

GIBBS GILLESPIE

Premier Service

Terms and Conditions

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1. Introduction

The Gibbs Gillespie Premier Service is an additional service available only to those Landlords to whom Gibbs Gillespie provide either a letting and rent collection or full management service.

These Terms and Conditions for the Premier Service (the "Premier Service") apply in addition to our Terms and Conditions for lettings and rent collection and full management as set out in the letting instructions between Gibbs Gillespie and the Landlord and should therefore be read in conjunction with those terms; definitions used in both are consistent.

As part of the Premier Service, Gibbs Gillespie will guarantee certain aspects of their service in the event that a Tenant introduced by Gibbs Gillespie defaults in the terms of their Tenancy with the Landlord as expressly described and subject to the limitations set out below in paragraph 3.

2. Premier Service

Gibbs Gillespie will provide a Landlord who contracts for the Premier Service with the following services in addition to those services provided as part of Gibbs Gillespie's letting and rent collection or full management services.

2.1 Enhanced Applicant Assessment

More diligent enquiry into an applicant Tenant's suitability and ability to fulfil the proposed Tenancy, involving:

2.1.1 an in-depth review of applicant Tenant profile by an experienced Gibbs Gillespie manager;

2.1.2 greater use of consumer credit bureau data where, in Gibbs Gillespie's view, it is available and appropriate;

2.1.3 an applicant Tenant profile review made against Gibbs Gillespie's own "high risk" applicant criteria; and

2.1.4 a further applicant Tenant profile review and approval by a Gibbs Gillespie's director.

2.2 Enhanced Tenancy Management

Greater pro activity in management, problem solving, dispute resolution and access to expert legal advice and support services in respect of Tenants who are in dispute or default concerning a Tenancy, to include;

2.2.1 making continued weekly telephone calls to the Tenant's home and place of work, even after legal process has commenced in order to see if any dispute or misunderstanding can be resolved;

2.2.2 producing documentation to commence litigation;

2.2.3 instructing Gibbs Gillespie's chosen solicitors and managing the legal process to judgement;

2.2.4 instructing Gibbs Gillespie's chosen solicitors and managing enforcement as appropriate including enforcement of both money orders (attachment of earning etc.) and possession orders (instructing bailiffs);

2.2.5 appointing Gibbs Gillespie's chosen tracing agents to locate absconded Tenants; and

2.2.6 managing any action involving a Tenant's guarantor(s).

3. Guarantee

Subject to paragraphs 5, 6 and 7, in the event that (i) the Tenant is in breach of the Tenancy Agreement resulting in any of the matters referred to in paragraphs 3.1, 3.2 or 3.3 below occurring; and (ii) Gibbs Gillespie's failure to perform the enhanced applicant assessment and tenancy management services as described in paragraph 2 above; and (iii) had Gibbs Gillespie performed such services the Tenancy Agreement would not have been entered into and accordingly no such breach would have occurred and no loss would have been incurred by the Landlord, then in such circumstances Gibbs Gillespie may in its absolute discretion agree to (but shall not be obliged to) compensate the Landlord by remedying the default as follows:

3.1 Rent

Where the Tenant has failed to pay the Rent set out in the Tenancy Agreement (within 30 days of it falling due), then Gibbs Gillespie will reimburse this to the Landlord for the remaining period of the then existing Tenancy subject to the limits in 3.4 below.

3.2 Legal Expenses

Where the Tenant has:

3.2.1 failed to pay the Rent due under the Tenancy Agreement;

3.2.2 failed to vacate the Property in accordance with the Tenancy Agreement;

3.2.3 left the Property in disrepair;

3.2.4 materially breached the terms of the Tenancy Agreement in a manner that is capable of legal redress; or

3.2.5 issued proceedings against the Landlord for a Property or Tenancy related matter, Gibbs Gillespie will manage and pay the related legal costs incurred on behalf of the Landlord in prosecuting or defending the proceedings in respect of the above provided that our appointed solicitors shall advise that it is reasonable and thereafter remains reasonable, to do so.

3.3 Alternative Accommodation

Where the Property let to the Tenant is the Landlord's own home (that is, occupied by the Landlord as his sole or principal residence prior to the Tenancy commencing) which the Landlord wishes to reoccupy at the end of the Tenancy but is prevented from so doing because either:

3.3.1 the Tenant has failed to leave and give vacant possession; or

3.3.2 the Property is unfit for the Landlord to reoccupy because of disrepair caused by the Tenant, Gibbs Gillespie will pay the actual reasonable alternative accommodation costs incurred by the Landlord should the Landlord find himself homeless and without accommodation for his use in England or Wales, limited to an amount equal to 3 months' Rent – being the level of rent payable under the last completed tenancy agreement – of the Landlords Property.

3.4 Guarantee Limits

The compensation payable by Gibbs Gillespie to the Landlord under this guarantee is limited in the following ways:

3.4.1 the maximum liability in respect of any Tenancy is limited to £40,000

3.4.2 compensation payments by Gibbs Gillespie in respect of unpaid Rent reduce to an equivalent of 75% of the Rent payable by the Tenant once vacant possession of the Property has been obtained; continued payment of compensation at this reduced level will continue, for a maximum of 2 months, until the letting of the Property to a new Tenant, always provided that the Landlord makes the Property immediately and exclusively available for reletting by Gibbs Gillespie, for a minimum period of 6 months, and at a rent achieved under the last Tenancy or at such other rental as Gibbs Gillespie consider appropriate to procure a reletting of the Property with a reasonable period

3.4.3 in calculating any compensation due under this guarantee any deposit paid by the Tenant and held by Gibbs Gillespie (whether as agent for the Landlord or as stakeholder) in respect of the Tenancy will be used by Gibbs Gillespie to set against amounts due to the Landlord before any sums which may be due under this guarantee

4. Fees and Charges

The fee for the Premier Service will be paid monthly by the Landlord, calculated as 3.5% of the monthly Rent plus VAT (4.2% inclusive of VAT) payable as set out in the Tenancy Agreement, and Gibbs Gillespie will where possible, collect the fee by deduction from Rent remitted to the Landlord.

Value Added Tax at the prevailing rate will be charged in addition to the fee.

5. Discretion

Gibbs Gillespie will also have absolute discretion in;

• the selection and appointment of any solicitors, bailiffs and other agents engaged under the Premier Service.

• deciding whether to continue to offer the Premier Service beyond the original Tenancy end date if the Tenant is or has been in default of the terms of the Tenancy, but the Landlord wishes to extend the Tenancy or otherwise allow the Tenant to remain in occupation.

6. Conditions

6.1 It is a term of the Premier Service that Gibbs Gillespie shall not be liable in respect of any obligation under it (including the guarantee) unless and only to the extent that the Landlord has fully complied with the terms and conditions of the Tenancy Agreement and any other agreement whatsoever made in respect of the Tenancy or the Tenancy Agreement (including the terms and conditions for lettings and rent collection and full management as set out in the letting instructions between Gibbs Gillespie and the Landlord and the terms of this Premier Service contained in this form)

6.2 Gibbs Gillespie or the Landlord may cancel the Premier Service at any time by sending 30 days written notice to each other. The Landlord may not give such notice to terminate this agreement during the first 30 days of any letting of the landlord's property in the event that the Landlord gives such notice to cancel the Premier Service then Gibbs Gillespie will have no further obligation in respect of the guarantee set out in clause 3 in respect of any events or matters whether or not they occurred before or after the cancellation of the Premier Service.

6.3 The Landlord shall notify Gibbs Gillespie immediately of any circumstance which might reasonably lead to Gibbs Gillespie being potentially responsible for making a guarantee payment under the terms of paragraph 3.

6.4 When presenting a claim the Landlord must give Gibbs Gillespie full written details of the incident and provide such proof, supporting evidence and other information as Gibbs Gillespie may reasonably request. In the event of a dilapidation claim, the Landlord must provide a full quantified and supported claim no later than 30 days from the date the claim first arose or, if later, the date the Landlord became aware of the circumstances giving rise to the claim.

6.5 The Landlord will not interfere with or prejudice Gibbs Gillespie's Rent Arrears procedures.

6.6 Gibbs Gillespie shall make payment under this service in respect of legal expenses provided that there are, in Gibbs Gillespie's view, reasonable prospects for the recovery of damages or other remedy or for a successful defence. Gibbs Gillespie may discontinue the payment of legal expenses to the Landlord if during the course of any claim Gibbs Gillespie considers that such prospects of success no longer exist. If Gibbs Gillespie either refuses to accept or discontinues a claim it shall inform the Landlord the reasons for so doing.

6.7 The Landlord agrees to co-operate fully with Gibbs Gillespie and the appointed solicitor on all matters arising out of or in connection with any incident relating to this Premier Service. Further, the Landlord agrees that the appointed solicitor may act in the name of and on behalf of the Landlord. Gibbs Gillespie reserves the right to investigate the circumstances of any incident giving rise to a requirement for Gibbs Gillespie to make payment under this service and to attempt to obtain settlement of any matter prior to litigation.

6.8 Control and direction of any litigation conducted in connection with the Premier Service shall rest solely with Gibbs Gillespie. The Landlord's legal expenses will only be covered provided these are incurred with Gibbs Gillespie's appointed solicitors; expert witness costs will only be covered provided Gibbs Gillespie has given prior written approval to their appointment. The Landlord must inform Gibbs Gillespie immediately in writing of any offer or payment into court made with a view to settling a claim. No agreement to settle a claim relating to a Tenant may be made without the appointed solicitor's approval. If an offer or payment into court is not accepted by the Landlord but the amount thereof is equal to or in excess of the total amount eventually recovered by him then Gibbs Gillespie shall have no liability in respect of any further legal costs and expenses unless upon being notified of the offer or payment into court Gibbs Gillespie agrees to the continuation of any proceedings. If the outcome of any proceedings is not in the Landlord's favour then no appeal or further proceedings will be covered by the Premier Service unless agreed to in writing in advance by Gibbs Gillespie and at whose sole discretion agreement rests.

6.9 If a Landlord shall make any statement recklessly or knowing this statement to be false or fraudulent in any way then the Landlord shall forfeit the right to any payment by Gibbs Gillespie under this Premier Service and repay any payments already made by Gibbs Gillespie. All accounts for arrears of rental income, legal expenses or alternative accommodation expenses must be submitted to Gibbs Gillespie monthly. Gibbs Gillespie shall be entitled to recover any Value Added Tax.

6.10 The Landlord shall at Gibbs Gillespie's request and expense take every available step to recover from third parties legal costs and expenses and other liquidated costs paid by Gibbs Gillespie under this Premier Service and all recoveries from the deposit must be paid to Gibbs Gillespie. Gibbs Gillespie has the right in the first instance to all recoveries made resulting from actions taken and payment made pursuant to this Premier Service; Gibbs Gillespie may utilise such recoveries in part or in whole. Recoveries shall include any balance of the Tenant's deposit remaining after settlement of a valid dilapidation claim. If the Landlord becomes or is deemed to become insolvent during the course of any claim or legal proceedings to which has given support under this Premier Service then Gibbs Gillespie reserves the right to withdraw that support immediately and thereafter, none of the benefits to which the Landlord would otherwise be entitled to pursuant to the Premier Service shall continue.

6.11 In the event of a payment of compensation by Gibbs Gillespie to the Landlord under clause 3.1, limited as set out in 3.4.2, it is a condition that the Landlord must accept a new tenancy of the Property at a rent equivalent to at least 85% of the monthly Rent payable under the last Tenancy.

7. Exclusions

Gibbs Gillespie shall not be liable to make any payment under this Premier Service in respect of rental income arrears, legal expenses, alternative accommodation expenses or whatever:

7.1 where a Landlord:

7.1.1 has failed to comply with his own contractual and statutory obligations;

7.1.2 has agreed or waived in whole or in part to any breaches of Tenant's covenants under the terms of the Tenancy Agreement;

7.1.3 has commenced negotiations with a Tenant for the purchase of the Property whether or not such purchase is completed,

7.2 In respect of or arising from or related to:

7.2.1 any incident reported to Gibbs Gillespie more than two calendar months after the date that it first became or should have become known to the Landlord;

7.2.2 fees, costs and disbursements incurred without the written agreement of Gibbs Gillespie;

7.2.3 any dispute between Gibbs Gillespie and a Landlord

7.2.4 rent registration reviews, lease holding franchisement or any matter which in the first instance falls within the jurisdiction of the Rent Rates or Land Tribunals or Rent Officers;

7.2.5 disputes of whatever nature with persons other than the Tenant of the Property or a person in actual unauthorised occupation;

7.2.6 the compulsory purchase, confiscation, nationalisation, requisition, destruction or restriction or control placed on or damage to any Property or the actual planned or proposed construction, closure, adaptation or repair of roads or bridges or the actual planned proposed construction, demolition or adaptation of buildings, housing or other works by or under the order of any intergovernmental, governmental, public or local authority;

7.2.7 mining, subsidence, or heave;

7.2.8 ionising, radiations or contamination by radioactivity from any eradiated nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic exposure or other hazardous properties of any exposure to nuclear energy or nuclear component thereof;

7.2.9 events which are a consequence of war, invasion, act of foreign enemy, terrorism, hostilities (whether war was declared or not) civil wars, rebellion, revolution, insurrection or military or usurped power, strikes, lockouts, all worker occupations;

7.2.9b Epidemic or Pandemic. We do not pay any events which are a consequence of an Epidemic or Pandemic declared by the World Health Organization (WHO);

7.2.10 any liability whatsoever for further liquidated costs following a re-letting of the Property;

7.2.11 any service charges relating to the Property;

7.2.12 any liability arising from the supply of electricity, gas, water, other utilities and telephone services unless the respective public utility has been instructed of the change of occupancy to a Tenant;

7.2.13 liability arising in the common law full mesne profit;

7.2.14 the Landlord's personal or incidental expenses shall not be an allowable deduction from deposit monies held where this prejudices Gibbs Gillespie's position in recovery of rental income arrears or dilapidations;

7.2.15 disputes in respect of dilapidations not exceeding £500 in excess of the deposit held by Gibbs Gillespie on behalf of the Landlord to whom the Premier Service applies;

7.2.16 any harassment of a Tenant;

7.2.17 the defence of the Landlord in civil proceedings due to a) bodily injury, illness, disease or death, b) loss, destruction or damage of or to the Property, c) alleged breach of any professional duty, d) any tortuous liability;

7.2.18 fines or other penalties imposed by a court;

7.2.19 any defect in the condition of the Property which pre-exists the date of this agreement or any gradually operating cause which pre-exists any letting of the Property.

7.2.20 any defect in a Landlord's title to any part of the Property,

7.3 where the Landlord:

7.3.1 pursues or defends a case without Gibbs Gillespie's consent or contrary to the manner advised by Gibbs Gillespie's or their appointed solicitor, fails to give complete proper and timely instruction when required by the appointed solicitor or counsel;

7.3.2 fails to give proper instruction when required by the appointed solicitor or counsel;

7.3.3 is responsible for delay which in the reasonable opinion of Gibbs Gillespie is prejudicial to the prospects of success;

7.3.4 fails to take all reasonable steps to avoid or prevent claims or legal proceedings;

7.3.5 fails to maintain in full force and effect during the Tenancy Agreement buildings insurance on the Property covering the standard range of perils;

7.3.6 fails to pay instalments in respect of a mortgage on the Property except where such failure to pay instalments occurred after the Tenant first failed to pay the rental income due to the Landlord;

7.3.7 instructs a solicitor other than Gibbs Gillespie's appointed solicitor.

8. Limitation of Liability

8.1 Paragraph 3 sets out the full extent of Gibbs Gillespie's liability to the Client under or in connection with the Premier Service.

8.2 Nothing in this agreement restricts Gibbs Gillespie liability for:

8.2.1 death or personal injury; or

8.2.2 fraud or fraudulent misrepresentation.

8.3 This agreement is made between Gibbs Gillespie and the Landlord. It is agreed that as regards the Premier Service provided to the Landlord by Gibbs Gillespie, that neither Gibbs Gillespie's directors or employees shall be in any way personally liable for the provision of this Premier Service or owe any duty of care to the Landlord in respect of the provision of the Premier Service.

9. General

These terms and conditions are governed by English Law and both Gibbs Gillespie and the Landlord submit to the exclusive jurisdiction of the English courts.

This Agreement is made exclusively between Gibbs Gillespie and the Landlord and no third party shall be entitled to any interest in this Agreement or be entitled to enforce the terms of the same beit under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

I confirm I have read, understood and accept the Premier Service Terms and Conditions.

Print Name: _____

Signature: _____

Date: _____

We are local specialists experienced in caring for all types of rented property, from studio flats and luxury apartments, to family homes and company rentals.

GIBBS GILLESPIE

gibbs-gillespie.co.uk

Registered address: Building 1
Meadows Business Park, Blackwater,
Camberley, GU17 9AB

Gibbs Gillespie is a member of Propertymark (which includes their Client Money Protection Scheme) and Gibbs Gillespie is one of the UK's largest residential property groups specialising in letting, sales, buy-to-let and investment finance. Established by the co-founder of the Association of Residential Letting Agents (ARLA) in 1983, Gibbs Gillespie provides financial probity and rigorous standards in letting and property management. Membership of ARLA and the Property Ombudsman gives landlords and tenants complete peace of mind.

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TDS Tenancy Deposit Scheme member