Code of Practice for Residential Estate Agents in the Channel Islands

Effective from 1 September 2016

This Code of Practice is mandatory for all TPO Members who are entitled to display the above logo and who offer estate agency services. Copies of this Code of Practice and the TPO Consumer Guide should be made available in all your offices. You should prominently display the logo in the window of all your offices.
All references to the singular include the plural. Terms marked (*) - the first time they appear are defined in a Glossary of Terms at Section 15.


Applicability

1a This Code applies to estate agency services in Jersey, Guernsey, Alderney and Sark provided by a person or organisation who has agreed or is required to comply with it for the marketing of residential property (*). Note that letting and buying agents are covered by separate Codes of Practice.

General Obligations

1b You (*) must comply with this Code of Practice, all housing, land and property legislation relating to the Bailiwicks of Jersey and Guernsey and the Data Protection (Jersey) Law 2005.

1c You must ensure that all staff are fully conversant with all aspects of this Code of Practice and their legal responsibilities. Such staff must observe this Code and their legal responsibilities in all their dealings with consumers. Staff must have a good working knowledge of the law of agency, the law of contract, and all relevant estate agency legislation; and familiarity with the basic conveyancing and mortgage application processes.

1d You should provide a service to both buyers and sellers consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit or misrepresentation. You must avoid any course of action that can be construed as aggressive behaviour (*) or harassment (*).

1e You must treat consumers equally regardless of their race, religion or belief, sex, sexual orientation, gender reassignment status, disability or nationality. Unlawful discrimination includes giving less favourable treatment because someone is perceived to have one of these personal characteristics or because they are associated with a person with such a characteristic.

1f You should take special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement.
You must not release or misuse confidential information given by your client (*) during the process of selling or buying a property (*) without your client’s permission unless legally required to do so.

You must keep clear and full written [*] records [*] of all transactions for a period of 10 years and produce them when required by the Ombudsman.

As a TPO Member [*] you must not, or be involved in any action which would bring the scheme into disrepute.

Promoting Your Business

You must use and display such material promoting the Code of Practice as provided by TPO. You should prominently display the TPO logo on the window of all offices, on relevant documentation such as marketing literature, property advertisements, and on your letterheads.

You must have available, free of charge, copies of this Code of Practice to give to consumers on request. You must also prominently display copies of the TPO Consumer Guide leaflet in all your offices.

Duty of Care and Conflict of Interest

You must treat all those involved in the proposed sale or purchase including sellers, potential sellers, buyers and potential buyers fairly and with courtesy.

You must avoid any conflict of interest. You must disclose at the earliest opportunity in writing [*] to your client or any relevant third party any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.

If you intend to offer potential buyers surveying, financial, investment, insurance, conveyancing or other services or those of an associate [*] or connected person [*], you must by law advise your clients either separately in writing or within your Terms of Business, especially in circumstances where a commission or referral fee could be earned.

Customer [*] requirements are key and this applies to the potential viewer/buyer as well as the seller. You should complete a consumer fact find to ensure that any specific requirements of the seller or potential buyer may be taken into consideration.

You must tell the seller in writing or in the memorandum of sale, as soon as reasonably possible after you find out that a prospective buyer, who has made an offer, has applied to use your surveying, financial, investment, insurance, conveyancing or other services or those of an associate or connected person in connection with that purchase.

If your firm is instructed to sell a property and you, an employee or an associate (or an associate of the employee of your firm) is intending to buy it you must, before negotiations begin, give all the relevant facts, in writing, to the seller; and as soon as possible to the seller’s legal representative.

If you are selling a property that is owned by you, an employee or an associate (or an associate of an employee) or in which you, an employee (or an associate of an employee) has an interest, you must, before negotiations begin, immediately make this known, in writing.

Advertising for New Business (Canvassing)

If a Member wishes to offer a property which is on another agent’s books, knowledge of which came to that Member by reason of the agent having erected a board on the property, or having taken any other action to market it, the Member may only approach the prospective client for instructions by post, including an enquiry as to whether a sole agency and/or sole selling rights contract has been granted elsewhere. In such a letter, intended to solicit instructions, the following clause shall be included:

“If you have instructed another agent on a sole agency and/or sole selling rights basis, the terms of those instructions must be considered to avoid a possible liability to pay two commissions.”

Market Appraisal

When you give advice to someone selling their property, any figure you advise, either as a recommended asking price or as a possible selling price must be given in good faith. It must also reflect available information about the property and current market conditions and must be supported by comparable evidence where that is available and/or appropriate. You must never deliberately misrepresent the market value of a property.

Any evidence relating to comparables of similar properties in a similar location should be retained on file for future reference.

You must keep your marketing strategy under regular review with your client.

Instructions, Terms of Business, Commission and Termination

Instruction

You must, at the point of instruction, inform your client in writing that you are a Member of the TPO scheme and subscribe to this Code of Practice.

You must not directly or indirectly harass [*] any person in order to gain instructions, nor must you repeatedly try to gain instructions in a way likely to cause offence.

You must not instruct other agencies to assist you in selling a property without the seller’s permission.

You must give your client written confirmation of their instruction for you to act in the buying or selling of property on their behalf. You must give the client written details of your Terms of Business including your fees and charges before the client has committed or has any liability towards you.

Fair Contracts

Your Terms of Business should be written in plain and intelligible language.

Fees and Charges

All fees and additional costs must be included in your Terms of Business. They must be fully explained, clearly and unambiguously stated in writing before the seller is committed to the contract.

Where the fee is a percentage you should clearly state whether Goods and Services Tax (GST) is chargeable and quote the fee inclusive of GST. 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.

5h Where you charge a fixed fee you should state the actual amount payable inclusive of GST (if applicable) in the contract and ensure that the seller understands that the fee will not vary whatever the sale price.

5i In the circumstances where a buyer may become liable for your fees, this liability must be communicated at the earliest opportunity such that in all forms of media, the property asking price is accompanied by a statement that ‘buyer’s fees apply’ and that websites allow for a click-through to an information pack and FAQs. Appropriate arrangements should be made to provide the same information where non-electronic access is present. The information pack should have ‘key features’ of the approach as the first page and include a full explanation of all fees and additional costs, the circumstances upon which they become due and advise that by paying your fee, that amount may be considered as part of the chargeable consideration for the property and be included in the calculation for stamp duty liability.

Duration and Termination

5j Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party.

5k If you intend to charge the client a fee or recover costs for terminating the instruction, you must make this clear and specify the amount of the fee and additional costs and their purpose. Fees and charges should reasonably reflect activity costs and not include a penalty charge.

5l On receipt of the seller’s instruction (includes executor, trustee, person holding power of attorney), or on your own decision, to terminate your instruction, you must promptly give the seller written confirmation that you are no longer acting, confirm the actual date of termination, and give details of any fees or additional costs the client owes you (see 5p below).

5m Your contract should allow for the required notice of termination to be given before the end of the term, such that termination by the client can occur at the expiry of the minimum term.

Fee Entitlement and Client Liability

5n 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 may be entitled to a commission fee if that client terminates your instruction and a memorandum of sale is issued by another agent to a buyer that you have introduced.

5o At the time of the termination of the instruction, you must explain clearly in writing any continuing liability the client may have to pay you a commission fee and any circumstances in which the client may otherwise have to pay more than one commission fee.

5q Where a dispute arises with another agent in relation to which agent has earned the fee, you should liaise with the other agent to agree where applicable an appropriate split of the commission.

5r Your action in pursuing a commission fee or additional charges must be proportionate and reasonable and not intimidatory.

5s Although nothing precludes you taking court action to pursue payment of your commission account, it is generally expected that you will not take court action when a complainant has referred the matter to the Ombudsman. If however you do pursue payment of your commission fee through the courts you must agree to the Ombudsman considering any outstanding service-related complaints after the court action has been determined.

Signing

5t You must sign and date your Terms of Business before they are given to your client. The client should be asked to sign and be given a copy to retain. The client must be given sufficient time to read them before agreeing to instruct you.

5u 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.

Subsequent Changes

5v Any subsequent changes to the Terms of Business must be:
• Mutually agreed by you and your client;
• Promptly confirmed in writing;
• Where appropriate, contained in a new Terms of Business signed and dated by your client.

6. Marketing and Advertising

6a You must not put any property on the market for sale without permission from the seller, without obtaining adequate proof of identification of the seller in accordance with relevant Money Laundering laws or codes of practice as applicable from time to time.

For Sale Boards

6b You must not erect any form of estate agency board at a property unless you have been instructed to market that property.

6c You can only erect an estate agency board with the specific permission of the client.

6d Any board you do erect must be appropriate for the occasion.

6e If your board relates to part of a building in multiple occupation, it should indicate the part of the building to which it relates.

6f You must not replace another agent’s board with your own, hide it or remove it from a property, without the client’s permission or without notifying the other agent.

6g You must comply with local legislation in relation to erecting your boards.

Published Material and Information about a Property

6h All material information (*) of which you are aware or should be aware in relation to the property must be disclosed and there must be no material omissions which may impact on the average consumer’s (*1) transactional decision (*). Where information is given to potential buyers or their representatives, it must be accurate and not misleading.

6i The written details of a property (sales particulars) must be agreed with the seller to confirm that the details are accurate.

6j Where relevant, you should include basic key information such as service charges; ground rent; the number of years remaining on the lease, and any known special conditions, especially where those conditions could incur additional fees.
6k All advertisements must be legal, decent, honest and truthful. Manipulating internet portals (and other channels of marketing) to give the impression a property is new to the market, when it is not, is misleading.

7. Viewing and Access to Premises

Viewings
7a You must take instructions from the seller regarding viewings, specifically whether or not they should be conducted by you.

7b You must record any viewings that have been arranged for that property, feedback from those viewings and pass this to the seller within a timescale agreed with your client. If this feedback is an offer, you should refer to section 8 below.

7c Before arranging any viewing, you must tell the viewer if you are aware of an offer that has already been accepted subject to contract.

7d When you know the property has been marketed by another agent you should establish if your viewer has previously viewed the property through that or any other agent.

Access to Premises
7e Unless otherwise instructed by the seller, if you hold the keys to a property you must accompany any viewings of that property. If you are arranging for someone to view an occupied property, you must agree the arrangements with the occupier (including any tenants) beforehand, wherever possible.

7f 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.

7g If access to a property is required by a person on behalf of the buyer (e.g. a surveyor, builder, tradesman etc.) and you hold the key but are not able to accompany that person, this must be made clear to the seller beforehand and their express permission obtained before you hand over the key.

7h You must exercise reasonable diligence to ensure that, after any visit by you, a property is left secure.

8. Offers

8a You must tell sellers as soon as is reasonably possible about all offers that you receive at any time until completion unless the offer is an amount or type which the seller has specifically instructed you, in writing, not to pass on. You must confirm each offer in writing to the seller, and to the buyer who made it, within 24 hours whenever possible.

8b You must keep a written or electronic contemporaneous record of all offers you receive including the date and time of such offers and the seller’s response.

8c You must not make it a condition of passing on offers to the seller that the person wanting to buy the property must use services offered by you or another party. You must not discriminate, or threaten to discriminate, against a prospective buyer of the seller’s property because that person declines to accept that you will (directly or indirectly) provide related services to them. Discrimination includes but is not limited to the following:

- Failing to tell the seller of an offer to buy the property;
- Telling the seller 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.

Continuation of Marketing
8d When an offer has been accepted subject to contract you must consult and take the seller’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 buyer in writing. The prospective buyer must also be informed in writing should the seller later decide to put the property back on the market. You remain under obligation to pass on offers, as defined in 8a above.

8e After an offer has been accepted subject to contract, you must promptly tell that prospective buyer if the seller accepts another offer.

8f You must not misrepresent or invent the existence, or any details, of any other offer made or the status of any other person who has made an offer. If you know that the seller has instructed a legal representative to send a contract to an alternative buyer, you must then tell your prospective buyer in writing.


9a At the time that an offer has been made and is being considered by the seller, you must take reasonable steps to find out from the prospective buyer the source and availability of their funds for buying the property and pass this information to the seller. Such information will include whether the prospective buyer needs to sell a property, requires a mortgage, claims to be a cash buyer (*) or any combination of these. Such relevant information that is available should be included in the memorandum of sale having regard to the provisions of the Data Protection Law 2005.

9b You should put all offers to your seller client even if the prospective buyer has not been financially qualified at that stage.

9c These reasonable steps must continue after acceptance of the offer and must include regular monitoring of the prospective buyer’s progress in achieving the funds required, and reporting such progress to the seller.

10. Deposits

10a If a deposit is taken you must make clear the terms of refund or forfeiture, in writing, before the consumer is committed to the payment.

11. In-house Complaints Handling

11a 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 the Ombudsman; be readily available in each office for consumers; and be available for inspection by the Ombudsman and/or TPO Limited.

11b All verbal and written complaints must be recorded by you at the time they are made.
You must agree to deal with any properly appointed representative of a Complainant (*).

All complaints must be acknowledged in writing within 3 working days and a proper investigation promptly undertaken. A formal written outcome of your investigation must be sent to the Complainant within 15 working days. A senior member of staff not directly involved in the transaction should deal with the complaint.

If the Complainant remains dissatisfied, they must be told how to further pursue the complaint within your business. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. Such a review must be sent to the Complainant within 15 working days.

Following the conclusion of your investigation, a written statement of your final view, and including any offer made, must be sent to the Complainant. This letter must also tell the Complainant how the matter can be referred to the Ombudsman, pointing out that any such referral by the Complainant must be made within 12 months of your final view.

You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

You must co-operate with any investigations by the Ombudsman being conducted in accordance with the Ombudsman’s Terms of Reference.

You must:
- Comply with any award and/or direction made by the Ombudsman against you and accepted by the Complainant and which is binding upon you under the Terms of Reference;
- Pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

You must:
- Pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

The Ombudsman will consider cases of non-compliance where the monitoring process at 13 above shows any single flagrant breach and/or any persistent breaches of the Code by any Member Agent.

The Ombudsman will also consider cases of non-compliance where the monitoring process at 13 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.

The DSC will determine any disciplinary action in accordance with its Terms of Reference as defined from time to time.

Any Member issued with a warning or sanction has the right to make a representation to the DSC and after the final decision of 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 appeal must be made within 4 weeks of the issue of the warning or sanction.

15. Glossary of Terms

In this Code, the following interpretations and definitions apply:

Aggressive Behaviour. Here are some illustrative examples of aggressive behaviour or practices. It is not an exhaustive list. In each case, the test is whether the average consumer’s freedom of choice or conduct is (or would be likely to be) impaired and, as a result, they take (or would be likely to take) a different transactional decision. When you gain new clients and instructions, when you market property, when you negotiate and make sales you should not:
- Impose onerous or disproportionate requirements which prevent a client from exercising rights to terminate an agreement or switch to another property sales business;
- Refuse to allow a consumer to cancel their contract with you, where a cancellation period applies and has not expired;
- Pressure a potential buyer to use associated services, for example to take out a mortgage through the in-house mortgage advisor or to use a particular firm of solicitors or licensed conveyancers;
- Pressure (for example by persistent and/or aggressive telephone calls) the buyer to act quickly to put in an offer, raise their price, skip the survey, and/or finalise the sale;
- In order to make commission quickly, pressure a seller client to accept an offer at a lower price than is reasonable for their property, for example by telling them that they cannot get a better offer;
- Pursue commission to which you are not entitled;
- Intimidate, apply pressure or coerce consumers into dropping complaints against your business, for example by the use of threatening or abusive when you deal with complaints.

Associate. Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

Average Consumer. The “average consumer” is someone who is reasonably well-informed, and reasonably observant and circumspect. For example, an average consumer would pay some attention to documentation given to them, but not necessarily to the small print unless key points in it are brought to their attention. An average consumer would check out publicly available facts for themselves where this is straightforward to do, although what checks they actually make will be influenced by the information that you have given them. Where a commercial practice is targeted at a particular group of consumers, the “average consumer” will refer to the average member of that group, not the average consumer generally. This will be relevant to you if you are targeting your commercial practice at a particular group of consumers.
15p **Transactional Decision.** Informed decisions made by consumers, which include:
- A decision to find out more about your services, or to rule out using the services of one of your competitors;
- A client’s decision whether and on what terms to sign or renew an agreement with you, or their decision to end an agreement;
- A seller’s decision whether to put their property up for sale or take it off the market, to accept or turn down an offer, or to complete on the sale or not;
- A buyer’s decision whether to view an advertised property, or whether and on what terms to make an offer on a property, instruct a solicitor or licensed conveyancer, commission a survey, apply for a mortgage, or complete on the purchase.

15q **Written, in Writing.** Includes typed or hand-written letters, records or notes, emails, text message and faxes. Electronic signatures are acceptable.

15r **You.** Applies to all those Estate Agents bound by this Code, and their staff providing estate agency services.

15d **Cash Buyer.** A ‘cash buyer’ can only be described as such if the buyer has realisable cash assets in the form of sufficient cash in the bank, building society or other investments, which can be realised in a reasonable time. That is, it will be available by the estimated completion date.

15e **Client.** A person who has instructed you to sell or, for a fee, to buy, a property on their behalf in the United Kingdom (including the Channel Islands and the Isle of Man). Where appropriate, this definition includes a client’s properly appointed representative.

15f **Customer.** Refers to an actual or potential seller or buyer.

15g **Complainant.** Someone making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant’s properly appointed representative.

15h **Connected Person.** Includes:
- Your employer or principal;
- Your employee or agent;
- Any associate including the term “business associate”.

15i **Estate Agency Services.** Things done by any person in the course of a business pursuant to instructions received from a third party who wishes to sell or buy any residential property, including:
- For the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to buy or, as the case may be, sell such residential property;
- After such an introduction has been effected in the course of that business, for the purpose of securing the sale or, as the case may be, the purchase of that property.

15j **Harass/Harassment.** Unwanted conduct which has the purpose or effect of:
- Violating a person’s dignity;
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.

15k **Material Information.** In the most straightforward sales, the material information that you should give to potential buyers may be quite basic, such as the asking price, location, number and size of rooms, and whether the property is freehold or leasehold. However, depending on the circumstances of each sale, material facts could include the length of the lease, the level of charges payable under a lease, uncertainties known about title, major structural defects, lack of connection to mains services, etc. At the outset of the marketing process, you are not expected to research issues that are outside your line of business, for example, where your business is marketing property and the issues are ones that a surveyor or conveyancer would investigate. However, should you become aware of such information later on, you cannot ignore or suppress it. If the information is material, you will need to disclose it.

15l **Member.** An estate agent who is a Member of the TPO voluntary scheme and who has undertaken to abide by all provisions of the Code of Practice.

15m **Property or Residential Property.** Means property (land and/or buildings) used, last used, or to be used for residential purposes.

15n **Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.