

Agency Agreements



The following guidance is provided for agents to help ensure that their agency agreements meet the requirements of the TPO Code of Practice for Residential Estate Agents and their obligations under the law. The guidance does not set out to determine what is legally acceptable but all agents should be aware of the need to avoid using any unfair terms (as defined by the Unfair Terms in Consumer Contracts Regulations 1999).

The fundamental approach in any agreement should be to define clearly the commitments the seller has taken on as a result of entering into a legally binding contract and to define the commitments you as agent have made to that seller.

This document does not specify model wording of individual terms but rather lays down what are the principles that should be included in any agreement under which a seller will agree to engage your services. This guidance does not specify the format of your agency agreement and recognises that there will be local variations or particular matters that you will want to include.

The overriding principle is that your agreement must be easy to understand by the consumer and the guidance recommends that certain key features of the agreement should be highlighted so that they are specifically drawn to the client's attention.

The principles or heads of agreement which should be included in any agency agreement are as follows:

- Who you are.
- Who the client is including their address (this might be different from the property address) and contact details.
- Details of the property to be sold, the asking price and a clear statement that this is for marketing purposes rather than a formal valuation.
- **The basis of the fee and whether this will be charged as a percentage of the achieved sale price or is fixed. You should also make clear when the fee becomes due and what will happen if payment is not received when due. See also the TPO Code of Practice paragraphs 3h – 3m as to the method of stating the fee structure.**
- **Any additional fees which may be incurred and when these might be payable.**
- **The basis of your agency (sole agency, sole selling rights, multi-agency etc). These must follow the specific definitions shown in the Estate Agents (Provision of Information) Regulations 1991.**
- **Duration of the agreement and how it can be terminated with what period of notice. This should also include a cautionary note about the seller's potential on-going liability after you have been disinstucted and where the property is then sold to someone who you can claim to have introduced to the purchase.**
- Formal notice of the right to cancel the agreement within 7 days in relevant circumstances according to the Cancellation of Contracts etc Regulations 2008.
- The requirement to carry out checks on seller identity to meet Money Laundering Regulations 2007.
- The requirement for an Energy Performance Certificate and the process of obtaining that document together with the associated costs.
- Your obligations regarding the Property Misdescriptions Act 1991 and the need for the seller to formally verify the contents of the Sales Particulars.
- **The disclosure by you of any personal interest you or a connected person has in the sale or potential conflict of interest.**
- Whether you will use a sub-agent to assist in the marketing of the property and the client's option to agree or not to such an approach.
- The facility for the seller to specify their instructions regarding erection of boards and accompanied viewings.
- **The procedures by which any complaint against the service you have provided can be actioned including the right of referral to TPO if the matter is not resolved between the parties.**
- **A clear declaration that by signing the document, the seller is entering into a legally binding agreement, that they are entitled to sell the property and that they have read and understood the terms of that agreement.**

In drafting an agency agreement the above principles should be considered in conjunction with the standards and approach detailed in the TPO Code of Practice for Residential Estate Agents.

Agents are encouraged to use this guidance to contribute to consistency in approach, for ease of consumer understanding and avoidance of complaint.