



## **Code of Practice for Residential Property Buying Companies**

**Effective from 1 July 2014**

This Code of Practice is mandatory for all TPO members who must display the above logo and who purchase property directly from home owners. Copies of this Code of Practice should be made available to sellers at the earliest opportunity. You should prominently display the TPO logo in the window of all your offices and on your website.

The Office of Fair Trading previously distinguished between companies who buy in as principals and those who broker a deal between a seller and a third party buyer. This Code applies to companies who buy as principals. Buying Agents acting on the instructions of a third party to source a property are covered by the Code of Practice for Buying Agents.

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**All references to the masculine include the feminine, and to the singular include the plural. Terms marked (\*) - the first time they appear are defined in a Glossary of Terms at Section 10.**

## **1. General Provisions**

### **Applicability**

- 1a. This Code applies to Property Buyers (\*) in the United Kingdom provided by a person or organisation who has agreed or is required to comply with it for the buying of residential property.

### **General Obligations**

- 1b. You (\*) must comply with this Code of Practice. You must comply with all relevant laws relating to the purchase of residential property such as the Data Protection Act 1998, Unfair Terms in Consumer Contract Regulations 1999, Consumer Protection from Unfair Trading Regulations 2008, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and all other current and relevant legislation.
- 1c. 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 all relevant legislation and familiarity with the basic purchase process.
- 1d. You should provide a service consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit or misrepresentation. You must avoid any course of action that can be construed as aggressive or harassment (\*) behaviour.
- 1e. You must treat consumers equally regardless of their race, religion or belief, sex, sexual orientation, gender reassignment status disability or nationality. Unlawful discrimination includes giving less favourable treatment because someone is perceived to have one of these personal characteristics or because they are associated with a person with such a characteristic.
- 1f. You should take special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement.
- 1g. You must not release or misuse confidential information given by your client (\*) during the process buying a property (\*) without your client's permission unless legally required to do so.
- 1h. 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.
- 1i. As a TPO Member you must not take, or be involved in any action which would bring the scheme into disrepute.

## **Publicity**

- 1j. You must use and display such material promoting the Code of Practice as provided by TPO. You should prominently display the TPO logo on the window of any offices, your website and on relevant documentation such as marketing literature, advertisements, and on your letterheads.
- 1k. You must have available, free of charge, copies of this Code of Practice to give to consumers on request.

## **Terms of Business and Service Provision**

### **2. Lead Generation and Advertising**

- 2a. All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion and Direct Marketing.
- 2b. You must not use unfair methods when seeking new clients by unsolicited approaches. Any canvassing material must be truthful and must fully explain who the message is from, its purposes and how the client's interest can be followed up.
- 2c. You must explain to the client the valuation, offer and purchase process before the client is committed to the sale. You must clearly explain the limits of the service and in particular advise that the sale will be at a discount to open market value.
- 2d. You must not mislead about the type of service you provide, for example saying you are the buyer of the property when you are not.
- 2e. You must not mislead about the likely timescales for the sales process, for example giving false or unrealistic timescales.
- 2f. You must not mislead about how the purchase will be paid for. For example you should not claim to be a cash buyer if you are in fact using mortgage finance.
- 2g. You must not mislead about the price you are prepared to pay.
- 2h. You must not mislead about how the property will be valued.
- 2i. You must not train your staff to use scripts and/or techniques that are intended, or likely, to mislead or pressurise home sellers.
- 2j. You must not directly or indirectly harass (\*) any person in order to gain agreement to sell. Nor must you repeatedly try to gain agreement to sell in a way likely to cause offence.

### **3. Offer**

- 3a. You must, at the point of offer, inform your client in writing (\*) that you are a Member (\*) of the TPO scheme, and subscribe to this Code of Practice.
- 3b. You must comply with the Consumer Protection from Unfair Trading Regulations 2008.
- 3c. You must conduct valuations in a proper manner, fairly and in good faith.

- 3d. You must never deliberately misrepresent the value of a property.
- 3e. You must give your client written confirmation of any offer or amended offer for his property. You must give the client written details of your Terms of Business including your fees and charges before he is committed or has any liability towards you.
- 3f. You must not mislead about the status of the offer and / or whether that offer is subject to conditions or mortgage valuation.
- 3g. Any fees and charges, restrictions and liabilities should be confirmed in writing alongside the offer.
- 3h. Any subsequent changes to the offer or withdrawal must be promptly confirmed in writing as soon as you are aware of the need to amend the arrangements and the client informed as to the reasons for the amendment.
- 3i. The offer price should not be reduced late in the process without a valid reason and these reasons should be fully explained to the client.
- 3j. Your Terms of Business and your contract must be consistent with the provisions of this Code of Practice and comply with the Unfair Terms in Consumer Contracts Regulations 1999 (as amended).
- 3k. Your Terms of Business should be written in plain and intelligible language.
- 3l. You should keep a written or electronic contemporaneous record of all offers you make including the date and time of such offers and the seller's (or his appointed representative's) response.
- 3m. By law you must not discriminate, or threaten to discriminate, against a prospective client because that person declines to accept that you will (directly or indirectly) provide related services to them, for example by making it a condition that the person wanting to sell the property must use any other service provided by you or anyone else.

#### **4. Purchase**

##### **Between Acceptance and Exchange of Contracts**

- 4a. You must not transfer the purchase to a third party without your client's permission. If the client gives permission, you are liable for the actions of the sub-instructed party and will be held responsible for any failures to comply with this Code of Practice by that sub-instructed party even if that party is not a TPO Member.
- 4b. Notwithstanding 4a above if you are instructed as a sub-party, you must continue to act in accordance with all relevant provisions of this Code of Practice.
- 4c. You must not reduce offer prices late in the process without a valid reason and you must avoid putting undue pressure on the house seller which restricts their ability to make free or informed choices
- 4d. You must explain to sellers that they are free to use their own professional advisers. Where there is a legitimate business case for the solicitor to be nominated by you, you must disclose at the start of any transaction and before the seller is committed to expenditure:

- the reasons why their choice is limited
  - that either party may withdraw without penalty at that stage.
- 4e. Your obligations to the client are to monitor progress of the sale and keep relevant parties informed.
- 4f. You must do everything within your power to ensure the clients favoured sale dates are met.
- 4g. You must ensure that purchase funds are in place and forwarded to solicitors in time for agreed completion.
- 4h. You must report information to the appropriate parties deemed helpful to bringing the transaction to fruition.
- 4i. You must keep written or electronic records of such activity.

### **5. Fees, Charges and Client Liability**

- 5a. All fees and additional costs, must be included in your Terms of Business alongside your written offer. They must be fully explained, and clearly and unambiguously stated in writing.
- 5b. If you intend to charge the client a fee or recover costs for terminating a sale, you must make this clear and specify the amount of the fee or the method of calculation and additional costs and their purpose.
- 5c. If you use a tie-in (option) agreement then the implications, costs and duration of this should be clearly explained to the client. For example: how long any contractual agreement will last, what costs/charges would apply if the seller pulls out, any notices you will place at HM Land Registry, Registers of Scotland or Northern Ireland's Land and Property Services whilst the agreement is in place, and the effect of those notices on the seller's ability to sell to a different buyer at a later date

### **6. Conflict of Interest**

- 6a. 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.
- 6b. You must avoid a conflict of interest. You must disclose at the earliest opportunity in writing to your client or any relevant third party any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.
- 6c. If you intend to offer potential clients surveying, financial, investment, insurance, conveyancing or other services or those of an associate (\*) or connected person (\*), you must by law advise your clients either separately in writing or within your Terms of Business.
- 6d. The client has a duty of disclosure of any matter affecting the value or saleability or otherwise the residential enjoyment of the property.

### **7. In-house Complaints Handling**

- 7a. 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 any office for consumers; and be available for inspection by the Ombudsman and/or TPO Limited.

- 7b. All verbal and written complaints must be recorded by you at the time they are made.
- 7c. You must agree to deal with any properly appointed representative of a Complainant (\*).
- 7d. 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. A senior member of staff not directly involved in the transaction should deal with the complaint where that is possible.
- 7e. If the Complainant remains dissatisfied, he must be told how he can further pursue his complaint 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 where that is possible. Such a review must be sent to the Complainant within 15 working days.
- 7f. 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 6 months of your final view.
- 7g. You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

## **8. Referrals to the Ombudsman**

- 8a. You must co-operate with any investigations by the Ombudsman being conducted in accordance with his Terms of Reference.
- 8b. 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.

## **9. Non-Compliance with the Code**

- 9a. Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.
- 9b. The DSC will consider those cases brought to its attention by the Ombudsman, acting within his Terms of Reference, where he considers there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent. When considering such cases the DSC will also consider whether the conduct is such that it raises issues concerning the Member's continuing registration under the Consumers, Estate Agents and Redress Act (CEARA) 2007.

- 9c. The DSC will also consider cases of non-compliance where the monitoring process at 9 above shows any single flagrant breach and/or any persistent breaches of the Code, failure to complete monitoring or where it is considered that the Member has brought the scheme into disrepute.
- 9d. In these cases above, the DSC could issue:
- An informal warning.
  - A formal warning.
  - A notice of dismissal from TPO Limited in writing
  - Levy a fine.
- 9e. Any Member issued with a warning or sanction has the right to make a representation to the DSC and after the final decision by that body shall, if necessary, have the right to put the matter before an Appeals Committee made up of two independent Council members (one of whom will act as Chair) and one Board member. Such appeal must be made within 4 weeks of the issue of the warning or sanction. Expulsion or suspension from the TPO voluntary scheme will not necessarily result in loss of Consumers, Estate Agents and Redress Act registration.

## 10. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 10a. **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.
- 10b. **Client.** A person who has sold you a property in the United Kingdom (excluding the Channel Islands and the Isle of Man). Where appropriate, this definition includes a client's properly appointed representative.
- 10c. **Complainant.** Someone who is an actual or potential seller of residential property making a complaint against a TPO Member. Where appropriate, this definition includes a Complainant's properly appointed representative.
- 10d. **Connected Person.** Includes:
- Your employer or principal.
  - Your employee or agent.
  - Associates as defined in 10a.
- 10e. **Property Buyers.** Any things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from a Consumer (the "client") who wishes to sell any residential property in the United Kingdom for the purpose of, achieving a sale of their property in a short and/or certain timeframe.
- 10f. **Harass/Harassment.** Means to act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.
- 10g. **Member.** A Property Buying Company who is a Member of the TPO voluntary scheme and who has undertaken to abide by all provisions of the Code of Practice.

- 10h. **Property or Residential Property.** Means property (land and/or buildings) used, last used, or to be used for residential purposes.
- 10i. **Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.
- 10j. **Written, in Writing.** Includes typed or hand-written letters, records or notes, emails and faxes.
- 10k. **You.** Applies to all Property Buying Companies bound by this Code, and their staff who facilitate the purchase.