

**裁決**

個案中的高級營業主管作為代理人（即地產代理公司僱員），在未有其主事人（即地產代理公司）的許可下，收受下線營業員提供的部分銷售佣金，作為轉介客戶及協助促成物業交易的報酬，觸犯《防止賄賂條例》第9條。法官判刑時稱，被告的行為荼毒地產代理業的營商環境，並令所屬地產代理公司蒙受經濟和商譽的損失。該名高級營業主管最終被判入獄，並須向所屬地產公司作出賠償。

**Result**

In this case, the senior sales supervisor, as an agent (i.e. employee of the estate agency), without the approval of his principal (i.e. the estate agency), accepted part of the sales commission from his downline agent as a reward for referring a client and providing assistance in the property transaction. The supervisor thus contravened Section 9 of the Prevention of Bribery Ordinance. In sentencing, the Judge said the defendant's act was detrimental to the business environment of the estate agency sector. He also caused a financial loss to his employer and undermined its reputation. The sales supervisor was sentenced to imprisonment and was ordered to pay a restitution to his employer.

**廉署意見 ICAC's Advice**

廉署提醒地產代理業從業員，在沒有主事人（可包括其僱主或買賣雙方）許可的情況下，絕不可利用職權索取或收受任何利益，否則提供及收受利益雙方均有可能觸犯《防止賄賂條例》。若地產代理觸犯刑事罪行而被定罪，亦有可能按《地產代理條例》第19條被視為並非作為持牌人的適當人選，因而影響他們獲批或持有牌照的資格，不能再從事地產代理工作。地產代理業從業員在業務過程中須注意相關的法規，並留意監管機構的操守指引及公司就員工索取或接受利益方面的守則。如遇到任何懷疑貪污的情況，應立即向廉署舉報。

The ICAC reminds practitioners of the estate agency industry not to solicit or accept any advantages when conducting their principal's affairs or business without the approval of their principal (which may include their employer, vendor or buyer), otherwise both the offer or and recipient of the advantage may breach the Prevention of Bribery Ordinance. Any conviction of bribery offences will render estate agents not being regarded as fit and proper persons under Section 19 of the Estate Agents Ordinance, which may in turn affect their eligibility to be granted or to hold their licences and shall inhibit them from participating in estate agency work. Practitioners should observe and comply with the relevant laws and regulations in the course of their business and should pay attention to the regulatory guidelines and their company's code of conduct on solicitation and acceptance of advantages when conducting business. Should anyone come across any suspected corruption, they should report it to the ICAC immediately.

**刑事個案 Criminal case**

## 未有申報刑事定罪紀錄

### Failure to disclose a criminal record

**引言**

在申請地產代理或營業員牌照時，不得提供任何虛假或具誤導性的資料；否則，申請人可能會觸犯刑事罪行並被警方起訴，因此而留下案底。

**Introduction**

An applicant must not provide any false or misleading information when applying for an estate agent's or a salesperson's licence; otherwise, the applicant may commit a criminal offence and be prosecuted by the police, resulting in a criminal record.

### 事件經過

一名持牌人向監管局提交的營業員牌照申請及其後的續期申請時，從沒有在其牌照申請表中披露其刑事定罪記錄。監管局在一次抽查中發現，該營業員在首次申請營業員牌照前，曾被裁定管有違禁武器及其他罪行罪名成立。根據《地產代理條例》（「《條例》」），在申請牌照時提供虛假或具誤導性的資料屬刑事罪行，因此監管局將個案轉介警方跟進。

### Incident

A licensee had submitted his application forms for the grant of his salesperson's licence and subsequent renewals of his licence without disclosing his criminal record in all his licence applications. In a random check by the EAA, it was discovered that the salesperson concerned was convicted of possession of a prohibited weapon and some other offences before his first application for the grant of the salesperson's licence. As providing false or misleading information when applying for a licence is a criminal offence under the Estate Agents Ordinance ("EAO"), the EAA referred the case to the police.

### 結果

經警方調查後，案件交由法庭審理。結果，法庭裁定該名營業員罪成，被判監禁六個月，緩刑三年。

另一方面，監管局認為這涉及嚴重的誠信問題。由於該營業員被認為並非《條例》第21條所指的持有營業員牌照的適當人選，其牌照被監管局牌照委員會撤銷。

任何人如有任何刑事紀錄，必須在向監管局申請牌照時作出披露，除非他所犯的罪行是夾附於補充表格的「毋須向地產代理監管局申報的輕微罪行列表」所列的輕微罪行。

### Result

After the police's investigation, the case was taken to court. The salesperson was convicted and sentenced to six months imprisonment suspended for three years.

In addition, the EAA was of the view that it was a serious integrity matter. The salesperson's licence was subsequently revoked by the EAA's Licensing Committee as he was not considered a fit and proper person to continue to hold a licence under section 21 of the EAO.

Any person, if possessing any criminal record, must disclose it when applying to the EAA for a licence unless the offence he has committed is a minor offence under the List of Minor Offences Requiring No Disclosure to the EAA attached to the Supplementary Form.



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### ● 業界意見 Comment from trade

這宗個案對業界是一個警惕。從業員在申請牌照時，必須如實申報是否有犯罪紀錄，故意隱瞞有關資料是屬於十分嚴重的問題。希望在此提醒各位有意入行的人士，即使擔心有犯罪紀錄影響發牌，也一定要申報，寧願在其他方面再作求情和將功補錯，也不要一錯再錯。

This case is a warning to the trade. Practitioners must truthfully declare whether they possess a criminal record when applying for a license. Deliberately concealing the relevant information is a very serious problem. I would like to remind those intending to join the trade: even if you are worried that your criminal record will affect your chance of being granted a licence, you must still disclose it. It would be better to try to make amends than make another mistake again.