



## **AIPP GUIDELINES FOR THE SALE OF OVERSEAS LAND AND PROPERTY TO BUYERS FROM THE UNITED KINGDOM**

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The AIPP is the Association of International Property Professionals - a not-for-profit trade association founded in 2006. Our members include estate agents, property developers, lawyers, financial services, media & more. Based in Westminster, London, the AIPP has over 300 corporate members in 26 countries around the world. The AIPP is owned by the UK-based National Federation of Property Professionals (NFoPP).

## Helping the next 1 million British Buyers of a foreign property do so more safely

Most British buyers of a foreign property do not belong to a 'wealthy elite'. They are ordinary people, on a modest income, who have worked hard and saved all their lives.

The last 'property boom' saw many British people buy abroad with some ending up in terrible and well documented difficulties. Of course, the media highlight the negative and a majority of people have successfully bought and continue to enjoy their properties as a 2<sup>nd</sup> home, retirement or for investment.

But it is the scale of the potential financial & emotional loss through buying a foreign property that necessitates our work. Buyers need to take proper advice before venturing into the market and I am proud to announce, today, an AIPP consumer protection initiative that takes this to the next level.

Thanks for taking the time to engage with us, we aim to be a catalyst for a wider collective on the subject, please let me know what you think of this paper.

My thanks to David Amess, MP, who has kindly sponsored this AIPP event to promote our work to fellow MP's in the House of Commons, 18<sup>th</sup> November 2014.

Peter Robinson  
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AIPP – Association of International Property Professionals

## Executive Summary

AIPP is taking the initiative to review the overseas property industry (from a UK buyer perspective), with the aim to identify areas that can be improved to enable a more transparent, safer and professional cross-border transaction and make appropriate conclusions and recommendations.

The AIPP is backing this with the launch of a free legal advice service for British buyers and existing owners of a foreign property. We know this market can never be perfect, but it could be a lot safer.

For a number of reasons the British have a high propensity to buy property overseas. This trend is likely to continue for lifestyle (second home/holiday home), semi or full retirement (first home) or investment purposes.

Buying property overseas carries extra attendant risks compared to the process of buying in the UK which invariably is a streamlined and professional process. The foreign property transaction is subject to the laws of the country where the property is sited and there may be differences in the processes and financing requirements.

There are extra costs to ensure that the buyer is advised by an independent expert and the appropriate due diligence is carried out. If buyers don't know where to find an expert professional advisor, or how to select said advisor or the process (hence costs seem open ended) then they will be tempted to think they know best and conduct the transaction themselves without appropriate advice. In this instance advice and educational training can be provided.

If the UK buyer is insistent on conducting the transaction themselves and it goes wrong then any redress is between the buyer and the developer.

If, however, the overseas property is promoted by an agent (whether the agent has been sub contracted by a lead 'foreign' agent or deals directly with the developer), then AIPP recommends incumbent responsibilities on the Agent also to give the buyer redress with that agent.

The implication is that the Agent must be trained to become more professional and to possess necessary professional indemnity insurance.

The owner of the agency must undertake extra training and receive certification.

Members of the public should be encouraged ONLY to deal with agents that have this certification and insurance.

Whilst there are many items to be checked in the due diligence process the main ones are:

- **The Developer:** track record, customer testimonials, financial standing and the provision of a Bank Guarantee that construction will be completed.
- **The land or property:** Full legal documentation on clear title, planning permissions, and building licences that would provide the necessary security against any investment.
- **The claims:** Independent corroborating evidence to substantiate the claims with underlying assumptions and/or examples.
- **The Financial transaction:** That there is proper process, the funds are secured in an escrow account (with consumer-protecting terms and conditions) and if monies are deducted for, say, agent commission then this to be declared.
- **The agency owner and individual sales agents:** To be trained in how to professionally conduct overseas property sales plus any product specific agent training on product type and location.
- **The buyer:** AIPP to reach out through multi channels including online and off-line media to provide them with the necessary education also sources for information. AIPP has just formed a member-driven legal group to, firstly, give introductory pro bono advice and secondly, to point buyers and owners in the right direction for independent expert assistance.

## Conclusion

Whilst purchasing land or property overseas has extra risks, through basic education and straightforward procedures, the majority of negative situations can be avoided.

The committed and professional fraudster will invariably be around as they have the resources to package themselves to look good, would have taken great care not to be personally exposed and know that the time, energy and cost to recoup the buyers investment would deter many.

Prevention is better than cure. Good promotion, guidelines, education and training will do much to make the buying process a safer experience.

Ultimately there needs to be a supervising organisation, with 'teeth', to ensure developers and agents comply with proper process.

## **Recommendation & Actions**

The AIPP, supported by its trade membership of agents, property developers, lawyers, financial services and other trade professionals, now wishes to engage with MP's to coordinate a wider collective to address consumer protection issues in the industry. This could possibly be driven through formation of a new APPG (All Party Parliamentary Group) on foreign property matters, for which AIPP is willing to act as secretariat.

The AIPP, supported by a qualified group of legal members of the association, will launch (in January 2015) a free AIPP advisory service to British owners and potential buyers of a foreign property. This service is designed to remove the initial price 'barrier' to qualified legal advice for owners in need of assistance and for buyers to understand the correct steps to take as they approach the purchase process. The service will be administered through AIPP and will involve up to 1 hour of free consultation, the review of up to 50 pages of documentation and not exceed 5 hours of legal pro work, in total.

## Introduction

Industry estimates put at more than 1 million the number of British people who now own a property in another country.

Approximately another 600,000 have a financial interest in a foreign property through timeshare ownership.

From a trade point of view, the freehold and timeshare industries are quite different. AIPP is a freehold property organisation, the RDO (Resort Developers Organisation) deals with timeshare. This paper will address freehold property issues only, although the AIPP and RDO have begun to explore potential for joint consumer protection initiatives.

With a longer history of a need to 'clean house', the RDO has driven measures, over many years, to improve the way in which Timeshare is sold and operated. The RDO, winning arguments in Brussels, has seen the OFT and Police in the UK with new powers to clampdown on Timeshare abuses. But these are, seemingly, rarely enforced. Against such a backdrop and starting 'further back', what potential to protect (via enforcement), British buyers of a freehold foreign property?

After a hiatus period (2008 – 2013, driven by economic uncertainty and broadly falling property prices abroad) growth in foreign property ownership is set to continue for reasons of Lifestyle (2<sup>nd</sup> home), Retirement (main residence, driven by 'baby boomers') and Investment (trend of mistrust & dissatisfaction with traditional financial investments). Recent changes to pension legislation mean that retirees will soon have access to significant amounts of cash. They could be easy targets for unscrupulous 'players' in the international property market. At retirement, what opportunity to recoup a life of savings if lost?

British buyers of foreign property cross the socio-economic & political 'divide'. A greater number are not the 'wealthy elite' but ordinary people with modest incomes.

For many buyers, it has been a (fairly) painless, pleasurable and even profitable experience. For some, it has been, and remains, an enduring nightmare. Those affected by malpractice and misadventure can face financial ruin, depression and even suicide.

Purchase of a foreign property carries additional risk not associated with UK property transactions. The foreign property transaction is subject to the laws of the country where the property is sited and there may be differences in the processes and financing requirements.

Buyers might work directly with the developer or purchase via an agent. Newly built properties have been the dominant force in foreign property sales to Brits over the last 15 years, driven and underpinned by a developer's margin exceeding that offered through a resale property often 2:1.

If working directly with the owner of the land or property ('the product') it is recognized buyers can be easily seduced by the unscrupulous or unprofessional. If a buyer deals directly with the owner of the 'product' then, apart from education, there is little that can be done.

However if there is an agent that acts as a developers representative, to promote and sell that product, then there must be an onus on the agent to ensure they are a fit and proper person to promote, advise and sell, also that appropriate due diligence has been conducted on the developer, the product and the various claims.

Agents may approach foreign developers directly or may tie-up with foreign estate agents to market foreign property to consumers in the UK.

There ought to be recourse from the buyer to the agent. Buyers working with AIPP members may avail themselves of our (no-cost) complaints procedure administered by the (UK-based) **The Property Ombudsman** through which awards of compensation may be made.

The scope of this paper and guidelines applies to agent work conducted in the UK for properties located outside of the UK also for UK buyers acquiring outside of the UK.

Care must be taken so that recommendations designed to protect the consumer and filter-out rogue agents also allow good agents to survive and prosper. The measures and their implications must be carefully considered so that the industry can effectively operate, without which, the consumer would be in a worse position of protection.

In this paper, foreign properties refer to properties located outside the UK, regardless of whether they are developed by foreign developers or UK-based developers.

## Objectives

This paper will:

- Guide agents to adopt professional practices in the marketing and selling of overseas products to the purchaser. The indirect purchasing route.
- Document necessary activities to be taken to *directly* advise, educate & support purchasers.
- Seek a wider collective of inputs & outputs drawn from MP's, FCA – Financial Conduct Authority, MAS – Money Advice Service, TPAS – The Pension Advisory Service, APFA – Association of Professional Financial Advisors & others.

## Sample Issues for British International Property Buyers

In the buying and selling process in the UK, the purchaser takes it for granted that there is a land register. There is security for a mortgage. Someone independent and experienced (solicitor) acts for the buyer. The sales agent invariably acts for the seller of the property.

Also, that when the purchaser comes to sell the property that invariably there is a willing person to sell the property too - hence the original purchaser has an exit.

Lost deposits – due to the economic downturn, developers going bust, purchasers have been left with deposits stuck on off-plan properties which have not come to fruition.

Illegal Homes-bought in good faith by British buyers but without the right permissions - various pressure groups fighting their cause e.g. AUAN group

Title Deeds, particularly in Cyprus, taking years to come-through for buyers, or delayed due to unscrupulous developers or others taking unknown charges on the property.

Monies (whether the deposit and/or the completion funds) going into a foreign solicitor's client account and then the solicitor running-off with the funds. This has allegedly happened in Turkey in the last few months affecting British buyers to the tune of an estimated combined loss of more than £5m

Typically agents receive around 1% sales commission in domestic sales with 3%+ for international re-sales and 5%+ for international new build sales. The higher commissions available on international property sales can attract opportunists with very questionable sales practices.

It should be noted that the higher commission rates are made available to compensate agents for the higher marketing and associated costs of effectively operating in the international sector. Most agents who earn these higher commissions have delivered an outstanding service often over an extended period of time – often around 6 months of work with a client to include follow-ups once they have bought.

## The Property

There are many countries without a Land register where there are defective titles.

The land might not have detailed planning permission.

The land isn't owned by the developer but as an option with the land owner that has clauses where the land can revert to the owner if the developer doesn't fulfil their obligations.

The agent isn't authorised to sell the land or property in question, but has 'stolen' it from an official web site, placed it on their web site for a significant discount in order to attract buyers, who are then sold something else.

The agent or the developer doesn't own anything as their business focus is in receiving deposits on land/property they don't own.

Clients being asked to pay large up front deposits in some jurisdictions on 'off plan' property with no guarantees and they risk losing their money. Make it a requirement that a third party guarantee is required at least in all European jurisdictions. At present it is only applicable to a minority of jurisdictions.

Houses built without building licenses thereby making them liable to enforced demolition.

Forged documentation or properties subject to litigation or already 'owned' by another person.

Non-completion of the build.

The build is completed but is defective and final snagging not carried out.

The building has structural or operational issues after a few years.

If the property was bought with the aim of renting out the property in part or in full, the buyer can be unaware of regional regulations in the country relating to renting out Holiday Homes also any tax obligations.

Where there is an ongoing annual maintenance contract to a third party not necessarily connected with the owner of the land/building, this needs careful examination to prevent higher fees and lower services in subsequent years or the selling-on of the annual maintenance contract to another party that is purely concerned with commercial profit rather than the servicing of the property owner at reasonable charges.

For 'investment property' the seller doesn't need to be trained, authorised or regulated to sell. A person needs to be regulated to sell a funeral plan for £X per month but not to sell a €200,000 'property investment opportunity' in a foreign country. There is no regulation of the sale of real estate (property) for investment – unless the arrangement constitutes a "collective investment".

The AIPP is reaching- out to the FCA – Financial Conduct Authority, MAS – Money Advice Service, TPAS – The Pension advice Service and APFA – Association of Professional Financial Advisers ad others to spread education and understanding.

With regulation could come all of the “know your client” and “best advice” provisions which have helped clean up the UK mortgage & insurance markets. This process would cut out huge numbers of inappropriate purchases.

The sale of an investment property can be part of a larger picture that renders the arrangement a “Collective Investment Scheme” (CIS). This could, for example, be where the property was sold on the basis that the whole complex would continue to be let and managed by the seller, often a hotel. Collective Investment Schemes are tightly regulated by the FCA.

The rules governing such schemes, particularly, the definition of what constitutes a CIS, were drafted principally for pure financial products rather than real estate investments.

*A proper FCA guide as to how the rules should be interpreted in property transactions is required.*

Merely agreeing to buy one of these land or property ‘products’ – even if your lawyer catches your error before money changes hands – is stressful and wasteful. Costs, time and energy would have been incurred in travel, fees and more. Then possibly litigation by the seller as the person extricates themselves from the deal.

### **The Financial transaction**

Currency issues - stability of Euro / Dollar / Sterling, in particular.

Swiss Franc Mortgage – multi-currency exposure an issue for some British buyers in Cyprus

Investing in non-regulated property investments via a SIPP or SSAS and complying with all the pension and FCA regulations

Monies are transferred into an escrow client account but the property is substantially delayed or not built. The purchaser then finds out the funds cannot be repatriated due to the wording of the escrow account.

The acquisition stipulates a payment schedule where if 100% funds are not received according to the payment schedule then the entire acquisition of the property is lost even if the vast majority of the funds have been paid.

## Proposed Guidelines

### AIPP General

AIPP seeks to strike an appropriate balance between a consumer-facing organisation and a trade lobbying and networking organisation. We are committed to delivering:

- The combined & centralised voice of the industry with UK national government.
- Represent the industry with EU in Brussels and other international trade associations

In time, AIPP seeks to address and deliver the following initiatives:

Agents should go through mandatory basic training to conduct due diligence on developers and lead (foreign) agents. Also country specific training. Product specific training eg +55 yr developments, investment properties, social housing, student accommodation, alternative investments and so on, including formal exams.

Owners of overseas property sales agencies should first of all have passed the 'sales person' courses. In Singapore, owners must prove they have successfully sold 30 properties over three years, and then take a three month course culminating in a formal exam.

Professional indemnity insurance (evidenced & checked on an annual basis) would be a mandatory requirement.

The training would be practical - giving agents the best chance of a sustainable business. Possibly similar to NVQ 3 and 4. (NOTE Singapore has led the way in agent training for Council of Estate Agents (CEA) and for Key Executive Officers (KEO)

To introduce appropriate courses for developers, particularly those without a family history of successful delivery. Part of the problem with land/property development is that the cycle between owning land, gaining planning permission, marketing, sales, finance-raising and building is lengthy. Expertise thereby takes a long time to build. There are also a number of discrete steps in the chain and each requires a great level of expertise.

AIPP, as a consumer facing organisation:

- Promotion of AIPP and what it means to be a member is a key role - ‘don’t buy from anyone who isn’t a member of AIPP’
- AIPP provision of proposed legal services covering many countries. Services include:
  - A FREE 1 hour consultation to prospective buyers, buyers and foreign home owners with an issue to be resolved – backed by up to 5 hours of work to include research and the review of up to 50 pages of documentation, all pro bono (delivery January 2015)
  - Regular webinars by AIPP legal group members
  - Regular briefing on the legal aspects of international property buying to media, politicians and other opinion leaders.
  - Enhanced ability to quickly coordinate class actions
  - Identify and advise on market issues before they arise and/or quickest reaction when they do arrive
- To prepare a series of consumer training videos plus e-books to buying abroad complete with recommendations and FAQ’s. Promoted on AIPP web site, with direct pro active communication through online digital marketing and through partners, first point of contact with media, also indirectly (via agents and owners of consumer property exhibitions) to potential buyers

AIPP is conscious that the ‘PPI Claims’ industry (SIC) will always be looking for another industry to latch onto. If overseas property and miss-selling is deemed to be an easy and lucrative source of clients then a major media and industry battle looms.

### **Pre-Marketing Checks**

#### Due diligence on the developer.

- Track record, testimonials from previous clients.
- The developer to provide a Bank Guarantee for the construction finance showing the development or first phase of the development would be built. Additionally, or alternatively, to show 50% off-plan sales with deposits in escrow, which would then elicit the Bank Guarantee for construction finance.

Due diligence on the lead agent (foreign), sub agent and individual sales agent.

- In every transaction we should require a disclosure form to say for whose benefit the agent is working, their level of qualification, their track record in overseas property sales/this particular region or type of property and the level of insurance they carry.

Due diligence on the property/land.

- Each property should come with a (short) property report, prepared by an independent lawyer (or, in countries where they have the qualification and experience, estate agent) saying that s/he has examined the title & building license and that they appear to be in order.
- A bank or insurance guarantee to be provided.
- There should be a prominent caveat saying that this is an examination of the paperwork only – without checking the original records – and that a full examination of the title plus other due diligence is essential before purchase. This is not a perfect solution but it is cheap and would, probably, eliminate 75% of the problems.

Due diligence on the marketing claims made

- Comparable and verifiable statistics to support every claim.

**The Agent to:**

- Be trained to understand consumer needs and budget (to cover all aspects of buying, costs, annual costs and maintenance ...)
- Promote an Advisory message
- The agents appointed by the developer/foreign estate agent shall provide a written advisory message to the consumers that they must conduct due diligence, drawing their attention that risks are involved for purchase of foreign property.
- That the transaction is subject to foreign laws and to any change in policies and rules in the country where the property is located.
- The written advisory message shall also state the estate agents'/ salespersons' commitment if any, including commitment by the developer related to the project construction and payment schedule.

### Payment and Finance Arrangements

- Agent owners and salespersons shall explain clearly to consumers what are the payment and financing arrangements including the payment milestones and amounts involved.
- Agent owners and salespersons are to inform consumers whether there is any restriction imposed on loans for the property e.g. whether the developer or foreign law requires the loan to be secured from certain sources only and/or affordability ratios
- Foreign currency exchange requirements and fluctuation having impact on financial commitment shall be highlighted to consumers.
- If payments made out by consumers are not going directly to the developers, the agent shall explain to the consumers to whom the payments are going to, its purposes and how it will be delivered to the developers.
- If the payment process is not a typical sale and purchase arrangement, the agent shall highlight the arrangements in writing to the consumers.

### Professional indemnity Insurance

- Agents shall ensure that they possess the necessary professional indemnity insurance for the conduct of agency work by themselves and their salespersons for the specific foreign property before commencing any such work in relation to the said property.

### **The Marketing Phase**

#### Representation

- Sales persons to disclose who they are representing. Sales persons cannot represent the developer *and* the buyer.
- The buyer must have independent advice. How does the buyer choose the right adviser and at reasonable cost? The latter is invariably seen as a cost not an investment or protection, therefore if it is difficult to choose a trusted advisor and it is perceived that the process hence cost is open ended then the buyer may choose to go alone or use the developers or agents recommended advisor.
- Use of protected Client accounts for safeguarding client's money. Care must be taken in choosing a solicitor, the level of PI cover and the terms of the escrow account.

- Advertising and promotion - advertisements on foreign properties are to comply with the requirements of Trading standards and not liable to misrepresentation.

#### Entering into binding agreements

- Agent owners and salespersons shall explain to consumers the arrangements for the signing of sales and purchase agreements and inform them that they should get a lawyer to explain the terms and conditions of the agreement before they sign it.
- Salespersons are to facilitate or arrange for signing of sales and purchase agreement or equivalent contract with the developer. If contracts or agreements are not in English, estate agents and salespersons shall advise the consumer to seek interpretation of the document before signing.

#### Dispute Resolution mechanism

- Agent owners and salespersons shall explain to consumers the dispute resolution mechanism that will apply in the event of a dispute pertaining to the purchase. They shall inform the consumers under which jurisdiction the dispute will be resolved. If contracts are in both English and in a foreign language, estate agents and salespersons shall inform the consumers which version shall be the version to be used for the purposes of dispute resolution.

#### Unlicensed/ unregistered persons

- The ultimate aim is that Agent owners and salespersons should become approved or licensed estate agents for overseas property transactions and only registered salespersons are allowed to conduct overseas property work in the UK.

#### Record Keeping

- The estate agent shall keep documents and records that provide evidence of their compliance with the due diligence requirements and other requirements of formal guidelines.
- The Agent owners shall keep transaction records, such as Sales & Purchase Agreement, Option to Purchase and/or related documents and contracts, of each property that they have sold. In addition, they shall keep payment records for any payment by consumers that is made to or through the estate agent, e.g. booking fee, deposit

## **Conclusion**

Purchase of foreign properties has a variety of attendant risks not readily apparent to British buyers and for which many are ill-prepared.

However, if Agent owners and salespersons do their due diligence before they market an overseas project, and conduct themselves professionally when they market the foreign property, the risk on the Agent owners, salespersons and buyers will lessen considerably.

If buyers would take and heed basic education to know the right questions to ask and proper procedures to follow then most mistakes can be prevented.

In the event of any disputes, agent owners, estate agents and salespersons will also be clear of their rights and liabilities to their clients and consumers.

## Contributors

The AIPP would like to thank (in alphabetical order) the following in assisting the preparation of this paper

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