

# **INSTITUTION OF COMMERCIAL & BUSINESS AGENTS**

## **RULES OF CONDUCT**

### **The Constitution**

These Rules were adopted at the inaugural meeting of the NAEA on 6<sup>th</sup> March 1962 and have subsequently been amended, most recently in July 1998.

### **The Name**

The name of the Institution shall be **Institution of Commercial & Business Agents**.

### **The Aims of the Institution**

The aims of the Institution as defined in its Memorandum of Institution include requirements that it shall:

- Promote unity and understanding among commercial agents and protect the general public against fraud, misrepresentation and malpractice;
- Safeguard its membership and the public against restrictive practices within the profession;
- Encourage a high ethical standard of competitive practice combined with commercial experience;
- Provide an organisation for land and commercial agents and managers, surveyors, auctioneers and valuers for the protection of their collective interests; and
- Do such things as may be necessary or expedient to sustain or raise the status of land and commercial agents and managers, surveyors, auctioneers, and valuers, and particularly members of the Institution as such.

## **NOTES FOR GUIDANCE**

### **Introductory Notes**

These Rules of Conduct form an integral part of the conditions of membership of the Institution. All applicants for membership of the Institution are sent a copy of the current version of the Rules, and on their application form agree to abide by them and the Disciplinary Procedure Regulations.

### **Consultation**

Any subsequent proposal to amend the Rules of Conduct will always be widely discussed with the Institution and the Articles require all branches to be consulted. The Council will not be asked to approve any changes until adequate time has been allowed for the results of this consultation to be received and for all the branch and other comments to be considered by the Council.

### **No Contractual Obligation**

These Rules relate solely to the way in which the Institution requires members to conduct their activities as commercial agents. They must not be taken by clients, applicants, or other, as in any way affecting the legal relationship between them and any firm, or member.

### **Definitions**

In the Rules and in Explanatory Notes which follow them, the term 'member' also denotes – where appropriate – any firm or company practising as commercial agents of which one, or

more, of its principals, partners, or directors are members of the Institution. Conversely, the word 'firm' also denotes – where appropriate – a member, or such company.

Throughout – where appropriate – the male gender includes the female, the singular includes the plural, the plural includes the singular, and references to all 'acts' include 'omissions'.

References to any Act of Parliament or to Statutory Regulations include any subsequent re-enactment or amendment.

### **Responsibility for others**

Although the Rules relate directly to commercial agency activities, members are advised to note that they are answerable for the acts of all partners and fellow directors whether they are members or not, and for the acts of members and non-members employed by any firm of which they are a principal, or director, whether or not they are personally at fault; and they may be penalised accordingly.

Where local law and practice render it appropriate (e.g. in Scotland), the Institution may issue special requirements varying the general Rules.

### **Penalties**

The breach by a member of any of the Rules constitutes a disciplinary offence for which the member may be punished by one or more of the following: a caution, reprimand, fine, reclassification of membership, suspension or expulsion. In certain cases a member could be asked to give an undertaking as to his/her future conduct, in which case the Disciplinary Sub-Committee may, in its absolute discretion, amend, or suspend a penalty in the light of this undertaking.

### **The Notes**

Neither the subheadings, nor the explanatory notes are part of the Rules. However, in determining whether a breach of any Rules has occurred, and, if so, what punishment (if any) to impose, reference may be made to the Note accompanying the Rule or Rules. Conversely, the contravention of anything said in the Note, unless accompanied by a breach of a Rule, does not in itself constitute a disciplinary offence.

### **Proceedings**

Disciplinary proceedings are initiated either by a complaint in writing lodged with the Institution or by direction of the Executive Committee. All the investigations are carried out by the Institution's Compliance Officer working under the direction of the Business Practices Officer.

### **Suspension**

The Disciplinary Procedure Regulations make provision for the immediate suspension of any member believed to be in breach of the Rules pending determination of the matter. Any member under suspension remains subject to the Rules. Immediate suspension would normally only be considered in cases where it may assist in the protection of the public.

The right to be heard and the appeal provisions open to members are set out in the Disciplinary Procedure Regulations approved, from time to time, by Council.

### **Promotion**

While the Institution expects its members to avoid any misrepresentation, bad presentation, and poor taste in their advertising and other publicity material, it places no restriction on honest advertising and permits its members to advertise in such ways as they judge appropriate.

Likewise, it places no restriction on the use of promotional literature as such, believing there is a proper place for this in an activity which manifestly has commercial aspects.

## **Publication of information**

The Institution reserves the right to publish, or otherwise make known, any information concerning a member's conduct which comes into its possession and in the opinion of the President ought to be published or made known. Provided the Institution acts in good faith and with proper care, it cannot accept responsibility for inaccuracies in any information received by it and passed on.

All correspondence regarding the Rules of Conduct should be addressed to :

The Chief Executive  
The National Institution of Commercial Agents  
Arbon House  
21 Jury Street  
Warwick  
CV34 4EH

## **RULE 1**

### **Duty to maintain separate clients' accounts.**

#### **Rule 1(1)**

All members who receive, or may receive, deposits in transactions to which the Estate Agents Act 1979 applies, shall open and operate a Clients' Account (or Accounts) – hereinafter described as Statutory Clients' Account(s) – in accordance with the requirements of that Act or with the Regulations made under it.

#### **Rule 1(2)**

All members who receive clients' money to which that Act does not apply shall keep, at an Authorised Institution, at least one Clients' Account distinct from any Statutory Clients' Account(s) into which shall be paid without delay any money which is to be held on behalf of clients, tenants, or applicants, other than deposits on transactions covered by the Act.

***Note:** It cannot be too strongly stressed that clients' money must be held by a member in such a way that it is not available for the ordinary trading purposes of the firm, nor used as security for any loan, nor for meeting any personal or business liabilities. The rules, which follow dealing with approved forms of withdrawal from Clients Account(s) are designed to enforce this main purpose of separate accounts. 'Authorised Institution' in Rule 1(2) bears the same meaning as it does in Estate Agents (Accounts) Regulations; thus any institution which may properly be used for Statutory Clients' Account(s) may also be used for other Clients' Accounts. In deciding which institution to use, members are reminded of the importance of having immediate access to the money.*

*When operating any form of Clients' Account the bank or other institution should be advised that the money is to be held in a separate right from the firm's own money, and should be instructed to handle the account(s) in accordance with these rules. A suitable letter is available from the Secretariat for the guidance of members.*

*Bank charges for operating all forms of Client' Account(s) must be paid out of other resources and not charged against the account(s). Interest payments must not be credited to Statutory Clients' Accounts.*

#### **Rule 1(3)**

Money may be drawn from Clients' Account(s) only;

- (a) for payment, on proper authorisation, to the person entitled to received it; or
- (b) in discharge of a sum owed to the member by the person otherwise entitled to receive it; or
- (c) for payment into another Client Account kept by the member; or

- (d) to correct an inadvertent overpayment into the account; or
- (e) to withdraw interest which has accrued on the account; and
- (f) if there are sufficient funds available to the credit of the client to fully cover the payments;

always provided that in the operation of Statutory Clients' Accounts, the provisions of the Estate Agents Act and of the Estate Agents (Accounts) Regulations 1981 or any other Regulations made in pursuance of that Act have precedence over these rules.

**Note:** Rule 1(3) allows the member to draw commission out of the balance in the account for the person liable to pay that commission; but to do so only when the event has taken place upon which the commission becomes due. It also allows disbursements to be recovered, where expressly arranged with the client.

Rule 1(3)(f) applies to property management; a member may only pay other contractors' invoices on behalf of a landlord when there is sufficient rent presently in the account. Payment made in advance against anticipated future rent would be a breach of the Rule.

### **Rule 1(4)**

Every member shall maintain proper internal accounts showing the up-to-date position in relation to sums falling within Rules 1(1) and 1(2), and the heading under Rule 1(3) for all withdrawals. There shall be maintained on the Clients' Account(s) at all times balances to satisfy the indebtedness shown in the internal accounts.

**Note:** Members are reminded that an auditors report in prescribed form is required in respect of that part of the audit which relates to Statutory Clients' Accounts. A copy of a suitable form of Report is available on request from the Secretariat.

### **Rule 1(5)**

Existing members and new applicants for membership who handle clients' money whether in a statutory Client Account or otherwise must produce on application for membership and thereafter, annually, a report by an accountant approved by the Institution, such report to be in the form approved the Institution and to be produced within 6 months of the end of the accounting year. If a report has not been provided within this period a letter will be sent to request production of the report within 14 days.

When a member retires from practice or ceases to be a member of the Institution (whether by retirement, resignation, expulsion or otherwise) that member is obliged to deliver a report covering the period from the last report to the date upon which the member ceased to hold clients' money or to be a member.

## **RULE 2**

### **General duty to uphold high standards of ethical and professional practice.**

#### **Rule 2(1)**

A member shall conduct his/her/hers practice so as to conform with the laws relevant thereto.

**Note:** A member is responsible for informing him/herself as to the requirements of the law and no attempt has been made to write them all into these Rules. The Institution is prepared to give such general advice as it can, but where necessary members should seek specific professional advice. In the case of the Estate Agents Act 1979 the Institution has issued guidance to which members should refer in the first instance for advice in respect of that part of their practice which is covered by the Act. A warning or banning order under that Act against a member would call into question his/her suitability or, in some cases, eligibility to continue as a member.

#### **Rule 2(2)**

No member shall do any act (whether in the business of commercial agency or otherwise) which:

- (a) involves dishonesty or deceitful behaviour: or
- (b) involves unprofessional practice or practices that is unfair to members of the public; or
- (c) in any other way brings the Institution into disrepute.

**Note:** *The purpose of Rule 2(2) is to enable disciplinary action to be taken against certain kinds of disgraceful behaviour which may adversely affect the public when dealing with a member, or are seriously detrimental to the Institution, but which are not covered by another more specific Rule. It is not intended to differ from the spirit of the rules as a whole, nor to limit the freedom of members to conduct their businesses competitively.*

*This is the only Rule which applies to a member's conduct generally and is not confined to commercial agency. Conviction on a criminal offence is not necessary for proceedings under the Rule as misconduct may be evidenced in other ways, and successful proceedings against a member in a criminal or civil action do not necessarily imply a breach of this rule.*

### **Rule 2(3)**

A member who is a principal shall be responsible for the proper supervision of his/her/hers partners, fellow directors and staff in the conduct of his/her/hers business and shall be liable under these Rules of Conduct for any breaches as if such breaches had been committed by him/hers.

**Note:** *The purpose of Rule 2(3) is to require principals to ensure that their partners, fellow directors and members of staff comply with the Rules of Conduct of the Institution. The Rule makes principals liable to disciplinary action for any breaches of the Rules of Conduct committed by others within their control.*

## **RULE 3**

### **Duty not to carry on business with inadequate working capital.**

A member shall not carry on business if he/she/she lacks sufficient financial resources to operate successfully without undue risk to the interests of clients and applicants.

**Note:** *This Rule is designed to prevent members setting up or running a business with insufficient resources. A business cannot be run efficiently if there is constant anxiety about how wages are to be paid and other bills met. Evidence of financial strain, such as unsatisfied County Court judgments, may lead to investigation under Rule 13.*

## **RULE 4**

### **Duty not to carry on business without stipulated security.**

A member shall not carry on business unless he/she/she complies with such requirements of the Council as are currently in force as to bonding or other financial safeguards of the public's money.

**Note:** *Members are required to comply with whatever regulations are currently in force to protect the public against defalcation. Details of the regulations in force from time-to-time are obtainable from the Secretariat.*

## **RULE 5**

### **Duty not to misdescribe class of membership.**

No member shall publish or display the name of a principal, director or employee, of a firm with letters or other description indicating that he/she is a member of the Institution, or a member of any particular class, if he/she is not such a member, or is for the time being suspended from membership.

**Note:** This Rule applies to any form of publication, including the heading on a letter. Particularly, it covers three cases:

- a) stating or implying that a person is a member when he/she is not;
- b) stating or implying that he/she is a member of one class (e.g. a Fellow) when he/she in fact belongs to another class (e.g. Associate); and
- c) stating or implying that he/she is a member when he/she has been suspended.

*Suspension, while it lasts, takes away the privileges of membership. It is most important therefore, however inconvenient it may be, that stationery etc, should not be used which indicates that a suspended person is a member. If such a practice were permitted suspension would lose meaning and membership its value as a protection to the public.*

**Attention is also drawn to Article 8 of the Memorandum and Articles of the Institution as follows:**

A member shall cease to be a member on the happening of any of the following events:

- (a) If any aspect of the declaration and certification in the member's application for membership proves to be false.
- (b) (i) If he/she (being an individual) shall become bankrupt or shall enter into an arrangement or composition with his/her creditors.  
(ii) If it (being a company) shall enter into liquidation whether compulsory (save for the purpose of amalgamation or re-construction of a solvent company) or if a receiver shall be appointed of its undertaking or if it shall have an administration order made against it or if it shall enter into an arrangement or composition with its creditors or  
(iii) If he/she (being an individual) is a Director of a Company in respect of which any of the circumstances set out in sub-clause (ii) above occur.
- (c) If he/she be required to resign his/her membership as a result of a finding to that effect made under the Institution's disciplinary procedure.
- (d) On his/her death.
- (e) If he/she becomes of unsound mind.
- (f) If the subscriptions or any agreed contributions of a member or any other monies due from him to the Institution shall remain outstanding for more than one month but while any other subscriptions, contributions or other monies shall remain a debt due to and recoverable by the Institution the Council shall have power to reinstate such member upon such terms and conditions as the Council shall think fit.
- (g) If he/she resigns from the Institution by notice in writing sent by post or delivered to the Chief Executive at the office of the Institution.
- (h) If the Council shall notify a member in writing that he/she no longer continues to meet the current qualifications for membership or any condition for membership imposed on him under Article 3(iv) hereof.
- (i) If the Membership Sub-Committee attaches to his/her membership, special conditions and he/she is in breach of those conditions.

Provided always that if a member ceases to be a member in accordance with any one or more of the foregoing provisions, he/she shall not thereafter be entitled to hold him/herself out to be a member of the Institution in any way and if he/she does so then the Institution may take such action (including legal proceedings) against him as it deems to be necessary and the Institution shall be entitled to publish the facts in any local and/or national newspapers and such other publications as it shall think fit.

The Membership Sub-Committee may, on just cause shown, reinstate a former member in any grade.

## **RULE 6**

### **Duty to abide by the aims and rules of the Institution.**

Every member shall, in his/her business dealings, conform to the statement of aims of the Institution, together with these Rules and any other Rules and Regulations made from time-to-time by the Institution.

## **RULE 7**

### **Duty not to seek business by improper means.**

#### **Rule 7(1)**

A member shall not seek business by methods which are oppressive or involve dishonesty, deceit, or misrepresentation. Members shall not use any business term, name or initials which could cause confusion between their own business and that of the Institution. In particular, the word 'HomeLink' or the initials 'NAEA' may only be used in their correct context with reference to the Institution.

*Note: It is considered oppressive to seek business by methods designed to take unfair advantage of the age, condition, infirmity, ignorance, or bereavement of a prospective client or by any course of action which amounts to harassment. Members are not permitted to use any cheat or subterfuge to obtain business.*

#### **Rule 7(2)**

A member shall not contact another agent posing as an applicant, nor place him/herself, or his/her nominee, on another agent's register of applicants to obtain addresses for the purpose of canvassing.

#### **Rule 7(3)**

A member shall not advertise for properties under a box number without making it clear that he/she is not an agent who is advertising, unless specifically instructed to do so by a retaining applicant, nor shall he/she use any form of misleading advertisement or published material.

#### **Rule 7(4)**

Before accepting instructions a member shall ascertain whether the prospective client has given the sole agency and/or sole selling rights to another agent. No attempt shall be made to induce the breaking of a valid sole agency and/or a sole selling rights contract. If a prospective client wishes to give instructions regardless of an existing sole agency and/or sole selling rights contract the member shall not accept instructions before advising the vendor that he/she thereby lays him/herself open to a possible liability for payment of two commission claims.

#### **Rule 7(5)**

If a member wishes to offer a property which is on another agent's books, knowledge of which came to him by reason of that agent having erected a board on the property, or having taken other action to market it, he/she may approach the seller for instructions only by an individually signed letter sent 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."

And Rule 7(4) must then be observed.

**Note:** The Institution permits general promotional activity, and a communication which offers commercial agency services generally is not normally deemed to be an approach for instructions for the purpose of this rule.

Rule 7, like all other Rules, is not intended to interfere with competitive methods if they are legitimate. A member is permitted to accept business which is in the hands of another agent if, without infringement of the Rules against improper methods, that business is offered by the seller.

## **RULE 8**

### **Duty to ensure that agency terms are fair and that clients are aware of them.**

#### **Rule 8(1)**

A member shall not propose to a prospective client terms and conditions for the supply of his/her services, including lettings, management and commercial, which are otherwise than fair and reasonable.

#### **Rule 8(2)**

A member shall ensure that each client is aware of the terms and conditions upon which his/her services, including lettings, management and commercial, are supplied and these shall be set out in writing.

**Note:** This Rule is particularly important where sole agency or sole selling rights are agreed. The period during which a vendor is precluded from going to other agents must not be excessive, relative to the vendor's circumstances.

Attention is directed to Section 18 of the Estate Agents Act 1979 which stipulates the information which must be given to clients in cases to which the Act applies. The uncertainty of interpretation of this Section has been clarified by a statement published by the Office of Fair Trading, and while that is not a definitive statement of the Law, all members are strongly recommended to follow the OFT guidance and must comply with the 1991 Orders and Regulations.

If VAT is payable on any items of expenditure, this should be indicated.

The client should be made aware at the outset that his/her relationship with the firm will constitute a binding contract, even though in the case of selling instructions no obligation may be incurred until a sale is effected. The rate of commission and agreed level of advertising charges – if any – are particularly important as is the period of the sole agency. Such matters must be embodied in a written statement given to the client.

Members are advised that the Advertising Standards Authority publishes a code, which relates to property advertising. They should use terms which are clearly understood by the public and avoid possible confusion which can arise when, for example, 'No Sale – No Fee' could be taken to mean that no costs or out-of-pocket expenses will become payable either. If 'Free Valuations' only apply to cases where instructions are confirmed, then this point should be made clear in the advertising or promotional material.

The Institution receives a considerable volume of complaints relating to chargeable advertising.

Members are urged to clarify such arrangement beyond any doubt and not to exceed the agreed budget without the specific knowledge and authorisation of the vendor.

Members must comply, in all respects, with the requirements of the Property Misdescriptions Act 1991 and the Regulations.

## **RULE 9**

### **Duty to protect and promote clients' interests.**

A member shall use all due diligence in looking after his/her clients' business and shall take all such reasonable steps to protect and promote the clients' interests as are practicable, without improper conduct, or unfairness to members of the public.

**Note:** While the main duty is to one's client with whom an agreement has been made and to whom one looks for remuneration, this Rule should be read in conjunction with Rule 12.

## **RULE 10**

### **Duty as to conflicting interests.**

A member shall disclose in writing to his/her client and relevant third parties any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.

*Note: For transactions to which the Estate Agents Act 1979 applies, members' attention is drawn to Sections 21, 31 and 32 of the Act. Members are reminded that they also have a duty to declare existing or potential conflicts of interests in transactions to which that Act does not apply.*

*Members are reminded that under common law an agent's fiduciary duty of care is very wide: it covers all situations, not just those under the Act, and applies to all relationships with clients, tenants, applicants and potential clients.*

*Even when no conflicts of interest exists at the outset, they may never the less arise in a number of ways as the transaction progresses. Members should therefore be alert to this possibility and disclose any conflicts of interest or potential conflicts of interest to the client, and to anyone else affected by them, as soon as they themselves become aware of the situation. For the avoidance of doubt and confusion it is recommended that all disclosures should be confirmed in writing.*

*In any case where a member, or his/her partners, associates, staff, or any of their relatives, are interested in the purchase of a property which the member has been instructed to sell, the client should be advised in writing to obtain independent professional advice.*

## **RULE 11**

### **Duty not to accept secret commissions.**

Neither a firm, nor any principal, director or employee of the firm shall accept from any person in connection with the affairs of a client of the firm any commission, discount, rebate, or other profit unless the details thereof have first been disclosed to the client:

Provided that this Rule shall not apply to:

- a) interest accruing on sums held in Client Accounts under Rule 1, except where required to be paid by Regulations made under the Estate Agents Act 1979;
- b) discounts on advertisements; and
- c) remuneration paid by a firm to its principals, directors or employees.

*Note: The Rule about payment of interest may be superseded in a particular case by an agreement between a member and any other person or persons who have, or may have come to have, an interest in the money. A member should not act upon such an agreement in his/her favour unless the agreement is in writing.*

## **RULE 12**

### **Duty to applicants and others.**

Without detracting from his/her duty under Rule 9, a member shall treat applicant and other non-clients with fairness and courtesy at all times.

*Note: Although there is no contractual duty to applicants, they ought to be treated with proper consideration. Attention is drawn to the prohibition on any unqualified person drawing a contract or conveyance for the sale of land.*

*Nobody should be led into contractual commitments without being made aware of their binding nature, and invited to seek independent advice. Contracts should not be oppressive or unconscionable in relation to the circumstances.*

*Deposits should be returned the applicants upon receipt of a properly authorised request without delay, provided contracts have not been exchanged.*

*If an applicant becomes involved in a race to contract he/she should be told immediately and given such information as is consistent with the firm's duty to the client.*

*If more than one deposit is taken on the same property, the agent must immediately explain the circumstances to each applicant involved.*

## **RULE 13**

### **Duty to allow inspection of accounts, etc.**

In order to ascertain whether these Rules have been complied with, the Institution may – whether or not any complaint has been made – require a member to produce for the inspection of a person appointed by the Institution, his/her books of accounts, bank statements, vouchers and other relevant documents, to furnish him with copies of any parts thereof, and to give him such information and explanations as he/she may require. The member shall comply with any such requirements at the time and place specified.

Any information obtained by such an appointed person as a result of compliance with this Rule shall only be used by the Secretary of the Institution, its Council, Executive Committee, Disciplinary Sub-Committee or Appeals Committee for the sole purpose of ascertaining whether these Rules have been complied with.

***Note:** It should be thought that an investigation under this Rule necessarily involves suspicion of misconduct because the Rule may also be used to make spot checks at random. The appointed inspector will usually be a qualified accountant but in any case will not be a practising commercial agent nor a member of the Institution, and he/she will be instructed to confine the report of his/her findings to any material relating to the Rules of Conduct. A copy of the inspector's report will be given to the member.*

## **RULE 14**

### **Duty to assist in disciplinary investigations.**

A member shall co-operate with any disciplinary investigation, replying to correspondence within 14 days, in accordance with the current Disciplinary Procedure Regulations. *Inter alia*, these provide that he/she may attend any meeting of the Disciplinary Sub-Committee at which an allegation concerning his/her conduct is to be discussed, and that he/she has the right to be heard, to be represented and to appeal against any finding or penalty. A member must abide by any finding, and pay any fine imposed on him no later than 28 days after the end of the period within which an appeal against the finding or penalty may be lodged or, if such an appeal is lodged and not allowed in full, within 28 days after proceedings on the appeal are concluded.

***Note:** This Rule requiring a member to co-operate with any investigation applies regardless of whether he/she has allegedly broken a Rule or Rules, and follows from each member's agreement to be bound by the Rules of Conduct which he/she signed in applying to join the Institution. The full details of how the Institution handles any investigation are set out from time-to-time in the Disciplinary Procedure Regulations approved by the Council. This Rule is merely a synopsis of these regulations. Any member may obtain a copy of the Regulations on application to the Compliance Officer at the Secretariat.*

## **RULE 15**

### **Examination Regulations.**

Every member to whom examination requirements apply shall comply with such Regulations as the Council may, from time-to-time, stipulate for that purpose.