approach the agent enters into an agreement with a seller to market a property whereby offers are submitted through a sealed bid/tender process. Prospective buyers submit their offers to the agent having entered into an agreement to meet the fee liability which is over and above the agreed price for the property.

2. Why this guidance?

It is becoming increasingly clear that the practice is causing confusion as to who is actually responsible for the fee and whether, if the agent is charging the buyer, there is any potential for a conflict of interest and consumer detriment. The following guidance is to assist the industry in ensuring that where this approach is employed as a commercial decision, it is subject to a degree of control and consistency across those agents using it; and can help agents ensure that they avoid conflicts of interest. This guidance is intended to supplement the TPO Code of Practice for Residential Estate Agents and it is therefore expected that industry will apply it, using it as the accepted approach. Agents need to be aware that deviation from the practice may result in a breach of the Code of Practice rendering the agent ultimately with a disciplinary action through the established TPO Disciplinary and Standards Committee (DSC) process. The DSC has a range of sanctions including expulsion from the scheme.

This guidance focuses on four particular aspects of the Code of Practice and the standards laid out in the Code of Practice in relation to:

- Transparency.
- Disclosure.
- Conflicts of interest.
- Duty of care, fairness of treatment.

3. The principles of approach – code of conduct

1. Transparency and disclosure are the primary drivers for defining a structured and consistent approach to the sale by tender/buyer pays fee practice. **Buyer liability** for the fee must be communicated at the earliest opportunity such that in all forms of media, the property asking price is accompanied by a statement that 'buyers fees apply' and that websites allow for a click-through to a tender pack and FAQs. Appropriate arrangements should be made to provide the same information where non-electronic access is present. The tender pack should have 'key features' of the approach as the first page.

2. It must be clear to all parties throughout and from the outset of the transaction that the instruction to the agent to market the property is given by the seller and that the agent's primary duty of care is therefore to that individual. Agents must ensure that any conflict of interest which might compromise that relationship is avoided.
3. **The seller must be advised of all options available to him for the marketing of his property** and in particular he must receive a full explanation of the risks of selling via this approach (for example it should include the buyer not wanting to pay a fee, buyer being frightened off by the thought of signing an agreement and thereby a potential offer for the property would be lost –potentially from a buyer in a strong position.
4. It must be made clear to the seller what the position would be in the event of the buyer wanting to buy but not pay the fee and the seller wanting to sell to that buyer.
5. **The buyer must be advised that by paying the agent's fee, that amount may be considered as part of the chargeable consideration for the property and be included in the calculation for stamp duty liability.**
6. The level of **fee charged to the buyer must be representative of the agent's normal fee for residential property sales and should not be exploitative.** A 'health warning' about the fee's relative level with other agency's fees should be given. The buyer should be made aware that the seller will only have been charged a nominal marketing fee or not at all.
7. All offers must be passed on regardless of the manner in which they are communicated unless the offer is an amount or type which the seller has specifically instructed you, in writing, not to pass on.
8. It must be made clear whether the buyers agreement with the agent to submit an offer through the sealed bid process and to pay the fee, is specific to that offer or whether it will apply in a situation where further offers are requested on the specific property. If the buyer and seller make an arrangement outside of that tender process (with or without the agent's involvement) the agent cannot rely on the tender documentation to support a claim to a fee and a separate agreement must be made.
9. In situations where the property has not been sold and the agreed term of the sealed bid agreement has expired, the seller is free to renegotiate a new contract, method of sale and term with any agent.

4. Point of sale script

To ensure agents meet their obligations under the Code of Practice as set out above, agents will need to use a script for dealing with the seller and a script for dealing with the buyers. Agents are allowed their own wording but the script needs to include certain principles notably:

- Who will have the liability for the fee.
- The options for marketing (i.e. sales by tender or traditional sales approach to selling the property) should be explained.
- The risks, advantages and disadvantages about each approach.

- The precise costs for both buyer and seller; implications for stamp duty and any documentation should be shown and explained to the seller/buyer.

5. FAQs

Sellers

- i) **Do I have to agree to the sale by tender/buyer pays fee approach?**
No – the agent must advise you of the options available to you for marketing your property.
- ii) **If the prospective buyer does not agree to pay the fee will I lose the offer?**
The law requires that any offer made to purchase your property must be passed on by the agent unless you have said offers of a particular type are not to be advised to you. If the prospective buyer does not agree to pay the fee the agent should advise you accordingly and seek your instructions.
- iii) **If the actual buyer then refuses to pay will I have to meet the agent's fee?**
This will depend on the specifics of your individual contract(s) with the agent. The agent should explain this clearly to you before you sign anything. The actual buyer has entered into an agreement to pay the fee so it is for the agent to pursue the buyer but the agent must make clear to you what will happen in such circumstances.
- iv) **Do I have to accept the highest offer?**
It is entirely your choice as to what price you sell your house at and it is recognised that sellers will sometimes sell to someone who has not offered the highest amount because that person has, for example, cash or is ready to proceed straightaway.

Buyers

- i) **If I don't get the property do I still pay?**
If you do not succeed in your purchase of the property no fee will be payable.
- ii) **When do I have to hand money over?**
The agent's fee becomes due on exchange of contracts but will not be collected until completion stage. In some circumstances the agent may charge interest on late payments.
- iii) **Does the fee include VAT?**
The fee may be displayed as a VAT inclusive price or as a figure plus VAT. This should be made clear to you but always read the statement and ask the agent to confirm how the fee will be made up.
- iv) **Will it increase stamp duty liability?**
HMRC policy is that the fee paid to the agent is part of the 'chargeable consideration' for the property and is therefore included in the stamp duty calculation.
- v) **Can it be included in my mortgage application?**
You should seek advice from your proposed mortgage provider but it is unlikely that it will be considered as part of the value of the property for the mortgage calculation.

- vi) **Does it go to the seller or the agent?**
The money goes to the agent.
- vii) **If I do not agree to pay the fee can I still make an offer?**
Yes and the agent will be under an obligation to pass on all offers, unless the seller has instructed the agent in writing that offers of a particular type are not to be advised to them. It will be for the agent to arrange payment of the fee with the seller.
- viii) **If my offer is accepted does that mean no one else can buy the property?**
You should clarify the exact position with the agent if your offer is accepted. The agent should provide a clear statement as to whether or not the property will continue to be marketed or whether it has been withdrawn from the market. Note that the agent is under a legal obligation to pass on offers he receives unless he has been specifically instructed by the seller in writing not to do so.

6. Key features documents specifically for sale by tender/buyer pays fee approach (included in the tender pack)

Seller

- i) The agreement you have entered into is a legally binding document and gives [the agent] sole selling rights/a sole agency to market your property. The definition of the type of agency is contained in the agency agreement.
- ii) You will pay [the agent] an administration fee of [£] for the marketing of the property. After [the agent] has started marketing the property this fee is non-refundable unless you cancel within 14 days of signing the agreement in which case the separate cancellation agreement will apply.
- iii) You have chosen the option whereby the successful buyer of the property will meet the fee liability. You should be aware that:
- Current HMRC policy is that the chargeable consideration (monies or monies worth) for a land transaction is what has been given (either directly or indirectly) in order to acquire the subject-matter of the transaction, by the purchaser or a person connected with him. This includes fees which must be paid in order to acquire the property. This means that whatever the buyer pays, it will form part of the purchase price for the property and it will be included in his liability for stamp duty.
 - The prospective buyer may decline to pay the commission in which case you may lose an offer on your property. Where the prospective buyer does decline to pay [the agent] will seek advice from you as to whether you will be prepared to pay the fee and this can be subject to negotiation.
 - [The agent] will charge the successful buyer x% +VAT of the achieved sale price.
 - Your solicitor/conveyancer will be advised of the arrangement through the memorandum of sale.

- iv) You have chosen the sale by tender basis which means that:
- All offers will be submitted on a standard tender document (see tender pack).
 - Each offer will be submitted in a sealed envelope and will be opened by the agent's branch manager on an agreed date. You are entitled to be present when the bids are opened. .
 - In cases where a subsequent offer process is needed such offers may be submitted verbally.

Buyer

- i) The fee you have agreed to pay will become due on exchange of contracts but will be payable on completion of the sales transaction.
- ii) You will pay x% +VAT of the purchase price of the property, for example on a £200,000 property that would mean you will pay including VAT [£].
- iii) You must be aware that a current HMRC policy dictates that the commission fee will be considered as part of the 'chargeable' consideration for the property and will therefore be included in the calculation for any stamp duty liability which you will pay on transfer of the property to your ownership. For example if you purchase the property for £200,000 plus a buyers fee of 1% plus VAT = £2400, you will pay £774 in stamp duty.
- iv) Your solicitor/conveyancer will be advised of this arrangement through the memorandum of sale.
- v) You will submit your offer for the property through the sealed bid process as referred to in the tender pack. All offers for the property will be opened in the presence of the seller on a set date. Note that it is the sellers choice which offer to accept and he may not necessarily choose the highest offer if for example a particular prospective buyer is in a better position to proceed more quickly.
- vi) If your offer is unsuccessful you will not incur a fee.

7. Tender pack

Must include:

- Sales particulars
- Agreement to submit by tender/pay agents commission
- Bid form
- FAQ's
- Key features document