Code of Practice for Residential Letting 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 residential letting and/or management 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.
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All references to the singular include the plural. Terms marked (*) - the first time they appear, are defined in a Glossary of Terms at Section 21.

### 1. General Provisions

#### 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 estate 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 including but not limited to the Residential Tenancy Law 2014 and the Data Protection (Jersey) Law 2005.
1c You must ensure that all staff are fully conversant with all aspects of the Code of Practice and their legal responsibilities. Such staff must observe the Code and their legal responsibilities in all their dealings with consumers. You must comply with all laws relating to the letting of residential property and all other current and relevant legislation.
1d You should provide a service to both landlords and tenants 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.
1g You must not release or misuse confidential information given by your client (*) during the process of the letting or property management of a residential property without your client’s permission, unless legally required to do so.
1h You must keep clear and full written [*] records [*] of your relationship with landlords and tenants for at least 10 years. Those records must be produced when required by the Ombudsman.
1i As a TPO Member (*) you must not take or be involved in any action which would bring the scheme into disrepute.

#### Publicity
1j 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, and on relevant documentation such as marketing literature, property advertisements, and on your letterheads.
1k You must have available, free of charge, copies of the 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.
2. **Duty of Care and Conflicts of Interest**

2a You must treat all those involved in the proposed letting including actual or potential applicants, tenants and landlords fairly and with courtesy.

2b 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.

2c Customer requirements are key and this applies to the potential tenant as well as the landlord. You should complete a customer fact find to ensure that any specific requirements of the landlord or potential tenant may be taken into consideration.

2d You must tell the landlord in writing as soon as reasonably possible after you find out that a prospective tenant, who has made an offer, has applied to use any service provided by an associate (*) of yours or connected person (*) in connection with the letting and/or management of a property, especially in circumstances where a commission or referral fee could be earned.

2e If an employee or an associate (or an associate of the employee of your firm) is intending to rent a property which your firm is instructed to let you must give all the relevant facts in writing to the landlord (or the landlord’s representative) before negotiations begin.

2f If you or an employee or an associate is intending to rent a property which your firm is instructed to let that person must take no further direct part in the letting of that property on behalf of your business.

2g If you are letting a property that is owned by you, an employee or an associate (or an associate of an employee) or in which you or an employee (or an associate of an employee) has an interest, you must, before negotiations begin, immediately make this known in writing.

3. **Advertising for New Business (Canvassing)**

3a 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.”

4. **Market Appraisal**

4a When you give advice to someone intending to let their property, any figure you advise as a recommended rent must be given in good faith, reflecting current market conditions. You must never deliberately misrepresent the potential rental level of a property in order to gain or retain an instruction.

4b Any figures given should, within reason, be supportable by indicators in the market place, preferably by comparables of similar properties in a similar location.

4c You must keep your marketing strategy under regular review with your client.

4d You should advise a potential client of the need to comply with the obligations and requirements of relevant Health and Safety legislation and regulations that apply to rented property, and you should verify the validity of the necessary certificates.

4e You should, within reason, draw to the attention of the potential client any obvious repairs or maintenance issues which appear necessary in preparation for the intended letting.

4f You must draw a potential client’s attention to the necessity and benefit of a properly prepared full inventory and a schedule of condition.

5. **Instructions, Terms of Business, Fees, Charges and Termination of Client Agreement**

Instructions and Terms of Business

5a 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 for Letting Agents.

5b 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.

5c You must ensure that the client understands your Terms of Business, that all fees and charges are clearly stated and are drawn to the attention of the client and you must satisfy yourself that the client is entitled to instruct you and to sign on behalf of all co-owners as necessary.

5d The client must be given sufficient time to read your Terms of Business before agreeing to instruct you. The client should be required to sign a copy which you should hold on file and the client must be given a copy to retain.

5e You must give your client written confirmation of their instruction to act in the letting and/or management of properties on their behalf. You must give the client written details of your Terms of Business, which should include what different types or levels of service are available, for example letting only, rent collection, full management including any relevant fees and expenses. You must give the client these details before the client is committed or has any liability towards you. Your Terms of Business must not contain provisions which are inconsistent with the provisions of this Code.

5f You must confirm in writing the client’s instructions to act on their behalf and which type or level of service is being provided.

Fair Contracts

5g Your Terms of Business must:

- Actively flag any entitlement to renewal commission and the scale of charges that will apply;
- Make clear that a liability to renewal commission will only arise where you are instructed to renew the tenancy or where the landlord has otherwise specifically agreed to your entitlement. Where you intend to charge a fee for renewal of a tenancy you should remind the landlord of that liability at the time of renewal even if that liability is stated in the management agreement;
- Not include any liability to pay renewal commission where the property is sold to another landlord who retains the existing tenant;
Fees and Charges

5h 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.

5i 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.

5j 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.

5k Your Terms of Business must include clear and accurate information regarding the circumstances under which either party to the contract may cancel or terminate the arrangement and they must actively flag what liability for fees or charges may be incurred in those circumstances. Fees and charges should reasonably reflect activity costs and not include a penalty charge.

5l You must not make a tenant or landlord pay a charge for or be liable for an element of your service that the other party has also been charged for in the course of the same transaction.

Termination of Client Agreement

5m Whether you or the client terminates the instruction, you must give the client appropriate written confirmation that you will no longer be acting, including the date of termination, and giving details of any liability for fees or charges owed by the client to you (or any credit or funds owed to the client) and confirming any arrangements for the handover of the property, appropriate documentation, keys etc to the client or appointed representative.

5n Where your contractual arrangement with your client is terminated, and the relevant managed property is still tenanted, you must promptly tell the tenants, in writing, of the change in arrangements, including where the deposit will be held. In such circumstances, the written authority of the tenant(s) to release their deposit to a third party must be obtained.

Subsequent Changes

5p Any change 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

Letting Boards

6a You must not erect any form of letting board at a property unless you have been instructed to market that property for rent.

6b You can only erect a letting board with the specific permission of the client.

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

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

6e 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.

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

7. Published Material and Information about a Property

7a All material information (*) of which you are aware or should be aware of in relation to the property must be disclosed and there must be no material omissions which may impact on the average consumer’s (*) transactional decision (*) and where information is given to potential tenants or their representatives, it is accurate and not misleading. In particular you must accurately describe whether the property is being let as furnished, part furnished or unfurnished and whether facilities are shared so that prospective tenants are not misled as to what fixtures, fittings etc. will be included. You must be diligent in compiling the particulars.

7b 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.

8. Viewing and Access to Premises

Viewings

8a You must take the client’s instructions regarding viewings, specifically, whether or not they should be conducted by you.

8b You must record any feedback from viewings and pass this to the client within a reasonable time. If this feedback is an offer to rent, you should refer to Section 9 below.

8c Before arranging any viewing, you must tell the applicant if an offer has already been accepted by your client.

Access to Premises

8d Where you are arranging for an applicant to view a tenanted property, the existing tenant must be provided with appropriate and reasonable notice, as prescribed by law, of the appointment unless other arrangements have been agreed with the occupying tenant. You should accompany all viewings unless an unaccompanied viewing has been agreed by the existing tenant.

8e You must make sure that all the keys to a client’s property that are in your possession are coded and kept secure. You must maintain records of when you issue keys and to whom; when they are returned and by whom. These records must be kept secure and separate from the actual keys. You must only give keys to people providing you with satisfactory identification and who can demonstrate a legitimate purpose.

8f If access to a property is required by you, or an authorised third party on behalf of the landlord [e.g. a surveyor, builder, tradesman etc.] for the purpose of viewing the condition, state
of repair and/or to fulfil related statutory obligations and/or to carry out repairs, and you
hold the key but are not able to accompany that person, the occupying tenant must be
provided with the appropriate minimum notice of 24 hours or that prescribed by law, of
the appointment, unless agreed otherwise with the occupying tenant beforehand except
in cases of genuine emergency.

8g When you are unable to accompany any third party, this must be made clear to the tenant
or other occupier beforehand.

8h You must exercise reasonable diligence in ensuring that, after any visit by you or an
authorised third party, a property is left secure.

9. Offers

9a It is not advisable for you to accept, or recommend a client to accept, an offer on a
property that has not been viewed either by the applicants themselves or by a suitably
authorised representative of the applicants, for example, an appointed relocation agent
or direct associate. Exceptions might be made when an applicant resident overseas is
willing to be contacted by letter, fax or electronic means.

9b You must inform your client, in writing as soon as is reasonably practicable about formal
offers received on a property up to the point where tenancy agreements are signed unless
the client has instructed otherwise, or, unless the offer is of an amount or type that the
client has indicated previously (in writing) is unacceptable. Details of all formal offers
made on a property including the name of the applicant, the amount, the date and the
response given must be recorded. Where you are instructed as a sub-agent you must
inform the principal agent of any offers received.

9c Where an offer has been made to a landlord and the landlord declines the tenancy other than
because the prospective tenant has failed referencing, the landlord should be advised that
the prospective tenants holding deposit will be refunded in full to the tenant (see 9j below)
and that the landlord may be liable for costs incurred by the agent in pursuing the references.

9d An applicant, whose offer has been confirmed as having been accepted in principle, must
d be given written confirmation as to whether or not the marketing of the property is
to cease and/or if further viewings will be carried out by you whilst the application is
processed. If marketing and/or viewings are subsequently recommenced by you the
applicant must be promptly informed.

9e You must provide the parties with a draft or specimen tenancy agreement prior to the
applicant becoming liable for fees or charges associated with the rental of the property
except where such opportunity is declined or where you hold an instruction to the contrary. Where there is to be a guarantor for the applicant for the tenancy, this facility
must be extended to that person.

9f Any standard documentation that seeks to create a contractual relationship, via its standard
terms or clauses, between an applicant and you or your client must be transparent in
relation to the commitments of each party.

9g Without prejudice to paragraph 9j and as appropriate to any local legislation, prior to an
applicant’s offer being formally accepted, you must set out in written form and must
actively flag any significant tenancy pre-conditions and terms for the letting, including
the circumstances in which the applicant may have any potential financial liability for
fees, charges or penalties relevant to:

• The processing of the applicant’s application to rent the property, including the cost
of any credit checks to be made by you or the landlord;
• The applicant’s withdrawal, at any stage, of the application for the tenancy or the
client’s rejection of it. Consumers are entitled to a refund of a fair proportion of any
prepayments made under a contract that does not go ahead (without prejudice to
paragraph 9c), or that ends before they have enjoyed any significant benefit;
• The initial setting up of the tenancy including inventory/check-in costs;
• Any ongoing or future liability for fees or charges payable to you for the applicant to
extend, renew or terminate the proposed tenancy including inventory/check-out costs.

9h Details of an offer accepted in principle (albeit still subject to references etc) should be
confirmed to the client as soon as practicable and ideally in writing.

9i You must take reasonable steps to keep applicants who have made an offer, which has not
already been rejected, informed of the existence (but not the amount) of other offers
submitted. You must not misrepresent to either the client or an applicant the existence of,
or any details of, any other offer allegedly made or of the status or circumstances of any
other person who has made an offer.

9j You must provide any prospective tenant with a written receipt detailing the charges and
fees that will be offset against the deposit, if any, and the terms of repayment or forfeiture
should the tenancy not proceed. Any deductions from the deposit must be reasonable and
must take account of the specific circumstances of the situation and the services actually
provided (for example where the landlord declines the tenancy application; or the
prospective tenant decides not to proceed and notifies you promptly after payment of the
holding deposit; or where the tenant is not chosen in a competitive environment). Any
holding deposit due to be returned must be repaid within 10 working days.

10. Referencing

10a In all referencing processes or procedures, you must be diligent in identifying fraudulent
applications.

10b You must take references on a prospective tenant or guarantor appropriate to the
circumstances of the application and in line with arrangements agreed with your client.
Your own referencing procedures should usually be by way of a Referencing Service
provider or by direct application to third party referees or any combination of the above.

10c Where references are provided directly by the prospective tenant or guarantor, you must
be diligent in validating their authenticity. In cases when you take or examine references and/or
make a charge for them, the charge must be fair and reasonable for the work undertaken.

10d Where the current existing address of the prospective tenant or guarantor is not evidenced
via the Electoral Roll, such an address must, wherever practical, be verified by the
prospective tenant or guarantor providing you with a utility bill or bank statement, or
Building Society passbook or Parish Rates account or driving licence or similar.

10e You must be diligent in verifying the identity and nationality of an applicant or guarantor
including verifying the nature of any visa, status of residency and work permit and you
must retain a record of steps you have taken.

10f Where a prospective tenant or guarantor fails, in the circumstances, to meet prudent
referencing criteria, you must obtain confirmation in writing from the client they wish to
10g You must provide the landlord with all relevant facts (subject to data protection restrictions) relating to the application to enable the landlord to make an informed decision, regardless of whether the tenant has passed the referencing criteria.

11. Tenancy Agreement, Inventories and Deposits

The Tenancy Agreement

11a You must take care to prepare an appropriate written tenancy agreement that includes any agreed or specially negotiated clauses or terms particular to the property or the circumstances of the parties to the letting in accordance with Residential Tenancy Laws. You should ensure tenancy agreements are transparent in relation to the commitments of each party. The tenancy agreements must be clearly presented, written in plain and intelligible language; and any fees and other charges must be actively flagged. The relevant clause of the tenancy agreement must include provision for an unresolved deposit dispute to be referred to an independent dispute resolution scheme. This is via the statutory Tenancy Deposit Protection Scheme and there is a requirement by law to inform the tenant under which scheme the deposit is protected and how to seek resolution of a dispute over the return of the deposit should one arise.

11b You must give the tenant the opportunity to raise queries in order to clarify and understand their rights and obligations under the tenancy agreement, particularly those relating to rent, deposit or ancillary fees and charges. Whilst you should not seek to vary the tenancy agreement during the period of your agreement with the client, there may be occasions where this may occur. In such circumstances the tenant and the client must be given the opportunity to see and confirm the changed tenancy agreement.

11c You must ensure that tenants are provided with relevant and appropriate documentation, statutory or otherwise, prior to their occupation of the property or commencement of the tenancy, whichever is the sooner.

11d You should, within 21 days of receipt of formal written request from a tenant, provide that tenant with the name and address of their landlord.

11e At the start of a tenancy, you must ensure that both client and tenant are aware of your ongoing role and scope, if any, in the continuing collection of rent and/or management of the property.

Inventories and Schedules of Condition

11f Unless you have instructions to the contrary you must ensure at the start of a tenancy that any inventory and/or schedule of condition prepared for the client by you, or an appointed sub-contractor, is sufficiently detailed and up to date to allow it to be used as a fair measure at the end of the tenancy.

11g You should arrange for a tenant to be checked-in to the property accompanied either by an Inventory Clerk or other representative of the landlord or the landlord’s agent. Wherever this is not practical, the tenants must be provided promptly with the Inventory and/or Schedule of Condition and advised of the need to formally raise in writing any notable discrepancies, deficiencies or differences identified, within a specified period of time.

11h The tenant must be given sufficient time, up to 7 working days from receipt to read and comment upon and sign the check-in report and inventory, and given a copy. If the tenant fails to sign and return the inventory within the time frame the tenant can be deemed as having accepted the inventory as accurate. You must hold a copy on file. You must actively flag and specifically draw to the attention of the tenant that their failure to sign and return the inventory will result in the relevant documentation being accepted as accurate. If the tenant refuses to sign within the relevant timescale they should be asked to explain why and the reason recorded.

12. Rent Collection

12a You must use legally acceptable methods to obtain prompt rental payments from tenants in accordance with their tenancy agreement.

12b You must have procedures in place to notify both client and tenant (and guarantor if relevant) in a timely manner, of rent that has become appreciably overdue and take suitable steps to notify rental warranty insurers (if appropriate) as necessary.

12c You must provide a tenant, upon request, with a statement or schedule of rental payments received showing how arrears have arisen.

12d You must draw a client’s attention to a build-up of serious rental arrears and should seek appropriate instructions from the client or their professional advisers.

12e You must co-operate fully and promptly with legal advisers acting for, or appointed on behalf of, client landlords or tenants.

13. Management

13a You must manage a property in accordance with the law, the relevant tenancy agreement, and the Terms of Business with the client. It is accepted that there will be times when you will have to act as “an agent of necessity”.

13b You must respond promptly and appropriately in the circumstances to reasonable communications from clients and tenants or any other authorised or appropriate third party, particularly where these relate to statutory repairing or maintenance obligations or safety regulations.

13c You must be prudent in the selection, appointment and use of contractors engaged to carry out work on behalf of, or to provide advice to clients. You should take reasonable steps to ensure such contractors hold relevant professional indemnity and public liability insurance and possess suitable experience or applicable professional or trade qualifications where required.

13d You must keep suitable records of repairs, maintenance etc carried out on behalf of the client and should ensure that instructions to contractors or suppliers indicate both any urgency required in carrying out jobs and, within reason, the scope or scale of the works needed.

13e When determining the standard of repair or general maintenance required on behalf of a landlord client, you should consider the age, character and prospective life of the property or the relevant part, and the locality in which it is situated.

13f Initial contractors’ quotes or estimates and subsequent receipts and invoices, submitted to you should be required to provide a sufficiently detailed breakdown to clarify what work is needed to be, or has been, carried out in which areas of the property and at what cost.

13g The frequency of any routine visits to be made to the property by you during a tenancy must be agreed with the client in advance, normally within the Terms of Business. The
client should be made aware that such visits are of limited scope, are of a generally superficial nature and are neither an inventory check nor a survey.

13h You must keep records of when, if any, routine visits are carried out during a tenancy; record any significant findings and be diligent in bringing such findings to the attention of both landlord and tenant, including any corrective actions suggested or required.

13i You must communicate promptly to client and tenant on any important issues or obligations relating to the use and occupation of the property, including significant breaches of the tenancy agreement that you become aware of.

13j You should be prepared to provide a reasonable degree of guidance and sympathetic support to tenants of a managed property who are being harassed or victimised, or are the target of persistent anti-social behaviour.

13k You should have in place a system to ascertain, at an appropriate time, the tenant’s wishes and the landlord’s instructions with regard to any extension and/or termination of the tenancy.

14. Termination of a Tenancy

14a Upon receipt of appropriate instructions from a landlord client, you must take steps to serve a lawful notice in writing upon a tenant to terminate the tenancy; either in line with the landlord’s instructions or at the earliest time the law allows taking account of the landlord’s requirements.

14b You must inform a landlord client, promptly and in writing, of the receipt of lawful notice from a tenant.

14c On giving or receiving notice to bring a tenancy to an end, you must provide a tenant with general written guidance as to what steps need to be taken relating to the preparation of the property for the final checkout, handover of keys and other matters. You must actively flag and draw the tenant’s attention to any specific clauses or obligations within the tenancy agreement relating in particular to proposed deductions from the tenancy deposit but also, for example, to specified standards of cleaning etc.

14d Where a tenant does not vacate a property on the due date, you should take steps to ascertain the tenant’s intentions and advise the client landlord as soon as practicable after the tenants vacate and at the lawful end of the tenancy, preferably during daylight hours. The outgoing tenants should always be offered the opportunity of being present to observe the final check-out.

14e Wherever possible, once proposed deductions have initially been raised with the parties, you must pay over to each relevant party any amount of the deposit that is not subject to a dispute, as soon as administratively practicable and ensure that the parties to a disputed tenancy are advised of the timescales and procedures for progressing a dispute.

15. End of Tenancy – Deposits, Disputes and Damages

15a Where appropriate to the services being provided and unless you have instructions to the contrary, you must arrange for, or carry out, the final check-out as soon as is reasonably practicable after the tenants vacate and at the lawful end of the tenancy, preferably during daylight hours. The outgoing tenants should always be offered the opportunity of being present to observe the final check-out.

15b The check-out must be conducted thoroughly and a sufficiently detailed report or summary prepared with specific reference back to the inventory and schedule of condition prepared prior to the tenancy.

15c When the final check-out has been completed and the parties have agreed there are no intended deductions or any dispute, you must refund the full deposit to the ex-tenant(s) or instruct the landlord or tenant’s deposit holder in respect of the Residential Tenancy (or appropriate agreement) within a maximum of 10 working days. Where practical the agent should use fast payment schemes.

15d Irrespective of how the tenancy deposit has been held by you, where you are subsequently contractually involved in negotiations between the parties at the end of the tenancy, you must communicate promptly, regularly, politely and fairly. Major pertinent details and recommendations or suggestions must be confirmed in writing and copies of relevant significant information (such as quotations or invoices) provided.

15e You must ensure that instructions to contractors or suppliers, and subsequently contractors or suppliers quotations or receipts, provide a sufficiently detailed breakdown to clarify precisely what work is to be/has been carried out in which areas of a property. It should then be simple for all parties to assess and understand what portion of the work and costs can lawfully be allocated to the landlord or tenant in the light of the inventory check-out report or tenancy agreement obligations.

15f Wherever possible, once proposed deductions have initially been raised with the parties, you must pay over to each relevant party any amount of the deposit that is not subject to a dispute, as soon as administratively practicable and ensure that the parties to a disputed tenancy are advised of the timescales and procedures for progressing a dispute.

16. Clients’ Money

16a You must at all times keep clients’ money in a separate designated client account and comply with your regulatory bodies’ rules or byelaws in relation to the handling of clients’ money. The client should be advised that monies will be held in a designated client account.

16b You must transfer monies due to a client and provide an appropriate, regular statement of income and expenditure in accordance with agreed terms. Other than for minor amounts, adequately detailed invoices or receipts should support payments made on behalf of a client and copies provided to the client upon request.

17. In-house Complaints Handling

17a 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.

17b All verbal and written complaints must be recorded by you at the time they are made.

17c You must agree to deal with any properly appointed representative of a Complainant (*).

17d 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.

17e If the Complainant remains dissatisfied, they must be told how they can 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.
17f 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.

17g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

18. Referrals to the Ombudsman

18a You must co-operate with any investigations by the Ombudsman being conducted in accordance with the Ombudsman’s Terms of Reference.

18b 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.

19 Compliance Monitoring

19a You must comply with the requirements of any code compliance monitoring procedure used by TPO Limited.

19b You must seek consumers’ permission for their contact details to be used in any monitoring process to ensure compliance with the Data Protection Law 2005.

20. Non-Compliance with the Code

20a Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.

20b The DSC will consider those cases brought to its attention by the Ombudsman, acting within the Ombudsman’s Terms of Reference, where the Ombudsman considers there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent.

20c The DSC will also consider cases of non-compliance where the monitoring process at 19 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.

20d The DSC will determine any disciplinary action in accordance with its Terms of Reference as defined from time to time.

20e 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.

21. Glossary of Terms

In this Code, the following interpretations and definitions apply:

21a 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 landlord clients and instructions, when you market property for rental, when you negotiate rents and arrange tenancies you should not:

- Impose onerous or disproportionate requirements which prevent a landlord client from exercising rights to terminate an agreement or switch to another agency;
- Refuse to allow a landlord to cancel their contract with you, where a cancellation period applies and has not expired;
- Pressure a landlord or tenant to use associated services, for example to take out an insurance policy through an associate;
- Pressure (for example by persistent and/or aggressive telephone calls/emails) the prospective tenant to act quickly to put in a rental offer or finalise the tenancy agreement;
- In order to make commission quickly, pressure a landlord client to accept a rental offer at a lower rate than is reasonable for their property, for example by telling them that they cannot get a better offer;
- Pursue commission or other fees from the prospective or existing tenant/landlord to which you are not entitled;
- Intimidate, pressure or coerce landlords or tenants into dropping complaints against your business, for example by using threatening or abusive language or actions when you deal with complaints.

21b Associate. Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, nieces, parents, grandparents, children and grandchildren. The definition also includes business associates.

21c 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. You should provide for where a commercial practice is targeted at a particular group of consumers. In these cases, 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.

21d Client. A person who has instructed you to let 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.

21e Clients’ Money. Money held or rent collected for and on behalf of client landlords, including ex-clients is considered as client money and this will include deposits or money held for and on behalf of an applicant, tenant or ex-tenant.
21f Complainant. Someone who is an actual or potential landlord or tenant or former landlord or former tenant of residential property making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant’s properly appointed representative.

21g Connected Person. Includes:
- Your employer or principal;
- Your employee or agent;
- Any associate including the term “business associate”.

21h 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.

21i Material Information. In the most straightforward lettings, the material information that you should give to potential renters may be quite basic, although you should bear in mind the requirements of paragraph 7a.

21j Member. An agent who is a Member of the TPO scheme and who has undertaken to abide by all provisions of the Code of Practice.

21k Portfolio Landlord. A landlord with a number of properties that are being let, often through the same letting agent.

21l Property Management. In this Code, property management means the management of a property on behalf of the landlord, generally following the finding of a tenant. It does not relate to ‘block’ management.

21m Records. Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.

21n Residential Property. Means property (land and/or buildings or part thereof) used, last used, or to be used for residential purposes. Excluding holiday lets.

21p Superior Landlord. The owner of a superior interest in the property as a freeholder or leaseholder or intermediate landlord.

21q 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 prospective tenants decision whether to view an advertised property, or whether and on what terms to make an offer on a property or renew a tenancy.

21r Written, in Writing. Includes typed or hand-written letters, records or notes, emails and faxes. Electronic signatures are acceptable.

21s You. Applies to all those Letting Agents and their staff providing letting services bound by this Code.