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

Effective from 1 June 2019

Enquiries: use our contact us form at www.tpos.co.uk

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This Code of Practice is mandatory for all Property Ombudsman (TPO) Members who are entitled to display the TPO logo and who purchase property directly from home owners. Copies of this Code of Practice and the TPO Consumer Guide should be made available to consumers. You should prominently display the logo 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. 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 training 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 11.

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1. General Provisions

Applicability

1a This Code applies to Property Buyers (*) in the United Kingdom who have agreed or are 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 (as amended, re-enacted or substituted with or without modification from time to time) relating to the purchase of residential property such as the General Data Protection Regulation (or any successor legislation), Competition Act 1998, Consumer Protection from Unfair Trading Regulations 2008, Business Protection from Misleading Marketing Regulations 2008 (BPRs), Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Consumer Rights Act 2015 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 dishonest, deceitful, manipulative or involve 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 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.

1f 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.

1g 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 notice[1] (*).

1h 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.

1i As a TPO Member you must not take, or be involved in any action which would bring the scheme into disrepute.

[1] https://ico.org.uk/for-organisations/resources-and-support/

Publicity

1j 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.

1k You must use and display such 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).

1l 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 offer suitable information to meet the client's aims and needs. Where the law and the interests of the client conflicts, adherence to the law must prevail.

2b You must treat all those involved in the proposed transaction fairly and with courtesy.

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. You should complete a consumer fact find to ensure that any specific requirements are taken into consideration.

2f The client has a duty of disclosure of any matter affecting the value or saleability 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 acquired, you must seek the owner's prior written permission in writing.

3c Fees must be shown inclusive of VAT alongside a statement confirming that VAT is included.

3d 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.

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

3e 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.

3f 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.

3g You must not mislead about the likely timescales for the sales process, for example giving false or unrealistic timescales.

3h 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.

3i You must not mislead about the price you are prepared to pay.

3j You must not mislead about how the property will be valued.

3k You must not train your staff to use scripts and/or techniques that are intended, or likely, to mislead or pressurise home sellers.

3l 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.

3m You must act promptly if a consumer asks you to stop canvassing them.

4. Offers

4a 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.

4b You must comply with the Consumer Protection from Unfair Trading Regulations 2008.

4c You must conduct valuations in a proper manner, fairly and in good faith.

4d You must never deliberately misrepresent the value of a property.

4e You must give your client written confirmation of any offer or amended offer for the property, along with details of the proposed timescales. You must give the client written details of your Terms of Business including your fees and charges before the client is committed or has any liability towards you.

4f You must not mislead about the status of the offer and/or whether that offer is subject to conditions or mortgage valuation.

4g Any fees and charges, restrictions and liabilities should be confirmed in writing alongside the offer.

4h 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 within 15 working days of the seller accepting the offer. Where there is an issue that requires longer investigation (e.g. leasehold issues) the seller must be informed in writing within this timescale of what the issue is and the potential impact on the offer. Following the conclusion of the investigation, the seller should be informed in writing as to the reasons for the amendment.

4i 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 in writing.

4j 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.

4k Your Terms of Business should be written in plain and intelligible language.

4l 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 appointed representative's) response.

4m 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.

5. Purchase - Between Acceptance and Exchange of Contracts

5a 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.

5b 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.

5c 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

5d 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
- any financial benefit you will receive from the arrangement in accordance with paragraph 2d.

5e Your obligations to the client are to monitor progress of the sale and keep relevant parties informed.

5f You must do everything within your power to ensure the client's favoured sale dates are met.

5g You must ensure that purchase funds are in place and forwarded to solicitors in time for agreed completion.

5h You must report information to the appropriate parties deemed helpful to bringing the transaction to fruition.

5i You must keep written or electronic records of such activity.

6. Fees, Charges and Client Liability

6a All fees and additional costs, must be included in your Terms of Business alongside your written offer. They must include VAT and be fully explained, and clearly and unambiguously stated in writing.

6b 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. Fees and costs should reasonably reflect the activity undertaken and not include a penalty charge.

6c 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.

6d 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'[3].

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 each office and on your website; 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 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 where that is possible. In exceptional cases, where the timescale needs to be extended beyond this limit, the Complainant should be kept fully informed and an explanation provided.

7e If the Complainant remains dissatisfied, they must be told how they can further pursue the 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 12 months of your final view.

7g You must not imply that payment of any outstanding commission fee or additional costs is a condition of a review by the Ombudsman.

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[3] https://en.powys.gov.uk/article/3989/Business-Information-NTSEAT

8. Referrals to the Ombudsman

8a You must co-operate with any investigations by the Ombudsman being conducted in accordance with the Ombudsman's 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 Compliance Committee (CC) of the TPO Board.

9b 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 business. 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 (CEARA) 2007.

9c The CC will determine any disciplinary sanction in accordance with its terms of reference as defined from time to time.

10. Compliance Monitoring

10a You must comply with the requirements of any code compliance monitoring or compliance survey procedure used by TPO Limited.

10b 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.

11. Glossary of Terms

In this Code, the following interpretations and definitions apply:

11a **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

11b **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.

11c **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, third parties and other definitions as set out in the Ombudsman's Terms of Reference.

11d **Connected Person.** Includes:

- Your employer or principal.
- Your employee or agent.
- Associates as defined in 10a.

11e **Consumer.** Refers to an actual or potential seller or buyer.

11f **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.

11g **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.

11h **Property or Residential Property.** Means property (land and/or buildings) used, last used, or to be used for residential purposes.

11i **Property Buyers.** Any 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 any residential property in the United Kingdom for the purpose of, achieving a sale of their property in a short and/or certain timeframe.

11j **Privacy Notice.** A published notice to consumers explaining how collected personal data will be used and the lawful basis for processing it.

11k **Records.** Means all written correspondence, file notes, contracts and agreements in hard and digital copy or electronic communications including emails, texts and other forms of digital messages or faxes.

11l **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.

11m **You.** Applies to all Property Buying Companies bound by this Code, and their staff who facilitate the purchase.