

Code of Practice for Commercial & Business Agents

Effective from 1 September 2009



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Code of Practice for Commercial & Business Agents

1. General

- 1a This Code applies to the services provided by a person or organisation who has agreed or is required to comply with it in the United Kingdom for the selling, buying or otherwise in connection with, property and/or businesses - (see 14a below).
- All references hereafter in this Code to 'property' means property and/or business as so defined and related services. The Code aims to promote the highest standards of service. You must comply with all laws relating to estate agency such as The Estate Agents Act 1979 and all secondary legislation, The Property Misdescriptions Act 1991 and all secondary legislation, Data Protection Act 1998, The Housing Act 2004, The Consumer Estate Agents and Redress Act 2007, Cancellation of Contracts etc Regulations 2008, The Business Protection from Misleading Marketing Regulations 2008 and all other current and relevant legislation.
- 1b You must offer equality of professional service to any person, regardless of their race, religious belief, gender, sexuality, age, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, religious belief, gender, sexuality, age, disability or nationality.
- 1c You must always act both within the law and in the best interests of the client (see 14b below). You must offer suitable advice to meet the client's aims and needs. You must immediately (see 14c below) tell your client, in writing, about any circumstances which may give rise to a conflict of interest. However, this duty does not excuse you from considering fairly all those involved in the proposed sale or purchase. You must not release without your client's permission or misuse confidential information given by your client during the process of selling or buying a property, unless legally required to do so.
- 1d You must make sure that you and all members of your staff keep to this Code and have a good working knowledge of the law of agency, the law of contract, and all relevant estate agency legislation.
- 1e Where dealing with leasehold property and where appropriate you should comply with the Code of Practice for Commercial Leases in England and Wales as amended from time to time.
- 1f You must keep clear and full written records of all transactions and produce them when required by the Ombudsman for a period of six years.

2. Instructions

- 2a By law you must give your client written confirmation of their instructions to act in the buying or selling of a property on their behalf. You must give the client written details of your fees and expenses and of your business terms. All fees and charges must be included in your Terms of Business; they must be fully explained, and clearly and unambiguously stated in writing. When your fee is not a fixed fee, but involves a percentage of the selling price, the example amount should be based on the asking price. However, you must make it clear that, should the selling price be higher or lower than the asking price, your commission fee will be correspondingly higher or lower. Where you charge a fixed fee you should state the actual amount payable plus VAT in the contract and ensure that the seller understands that the fee will not vary according with the sale price.

Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party. If you intend to charge the client a fee or recover costs should he wish to terminate the instruction, you must make this clear and specify the amount of that fee and additional costs and their purpose.

You must give the client these details before he is committed or has any liability towards you. If appropriate, you must notify your client in writing if you or an 'associate' (see 8a below) or 'connected person' (see 14d below) wish to offer estate agency, surveying, investment, insurance or other services to people proposing to buy or let your client's property through you. Your Terms of Business and your contract must be consistent with the provisions of this Code of Practice and comply with relevant legislation.

You must sign and date your Terms of Business before they are given to your client. The client should also be asked to sign a copy and be given a copy to retain. The client must be given sufficient time to read them before agreeing to instruct you.

You should take reasonable steps to satisfy yourself that the seller is entitled to instruct you and to sign on behalf of all co-sellers.

Any subsequent changes to the Terms of Business must be:

- Mutually agreed by you and your client.
- Promptly confirmed in writing.

- 2b Except for any previously agreed expenses and fees, fees will only become due if a purchaser enters into a contract (in Scotland, concludes missives), through you to buy the property, or as stated otherwise in your terms of business. If you use the phrase 'sole selling rights', 'sole agency' or 'ready, willing and able purchaser' within the terms of engagement, you must explain these phrases in writing, as set out in The Estate Agents (Provision of Information) Regulations 1991. Your client must be informed that, if any other agent introduces a purchaser to them during the period of your sole agency agreement this will be regarded as an introduction by you and the client will have to pay your fees.
- 2c If the client withdraws their instructions from you, you must advise them in writing of any circumstances in which they may have to pay more than one fee.
- 2d You must try to get written confirmation if your client wishes to terminate your agency. You must promptly give the client written confirmation that you are no longer acting for him, confirm the actual date of termination, and itemise and explain any fees or charges the client owes you. You must also explain any continuing liability the client may have to pay you commission, and/or any circumstances in which he may have to pay more than one commission fee. You must explain those circumstances clearly.
- 2e At the time of accepting instructions from a client, you must point out and explain clearly to that client in your written Terms of Business:
- That you will have a commission fee entitlement if that client terminates your instruction and a buyer that you have previously introduced goes on to purchase the property after re-introduction within two years of the date your instruction ended.
 - And that there may be a client liability to pay more than one fee if:
 - That seller has previously instructed another agent to sell the same property on a sole agency, joint sole agency of a sole selling rights basis; or
 - That seller instructs another agent during or after the period of your sole agency, joint sole agency or a sole selling rights basis.
- 2f You must give up your rights to any commission if a purchaser first introduced by you goes on to buy the property through another agent, in circumstances where that purchaser was introduced by the other agent more than six months after the date your agency ended.
- 2g You must not instruct other agencies to assist you in selling or letting a property without your client's permission. If the client gives permission, you must make sure any other agent appointed by you agrees to comply with this Code. As the instructing agent, you are liable at law for the actions of the sub-instructed agent, and will be held responsible for any failures to comply with this Code of Practice by that sub-instructed agent even if that sub-agent is not subject to this Code.
- 2h When you give advice to someone regarding their property, any advice (for example any figure you advise either as a recommended asking price or as a possible selling price) must be given in good faith reflecting current market conditions, supported by comparable evidence. You must never deliberately misrepresent the value of a property in order to gain an instruction.
- 2i You must not directly or indirectly harass (see 14e below) any person in order to gain instructions. Also, you must not repeatedly try to gain instructions in a way likely to cause offence.
- 2j You must not put any client's property on the market for sale without permission from that client or the client's properly appointed representative.

3. Marketing Boards

- 3a You can only erect a Marketing board with the client's permission. When you put up a Marketing board you must keep to the Town and Country Planning (Control of Advertisements) Regulations 2007 as amended; or in Scotland, the Town and Country Planning (Control of Advertisement) Regulations 1990. You must accept liability for any claim arising under these Regulations in connection with the board, unless the action arises as a result of a further board being put up by another person.
- 3b You must not erect an estate agency board at a property unless you have been instructed on that property. Any board you do erect must be appropriate for the occasion.
- 3c If your 'For Sale or Letting' board relates to part of a building in multiple occupation it should, where appropriate, indicate the part to which it relates.
- 3d You must not replace another agent's board with your own, or hide or remove another agent's board from a property, without the client's permission. If you have the client's permission to remove another agent's board, you must immediately tell the other agent, in writing, of the action.

4. Published Material

- 4a You must take all reasonable steps to make sure that all statements, whether oral, pictorial or written, made about a property are accurate. Whenever possible, the written details of a property must be sent to the seller for them to confirm that the details are accurate.
- 4b All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion and Direct Marketing.

5. Offers

- 5a By law you must tell your client as soon as is reasonably possible about all offers that you receive at any time until contracts have been exchanged (in Scotland, missives have been concluded) unless the offer is an amount or type which the client has specifically instructed you, in writing, not to pass on. You must confirm such offers in writing at the earliest opportunity and keep a written or electronic contemporaneous record of all offers you receive, including the date and time of such offer and the seller's response.
- 5b You must not discriminate, or threaten to discriminate against a prospective purchaser of your client's property because that person refuses to agree that you will (directly or indirectly) provide related services to them. Discrimination includes the following:
- Failing to tell the client of an offer to buy the property.
 - Telling the client of an offer less quickly than other offers you have received.
 - Misrepresenting the nature of the offer or that of rival offers.
 - Giving details of properties for sale first to those who have indicated they are prepared to let you provide services to them.
 - Making it a condition that the person wanting to buy the property must use any other service provided by you or anyone else.
- 5c You must make reasonable enquiries of the prospective purchaser, assignee or tenant of their source and availability of the funds for buying the property and pass this information to the client.
- 5d You must tell your client in writing as soon as reasonably possible after you find out that a prospective purchaser, assignee or tenant who has made an offer, has applied to use your services or those of an associate or connected person in connection with that purchase or letting.
- 5e When an offer has been accepted subject to contract, you must consult and take your client's instructions as to whether the property should be withdrawn from the market, or continue to be marketed. In the latter case, you must so advise the prospective purchaser, assignee or tenant in writing.

You remain under the legal obligation to pass on offers, as defined in 5a above.

In England, Wales and Northern Ireland

- 5f You must do everything you reasonably can to keep all prospective purchasers, landlords, assignees or tenants who have recently made offers through you, and which have not already been rejected, informed of the existence (but not the amount) of other offers submitted to the client. You must not misrepresent the existence of, or any details of, any other offer allegedly made, or the status of any other person who has made an offer. If you know that your client has instructed a solicitor to send a contract to an alternative purchaser, assignee or tenant, then you must tell your prospective purchaser, assignee or tenant in writing.

In Scotland

- 5g You must do everything you reasonably can to keep those who have told you that they intend to make an offer informed of the existence (but not the amount) of any other offers. All your negotiations must neither advantage nor disadvantage any of the prospective purchaser, assignee or tenant involved.

If you have received a note of interest (either orally or in writing) from someone intending to make an offer, you must do the following:

- Immediately tell your client about the note of interest and confirm the details in writing, whenever this is practicable (you must keep a written, or computerised, record of all notes of interest).
- Do everything reasonably possible to tell the person intending to make an offer about any formal closing date for offers.

6. Access to Premises

- 6a Unless you and the client agree otherwise in writing, if you hold the keys to a property you must accompany anyone looking around that property. If you are arranging for someone to view a property, you must agree the arrangements with the occupier beforehand, wherever possible.
- 6b You must make sure that all the keys you have are coded and kept secure. You must maintain records of when you issue keys and to whom, and when they are returned. These records must be kept secure and separate from the actual keys. You must only give keys to people providing you with satisfactory identification.
- 6c After exchange of contracts (in Scotland, conclusion of missives) you must not give the purchaser, future assignee or tenant the keys to the property without specific permission from your client or their solicitor. (In Scotland, keys to the property must not be given to the purchaser without specific permission from the client's solicitor).

7. Clients' Money

In England, Wales and Northern Ireland

- 7a As a general rule, you should not take pre-contract deposits, which have no validity in law and can give consumers a false sense of security. If a deposit is taken, then a written receipt must be given, and the circumstances under which the deposit is held and any interest accrued are refundable must be clearly stated in writing. You must not hold a deposit or any other money belonging to a client, unless you are covered by adequate insurance.
- 7b All clients' money must be held in a separate client bank or building society account or accounts, as set out in the Estate Agents (Accounts) Regulations 1981. You must be able to account immediately for all money you are holding on behalf of a client.
- 7c You must refund immediately any deposit paid before exchange of contracts, together with any interest that may be due when you are asked, in writing, to do so. You should ask for a receipt for all the deposits you refund.
- 7d You must not deduct any cost or charges from any client's money you hold, unless your client has given you written authority or your terms and conditions of business with your client permit you to do so.

In Scotland

- 7e Deposits should not be taken at any time.

8. Conflict of Interest

- 8a If your firm is instructed to sell or let a property and you, an employee or an associate (or an associate of the employee if you know about the relationship) is intending to buy it or make an application to rent it, you must, before negotiations begin, give all the relevant facts, in writing, to the client and their solicitor. If you or an employee is intending to buy or rent a property which your firm is instructed to sell or let, that person must take no further direct part in marketing that property. (The term 'associate' includes a brother, sister, husband, wife, "partner" (i.e. co-habitee in an intimate relationship), aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates).
- 8b If you are selling or letting a property that is owned by you, an employee or an associate (or an associate of an employee), or you are selling or letting a property in which you, an employee (or an associate of an employee) has an interest, you must, before negotiations begin, immediately give all the relevant facts, in writing, to the prospective purchaser or tenant.
- 8c You must make every attempt to avoid any conflict of interest which might not be in the best interest of the client.

9. Financial Services

- 9a You must keep to the rules of the Financial Services Authority as defined by the Financial Services and Markets Act 2000 (or any other relevant legislation) which regulates the conduct of your investment business, or the life assurance company you represent, as the case may be.

10. In-house Complaints Handling

- 10a You must maintain and operate an in-house complaints procedure. Such procedures must be in writing; explain how to complain to your business and to any redress scheme and be available in each office.
- 10b All complaints, oral and written, should be noted in writing.

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- 10c You must agree to deal with any properly appointed representative of a complainant.
- 10d All written complaints must be acknowledged within three working days, and a proper investigation promptly undertaken. A formal written outcome of the investigation must be sent to the complainant within fifteen working days. If longer is needed, the complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the complainant within such timescale.
- 10e If the complainant remains dissatisfied, they must be told how they can further pursue their complaint within your company. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. In the case of a single-office Agent, a member of staff not directly involved in the transaction should deal with the complaint. In the case of a sole practitioner who has been directly involved in the transaction, this position must be made clear in writing to the complainant.
- 10f Following the conclusion of your In-House Review, a written statement, expressing your final viewpoint, and including any offer made, must be sent to the complainant. If the complainant remains dissatisfied you must advise them of any further sources of recourse or redress that are available including membership of Ombudsman Schemes, professional bodies, etc, in accordance with the rules and codes of such organisations. Where such rules or Codes differ from the above, the agent must act to ensure that all such are satisfied.
- 10g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

11. Referrals to the Ombudsman

- 11a You must co-operate with any investigations by the Ombudsman being conducted pursuant to, and in accordance with, his Terms of Reference.
- 11b You must:
- comply with any award and/or direction which, in accordance with his Terms of Reference, is made by the Ombudsman against you and accepted by the complainant and which is binding upon you under the Terms of Reference; and
 - pay the complainant the amount of any such award if accepted by the complainant within the period for payment required by the Ombudsman.

12. Compliance Monitoring

- 12a You must comply with the requirements of any Code compliance monitoring used by TPO Limited.
- 12b You must seek consumers' permission for their contact details to be used in any monitoring process to ensure compliance with Data Protection legislation.

13. Non-Compliance with the Code

Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the The Property Ombudsman Council.

The DSC will also consider those cases brought to its attention by the Ombudsman, acting within his Terms of Reference, where he considers that there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent.

The DSC will consider cases of non-compliance where the monitoring process at 12b above shows any single flagrant breach and/or any persistent breaches of the Code, failure to complete monitoring or where it is considered that the member has brought the scheme into disrepute.

In both cases above, the DSC could issue:

- An informal warning.
- A formal warning.
- Levy a fine.
- A notice of dismissal from TPO Limited in writing.

Any Member issued with a warning or sanction has the right to represent to the Disciplinary and Standards Committee of the Council and after the final decision by that body shall, if necessary, have the right to put the matter before an Appeals Committee made up of two independent Council members (one of whom will act as chair) and one board member. Such appeals must be made within four weeks of the issue of the warning or sanction.

14. Interpretation and Definitions

In this Code, references to the masculine include the feminine, the plural and organisations. The following interpretations and definitions also apply:

- 14a Property - property (land with or without buildings) used, last used, or to be used for commercial or residential purposes to be sold or purchased with vacant possession or with a going concern business or a going concern business sold without any land or buildings.
- 14b Client - a person who has instructed you to sell or, for a fee, to buy a property on their behalf, in the United Kingdom - excluding the Channel Islands and the Isle of Man: or to let a property; or to provide other professional services.
- 14c Immediately - as soon as is reasonably practicable in the circumstances.
- 14d Connected Person - "connected persons" include:
- your employer or principal;
 - your employee or agent;
 - any associate including the term "business associate" as defined within Sections 31 and 32 of the Estate Agents Act 1979.
- 14e Harass - means act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.
- 14f Written, in writing – includes typed or hand-written letters or notes, e-mails and faxes.