

10 September 2013

Dear Sir/Madam

We are writing to bring to your attention important information about non-optional fees in ads for rental properties. This information concerns the need to prominently include information about non-optional fees around rental prices (the “asking rent”) in your marketing communications in all media.

Who we are

You are receiving this letter from the Committee of Advertising Practice (CAP) Compliance team. CAP represents advertisers and promoters, their agencies, the media and the trade and professional organisations of the advertising and sales promotion business. It writes and enforces the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The CAP Code lays down rules for advertisers, agencies and media owners to follow. It includes general rules that state advertising must be responsible, must not mislead, or offend and specific rules that cover advertising to children and ads for specific sectors like alcohol, gambling, motoring, health and financial products. The Code covers ads across non-broadcast media including posters, newspapers, magazines, leaflets, mailings, commercial emails, ads on websites, text messages and those on advertisers’ own websites, including social media spaces that they control. The Advertising Standards Authority (the ASA) is the independent body that assesses whether advertising complies with the Codes.

The Broadcast Committee of Advertising Practice (BCAP) represents broadcasters, advertisers, agencies and direct marketers. It is the industry body responsible for writing the UK Code of Broadcast Advertising (the BCAP Code).

The Compliance Team is responsible for communicating and, as necessary, enforcing ASA rulings and the CAP and BCAP Code generally. By doing this we ensure that you and your competitors compete on a level playing field.

ASA and CAP are accepted by the Department for Business, Innovation and Skills and the Office of Fair Trading as a first line of control in protecting consumers and businesses from misleading advertising.

Why we are writing to you

To bring to your attention a recent ASA ruling that has important ramifications for the advertising of rental properties: [Link to ASA Ruling - yourmove.co.uk ltd t/a Your Move Lettings](#)

The yourmove.co.uk ruling considered a complaint about ads for properties for rent posted by an estate agent on rightmove.co.uk. The complainant objected that the ads were misleading because they did not include a compulsory administration charge.

In response the estate agent said the information about administration charges was made available on their website and in-branch. They said fees were not fixed and pointed out that their approach was in line with market practice and with the requirements of the Association of Residential Lettings Agents (ARLA) and The Property Ombudsman (TPO).

The ASA noted that fees were dependent on consumers' individual circumstances and were not, therefore, always calculable in advance. It pointed to Clause 3.19 of the CAP Code, which states:

"If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the marketing communication must make clear that it is excluded from the advertised price and state how it is calculated".

Because the ASA considered that a consumer's transactional decision was likely to be affected by material information such as the existence and cost of an administration fee, it concluded that the ads should have complied with Clause 3.19 by indicating clearly that the administration fee was not included in the quoted rental prices and by providing enough information to allow the consumer to establish easily how further charges would be calculated.

The ASA told the advertisers to ensure their ads made clear when non-optional fees and charges, that could not be calculated in advance, were excluded from quoted prices, and to provide enough information to allow the consumer to establish easily how further charges would be calculated.

Clearly, the ASA ruling creates a new requirement for most residential lettings agents who must now make changes to their websites and ads placed on property portals and in other media.

Interpreting the ruling

1. The ruling applies to ads placed by lettings agents and private landlords.
2. The ruling does not apply to fees which an agent charges to a landlord.

3. Although the investigation referred only to non-optional administration charges, it also applies to other non-optional charges that could affect the transactional decision of deciding whether or not to arrange a viewing. Those charges include, but are not limited to:
 - general administration fees
 - reference fees (including credit checks, bank, guarantor, previous landlord, etc)
 - application fees
 - fees for drawing up tenancy agreements
 - inventory fees, including check-in and check-out fees
 - guarantor arrangement/application fees
 - additional occupant fees
 - pets disclaimer fees/additional pet deposit

Ads should make clear whether charges are per tenant or per property.

4. The ASA ruling covers (non-refundable) charges that relate to consumers taking on a tenancy. The ruling does not cover those charges that might be levied during the tenancy or at the point of tenancy renewal.
5. The ASA ruling does not cover refundable deposits, which we categorise as something separate from a non-optional fee. However, landlords and lettings agents are required, under the Consumer Protection Regulations (CPRs), to provide all material information to enable average consumers to make informed decisions. “Material information” is likely to include more than just the non-optional fees and charges, but also other financial information such as refundable deposits. We therefore encourage landlords and agents to include a note of the deposit and how it is calculated in their advertising.
6. Landlords and lettings agents should comply with both the letter and the spirit of the ruling: giving a fee a different name, grouping fees together and calling them something else, using generic statements like “see terms and conditions”, hiding the key information in smallprint or otherwise attempting to circumvent the spirit of the ruling will not help you to achieve compliance. You need to consider and respond to the principle behind the ruling: the need for more transparency in ads about non-optional charges.
7. If a landlord or agent charges tenants for any services that do not apply to all but are non-optional for those to whose circumstances they do apply (e.g. a guarantor’s fee), then they should be considered non-optional charges. Relevant ads must:
 - make the existence of that charge clear
 - note that it is excluded from the advertised asking rent and
 - provide information to allow consumers to establish easily how the charge is calculated.

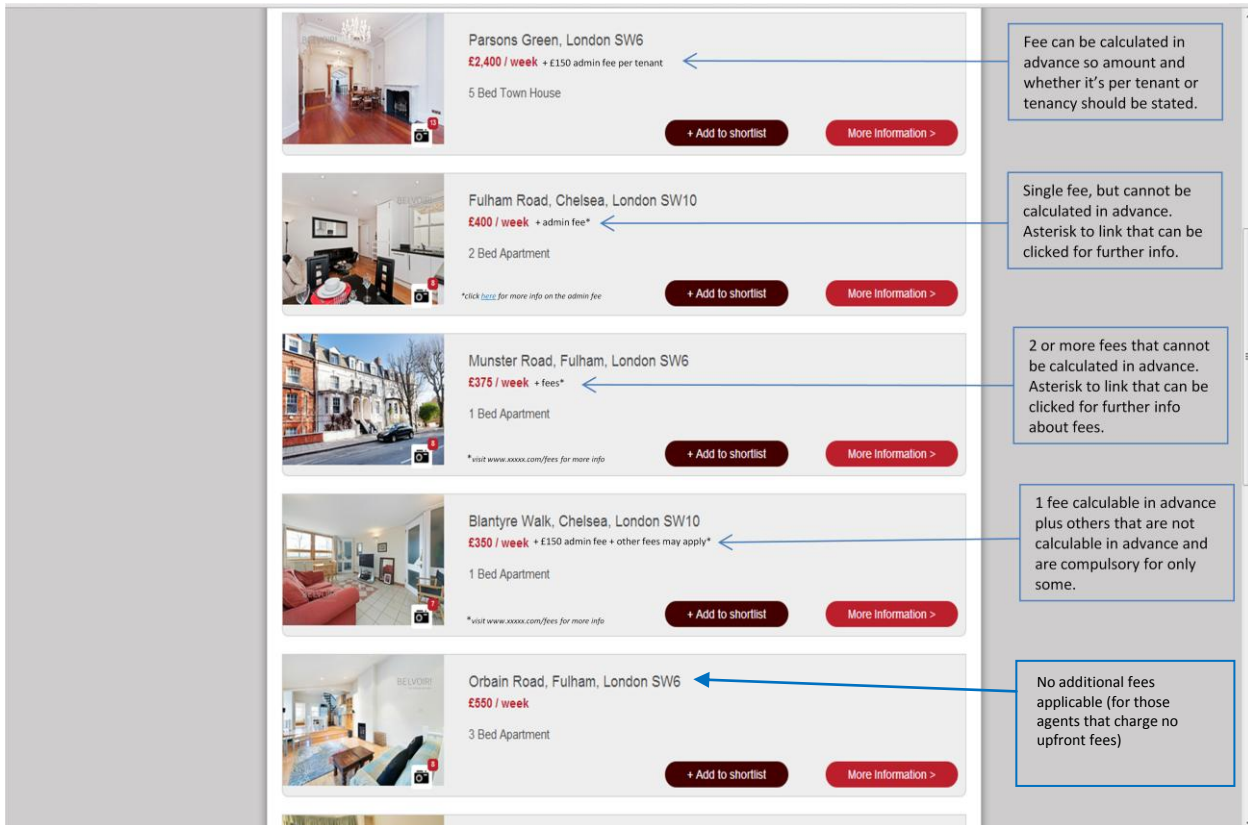
8. Non-optional fees that can be calculated in advance must be included with the quoted asking rent. So, when an agent or landlord charges a non-optional fee that does not change according to individual circumstances, e.g. a fixed admin fee of £150 per tenant, ads should state “£1500pcm + £150 admin fee per tenant” or similar.
9. If you do not include an asking rent in your advertising, you need not make a statement about the existence of additional fees.

Medium-specific advice

For most media, enough space should be available for you to easily comply with the ASA ruling by stating the fees that are payable (and the amount when it can be calculated in advance) and providing a link/web address (or other means) via which consumers can easily establish what the charges are and/or how they are calculated. But we recognise that the available space for some forms of advertising (e.g. sponsored search, sms text message, tweets etc) might not be enough to facilitate straightforward compliance. Below we offer some advice – and mocked-up examples where relevant – on how to ensure compliance for your ads in different media.

Your websites and your social media pages

For ads on your own websites and on your social media pages (e.g. your facebook page) we recommend clear and prominent statements immediately below or close to the asking rent. Below are examples of how you might comply, for a range of different fee circumstances, by offering information in each of your rental listings.

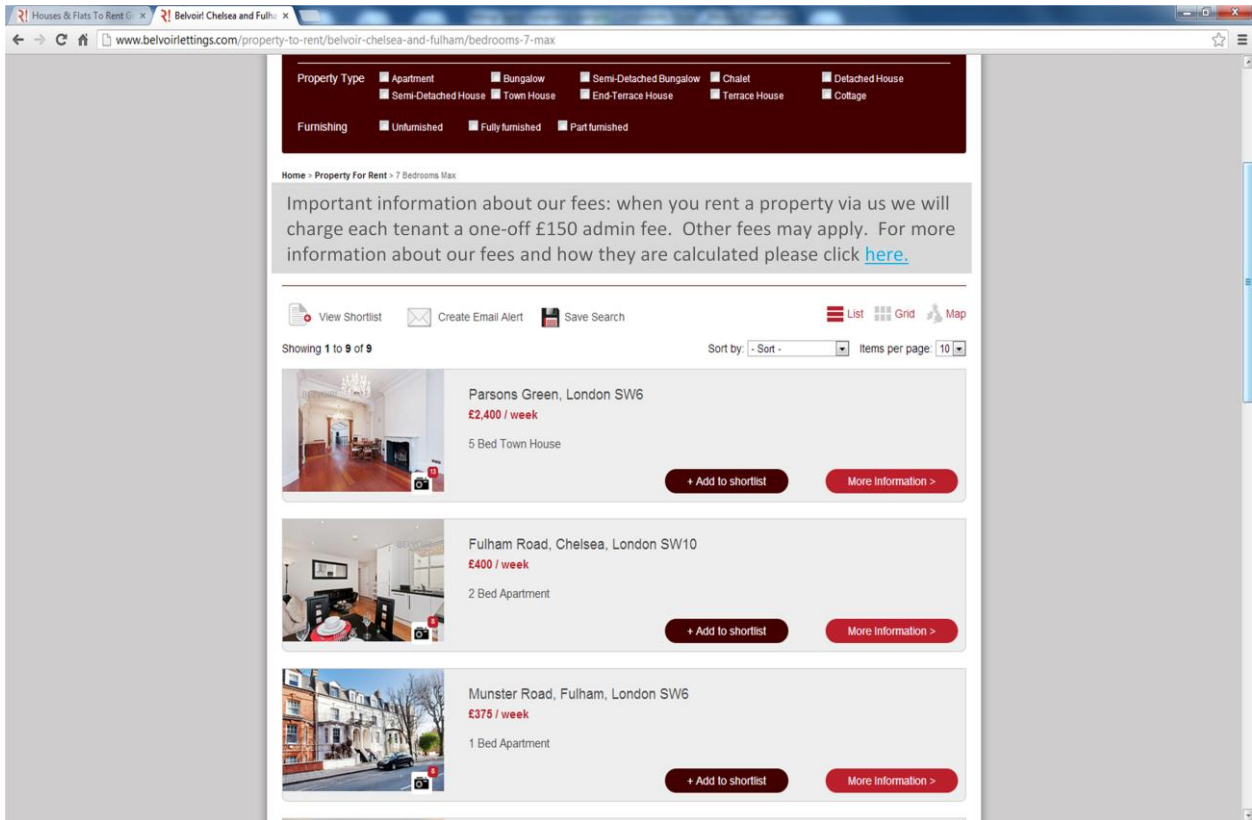


The screenshot shows five real estate listings, each with a photo, address, price, and number of bedrooms. Callout boxes on the right explain the fee structures for each listing:

- Parsons Green, London SW6:** £2,400 / week + £150 admin fee per tenant. Callout: "Fee can be calculated in advance so amount and whether it's per tenant or tenancy should be stated."
- Fulham Road, Chelsea, London SW10:** £400 / week + admin fee*. Callout: "Single fee, but cannot be calculated in advance. Asterisk to link that can be clicked for further info."
- Munster Road, Fulham, London SW6:** £375 / week + fees*. Callout: "2 or more fees that cannot be calculated in advance. Asterisk to link that can be clicked for further info about fees."
- Blantyre Walk, Chelsea, London SW10:** £350 / week + £150 admin fee + other fees may apply*. Callout: "1 fee calculable in advance plus others that are not calculable in advance and are compulsory for only some."
- Orbain Road, Fulham, London SW6:** £550 / week. Callout: "No additional fees applicable (for those agents that charge no upfront fees)".

It would also be acceptable (and perhaps neater) to hyperlink the fees statement (instead of using an asterisk) to a pop-up or page containing the detailed fee information.

An alternative approach would be to include a prominent statement about fees at the head of every page of search results. We would suggest a statement along the lines of the one shown in the mocked-up example below. Of course that statement might need to change to reflect different scenarios such as the ones laid out above. What follows suggests text for just one such example (a fixed £150 fee plus a message about others that could apply). Please consider how you apply fees and draft appropriate text accordingly.




The page to which the above ads would link through to must contain the more detailed information about how fees are calculated.

Internet portal ads

Rightmove, Zoopla and Primelocation will insert a hyperlinked “fees apply” statement next to the rental price in their full page ads. This will link to a pop-up page containing generic information about the range of fees that could be charged.

£1,500 pcm (£346 pw) [Fees apply](#) ←

Property details | Map & nearby | Street view | Local info | Review your Experian credit report



Start photo slideshow | 1 of 7 | Lounge

Interested in this property? Call 020 3318 6806 or [Request Details](#)

Property info

- Available immediately
- Furnished

Property features

- Brand new 2 bedroom apartment
- Smart interior finish

Share this property

Share | Tweet | Pin it

Nearby stations

- Lewisham (0.1 miles)
- St Johns (London) (0.4 miles)
- Ladywell (0.6 miles)

Experian CreditExpert

Looking for a new home and need help improving your credit rating?


[Get your 30-day trial now](#)

Monthly fee applies after trial, see website for details

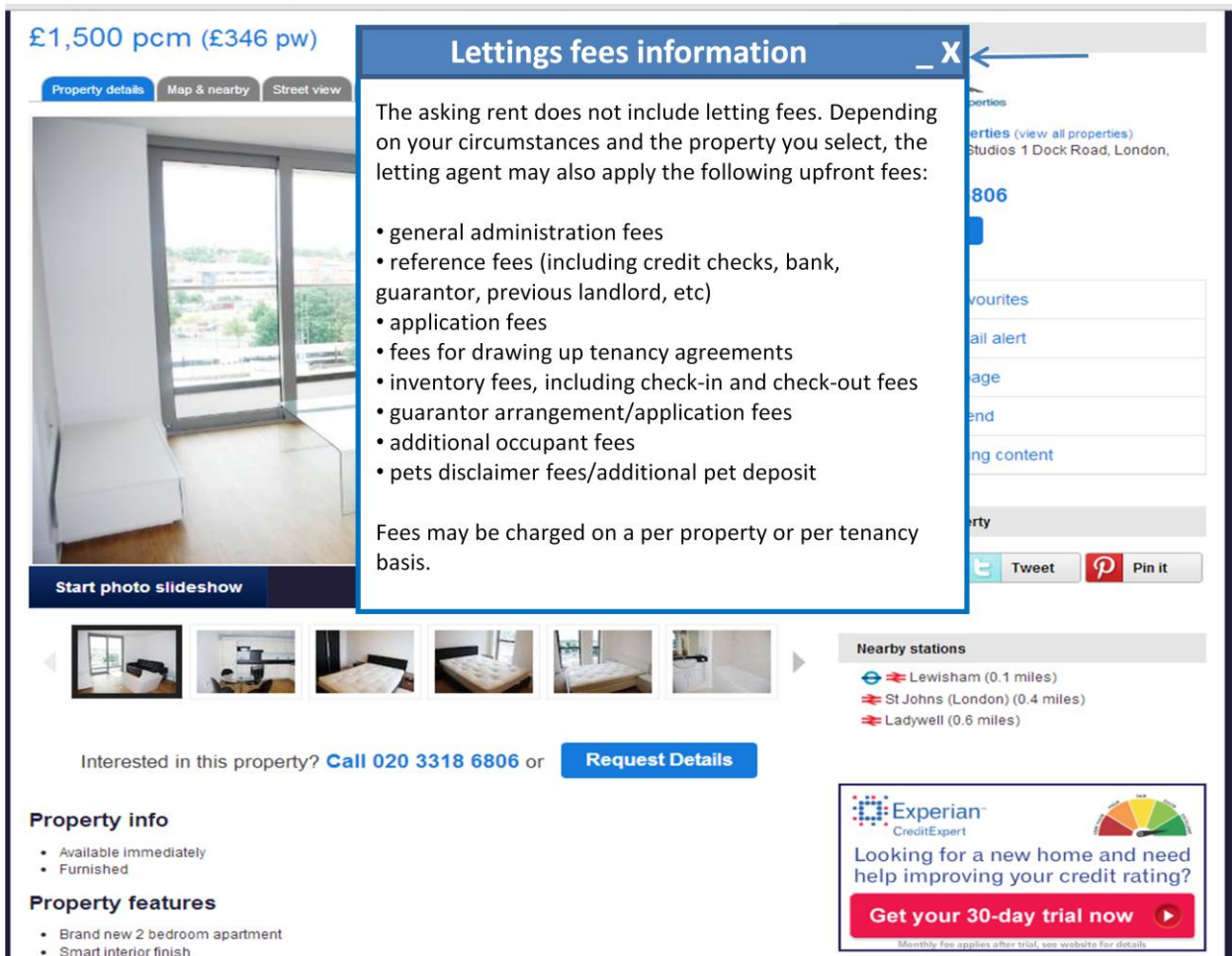
Property details page will include link to pop-up with generic information about fees.

£1,500 pcm (£346 pw) [Fees apply](#) ←

Property details | Map & nearby | Street view | Local info



Consumer clicks on link to launch pop-up.



The screenshot shows a property listing for a studio in London. The asking rent is £1,500 pcm (£346 pw). A pop-up window titled 'Lettings fees information' is overlaid on the listing. The pop-up contains the following text:

The asking rent does not include letting fees. Depending on your circumstances and the property you select, the letting agent may also apply the following upfront fees:

- general administration fees
- reference fees (including credit checks, bank, guarantor, previous landlord, etc)
- application fees
- fees for drawing up tenancy agreements
- inventory fees, including check-in and check-out fees
- guarantor arrangement/application fees
- additional occupant fees
- pets disclaimer fees/additional pet deposit

Fees may be charged on a per property or per tenancy basis.

The background listing includes a photo of the property, a 'Start photo slideshow' button, a 'Request Details' button, and a 'Nearby stations' section listing Lewisham (0.1 miles), St Johns (London) (0.4 miles), and Ladywell (0.6 miles). There is also an Experian CreditExpert banner at the bottom right.

Landlords and agents that do not charge any upfront fees should contact the portals to request removal of the statement.

The portals will disable the “fees apply” statement for properties with a Scottish postcode.

Sponsored search / Banners / Pop-ups / short-form social media (e.g. twitter)

Usually space is an important consideration for these platforms. We would suggest either not including an asking rent at all or making simple statements such as “2 beds from £1200pcm + fees”. The landing page should feature the more detailed information about the fees and how they are calculated.

Print / Posters / Leaflets / Mailings / Leaflets

- We would suggest an approach similar to the one advised for your websites above: either include the relevant statement next to the asking rent for each advertised property or have one prominent statement about fees when you feature a list of properties. As with websites you should then provide a web address that consumers can visit to find out more about how the fees are calculated. If you do not have a

website you will have to provide an alternative means for consumers such as a contact telephone number.

The level of detail provided about non-optional fees and charges should be proportional to the size of the advertisement. So, a two line advertisement will not necessarily be expected to show as much detail as a half or full page one.

For mailings and leaflets it might be possible to include both the statement(s) about fees and then the further information about how they are calculated. If that is possible we would encourage it.

Cinema

Your ads should include either on-screen text or a voiceover message noting that fees apply (stating the amount when those fees can be calculated in advance). As above, the text or statement should be accompanied with an on-screen url (or telephone number if you don't have a website) to allow consumers to easily establish how the further charges will be calculated.

Television

Please contact Clearcast for guidance: <http://www.clearcast.co.uk/>.

Radio

Please contact the RACC for guidance: adclear@racc.co.uk.

What you need to do

Please review your ads for rental property listings across all media to ensure that they comply with our position. If they do not, please change them as soon as possible. This applies to all ads covered by the CAP and BCAP Codes.

We shall closely monitor ads in all media from **1 November 2013** onwards and will consider appropriate follow-up action against non-compliant ads from this date. Please note that we have discussed the advice within this letter with ARLA, the TPO, RICS, UKALA, NALS, NLA & RLA.

Further assistance

Please do not hesitate to contact me if you do not understand anything in this letter. If you would like advice about future non-broadcast advertisements, please consult the CAP Copy Advice team, which provides fast and free pre-publication advice that is confidential from competitors. Although its advice does not bind the ASA Council, the team can help if you are in doubt. You can reach the Copy Advice team via the Copy Advice website <http://www.cap.org.uk/Advice-Training-on-the-rules/Bespoke-Copy-Advice.aspx>. For advice



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about TV broadcast advertisements, please contact Clearcast: <http://www.clearcast.co.uk/>.
For advice about radio advertisements, please contact RACC by email at adclear@racc.co.uk or phone at 020 7010 0608.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rupa Shah', is written above the printed name.

Rupa Shah

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