



PROTOCOL: OPEN MARKET INVESTMENT AGENCY 26 November 2014

The aim of this UK 'Protocol' is to establish clear guidance around good practice relating to open market property investment sales and acquisitions, in order to address potential conflicts of interest.

The potential for conflict of interest has become a fact of modern investment agency. Such situations should always be managed proactively and transparently to ensure trust and confidentiality is maintained at all times.

Intentionally, the guidance is high-level, recognising the danger of going into too much detail in areas where it would not be unreasonable to expect individual organisations to approach the detail differently.

The terms 'Agent' and 'Principal' refer in all cases to the respective organisation, not individuals and where communication between Agent and Principal is proposed, it is recommended that key subject matter is always confirmed in writing or by email.

In all circumstances, Principals should be provided with terms of engagement that are fair and clear, including reference to complaints-handling procedures and, where it exists, an appropriate redress scheme.

This Protocol accords with RICS ethical standards and the RICS Real estate agency and brokerage guidance, 2nd edition, which contains mandatory requirements for RICS Members and RICS Regulated Firms.

1. Multiple introductions

1. An Agent may elect to make multiple introductions of an investment property/ies acquisition opportunity.
2. Principals should have a written 'Introductions Policy' so Agents are clear how any introduction will be treated. Agents wanting to make an introduction should be aware of the Principal's Introductions Policy, which should be available on request.
3. Where the Principal does not have an Introductions Policy, the Agent should agree at the outset the basis of engagement with the Principal in writing.
4. Agents should have a clear and robust 'Barrier Policy' (See Appendix 1) to deal with potential conflicts of interest that is proactively managed and reviewed on a regular basis, with compliance enforced across its entire organisation. A copy of the Barrier Policy should be available to Principals on request.
5. Where a Principal chooses to progress a particular investment opportunity with an introducing Agent, the terms of engagement should be confirmed in writing or by email as soon as practicably possible at the outset of the engagement.

6. As part of the formalisation of engagement terms, there should be clear agreement that:
 - a. The Agent is appointed and will act on an exclusive basis, or
 - b. The Agent is appointed on a non-exclusive basis and it is accepted by the Principal that the Agent may act for more than one Principal but confidentiality will be maintained at all times by activating the Agent's Barrier Policy.
7. Where section 1.6.b. applies, the Agent must clearly identify and record internally, all individuals (across all services lines) nominated to represent each Principal in connection with formulating their respective offer (the Deal Teams), in accordance with the Agent's Barrier Policy.
8. In the absence of a clear and robust Barrier Policy, an Agent should not represent more than one Principal on any given transaction.
9. Following engagement, the Agent should ensure the basis of its agreed appointment, either exclusive or not, is made clear to the Vendor's Agent. Where the Vendor is unrepresented, then the Vendor should be advised directly.
10. As soon as an Agent agrees to accept an exclusive appointment, all other Prospective Principals with whom there was an ongoing dialogue concerning the same opportunity need to be notified that the Agent is now unable to represent them.
11. During the period of an exclusive or non-exclusive appointment, should the Agent be approached to provide specific "incremental advice" related to the investment transaction (e.g., planning, building surveying, valuation), this additional work can be accepted/undertaken but only in accordance with the Agent's Barrier Policy to ensure clear segregation of the individuals providing this incremental advice from the already nominated Deal Team(s). Where an "incremental instruction" is to be accepted, the Agent will need to advise a Principal with whom the Agent has an exclusive buy-side engagement and obtain the Principal's consent unless this circumstance has been covered in the terms of engagement, as per section 1.5. above.

2. Dual agency

Dual agency arises where an Agent, acting on behalf of the Vendor in the sale of an investment property/ies, then acts for another Principal, or wishes to approach a Principal to act on its behalf, in respect of the proposed acquisition of the same property/ies.

The default position is that an Agent retained to sell a property should avoid acting for another Principal on the buy-side.

1. There should be formal written terms of engagement regarding the sales instruction between the Vendor and the Agent. Before these are concluded, the Agent should declare any pre-existing, sole buying mandates that the Agent has that are likely to result in a Prospective Purchaser for the property/ies in question.
2. Where the Agent is instructed to sell, it should only approach Prospective Purchasers in its capacity as retained selling Agent. Under no circumstances should it also seek to introduce the transaction in order to create a buy-side position.
3. On receiving instructions from the Vendor, the Agent must clearly identify and record internally individuals across all service lines nominated to represent the Vendor on the sale (the Deal Team), in accordance with the Agent's Barrier Policy.
4. Only in exceptional circumstances, e.g. the Agent has a pre-existing sole buying mandate, should the retained selling Agent also represent a Prospective Purchaser. In this instance, the terms of engagement need to be reconfirmed in writing with both Principals (Vendor and Prospective Purchaser), including specific acknowledgement

that the Agent is acting for both the Vendor and a Prospective Purchaser and the Agent's Barrier Policy has been activated. The Agent will identify and record internally individuals across all service lines nominated to represent the Prospective Purchaser, all of whom (in accordance with the Barrier Policy) will be independent from the selling Deal Team.

5. During the period of a sale mandate, should the Agent be approached to provide specific "incremental advice" by a Prospective Purchaser (e.g., planning, building surveying, valuation), this additional incremental work can be accepted/undertaken but only in accordance with the Agent's Barrier Policy to ensure clear segregation of the individuals providing this incremental advice from the already nominated Deal Team(s). The Vendor should be notified of the details accordingly but the Vendor's consent is not required.
6. In the interest of transparency to the wider market, in the exceptional circumstances where the retained selling Agent also has a retained buy-side instruction (over and above giving incremental advice), then the Vendor's Deal Team should ensure all other Prospective Purchasers and their Agents are made aware of this (along with confirmation of the invocation of the Agent's Barrier Policy).
7. Where an Agent is acting in this dual agency capacity, all bids should go directly to a Third Party, such as the Vendor, Vendor's Solicitors or a joint selling agent.

Appendix 1

Example of issues to be addressed in Agency Barrier Policies

Appendix 2

The IPF Protocol Working Group

APPENDIX 1

Example of issues to be addressed in Agency Barrier Policies

1. The guiding principles are that the Agent acts with utmost integrity and that transactions should be managed proactively and transparently at all times to avoid potential conflicts of interest. Disclosures should always be made where required, with written consent being obtained from all affected parties that the Agent is free to act/advise.
2. Conflicts checks relating to properties should always be undertaken prior to accepting any new instruction.
3. It is expected that a computerised registration/conflicts management system will form an integral part of the Agent's Barrier Policy.
4. Separate Deal Teams should be established before the Barrier Policy is activated and work on the instruction begins. Names of the Deal Teams for each Principal will be recorded on the registration/conflicts management system and no individuals should be on more than one Deal Team.
5. There should be an internal process where each Deal Team member is made aware of, and agrees to, an internal protocol governing the protection of information relating to the transaction. This is likely to include:
 - a. The approval/addition/removal of Deal Team members.
 - b. No internal communication on the instruction between different Deal Teams.
 - c. Security of electronic documents created/stored, to ensure they can only be viewed by the relevant Deal Team.
 - d. The handling, storage and security of hard-copy documents to ensure that they are only available to those who are members of the respective Deal Team.
6. A nominated individual(s) ("A Compliance Officer" or "Compliance Team") should be accountable for the development, operation, oversight and enforcement of the Agent's Barrier Policy on individual transactions and overall. The Compliance Officer should present regular reports to the Agents senior management team/ Board.
7. Details of the Agent's Barrier Policy should be in the staff handbook and either on the website or available to clients on request.



APPENDIX 2

The IPF Protocol Working Group

The IPF would like to express its thanks to the members of the Working Group, as listed below, for their time and expertise in putting together this Protocol, with particular thanks to Martin Moore for chairing the Group.

Members of the Working Group

Chairman

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Peter MacColl – Knight Frank

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Imogen Moss – Allen & Overy

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James Watson – Colliers International

Chris Taylor – Hermes Real Estate

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