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## INFORMATION ABOUT PAYING RENT IN ADVANCE

**VERSION: LSHG11RIAP4S01**

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### **PAYING RENT IN ADVANCE**

We are now regularly processing payments from students (and/or their guarantors) which are specifically being made as rent in advance (RIA). These typically fall into two categories, those made contractually and those made voluntarily.

#### **Landlord's contractual requirement:**

We may require RIA from a student either because that student cannot supply a UK guarantor, or the student has a UK guarantor, but that guarantor cannot provide the level of financial security we need.

In these cases we may make it a term of the tenancy agreement (and a pre-condition to granting and/or completing such a tenancy agreement) that the student in question pays their proportionate share of the tenancy rent as RIA in full for the whole year (or possibly as RIA for 6 months) before they move in, instead of paying their proportionate share of the tenancy rent on the normal calendar monthly basis.

The student will benefit from this arrangement because they will not have to supply a guarantor, and often it will be the only way they can secure rented accommodation on reasonable terms from a private landlord.

#### **Student's or guarantor's voluntary payment:**

Students (and/or their guarantors) are increasingly asking voluntarily to pay chunks of RIA. This may be before or after they move in, but crucially the payment is entirely voluntarily and not made pursuant to any clause in the tenancy agreement.

Because we offer our students a modest rent reduction for voluntary advance payments, this is a popular facility enabling students and guarantors to budget effectively and receive a small financial benefit in return, exceeding that which they would receive by keeping the funds on deposit with their own bank.

As an example, if all students in a six bedroom house paid their rent in advance for the whole year, they would receive a total discount of £1200 in rent based on £100 per student per 6 months paid in advance ( $£100 \times 6 \times 2 = £1200$ ).

## **IS RENT PAID IN ADVANCE A DEPOSIT**

We are sometimes asked by students, their guarantors and university housing officers whether RIA may amount to a deposit pursuant to the Housing Act 2004 and should therefore be registered with an authorised tenancy deposit protection scheme.

The Housing Act 2004 requires deposits paid under an assured shorthold tenancy agreement to be dealt with in accordance with an authorised tenancy deposit protection scheme. We are registered with Tenancy Deposit Solutions Limited (known as **my|deposits**). For more details [click here](#).

To ensure that we could continue to advise students and their guarantors both impartially and accurately and to ensure that we fully complied with the legislation (whilst being able to accept payments which many students wish to make to help them budget) specific advice on this issue was sought from **my|deposits** and from the leading Residential Landlord and Tenant Solicitors in England, PainSmith who act for Knight Frank and The Grosvenor Estate.

**As we anticipated, the unconditional advice we have received from mydeposits and PainSmith is that RIA is not a deposit.**

The letter of advice can be downloaded by [clicking here](#) and in particular we have been advised by Marveen Smith at PainSmith that:

- “there is a distinction between a deposit held as security for a tenant’s obligations under the tenancy agreement and rent paid in advance”
- “where rent is [stated in the tenancy agreement to be] payable monthly and the tenant also pays you in advance, the money is not being taken as security for performance of obligations, it is in fact being paid in advance ”

- “If you collect money in advance, as long as you do not represent that such sum is a deposit, there will be no problem in collecting the rent [in advance] from one/ all of the tenant(s)”
- “You are able to request [and accept] payment of rents in advance without being required to register the amount”
- “I would not advise registering rent paid in advance”

Based on the initial advice, we sought further additional advice based on typical business scenarios where we may find that as landlords we receive rent in advance, to ensure that in these specific cases this did not amount to a deposit.

#### **The key findings from the further advice were:**

- RIA paid by the tenant pursuant to a specific clause in the tenancy agreement **is not a deposit**
- RIA paid voluntarily by the tenant (ie in the absence of any contractual obligation and where the tenancy agreement only specifies that rent is due calendar monthly) but before move in **is not a deposit**
- RIA paid voluntarily by the tenant (ie in the absence of any contractual obligation and where the tenancy agreement only specifies that rent is due calendar monthly) but after move in (during a tenancy) **is not a deposit**
- RIA paid by the tenant pursuant to a separate pre contractual letter **is not a deposit**

Students (and/or their guarantors) should note that any payment of RIA is non refundable and is not a substitute for the normal tenancy deposit which will still be required in accordance with our terms.

#### **THE DECISION IN JOHNSON -V-OLD**

Please note that the decision of Deputy District Judge Collins in Johnson -v- Old [Brighton County Court 20 July 2012] was appealed successfully on 31st July 2012.

The appeal was heard by His Honour Judge Simpkins who overturned the original decision and found that RIA was “never intended to be returnable at any time during the tenancy or once it had ended” and was “not a security to ensure fulfillment of the obligation to pay rent but was actually the obligation itself”. It was therefore not a deposit pursuant to the Housing Act 2004 and should not therefore be registered with an authorised tenancy deposit protection scheme.

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To ensure that we could continue to advise students and their guarantors both impartially and accurately and to ensure that we fully complied with the legislation we took further advice on this issue from PainSmith in August 2012 and the advice can be reviewed by [clicking here](#).

Crucially “There is no reason to change the advice given on 22 March 2011 in so far as it relates to RIA.”

**A final decision on this matter was given by the Court of Appeal on 23 April 2013 confirming that:**

Rent in advance does not constitute a deposit in need of protection and

Rent taken at the beginning of a tenancy in respect of the last month of a tenancy is not a deposit.

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