

**Practice Circular on  
Good and Effective Competition Practices (1) –  
Charging of Commission and Offering of Incentives**

**Questions and Answers (Q&As)**

Notes:

1. All references to:
  - a. “EAA” shall mean the Estate Agents Authority.
  - b. “Practice Circular” shall mean Circular No. 24-01 (CR) issued by the EAA on Good and Effective Competition Practices (1) – Charging of Commission and Offering of Incentives.
  - c. “Purchaser” shall include a prospective purchaser.

The words and expressions used in these Q&As shall have, unless the context otherwise requires, the same meaning as those words and expressions have in the Practice Circular.

2. These Q&As are for general reference only. The answers/solutions suggested in the Q&As are not exhaustive and they do not constitute legal or professional advice. In considering whether a licensee has breached the Practice Circular, the EAA will consider each case on its own merits. You should seek legal or professional advice as and when necessary, especially on the interpretation of relevant legal provisions and specific advice on any individual case. The EAA makes no warranty as to the completeness of the information set out in these Q&As, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.



### Q&As

**Q1. When the Practice Circular becomes effective on 1 November 2024, will the existing guidelines on offering of incentives by estate agents in the sale of first-hand residential properties and compliance with the Competition Ordinance (namely Circular No. 13-04 (CR) and Circular No. 16-01 (CR)) be superseded and cease to have effect?**

Answer: No.

The relevant existing guidelines will continue to be in force in addition to the Practice Circular after 1 November 2024 and licensees must observe and comply with the same.

Licensees should also refer to the relevant Questions and Answers in respect of Circular No. 13-04 (CR) and Circular No. 16-01 (CR) published on the EAA's website for more explanation with respect to the guidelines in the said Circulars.

**Q2. With respect to the good and effective competition practices in relation to commission set out in paragraph (9) of the Practice Circular, are those mandatory requirements which licensees must follow?**

Answer: No.

Since formulating a commission policy is a matter for an estate agency company to consider according to its own circumstances, and charging and payment of commission is a business matter to be agreed between estate agency companies and their clients, it is not appropriate for the EAA to fix commission rates or stipulate mandatory commission

guidelines as this could harm competition. Accordingly, the Practice Circular only encourages licensees to follow the practices set out in paragraph (9) therein for better explanation of licensees' fees vis-à-vis the level of services they provide.

**Q3. With respect to the guidelines set out in paragraphs (8) and (9) of the Practice Circular, will it be necessary for an estate agency company to disclose what factors it has taken into account when formulating its commission policy and how it weighs such factors to its clients?**

Answer: No.

The information in relation to commission that an estate agency company is encouraged to provide to its clients is set out in paragraph (9)(b) of the Practice Circular. It **does not** include detailed breakdown of how the commission is determined, as such information constitutes competitively sensitive information under paragraph (8) of the Practice Circular and an estate agency company must not discuss or exchange with or disclose such information to its competitors.

**Q4. According to paragraph (11) of the Practice Circular, should incentives be offered by estate agency companies, licensees are required to inform prospective purchasers and set out in writing the incentives that are offered to them. Does it mean that an estate agency company needs not honour its promise if the incentives offered by it was not reduced in writing?**

Answer: No.

It is the estate agency companies' own commercial decision whether or not to offer incentives to prospective purchasers. If incentives were offered by estate agency companies, they must honour their promise of incentives, irrespective of whether the promise was made verbally or in writing and regardless of when it was made. Failure of estate agency companies to honour their promise of incentives made to purchasers is unprofessional. Non-compliant licensees who fail to honour their promise of incentives to purchasers, if proven to have been made to purchasers, whether verbally or in writing, may be subject to disciplinary action by the EAA.

**Q5. In the event that an estate agency company did not comply with the timeline as required under paragraph (15) of the Practice Circular with respect to its offering of incentives, will the estate agency company still have to comply with the requirements in the Practice Circular (such as using the pro-forma incentive letter etc.) if incentives are offered after the timeline?**

Answer: Yes.

Notwithstanding the non-compliance of the timing requirement mentioned under paragraph (15) of the Practice Circular which may trigger disciplinary action by the EAA, if incentives are offered by an estate agency company after the timeline, it must still use the pro-forma incentive letter issued under its letterhead as required by paragraph (15) of the Practice Circular to set out details of the incentives and provide the purchaser with the original of such incentive letter containing the terms that the estate agency company must abide by under paragraphs (16) and (17) of the Practice Circular. In addition, the estate agency company must comply with paragraphs (18) to (20) of the Practice Circular

with respect to the incentives offered by it.

For the avoidance of doubt, it is the estate agency companies' own commercial decision whether or not and when to offer incentives to purchasers. If incentives were offered by an estate agency company, the estate agency company must honour its promise of incentives, even if the promise was made after the timeline stated in paragraph (15) of the Practice Circular. Failure to do so may subject the licensee to disciplinary action by the EAA.

**Q6. With respect to the requirement under paragraph (12) of the Practice Circular that the incentives offered by an estate agency company must not restrict or prevent purchasers from giving a holistic consideration when making a purchase decision (e.g. seeking to divert the purchasers' attention so that they fail to take into account all the relevant considerations when making a purchase decision), under what circumstances would an estate agency company be considered to be in breach of such requirement and what could be some of the relevant considerations that prospective purchasers may be diverted from when making a purchase decision?**

Answer: While each case would depend on its own facts, estate agents should not put their interests in conflict with or above those of the prospective purchasers. In considering whether an estate agency company has breached paragraph (12) of the Practice Circular, the EAA would take into account all relevant circumstances in which the incentives were offered as well as whether the purchaser has made known to the estate agency company his considerations in relation to the purchase and whether he is able to adduce sufficient evidence to show that the incentives offered by the estate agency company had distracted him from giving a holistic

consideration when making his purchase decision. The EAA will consider each case on its own merits. In general, simply focusing on inducing a prospective purchaser to buy a first-hand residential flat through the offer of attractive incentives and diverting the prospective purchaser's attention from giving a holistic consideration, such as his ability to obtain a mortgage to pay for the flat or the actual amount of stamp duty to be paid (based on *the price stated in the preliminary agreement for sale and purchase*) being higher than expected (based on *the actual price paid after netting off all incentives received*) is considered unprofessional and may amount to a breach of paragraph (12) of the Practice Circular.

**Q7. With respect to the requirement under paragraph (13) of the Practice Circular that the incentives offered by an estate agency company with a substantial degree of market power must not be abusive, please provide more explanation as to what may amount to abusive conduct by such estate agency company.**

Answer: Please refer to Q13 to Q15 of the Questions and Answers of Circular No. 16-01 (CR) for more information/explanation with respect to abuse of substantial degree of market power under the Second Conduct Rule.

An example of abusive conduct by an estate agency company with a substantial degree of market power has been provided in Q14 of the Questions and Answers of Circular No. 16-01 (CR), which is still in force.

**Q8. With respect to the requirement in paragraph (17)(b) of the Practice Circular, can incentives (such as cash rebates) offered by an estate agency company in the sales**

**of first-hand residential properties in Hong Kong make reference to a percentage of the commission to be received by it from the developer?**

Answer: No.

According to paragraph (17) of the Practice Circular, if an incentive in monetary term (such as a cash rebate) is offered by an estate agency company, it could only be an absolute amount or a formula showing how the definite amount would be calculated, which may only be expressed by way of a percentage of the purchase price as stated in the preliminary sale and purchase agreement (e.g. [X]% of the purchase price as stated in the preliminary sale and purchase agreement to be entered into between the purchaser and the vendor of [*name of the development*]). Hence, when an estate agency company offers incentives to purchasers in the sales of first-hand residential properties, such incentives cannot be referenced to a percentage of the commission to be received by it from the developer.

If an estate agency company wishes to cover in the pro-forma incentive letter the situation where there may be subsequent change in the purchase price of the property as stated in a preliminary sale and purchase agreement due to a different purchase plan being subsequently selected by the purchaser and accepted by the vendor, the estate agency company could set out clearly in the incentive letter whether the purchase price stated in the first preliminary sale and purchase agreement or in the subsequent preliminary sale and purchase agreement should prevail. For example, the amount of rebate to be offered would be calculated as a percentage of the purchase price as stated in the first preliminary sale and purchase agreement regardless of any subsequent preliminary sale and purchase agreement(s) to be entered into **or** the amount of rebate would be calculated as

a percentage of the purchase price as stated in the first preliminary sale and purchase agreement or, if applicable, the subsequent preliminary sale and purchase agreement (whichever is the [higher / lower]).

**Q9. If incentives have been offered by estate agency companies, does the EAA impose any requirement on such estate agency companies as to when such incentives must be paid to the purchasers?**

Answer: No.

Although the EAA does not specify the timing as to when estate agency companies must pay the incentives offered to the purchasers, according to paragraph (16)(d) of the Practice Circular, estate agency companies **must specify the time and manner of payment** of incentives, such as within a specified period after the happening of a certain event (e.g. payment of incentives would be made within *[X]* days after *[signing of the formal agreement for sale and purchase] / [completion of the purchase]* and subject to receipt of the commission by the estate agency companies from the vendors, by way of a cheque issued by *[name of estate agency company]*).

Failure to provide the pro-forma incentive letter would not exonerate the estate agency companies from their liability to honour their promise of incentives if such promise has been made.

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