



Code of Practice for Residential Estate Agents in Scotland

Effective from 1 June 2019



The Property Ombudsman

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This Code of Practice is mandatory for all Property Ombudsman (TPO) Members who are entitled to display the above TPO and 'Approved Code' logos and who engage in estate agency work in Scotland. Copies of this Code of Practice and the TPO Consumer Guide should be made available to consumers. You should prominently display the logos in the window of all your offices, your website(s), your letterheads (including emails and other digital communications) and your marketing material.

This Code comprises of two elements:

- Best Practice - standards set above the minimum level required by law.
- Legal Obligations - standards set by law.

TPO Members are expected to conduct their business practices in-line with both elements of the Code, as such, the Code intentionally does not differentiate between the two elements. In line with the Ombudsman's Terms of Reference, TPO can consider complaints raised by consumers against TPO Members against these obligations.

Note: TPO is not authorised to take enforcement action or make decisions on potential breaches of legislation. Where potential breaches or criminal activity is found by TPO, we will report the matter to the appropriate authority. Local Trading Standards (and/or appointed lead enforcement authority) are responsible for enforcement of legislation and regulations. The Courts are empowered to determine whether legal obligations have been met. References made to legislation and regulations within this Code are made for information and education purposes.

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All references to the singular include the plural. Terms marked (*) - the first time they appear are defined in a Glossary of Terms at Section 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 work (*) in Scotland undertaken by a person or organisation who has agreed or is required to comply with it for the marketing of residential property (*). Note that letting agents in Scotland are covered by a separate TPO Code of Practice and solicitors practicing estate agency are regulated by the Law Society of Scotland.

General Obligations

- 1b** You (*) must comply with this Code of Practice. You must comply with all laws (as amended, re-enacted or substituted with or without modification from time to time) relating to residential estate agency and in particular the Estate Agents Act 1979, the Consumers, Estate Agents and Redress Act 2007, the General Data Protection Regulation (or any successor legislation), 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, Energy Act 2011 (Green Deal), Consumer Rights Act 2015, the Housing (Scotland) Act 2001, 2006, 2010 and 2014 and all other current and relevant primary, secondary or devolved legislation.
- 1c** You must register with the appropriate authority in accordance with Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- 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; including Home Report 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 dishonest, deceitful, manipulative or involve 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 recognition, disability, pregnancy or maternity, 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 factors such as their age, infirmity, lack of knowledge, lack of linguistic or numeracy ability, economic circumstances, bereavement or do not speak English as their first language.

- 1h** You must not release or use confidential information for any purpose other than that for which it was given by consumers (*) during the process of selling or buying residential property without the consumer's permission, unless legally required to do so. Personal data should be processed in line with data protection legislation and your business's privacy notice¹ (*)
- 1i** Save where you are required to delete such records sooner under applicable law, 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 and/or any enforcement authority, such as Trading Standards.
- 1j** As a TPO Member (*) you must not take, or be involved in any action which would bring the scheme into disrepute.

Publicity

- 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** You must use and display material promoting the Code of Practice as provided by TPO. You must prominently display the TPO logo in the window of all your offices, your website(s), your letterheads (including emails and other digital communications) and your marketing material (including advertisements).
- 1m** You must have available, free of charge, copies of this Code of Practice and Consumer Guide to give to consumers 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 and buyers fairly and with courtesy.
- 2b** When instructed, your duty of care is to the client (*). You must offer suitable advice to meet the client's aims and needs. Where the law and the interests of the client conflicts, adherence to the law must prevail.
- 2c** You must avoid any conflict of interest. You must disclose at the earliest opportunity in writing (*) to consumers or any relevant third party any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.
- 2d** If you intend to offer or recommend to consumers surveying, financial, investment, insurance, conveyancing or other services, or those of an associate (*) or connected person (*), where the service provider rewards you for the referral by way of money, gifts or any other form of benefit, you must disclose this arrangement to consumers in accordance with the National Trading Standards Estate Agency Team's 'Guidance On Transparency of Fees Involving Property Sales'².
- 2e** Consumer requirements are key and this applies to the buyer as well as the seller. You should complete a consumer fact find to ensure that any specific requirements are taken into consideration.

¹ <https://ico.org.uk/for-organisations/resources-and-support/>

² <https://en.powys.gov.uk/article/3989/Business-Information-NTSEAT>

- 2f** You must by law³ tell the seller if you intend to offer buyers surveying, financial, investment, insurance, conveyancing or other services or those of an associate or connected person in connection with that purchase, before the seller has committed any liability to you. Thereafter, you must inform the client in writing, or in the Note of Interest, or when communicating a formal offer, as soon as reasonably possible after you find out that a buyer, who has made an offer, has applied to use one or more of these services in connection with that purchase.
- 2g** 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 legal representative.
- 2h** 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.
- 2i** 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. The person who is selling should not participate in the direct sale of the property.

3. Advertising for New Business (Canvassing)

- 3a** You must not use unfair methods when seeking new business. Advertising material should be in accordance with the Advertising Standards Authority's (ASA) Codes and must be truthful, not misleading and fully explain who the message is from, its purposes and how the consumer'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 in writing.
- 3c** Fees must be shown inclusive of VAT alongside a statement confirming VAT is included.
- 3d** If a consumer 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.
- 3e** You must take decisions on the content of your advertisements independent of your competitors, 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 consumer asks you to stop canvassing them.

4. Market Appraisal

- 4a** When you give advice to someone selling their property, that advice must be in the consumer's best interests and within the law. The potential benefits and disadvantages of any recommended method of sale must be explained in clear terms and take into account customer requirements as outlined in paragraph 2e.

³ <http://www.legislation.gov.uk/ukxi/1991/859/contents/made>

- 4b** 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.
- 4c** Any evidence relating to comparables of similar properties in a similar location must be retained on file for future reference.
- 4d** You must keep your marketing strategy under regular review with your client. This must include updates relating to marketing costs where those services are not being provided for a fixed fee.

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 paragraph 5c 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 should take reasonable steps to satisfy yourself that the seller is entitled to instruct you (such as obtaining title information from the Land Registry) and to sign on behalf of all co-sellers.
- 5f** In accordance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, you must undertake Customer Due Diligence (*) and, where appropriate Enhanced Due Diligence (*), on the seller before you establish a business relationship. Should you have suspicion, knowledge or reasonable ground to suspect that money laundering is taking place, you must report this in accordance with your money laundering policy and procedures. You must keep records of your Customer Due Diligence checks for five years from the date of the transaction.

Signing

- 5g** 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. You must sign and date your Terms of Business before they are given to your client. The client must be given sufficient time to read them before signing and agreeing to instruct you (refer also to paragraph 5q). The client should be given a copy, signed by both parties, to retain.

Fair Contracts

- 5h** 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.
- 5i** 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, display them prominently and clearly explain the implications of the terms to your client, especially where multiple definitions are used.

Fees and Charges

- 5j** All fees and additional costs must be included in your Terms of Business. They must be fully explained, clearly and unambiguously stated in writing, along with an explanation of the specific circumstances in which those fees and costs will become due, before the client is committed to the contract.
- 5k** Where the fee is a percentage it must 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.
- 5l** Where you charge a fixed fee you must state the actual amount payable including VAT in the contract and ensure that the client understands that the fee will not vary whatever the sale price.
- 5m** Except for any previously agreed additional costs, commission fees will become due on conclusion of missives.
- 5n** Where your Terms of Business include options for sellers to use associated and/or recommended services (such as conveyancing), sellers should be presented with the opportunity to actively opt-in to use the service. Requiring sellers to actively opt-out of any additional or recommended service should be avoided. Charges made for not using a service must be disclosed in accordance with the National Trading Standards Estate Agency Team's 'Guidance On Transparency of Fees Involving Property Sales'⁴.
- 5o** 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 land tax liability.
- 5p** Where charges are being levied for marketing services, charges must be fully explained and stated in clear terms to allow your client to calculate ongoing costs where appropriate.

⁴ <https://en.powys.gov.uk/article/3989/Business-Information-NTSEAT>

Duration and Termination

- 5q** 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 after the day 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.
- 5r** If you intend to charge the client a fee or recover costs for terminating the instruction, you must make this clear 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.
- 5s** On receipt of the 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 seller written confirmation that you are no longer acting for him, confirm the actual date of termination, and give details of any fees or additional costs the client owes you (see paragraph 5v).
- 5t** 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

- 5u** At the time of receiving instructions from a seller, you must:
- point out and explain in your written Terms of Business that you may be entitled to a commission fee if that seller client terminates your instruction and a Formal Offer is issued by a solicitor acting for a buyer that you have introduced (see definition of effective introduction (*) and supplementary TPO 'Dual Fee' guidance) within 6 months of the date your instruction ended and where a subsequent conclusion of missives takes place.
- If no other estate agent is involved this time limit extends to 2 years.
- advise that the seller may be liable to pay more than one fee if they instruct another agent during or after the period of your agency.
 - ask the seller if they have previously instructed another agent in respect of the property, and if advised yes:
 - ask to see a copy of the previous agency agreement to ensure that by instructing you, the seller will not be in breach of contract (note that if the seller is unable or refuses to supply a copy, you must advise, in writing, that you are unable to advise as to whether the seller is in breach of their agreement with the previous agent);
 - specifically advise of the possible liability to pay more than one agent;
 - establish if an interested party has previously viewed through another agent;
 - if an interested party has previously viewed through another agent and makes an offer through you, you must disclose this information and refer the sale back to that agent as they will be deemed to have introduced the buyer (please refer to supplementary TPO 'Dual Fee' guidance).

- 5v** 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. Your explanation must include a list of parties that you have introduced to the property.
- 5w** Your action in pursuing a commission fee or additional charges must be proportionate and reasonable and not intimidatory.
- 5x** 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.

Subsequent Changes

- 5y** 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. Home Report

- 6a** The relevant provisions set out in Section 5 should be followed when entering into an agreement with a seller for the supply of a Home Report 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 the nature and relevance of the documents required and authorised to be included in the Home Report, and the reports 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 a Home Report and the terms of payment.
- 6d** Regardless of whether the Home Report has been supplied by you, the seller, or a third party, you should ensure that the correct documents are present.
- 6e** Where a person requests a copy of the Home Report you must comply with that request within 9 days unless you have reasonable grounds to believe that the person making the request is not a serious buyer. Any charge you make for the copy Report must be reasonable.

7. Marketing and Advertising

- 7a** You must not put any property on the market for sale without permission from the seller and without a valid Home Report 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. Where the property forms part of a larger building, you should advise the seller to check for any restrictions and obtain their response before erecting the board.
- 7d** Any board you do erect must be appropriate.
- 7e** When you put up a board you must by law comply with the appropriate regulations. 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 to ensure 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 (*). Where information is given to consumers and/or their representatives, it must be accurate and not misleading.
- 7j** Prior to the 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 properties being re-sold with existing building warranties, you should ask the seller to declare in writing (for example via the completion of a property information questionnaire signed by the seller) the remaining length of the warranty and whether any claim has been made against the policy. This information should be made available to buyers to enable them to make an informed transactional decision.
- 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 ASA Codes. 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 a timescale agreed with your client. If this feedback is an offer, you should refer to section 9.
- 8c** Before arranging any viewing, you must tell the buyer if you are aware of a formal offer that has already been accepted subject to conclusion of missives by the seller.
- 8d** In accordance with paragraph 5u, when you know the property has been, or is being marketed by another agent you should establish if your buyer 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 missives have been concluded 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** In accordance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, you must undertake Customer Due Diligence and, where appropriate Enhanced Due Diligence, on the buyer before a binding contract has been entered into (for example, exchange of contracts). Should you have suspicion, knowledge or reasonable ground to suspect that money laundering is taking place, you must report this in accordance with your money laundering policy and procedures. You must keep records of your Customer Due Diligence checks for five years from the date of the transaction.
- 9c** 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.
- 9d** By law you cannot make it a condition of passing on offers to the seller that the 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 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 those who have indicated they are prepared to let you provide services to them.

Continuation of Marketing

9e When an offer has been accepted subject to conclusion of missives 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 buyer (including potential buyers) or their solicitor in writing and ensure your marketing clearly explains that an offer has been accepted subject to conclusion of missives. The buyer or their solicitor 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.

9f Where appropriate, you must keep all 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.

9g You must be fair and not misleading when disclosing the amount of any offers made to other buyers. Before disclosing the amount of an offer, you must advise the seller of such intention and get his agreement; and you must warn all buyers who make offers that it is your practice to do so. If you do disclose any offer to one buyer, then all offers must be immediately disclosed to all buyers with a current interest in negotiations for the property.

9h After an offer has been accepted subject to contract, you must promptly tell that buyer if the seller accepts another offer.

9i 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 buyer in writing.

9j If you have received a Note of Interest from someone intending to make an offer (preferably in writing from a solicitor), you should:

- Immediately tell the seller about the Note of Interest and confirm the details in writing, whenever this is practicable.
- Do everything reasonably possible to tell the person intending to make an offer about any formal closing date for offers.

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 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 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 data protection laws.

10b You must put all offers to your seller client even if the buyer has not been financially qualified at that stage.

10c These reasonable steps must continue after acceptance of the offer until conclusion of missives and must include regular monitoring of the buyer's progress in achieving the funds required, and reporting such progress to the seller.

11. Deposits

11a Estate Agents or anyone engaging in estate agency work cannot accept pre-contract deposits.

12. Between Acceptance and Conclusion of Missives

12a After acceptance of the offer by the seller, and until conclusion of missives you have no direct influence on such matters as the conveyancing process or the mortgage lending process. Your obligations to the client are:

- to monitor progress;
- to assist where possible, as asked;
- to report information deemed helpful to bringing the transaction to fruition;
- where there is a chain, routinely check and communicate information helpful to bringing your client's 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. Conclusion of Missives and Settlement Date (Date of Entry)

13a After conclusion of missives keys to the property must not be given to the buyer without the specific permission of the seller's legal representative.

13b Where you become aware that the seller must contractually vacate the property by a specific time on the date of entry, this should be conveyed to the seller at the earliest possible opportunity.

13c At the settlement date, 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 and on your website for consumers; and be available for inspection by the Ombudsman and/or TPO Scotland 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 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

16a You must comply with the requirements of any code compliance monitoring or compliance survey procedure used by TPO Scotland Limited.

16b You must inform consumers that their contact details may be used in any monitoring/survey process in order to ensure compliance with data protection legislation (in particular, the General Data Protection Regulation or any successor legislation). You must also inform consumers of the lawful basis of such processing, which might be, for example, that the processing is necessary for the purposes of your legitimate business interests.

17. Non-Compliance with the Code

17a Cases of non-compliance will be dealt with by the Compliance Committee (CC) of the TPO Board.

17b The CC 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 CC 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 CC 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.

17d The CC will determine any disciplinary sanction in accordance with its terms of reference as defined from time to time.

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.
- Pressurising 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.
- Pressurising (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, pressurising 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, pressurising or coercing consumers into dropping complaints against your business, for example by using threatening or abusive language or actions 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 conclusion of missives and settlement dates; or
- the buyer has actually sold a property, that missives have been concluded and is expected to achieve the settlement date on that sale before conclusion of missives 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 to buy, a property on their behalf, in Scotland. Where appropriate, this definition includes a client's properly appointed representative.

18f 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, third parties and other definitions as set out in the Ombudsman's Terms of Reference.

18g 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.

18h Consumer. Refers to an actual or potential seller or buyer.

18i Customer Due Diligence. Taking steps to identify your customers and checking they are who they say they are. It is a cumulative process and means obtaining the customers':

- Full name
- Official documentation which confirms their identity (normally a form of photo ID)
- Residential address and date of birth
- Details of any resulting beneficial owners

Estate Agency Business Guidance on money laundering obligations is available on the UK Government's website.

18j Effective Introduction. An effective introduction must evidence that the agent carried out an act that initiated the buyer's reaction to the property. As such, there is a need for a defined transaction event to occur. This can be most clearly evidenced by an agent carrying out a viewing.

18k Enhanced Due Diligence. Applies in situations where there is a higher risk of money laundering or terrorist finance. You must do this when:

- The transaction is complex or unusually large.
- A person is a Politically Exposed Person.
- Your risk assessment has identified that there is a high risk of money laundering.
- A seller or buyer is from a high risk country as identified by the UK Government.
- You have been notified that a situation is high risk.

Estate Agency Business Guidance on money laundering obligations is available on the UK Government's website.

18l Estate Agency Work. 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 Scotland:

- 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.

18m 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.

18n 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. However, depending on the circumstances of each sale, material facts could include, 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.

18o 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.

18p Privacy Notice. A published notice to consumers explaining how collected personal data will be used and the lawful basis for processing it.

18q Property or Residential Property. Means property (land and/or buildings) used, last used, or to be used for residential purposes.

18r Records. Means all written correspondence, file notes, contracts and agreements in hard or digital copy or electronic communications including emails, texts and other forms of digital messages or faxes.

18s Service Charge. The amount payable as a contribution to the costs of services, repairs, maintenance, insurance, improvements or costs of management etc. The amount payable may vary according to the costs incurred or to be incurred.

18t Transactional Decision. Informed decisions made by consumers, which include, but are not limited to:

- 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.

18u Written, in Writing. Includes typed or hand-written letters, records or notes, emails, texts, other forms of digital messages and faxes. Electronic signatures are acceptable.

18v You. Applies to all those Estate Agents bound by this Code, and their staff providing estate agency services.