Pets in Properties – All you need to know!

360° Degree
Virtual Viewings

Customisable Guide

Customisable Guide



**Why give this guide to your landlords?**

By passing this guide to your landlords, you will convey your awareness and knowledge of an increasingly prevalent topic – along with the legal position and government guidance.

Inside the guide, you and your landlords will find useful advice on:

* Virtual property viewings.
* Data protection.
* Consumer Protection Regulations.
* The Property Ombudsman Guidance.
* The Information Commissioner’s Office.
* FAQs.
* Pre-viewing checklist.
* Post-viewing checklist.

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2. Replace the grey box with your organisation logo and agency details on any page;
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5. Share a digital or printed copy with your landlords.

**Agent and Property Owner Guide to:
Virtual Property Viewings in England**

Virtual property viewings have become the norm over the past year, initially as a result of Government guidance, but they have persisted even as this has been rescinded. This is a little surprising considering that they were a fairly rare occurrence before the pandemic.

Despite the property market having largely reopened and in-person viewings now being possible, virtual viewings continue to be widely used both for lettings and sales and it looks like their use will endure. Their popularity seems to be down to convenience for all parties involved as well as the ability to reduce the number of viewings by prospective buyers who are less interested in the property. However, there are important legal and regulatory considerations to be kept in mind for agents and property owners.

This guide produced by Inventory Hive and JMW Solicitors seeks to provide both agents and property owners with an overview of the law and guidance in this area and deliver practical tips for navigating the legal and regulatory pitfalls so all parties can confidently and safely enjoy the practical advantages of virtual viewings. It will also provide pre-viewing checklist and answers to some Frequently Asked Questions (FAQs).

**Virtual Property Viewings**

A virtual property viewing’s purpose is to show a prospective buyer or tenant around
the property virtually, i.e. through a live video stream (which may also be recorded).
This is usually done using a smartphone or a tablet through an application, which allows for video calls, such as Zoom, Microsoft Teams or WhatsApp (other applications available). More elaborate video productions (3-D cameras) are also available but not as widely used. The future may even hold Virtual Reality viewings provided at agents’ offices or online.

**Property Marketing Photographs**

Using digital content to market properties is nothing new. Agents and property owners should all be aware of the general DOs and DON’Ts by now:

✔ DO show off the property off in its best light (figuratively and literally)

✖ DON’T trick or mislead the prospective tenant or buyer.

Generally, the same principles apply to virtual viewings as to conventional photography and descriptions. They are actually covered by the same law (the Consumer Protection From Unfair Trading Regulations 2008) as no additional legislation has been passed to specifically address their increased popularity. Additional guidance has been produced by The Property Ombudsman (TPO) and is discussed later in this guide.

While live and even recorded videos are not as easy to manipulate as photographs are (at least not by your average agent or property owner), they can inadvertently turn out to be more misleading. Videos create a more powerful illusion of reality and, as intended, virtual viewings create an impression as close as possible to an in-person viewing. Therefore any lack of transparency is likely to be more damaging as viewers will tend not to question the accuracy of a virtual viewing. It is important to keep this in mind that a prudent agent or owner should consider the relevant law and rules. This is what this guide aims to assist with.

**Pros**

* **Cheaper** (can use a pre-recorded video for multiple viewings and recorded videos can be re-watched multiple times by interested parties)
* **Easier** (in terms of practical arrangements, travel, etc.)
* **Able to fit more viewings in a day**
* **More convenient**
* **Safer** (in terms of COVID-19 considerations)

**Cons**

* **Less realistic impression of the property overall** (ultimately always advise to follow up with an in-person viewing)
* Interested parties are unable to explore the **neighbourhood and the local community**
* It is more difficult to emphasise the availability of **local amenities** virtually
* **Noise underestimated** (difficult to transmit an accurate impression of noise in the property or the video may have poor audio)
* **Transport links** (interested parties are unable to test the local transport links virtually)

**Note:** Virtual viewings are likely to continue to be used at least for initial viewings. The TPO guidance recognises this especially where a property is a long way away from the viewer. However, the TPO still recommends an in-person viewing where possible.

**Data Protection Implications**

**Why think about Data Protection?**

“Estate agent's hi-tech house tour exposes personal data” is the headline of a story ran by the BBC this year when an estate agent in Devon published a 3D house tour which allowed viewers to zoom into the personal information of the vendor, including financial details. The story was reported by the BBC on their website and a report was made to the Information Commissioner’s Office (ICO). This neatly underlines the potential data protection issues of virtual viewings. The very high quality of many digital cameras allows for viewers to zoom in on small details with enough resolution to still be able to read text easily.

“We are much better at collecting personal data than we are at keeping it safe, but if we can't keep it safe, we shouldn't be collecting it in the first place.” [Carissa Veliz, author of Privacy is Power, as reported by BBC: <https://www.bbc.co.uk/news/technology-56718046> on 13/04/2021 (link accessed at 17:45 on 12/08/2021)]

**UK Data Protection Regime**

The UK data protection regime consists of the Data Protection Act 2018 (DPA 2018) and the UK General Data Protection Regulation (UK GDPR). Data protection is regulated by the ICO and the ICO has a lot of helpful information on its website: <https://ico.org.uk/for-organisations/>

The data protection regime’s aim is to ensure “the fair and proper use of information about people” [ICO Website: <https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/some-basic-concepts/> (link accessed on 16/08/2021 at 14:31)].

Data protection law applies where personal data is processed (including by way of a live video stream or video recording) in relation to a commercial activity, e.g. marketing, sale or letting.

“personal data” – information about an individual, i.e. data that can identify an individual.

Examples of personal data to be mindful of during virtual viewings: unitality bills, family photographs, bank statements, passports.

Agents and property owners must be able to justify any processing of personal data on one of the grounds set out in law. While consent is one of the possible grounds, it is arguably the weakest one. Agents will be able to justify the processing of data when it comes to virtual viewings in reference to performing their contractual obligations towards the individual. Ultimately, this will be a matter of degree and necessity: no more data than reasonably necessary for the performance of the contract must be processed. However, this consent or the performance of a contractual obligation does not extend to the accidentally revealing individual personal data to anyone who zooms into the video sufficiently. Any attempt to avoid this responsibility by getting vendors or landlords to agree that they accepted the risk would be likely to be found to be void by the courts.

Practical Tip: Before recording or streaming the virtual viewing, walk through the property and ensure that personal documents, photographs and any other items or papers which contain personal information are removed or covered where possible.

Hand a copy of this guide to the property owner and advise them to remove or cover any items revealing their personal information.

When dealing with a recorded video, re-watch the video (and ask the property owner to re-watch it too) before publishing to ensure that no personal data has made it on video despite your pre-recording checks. If it has, then this should be obscured.

If a data breach still occurs, a report must be made to the ICO within 72 hours of becoming aware of the breach: <https://ico.org.uk/for-organisations/report-a-breach/>. Given the sensitivity of the data that might be lost a report would be very likely to be required to both the ICO and the person whose data had been accidentally revealed. The ICO would be unlikely to fine someone for a first offence but an individual could make a claim for damages for the distress associated with the loss of their personal data.

NOTE: There is no need for health data to be processed for the purposes of a virtual viewing and care should be taken not to inadvertently record any health information (e.g. GP or hospital letters lying around). Health information is particularly sensitive and is “special category data” [Article 9(1), UK GDPR], which is subject to additional protection under the Data Protection regime.

Legal advice should be sought prior to processing any health data (this could include, for example, COVID-19-related information) to ensure compliance with the additional legal requirements.

Agents should also be mindful of their duty of confidentiality towards their clients.

Lastly, agents should consider how long to keep any videos made and saved on their computer systems. Videos should not be stored for longer than necessary and clients should be advised of the relevant archiving and deletion policy as part of the agent’s data privacy policy.

**Consumer Protection from Unfair Trading Regulations (CPRs)**

Virtual viewings (live or recorded) are likely covered by the CPRs as they fall within the definition of a commercial practice. Accordingly, representations made during any video footage are subject to the legal requirements set out in the CPRs. The TPO guidance which is approved by trading standards confirms that this includes the video footage itself and any audio, and representations given by any person on the video or voiceover. It is important to understand that the CPRs cannot be avoided by suggesting that all representations and viewings need to be considered together. If a virtual viewing is misleading but the misconception would be easily corrected by a physical viewing then that is not an excuse as the misleading virtual viewing causing someone to decide to physically view the property is a breach of the CPRs in itself.

The TPO Code of Practice for Residential Letting Agents generally advises agents against accepting or advising a landlord to accept an offer on a property that has not been viewed personally by the relevant person or a third party suitably authorised by the relevant person. However, there is no requirement to reject an offer for that reason. It is important to note that there is no ability to avoid the effect of the CPRs with a disclaimer stating that by not physically viewing the property the tenant or buyer accepts the risks involved.

 **Misleading Omissions**

The viewing should aim to demonstrate as much of the property as possible – good and bad. Attempting to conceal bad points may constitute a misleading omission which is an offence under the CPRs. This is why a live video viewing can be better as the viewer can exercise control by asking the person showing the video to turn in a particular direction or zoom in on a specific point.

It is good practice for the video to also be as clear as possible about sizes and dimensions, which may be difficult to convey accurately on a video call. Careful placement of measuring tapes or items of a known size can be helpful.

Practical Tip: Try to avoid situations such as a room containing small furniture to avoid giving a false impression. Having a person in the video for scale may also be of assistance.

Think **honesty** and **comprehensiveness**.

It is important that everyone involved in the viewing under the control of the agent is aware of the legal requirements and agents should take all reasonable precautions and exercise all due diligence to avoid the commission of an offence by any such person. Agents should be careful where it is the owner who is carrying out the video viewing and should make sure that they have been made aware of the obligation to be transparent.

Agents should hand a copy of this guide to a landlord, seller or other third parties outside of the agent’s control who conduct the virtual viewing. The agent should also inform the prospective tenant/buyer that the agent is not responsible for representations made out of the agent’s control.

Practical Tip: Agents should make reasonable efforts to review and verify the truth and accuracy of pre-recorded videos. Relying on the word of the landlord or seller may not be enough due diligence for agents.

Disclaimers may be inserted when video recordings are provided to viewers that accuracy has been verified at the time of filming, but changes may have occurred since.

A copy of the live viewing recording may be provided to the viewer and kept on the agent’s file (subject to the data protection considerations covered above).

 **FAQs**

Q: Should prospective tenants/purchasers be allowed to ask questions and direct the live viewing?

A: Yes. The TPO recommends conducting a virtual viewing in a manner similar to an in-person one: allowing the tenant/purchaser to ask question, ask for demonstration of things working (such as light switches for example).

Q: Where should a virtual viewing start?

A: Outside the property is a good place as it will serve as confirmation of the address.

Q: Should negative factors be shown?

A: Yes. The virtual viewing should show anything that could be seen from a real viewing. So if there is a petrol station next door that should be clear. If there is damp or property damage that should be made obvious. If there are power lines across the garden that should be shown.

**Checklist**

**Before the viewing**

* Hand a copy of this guide to anyone involved in the viewing on behalf of your client
* Tidy around and remove clutter
* Clear and clean the outside space
* Remove or cover any items or documents, which contain personal information: photographs, letters, utility bills, bank statements, passports, etc.
* Ensure good lighting for the recording: open curtains, switch on lights, record during the day
* Ensure all necessary technology is charged and in working order
* Plan for the number of people to be in attendance, considering noise, what help is needed and whether a person or something else will be in shot for scale
* Plan the timing of the viewing in terms of length
* Plan the route and practice it (this will assist with timing planning too)
* Prepare an outline script to accompany the route
* Test the audio to ensure the appropriate volume and tone of voice is used
* Prepare answers to expected questions

**After the viewing**

* If recorded video post-live viewing – re-watch the video while keeping data protection and consumer law obligations in mind:
* Obscure any personal information recorded if a copy is to be sent to the prospective tenant/purchaser
* Ask the seller/landlord to also watch and approve the video before sending it out
* Address in writing any point which does not appear to have been made fully or accurately on video or which requires clarification or correction
* Advise the prospective buyer/tenant that an in-person viewing is advised
* If recorded virtual viewing for posting - re-watch the video while keeping data protection and consumer law obligations in mind:
* Obscure any personal information recorded before posting
* Ask the seller/landlord to also watch and approve the video prior to posting
* Verify the accuracy of any statements made if the video is narrated
* Attend the property to ensure the video gives an overall accurate impression of the property
* Include a disclaimer when posting the video that an in-person viewing is advised





