

Institution of Commercial & Business Agents
Commercial and Business Transfer Agency Code of Practice

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1. General

- a) This Code applies to estate agency services (provided by a person or organisation who has agreed or is required to comply with it) in the United Kingdom for the selling and buying of property and/or businesses (see 10 a) below - all references hereafter in this Code to 'property' means property and/or business as so defined) and related services. The Code aims to promote the highest standards of service. You must comply with all laws relating to estate agency (such as The Estate Agents Act 1979 and The Property Misdescriptions Act 1991, together with all relevant Orders and Regulations) and all other relevant legislation.
- b) You must offer equality of professional service to any person, regardless of their race, creed, sex, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, creed, sex, disability or nationality.
- c) You must always act both within the law and in the best interests of the client (see 10 b) below). You must offer suitable advice to meet the client's aims and needs. You must immediately (see 10 c) below) 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 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.
- d) 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 estate agency legislation.
- e) 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.

2. Instructions

- a) By law you must give your client written confirmation of their (see 10 below) instructions to act in the buying or selling of a property on their behalf. You must give the client written details of your fees and expenses and of your business terms. You must give the client these details before they are committed or have any liability towards you. If appropriate, you must notify your client in writing if you or an 'associate' (see 8 a) below) or 'connected person' (see 10 d) below) wish to offer estate agency, surveying, investment, insurance or other services to people proposing to buy your client's property through you.
- b) Except for any previously agreed expenses and fees, fees will only become due if a purchaser enters into a contract (in Scotland, concludes missives), through you to buy the property, *or as stated otherwise in your terms of business*. 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.
- c) If the client withdraws their instructions from you, you must advise them of any

circumstances in which they may have to pay more than one fee.

d) You must try to get written confirmation if your client wishes to terminate your agency. You must give the client written confirmation that you are no longer acting for them 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.

e) If you receive instructions from a client, you must give that client written notice that there may be a dual fee liability if:

- that client has previously instructed another agent to sell the same property on a sole or joint sole agency or a sole selling rights basis;

or

- that client instructs another agent during or after the period of your sole agency or sole selling rights.

f) You must give up your rights to any commission if a purchaser first introduced by you goes on to buy the property through another agent, in circumstances where that purchaser was introduced by the other agent more than twelve months after the date your agency ended.

g) You must not instruct other agencies to assist you in selling 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.

h) 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 price) must be given in good faith reflecting current market conditions. You must never deliberately misrepresent the value of a property in order to gain an instruction.

i) You must not directly or indirectly harass (see 10 e) below) any person in order to gain instructions. Also, you must not repeatedly try to gain instructions in a way likely to cause offence.

j) You must not put any client's property on the market for sale without permission from that client or the client's properly appointed representative.

3. For Sale Boards

a) You can only erect a 'For Sale' board with the client's permission. When you put up a 'For Sale' board you must keep to the Town and Country Planning (Control of Advertisements) Regulations 1992 as amended; or in Scotland, the Town and Country Planning (Control of Advertisement) Regulations 1990. 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.

b) You must not erect an estate agency board at a property unless you have been instructed to sell that property.

c) If your 'For Sale' board relates to part of a building in multiple occupation it should, where appropriate, indicate the part to which it relates.

d) You must not replace another agent's board with your own, or remove another agent's board from a property, without the client's permission. If you have the client's permission you must immediately tell the other agent, in writing, of the

action you have taken.

4. Published Material

a) You must take all reasonable steps to make sure that all statements, whether oral or written, made about a property are accurate. Whenever possible, the written details of a property must be sent to the Seller for them to confirm that the details are accurate.

b) All advertisements must be fair, decent and honest.

5. Offers

a) 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 client has specifically instructed you, in writing, not to pass on. You must confirm such offers in writing at the earliest opportunity and keep a written or computerised record of all offers you receive.

b) You must not discriminate, or threaten to discriminate against a prospective purchaser of your client's property because that person refuses to agree that you will (directly or indirectly) provide services to them. Discrimination includes the following:

- Failing to tell the client of an offer to buy 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 for sale 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 the property must use any other service provided by you or anyone else.

c) You must make reasonable enquiries of the prospective purchaser of their source and availability of the funds for buying the property and pass this information to the client.

d) You must tell your client in writing as soon as reasonably possible after you find out that a prospective purchaser, who has made an offer, has applied to use your services or those of an associate or connected person in connection with that purchase.

e) When an offer has been accepted subject to contract, you must consult and take your 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 in writing.

You remain under the legal obligation to pass on offers, as defined in 5 a) above.

f) In England, Wales and Northern Ireland

You must do everything you reasonably can to keep all prospective purchasers 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 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 client has instructed a solicitor to send a contract to an alternative purchaser, then you must tell your prospective purchaser in writing.

In Scotland

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 advantage nor disadvantage any of the prospective purchasers involved.

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

- a) Unless you and the 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.
- b) 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.
- c) After exchange of contracts (in Scotland, conclusion of missives) you must not give the purchaser the keys to the property without specific permission from your 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

- a) You must not hold a deposit or any other money belonging to a client, unless you are covered by adequate insurance.
- b) 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.
- c) You must refund immediately any deposit paid before exchange of contracts, 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.
- d) 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, deposits should not be taken at any time.

8. Conflict of Interest

- a) If your firm is instructed to sell 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 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 a property which your firm is instructed to sell, that person must take no further direct part in marketing that property. (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).

b) If you are selling a property that is owned by you, an employee or an associate (or an associate of an employee), or you are selling 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.

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

9. Financial Services

a) You must keep to the rules of the recognised self-regulating organisation (as defined under the Financial Services Act 1986 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.

10. In-house Complaints Handling

a) You must maintain and operate an in-house complaints procedure. Such procedures must be in writing.

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

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

d) All written complaints must be acknowledged within 7 working days – and a proper investigation promptly undertaken. A formal written outcome of the investigation must be sent to the complainant within 21 days. If longer is needed, the Complainant should be told in writing, with an explanation, and given an indication of timescale. The outcome of the investigation must be sent to the Complainant within such timescale.

e) If the complainant remains dissatisfied, they must be told how they can further pursue their complaint within your company. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction. In the case of a single-office Agent, a member of staff not directly involved in the transaction should deal with the complaint. 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.

f) 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 such rules or codes differ from the above, the agent must act to ensure that all such are satisfied.

11. Interpretation and Definitions

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

a) **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.

b) **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 the Channel Islands and the Isle of Man.

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

d) **Connected Person** - "connected persons" include:

1) your employer or principal;

2) your employee or agent;

3) any associate including the term "business associate" as defined within Sections 31 and 32 of the Estate Agents Act 1979.

e) **Harass** - means act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.