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2007

2008

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The Dispute Service Annual Report 2007-08

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Chairman's foreword

The production of this first full annual report coincides with the end of the first year of operation for our Insurance Based Tenancy Deposit Scheme. The statutory scheme was launched on 6th April 2007 and after a complicated, exhaustive and very bureaucratic bidding process we were finally awarded a contract to run a scheme in December 2006.

It is to the great credit of Lawrence Greenberg and his staff that despite such an inadequate timetable we were able to produce a working scheme with all the necessary call centre, IT and administrative support needed. In particular the membership process was made extremely difficult as we were prevented from invoicing or collecting any subscriptions prior to the launch date – yet under the Housing Act 2004, any new deposit collected after the 6th April had to be protected within 14 days!

Whilst the operation did not run entirely smoothly, I am satisfied that we did extremely well under the circumstances to produce a working scheme and to process over 3000 applications in a very short time.

Since then we have been working continuously to refine and improve the scheme, database, website and administrative processes and our members are seeing the benefit of these changes. We are refining our techniques of dispute resolution to improve response times and keep costs down whilst still maintaining the integrity and independence of the adjudication process. There will always be other improvements we can make and we welcome constructive criticism and ideas from our members to aid this development process.

Obviously the Tenancy Deposit Scheme (TDS) has been the main focus of activity in the last year but we have also been providing an independent complaints handling service for ARLA, and another under a sub-contract from the Ombudsman for Estate Agents for its members. We plan to develop further dispute resolution and complaints handling services in the residential letting industry.

There is a growing lobby for the regulation of letting agents and an independent redress scheme will be an integral part of this process. The Dispute Service Ltd has been developing staff and expertise ready to meet the demands and challenges this will bring.

In the meantime the TDS continues to grow and at the end of its first year of operation we were protecting over £500 million of deposits. Although it is recognised that there is still widespread ignorance and non compliance with tenancy deposit protection (TDP) in the wider marketplace we, along with the professional bodies and the other TDP schemes, are doing what we can to address this issue. Hopefully by the time of our next annual report progress will have been made to create a level playing field for all agents and landlords.

John Hornsey
Chairman

What is The Dispute Service Ltd?

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly. At the end of the year the company had nine directors. Three of them represented the main professional bodies in the lettings industry who are also shareholders in the company. They are: the Association of Residential Letting Agents (ARLA), the National Association of Estate Agents (NAEA) and the Royal Institution of Chartered Surveyors (RICS). A list of directors can be found in Appendix A.

The company currently runs the following schemes:

- The **Tenancy Deposit Scheme**, to ensure that the deposits held by regulated agents are protected and to resolve disputes about their return.
- The **Association of Residential Letting Agents (ARLA)** complaints scheme to deal independently with complaints against its members.
- A similar scheme for members of the **Ombudsman for Estate Agents (OEA)** who undertake residential lettings.¹

Tenancy Deposit Scheme

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The legislation came into effect on 6 April 2007. After that date all deposits taken for new Assured Shorthold Tenancies have to be covered by a tenancy deposit protection scheme.

TDS is one of three schemes authorised by [the Department of] Communities and Local Government (CLG). It has been designed primarily for agents, but membership is also open to landlords. Mandatory deposit protection was implemented in April 2007, but The Dispute Service Ltd offered a voluntary scheme to regulated agents for three years before that (the Tenancy Deposit Scheme for Regulated Agents) .

TDS operates as follows:

- The member holds the deposit.
- Where there is no dispute at the end of the tenancy, the member will, as normal, pay out the deposit promptly;
- If any of the parties wants to challenge the proposed apportionment of the deposit, they must do so within 20 working days. If there is an agent, they

¹ This arrangement came to an end by mutual agreement in September 2008

must try to negotiate a settlement between the parties within 10 working days;

- If this can't be done, any of the parties can refer the dispute to the Independent Case Examiner (ICE) for third party independent adjudication;
- The deposit-holder must transfer the deposit to The Dispute Service Ltd. The ICE will carry on with an adjudication and pay out the deposit. If the deposit has not been submitted, The Dispute Service Ltd will claim the amount in question from its insurers, and seek to recoup it from the member. Persistent failure to submit disputed deposits will probably lead to the termination of membership.
- The ICE will make his decision within 28 days of receiving all the necessary information. The deposit will be paid out within a further 5-10 working days.

Members join directly, rather than through their membership of another body. Agents pay an annual subscription based on the number of offices they have and their membership of professional, trade or regulatory bodies. The subscription for landlords is based on the number of properties they own, and can be ameliorated by their membership of other bodies. It is a matter for members to decide if and how they recover the subscription from landlords or tenants.

There is no additional fee for adjudication on disputes arising out of tenancies which started after the member joined the scheme.

Why is using alternative dispute resolution better than sending disputes to court?

Deposit disputes in particular need to be resolved quickly and cheaply. Tenants usually need the money as a deposit on their next property, and landlords need to know how much will be available to spend on redecoration and repair. Going to court takes time and can be expensive and stressful.

Methodology

While our current methodology is tried and tested, it continues to evolve to meet the changing demands generated by the growing number and range of cases and we have changed its basic premise that nearly all disputes will justify a full adjudication. In order to focus our resources most effectively, we need to both contain the volume of disputes to those which genuinely require our input; and to use a form of adjudication which is both appropriate and proportionate to the case concerned.

To achieve this aim we:

- apply the adjudication selection criteria set out in the Scheme Rules to

2 determine early those cases which do not require an extensive adjudication.
3 For example – identifying cases that can be dealt with summarily by letter;
4 cases that can be dealt with in short-form rather than full adjudication; etc

- 5 ■ increased ‘filtering’ at the administrative stage to establish that key
6 documentation has been submitted – e.g. tenancy agreement, inventories –
7 and avoid delays during the adjudication itself.
- 8 ■ where the amount in dispute is small and the issue straightforward, call the
9 parties to suggest that it doesn’t need us to resolve, and give a time limit for
10 them to sort it out.
- 11 ■ produced *TDS L Progress of a dispute* to advise for landlords and tenants
12 about how we deal with disputes and the evidence we will need. It is
13 available at the point of dispute, both on the website and for members to
14 hand out.
- 15 ■ publish regular digests of cases so members can see how particular disputes
16 were resolved.

17 We continue to get a lot of questions about basic procedures and practices
18 e.g. “*How do we end a tenancy?*” “*How should we deal with absconding*
19 *tenants?*” “*How should we handle deposits for let-only tenancies?*”. In an
20 attempt both to be helpful and to diminish our call centre costs, we have
21 produced some short videos and articles to explain the most frequent
22 enquiries.

23 Cleaning continues to be the major source of dispute. It would be beneficial
24 to both reduce the number coming to us and to streamline their
25 adjudication process. We have undertaken research to establish a broad set
26 of tariffs – as the large student accommodation providers do – for time and
27 costs. We are also extending it to other areas e.g. gardening and decorating.
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ARLA Scheme

- The landlord or tenant makes a complaint to ARLA;
- ARLA ensure that the complaint meets their criteria of eligibility;
- It is referred to The Dispute Service Ltd. ;
- We check the documentation and send it to one of our adjudicators for consideration;
- They liaise as necessary with the parties, and produce a report for the ICE.
- He aims to issue his adjudication within 60 days of receiving the complaint.

We apply a similar methodology to TDS, but benefit from the sifting carried out by ARLA before cases are sent to us. The greater complexity of these cases means they frequently have considerably more documentation.

OEA Scheme

The OEA Scheme is very similar to the ARLA scheme, as are the complaints, but the methodology is varied slightly to comply with the OEA’s approach to sales complaints. OEA ask the agent to submit the full case file, rather than a response to the complaint with supporting evidence. When the ICE has received the adjudicator’s report, he invites the parties to comment before finalising it. The timescale is therefore extended to 90 days. Again we benefit from the sifting carried out by OEA before cases are sent to us. ²

²This arrangement came to an end by mutual agreement in September 2008

Facts and figures

Summary of the position at the end of 2007-08

In the company-only access to the website we now have a number of reports, including the table below which adjusts in real-time. At midnight on 31st March 2008 it read:

Landlords registered:	361,522
Tenancies registered:	470,323
Tenants registered:	731,244
Tenancies renewed	7,877
Tenancies made periodic:	3,881
Total number of tenancies ended in dispute:	577
Total amount of deposits protected from current tenancies registered:	£466,190,677.96

As in most new ventures, the first year has been tough. Not everything has gone to plan, and we have had to adapt quickly. But overall, it has been successful. We resolved nearly 2,000 disputes of all kinds. Membership is steady. We have met all our KPIs and CLG have made clear the satisfaction of both officials and ministers with the first year of TDS. We are fortunate to have skilled and hard-working staff. We can go forward with confidence.

Management accounts

The Management Accounts for the 12 months to 31st March 2008 show a surplus of £1,629k compared to the revised budget for the period of £1,165k, an adverse variance of £464k. (See *management accounts* table opposite).

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Management accounts 1 April 2007- 31 March 2008

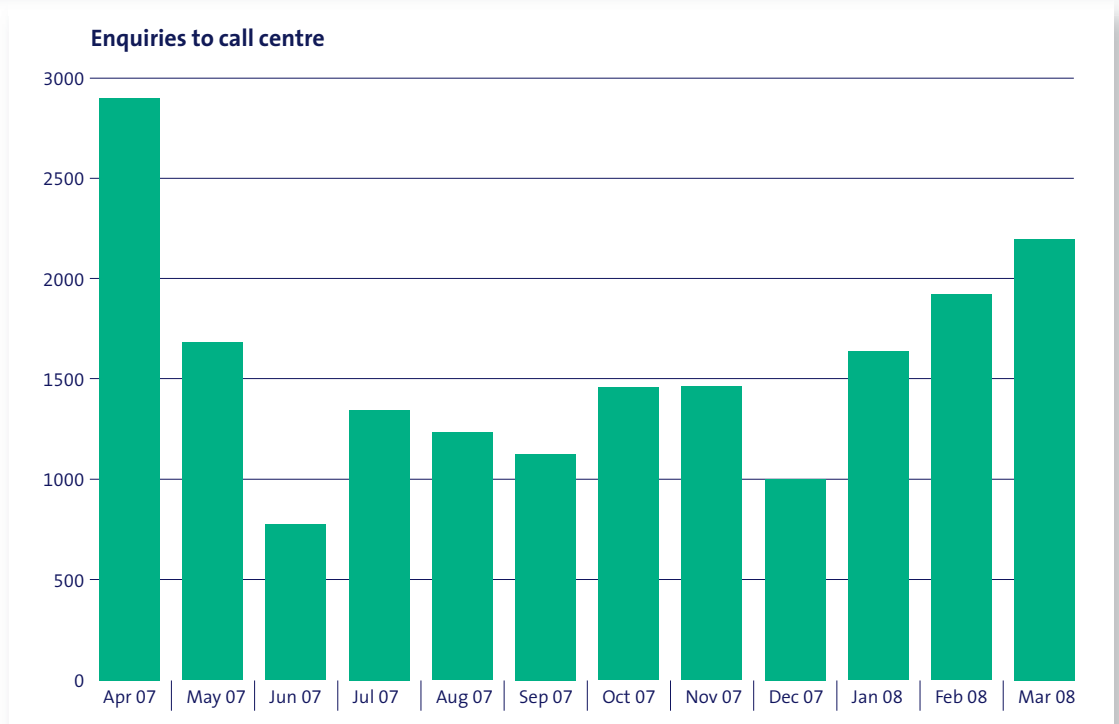
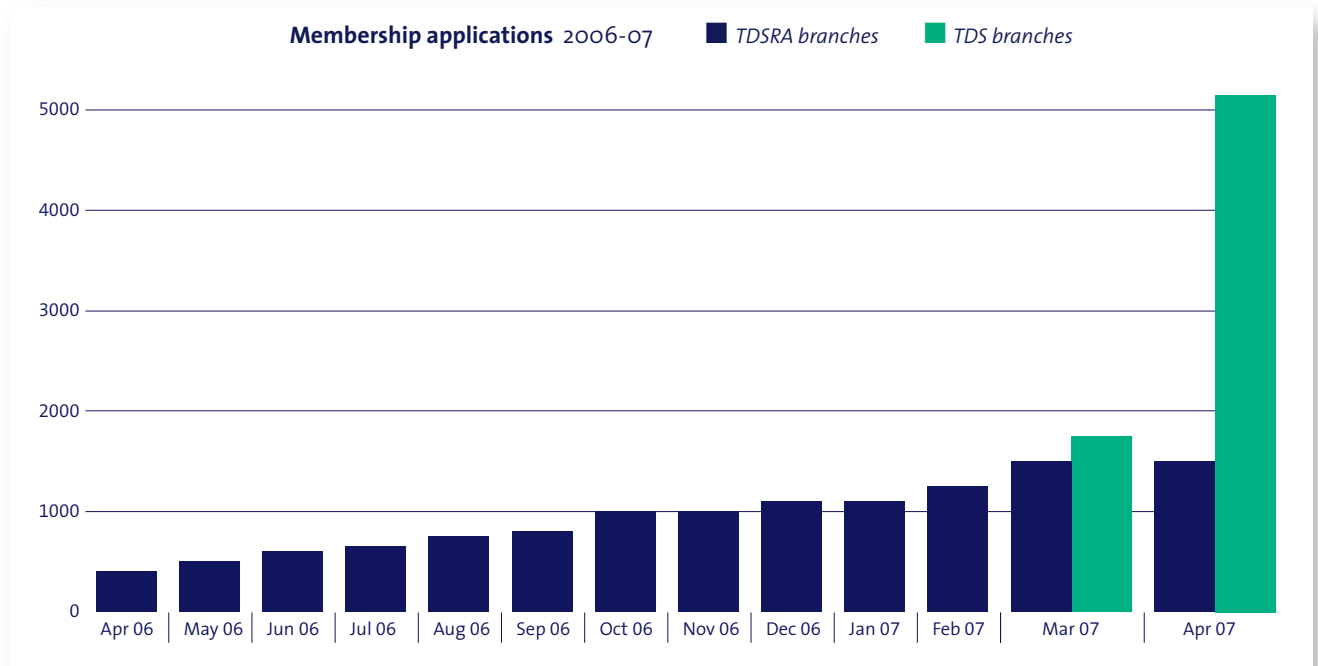
Income	Budget	Actual	Variance
Subscriptions	3,596,850	3,370,028	-226,823
ARLA complaints scheme	65,000	24,200	-40,800
OEA complaints scheme	25,000	26,550	1,550
Other income	3,246	17,332	14,086
Interest received	37,500	64,727	27,227
Total	3,727,596	3,502,836	-224,760
Overheads	Budget	Actual	Variance
Staff costs	501,831	553,116	51,285
Travel and subsistence	8,000	6,702	-1,298
Board	13,000	1,011	-11,989
Staff training	21,535	27,475	5,940
Staff recruitment	47,970	45,452	-2,518
Accommodation	45,544	86,473	40,929
Office running costs	80,000	63,136	-16,864
Insurance	379,167	198,288	-180,879
Publicity and promotion	80,000	64,218	-15,782
External adjudication	107,840	0	-107,840
TDRSA Disputes	403,763	293,217	-110,546
Consultancy and professional fees	40,000	37,900	-2,100
IT support and maintenance	37,500	41,714	4,214
Software development costs	33,400	52,378	18,978
Call centre	210,025	332,657	122,632
Moving costs		69,444	69,444
Total	2,009,575	1,873,181	-136,394
	Budget	Actual	Variance
Retained surplus	1,718,021	1,629,655	-88,366

The company decided to fix the subscriptions for the first two years. We expected to build up a surplus in 2007-08 when there would be relatively few disputes, and expend it in 2008-09. This forecast seems likely to be borne out.

Audited accounts will be published separately.

Applications and enquiries

TDS went live on 6 April 2007. Around that time we were flooded with applications and enquiries.



The unpredictable volume was such that we were unable to meet the service standards we had set ourselves. Things had settled down by the end of May. By the end of the year our call centre was dealing with around 800 enquiries a week, compared to over 3,000 at the peak – a considerable number of which were general queries about tenancy deposit protection. We decided we would answer these as a public service even though they hampered the handling of matters specific to TDS.

Membership

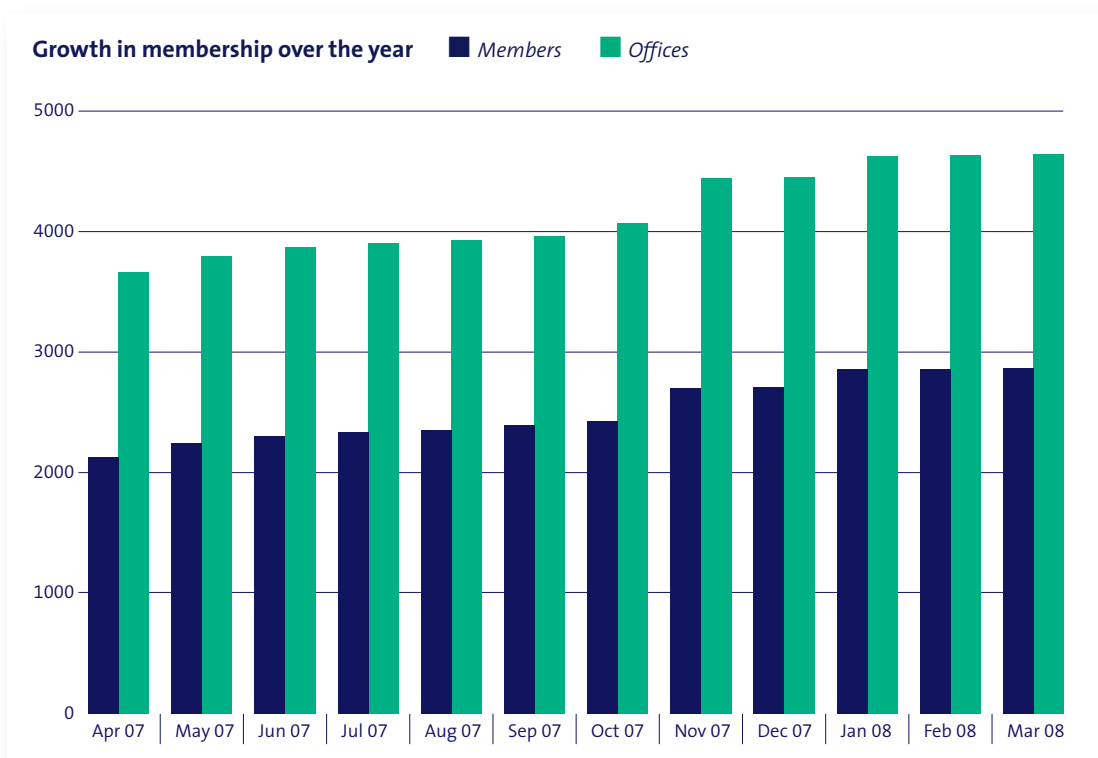
Initial estimates of all our activity were inevitably highly speculative. Tenancy deposit protection had previously been a voluntary commitment, and only for a relatively small number of practitioners.

	Firms	PROJECTED Offices	Firms	ACTUAL Offices
Affiliated agents	2,000	5,000	2,298	3,886
Non-affiliated agents	1,000	1,000	624	814
Corporate landlords	10	10	27	37
Non-corporate landlords	10,000	10,000	27	28
Total	13,010	16,010	2,976	4,765

The difference between our projection and reality is primarily because we have attracted hardly any non-corporate landlords. With hindsight, this is neither surprising nor alarming. TDS is designed primarily to reflect the way agents and corporate landlords operate. The other insurance-based scheme is more precisely focused on small landlords.

It is also interesting to note that, whilst the number of regulated agents is higher than expected, they have 22% fewer lettings offices than anticipated.

Although still only a small proportion of the membership, corporate landlords are 2½ times more in evidence than projected. They had not yet generated any disputes by the end of the year. But it is early days, and many are providers of student accommodation which would not generate any disputes until Summer 08.



The huge influx at the start of the scheme has been mentioned above. From May to October, growth of membership was relatively slight. It then increased appreciably before steadying again, at the higher level. Anecdotally this has been attributed to firms seeking membership when the first batch of tenancies registered with other schemes came to an end. We continued to receive up to 25 applications per week.

Tenancies and disputes

	EXPECTED	ACTUAL
Tenancies registered	723,740	489,428
Terminating year 1 – estimate	289,496	
Terminating year 1 – specified in tenancy agreements	157,966	41,261
Disputes year 1 – initial projection	6,179	
Disputes year 1 – revised projection	4,703	426
Dispute rate %	2.13	1.76

Registration of tenancies has been more gradual than we had expected. Members have been bringing them into the system as they have turned over or been renewed. This has also been at a slower pace. Changes in the housing market had meant that people were moving less often. Tenants are more likely to want to stay where they are, and landlords less keen to want to test the market. Consequently, more properties let before tenancy deposit protection was implemented, have been prolonged. There may also have been some under-reporting of tenancies which ended, but that is impossible to quantify.

Our initial assumptions were that the dispute rate for regulated agents would be around 2%. In the first year, the dispute rate overall has been 1.76%. It is gratifying that the figure has been low, although still higher than some providers predicted. It also produces a significant number of disputes. Taking 1.76% as a marker going forward, we project just under 6,000 disputes in 2008-09 (See *projection of disputes* table opposite).

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Projection of disputes 2008-09

Date	Tenancy agreement due to end	Tenancies projected actually to end	Disputes projected
May 08	39,778	19,646	346
Jun 08	46,973	21,806	384
Jul 08	57,505	26,367	464
Aug 08	54,370	26,267	462
Sep 08	46,836	23,986	422
Oct 08	39,789	25,188	443
Nov 08	19,210	27,459	483
Dec 08	12,018	28,180	496
Jan 09	15,900	34,609	609
Feb 09	17,533	34,475	607
Mar 09	17,982	31,580	556
Apr 09	14,935	30,335	534
Total	382,829	329,898	5,806
Average per month	31,902	27,491	484

Given that the renewal of ASTs appears to be more widespread, we have made the assumption that 30% of tenancies will end after six months; 40% after twelve months; 30% after 18 months. Thus in May 08, 30% of those due to end will do so, together with 40% of those due to have ended in Nov 07. And in Nov 08, 30% of those due to end will do so, plus 30% of those due to have ended in May 08, together with 30% of those due to have ended in Nov 07.

This is a rolling projection, and inevitably still tentative. Those tenancies due to end on or after Nov 08 will grow as more are registered. This will also reflect any absolute growth in the number of tenancies protected.

Disputes handled 2006-08

	received	06-07 closed	received	07-08 closed
TDSRA	944	694	1,324	1,341
TDS			577	423
ARLA	115	154	109	88
OEA	11	7	93	63
Total	1,070	855	2,103	1,915

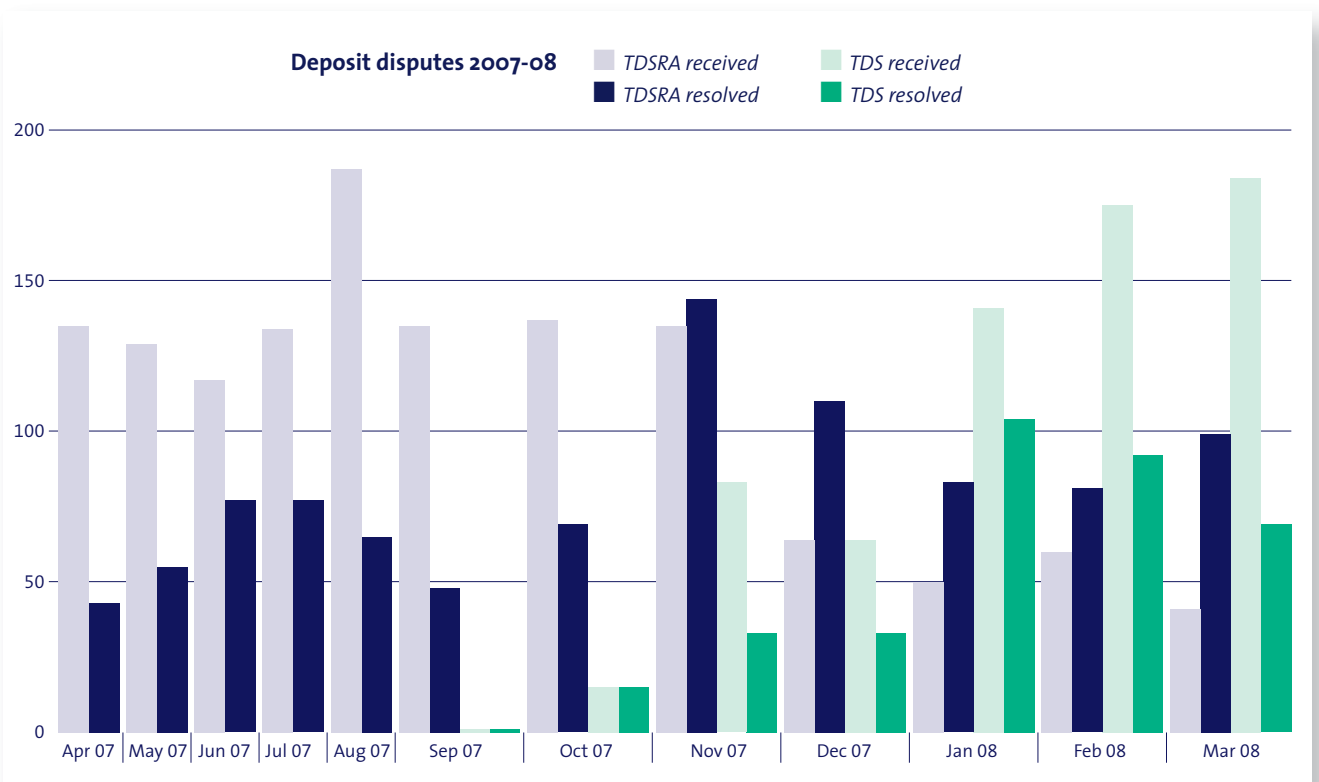
This table is a snapshot. Whilst the number of cases received in a given year

is fixed, the number resolved will include cases submitted in the previous time period. Thus in 06-07 we closed more ARLA cases than were submitted; and in 07-08 we closed more TDSRA cases than were submitted.

By the same token, the fact that we resolved fewer TDS cases than we received is not a cause for alarm. In fact we closed all cases within an average of 28 days from receiving consent of both parties to the adjudication. The key performance indicator in our contract with CLG is for 95% of cases to be completed in an average of 28 days.

There is a wide range around the average. Some disputes are resolved in as little as three days. Others have taken several weeks, either because the parties have been dilatory in responding or because they have sought an extension.

We have experienced a backlog in resolving TDSRA disputes. We had expected that the number of tenancies covered by the voluntary scheme would decline as the statutory scheme came on-stream. In fact, it continued to rise overall, and only started to reduce towards the end of the year.



We have worked hard to eliminate the backlog, and it was being steadily whittled by the end of the year. There is as yet no sign that TDSRA is winding down.

Staffing

Actual and projected staffing

	END OF YEAR ONE actual	END OF YEAR TWO projected	END OF YEAR TWO revised
Independent Case Examiner	1	1	1
Deputy Independent Case Examiners	3	3	4
Casework Scrutiny Managers	1	12	5
Dispute Support Officer			1
Administrators	8	9	11
Adjudicators			
<i>part-time/ consultants</i>	3	28	10
<i>freelance</i>	38	24	35
Total casework staff	54	77	67
Total finance & membership	4	6	6
Total all staff	58	83	73

The staffing requirements are lower than projected because we now expect fewer disputes than we had originally anticipated.

Due to opportune circumstances, we were able to recruit a Casework Scrutiny Manager (CSM) earlier than we had expected. This has proved to be a valuable appointment. The post-holder sifts out, and frequently resolves, straightforward disputes, and deals with many which require short-form adjudications.

The post of Dispute Support Officer will relieve DICE of their non-casework tasks e.g. organising adjudicator training; maintaining the Adjudicator’s Handbook; monitoring and analysis of disputes. S/he will also be responsible for maintaining and developing the website.

Processing disputes is proving to take more time than expected. The weight of paper submitted, the need to check eligibility, and the requirement to have relevant documents before being able to do so, are amongst the factors attenuating the process. We are therefore increasing staffing here by more than initially projected, whilst rigorously streamlining procedures where possible.

It remains our objective to have fewer adjudicators doing more cases, mainly through their becoming part-time employees or consultants on contract. But few have so far opted for this, largely because they are busy with other work.

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3 It is to our benefit that they continue to gain wider understanding of law,
4 dispute resolution, the PRS and other relevant matters, which they then
5 bring to bear on the disputes we ask them to resolve. We expect to have
6 greater success in persuading the most successful members of the new
7 intake, who have been recruited specifically with a view to part-time
8 contracts. We are in the fortunate position of having more trained
9 adjudicators than we currently need.

10 The figures shown in the *Actual and projected staffing* table (see page 15) will
11 allow us to deal with around 6,000 disputes in 08-09. We are currently
12 recruiting the extra staff, and propose to use the opportunity to take on an
13 extra CSM and additional administrators so we can get ahead of the next
14 surge in demand. These additional people will not be under-employed. There
15 are a number of areas where we need time and resource to develop policy
16 and practice.
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Training adjudicators

Our objectives are to ensure that caseworkers are fully equipped to carry out their tasks, so that they need minimum supervision and assistance. We run an intensive residential training programme for new adjudicators consisting of:

General induction	half-day
Law	one-day
Practice of letting agents	one-day
Report writing	one-day
Practical casework	half-day

We continue to offer regular feedback and individual extra training as necessary. This year we ran two half-day workshops with adjudicators to bring them up to date on current developments, as we have done before. Given the increasing number of adjudicators, we will replace this in 2008-09 with a one-day annual conference in the Autumn. We believe this will be more cost-effective

When resources allow, we will work with the Professional Bodies to help train and educate members so that they can avoid or resolve more disputes before they reach us.

External relations

We have produced a range of documents about the Scheme and its operation. Some are for general information e.g:

- TDS A *Rules of membership*
- TDS L *Progress of a dispute*, which explains how we deal with deposit disputes, and in particular what people should take into account in deciding whether or not to submit a dispute.

Others are specifically for members e.g.:

- TDS D *Operational procedures and advice*. It contains answers to all the questions which members have frequently put to us, and they are encouraged to refer to use this as their main reference document.
- TDS G *Clauses for inclusion in agreements*, which contains the Prescribed Information which Scheme members are statutorily required to give to their tenants, and other matters which must be included in formal agreements to enable the operation of TDS.

Senior staff have attended many conferences, seminars and workshops to talk about TDS. We have also produced a series of short films for the website about the Scheme in general, and also to deal with operational and practice issues which are frequently raised with us.

Website and database

Whilst most of the comments we have received have been positive, it is clear that a number of users found the website and/or database awkward to use. It is important to us that members, in particular, find it accessible. We are therefore part way through a programme of enhancement which includes:

- A comprehensive review of the design of the database side of the website following much constructive input from members and users.
- Closed tenancies have been removed from the database and put into an archive. Members can still look up the details of the older tenancies, helping them to ensure they are only recording and retrieving live tenancies at any one time.
- Refining the data import system which enables members to schedule and download zip files and keep track of uploaded tenancies. Software houses are developing data management packages which will register tenancies on our database as part of local input.

Casework

Deposit disputes almost invariably concern small sums of money and run-of-the-mill issues. That is not to say they are trivial. Our experience has been that most people don't want to complain. Those who do feel they have good reason and are keen for their case to be seriously examined by somebody independent. But we have to admit that disputes accompanied by the refrain "it's a matter of principle" cause our hearts to sink: we know the adjudication will be tortuous and the outcome will rarely satisfy the complainant.

The cases in Appendix B (see page 24) have been selected at random from the huge number that has passed over our desks, to give a flavour of the issues that arise.

Matters of concern

- We have a continuing problem of members failing to send us the disputed amount correctly or on time. We also find that they often fail to account adequately for the disbursement of the deposit.
- All too frequently, members forget to send key documents such as the tenancy agreement; or the rent account where arrears are a feature of the case. Inventories are often absent or insufficiently thorough, particularly in relation to gardens and the state of cleanliness.
- We appreciate that people may dig their heels in over “a matter of principle” leading to disputes over very small sums, and we have to resolve them so that they can be brought to an end. But in many cases it is hard to avoid the conclusion that agents are not trying to resolve the dispute, but are simply passing it to us. This will clearly affect the costs of the Scheme and what we have to charge for membership.
- A considerable number of disputes are generated from ‘Let Only’ tenancies. The quality of evidence presented to substantiate a landlord’s claim often falls short of what is required. Most agents shy away from getting involved in any negotiations as they feel it falls outside their terms of instruction. This can cause administrative difficulties and a higher volume of deposit dispute cases that could have been resolved if the agent had been pro-active – particularly in cases where they were taking a fee for holding the deposit.
- A small proportion of members is responsible for the great majority of cases brought to us. The differential is so marked that we are obliged to consider how the incidence of disputes should be reflected in the subscription calculation in future years.
- We remain concerned that members do not seem to be fully familiar with the requirements and operation of TDS. We will be exploring what other methods we might use to help them.

Bouquets, brickbats and other comments

- I take this opportunity to thank you for all the study you have done on that case, and thank you again, as my tenant was not 'fair play' as you say. I have no intention whatsoever to discuss any longer, and appreciate that such a 'Dispute Service' exists*
- Thank you for your letter dated 19th December 2005 enclosing the copy report from the adjudicator. I am happy with its conclusions and appreciate the hard work carried out by your organisation*
- I am most relieved and grateful for the outcome*
- We thank you for your assistance in the dealing with this unfortunate incident. We believe that the outcome was the correct decision*
- Elizabeth and I have received the payments in accordance with the adjudication, and would like to express that we are both relieved and pleased with the result*
- Many thanks for your letter dated 8 February 2008; I accept the verdict of the independent case examiner along with the balance of my Deposit of £171.59 for the above mentioned property*
- You were set up... to administer information, act on behalf of disputed tenants & LANDLORDS. We pay over £1000.00 per annum for the privilege of being a member of your outfit, and for this I expect support...*
- I cannot believe that you awarded the deposit to the tenant when I told you that I had to redecorate the whole property at considerable expense. I have never had to produce an inventory to justify keeping a deposit before, and I do not see why I should have to spend the money to do so now*
- ironing: (7 hours) £70.00
We agree to pay this charge but do feel it prudent to note that 7 hours of ironing is a very unrealistic amount of time to do sheets, towels, bedspreads and cloths, unless they are numbered in the hundreds! The thought of spending the same time it would take to fly London to New York ironing is tantamount to torture...*

Thank you

Many people and organisations have helped us establish The Dispute Service Ltd and get TDS up and running. It would be impossible to name them all, and invidious to pick out individuals. Suffice it to say that an organisation like ours cannot function without a wide range of support and goodwill. We are continually grateful, and never take it for granted.

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Appendix A

Interim board of directors

Peter Bolton King *representing the National Association of Estate Agents*

Gillian Charlesworth *representing the Royal Institution of Chartered Surveyors*

Fiona Dickie *Barrister*

John Hards *Countrywide Residential Lettings*

John Hornsey (Chair) *Jardine Lloyd Thompson*

Lindsay Ostervig* *Ashton Burkinshaw*

Ian Potter** *representing the Association of Residential Letting Agents*

Marveen Smith *PainSmith, solicitors*

Adrian Turner * *representing the Association of Residential Letting Agents*

Kit Wilby *Brent Private Tenants Rights Group*

** resigned during the year*

*** after the resignation of Adrian Turner*

Appendix B

Selection of cases

Example case 1

Complaint brought by:	Agent
Amount of deposit:	£995.00
Amount in dispute:	£995.00
Amount awarded to:	
<i>landlord:</i>	£N/A
<i>agent:</i>	£0.00
<i>tenant:</i>	£995.00

The agents issued a complaint against the tenants concerning the condition of the property's carpeting. The agent felt that, as the carpets were not in a suitable condition, the deposit should be withheld to compensate for cleaning expenses.

The check-out inventory report did not indicate that the carpets were dirty and the landlords declined to submit evidence to the contrary. The deposit was awarded to the tenant.

Example case 2

Complaint brought by:	Agent
Amount of deposit:	£1,300.00
Amount in dispute:	£452.38
Amount awarded to:	
<i>landlord:</i>	£50.00
<i>agent:</i>	£0.00
<i>tenant:</i>	£402.38

A complaint was raised against the tenant for accidental damage to the shower tray, requiring a full replacement.

The landlord enlisted a third-party to carry out repairs in the bathroom and was billed for a total sum of £452.38, including a report stating that the dropping of a heavy object was the most likely cause of the damage. The Independent Case Examiner considered this sum to be reasonable.

A complication arose due to the landlord making a claim against his insurance for the total sum. The insurance company reimbursed the landlord the full amount, minus £50 policy excess. The tenancy agreement stated that the tenant agreed:

‘To reimburse the Landlord for any excess sum, up to a maximum of £100, payable under the Landlords insurance policy for each and any claim on the Landlords policy resulting from any action or inaction on the part of the Tenant, his invited guests or visitors, in breach of this agreement’

It was concluded that the tenant was only responsible for the sum of the policy excess – any more than that would have given the landlord an unjustifiable profit. However, if the landlord had not made a successful insurance claim, and evidence substantiating the damage claim had been provided, the decision might have been different.

Example case 3

Complaint brought by:	Agent
Amount of deposit:	£1,050.00
Amount in dispute:	£1,040.67
Amount awarded to:	
<i>landlord:</i>	£940.74
<i>agent:</i>	£0.00
<i>tenant:</i>	£99.93

Issue 1:

On the tenants check-in, the property was found to be domestically clean, with some light cleaning required. However, on check-out the landlord felt the property required a professional clean throughout, with specific attention needed for:

- a stained WC bowl
- the oven which was dirty and marked
- the washing machine soap tray

The landlord proceeded to have the property professionally cleaned to a total charge of £129.25, and requested the tenant pay a 50% contribution towards the total cost. However the tenant, in reply, felt that the premises were left in an improved state on check-out and were unwilling to split the cost of the professional clean.

In this matter, it was decided that it was unreasonable for the landlord to claim 50% of the cleaning from the tenant. The tenant moved into a property that was cleaned to a domestic standard, and left it in an equal state of cleanliness. In paying the share of the cleaning, the tenant would be paying to have the property cleaned to a standard far exceeding that at the beginning of their tenancy, with only three areas noted to be worse.

As such, the adjudicator felt that these areas could be cleaned in two hours at an hourly rate of £15 and thus awarded the landlord a total of £30 to cover cleaning expenses.

Issue 2:

Upon taking up the tenancy, the tenant agreed to a twelve month assured lease at a total of £910 per month. Five months into this contract, outside the six-month break-clause in their tenancy agreement, the tenant decided to give two months notice and vacate the property.

It took the agents a further 24 days to find a new tenant, for which the previous tenant was liable having left outside of the times specified in their tenancy agreement. It was duly calculated that the tenant was required to pay rent arrears to a total of £718.08.

Issue 3:

As a result of vacating the premises early, the landlord felt the tenant to be liable for a loss of commission (14% exc. VAT) paid in advance to the agent. It included the period the property was consequently empty.

This was found to be the case with the landlord being awarded a total of £192.66 to compensate for loss of monies.

Example case 4

Complaint brought by:	Tenant
Amount of deposit:	£925.00
Amount in dispute:	£925.00
Amount awarded to:	
<i>landlord:</i>	£0.00
<i>agent:</i>	£N/A
<i>tenant:</i>	£925.00

The landlord and tenant agreed to an early termination of the tenancy, due to the tenant being unable to lock the door.

The landlord proceeded to email the agents informing them to expect the keys back from the tenant, with no instructions or guidance regarding releasing the tenants' deposit.

The full sum was awarded to the tenant for the following reasons:

- 1** The landlord did not respond to dispute papers issued to him.
- 2** The agent did not receive a copy of the inventory/check-in or check-out and as such were unable to provide the independent case examiner with a copy.
- 3** The landlord failed to register any claim against the tenant's deposit.

Example case 5

Complaint brought by:	Tenant
Amount of deposit:	£1,125.00
Amount in dispute:	£672.00
Amount awarded to:	
<i>landlord:</i>	£202.00
<i>agent:</i>	£N/A
<i>tenant:</i>	£470.00

Issue 1:

At the commencement of the tenancy, the landlord and tenant verbally agreed that the oil tank would remain at level 2 of 5 (approx. or 500 litres). On check-in, it was agreed by both parties that this was the case.

On vacation of the premises the check-out report concluded that the level in the oil tank to be 0, and as such the landlord is requesting a sum of money to cover the replacement oil totalling £202.00. This money was awarded to the landlord, as clause 8.4 in the tenancy agreement states that the tenant is to ensure any oil is replaced at the end of the tenancy.

Issue 2:

On conclusion of the tenancy, the check-out clerk found the shower tray in the annexe bathroom to be cracked, and asserted that this was most likely due to the tray having been subjected to more pressure than it was designed to take and was unlikely to be caused by wear and tear. The landlord felt that this was the responsibility of the tenant and requested a sum of £470 to replace the shower tray, based on quotes from third parties.

However, the landlord failed to provide information on the age, quality or original cost of the shower tray or have the damage assessed by an independent expert. The tenant claimed not to have used the annexed flat for anything other than storage and that a previous occupant may have caused the damage. The tenant also claimed that they had found maintenance problems in the property that appeared to have been repaired inexpertly.

Clause 3.2 of the tenancy agreement states that the landlord is required to maintain fixtures and fittings, repairing and replacing as required those that need it due to fair wear and tear. Due to this, it was felt that the tenant paying to replace the shower tray would put the landlord at an advantage with the property being in a better condition than it was previously. Accordingly the landlord was awarded no monies to cover these costs; however had they provided evidence to support their claim the ruling may have been different.

Appendix C

Publications

Documents

TDS A *Rules of Membership*

TDS B *Management and administration of the Tenancy Deposit Scheme*

TDS C *Criteria for approved bodies*

TDS D *Operational procedures and advice for members**

TDS E *Consumer Leaflet What is the Tenancy Deposit Scheme?**

TDS F *Procedure for complaining about the way the ICE handled your case*

TDS G *Clauses for inclusion in agreements**

TDS H *Certificate of tenancy registration**

TDS J *Procedure for complaining about the way The Dispute Service Ltd handled your membership application or deposit Schedule of fees*

TDS K *Schedule of fees*

TDS L *Progress of a dispute*

** Available to members only*

*** Also translated into:*

Arabic	Hindi	Russian
Bengali	Mandarin	Spanish
Cantonese	Polish	Urdu
Gujarati	Punjabi	Welsh

Forms

TDS 1A *Application for an agent to join TDS*

TDS 1B *Application for a landlord to join TDS*

TDS 2 *Notification/referral of a deposit dispute*

TDS 3 *Report of adjudication*

TDS 4 *Consent to submit to adjudication disputes on tenancies which started before the member joined TDS*

TDS 5 *Registration of a tenancy*

TDS 6 *Response to dispute*

TDS 7 *Notification of an office opening/closure*

TDS 8 *Changes during the tenancy*

TDS 9 *End of tenancy*

TDS 10 *Application to be an Approved Body*

TDS 11 *Declaration by members of TDSRA*

These documents may also be downloaded from the website www.thedisputeservice.co.uk

The Dispute Service

Annual Report

Published by

The Dispute Service Limited

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Designed by

M+IM Frost *Design Consultants*, Teddington, Middlesex TW11 9LS

Printed by

Barclay's Print Limited, London E10 7QX

*A biodegradable laminate
has been used on the cover
of this annual report*

