Code of Practice for Commercial & Business Agents
Effective from 1 October 2016
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 15a).


1b 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.

1c You must always act both within the law and in the best interests of the client (see 15b). You must offer suitable advice to meet the client’s aims and needs. You must immediately (see 15c) 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, let 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 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.
Publicity

1g In accordance with the Alternative Dispute Resolution for Consumer Disputes [Competent Authorities and Information] Regulations 2015, you must include TPO’s name and website address on your website, within your terms of business and within any other sales or service contract you agree with a client.

1h You must prominently display the TPO logo on your website, the window of all offices, and on relevant documentation such as marketing literature, property advertisements, and on your letterheads.

1i You must have available, free of charge, copies of the Code of Practice to give to clients on request.

2. Instructions

2a By law you must give your client written confirmation of their instructions to act in the buying, selling, letting or renting 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 final selling, buying or rental price, the example amount should be based on the asking price (or an example buying price, where search and/or buying services are being provided). However, you must make it clear that, should the final selling, buying or rental price be higher or lower than the stated 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 client understands that the fee will not vary according with the final sale or rental 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 the client wish to terminate the instruction, you must make this clear and specify the amount of that fee and additional costs and their purpose. Fees and costs should reasonably reflect the activity undertaken and not include a penalty charge.

You must give the client these details before the client is committed or has any liability towards you. If appropriate, you must notify your client in writing if you or an ‘associate’ (see 9a) or ‘connected person’ (see 15d) wish to offer agency, surveying, investment, insurance or other services to people proposing to buy or let your client’s property, or sell or rent their property to your client, through you. Your Terms of Business and your contract must be supported by comparable evidence. You must never deliberately misrepresent the value of a property in order to gain an instruction. Also, you must not repeatedly try to gain instructions in a way likely to cause offence.

2b Except for any previously agreed expenses and fees, fees will only become due if a client enters into a legal contract to buy, sell, let or rent the property, or as stated otherwise in your Terms of Business. When selling a property, 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 services. You must promptly give the client written confirmation that you are no longer acting, 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 the client 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 seller 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 seller client liability to pay more than one fee if:
  - That seller client 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 client 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 to the seller client’s property 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, buying, renting 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, letting, renting or buying 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 15e) 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 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 1992. 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 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 seller or landlord client’s written permission. If you have the seller or landlord 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 make 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 or landlord client 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. Manipulating internet portals (and other channels of marketing) to give the impression a property is new to the market, when it is not; inflating your market share by listing properties multiple times; listing properties that are not currently available to buy or let; or claiming to have sold, purchased or let a property which was sold, purchased or let through another agent, is misleading.

4c If you intend to include material produced by a third party, you must obtain that party’s permission to do so prior to the commencement of marketing.

5. Offers

5a When selling a property, 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 seller client has specifically instructed you, in writing, not to pass on. Whether you are instructed to sell, buy, rent or let a property, you must confirm all offers in writing at the earliest opportunity and keep a written or electronic contemporaneous record of those offers, including the date and time of such offer and the seller or landlord’s response.

5b You must not discriminate, or threaten to discriminate against a prospective purchaser, seller, tenant or landlord 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, sell, rent or let 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 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, sell, let or rent 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 or renting the property and pass this information to the seller or landlord client.

5d You must tell your client in writing as soon as reasonably possible after you find out that a prospective purchaser, seller, landlord, assignee or tenant who has made or received an offer, has applied to use your services or those of an associate or connected person in connection with that purchase or letting especially (but not limited to), circumstances where a commission or referral fee could be earned. Any fee earned should be declared.

5e When an offer has been accepted subject to contract, you must consult and take your seller or landlord 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 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, 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 seller or landlord 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 seller or landlord 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 unfairly advantage nor disadvantage any of the parties involved in the transaction.

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

6.1 Unless you and the seller or landlord 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 seller or landlord 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 you do, you must take into account specific instructions from clients. Before a deposit is taken, the circumstances under which the deposit is to be held, refunded, forfeited or used towards the transaction, must be clearly stated in writing, agreed by the relevant parties and a copy of the agreement provided to those parties. In each circumstance the beneficiary of the deposit (and any interest accrued) must be clearly defined. 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 Subject to 7a, you must refund immediately any deposit paid before exchange of contracts or a lease is agreed, 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. Property Management Services

8a Property management services should be conducted in accordance with the agreed Terms of Business and the terms of the relevant lease(s).

9. Conflict of Interest

9a If your firm is instructed to sell, buy, rent 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, sell, let 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, sell, let or rent a property which your firm is instructed to sell, buy, rent or let, that person must take no further direct part in the agency services you have been instructed to provide. (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).

9b If you are instructed to sell, buy, rent or let a property that is owned by you, an employee or an associate (or an associate of an employee), you are instructed to sell, buy, rent or let 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.

9c You must make every attempt to avoid any conflict of interest which might not be in the best interest of the client.

10. Financial Services

10a 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.

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 any redress scheme and be available in each office.

11b All complaints, oral and written, should be noted in writing.

11c You must agree to deal with any properly appointed representative of a complainant.

11d All written 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 of receipt of the original complaint. A senior member of staff or designated complaint handler not directly involved in the transaction should deal with the complaint. In exceptional cases, where the timescale needs to be extended beyond this limit, the Complainant should be kept fully informed and an explanation provided.

11e If the Complainant remains dissatisfied, the Complainant must be told how the complaint can be further pursued 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. 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.

11f 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 a complainant can pursue the complaint through TPO, they must be informed that they have 12 months from the date of your final viewpoint to do so. Where such rules or Codes differ from the above, the agent must act to ensure that all such are satisfied.

11g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

12. Referrals to the Ombudsman

12a You must co-operate with any investigations by the Ombudsman being conducted pursuant to, and in accordance with the Ombudsman’s Terms of Reference.

12b You must:

• comply with any award and/or direction which, in accordance with the Ombudsman’s 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.

13. Compliance Monitoring

13a You must comply with the requirements of any Code compliance monitoring used by TPO Limited.

13b You must seek consumers’ permission for their contact details to be used in any monitoring process to ensure compliance with Data Protection legislation.

14. 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 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.

The DSC will also consider cases of non-compliance where there may have been a single flagrant breach and/or any persistent breaches of the Code, failure to complete compliance monitoring, where it is considered that the Member has brought the scheme into disrepute or where the Member has seriously failed to comply with their membership obligations in another way.

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. Expulsion or suspension from full TPO membership will not necessarily result in loss of registration under either the Consumers, Estate Agents and Redress Act 2007 or the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) [England] Order 2014.

15. Interpretation and Definitions

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

15a 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.

15b Client - a person who has instructed you to sell, buy, rent or let a property on their behalf, in the United Kingdom - excluding the Channel Islands and the Isle of Man: or to provide other professional services.

15c Immediately - as soon as is reasonably practicable in the circumstances.

15d 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.

15e 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.

15f Written, in writing - includes typed or hand-written letters or notes, e-mails and faxes. Electronic signatures are acceptable.