

National Property Services Regulatory Authority
An tÚdarás Rialaitheach Náisiúnta um Sheirbhísí Maoine



CODE OF PRACTICE

FOR

PROPERTY SERVICES PROVIDERS

(Auctioneers and Estate Agents)

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Introduction

This Code of Practice for Property Services Providers reflects the ethos and culture of the profession and the spirit of the law governing it. It identifies the key principles and values that should guide day to day practice and emphasises the core values that are to be honoured.

The Code sets out the minimum standard of professional conduct to be expected of Property Services Providers in the provision of property services. It requires of them not only a recognition of their responsibilities to their clients but also their responsibilities to the public, customers and fellow professionals.

Adherence to the Code demonstrates an ongoing commitment to ethical business practices as well as professional integrity and honesty and the provision of efficient and effective services.

Property Services Providers subscribing to this Code also demonstrate a commitment to ensuring that public confidence in the profession is maintained at a high level.

This Code is voluntary, but binding on those parties that subscribe to it.

All Property Services Providers subscribing to this Code shall have this fact recorded in the Public Register of Property Services Providers.

This Code of Practice should be available for consultation by the public in the offices of all Property Services Providers who subscribe to it.

1. GUIDING PRINCIPLES

1.1: Statutory Duty

Property Services Providers are obliged to be aware of their legal obligations, particularly their obligations under the Auctioneers and House Agents Acts 1947 to 1973, the Criminal Justice Act 1994 and the Data Protection Acts 1988 and 2003, and to ensure that they and their employees comply fully with these obligations and all future relevant legislation. In particular they may only engage in the provision of property services when in possession of an appropriate licence.

1.2: The Public Interest

Property Services Providers should recognise and accept that they have a responsibility to the public and should at all times, in the conduct of their professional business, act in a manner which affirms this. They should endeavour, in the conduct of their business, to ensure that public confidence in the integrity, probity and honesty of the profession is maintained by adhering to the highest standards of service delivery.

1.3: Ethical Conduct

Property Services Providers should, in the conduct of their business, uphold at all times the standards set out in this Code and should conduct themselves in accordance with the standards of conduct expected of Property Services Providers in their practice.

They should, in their day to day practices, adhere to an ethical standard of business practice and behave with integrity, and fairness towards the public, their clients, customers and fellow professionals bearing in mind that the primary duty of a Property Services Provider is to his client.

1.4: Professional Conduct

Property Services Providers should, in the conduct of their business, act in a manner consistent with the good reputation of the profession and refrain from any conduct which might discredit it.

They should not:

- seek to impede, obstruct, disrupt or subvert the normal business operations of fellow professionals, or
- maliciously do anything directly or indirectly to injure the reputation, practice, employment or livelihood of a fellow professional.

Where a client transfers from one Property Services Provider to another the client is entitled to request all material relevant to the sale, letting, etc., of the property which is the subject of the transaction and the first Property Services Provider is obliged to comply with any such reasonable request, provided that the privacy rights conferred by the Data Protection Acts 1988 & 2003 are not infringed.

Where a client transfers from one Property Services Provider to another, the second provider shall inform the client that he may have to pay a fee to each of the providers.

Property Services Providers should, at all times, act objectively, with intellectual honesty and free of any conflict of interest and not allow their actions or advice to be unduly influenced by others.

1.5: Conflict of Interest

A Property Services Provider has a conflict of interest where he is in a position of trust which requires the exercise of judgment on behalf of a person for whom he is acting and also has either private or business interests or obligations of a sort that might interfere with the exercise of his judgment.

Where a Property Services Provider identifies the existence of, or the potential for, a conflict of interest he should, as soon as practicable, inform the person for whom he is acting, in writing, of the circumstances and unless such person(s) consent(s) in writing to his continuing to act, or requests him to continue to act, he must cease to act in that transaction.

Where a Property Services Provider is offered any form of inducement by a customer or potential customer he shall immediately inform his client.

Where a Property Services Provider is engaged in the provision of Financial Services he shall not provide a Financial Service to a customer proposing to purchase a property where the vendor of the property is his client unless he has first:

- informed his client in writing or by e-mail that he is providing a Financial Service for the customer, and
- informed the customer in writing that he is acting for the vendor in the sale of the property.

Where the client and customer agree in writing or by e-mail to the provision by the Property Services Provider of a Financial Service to the customer, the Property Services Provider shall ensure that all information which he holds, in respect of both the client and the customer, shall only be used in full compliance with the provisions of the Data Protection Acts. Failure to comply with these requirements will be deemed to be a breach of the Code.

A Property Services Provider shall report all offers to clients including any details provided by potential customers in relation to:

- the availability of finance to the potential customer,
- the level of borrowing, if any, of the potential customer,
- whether the offer is contingent on the sale by the potential customer of another property,
- whether the potential customer has had a satisfactory survey of the property carried out, and
- the suitability to the client of the proposed closing date.

A Property Services Provider shall not make the sale of property, to a customer or potential customer, conditional on the provision by him, or a subsidiary or associated body of his, of a financial service, or other service relating to land, to that customer or potential customer.

Where an employee of a Property Services Provider has reason to believe that his employer, or any licensed Property Services Provider, is acting or permitting or inducing employees to act, in an illegal or unethical manner he may report the matter in confidence to the Disciplinary Board established under clause 4.1 of the Code. Any such “confidential report” must:

- be made in writing,
- be made in good faith, and
- disclose any document, record or information in the possession or control of the person making the report which relates to the allegation.

Confidential reports may not be made anonymously.

1.6: Confidentiality

A duty of confidence exists in respect of information gathered in the course of business by Property Services Providers either directly or indirectly from, or about, a client, a customer or a member of the public. Confidential information may only be used or disclosed in accordance with the provisions of the Data Protection Acts. The duty of confidence shall remain even after the relationship has been terminated.

Information obtained by a Property Services Provider from clients, customers and potential customers, pertinent to facilitating a property transaction may be furnished to relevant persons. However, a Property Services Provider shall not disclose the identity of a customer or potential customer to any party other than the client or the client’s representative/solicitor, without the express written consent of the customer or potential customer.

In sales other than at auction, a Property Services Provider shall not disclose the specific price achieved without the prior written consent of the client unless legally required to do so.

1.7: Competence and Professional Development

Property Services Providers have an on-going duty to maintain professional knowledge and skill at a level which ensures that they deliver an efficient and effective service to the highest standard.

They should:

- only engage in the provision of services for which they are qualified,
- not claim to have expertise or experience which they do not have, and
- ensure that their skills, and the skills of staff, are kept up to date taking into account developments in the property services sector.

1.8: Insurance

Property Services Providers should not engage in a Property Services activity unless adequate and appropriate public liability and professional indemnity insurance cover levels, as advised by the Authority and confirmed by their auditor, are in place.

1.9: Record of Offers

In sales, other than by auction, Property Services Providers shall maintain a record of all offers made for property, including the identity of the person/representative making the offer, the level of the offer and any conditions attached.

Conditional acceptance of such offers shall be recorded by Property Services Providers, but in a format that does not create a Memorandum of Understanding for the purpose of the Statute of Frauds.

Records of offers shall be retained for a period of at least six years from the date of their creation and shall be made available for inspection by the Disciplinary Board.

1.10: Conduct of Auctions

Property Services Providers conducting auctions should ensure that licence details (including licence number, licensed person and issuing authority) are displayed clearly at the auction venue.

1.11: Advertising

Property Services Providers should not publish or cause to be published any material or advertisements that are false, misleading or dishonest. Any advertising material must take notice of advertising codes as well as consumer legislation.

1.12: Direct Marketing

Property Services Providers should not:

- contact a person for the purpose of direct marketing, if that person has previously objected to receiving such material.
- make a phone call or send a fax, e-mail, SMS or MMS message, for the purpose of direct marketing, to a natural person who is not a client or customer, unless the recipient has given prior consent to the receipt of such communication.

Property Services Providers may send postal direct marketing material to non-clients, provided the recipients have not previously notified them that they do not wish to receive such material. Any such material shall include a cost free means of objecting to receiving further material. Property Services Providers should maintain, or cause to be maintained, a register of persons who object to receiving marketing material from them.

1.13: Compliance with Code

The enforcement procedures provided for under sections 4 and 5 of this Code shall be binding on all Property Services Providers who subscribe to the Code. Where statutory provision is made for the regulation of Property Services Providers, the Code shall be enforced in accordance with the statutory enforcement procedures.

The Disciplinary Board may initiate an investigation:

- into any complaint against a Property Services Provider for an alleged failure to comply with the Code, and
- of its own motion where it has reason to believe that a Property Services Provider may not be complying fully with the Code.

In addition to investigations carried out by the Board the Chief Executive designate may carry out or cause to be carried out such investigations or audits as he considers appropriate in order to ensure compliance by Property Services Providers with the provisions of the Code.

It is the duty of Property Services Providers to co-operate with any such investigation or audit, carried out by or on behalf of either the Board or Chief Executive designate, in a timely manner as provided for under the Code. Failure to comply with the provisions of this Code, or to co-operate with the Board or Chief Executive designate, will result in a finding of misconduct, which fact shall be recorded in the Public Register of Property Services Providers.

2. RELATIONSHIP WITH CLIENTS

2.1: Compliance

Before accepting a client, Property Services Providers should assess any potential threats to compliance with this code presented by the acceptance of the client (e.g. a conflict of interest). Any identified threats should be dealt with before the client can be accepted (e.g. where a conflict of interest is identified, the client should be notified and the Property Service Provider should only continue to act if the client consents).

2.2: Provision of Service

Property Services Providers should take reasonable steps to ensure that:

- There is clarity on the part of the Property Services Provider on the precise nature of the services requested by the client,
- There is clarity on the part of the client on the precise nature of the service to be provided by the Property Services Provider,
- No agreement or letter of engagement is entered into for services which the Property Services Provider has not a reasonable expectation to fulfil by nature of competence, ability and resources,
- Where he requires to engage specialist expertise to assist in carrying out the agreement he shall inform the client before entering into an agreement with any such specialist,
- An agreement for the provision of a service is in writing,
- The terms of any such agreement are lawful, fair and reasonable, and include the following:-
 - The name and trade name of the Property Services Provider.
 - The address and contact details of the Property Services Provider.
 - License number.
 - The address/description and title (freehold, leasehold etc) if known of the subject property.
 - The Advised Value.
 - The amount of fee or commission. If expressed in percentage terms, the cash equivalent, based on the Advised Value, with details of VAT and a statement of the circumstances under which a fee becomes payable.
 - The amount (VAT - inclusive figures, as appropriate) of any promotional budgets detailing all outlays (signage, travel, brochure etc.). Provision that any additional expenditure must be agreed in advance and confirmed in writing to the client by the Property Services Provider.
 - Whether sole agency, sole selling rights, joint agency, or multiple agency, and the consequences.
 - Duration of agency contract and length of notice to be given in the event of termination by the client or the Property Services Provider, and the implications therein.

- Consequence of termination should be identified for each contract (e.g. the client will be liable for a fee if the property is sold to a customer introduced by the Property Services Provider).
 - Identity of client's solicitor, and advice to client to instruct solicitor immediately.
 - Notification of obligation on auctioneer to seek money laundering verification.
 - Schedule of contents and fixtures and fittings to be included in the sale.
 - Where applicable, statement of intent to offer financial products to customers.
 - Affirmation that no conflict of interest exists that should prevent the auctioneer accepting the agency contract.
 - Complaints and redress procedures.
- Clients are informed of their right to seek independent advice before entering into the agreement,
 - The service provided is in strict conformity with the agreement,
 - Clients are provided with information about how to obtain a copy of the Code of Practice, details of the complaint's procedure and their right to complain to the Disciplinary Board.

2.3: Client Accounts

Property Services Providers who receive money in relation to the provision of property services shall open and operate appropriate Client Accounts. The rules for operating such accounts shall be as follows:

- All client money shall be kept in an account, or accounts, separate from any personal, office or business account.
- A client account shall be a current or deposit account in which the word "client" appears and which is kept in a bank at a branch in the Republic of Ireland.
- The Property Services Provider shall provide the client and customer with notice of the lodgement of money to the client account and, on reasonable request, shall inform the client and customer of the amount of money held in his client account.
- The Property Services Provider shall maintain an up to date record of client accounts for inspection by the Disciplinary Board. The record shall include:-
 - The source of any money lodged to the account,
 - The date of receipt of such money by the Property Services Provider,
 - The format of payment (i.e. cash, cheque, bank draft, electronic fund transfer),
 - The date, location and format of lodgement of such money,
 - The identity of the person making the lodgement,
 - The date and amount of any withdrawal,

- The format of withdrawal (cash, cheque, electronic fund transfer, etc.),
 - The purpose of the withdrawal,
 - The identity of the person making the withdrawal,
 - The identity of the person to whom the sum withdrawn was/is to be paid,
 - The payment of interest, where applicable, to the account,
 - The deduction of charges from the account.
- It will be the responsibility of Property Services Providers to ensure that records of client accounts are audited on an annual basis. Such an audit report should be retained for a period of six years from the closing of the client account.
 - All monies in client accounts shall be clearly identifiable.
 - All relevant money shall be lodged to client accounts without unreasonable delay, and no later than five working days from receipt by the Property Services Provider of such money.
 - Each client account shall be held in credit until it is closed.

2.4: Duty to Client

Property Services Providers should at all times

- Act in the best interest of their clients and with integrity and fairness to others.
- Promptly and without undue delay inform clients, or their representatives, of any offer made on the property covered by the agreement or letter of engagement.

Where Property Services Providers are key holders in respect of client properties they must, in the context of that relationship, take due care over the security of the key(s) and exercise reasonable care to ensure that, after any visit, a property is left secure – or at least as secure as it was prior to the visit.

2.5: Fees

Property Services Providers should notify clients in writing of fees and outlays payable or the means by which fees may be calculated prior to an agreement being entered into. The means by which fees are calculated must be transparent and, where not readily understood, must be explained to the client.

3. RELATIONSHIP WITH CUSTOMERS AND THE PUBLIC

3.1: Information to be supplied to the Public

It is the duty of a Property Services Provider to ensure that any information supplied to the public, either in the form of advertising or as a result of a request for information, should

- Be factually correct and accurate,
- Not be misleading,
- Not misrepresent the investment potential of a property.

3.2: Information to be supplied to customers

Property Services Providers should make available to customers, or potential customers, the following information, where supplied to the Property Services Provider by his client for the purpose of the sale:-

- Terms of sale, detailing precisely what is being offered for sale including, but not limited to, the area of the property and the site,
- Architects' plans or scale drawings and any supplementary plans including electrical and plumbing plans,
- Details of known structural alterations,
- Details of insurance claims on the property, made by the client, arising out of structural damage.
- Copies of guarantees/warranties relating to the property being sold (to be provided only to a customer),
- Details of any protected building status,
- Details on the energy rating of the real property.

Property Services Providers shall treat all potential customers equally in terms of disclosing or otherwise the specific level of, and/or conditions attaching to, counter offers received for a property.

Where the property being offered for sale is part of a multi-unit development managed by a Management Company or Agent, the Property Services Provider should inform the customer that:

- The development is managed by a Management Company and give the name and contact details of the Management Company;
- As an owner of such property he will become a member of the Management Company;
- He will be required to pay an annual 'service charge' for the maintenance and upkeep of the common areas in a multi-unit complex and the level of such charge;
- The service charge may increase following the expiration of any warranties,
- He may have to pay into a sinking fund to cover future major maintenance and repairs to the common areas of the multi-unit complex.

3.3: Duty to Customers

Property Services Providers should take all reasonable steps to ensure that:

- Details of their licences are prominently displayed in all their business premises and on all promotional, marketing and advertising material, such details to include a registration number (where appropriate), name and address of licensee;
- Customers are dealt with in a courteous, efficient and ethical manner;
- Any person intending to enter into a transaction is informed of their right to seek independent advice;
- No information as to the identity of a customer is supplied to a client unless necessary in the context of a transaction, or is with the consent of the person concerned;
- Where a deposit is due to be returned it shall be returned within 5 working days;
- Offers made by a customer are promptly relayed to the client.

4. ENFORCEMENT

4.1: Disciplinary Board

For the purpose of monitoring and enforcing this Code, a Disciplinary Board (“the Board”) shall be established to investigate and adjudicate on all complaints against Property Services Providers.

All Property Services Providers shall

- Have in place their own written complaints procedure and/or,
- Subscribe to the complaints procedure of a Property Services Providers’ Representative Body of which they are a member.

The complaints procedure should be notified, and made available, to all clients. Such procedures may be used by any aggrieved person or they may alternatively complain directly to the Board. All clients must be informed of their right to make a complaint directly to the Board.

The Board shall consist of a Chairperson and six members. The membership of the Board shall include not more than 2 from the property services industry.

The Board shall be Chaired by the Chief Executive designate of the Property Services Regulatory Authority.

The members of the Board shall comprise–

- 2 persons nominated by the Implementation Group,
- 1 person nominated by the Irish Auctioneers and Valuers Institute,
- 1 person nominated by the Institute of Professional Auctioneers and Valuers,
- 1 person nominated by the National Consumer Agency, and
- 1 person nominated by the Consumers’ Association of Ireland.

At a meeting of the Board–

- The quorum shall be 4,
- The chairperson shall, if present, be chairperson of the meeting,
- If and so long as the chairperson is not present or the office of chairperson is vacant, the members present shall appoint one of their number to be chairperson of the meeting,
- Each member present shall have one vote,
- Every question shall be determined by a majority of the votes of the members present and voting on the question, and
- If there is an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

A decision of the Board may be by a majority of its members.

Sittings of the Board shall normally be held in private.

The Board, of its own motion or at the request of a party, may in its absolute discretion conduct an oral hearing of a complaint.

4.2: Complaints Procedure

Any person may make a complaint in writing to the Board against a Property Services Provider in relation to an alleged contravention of this Code of Practice.

On receipt of such a complaint, the Board, if satisfied that the complaint is made in good faith and is not frivolous or vexatious and it has not been possible to resolve the complaint through the provider's own complaints procedures, or (where applicable) through the provider's representative body's complaints procedures, shall:

- Inform the Property Services Provider, in writing, of receipt of the complaint;
- Investigate it, giving the Property Services Provider and the complainant an opportunity to be heard during the investigation;
- Issue a decision on a complaint.

On receipt of a confidential report, as provided for in clause 1.5, the Disciplinary Board shall—

- Examine the report and, unless the Board has reason to believe that the allegation contained in it was not made in good faith or is false, frivolous or vexatious, investigate the allegation, and
- Having regard to the legal rights of all concerned, take any other action necessary as a result of the investigation.

Without prejudice to the foregoing the Board may, of its own motion, investigate or cause to be investigated any property service being provided by any Property Services Provider.

For the purposes of such an investigation the Board—

- (a) may by notice in writing require the Property Services Provider who, in its opinion, is in possession of information, or has any record or thing in his possession or under his control, that is relevant to the investigation to supply that information, record or thing to the Board within a period specified in the notice,
- (b) where appropriate, may require the Property Services Provider to attend before it for those purposes within that period, and
- (c) appoint an inspector(s) to undertake any necessary investigation, which inspector(s) may, for the purposes of obtaining information in relation to the matter under investigation by the Board:

- (i) at all reasonable times enter, inspect, examine and search any place where the inspector has reasonable cause to believe that a property service is being provided,
- (ii) require the production of any records, books or accounts (whether kept in manual form or otherwise) or any other documents or information which are under the control of the Property Services Provider and which it is necessary for the inspector to see for those purposes and inspect, examine and copy them or require that a copy of them, or any entries in them, be provided to him,
- (iii) require a Property Services Provider, or any employee or agent of such Property Services Provider, to authorise inspection of any account opened by the Property Services Provider in any bank, and any documents relating to it, and to obtain from that bank copies of any documents relating to such an account for the purposes of ensuring compliance with clause 2.3 of the Code of Practice.

Where, following an investigation by the Disciplinary Board on foot of a “confidential Report”, provided for under clause 1.5, the Disciplinary Board’s decision is appealed to the Appeal Board the Disciplinary Board may disclose the identity of the person making the a confidential report to the Appeals Board only if satisfied that knowledge of the identity of the person making the report is essential for the appeal.

Where the Disciplinary Board proposes to disclose the identity of the person making the report to the Appeals Board it must first inform the person of its intention to do so.

The Disciplinary Board shall not disclose the identity of the person making the “confidential report” to the Property Services Provider who is the subject of the report.

Any communication from the Board or its inspector(s) shall be responded to by the Property Services Provider(s) within 21 days; such a response shall be substantive and shall directly address all matters raised in the communication. Where a Property Services Provider can demonstrate that a substantive response cannot reasonably be provided for within 21 days, he may seek an extension to that time period. Such a request for an extension must be received by the Board no later than 3 working days prior to the expiration of the 21 day period.

A Property Services Provider who:

- (a) withholds, destroys, conceals or refuses to furnish any information or thing, under his control, which is required for the purposes of an investigation by the Board,
- (b) fails or refuses to comply with any requirement of an inspector appointed by the Board, or
- (c) otherwise obstructs or hinders an inspector in the performance of his duties,

shall be deemed to have breached the Code and the Board may draw an adverse inference from such breach.

4.3: Sanctions

On completion of the investigation the Board—

- (a) may decide not to uphold the complaint, or
- (b) if satisfied on reasonable grounds that the Property Services Provider—
 - (i) has been guilty of misconduct in the course of providing a property service,
or
 - (ii) has contravened any provision of this code of practice,

may take whichever of the following actions in relation to the Property Services Provider which is, in its opinion, appropriate:

- (I) issue a private warning,
- (II) issue a public warning,
- (III) record the upholding of the complaint in the Public Register of Property Services Providers,
- (IV) recommend to the Property Services Providers' representative bodies that the member concerned be suspended from membership for a specified period,
- (V) recommend to the Property Services Industry representative bodies that the Property Services Provider concerned be excluded from membership of these bodies,

and shall notify the complainant and the Property Services Provider of its decision.

Where a complaint against a Property Services Provider has been upheld, the Property Services Provider will be liable for any legitimate cost incurred by the Board, and any witnesses in the conduct of that investigation. The Board may set the level of costs to be paid.

Where a complaint against a Property Services Provider is, following an appeal to the Appeal Board under Part 5 of the Code, upheld the Board may publish details of its decision, in such form and in such manner as it considers appropriate.

5. APPEALS

5.1: Disciplinary Appeal Board

A Disciplinary Appeal Board (“the Appeal Board”) shall be established to hear and determine appeals against decisions of the Board.

The Appeal Board shall consist of a Chairperson and 5 other members. The Appeal Board shall be Chaired by the Chairman of the Implementation Group and the members shall comprise:

- 1 person nominated by the Law Society of Ireland,
- 1 person nominated by the Irish Auctioneers and Valuers Institute,
- 1 person nominated by the Institute of Professional Auctioneers and Valuers,
- 1 person nominated by the National Consumer Agency, and
- 1 person nominated by the Consumers’ Association of Ireland.

At a meeting of the Board–

- The quorum shall be 3,
- The chairperson shall, if present, be chairperson of the meeting,
- If and so long as the chairperson is not present or the office of chairperson is vacant, the members present shall appoint one of their number to be chairperson of the meeting,
- Each member present shall have one vote,
- Every question shall be determined by a majority of the votes of the members present and voting on the question, and
- If there is an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

A decision of the Appeal Board may be by a majority of its members present.

Sittings of the Appeal Board shall normally be held in private.

The Appeal Board, of its own motion or at the request of a party, may in its absolute discretion conduct an oral hearing of an appeal.

5.2: Appeals Procedure

A person aggrieved by a decision of the Board may, within one month after the date of receipt of notification of the decision, appeal against the decision to the Appeal Board by serving on it a notice of appeal in writing giving

- The name and address of appellant,
- The subject matter of the appeal,

- The grounds for the appeal including the reasons, considerations and arguments on which they are based, and
- Any other documents, relating to the appeal, which the appellant considers necessary or appropriate.

The notice of appeal may be served by sending it by registered post to the Appeal Board,

The Appeal Board shall not consider an appeal if the relevant notice of appeal is received by it later than the expiration of the period of one month from date of notification of the decision on the complaint.

An appeal shall be grounded on:—

- The record of the decision to which the appeal relates,
- The information contained in the notice of appeal,
- Any observations of the Board given at the request of the Appeals Board,
- Any matter arising on the decision or the information contained in the notice of appeal, and
- Any other information received by the Appeals Board on the hearing of the appeal including information received at an oral hearing.

The Appeal Board shall, as soon as practicable after receiving a notice of appeal, send a copy of the notice to the Board by post.

The Board shall, within 14 days of receiving the copy of the notice, submit to the Appeal Board a copy of—

- (a) any report prepared for the Board or other relevant documents or information in its possession in relation to its dealing with the matter which is the subject of the appeal,
- (b) the record of the decision of the Board which is the subject of the appeal, and
- (c) the notification of the decision to the applicant.

The Board may make submissions or observations in writing to the Appeal Board in relation to the appeal within one month after receiving the copy of the notice of appeal from the Appeal Board.

Where the Appeal Board is of the opinion that any document or information is necessary for the purpose of enabling it to determine an appeal, it shall serve on any party to the appeal or other person who has made submissions or observations to the Appeal Board in relation to it a notice—

- (a) requiring the party or person concerned, within a period specified in the notice (being not less than 14 days beginning on the date of service of the notice) to submit to it such documents or information as are specified in the notice, and

- (b) stating that, if the documents or information are not received by it before the expiration of the specified period, it may determine the appeal after the expiration of that period without further notice to the party or person concerned.

Where such a notice has been served on a person, the Appeal Board, at any time after the expiration of the period specified in the notice, may, whether or not the notice has been complied with, determine the appeal without further notice to the person.

Where an appeal is brought by either a complainant or Property Services Provider both shall be a party to the appeal and all parties shall be given a copy of the appeal.

An appellant may withdraw an appeal by notice in writing to the Appeal Board at any time before the appeal is determined.

Where the name of a person making a “confidential report” is given by the Disciplinary Board to the Appeal Board, on foot of an appeal against the Disciplinary Board’s decision, the Appeal Board shall not disclose the identity of the person making the report to the Property Services Provider who is the subject of the report.

Where the Appeal Board is of opinion that proceedings on an appeal have been unnecessarily delayed by the conduct of the appellant it may serve on the appellant a notice stating that it is of that opinion and requiring the appellant, within a period specified in the notice (being not less than 14 or more than 28 days after the date of service of the notice) to make a submission in writing to it as to why the appeal should not be treated as having been withdrawn.

After the expiration of the period specified in the notice the Appeal Board may declare that the appeal has been withdrawn or determine the appeal.

5.3: Determination of Appeal

The appeal, if not withdrawn, shall be determined by the Appeals Board—

- (a) by affirming the decision of the Board to which the appeal relates, or
- (b) by substituting its determination for that decision, which shall thereupon stand annulled.

The Appeal Board shall not consider any documents submitted by an appellant at the appeal other than those which accompanied the notice of appeal or those provided specifically at the request of the Appeal Board.

The Appeal Board shall serve notice of its determination on each party to the appeal.

DEFINITIONS

'Appeal Board' means an Appeal Board established under paragraph 5.1 hereof;

'Authority' means the Property Services Regulatory Authority;

'Client' includes

- (a) the personal representative of a client and a beneficiary under a will, intestacy or trust,
- (b) a person to whom a refund of a deposit is due;
- (c) the vendor of a property;
- (d) a person who contracts a Property Services Provider to provide a property service.

'Client Account' means a current or deposit account in the name of a Property Services Provider in the title of which the word client appears and which is kept in a Bank in the State;

'Complainant' means a person who has made a complaint of professional misconduct against a Property Services Provider to the Disciplinary Board;

'Customer' means a person who through a Property Services Provider:

- (a) is purchasing, letting or renting property from a client of the Property Services Provider;
- (b) has purchased, let or rented property from a client of the Property Services Provider, or
- (c) has expressed an interest in purchasing, letting or renting property from a client of the Property Services Provider.

'Disciplinary Board' means the Disciplinary Board established under paragraph 4.1;

'Ethical standard of business practice' means the exercise, by a Property Services Provider, of core values, such as integrity, trustworthiness, respect, and fairness, in his:

- Policies;
- Practices;
- Decision making, and
- Relationships with clients, customers, business partners, fellow Property Services Providers and the public.

It also involves financial and accounting probity, avoidance of conflicts of interest, safeguarding against corruption and bribery, protection of client/customer and employee privacy, veracious advertising, adherence to the Code of Practice and compliance with statutory obligations;

‘Exclusion’ means permanent removal from the Register of Members of the representative bodies of the Property Services Industry;

‘Implementation Group’ means the Implementation Group for the National Property Services Regulatory Authority, appointed by the Tánaiste and Minister for Justice, Equality and Law Reform, for the establishment of the Authority and its structures.

‘Inspector’ has the meaning assigned to it by paragraph 4.2.

‘Misconduct’ includes—

- (a) the commission of an indictable offence,
- (b) the commission, outside the State, of an offence which would be an indictable offence if committed in the State,
- (c) the contravention of a provision of the Auctioneers and House Agents Acts, 1947 to 1973 or any order or regulation made thereunder,
- (d) the contravention of a provision of the Criminal Justice Act 1994 and the Data Protection Acts 1988 and 2003,
- (e) the contravention of a provision of this Code,
- (f) in the course of practice as a Property Services Provider, conduct, including any act or omission, which the Property Services Provider knows or ought to have known would be reasonably likely to bring the profession into disrepute.

‘Property Service’ means any of the following services provided in the State by a property service provider or in the course of an employment or as an independent contractor:

- (a) auction of private property other than land;
- (b) purchase or sale of any estate or interest in land wherever situated;
- (c) letting of any estate or interest in land wherever situated

‘Property Services Provider’ means the holder of a licence under the Auctioneers and House Agents Acts 1947 to 1963

‘Public Register’ means the register of Property Services Providers published by the National Property Services Regulatory Authority Implementation Group;

‘Suspension’ means removal from the Register of Members of the representative bodies of Property Services Industry for the period defined;