

Overarching Code of Practice for Residential Property Agents
Feedback from ARLA Propertymark and NAEA Propertymark
September 2020

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents, representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. NAEA Propertymark is the UK's leading professional body for estate agency personnel, representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.

Overview

Designated Professional Bodies

3. The Overarching Code of Practice for Residential Property Agents should reference Designated Professional Bodies. This will ensure it is in line with the Regulation of Property Agents (RoPA): working group report and the recommendation for the Regulator to be responsible for approving Designated Professional Bodies should it wish to involve them in the performance of its function.¹ Whilst we recognise that this Code of Practice sets out the overarching principles, it refers throughout to the work of the Regulator. Therefore, in order to future proof the Code and the role of the Regulator, we believe that reference to Designated Professional Bodies should be included to create consistency and avoid any confusion.

Defining agents and agencies

4. The definition of agents and agencies in the Overarching Code of Practice for Residential Property Agents should be clearer and more consistent. As outlined on page three of the Code, firms are defined as agencies, but individuals are not initially referred to as agents. Consequently, it is not always obvious throughout the Code whether information is referring to agents as individuals or agencies as businesses. For instance, on page 11 the Code refers to agents having effective consumer complaints procedures in place. However, these procedures will be put in place by businesses or individual business owners rather than individuals as employees. Furthermore, the Code says that agents must handle information sensitively and in accordance with data protection legislation. These are rules that impact on both individuals and businesses. This confusion is further highlighted in the glossary on page 13 which defines,

¹ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

“Agent(s) – Applies to all businesses and their staff providing services bound by this Code as defined within Chapter 2 of the Regulation of Property Agents Working Group Final Report, July 2019.” To make it clearer, the Code should clearly define agents as individuals working in the sector and agencies as firms and businesses operating in the sector.

Effective consumer complaints procedure

5. The necessity for agencies to have effective consumer complaints procedures in place should be more prominent and clearer at the start of the Code. Complaint handling for consumers is a widespread problem in the property sector. The Property Ombudsman’s annual report 2019 shows that ‘complaints handling’ was the second most common cause of complaint for sales and third most prevalent complaint for the lettings sector.² The other most common complaints from sales and lettings include, ‘communication and record keeping’, ‘management’ and ‘marketing and advertising’. In order to improve in-house complaint handling for consumers we believe there are four areas that should be highlighted more clearly in the Code. Firstly, it is imperative that all agencies have a clear, flexible, and open policy on complaints. Furthermore, under the legal requirement for agents to belong to one of the government-approved redress schemes there is an assumption that all agents have a complaints procedure in place and will deal with matters in the same way and to the same timescales. Secondly, staff and management of agencies need to be trained adequately in complaints handling. Thirdly, agencies need to ensure that they can process complaints from all sources, such as complaints received in person in branch, by telephone, by mail or by email, website, and social media. Agencies must be able to handle all these efficiently. Fourthly, agencies need to set up processes to log and analyse complaints to learn from problems and improve internal processes. This information should be included in Section One of the Code and as part of how agencies (as businesses) and their staff (as agents) deal with consumers.

Train staff regularly and review their needs continually

6. There should be a greater emphasis in the Overarching Code of Practice for Residential Property Agents on the need for agencies to train staff regularly and review their needs continually. Training of staff should not be a one-off event. Legislation on residential lettings and sales is amended regularly with new laws introduced frequently. For example, up to June 2015, there were 145 laws with over 400 regulations that property agents are advising landlords that they need to abide by to legally let a property in England and Wales. Further legislation is expected to impact the sector including the Draft Building Safety Bill³, Renters

² https://www.tpos.co.uk/images/documents/annual-reports/2019_TPO_Annual_Report.pdf

³ <https://www.gov.uk/government/publications/draft-building-safety-bill>

Reform Bill⁴, new rates of SDLT for non-UK residents⁵ and a Draft Registration of Overseas Entities Bill.⁶ This is not to mention the changing and devolved nature of property taxes from Stamp Duty Land Tax (England and Northern Ireland), Land and Buildings Transaction Tax (Scotland) and Land Transaction Tax (Wales) despite RoPA focusing on letting agents in England and sales agents operating across the UK. It is imperative that the Overarching Code of Practice for Residential Property Agents emphasises the need for individuals to obtain regular training and business owners provide regular opportunities for their staff to do this. Without regular training the sector and consumers will not reap the benefits of regulation.

Feedback

Section 1 - Dealing with consumers

7. In Section 1, point 1a of the Code, 'consumers reasonable expectations' is too ambiguous and should be more clearly defined. For instance, examples of 'consumers reasonable expectations' should include responding to correspondence, providing relevant information and can handle complaints. We do not believe that determining 'consumers reasonable expectations' should be left to individual agencies to decide. The Code and Regulator must provide clearer guidance to the sector to ensure that all consumers can benefit from best practice.
8. In Section 1, point 1b of the Code, the language should be simpler. Essentially the Code should say that agents must not discriminate, and agencies must have policies and procedures in place that encourage and respect equality, diversity, and inclusion.
9. In Section 1, point 4b of the Code, the language should be clearer. The word conversant is used to describe how agents and agencies working in the sector should understand the Code. This means they should be familiar and knowledgeable with it and as such conversant should be replaced with wording that better describes what agents and agencies need to do.
10. In Section 1, point 6b of the Code, it refers to providing information in a clear and accessible way as well as agents needing to provide consumers with the relevant 'How to' guide produced by the Ministry of Housing, Communities & Local Government (MHCLG) at the point of their initial interaction with consumers. However, this requirement does not take into account devolutionary matters and the proposed new regulatory framework for estate agents across the UK and letting and managing agents in England.⁷ For instance, under The Assured

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

⁵ <https://www.gov.uk/government/publications/new-rates-of-stamp-duty-land-tax-for-non-uk-residents-from-1-april-2021>

⁶ <https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

⁷ <https://www.gov.uk/government/collections/housing-how-to-guides#how-to-rent-a-safe-home>

Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015, landlords in England are required to provide their tenants with a copy of the 'How To Rent' guide issued by the UK Government.⁸ The 'How to lease' guide issued by MHCLG applies to England only and therefore is not relevant to Wales and Northern Ireland. In addition, there is no freehold and leasehold distinction in Scotland. The 'How to buy a home' and 'How to sell a home' guides are applicable for England and Wales, but sales agents in Northern Ireland and Scotland who are regulated under the Estate Agents Act 1979 will fall under the new regulatory regime for RoPA. These guides are not relevant throughout the UK and the Code should reference this accordingly.

11. In Section 1, point 7b of the Code, it says that 'Referrals to the Regulator must be done within a reasonable period of time. In order to create consistency and drive up standards we believe that a reasonable period of time should be defined as within 28 days of a breach. This is in line with, for example, proceedings for a Banning Order under the Housing and Planning Act 2016.⁹ Before applying to the First-Tier Tribunal for a Banning Order, the local authority must give the person a 'Notice of Intended Proceedings'. This should explain why the local authority is taking action, outline the length of the proposed ban for each offence committed and the level of fine. Local authorities must invite the person to make representations during a 'Notice Period' and they must be given at least 28 days to respond. The local authority must consider any views made during the 'Notice Period' and wait until this period has ended before applying for a Banning Order. By providing a defined number of days to describe a reasonable period of time to report a breach this will build consistency into the sector and ensure breaches are acted upon.

Section 2 – Managing businesses and staff

12. In Section 2, point 11 of the Code, it says that 'Agents must make appropriate arrangements to protect consumers' money. There are four points we would like to raise. These relate to firstly, tenancy deposits, secondly, client money protection, thirdly, anti-money laundering fraud and bribery, and fourthly, use of contractors. Additional information is needed, and further clarity is required on these topics in order to strengthen the Code.
13. Firstly, reference should be made to the legal requirement for landlords who take a deposit in England to protect it in one of the three government-approved tenancy deposit schemes if a tenant rents a home on an Assured Shorthold Tenancy that started after 6 April 2007. Furthermore, the rules state that the deposit must be registered within 30 days of receiving it. Information regarding the protecting of deposits is important and should be referenced in the Code because according to the Tenancy Deposit Scheme, in March 2019, the average

⁸ https://www.legislation.gov.uk/uksi/2015/1646/pdfs/uksi_20151646_en.pdf

⁹ <https://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

deposit in England and Wales was £1,108.¹⁰ This is a significant amount of money and means that protecting deposits should be referenced in the Overarching Code of Practice for Residential Property Agents to remind the industry of its responsibilities and add further protections for consumers.

14. Secondly, the rules for protecting client money should be more clearly defined and include an explanation of how they apply. The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 clarify the definition of a property agent as set out in the Housing and Planning Act 2016 that it is a person who engages in letting agency work or property management work in England.¹¹ This needs clarifying in the Code as the regulations for protecting client money will not apply to agencies across the UK who carry out purely sales work and or do lettings and sales in Northern Ireland where regulations for the protection of client money are not in place. To avoid confusion and to ensure greater consumer protection in this area the Code should be updated to define the requirements more clearly around protecting client money.
15. Thirdly, because purchasing property in the UK is a common method used by serious organised criminals to launder the proceeds of criminal activity it is important that the Overarching Code of Practice for Residential Property Agents refers to the need for agents to be aware of the legislation covering money laundering and fraud and be vigilant when accepting all forms of payment. In addition, the Code should reference the need for all parties to be aware of the legislation covering bribery, as it is a criminal offence to make or receive a bribe. It is important that money laundering, fraud and bribery are referenced as the sales and lettings sectors, property auctioneers and high value dealers are all attractive targets. Furthermore, both small and large agencies are susceptible to criminal activity.
16. Fourthly, the Overarching Code of Practice for Property Agents should reference the use of contractors. Real estate activities, including commercial and residential lettings and sales, as well as management, support 240,000 jobs and add £13 billion of value added to the UK economy. Furthermore, the spending of agents on suppliers supports a further 17,000 jobs while the spending of employees within the sector supports 20,000.¹² To protect consumer money and supply chains the Code should reference the ability for agencies to ensure that contractors are competent for the task assigned to them and clear instructions have been provided. The property industry is an important sector and the role it plays within the wider economy should be acknowledged through the Code.

¹⁰ https://www.tenancydepositscheme.com/wp-content/uploads/2020/01/Statistical-Briefing-2019_Final_Interactive.pdf

¹¹ https://www.legislation.gov.uk/ukxi/2019/386/pdfs/ukxi_20190386_en.pdf

¹² <https://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

Glossary

17. As we have highlighted in point 4, we believe there needs to be a clearer definition of agents as individuals and agencies as businesses. Legislation affects employees and business owners in different ways. The Code needs to be written to reflect this and to also ensure only the offending employee or company director should be reported to the Regulator. Their actions should not penalise the company or other members of staff who work at a firm and abide by relevant legislation, as they may lose their livelihoods through no fault of their own. To ensure that this is the case the Overarching Code of Practice for Residential Property Agents must make a clear distinction between agents as individuals and agencies as businesses.
18. An additional reference to the Consumer Protection from Unfair Trading Regulations 2008 should be included in the Glossary alongside ‘Material information – Required by consumers to make informed ‘transactional decision’’. The Consumer Protection Regulations is a key piece of legislation for the property industry and must be recognised through the Overarching Code of Practice for Residential Property Agents as the main way of protecting consumers from unfair or misleading information. Reference to a working example would also allow agents to clearly understand what they can and cannot do. A simple example could be communicating with a consumer who is self-employed and looking to purchase a property of any parking restrictions surrounding commercial vehicles. Importantly, it could help to prevent complaints arising and reduce the need for consumers to seek redress when buying, selling, or renting property.

Additional comments

19. The UK Government has legislated for net-zero emissions by 2050 and therefore we believe that the Overarching Code of Practice for Residential Property Agents should have a section on Environment and Sustainability.¹³ This is important because the environment is the surroundings and conditions in which we all operate and the sustainable way in which our behaviours impact upon it. To this end, it is essential that the property sector minimises waste and pollution and uses natural resources efficiently. Simple measures and information in the Code could outline the need to adhere to local, national, and international standards designed to help protect the environment, as well as encourage waste recycling at premises and offices and when working with consumers.

¹³ <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>