

15. Non-Compliance with the Code

Cases of non-compliance will be dealt with by the OEA Council.

The Council will consider cases of non-compliance where the monitoring process at 14b above shows any single flagrant breach and/or any persistent breaches of the Code.

The Council will also 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.

In both cases above, the Council could issue:

- An informal warning.
- A formal warning.
- A notice of dismissal from OEA Ltd in writing.

Any Member issued with a warning or notice shall 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 – if such appeal is made within four weeks of the issue of the warning/notice.

16. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 16a Associate. Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.
- 16b Cash Buyer. A 'cash buyer' can only be described as such if he has realisable cash assets – that is:
- he has sufficient cash in the bank, building society or other investments, which can be realised in a reasonable time – ie it will be available by the estimated or proposed exchange of contracts and completion dates.
 - OR he has actually sold a property – ie, he has exchanged contracts (in Scotland, conclusion of missives) and is expected to achieve completion on his sale before exchange on his purchase – AND he does not require a mortgage to make up any difference in the purchase price of the new property.
- 16c Client. A person who has instructed you to sell – or, for a fee, to buy – a property on his or her behalf, in the United Kingdom – excluding the Channel Islands and the Isle of Man. Where appropriate, this definition includes a client's properly appointed representative.
- 16d 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.
- 16e 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.
- 16f Estate Agency Services. 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 or buy any residential property in the United Kingdom:
- for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to buy or, as the case may be, sell such residential property; and
 - after such an introduction has been effected in the course of that business, for the purpose of securing the sale or, as the case may be, the purchase of that property;
- 16g Harass/Harassment. Means to act in a threatening or oppressive manner likely to cause alarm and/or distress.
- 16h Immediately. Means as soon as is reasonably practicable in the circumstances.
- 16i Member. An estate agent who is a member of the OEA Scheme and who has undertaken to abide by all provisions of the Code of Practice.
- 16j Property or Residential Property. Means property (land and/or buildings) used, last used, or to be used for residential purposes.
- 16k Written, in writing – includes typed or hand-written letters or notes, e-mails and faxes.
- 16l You – applies to all those Estate Agents bound by this Code, and their staff providing estate agency services.



Code of Practice for Residential Estate Agents

Effective from 1 October 2006

This Code of Practice is mandatory for all OEA Members offering estate agency services. Such Members must display the above logo; and must make copies of the Consumer Guide (Using a Member Estate Agent to buy or sell your home) available to members of the public. Such Members must also have available, free of charge, copies of this Code of Practice to give to consumers on request – and a notice to this effect must be displayed with the Consumer Guides. OEA Members have agreed to be subject to the Ombudsman's powers of redress as defined in his Terms of Reference.

This Code of Practice has achieved the approval of the Office of Fair Trading under its Consumer Codes and Approval Scheme – and is the only such code for estate agents to have done so.

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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 15.*

1. General Provisions

Applicability

- 1a This Code applies to estate agency services (*) in the United Kingdom – provided by a person or organisation who has agreed or is required to comply with it – for the selling and/or buying of residential property (*).

General Obligations

- 1b You (*) must comply with this Code of Practice. You must comply with all laws relating to residential estate agency – such as The Estate Agents Act 1979, The Estate Agents (Account) Regulations 1981, The Property Misdescriptions Act 1991, The Estate Agents (Undesirable Practices) (No.2) Order 1991, The Estate Agents (Provision of Information) Regulations 1991, The Property Misdescriptions (Specified Matters) order 1992, The Housing Act 2004 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 the law of agency, the law of contract, and all relevant estate agency legislation; and familiarity with the basic conveyancing and mortgage application processes.
- 1d You are expected to 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, misrepresentation or harassment (*).
- 1e You must offer equality of professional service to any person regardless of their race, religious belief, gender, sexuality, age, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, religious belief, gender, sexuality, age, disability or nationality.
- 1f You should not take unfair advantage of any consumer. You should take special care in your dealings with consumers who may be vulnerable owing to, for example, their age, infirmity, disability, lack of knowledge or linguistic ability, or bereavement; nor should you follow any course of action that can be construed as harassment.
- 1g You must not release or misuse confidential information given by your client (*) during the process of selling or buying a property (*) without your client's permission – unless legally required to do so.
- 1h You must keep clear and full written (*) records of all transactions and produce them when required by the Ombudsman.

Publicity

- 1i You must use/display such material promoting this Code of Practice as is provided by OEA Ltd/OFT. You must display the OEA/OFT logo on the window of all offices – and you are strongly encouraged to do so on all sales particulars, on all property advertisements, and on your letterheads.
- 1j You must have available, free of charge, copies of this Code of Practice to give to consumers on request. You must also display copies of the Consumer Guide leaflet “Using a Member Estate Agent to buy or sell your home” in all your offices.

2. Market Appraisal

- 2a When you give advice to someone selling their property, any figure you advise – either as a recommended asking price or as a possible selling price – must be given in good faith and must reflect current market conditions. You must never deliberately misrepresent the value of a property.
- 2b Any figure given must be supportable, wherever possible, with comparables of similar properties in a similar location.
- 2c You must keep your general marketing strategy under regular review with your client.

3. Instructions, Terms of Business, Commission & Termination

Obligations

- 3a You must, at the point of instruction, inform your client in writing (*) that you are a member (*) of the OEA Scheme, and subscribe to this OEA Code of Practice.
- 3b 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.

- 3c 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 the Code of Practice by that sub-instructed agent.
- 3d You must give your client written confirmation of his instruction to act in the buying or selling of properties on his behalf. You must by law give the client written details of your Terms of Business including your fees and charges. You must give the client these details before he is committed or has any liability towards you. Your Terms of Business must not contain provisions which are inconsistent with the provisions of this Code.

Fair Contracts

- 3e Your contract/Terms of Business must comply with the Unfair Terms in Consumer Contracts Regulations 1999.
- 3f Your Terms of Business should be written in plain and intelligible language. Any terms used in your Terms of Business that are specifically mentioned in the Estate Agents (Provision of Information) Regulations 1991 – eg “sole agency” – must be defined in writing as set out in these regulations. You must use these definitions in full, and clearly explain the implications of the terms to your client.
- 3g In the event that model clauses for Terms of Business are available and introduced by OEA Ltd, RICS and NAEA, which you then use within your Terms of Business, these will constitute approved Terms of Business.

Fees and Charges

- 3h All fees and charges must be included in your Terms of Business; they must be fully explained, and clearly and unambiguously stated in writing. Fees should clearly state whether VAT is chargeable; and they must be expressed as an actual amount plus VAT. When your fee is not a fixed fee, but involves a percentage of the selling price, the “actual” 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.
- 3i Except for any previously agreed charges, commission fees will become due on exchange of contracts (in Scotland, conclusion of missives).

Duration and Termination

- 3j Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party.
- 3k If you intend to charge the client a fee should he wish to terminate the instruction, you must make this clear – and specify the amount of that fee and its purpose.
- 3l On receipt of the client's instruction, or on your own decision, to terminate your instruction, you must promptly give him written confirmation that you are no longer acting for him, confirm the actual date of termination, and give details of any fees or charges the client owes you or may owe you (see 3n below).

Fee Entitlement and Liability

- 3m At the time of accepting instructions from a seller, you must point out and explain clearly to that seller – in your written Terms of Business:
- that you will have a commission fee entitlement if that seller terminates your instruction and goes on to sell the property to a buyer, that you have introduced, within six months of the date your instruction ended. However, you must give up your rights to any commission fee if a buyer first introduced by you goes on to buy the property through another estate agent, in circumstances where that buyer was introduced by the other estate agent more than six months after the date your instruction ended. If no other estate agent is involved, this time limit will not apply.
 - and that there may be a dual fee liability if:
 - that seller has previously instructed another agent to sell the same property on a sole agency, joint sole agency or a sole selling rights basis; or
 - that seller instructs another agent during or after the period of your sole agency, joint sole agency or a sole selling rights basis;
- 3n At the time of the termination of the instruction, you must explain in writing any continuing liability the seller may have to pay you a commission fee – and/or any circumstances in which he may have to pay more than one commission fee. You must explain those circumstances clearly.
- 3p You must not harass a seller by claiming commission to which you believe that you are not reasonably entitled.
- Signing**
- 3q You must sign and date your Terms of Business before they are given to your client. The client should also be asked to sign a copy and be given a copy to retain. The client must be given sufficient time to read them before agreeing to instruct you.

3r You should take reasonable steps to satisfy yourself that the seller is entitled to instruct you and to sign on behalf of all co-sellers.

Subsequent Changes

3s Any subsequent changes to the Terms of Business must be:

- Mutually agreed by you and your client.
- Promptly confirmed in writing.

4. Marketing & Advertising

4a You must not put any property on the market for sale without permission from the seller.

For Sale Boards

4b You must not erect any form of estate agency board at a property unless you have been instructed to market that property.

4c You can only erect an estate agency board with the client's specific permission.

4d Any board you do erect must be appropriate for the occasion. Acceptable boards include:

- "For Sale" – to be used for general marketing of the property.
- When an offer has been accepted, you may change the board to read "Sale Agreed" or "Sold Subject to Contract" (in Scotland, conclusion of missives) – unless the client has instructed you not to do so.

4e When you put up a board you must by law comply with the Town and Country Planning (Control of Advertisements) Regulations 1992 as amended; or in Scotland, the Town and Country Planning (Control of Advertisement) Regulations 1990.

4f If your board relates to part of a building in multiple occupation, it should indicate the part of the building to which it relates.

4g You must not replace another agent's board with your own, or remove another agent's board from a property, without the client's permission.

Published Material & Information about a property

4h You must by law comply with the Property Misdescriptions Act 1991 and take all reasonable steps to make sure that all statements that you make about a property, whether oral, pictorial or written, are accurate and are not misleading.

4i The written details of a property (Sales Particulars) must be agreed with the seller to confirm that the details are accurate.

4j You may be liable if you include anything in the Sales Particulars which causes you to doubt that the information may be correct.

4k All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion and Direct Marketing.

4l There is no obligation on you to disclose information to potential buyers that may adversely influence them. However, the Property Misdescriptions Act 1991 requires you to take all reasonable steps to ensure that where information is given to potential buyers or their representatives, it is accurate and not misleading. Answers to questions about the property must be truthful and not misleading.

Advertising for New Business (Canvassing)

4m If you use leaflets or send letters to seek new properties for sale, you must include a warning about fee liability, including potential dual fee liability, on the part of the potential seller.

5. Viewing & Access to Premises

Viewings

5a You must take instructions from the seller as to his requirements regarding viewings – specifically, whether or not they should be conducted by you.

5b You must record any feedback from viewings and pass this to the seller within a reasonable time. If this feedback is an offer, you should refer to Section 6 below.

5c Before arranging any viewing, you must tell the viewer if you are aware of an offer that has already been accepted (subject to contract – in Scotland, conclusion of missives) by the seller.

Access to Premises

5d 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 beforehand, wherever possible.

5e 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.

5f If access to a property is required by a person on behalf of the buyer (eg 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 his express permission obtained before you hand over the key.

5g You must exercise reasonable care to ensure that, after any visit by you, a property is left secure – or at least as secure as it was prior to the visit.

6. Submission of Offers

6a By law, you must tell sellers as soon as is reasonably possible about all offers that you receive at any time until contracts have been exchanged (in Scotland, 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 two working days.

6b You must keep a written or computerised record of all offers you receive – including the date and time of such offers – and the seller's response. Such records should be made promptly.

Discrimination

6c By law you must not discriminate, or threaten to discriminate, against a prospective buyer of the seller's property because that person declines to accept that you will (directly or indirectly) provide 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.
- Making it a condition that the person wanting to buy the property must use any other service provided by you or anyone else.

Continuation of Marketing

6d When an offer has been accepted subject to contract (in Scotland, conclusion of missives) you must consult and take the seller's instructions as to whether the property should be withdrawn from the market, or continue to be marketed. In the latter case, you must so advise the prospective buyer in writing. The prospective buyer must also be informed in writing should the seller later decide to put the property back on the market.

You remain under the legal obligation to pass on offers, as defined in 6a above.

In England, Wales and Northern Ireland

6e You must do everything you reasonably can to keep all prospective buyers who have recently made offers through you, and which have not already been rejected, informed of the existence of other offers submitted to the seller.

6f Your negotiations must neither unfairly advantage nor disadvantage any prospective buyers. You must be fair and not misleading in disclosing the amount of any offers made to other prospective buyers. Before deciding to disclose the amount of an offer, you must advise the seller of such intention and get his agreement; and you must warn all prospective buyers who make offers that it is your practice to do so. If you do disclose any offer to one prospective buyer, then all offers must be immediately disclosed to all prospective buyers with a current interest in negotiations for the property.

6g After an offer has been accepted, you must promptly tell that prospective buyer if the seller accepts another offer.

6h 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 solicitor to send a contract to an alternative buyer, you must then tell your prospective buyer in writing.

In Scotland (in addition to 6e – 6h above)

6i If you have received a Note of Interest (either orally or in writing) from someone intending to make an offer, you must:

- 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.

7. Financial Evaluation

- 7a At the time that an offer has been made and is being considered by the seller, you must take reasonable steps to find out from the prospective buyer his source and availability of the funds for buying the property – and pass this information to the seller. Such information will include whether the prospective buyer needs to sell a property, requires a mortgage, claims to be a cash buyer (*) – or any combination of these. Such relevant information that is available should be included in the Memorandum of Sale – but caution must be exercised with regard to personal data covered by the Data Protection Act.
- 7b These reasonable steps must continue after acceptance of the offer until exchange of contracts (in Scotland, conclusion of missives) and must include regular monitoring of the prospective buyer's progress in achieving the funds required, and reporting such progress to the seller.

8. Deposits

In England, Wales and Northern Ireland

- 8a As a general rule, you should not take pre-contract deposits, which have no validity in law and can give consumers a false sense of security. However, in the case of new home sales, you may take into account specific instructions from sellers. If a deposit is taken, then a written receipt must be given, and the circumstances under which the deposit and any interest accrued are refundable must be clearly stated in writing.
- 8b You must not hold a deposit, or any other money belonging to a seller or buyer client, unless you are covered by adequate insurance.
- 8c Any money held must by law be in a separate client account or accounts, as set out in the Estate Agents (Accounts) Regulations 1981. You must be able to account immediately for all money you are holding on behalf of a client.
- 8d By law you must not deduct any cost or charges from any client's money you hold, unless your client has given you written authority to do so. You should ensure that your client's authority is obtained at the time of the deduction or that you give your client sufficient notice prior to the deduction to object to it.

In Scotland

- 8e Estate Agents or anyone engaging in estate agency work cannot accept pre-contract deposits.

9. Duty of Care and Conflict of Interest

- 9a When selling a property, your duty of care is to the seller. You must offer suitable advice to meet the seller's aims and needs. Where the law and the interests of the seller conflict, adherence to the law must prevail.
- 9b You must treat all those involved in the proposed sale or purchase – including sellers, potential sellers, buyers and potential buyers – fairly, and with courtesy.
- 9c You must make every attempt to avoid any conflict of interest. You must disclose, 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.
- 9d If you intend to offer potential buyers surveying, financial, investment, insurance, conveyancing or other services – or those of an associate (*) or connected person (*) – you must by law advise your clients either in writing or within your terms of business.
- 9e You must by law tell the seller in writing or in the memorandum of sale, as soon as reasonably possible after you find out that a prospective buyer, who has made an offer, has applied to use your surveying, financial, investment, insurance, conveyancing or other services – or those of an associate or connected person – in connection with that purchase.
- 9f 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 his solicitor.
- 9g 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.
- 9h 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.
- 9i You are entitled to recover outstanding fees and monies owed to you by your client – but in so doing, shall not engage in intimidatory tactics or actions, nor must you imply that such payment is a pre-condition of a review by the Ombudsman.

10. Between Acceptance and Exchange of Contracts

- 10a Whilst – after acceptance of the offer by the seller, and until exchange of contracts (in Scotland, conclusion of missives) – you have no direct influence on such matters as the conveyancing process or the mortgage lending process, your obligations to the seller are: to monitor progress; to assist where possible, as asked; and to report information deemed helpful to bringing the transaction to fruition. You must keep written or computerised records of such activity.
- 10b If a buyer becomes involved in a contract race, he 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).

11. Exchange & Completion

- 11a After exchange of contracts (in Scotland, conclusion of missives) you must not give the buyer the keys to the property without the specific permission of the seller or his solicitor. In Scotland, keys to the property must not be given to the buyer without the specific permission of the seller's solicitor.
- 11b At completion, you should offer to assist with the handover of keys during your office working hours, and do so if the seller so requests.

12. In-house Complaints Handling

- 12a You must maintain and operate an in-house complaints procedure. Such procedures must be in writing; explain how to complain to your business and to the Ombudsman; be readily available in each office for consumers; and be available for inspection by both the Ombudsman and OEA Ltd.
- 12b All complaints – verbal and written – should be recorded by you at the time they are made.
- 12c You must agree to deal with any properly appointed representative of a Complainant (*).
- 12d All written complaints must be acknowledged in writing within three 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. In the case of a single-office Member Agent, a member of staff not directly involved in the transaction should deal with the complaint.
- 12e 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. Such a review (and any further reviews as necessary) must be sent to the complainant within 15 working days.
- 12f Following the conclusion of your investigation, a written statement – expressing 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 six months of your final view.

13. Referrals to the Ombudsman

- 13a You must co-operate with any investigations by the Ombudsman pursuant to, and in accordance with, his Terms of Reference.
- 13b You must:
- comply with any award which, in accordance with his Terms of Reference, is 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's Terms of Reference.

14. Compliance Monitoring

- 14a You must comply with the requirements of any code compliance monitoring procedure used by OEA Ltd.
- 14b You must seek consumers' permission for their contact details to be used in any monitoring process to ensure compliance with the Data Protection Act.