



Compliance for Companies trading in the International Property Sector

- Guide -

(This guide is available only to AIPP members)

Applicable to companies based in the UK who deal with overseas property, as well as companies based abroad if they are doing business with the UK



This guidance has been endorsed by:
UK National Trading Standards Estate Agency Team (NTSEAT)

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Disclaimer & please note:

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AIPP makes no warranties about the completeness, reliability or accuracy of this information and accepts no liability for any losses and damages in connection with its use. AIPP recommends that any individual or entity wishing to engage in the International Property Sector seeks comprehensive legal advice.

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1. Executive Summary

Terms of reference

AIPP is constantly seeking to improve standards of professionalism in the largely unregulated international property industry. This is primarily delivered to its business members through the promotion of:

- Trade best practice
- Trade business development

As there is no single source of regulation or guidance available to businesses that serve the international property market, AIPP (the Association of International Property Professionals) has prepared a guide to those areas of relevant legislation, regulation and professional conduct which encompass both mandatory behaviour obligations and recommend best practice.

Regulation

The main focus is for UK estate agents who operate in the international property sector and for foreign estate agents who operate in the UK. Since businesses in the professional and financial service sectors are regulated by their own trade bodies and legislation they are largely exempt from the obligations of Estate Agents.

In either case (Estate Agents either in the UK or overseas and operating in the UK) legislation should be treated as if the estate agent is trading in the UK. Registration with HMRC under the AML - Anti Money Laundering regulations - is required.

Any practicing estate agent with a presence in the UK – this includes simply attending an exhibition and promoting/ facilitating property for purchase or sale – must comply with the Estate Agents Act 1979 (including registration with a redress scheme if promoting residential property) and the Money Laundering Regulations 2007 (including registration with HMRC).

Relevant legislation includes:

- Estate Agents Act 1979
- Money Laundering Regulations 2007
- Consumer Protection from Unfair Trading Regulations 2008 (CPR's)
- Business Protection from Misleading Marketing Regulations 2008 (BPR's)

Related legislation includes:

- Proceeds of Crime Act 2002
- Terrorism Act 2000
- Bribery Act 2010
- Data Protection Act 1998
- Enterprise Act 2002
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Rights Act 2015
- Companies Act 2006, and the Companies, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015

- Consumer Credit Act (CCA) 1974 as amended by the Consumer Credit Act 2006
- Electronic Commerce (EC Directive) Regulations 2002
- Performance of Buildings (England and Wales) Regulations 2012
- Financial Services and Markets Act (FSMA) 2000
- Competition Act 1998
- Unfair Contract Terms Act (UCTA) 1977

Legislation is designed to regulate the:

- a) Internal structure, processes and governance of relevant businesses
- b) External marketing and behaviour of relevant businesses towards consumers and other businesses

Enforcement agencies are empowered to monitor the operations of relevant businesses and pursue offenders through behavioural remedies, civil and criminal prosecutions that can lead to bans, fines or imprisonment.

Estate Agents and related businesses are encouraged to join regional or national trade associations, such as the AIPP for those involved in cross-border activity or an affiliate of the National Federation of Property Professionals (NFOPP) for those that operate in the UK domestic market only. Membership provides a wide range of benefits and a code of conduct that must be adopted. A trade association's code of conduct will refer to one of three Property Ombudsman redress schemes and their particular code of professional conduct.

Ethics

The International Ethics Standards Coalition ([IESC](#)) is a global initiative started in 2014 to create a universal set of ethics, principles and standards for real estate and related professions to observe around the world.

AIPP is a trustee of the IESC and as a member of its Standards Setting Committee has actively participated in the creation of the 10 draft ethical principles. Consultation has been running since February 2016 and has recently closed. The Independent Standards Setting Committee will report back to the IES Trustees this autumn.

Guidance

AIPP provides its members with:

- Detailed guidance which is reviewed and updated for changes in legislation
- Assistance in adopting the requirements of legislation to ensure a member is compliant
- A voice to express important issues in meeting compliance requirements with the regulator, National Trading Standards Estate Agency Team (NTSEAT), and to lobby for change or clarification as required
- Advice on best practice and implementation
- Automatic registration with The Property Ombudsman at no extra cost

2. Areas covered by this document

Relevant legislation

- Estate Agents Act 1979 – regulates behaviour of Estate Agents
 - Estate Agency work is defined as:
 - An individual or business with a presence in the UK
 - That deals with people who want to buy or sell freehold or leasehold property, in any location, including residential, commercial and agricultural property
 - As part of a business (covers relocation agents and property finding services)
 - Acting on instructions from a client
 - To act in the best interests of clients; buyers and sellers treated honestly, fairly and promptly
 - Generally makes no distinction between UK and overseas property, and any business based (or with an office or other presence) in the UK is caught by its provisions (save for the requirements in respect of pre-contract deposits).
 - Since April 2014, the National Trading Standards Estate Agency Team at Powys County Council ([NTSEAT](#)) is the UK's primary regulator under this Act
 - Issues individual banning or warning orders under the Act
 - Maintains the public register of such orders
 - Approves and monitors consumer redress schemes
 - Provides advice and guidance to consumers and businesses about their rights and obligations under the Act
- 2007 Money Laundering Regulations
 - Sets out what relevant businesses - like estate agents - must do to prevent their services being used for money laundering or terrorist financing purposes
 - Estate agency businesses must comply with the regulations and must not carry on business as an estate agent unless they register with HM Revenue and Customs (HMRC) for AML supervision
- Consumer Protection from Unfair Trading Regulations 2008 (CPR's) – applies to the behaviour by businesses around the promotion, sale or supply of a product to consumers.
- Business Protection from Misleading Marketing Regulations 2008 (BPR's) –
 - Prohibits businesses from advertising products in a way that misleads traders and
 - Sets out conditions under which comparative advertising, to consumers and business, is permitted.

Related legislation

- Proceeds of Crime Act 2002 – concealing, disguising, converting, transferring or removing criminal property from the UK, or becoming involved with criminal property
- Terrorism Act 2000 – regulated businesses, like estate agents, must report belief or suspicion of offences related to terrorist financing, such as:
 - fundraising for the purposes of terrorism
 - using or possessing money for the purposes of terrorism
 - involvement in funding arrangements
 - money laundering - facilitating the retention or control of money that's destined for, or is the proceeds of, terrorism
- Bribery Act 2010 – related to money laundering, professional ethics and good corporate governance. Offences cover:
 - the briber
 - the bribed
 - specific offence for bribing a Foreign Official
 - corporations that fail to prevent bribery
- Data Protection Act 1998 – e.g. in cases of stolen databases to target consumers interested in timeshare
- Enterprise Act 2002 – reforms designed to crack down on abuses that harm customers and fair-trading businesses alike and thus encourage productivity and enterprise:
 - establishes and provides for the functions of the Competition and Markets Authority (CMA), the Competition Appeal Tribunal and the Competition Service
 - makes provision about mergers and market structures and conduct
 - amends the constitution and functions of the Competition Commission, creates an offence for those entering into certain anti-competitive agreements, provides for the disqualification of directors of companies engaging in certain anti-competitive practices
 - amends the Insolvency Act 1986 and makes other provision about insolvency
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
 - require detailed information to be given to consumers and introduce a 14- day cancellation period
 - prohibit the use of premium-rate telephone helplines (for customers contacting you in connection with a contract that they have with you) and the use of so-called negative options to sell additional products to consumers that are incidental to the main contract
 - deal with the time that you take to deliver goods and who takes the risk when goods are being delivered to a consumer.
- Consumer Rights Act 2015
 - clarifies when terms and conditions can be considered unfair

- clarifies the periods for repair, replacement and refunds related to both goods and services
 - simplifies the process by which small businesses can take legal action against bigger companies that are breaking competition laws
- Companies Act 2006, and the Companies, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015
 - requires you, amongst other things, to display your registered company name prominently at the places where you carry out business and your registered company name and registered office address in all of your company correspondence, documents and websites
- Consumer Credit Act (CCA) 1974 as amended by the Consumer Credit Act 2006
 - requires you, if you engage in certain consumer credit activities, to be authorised by the Financial Conduct Authority and to adhere to certain rules, for example on advertising, precontract disclosure, credit agreements and post-contractual information
- Electronic Commerce (EC Directive) Regulations 2002
 - require you, if you have a web presence, to provide certain information about your business (e.g. address, contact details, membership with trade bodies)
- Performance of Buildings (England and Wales) Regulations 2012
 - where a building is placed on the market for sale or rent, the relevant person (e.g. the seller or landlord), and their agent, must ensure that a valid EPC has been obtained for the property, or that one will be made available within 7 days of marketing the property
- Financial Services and Markets Act (FSMA) 2000
 - requires you to establish whether your business is a 'regulated activity' (for example advising, arranging or administering home finance activities) and, if it is, to obtain authorisation or exemption from the Financial Conduct Authority
- Competition Act 1998
 - The Competition and Markets Authority (CMA) investigates mergers and anti-competitive practices in markets and can enforce a range of consumer protection legislation
- Unfair Contract Terms Act (UCTA) 1977
 - requires you, when selling to consumers or to businesses, to observe restrictions on the use of clauses that seek to exclude or restrict liability for breach of contract, negligence or other breaches of duty

Ethics

- The International Ethics Standards Coalition ([IESC](#)) was formed in 2014 by international, national and regional not-for-profit organisations serving the real estate or related professions around the world. Such organisations exist to guide, enhance and promote the professional, technical and ethical expertise of their members. The IESC's mission is to create a universal set of ethics, principles and standards for real estate and related professions and to enshrine business ethics at the heart of the world's real estate industry.
- AIPP is a trustee of the IESC and as a member of its Standards Setting Committee has actively participated in the creation of the 10 draft ethical principles for real estate practitioners to observe globally.
- Consultation has been running since February 2016 and has recently closed and the Independent Standards Setting Committee will report back to the IES Trustees this autumn. Implementation through the participating member organisations will provide assurance, consistency and confidence to all users of professional services.

Codes of Conduct

- Property Industry trade associations require their members to sign up to and follow their Code of Conduct. The overarching principle is for members to act with honesty, transparency and integrity in their dealings with the public and with the industry. The AIPP Code of Conduct can be found through this link: [Code of Conduct](#)
- Connected to the Code of Conduct, trade associations will require their members to be bound by their Disciplinary Procedure which will usually involve reference to a Property Ombudsman and its redress rules of professional conduct. The AIPP Disciplinary Procedure can be found through this link: [Disciplinary Procedure](#)

Redress

- There are three redress schemes operating in the UK. All estate agents, with a presence in the UK and who deal with residential property must belong to one of these schemes. Complaints by consumers should be referred to the relevant ombudsman depending on which scheme the estate agent is signed up to. The three schemes are as follows:
 - [The Property Ombudsman](#)
 - [Ombudsman Services: Property](#)
 - [Property Redress Scheme](#)

3. Summary of Relevant Legislation

3.1 Estate Agents Act 1979

Key points for anyone who intends to act as an Estate Agent

- Regulates the work of estate agents
- National Trading Standards Estate Agency Team at Powys County Council ([NTSEAT](#)) is the primary enforcement agency and can issue warning orders and prohibition orders for non-compliance
- Ignoring a prohibition order can lead to criminal prosecution and fines
- Before taking instructions, you must inform your client in writing about your:
 - Fees and charges
 - Services to potential buyers
 - Terms of Business
- Declare a personal interest you or a connected person have in a transaction
- Handling negotiations – treat everyone involved equally, fairly and promptly
- Handling clients money – strict rules around money held as a deposit

The Estate Agents Act regulates the work of estate agents.

- Defined as anyone with a presence (even a temporary one) in the UK who introduces and/or negotiates with people who want to buy or sell freehold or leasehold property (or their Scottish equivalents) including commercial and agricultural property, does this in the course of business and acts on instructions from clients – AIPP guidance on who is affected by this Act can be found in the Appendix
- Non-compliance with the law risks being banned from working as an estate agent
- Ignoring a ban leads to prosecution and fines.

The National Trading Standards Estate Agency Team of Powys County Council is the UK's primary regulator under the Act.

Connected persons

- The definition of a connected person is very wide and includes employees and employers as well as spouses, relatives, business associates and spouses and relatives of business associates
- Know who they are and inform your client if you or a connected person will receive a benefit from another person offering services to the buyer of your client's property

What you must tell your client – in writing and before taking instructions

- Fees and charges including how they are calculated, under what circumstances they fall due and how/when additional fees/charges are incurred (e.g. cost of advertising)
- Services to potential buyers through yourself or a connected person, such as arranging a mortgage or insurance, arranging the sale of the buyer's property

- Terms of business – full and precise definition of following terms if used in terms of business:
 - sole selling rights
 - sole agency ready
 - willing and able purchaser

Declaring a personal interest

- Agents must reveal promptly and in writing any personal interest they or a connected person have in a transaction
- Agents must not seek or receive a deposit for the sale of a property in which they have a personal interest

Handling negotiations

During negotiations, make sure that everyone involved is treated equally, fairly and promptly

- Keep clients informed of offers received – in writing, promptly
- Keep clients informed about services – see services to potential buyers above
- Make no misleading statements – to either sellers or buyers
- Property misdescription – offence under CPR's and BPR's 2008 to make misleading statements about property
- Avoid bias – do not discriminate against potential buyers because they don't want, or might refuse, to take services from you or a connected person, or someone from whom you or a connected person may receive financial benefits

Handling client's money

Money held as a deposit is done so on trust

- Deposits
 - Pre-contact – held before exchange and shown as a real intention to buy
 - Contract – paid on exchange
 - All deposits must be held in a special account (called a 'client account') set up for the purpose at a bank or other institution authorised for that purpose. No other client money, such as rents, should be paid into this account
 - Interest on any deposit over £500 must be paid if it amounts to £10 or more
 - Money from a connected contract may be paid into a client account, for example, money to buy carpets or curtains in the property
- Keeping Accounts – keep detailed accounts and receipts for all client transactions, maintained for 6 years, audited and available for inspection by an authorised officer

Enforcement

The National Trading Standards Estate Agency Team is responsible for the working and enforcement of the Estate Agents Act through:

- Local authority Trading Standards departments

- The Department of Economic Development (Northern Ireland).

Powers of the National Trading Standards Estate Agency Team (NTSEAT)

- Issue warning and prohibition orders that could stop someone working as an estate agent
- Require anyone, including clients and potential buyers, to give information or produce documents before deciding whether or not to issue an order or carry out other enforcement activities.

Making warning and prohibition orders

- Can be made against individuals, partnerships or companies, and anyone employed by them.
- NTSEAT will issue a 'Notice of Proposal' before making an order. This gives the affected person at least 21 days to explain why the proposed order should not be made.

Warning orders

The NTSEAT can issue a warning order if someone breaks the law relating to:

- Information on charges
- Definition of terms
- Your personal interest in a sale
- Information to clients about offers
- Information to clients about services provided to buyers
- Misleading statements
- Bias against buyers
- Interest on clients' money

Breaches of a warning order could lead to a ban under a prohibition order.

Prohibition orders

Can ban someone from all, or some aspects of, estate agency work. A prohibition order can be made if someone:

- Breaches a warning order
- Commits an offence of fraud or other dishonesty, or violence
- Commits racial or sexual discrimination during their work as an estate agent
- Commits certain specified offences
- Commits certain offences under the Act
- Breaches certain provisions of the Act
- Engages in a practice declared undesirable under the Act.

A prohibition order can be issued whether or not a warning order was made previously. It is a criminal offence to not comply with a prohibition order.

Appeal against prohibition orders

To the First Tier Tribunal and then, on points of law only, to the High Court. In Scotland, to the Court of Session.

3.2 Money Laundering Regulations 2007: supervision of Estate Agency Businesses

Key points for anyone who intends to act as an Estate Agent

- HMRC supervise Estate Agency Businesses under the Money Laundering regulations
- You must first register with HMRC for anti-money laundering supervision
- HMRC can impose punitive penalties and/or a prison term of up to 2 year for failure to register
- Senior managers of a business must:
 - Identify and manage effectively the risks their businesses might be exploited to launder money or finance terrorists
 - Appoint a nominated officer to report suspicious activity and receive reports from inside the business
 - Prepare a policy statement and procedures to show how the business will manage the risks of money laundering and terrorist financing identified in risk assessments
 - Make sure there are enough trained people equipped to implement the policy adequately, and systems to help them
 - Monitor effectiveness and make improvements where required
- You must undertake customer due diligence for all customers:
 - Do customer due diligence for all customers
 - Have systems to identify those who can't produce standard documents
 - Apply enhanced due diligence in higher risk cases, specifically when the customer isn't physically present when being identified, and in respect of politically exposed persons
 - Not deal with certain persons or entities if you can't do due diligence, or the results aren't satisfactory
 - Have a system for keeping customer information up to date
- You must report suspicious activity
 - Staff must raise an internal report where they know or suspect money laundering or that terrorist property exists
 - The business's nominated officer must consider all internal reports and report to the NCA (National Crime Agency) if there is suspicion that another person is engaged in money laundering, or financing terrorism
 - Seek consent from the NCA before proceeding with a suspicious transaction or entering into arrangements
 - It is a criminal offence to 'tip-off' another person that a disclosure has been made
- You must retain records of customer due diligence, transactions and details of suspicious transactions considered by the nominated officer, for 5 years
- You must ensure staff
 - are aware of the risks of money laundering and terrorist financing
 - know who the nominated officer is
 - receive proper training and equipment

Scope

HMRC supervise Estate Agency Businesses under these regulations. A person may not carry on estate agency business unless they register with HMRC. The Money Laundering Regulations define 'estate agent' as a firm or sole practitioner, who or whose employees carry out estate agency work (within the meaning given by section 1 of the Estate Agents Act 1979). Since 1 October 2012, the definition has included estate agents based in the UK who deal with overseas property, either exclusively or alongside other property services. This also includes estate agents based abroad if they are doing business within the UK, even on a temporary basis such as at a trade exhibition.

The Money Laundering Regulations set out what relevant businesses, like estate agents, must do to prevent their services being used for money laundering or terrorist financing purposes.

Responsibilities of senior managers

Senior managers are personally liable if they don't do everything they need to do to protect their business from money laundering and terrorist financing. A senior manager is a director, manager, secretary, chief executive, member of the management committee or someone who carries out those functions, or any partner in a partnership or a sole proprietor.

Senior managers core obligations

They must:

- identify and manage effectively, the risks that their businesses may be exploited to launder money or finance terrorists
- take a risk-based approach that focuses more effort on higher risks
- appoint a nominated officer to report suspicious activity to receive reports from inside the business and decide whether to report them to the NCA (National Crime Agency)
- devote enough resources to deal with money laundering and terrorist financing

Action required:

- carry out a risk assessment identifying where their business is vulnerable to money laundering and terrorist financing
- prepare a policy statement and procedures to show how the business will manage the risks of money laundering and terrorist financing identified in risk assessments
- make sure there are enough trained people equipped to implement the policy adequately, and systems to help them
- monitor effectiveness and make improvements where required

Policies and procedures

Senior managers must put in place appropriate policies and procedures that reflect the degree of risk associated with the business and its customers. These are:

- customer due diligence measures and ongoing monitoring
- reporting suspicious activity
- record keeping
- internal controls
- risk assessment and management
- monitoring and managing compliance
- the internal communication of these policies and procedures which should be easily accessible to staff and detailed enough to allow staff to understand and follow them easily.

Customer due diligence

Core obligations

The following must be actioned:

- do customer due diligence for all customers
- have systems to identify those who can't produce standard documents
- apply enhanced due diligence to take account of the greater potential for money laundering in higher risk cases, specifically when the customer isn't physically present when being identified, and in respect of politically exposed persons
- not deal with certain persons or entities if you can't do due diligence, or the results aren't satisfactory
- have a system for keeping customer information up to date

Customer due diligence must be undertaken when:

- establishing a business relationship
- carrying out an occasional transaction, such as an auction
- suspicion of money laundering or terrorist financing
- suspicion that information obtained for due diligence checks on a customer is not reliable or adequate

Customer due diligence means:

- identifying customers and verifying their identity
- identifying the beneficial owner, where applicable, and taking adequate risk based measures to verify their identity
- obtaining information on the purpose and intended nature of the business relationship
- conducting ongoing monitoring of the business relationship, to ensure transactions are consistent with what the business knows about the customer, and the customer's risk profile
- maintaining records of these checks

Reporting suspicious activity

Core obligations

- staff must raise an internal report where they know or suspect, or where there are reasonable grounds for having knowledge or suspicion, that another person is engaged in money laundering, or that terrorist property exists.
- the business's nominated officer must consider all internal reports. The Officer must make a report to the NCA as soon as it's feasible to do so, even if no transaction takes place, if they consider that there is knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering, or financing terrorism.
- the business must seek consent from the NCA before proceeding with a suspicious transaction or entering into arrangements.
- it's a criminal offence for anyone to do or say anything that 'tips off' another person that a disclosure has been made where the tip-off is likely to prejudice any investigation that might take place.

Record keeping

Core obligations

- retain copies of, or references to, the evidence obtained of a customer's identity for five years after the end of the business relationship
- retain details of customer transactions for five years from the date of the transaction
- retain details of actions taken in respect of internal and external suspicion reports
- retain details of information considered by the nominated officer in respect of an internal report, where the nominated officer does not make an external report

Staff awareness

Core obligations

- ensure relevant staff are aware of the risks of money laundering and terrorist financing, the relevant legislation, and their obligations under that legislation, know who the nominated officer is and what his responsibilities are, train in the firm's procedures and in how to recognise and deal with potential money laundering or terrorist financing transactions or activity
- ensure staff are trained at regular intervals, and record the details. The relevant director or senior manager has overall responsibility for establishing and maintaining effective training arrangements.

Failure to register

- it's an offence to carry on relevant business without registering with HMRC as required by the Money Laundering Regulations
- HMRC may impose penalties for failure to register a relevant business including carrying on the business as an estate agent without being registered, or after registration has been cancelled
- The National Trading Standards Estate Agency Team can prosecute businesses which fail to register for AML supervision. A failure to register can also be taken into account in prohibition order proceedings.
- any changes to business details (name, address, shareholders, entity, nominated officer..) must be notified to HMRC within 30 days of the change

Punitive Fines

- Punitive fines have been made for non-compliance with the obligation under this Act. In 2014 the OFT fined three estate agents a total of £246,665 for failures in policy and process:
 - Inadequate customer due diligence measures when carrying out estate agency work.
 - Failures to conduct ongoing monitoring of business relationships.
 - Failures to establish and maintain appropriate policies and procedures on adequate record-keeping, internal controls or risk assessments.
 - Failures to train relevant employees in how to recognise and deal with transactions and other activities which may be related to money laundering and terrorist financing.

Please note these large fines were imposed not for money laundering activity but for not having in place due processes to identify such

Offences under the Proceeds of Crime Act and the Terrorism Act

- non-compliance with the Money Laundering Regulations risks committing offences under the:
 - Proceeds of Crime Act 2002
 - Terrorism Act 2000
- up to 2 years imprisonment and/or unlimited fines

3.3 Consumer Protection from Unfair Trading Regulations 2008 (CPR's)

Key points for anyone engaged in the property sales business:

- CPR's are enforced by several agencies including National Trading Standards Estate Agency Team, local authority trading standards services and Department of Enterprise
- Enforcement measures range from education, civil enforcement, fines and criminal convictions
- Commercial practices are unfair when:
 - Giving misleading information to consumers, for example through false or deceptive advertisements or statements
 - Failing to give necessary information to consumers, for example leaving out or hiding important information
 - Acting aggressively, for example through sales techniques that use harassment, coercion or undue influence
 - Failing to act in accordance with reasonable expectations of acceptable trading practice (failing to be professionally diligent)
 - Engaging in any of 31 specific practices that the CPR's ban outright
- For a practice to be unfair, it must cause, or be likely to cause, the 'average consumer' to take a different 'transactional decision'.

Scope

CPR's apply to any activity conducted in the UK, no matter what country the business conducting the activity or the property for sale is located in, provided the marketing of the property or related services is capable of reaching consumers or business customers in the UK. They do not apply when only consumers are involved in a transaction.

General prohibition: Unfair commercial practices

- Practices that are not professionally diligent, and
- Materially distort, or is likely to materially distort, the economic behaviour of the average consumer

Prohibition of: Misleading and aggressive practices

- prohibit commercial practices which are misleading (whether by action or omission) or aggressive, and which cause or are likely to cause the average consumer to take a different decision

Practices prohibited in all circumstances

- 31 commercial practices which are unfair in all circumstances and are prohibited
 - (1) Claiming to be a signatory to a code of conduct when the trader is not
 - (2) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation
 - (3) Claiming that a code of conduct has an endorsement from a public or other body which it does not have
 - (4) Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation

- (5) Making an invitation to purchase products at a specified price if trader believes he cannot supply (bait advertising)
- (6) Making an invitation to purchase products at a specified price and then: (a) refusing to show the advertised item to consumers (b) refusing to take orders for it or deliver it within a reasonable time, or (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch)
- (7) Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice
- (8) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the European Economic Area State where the trader is located, and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction
- (9) Stating or otherwise creating the impression that a product can legally be sold when it cannot
- (10) Presenting rights given to consumers in law as a distinctive feature of the trader's offer
- (11) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)
- (12) Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product
- (13) Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not
- (14) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products
- (15) Claiming that the trader is about to cease trading or move premises when he is not
- (16) Claiming that products are able to facilitate winning in games of chance
- (17) Falsely claiming that a product is able to cure illnesses, dysfunction or malformations
- (18) Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions. E.G. An estate agent tells a consumer that he has recently sold several houses in the same area, just like the one the consumer is viewing, at a certain price
- (19) Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent
- (20) Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item
- (21) Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not
- (22) Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer
- (23) Creating the false impression that after-sales service in relation to a product is available in a European Economic Area State other than the one in which the product is sold
- (24) Creating the impression that the consumer cannot leave the premises until a contract is formed
- (25) Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified to enforce a contractual obligation
- (26) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation
- (27) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights
- (28) Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them
- (29) Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer, except where the product is a substitute
- (30) Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy
- (31) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either: (a) there is no prize or other equivalent benefit, or (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost

CPR's prohibit:

- Misleading actions and misleading omissions which cause or are likely to cause the average consumer to take a different decision are banned
 - Misleading actions occur when a practice misleads through the information it contains, or its deceptive presentation, and causes or is likely to cause the average consumer to take a different decision and include:
 - misleading information generally
 - creating confusion with competitors' products
 - failing to honour firm and verifiable commitments made in a code of conduct
 - Misleading omissions occur when insufficient information is given about a product to allow a consumer to make an informed choice:
 - omit or hide material information, or provide it in an unclear, unintelligible, ambiguous or untimely manner, and
 - the average consumer takes, or is likely to take, a different decision as a result
 - Misleading omissions can also occur where a trader fails to identify the commercial intent of a practice, if it is not already apparent from the context. The presence of a price, or of a statement making it clear that the practice is commercial (for example: 'this is an advertisement'), are examples of how commercial intent could be made clear.

- Aggressive commercial practices which intimidate or exploit consumers, restricting their ability to make free or informed choices through:
 - Harassment, coercion (including physical force) or undue influence,
 - Significantly impair, or are likely to significantly impair, the average consumer's freedom of choice or conduct concerning the product,and:
 - The average consumer takes, or is likely to take, a different decision as a resultare prohibited

- Promotion of unfair commercial practices by a code owner in a code of conduct are prohibited.

General prohibition

- Failing to act in accordance with reasonable expectations of acceptable practice
 - Acts as a safety net designed to 'future-proof' the protections in the CPRs, by setting standards against which all existing and new practices can be judged
 - Made up of two tests, it prohibits practices that:
 - contravene the requirements of professional diligence
 - and
 - materially distort the economic behaviour of the average consumer with regard to the product (or are likely to)

Enforcement

- Local Authority Trading Standards Services (TSS), the Department of Enterprise, Trade and Investment in Northern Ireland and the National Trading Standards Estate Agency Team have a duty to enforce the CPR's
- Enforcers should promote compliance by the most appropriate means, in line with their enforcement policies, priorities and consistent with available resources
- Enforcers can use a range of tools to ensure that businesses are complying with CPR's:
 - education, advice and guidance
 - established means - in other legislation or bodies to deal with cases/ complaints that are relevant (e.g. Advertising Standards Authority)
 - codes of conduct - use approved codes of conduct adopted by self regulatory bodies
 - civil enforcement - enforcers may apply to a court for an enforcement order to prevent Community or domestic infringements (under Part 8 of the Enterprise Act 2002). Breach of an enforcement order could be contempt of court which could lead to up to two years imprisonment and/or an unlimited fine.
 - criminal enforcement

Criminal offences

- Following contravention of requirements of general prohibition, misleading actions and omissions, aggressive practices and specific unfair commercial practices apart from numbers 11 and 28 on banned practices
- The offences above are all strict liability offences (proof of action), apart from contravention of the general prohibition, which requires proof of *mens rea* (knowledge or recklessness).
- The penalties are:
 - on summary conviction, a fine not exceeding the statutory maximum
 - on conviction on indictment, a fine or imprisonment not exceeding two years or both

3.4 Business Protection from Misleading Marketing Regulations 2008 (BPR's)

Key points for anyone engaged in the property sales business:

- BPR's are enforced by several agencies including the National Trading Standards Estate Agency Team , local authority trading standards services and Department of Enterprise
- Enforcement measures range from injunctions, civil enforcement, fines and criminal convictions (in extreme cases)
- BPRs prohibit misleading activities in dealings with other businesses, for example when advertising services to potential clients that are businesses or marketing property for sale to businesses
 - as a result the advertisement either: (a) is likely to affect their economic behaviour, or (b) injures or is likely to injure a competitor.
- BPR's also set out the conditions under which traders are permitted to make comparisons with competitors, whether those competitors are named or merely implied, when advertising or marketing to businesses, consumers or both.
 - If the same comparative advertising misleads or is likely to mislead the average consumer, then there may also be a breach of the CPRs.

- Prohibits businesses from advertising products in a way that misleads traders
 - An advertisement is misleading if:
 - it deceives, or is likely to deceive the traders it addresses or reaches, and
 - the deception is likely to affect the economic behaviour of those traders or
 - as a result of the above effect on traders it injures or is likely to injure a competitor in some way
 - An advertisement can be deceptive if it:
 - contains a false statement of fact – this may be possible to prove or disprove by evidence
 - conceals or leaves out important facts
 - promises to do something but there is no intention of carrying it out
 - creates a false impression, even if everything stated in it may be literally true
- Sets out conditions under which comparative advertising, to consumers and business, is permitted.
- A comparative advertisement is one that, in any way, identifies a competitor or products offered by a competitor. In such circumstances it must meet certain conditions in order to be compliant with the regulations. Identifying a competitor or a competitor's product can occur explicitly or by implication.

Enforcement

- Breaches of BPR's are enforced by the National Trading Standards Estate Agency Team, local authority Trading Standards Services (TSS) and the Department of Enterprise Trade and Investment in Northern Ireland
 - Enforcement authorities can seek an injunction to prevent or stop a breach of the BPR's
 - Breach of an injunction is considered contempt of court and can lead to up to two years imprisonment and/or an unlimited fine
 - An injunction will generally be sought only after the enforcement authority has consulted with the trader in an attempt to obtain compliance and this consultation has failed
 - Instead of seeking an injunction an enforcer may accept undertakings from the trader, promising not to engage in or repeat the conduct constituting a breach of the regulations
 - Engaging in advertising that is misleading is also a criminal offence, which on conviction can lead to up to two years imprisonment and/or an unlimited fine
 - In the case of criminal offences by a corporate body because of negligence of an officer of the body they will be guilty of an offence along with the corporate body
 - The offence is one of strict liability which means that it only has to be proved that a trader has engaged in advertising which is misleading under the BPRs. There is no requirement to consider whether the trader had a specific state of mind, for example, whether the trader intended to mislead
 - There are various defences available however, such as due diligence and innocent publication
 - Criminal enforcement will usually only be used as a last resort or if the particular circumstance is serious enough to warrant it

4. International Ethics Standards Coalition (IESC) for Real Estate Professions

The International Ethics Standards Coalition ([IESC](#)) was formed in 2014 by international, national and regional not-for-profit organisations serving the real estate or related professions around the world. Such organisations exist to guide, enhance and promote the professional, technical and ethical expertise of their members. The IESC's mission is to create a universal set of ethics, principles and standards for real estate and related professions and to enshrine business ethics at the heart of the world's real estate industry.

AIPP is a trustee of the IESC and as a member of its Standards Setting Committee has actively participated in the creation of the 10 draft ethical principles for real estate practitioners to observe globally.

Since February 2016 the draft has been under consultation prior to publication in July and implementation through the participating member organisations and will provide assurance, consistency and confidence to all users of professional services.

1. **Confidentiality:** Practitioners shall not disclose any confidential or proprietary information without prior permission, unless such disclosure is required by applicable laws or regulations.
2. **Disclosure:** Practitioners shall make all appropriate disclosures before and during the performance of a service. If, after disclosure, a conflict cannot be removed or mitigated, the practitioner shall withdraw from the matter or obtain written consent of the parties affected to continue.
3. **Fiduciary Responsibility:** Practitioners shall be honest, transparent and trustworthy in all their financial dealings.
4. **High Standard of Service:** Practitioners shall only provide services for which they are competent and qualified, and ensure that any employees or associates assisting with the provision of services have the necessary competence to undertake those services.
5. **Integrity:** Practitioners shall act with honesty and fairness in all their dealings, and shall not mislead or attempt to mislead. They shall base their advice on valid evidence.
6. **Respect:** Practitioners shall provide services that honour client, third party and stakeholder interests in the context of applicable rules of law and social and environmental concerns.
7. **Responsibility:** Practitioners owe a duty of care to their clients and due consideration to the rights and interests of third parties and stakeholders.
8. **Transparency:** Practitioners shall not misinform over the products or terms of service to be provided, and shall present relevant documentary or other material in plain and intelligible language.
9. **Trust:** Practitioners shall be truthful in their professional communications and recognise that their professional conduct bears upon the maintenance of public trust and confidence in the real estate professions.
10. **Verification:** Practitioners shall continually evaluate the services they provide to ensure they are consistent with the spirit and evolution of ethical principles and practice standards.

5. Appendix



5.1 Guidance to AIPP Members - Anti-money laundering regulations

If you are involved in UK estate agency work, even if you do not accept client monies and even if you are not a UK-registered company, you will be affected by registration requirements under anti-money laundering regulations in the UK.

The Money Laundering Regulations 2007 HOW YOU MAY BE AFFECTED

Sale of property – UK & Abroad

The Money Laundering Regulations 2007 were introduced to ensure businesses at risk of being used for money laundering by criminals and terrorists have controls in place to minimise the risk of this happening. It's an offence to trade as an estate agent unless you're registered with HM Revenue and Customs (HMRC) for anti-money laundering supervision.

HMRC took over supervision of Estate Agency Businesses from the Office of Fair Trading on 1 April 2014. More information can be found [here](#)

Who should register

You must register with HMRC if your business carries out any activity defined as estate agency work under Section 1 of the Estate Agents Act 1979.

This means you should register with HMRC if you have a presence in the UK (even a temporary one), and acting in the course of business, and on instructions from a customer who wishes to buy or sell commercial or residential property, and acting to introduce someone who wishes to buy or sell a property to a customer; or acting after such an introduction to secure the sale or purchase of a property, whether in the UK or abroad.

This type of work includes, for example:

- sending out property particulars and arranging viewings
- offering personal advice to potential sellers or buyers
- receiving and fielding queries from potential sellers or buyers and passing on details to customers
- providing an energy performance certificate or arranging for it to be provided
- providing a property valuation
- providing a plan of a property and taking photographs
- providing clients with a 'For Sale' board and/or putting it up outside their property where the board contains the Estate Agency Businesses contact details and the business deals with potential buyers on behalf of the seller

The main categories of Estate Agency Businesses that should register are:

- high street residential Estate Agency Businesses
- commercial Estate Agency Businesses
- property or land auctioneers
- land agents
- relocation agents, property finders, private acquisitions specialists
- a sub-agent providing estate agency services to a principal Estate Agency Business
- asset management businesses that also provide estate agency services
- business brokers or transfer agents that broker the sale or transfer of client businesses to third parties
- social housing associations that offer estate agency services
- letting or property management agents that offer estate agency services to landlord customers
- construction companies (house builders) with a sales offices at a construction site, to the extent that they offer additional estate agency services beyond the sale of their own construction units
- in Scotland, a solicitors' property centre

You don't need to register if you're:

- a lettings agent only carrying out lettings work
- an auctioneer already registered with HMRC as a High Value Dealer
- 'publishing advertisements or disseminating information', eg in a newspaper
- an intermediary such as an internet property portal for private sales, which merely provide a platform for private sellers to advertise their properties and provide a means for sellers and buyers to contact and communicate with one another - this exemption applies only if you do nothing else covered by the general definition of estate agency work
- a solicitor carrying on estate agency work as part of that practice as a solicitor, and not as a separate business

If an Estate Agency Business is regulated by the Financial Conduct Authority (FCA) for another purpose, HMRC and the FCA will consider the possibility of a single supervisor overseeing the anti money laundering arrangements for individual businesses on a case by case basis.

If your business is an appointed representative of a firm that is authorised by the FCA, then the FCA will not be your supervisor and you must register with HMRC.

Advisory Notice on Money Laundering and Terrorist Financing controls in Overseas Jurisdictions

On 23rd October 2015, the Financial Action Task Force (FATF) published the Advisory Notice on Money Laundering and Terrorist Financing controls in Overseas Jurisdictions, please click [here](#) to read.

HM Treasury advises firms to consider the following jurisdictions as high risk for the purposes of Money Laundering Regulations 2007, and so advises firms apply advanced due diligence measures in accordance with the risks:

- DPRK, Iran, Myanmar

Take appropriate actions in relation to the following jurisdictions to minimise the associated risks, which may include enhanced due diligence measures in high risk situations:

- Afghanistan, Algeria, Angola, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Panama, Papua New Guinea, Syria, Uganda, Yemen

5.2 Compliance Overview

