



“The key to security and Best Practice lies in looking after your clients’ keys.” says **Christopher Hamer** The Property Ombudsman.

All agents will be aware that, by holding the keys to a property, instructed in connection with a sale or let of property, they hold a considerable position of trust. It is a fundamental obligation to ensure that keys are kept safe and the whereabouts of those keys known at all times.

The TPO Codes of Practice lay down the standard that I expect and which I measure the actions of an agent against. Paragraph 6 of the new Sales Code and paragraph 5 of the new Lettings Code (both of which came in force in August 2011) stipulate that all keys retained by an agent must be coded and kept secure and, importantly, records must be maintained as to when and to whom keys are issued and when they are returned.

If keys are issued to a third party, for example a surveyor or contractor, and the agent is not attending at the property but has permission to release the keys, then this should be clearly noted on the key log and the keys checked out and in. However, if the agent is attending the property, usually for a viewing, I accept that it is likely to be self evident that they will take the keys with them.

I am aware that some agents cross reference the key records to the viewing records, considering that the viewing records are sufficient to establish and record the whereabouts of the keys.

Whilst I consider that a full key record would be best practice, it is not my role to stipulate how an agent chooses to maintain their records. I am not a Regulator so I have no powers to enforce rules and regulations which specify market practice or to impose penalties for failure to keep to any regulations. However, if a complaint is made to me concerning key security, I will need to be satisfied that the controls in place, albeit dependent on

‘custom and practice’, can adequately justify an agent’s stance that the keys were always under their secure control.

INAPPROPRIATE USE OF KEYS

Two recent cases were referred to me, both by Complainants understandably concerned about the security of their property. In the first case two branch staff members had taken the keys from the agency and accessed the property for their own entertainment, being discovered in the bedroom at the property by the Complainant’s mother. The agency principal was appalled by the incident, acknowledging that there was no excuse for the matter. The Complainant was entitled to expect that the keys to their property would only be used for legitimate agency business and I clearly found in his favour, making a compensatory award for the distress and aggravation caused to him by the incident.

A second incident concerned the use of a bathroom, the Complainant alleging that it had been left in an unacceptable state after a viewing. The agent denied that either they or the viewers had used the

bathroom so the Complainants were, understandably, concerned about the security of the keys as someone had clearly used the bathroom, in so doing causing the Complainants some aggravation. I made it clear that I was unable to come to a judgement on who left the bathroom in an unacceptable state and hence I was unable to make an award for the undoubted inconvenience caused to the Complainants by this issue.

The agent had recorded the whereabouts of the keys, both by way of a key log and viewing records and hence I was satisfied that the keys were kept secure at all times. As such, I considered that, on the facts as they were provided to me, the agent had complied with the obligations under the TPO Code of Practice and I was unable to support the complaint.

A FUNDAMENTAL OBLIGATION

I appreciate that it can be time consuming to keep detailed records. However, an agent must ensure that their records accurately detail the issue and whereabouts of the keys in order that they can satisfy both their client, and, if a complaint is made regarding this issue, my Office, so that they can substantiate any claim that they took all reasonable care to ensure that the keys were kept secure at all times.

I would advise all agents to familiarise themselves with the relevant sections of the Codes of Practice to ensure that their standard office procedures comply with the requirements.

It is a fundamental obligation to ensure that keys are kept safe and the whereabouts known at all times.

However, I have come across a number of sales cases where the seller and buyer have agreed and signed a key undertaking, and it may be helpful to explain my stance if complaints are referred to this Office.



Branch staff accessed a property for their own entertainment...



“Think carefully before allowing a buyer access to a property before completion; they might move in!”

It appears that it is not uncommon for a buyer to request access to a property after contracts have exchanged but prior to completion, to either store belongings or because they want to carry out some work at the property.

If the agent’s opinion is sought, the seller should be advised to think very carefully before agreeing to allow access in these circumstances; there can be considerable difficulty should the buyer break the terms of any undertaking and carry out acts that were not envisaged.

However if the seller is minded to agree, a key undertaking can be signed. The key undertaking should be agreed between the respective parties’ solicitors and I do not expect an agent to be involved in the drafting of the agreement; indeed, I would advise that if so requested, the agent should decline to act but recommend that the matter should be referred to the solicitor.

The undertaking should clearly set out the reason that the buyer is allowed the keys, what he is permitted to do at the property and any time restraints.

WHEN A BUYER MOVES TOO FAST

In one case, the seller allowed the buyer to obtain the keys from the agent to access the Property to store belongings prior to completion. The buyer exceeded this authority, as the seller returned from holiday and found that the buyer had moved in and was living at the property. The seller had given the agent very specific instructions that they were to release the keys to allow the buyer to leave some belongings but that they were to ensure that the keys were returned at the end of the day. The agent had not checked whether the keys were returned and did not seem to have noticed that the buyer still had the keys. Indeed, at the complaint stage the agent merely advised that they had not foreseen a problem as they knew that the sale should complete imminently.

I upheld the complaint and made an award of £250 to compensate the Complainant for the aggravation, distress and inconvenience caused to her by the agent’s shortcomings. The agent was not responsible for the actions of the buyer but

had failed to act in accordance with their seller client’s instructions. I would have expected the agent to have monitored the buyer’s keeping of the keys, taken reasonable steps to have ensured the safe return of the keys and, if they were not promptly returned as stipulated by the undertaking, have notified the seller of this.

Agents will be aware that the TPO Code of Practice for Residential Estate Agents (paragraph 5e October 2006 version / paragraph 6e August 2011 version) requires them to ensure that their records accurately detail the whereabouts of the keys in order that they can satisfy both their client, and, if a complaint is made, my Office, that they took all reasonable care to ensure that the keys are kept secure at all times and only released in accordance with specific instructions from their seller client, including those instructions detailed in any key undertaking that the seller and buyer agree to sign.

Furthermore, whilst an agent is not a party to the key undertaking, if an agent has any concerns about the terms of the key undertaking I would advise them to clarify this with their client or his solicitor at the earliest opportunity. ☰

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