



CODE OF PRACTICE FOR RESIDENTIAL ESTATE AGENTS

Changes to 2015 Code Highlighted in Red

(England, Wales and Northern Ireland)

Effective from **1 October 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.

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**THE PROPERTY OMBUDSMAN
CODE CHANGES HIGHLIGHTED DOCUMENT – 1 OCTOBER 2016**

All references to ~~the masculine include the feminine, and to~~ the singular include the plural.
Terms marked (*) - the first time they appear are defined in a Glossary of Terms at Section 18.
All references to 'sellers' include potential sellers.
All references to 'buyers' include potential buyers and viewers.

1. General Provisions

Applicability

- 1a This Code applies to estate agency services (*) in the United Kingdom (except Scotland) 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 in the United Kingdom and letting, management and sales agents operating in Scotland and the Channel Islands are covered by separate Codes of Practice.

General Obligations

- 1b You (*) must comply with this Code of Practice. You must comply with all laws relating to residential estate agency and in particular the Estate Agents Act 1979, the Consumers, Estate Agents and Redress Act 2007, Data Protection Act 1998, ~~Unfair Terms in Consumer Contracts Regulations 1999~~, Competition Act 1998, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), Business Protection from Misleading Marketing Regulations 2008 (BPRs), Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Consumer Rights Act 2015, Energy Act 2011 (Green Deal) and all other current and relevant primary or secondary legislation.
- 1c You must register with the appropriate authority in accordance with the Money Laundering Regulations 2007.
- 1d 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.
- 1e 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 (*).
- 1f 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.
- 1g 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.
- 1h 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.
- 1i You must keep clear and full written (*) records (*) of all transactions for a period of 6 years and produce them when required by the Ombudsman.
- 1j As a TPO Member (*) you must not take, or be involved in any action which would bring the scheme into disrepute.

Promoting Your Business

- 1k 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 consumer.
- 1l In addition, you must use and display such material promoting the Code of Practice as provided by TPO. 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.
- 1m 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 Consumer Guide leaflet in all your offices.

2. Duty of Care and Conflict of Interest

- 2a You must treat all those involved in the proposed sale or purchase including sellers, ~~potential sellers, buyers and potential~~ and buyers fairly and with courtesy.
- 2b You must avoid any conflict of interest. You must disclose at the earliest opportunity in writing (*) to ~~the seller, buyer 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 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 ~~the seller your clients~~ either separately in writing or within your Terms of Business (for example, but not only, in circumstances where a commission or referral fee could be earned). Any fee earned should be declared.
- 2d 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.
- 2e You must by law 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.
- 2f 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 by law, before negotiations begin, give all the relevant facts, in writing, to the seller; and as soon as possible to ~~the seller's~~ representative.
- 2g If you or an employee or an associate is intending to buy a property which your firm is instructed to sell, that person must take no further direct part in the sale of that property on behalf of your business.
- 2h 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 by law, before negotiations begin, immediately make this known, in writing.

3. Advertising for New Business (Canvassing)

- 3a You must not use unfair methods when seeking new properties for sale by unsolicited approaches. Advertising material must be truthful, not misleading and fully explain who the message is from, its purposes and how the seller's interest can be followed up.
- 3b In your canvassing material, if you seek to use a property you have recently sold and where completion has occurred, you must obtain the new owner's prior permission.
- 3c When you advertise for new business your fees should be shown inclusive of VAT alongside a statement confirming that VAT is included.
- 3d If as a result of an unsolicited approach a seller is interested in using your services, you must draw to their attention, and explain before they are committed to another contract, the potential of paying fees to more than one agent where another agent has been previously instructed to sell their property.
- 3e You must take decisions on the content of your advertisements independent of your competitors, ~~including whether to~~ such as how you advertise your fees, charges or any additional costs, or any special offers, discounts or other value offering.
- 3f You must act promptly if a seller or property owner asks you to stop canvassing them.

4. Market Appraisal

- 4a 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 and must reflect available information about the property and current market conditions and must be supported by comparable evidence. You must never deliberately misrepresent the market value of a property.
- 4b Any evidence relating to comparables of similar properties in a similar location must be retained on file for future reference.
- 4c You must keep your marketing strategy under regular review with your client.

5. Instructions, Terms of Business, Commission and Termination

Instruction

- 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.
- 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 not instruct other agencies to assist you in selling a property without the seller's permission. If the seller gives permission, 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 a TPO Member.
- 5d Notwithstanding 5c above if you are instructed as a sub-agent or share listings via a website, you must continue to act in accordance with all relevant provisions of this Code of Practice.
- 5e 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 by law give the client written details of your Terms of Business including your fees and charges before **they are** committed or **have** any liability towards you.

Fair Contracts

- 5f Your Terms of Business and your contract must be consistent with the provisions of this Code of Practice and comply with **Part 2 of the Consumer Rights Act 2015**.
- 5g Your Terms of Business should be written in plain and intelligible language. In particular you must use in your Terms of Business the specific definitions in the Estate Agents (Provision of Information) Regulations 1991. You must take particular care for example in defining and distinguishing between 'sole agency' and 'sole selling rights'; and in describing a 'ready, willing and able' contract. You must use the relevant definitions in full, and clearly explain the implications of the terms to your client.

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 **client seller** is committed to the contract.
- 5i Where the fee is a percentage **it should be quoted inclusive of VAT**. The example amount should be based on the asking price. However, you must make it clear that, should the selling price be higher or lower than the asking price, your commission fee will be correspondingly higher or lower.
- 5j Where you charge a fixed fee you should state the actual amount payable including VAT in the contract and ensure that the **client seller** understands that the fee will not vary whatever the sale price.
- 5k Except for any previously agreed additional costs, commission fees will become due on exchange of contracts.
- 5l 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

- 5m Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party. When a contract is signed by a client during a visit by you to **their** home, at **their** place of work, away from your premises or online, then **they** must be given a right to cancel that contract within 14 calendar days of signing. **The client** should be given a 'Notice of Right to Cancel'. Where the client wishes the contract to begin before the end of the 14 day cancellation period you must obtain confirmation of that request in writing. Where you intend to recover costs incurred during this cancellation period you must obtain the client's agreement in writing to those specific costs before work commences.
- 5n If you intend to charge the client a fee or recover costs for terminating the instruction, you must make this clear **in your Terms of Business** and specify the amount of the fee and additional costs and their purpose. **Fees and costs should reasonably reflect the activity undertaken and not include a penalty charge.**
- 5p On receipt of the **client's 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**

client written confirmation that you are no longer acting for **them him**, confirm the actual date of termination, and give details of any fees or additional costs the client owes you (see 5r below).

5q Your contract must 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

5r At the time of accepting instructions from a **seller 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 **seller client** terminates your instruction and a memorandum of sale is issued by another agent to a buyer that you have introduced within 6 months of the date your instruction ended and where a subsequent exchange of contracts takes place.

If no other estate agent is involved this time limit extends to 2 years.

- and that the **seller client** may be liable to pay more than one fee if:
 - that seller has previously instructed another agent to sell the same property on a sole agency, joint sole agency or a sole selling rights basis; or
 - that seller instructs another agent during or after the period of your sole agency, joint sole agency or on a sole selling rights basis.

5s 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.

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

5u 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

5v 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 (refer also to paragraph 5l above).

5w 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

5x 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. Energy Performance Certificates

- 6a The provisions set out in paragraphs 5f – 5k, 5m, 5n, 5t and 5v above should be followed when entering into an agreement with a seller for the supply of an Energy Performance Certificate (EPC) in relation to the property to be marketed.
- 6b You must provide adequate information to the seller to enable the seller to understand the basic legal requirement for and content of an EPC, and use in relation to the marketing of the property.
- 6c You must advise the seller in writing of all charges relating to the supply of an EPC and the terms of payment.

7. Marketing and Advertising

- 7a 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 Money Laundering Regulations 2007 and without commissioning an EPC compiled in accordance with the relevant legislation.

For Sale Boards

- 7b You must not erect any form of estate agency board at a property unless you have been instructed to market that property.
- 7c You can only erect an estate agency board with the specific permission of the **seller client**.
- 7d Any board you do erect must be appropriate for the occasion.
- 7e When you put up a board you must by law comply with the Town and Country Planning (Control of Advertisements) Regulations 2007. You must accept liability for any claim arising under these Regulations in connection with the board.
- 7f If your board relates to part of a building in multiple occupation, it should indicate the part of the building to which it relates.
- 7g You must not replace another agent's board with your own, hide it or remove it from a property, without the **seller's client's** permission or without notifying the other agent.
- 7h You must comply with local legislation in relation to erecting your boards.

Published Material and Information about a Property

- 7i You must by law comply with the Consumer Protection from Unfair Trading Regulations 2008 **(or the Business Protection from Misleading Marketing Regulations 2008 where applicable)**. The Consumer Protection from Unfair Trading Regulations 2008 require you to disclose any information of which you are aware or should be aware of in relation to the property in a clear, intelligible and timely fashion and to take all reasonable steps that all statements that you make about a property, whether oral, pictorial or written, are accurate and are not misleading. All material information (*) 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** buyers or their representatives, it must be accurate and not misleading.
- 7j **Prior to commencement of marketing**, the written details of a property (sales particulars) must be agreed with the seller to confirm that the details are accurate.
- 7k In regard to leasehold properties, you should include basic key information such as service charges; ground rent; the length of years remaining on the lease; any known special conditions, and advise sellers and **prospective purchasers buyers** that there may be additional fees that

could be incurred for items such as leasehold packs. In relation to sheltered housing, you should include in sales particulars the existence and level (if known) of event fees (*).

- 7l You will be liable if you include anything in the sales particulars which you have reason to doubt is correct.
- 7m 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 claiming to have sold a property which was sold by another agent, is misleading.**
- 7n **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.**

8. Viewing and Access to Premises

Viewings

- 8a **You must take a seller's instructions** regarding viewings, specifically whether or not they should be conducted by you.
- 8b You must record any viewings that have been arranged for that property, feedback from those viewings and pass this to the seller within **an agreed timescale** ~~agreed with your client~~. If this feedback is an offer, you should refer to section 9 below.
- 8c Before arranging any viewing, you must tell the **buyer viewer** if you are aware of an offer that has already been accepted subject to contract by the seller.
- 8d When you know the property has been marketed by another agent you should establish if your **buyer viewer** has previously viewed the property through that or any other agent.

Access to Premises

- 8e 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.
- 8f 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.
- 8g 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 **the seller's** express permission obtained before you hand over the key.
- 8h You must exercise reasonable diligence to ensure that, after any visit by you, a property is left secure.

9. Offers

- 9a By law, you must tell sellers as soon as is reasonably possible about all offers that you receive at any time until contracts have been exchanged 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 2 working days.

- 9b 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.
- 9c By law you cannot make it a condition of passing on offers to the seller that the ~~buyer 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 ~~buyers these~~ who have indicated they are prepared to let you provide services to them.

Continuation of Marketing

- 9d When an offer has been accepted subject to contract you must take and confirm 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 the legal obligation to pass on offers, as defined in 9a above.
- 9e You must keep all ~~prospective~~ buyers who have recently made offers through you, and which have not already been rejected, informed of the existence of other offers ~~you have~~ submitted to the seller.
- 9f You must be fair and not misleading when disclosing the amount of any offers made to other ~~prospective~~ buyers. Before disclosing the amount of an offer, you must advise the seller of such intention and get ~~the seller's~~ agreement; and you must warn all ~~prospective~~ buyers who make offers that it is your practice to do so. If you do disclose any offer to one ~~prospective~~ buyer, then all offers must be immediately disclosed to all ~~prospective~~ buyers with a current interest in negotiations for the property.
- 9g After an offer has been accepted subject to contract, you must promptly tell that ~~prospective~~ buyer if the seller accepts another offer.
- 9h By law 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.

10. Financial Evaluation

- 10a 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 Act 1998.

- 10b You must put all offers to your seller client even if the **prospective** buyer has not been financially qualified at that stage.
- 10c These reasonable steps must continue after acceptance of the offer until exchange of contracts and must include regular monitoring of the **prospective** buyer's progress in achieving the funds required, and reporting such progress to the seller.

11. Deposits

- 11a **Unless requested by a property developer**, you should not **generally facilitate take** pre-contract deposits. However, **if you do in the case of new home sales**, you **must may** take into account specific instructions from sellers. **Before** ~~If~~ a deposit is taken, ~~then a written receipt must be given, and~~ the circumstances under which the deposit is **to be held, refunded, forfeited or used towards the purchase (as well as the relevant beneficiary of and any interest accrued are refundable)**, 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.**
- 11b You must not hold a deposit, or any other money belonging to a seller or buyer **client**, unless you are covered by adequate insurance.
- 11c Any client money held must by law be in a separate client 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 seller or a buyer client**.
- 11d By law you must not deduct any cost or charges from any **client's** money you hold, unless your client has given you written authority to do so. You should ensure that your client's authority is obtained at the time of the deduction or that you give your client sufficient notice prior to the deduction to object to it.

12. Between Acceptance and Exchange of Contracts

- 12a After acceptance of the offer by the seller, and until exchange of contracts you have no direct influence on such matters as the conveyancing process or the mortgage lending process. Your obligations to the **client seller** are:
- to monitor progress;
 - to assist where possible, as asked;
 - to report information deemed helpful to bringing the transaction to fruition.

You must keep written or electronic records of such activity.

- 12b If a buyer becomes involved in a contract race, **the buyer** should be told promptly of the situation and given such information which comes to your attention as is consistent with your duty to the seller and the other buyer(s).

13. Exchange and Completion

- 13a After exchange of contracts you must not give the buyer the keys to the property without the specific permission of the seller or **the seller's** legal representative.
- 13b At completion, you should offer to assist with the handover of keys during your office working hours and maintain a record of what has been agreed. If the seller so requests, you must assist.

14. In-house Complaints Handling

- 14a 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.
- 14b All verbal and written complaints must be recorded by you at the time they are made.
- 14c You must agree to deal with any properly appointed representative of a Complainant (*).
- 14d 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.
- 14e 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.
- 14f 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.
- 14g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

15. Referrals to the Ombudsman

- 15a You must co-operate with any investigations by the Ombudsman being conducted in accordance with **the Ombudsman's** Terms of Reference.
- 15b 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; and
 - pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

16. Compliance Monitoring/~~Compliance Surveys~~

- 16a You must comply with the requirements of any code compliance monitoring or compliance survey procedure used by TPO Limited.
- 16b You must seek consumers' permission for their contact details to be used in any monitoring/survey process to ensure compliance with the Data Protection Act 1998.

17. Non-Compliance with the Code

- 17a Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.
- 17b 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. When considering such cases the DSC will also consider whether the conduct is such that it raises issues concerning the Member's continuing registration under the Consumers, Estate Agents and Redress Act 2007.

- 17c The DSC will also consider cases of non-compliance ~~where there may have been a where the monitoring process at 16 above shows any~~ single flagrant breach and/or any persistent breaches of the Code, failure to complete compliance monitoring, ~~or~~ 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.~~
- 17d The DSC will determine any disciplinary action in accordance with its terms of reference as defined from time to time.
- 17e 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. 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.

18. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 18a **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.
- Imposing onerous or disproportionate requirements which prevent a client from exercising rights to terminate an agreement or switch to another property sales business.
 - Refusing to allow a consumer to cancel their contract with you, where a cancellation period applies and has not expired.
 - Pressuring 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.
 - Pressuring (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, finalise the sale and/or exchange contracts.
 - 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.
 - Pursuing commission to which you are not entitled.
 - Intimidating, pressuring or coercing consumers into dropping complaints against your business, for example by the use of threatening or abusive when you deal with complaints.
- 18b **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.
- 18c **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. The CPRs do, however, 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.

- 18d **Cash Buyer.** A 'cash buyer' can only be described as such if **they have** realisable cash assets, that is:
- **the buyer** has 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 or proposed exchange of contracts and completion dates; or
 - **the buyer** has actually sold a property, that has exchanged contracts and is expected to achieve completion before exchange on **the purchase** and **the buyer** does not require a mortgage to make up any difference in the purchase price of the new property.
- 18e **Client.** A person who has instructed you to sell or, ~~for a fee,~~ to buy a property on **their** behalf, in the United Kingdom (**excluding Scotland, including** the Channel Islands and the Isle of Man). Where appropriate, this definition includes a client's properly appointed representative.
- 18f **Customer.** Customer refers to an actual or potential seller or buyer.
- 18g **Complainant.** Someone who is an actual or potential seller or buyer of residential property making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant's properly appointed representative.
- 18h **Connected Person.** Includes:
- 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.
- 18i **Estate Agency Services.** Things done by any person in the course of a business (including a business in which **they are** employed) pursuant to instructions received from a Consumer (the "client") who wishes to sell or buy any residential property in the United Kingdom:
- 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; and
 - 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.
- 18j **Event Fees.** Fees connected with the sale of sheltered housing.
- 18k **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.**
- 18l **Material Information.** In the most straightforward sales, the material information that you should give to potential buyers may be quite basic. Little more than 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.

- 18m **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.
- 18n **Property or Residential Property.** Means property (land and/or buildings) used, last used, or to be used for residential purposes.
- 18p **Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.
- 18q **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 exchange 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 exchange on the purchase.
- 18r **Written, in Writing.** Includes typed or hand-written letters, records or notes, emails and faxes. Electronic signatures are acceptable.
- 18s **You.** Applies to all those Estate Agents ~~bound by this Code~~, and their staff providing ~~estate agency~~ services ~~bound by this Code~~.