



Code of Practice for Residential Buying Agents

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 offer buying agent services. 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. 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 13. 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 services (*) in the United Kingdom undertaken 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 laws (as amended, re-enacted or substituted with or without modification from time to time) relating to residential estate agency such as the Estate Agents Act 1979 and all secondary legislation: the General Data Protection Regulation (or any successor legislation), Competition Act 1998, the Housing Act 2004 and all secondary legislation, the Consumers, Estate Agents and Redress Act 2007, Consumer Protection from Unfair Trading Regulations 2008, Business Protection from Misleading Marketing Regulations 2008 (where applicable), Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Consumer Rights Act 2015 and all other current and relevant legislation.
- 1c** You must register with the appropriate authority in accordance with the 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; in Scotland, Home Report legislation; and familiarity with the basic conveyancing and mortgage application processes.
- 1e** 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 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 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 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).

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 transaction 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 may apply to a seller as well as the buyer. You should complete a consumer fact find to ensure that any specific requirements are taken into consideration.

2f If your firm is instructed to buy a property and you, an employee or an associate (or an associate of the employee of your firm) is intending to sell it you must by law, before negotiations begin, give all the relevant facts, in writing, to the buyer; and as soon as possible to the buyer's representative.

2g If you or an employee or an associate is intending to sell a property which your firm is instructed to buy, that person must take no further direct part in the purchase of that property on behalf of your business.

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 purchased 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 that 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. Terms of Business, Commission and Termination

Instruction

4a 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 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.

4b You must clarify the instructions received from your client in writing and clearly outline the service that you will provide, explaining that you will in good faith and based upon the criteria supplied to you by your client, select a number of properties from those available and present such properties to your client for their consideration. You must clearly explain the limits to such instructions; in particular that you will not offer financial advice in connection with the purchase and that you have not carried out a survey on the subject properties or the facilities they provide.

4c 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.

4d 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.

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

4e You must not instruct other agencies to assist you in buying a property without your client's permission. If the client 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.

4f Notwithstanding 3c above if you are instructed as a sub-agent, you must continue to act in accordance with all relevant provisions of this Code of Practice.

Signing

4g You must give your client written confirmation of their instruction for you to act in the buying 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 the client is committed or has any liability towards you. This should also include details of commission or referral fees that could be earned through other services being offered. 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 3m). The client should be given a copy, signed by both parties, to retain.

Fair Contracts

4h 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.

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

Fees and Charges

4j All fees and additional costs, including the retainer payable, 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.

4k Where the fee is a percentage of the purchase price you must clearly state whether VAT is chargeable and must express it as an actual amount including VAT. The example amount should be based on the client's purchase budget. However, you must make it clear that, should the buying price be higher or lower than the asking price, your commission fee will be correspondingly higher or lower.

4l Where you charge a fixed fee you must state the actual amount payable including VAT in the contract and ensure that your client understands that the fee will not vary whatever the purchase price.

4m Except for any previously agreed additional costs, commission fees will become due and payable on exchange of contracts (in Scotland, conclusion of missives).

4n Where your Terms of Business include options for clients to use associated and/or recommended services (such as conveyancing), clients should be presented with the opportunity to actively opt-in to use the service. Requiring clients 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.

4o 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 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.

Duration and Termination

4p 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.

4q On receipt of the client's instruction, or on your own decision, to terminate your instruction, you must promptly give the client written confirmation that you are no longer acting, confirm the actual date of termination, and give details of any fees or additional costs the client owes you (see 3r below).

4r Your contract must allow for the required notice of termination to be given before the end of any term, such that termination by the client can occur at the expiry of the minimum term.

Fee Entitlement and Client Liability

4s At the time of receiving instructions from a client, you must:

- point out and explain clearly in your written Terms of Business that you may be entitled to a commission fee if that client terminates your instruction and goes on to exchange contracts on a property the details of which you previously provided to your client (see definition of effective introduction (*) and supplementary TPO 'Dual Fee' guidance) through another agent within 6 months of the date your instruction ended.

If no other estate agent is involved this time limit extends to 2 years.

- advise that the client may be liable to pay more than one fee if they instruct another agent during or after the period of your agency.
- ask the client if they have previously instructed another agent, and if advised yes:
 - ask to see a copy of the previous agency agreement to ensure that by instructing you, the client will not be in breach of contract (note that if the client is unable or refuses to supply a copy, you must advise, in writing, that you are unable to advise as to whether the client is in breach of their agreement with the previous agent);
 - specifically advise of the possible liability to pay more than one agent;
 - establish if a property has previously been introduced to the client through another agent;
 - if a property has been previously introduced through another agent and the client makes an offer through you, you must disclose this information and refer the purchase back to that agent as they will be deemed to have introduced the client to the property (please refer to supplementary TPO 'Dual Fee' guidance).

³ <https://en.powys.gov.uk/article/3989/Business-Information-NTSEAT>

4t 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 properties that you have introduced to the client.

4u Your action in pursuing a commission fee or additional charges must be proportionate and reasonable and not intimidatory.

4v 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

4w 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.

5. Advising your Client

5a 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.

6. Offers

6a When you give advice to someone buying a property, that advice must be in the consumer's best interests. The potential benefits and disadvantages of any recommended method of purchase must be explained in clear terms and take into account customer requirements as outlined in paragraph 2d.

6b You must make clear that any figure you advise be put forward as an offer is given in good faith but is not based upon your formal valuation of the property. You must never deliberately misrepresent the value of a property.

6c You should keep a written or electronic contemporaneous record of all offers you make on behalf of your client including the date and time of such offers and the seller's (or appointed representative's) response.

6d 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. Discrimination includes but is not limited to the following:

- Failing to tell the seller (or appointed representative) of an offer to buy the property.
- Making it a condition that the person wanting to buy the property must use any other service provided by you or anyone else.

In Scotland (in addition to 6a - 6c above)

6e If you have received a Note of Interest from your client (preferably in writing and where possible, from the client's solicitor) intending to make an offer, you must:

- According to your client's instructions tell the seller (or appointed representative) about the Note of Interest and confirm the details in writing, whenever this is practicable.
- Do everything reasonably possible to tell your client intending to make an offer about any formal closing date for offers.

7. Financial Evaluation

7a You should assist the selling agent by obtaining reasonable information about your client required by the seller.

8. Between Acceptance and Exchange of Contracts

8a 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.

8b If your client becomes involved in a contract race, the client should be told promptly of the situation and given such information which comes to your attention.

8c Where you become aware that the seller must contractually vacate the property by a specific time on the day of completion, this should be conveyed to the buyer at the earliest possible opportunity.

9. In-house Complaints Handling

9a 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.

9b All verbal and written complaints must be recorded by you at the time they are made.

9c You must agree to deal with any properly appointed representative of a Complainant (*).

9d 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.

9e 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.

9f 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.

9g You must not imply that payment of any outstanding commission fee or additional costs is a condition of a review by the Ombudsman.

10. Referrals to the Ombudsman

10a You must co-operate with any investigations by the Ombudsman being conducted in accordance with the Ombudsman's Terms of Reference.

10b 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.

11. Compliance Monitoring

11a You must comply with the requirements of any code compliance monitoring or compliance survey procedure used by TPO Limited.

11b 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.

12. Non-Compliance with the Code

12a Cases of non-compliance will be dealt with by the Compliance Committee (CC) of the TPO Board.

12b 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.

12c 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.

12d The CC will determine any disciplinary sanction in accordance with its terms of reference as defined from time to time.

13. Glossary of Terms

In this Code, the following interpretations and definitions apply:

13a 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.
- Pressuring 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.
- Pressuring (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, pressuring or coercing consumers into dropping complaints against your business, for example by the use of threatening or abusive when you deal with complaints.

13b Associate. Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

13c 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.

13d Client. A person who has instructed you, for a fee, to buy, a property on their behalf, in the United Kingdom (including the Channel Islands and the Isle of Man). Where appropriate, this definition includes a client's properly appointed representative.

13e 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.

13f 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.

13g Consumer. Refers to an actual or potential seller or buyer.

13h 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 (preferably 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.

13i 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 arranging a viewing.

13j 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.

13k Estate Agency Services. 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 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.

13l 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.

13m 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, and whether the property is freehold or leasehold. However, depending on the circumstances of each sale, material facts could include the length of the lease, the level of charges payable under a lease, uncertainties known about title, major structural defects, lack of connection to mains services, etc. At the outset of the buying process, you are not expected to research issues that are outside your line of business, for example, where 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.

13n Member. A buying agent who is a Member of the TPO voluntary scheme and who has undertaken to abide by all provisions of the Code of Practice.

13o Privacy Notice. A published notice to consumers explaining how collected personal data will be used and the lawful basis for processing it.

13p Property or Residential Property. Means property (land and/or buildings) used, last used, or to be used for residential purposes.

13q 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.

13r 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 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.

13s Written, in Writing. Includes typed or hand-written letters, records or notes, emails, texts, other forms of digital messages and faxes.

13t You. Applies to all those Buying Agents bound by this Code, and their staff providing estate agency services.