

紀律案例選錄

A selection of disciplinary cases

個案 1 – 隱瞞賣家的確認人身分

兩名地產代理從業員隱瞞賣家的確認人身分，被紀律委員會譴責及在牌照上附加條件。

郭先生和家人打算購買村屋。某地產代理從業員（「甲從業員」）陪同他和太太視察一幢村屋。該幢村屋共有三層：地下、一樓及二樓。郭先生向甲從業員表示有興趣購買該幢村屋，甲從業員遂告訴他村屋的叫價為2.8百萬元，但沒有提及業主是誰。

其後，甲從業員安排郭先生和太太第二次視察該幢村屋，並告訴他們村屋的叫價仍然是2.8百萬元。他沒有提到村屋的業主是誰，亦沒有透露賣家的身分。

同一天晚上，甲從業員及他的同事（「乙從業員」）再次安排郭氏夫婦和郭先生的父母視察該幢村屋，但他們沒有透露業主是誰，亦沒有說明村屋三層樓的業權屬同一抑或是不同的業主所有，也沒有安排郭氏一家與村屋的賣家會面。郭氏一家只是通過該兩名從業員和賣家商議村屋的售價。

經過一番商議，郭氏一家同意以2.65百萬元購入該幢村屋。甲從業員為他們購入村屋的地下、一樓和二樓，分別準備了三份臨時買賣合約。這時，乙從業員才告訴郭先生和家人，村屋的三個樓層由不同賣家放售，並建議將樓價分為三部分：地下、一樓和二樓的樓價分別為95萬元、75萬元和95萬元。郭先生同意有關建議。

為購買村屋的地下、一樓和二樓而制訂的臨時買賣協議內，業主一欄填上三名分別姓朱、姓胡和姓伍人士的姓名。

Case 1 – Concealing vendors' identities as confirmors

Two estate agency practitioners were reprimanded and had a condition attached to their respective licences for concealing the vendors' identities as confirmors.

Mr Kwok and his family wanted to purchase a village house. An estate agency practitioner ("Practitioner A") accompanied Mr Kwok and his wife to view a block of village house consisting of a ground floor (G/F) and two upper floors (1/F and 2/F). Practitioner A told him that the vendor's asking price was \$2.8 million. He did not mention who the vendor was.

Some time later, Practitioner A arranged a second viewing of the village house for Mr and Mrs Kwok. He told them that the asking price was still \$2.8 million. He did not say anything about the ownership of the village house or reveal the identity of the vendor.

On the evening of the same day, Practitioner A and his colleague ("Practitioner B") arranged for the Kwok couple and Mr Kwok's parents to view the village house again. Still they did not mention who the vendor was, or whether the different floors were owned by the same or different owners. They did not arrange for Mr Kwok and his family to meet the vendor. All price negotiations with the vendor were conducted through Practitioner A and Practitioner B.

After negotiation, Mr Kwok and his family agreed to purchase the village house at the price of \$2.65 million. Practitioner A then prepared three provisional agreements for sale and purchase, one each for the G/F, 1/F and 2/F. Only then did Practitioner B inform Mr Kwok and his family that each floor had a different vendor. He suggested allocating the purchase price to the different floors as follows: \$0.95 million for the G/F, \$0.75 million for the 1/F and \$0.95 million for the 2/F. Mr Kwok agreed.

In the provisional agreements for sale and purchase for the G/F, 1/F and 2/F of the village house, persons with the surname "Chu", "Wu" and "Ng" were named as the vendors respectively.

郭先生以買家的身分，就購買村屋的地下簽署臨時買賣合約，而郭先生的母親和郭太太則分別就購入村屋的一樓及二樓，簽署臨時買賣合約。郭氏一家共付了9萬元首期訂金。

事實上，朱先生、胡先生及伍先生並非村屋三個樓層的業主。他們只是在不足兩個月前，分別與原來的業主簽署買賣合約購入各樓層，而所有交易尚未完成。換句話說，他們三人是以「確認人」，而非業主的身分，向郭氏一家出售三個樓層。

郭氏一家一直相信，於臨時合約上填寫的賣家姓名，是村屋的三個樓層的業主。他們並不知道，而甲從業員及乙從業員亦從來沒有告訴他們，賣家以確認人的身分出售該幢村屋。

由於確認人在短時間內將該幢村屋轉讓予郭先生及家人，銀行只按確認人原來同意支付的樓價，而非郭氏一家於轉讓過程中同意支付的樓價，提供七成按揭。郭氏一家未能從銀行獲得足夠的按揭貸款，因此交易無法完成，確認人最後沒收郭氏一家支付的9萬元訂金。

紀律委員會就該個案進行紀律研訊。於研訊上，乙從業員承認，當他向郭氏一家介紹該幢村屋後，他一直以「業主」稱呼賣家。他聲稱已經向郭先生說明，賣家以物業投機者的身分出售物業，並告訴郭先生和家人，倘若他們和賣家訂於同一日完成物業交易程序，賣家願意減價。乙從業員辯稱，這顯示郭氏一家應該知道賣家並非原來的業主，而只是向業主購入村屋的買家。乙從業員承認，為郭氏一家處理交易的過程中，並沒有使用「確認人」這個字眼，亦沒有說明向確認人購入物業所涉及的風險。甲從業員則沒有作供。

Mr Kwok signed the provisional agreement for sale and purchase for the G/F as the purchaser. His mother and Mrs Kwok did the same for the 1/F and 2/F respectively. The Kwok family paid a total initial deposit of \$90,000.

In fact, Mr Chu, Mr Wu and Mr Ng were not the owners of the respective floors. Each of them was only the purchaser of the respective floor from the original owner. They had entered into the respective sale and purchase agreements with the original owner less than two months earlier. Their purchases had yet to be completed. In other words, they were selling the respective floors of the village house to Mr Kwok and his family as “confirmors”, not owners.

Mr Kwok and his family all along believed that the vendors named in the provisional agreements were the owners of the respective floors. They did not know, and Practitioner A and Practitioner B had never told them, that the vendors were selling as confirmors.

Because the sale of the village house to the Kwok family was in fact a sub-sale by the confirmors within a short period of time, the bank would grant a mortgage loan only equivalent to 70% of the original purchase price agreed to be paid by the confirmors, and not the purchase price agreed by the Kwok family in the sub-sale. Unable to obtain sufficient mortgage finance, the Kwok family could not complete the purchase and had to forfeit their \$90,000 deposit.

The Disciplinary Committee conducted an inquiry hearing into the case. At the hearing, Practitioner B admitted that when he had introduced the village house to the Kwok family and subsequently, he had all along referred to the vendors as “the owner”. He claimed that he had told Mr Kwok that the vendor was selling the house as a property speculator and that he had mentioned to the Kwok family that if they agreed to fix the completion date to match that of the vendor, the vendor would be prepared to lower the price. Practitioner B contended that this showed the Kwok family should have known the vendor was not the original owner but a purchaser from the original owner. Practitioner B admitted that he had never used the term “confirmor” throughout the course of his dealings with the Kwok family, nor did he explain to them the risks involved in a purchase from a confirmor. Practitioner A did not testify at the inquiry hearing.

紀律委員會裁定，甲從業員和乙從業員沒有向客戶披露賣家以確認人而非原來業主的身分出售物業。紀律委員會指出，從業員只是告訴客戶賣家是以物業投機者的身分出售物業，並不足夠。這樣做並不足以令客戶知道賣家的「確認人」的身分。一個專業的從業員應該向客戶解釋清楚賣家是誰、賣家以甚麼身分出售物業，以及如賣家是「確認人」時，客戶可能須要承擔的風險。從業員未有這樣做，不能視為已經採取適當措施，保障客戶的利益。因此，甲從業員和乙從業員沒有遵守《操守守則》第 3.4.1 段*。

紀律委員會判令向該兩名從業員作出譴責，並在其牌照上分別附加條件，規定他們在 24 個月內取得 20 個持續專業進修計劃核心科目的學分。

The Disciplinary Committee found that both Practitioner A and Practitioner B had failed to disclose to their clients that the vendors were selling as confirmors and not as original owners. The Committee pointed out that simply informing clients the vendor was selling as a property speculator was neither here nor there. It did not serve to enlighten clients that the vendor was selling as a "confirmor". A professional practitioner must explain fully to clients who the vendor was, in what capacity he was selling the property, and in the case of a purchase from a confirmor, the risks involved. A practitioner who failed to do so could not be said to have taken appropriate steps to protect his client's interests. Practitioner A and Practitioner B failed to comply with paragraph 3.4.1 of the Code of Ethics*.

The Committee ordered that the two practitioners be reprimanded and that a condition requiring each of them to acquire 20 points in core subjects of the CPD Scheme within 24 months be attached to their respective licences.

個案 2 – 安排客戶簽署漏空了一些條款的臨時買賣合約

一名地產代理從業員安排客戶於漏空了一些條款的臨時買賣合約上簽署，被紀律委員會暫時吊銷牌照及在牌照上附加條件。

一天，蘇氏夫婦到新界區某大型樓盤，希望購買合適且負擔得起的單位。他們在一間地產代理公司門外停駐，一名從業員上前向他們打招呼。該從業員提議帶他們視察該樓盤的單位。

該從業員陪同蘇氏夫婦視察了兩個單位，分別位於屋苑的一期（「一期單位」）及二期（「二期單位」）。蘇先生和太太對二期單位感興趣。

Case 2 – Arranging for clients to sign provisional agreements for sale and purchase with some terms left blank

An estate agency practitioner had his licence suspended and a condition attached to it for arranging for his clients to sign on provisional agreements for sale and purchase with some terms left blank.

One day, Mr and Mrs So went to a large residential development in the New Territories to see if there were any suitable flats for purchase at an affordable price. Stopping by the shop of an estate agency, they were greeted by one of its practitioners. The practitioner offered to take Mr and Mrs So to the development to view some flats.

The practitioner brought Mr and Mrs So to view two flats, one in Phase I ("the Phase I flat") and one in Phase II ("the Phase II flat"), of the development. Mr and Mrs So were interested in the Phase II flat.

* 《操守守則》第 3.4.1 段
作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益，按照地產代理協議執行客戶的指示，並對交易各方公平公正。

* Paragraph 3.4.1 of the Code of Ethics
Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

他們返回該地產代理公司後，該從業員要求蘇氏夫婦預先支付誠意金，並就購入二期單位簽署臨時買賣合約。該從業員表示，這樣有助他代表他們和賣家商議。他又游說蘇氏夫婦簽訂另一份購入一期單位的臨時買賣合約。

蘇氏夫婦以為該從業員會先和二期單位的賣家商議，倘若不成功，他們才考慮購買一期單位。於是，他們簽署了兩份臨時買賣合約。該從業員於兩份臨時買賣合約的條款上，漏空了一些條款，包括簽署正式買賣合約的日期和完成交易日期。蘇先生向該從業員支付了2萬元，並要求他發出收據。但是，該從業員建議蘇先生與他所屬的地產代理公司簽署一份「價格商議協議」，並稱該協議可視為收據。蘇氏夫婦告訴該從業員，由於安排按揭事宜需時，買賣的成交期不可少於60天。

該從業員分別就購入一期單位和二期單位，準備了兩份「價格商議協議」。該兩份協議均註明樓價不可多於1百萬元，且成交期不可少於60天。

第二天，蘇先生的手提電話收到該從業員發出的短訊。短訊稱賣家已經簽妥臨時買賣合約，但沒有指明是一期單位還是二期單位。

同一天稍後，蘇氏夫婦前往該地產代理公司。這時，他們才得知原來已簽妥的臨時買賣合約，是購入一期單位的，而合約上訂明的成交日期為40天。該從業員並沒有就縮短成交日期一事，徵求蘇氏夫婦的同意。

When they went back to the estate agency, the practitioner asked the So couple to pay in advance some earnest money and to sign a provisional agreement for sale and purchase for the Phase II flat. He said this would facilitate his negotiation with the vendor on their behalf. The practitioner also persuaded the So couple to sign a provisional agreement for sale and purchase of the Phase I flat.

On the understanding that the practitioner would first seek to negotiate with the vendor of the Phase II flat and only if that was unsuccessful would the Phase I flat be considered, the So couple signed the two provisional agreements for sale and purchase. In each provisional agreement for sale and purchase, the practitioner had left blank some terms, including the date for the signing of the formal agreement and the date of completion of the sale and purchase. Mr So gave \$20,000 to the practitioner. He asked the practitioner to issue a receipt, but the practitioner suggested that Mr So sign a "price negotiation agreement" with his estate agency instead. He said this would serve as a receipt. The So couple instructed the practitioner that the completion period of the purchase should not be less than 60 days, in order to allow time for them to make mortgage arrangements.

The practitioner prepared two "price negotiation agreements", one in respect of the Phase I flat, and the other for the Phase II flat. In each document, it was stated that the purchase price should not exceed \$1 million and that the completion period should not be shorter than 60 days.

The next day, Mr So received a message sent from the practitioner to his mobile phone. The message stated that the vendor had signed the provisional agreement for sale and purchase. It did not specify whether it was for the Phase I or Phase II flat.

Later that day, Mr and Mrs So went to the practitioner's estate agency. Only then did it come to light that the provisional agreement for sale and purchase that had been signed was in respect of the Phase I flat. The completion period stated in the provisional agreement for sale and purchase was 40 days. The practitioner had not sought the So couple's prior consent to the shorter completion period.

紀律委員會就個案進行紀律研訊。蘇氏夫婦以及該從業員均有出席研訊作供。該從業員於供詞中聲稱，蘇氏夫婦初時表示要取得高於樓價七成的按揭貸款，因此他建議把成交期訂為不少於60天，讓他們有足夠時間取得按揭貸款。然而，蘇氏夫婦隨後改變主意，表示他們只須要樓價六成的按揭貸款，並告訴該從業員成交期可以縮短。該從業員和賣家商議後，把臨時買賣合約上的成交期縮短至40天。他承認縮短成交期前，沒有徵詢蘇氏夫婦的意見。

紀律委員會不接納該從業員就成交期所提供的證供，並且指出，倘若蘇氏夫婦真的就成交期改變指示，一名專業的從業員應在「價格商議協議」上作出相應修改；而且，在該從業員給予監管局的書面回應上，他並沒有表示蘇氏夫婦曾經就成交期改變指示。

紀律委員會裁定，該從業員安排客戶在兩份漏空了一些條款的臨時買賣合約上簽署，沒有遵守《執業通告》編號03-02 (CR) 的規定：「從業員宜避免在重要交易條款（樓價、訂金、成交日、其他附帶條件）尚未談妥時令客戶在漏空的臨約上單方面簽署。」因此，該從業員沒有遵守《操守守則》第3.2.1段*的規定。

The Disciplinary Committee conducted an inquiry hearing into the case. Both Mr and Mrs So testified, as did the practitioner. In the practitioner's testimony, he claimed that initially the So couple said they needed to obtain a mortgage loan of over 70% of the purchase price, so the practitioner suggested a completion period of no fewer than 60 days in order to allow them adequate time to obtain mortgage financing. However, the So couple later changed their mind and said that they only needed a 60% mortgage loan. They told the practitioner that a shorter completion period would do. The practitioner put 40 days as the completion period in the provisional agreement for sale and purchase, after negotiation with the vendor. The practitioner admitted that he had not consulted the So couple on this shorter completion period.

The Committee rejected the practitioner's evidence on the completion period, pointing out that if, indeed, as claimed by the practitioner, the So couple had changed their instruction on the completion period, a professional practitioner would have amended the "price negotiation agreement" accordingly. Furthermore, in the practitioner's written reply to the EAA's enquiry, he never mentioned that the So couple had changed their instructions on the completion period.

The Committee held that, in arranging for his client to sign two provisional agreements for sale and purchase with some terms left blank, the practitioner had failed to observe the following guideline in the EAA's Practice Circular No. 03-02 (CR): "Practitioners should refrain from asking their clients to unilaterally sign any provisional agreement with many spaces left blank where the essential terms of the transaction (e.g, price, deposits, completion date, other conditions) have not been agreed on". Hence the practitioner had failed to comply with paragraph 3.2.1 of the Code of Ethics*.

* 《操守守則》第3.2.1段
地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、本操守守則，以及由監管局不時發布的所有其他指引。

* Paragraph 3.2.1 of the Code of Ethics
Estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice.

紀律委員會亦裁定，該從業員未有取得客戶同意前，擅自縮短成交期，未能保障和促進客戶利益，沒有遵守《操守守則》第3.4.1段*的規定。

紀律委員會判令暫時吊銷該從業員的牌照六個星期，並在牌照上附加條件，規定他在12個月內取得12個持續專業進修計劃核心科目的學分。

The Committee further held that, in failing to obtain his clients' consent to the shorter completion period, the practitioner had failed to protect and promote his clients' interest, and hence, to comply with paragraph 3.4.1 of the Code of Ethics*.

The Committee ordered that the practitioner's licence be suspended for six weeks and that a condition be attached to his licence requiring the practitioner to acquire 12 points in core subjects of the CPD Scheme within 12 months.

個案3 – 現金回贈承諾不兌現

一名地產代理從業員沒有兌現現金回贈的承諾，被紀律委員會暫時吊銷牌照。

李先生和太太到某個新住宅樓盤的示範單位參觀時，任職於某地產代理公司的從業員主動接觸他們。當時，該名從業員正為該樓盤尋找買家，他極力向李氏夫婦推薦自己的服務。據李先生引述，該從業員提出向他們提供樓價百分之二的現金回贈。於是，李先生同意使用該從業員的服務。

隨後，該從業員陪同李氏夫婦視察示範單位，並替他們索取價單和其他資料，供他們考慮。李氏夫婦決定認購兩個單位。該從業員安排他們到發展商的銷售處，簽署臨時買賣合約和其他文件。李氏夫婦簽署所有文件後，提醒該從業員他曾作出現金回贈的承諾，並強調他必須安排支付百分之二的現金回贈。該從業員向他們保證，一定會與上司跟進有關事宜。

然而，縱使李先生多番向有關的地產代理公司提出要求和交涉，他始終沒有得到該從業員所承諾的百分之二現金回贈。

Case 3 – Failure to honour promise of cash rebate

An estate agency practitioner had his licence suspended for failing to honour his promise of cash rebate.

Mr Lee and his wife went to view the show-flats in a new residential development. As they reached the development site, they were approached by a practitioner of an estate agency company involved in soliciting people interested in purchasing units in the new development. He urged Mr and Mrs Lee to use his service. According to Mr Lee, the practitioner offered them a cash rebate of 2% of the purchase price. On this basis, Mr Lee agreed to use the practitioner's service.

The practitioner then accompanied Mr Lee and his wife to view the show-flats, and helped to obtain the price list and other information for their consideration. Eventually, the Lee couple decided to purchase two units. The practitioner arranged for them to go to the developer's sales office to sign the provisional agreements for sale and purchase, along with other documents. After signing all the documents, the Lee couple reminded the practitioner of his cash rebate promise and stressed that he must arrange the payment of the 2% cash rebate. The practitioner assured the Lee couple that he would certainly follow up the matter with his superior.

However, despite repeated demands and negotiations with the estate agency company, Mr Lee was not paid the 2% cash rebate that the practitioner had promised.

* 《操守守則》第3.4.1段
作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。

* Paragraph 3.4.1 of the Code of Ethics
Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

紀律委員會就該個案召開紀律研訊。李先生和有關從業員均在研訊中作供。李先生提供了一盒錄音帶，內裡紀錄了李氏夫婦簽署臨時買賣合約後與從業員的對話。在對話當中，李太太向該從業員指出，他曾經承諾給予百分之二的現金回贈，而他們正是基於這承諾，才同意使用該從業員的服務，透過他認購物業。在對話中，該從業員沒有否認他曾作出此承諾。事實上，該從業員的反應顯示他默認曾經作出上述承諾。李先生和太太在對話中重複提醒該從業員，向上司跟進支付現金回贈的事宜，該從業員保證他會跟進。

於紀律研訊中，該從業員否認他曾提出給予李先生現金回贈。他表示，於事發當天主動接觸李氏夫婦時，他只是向他們提供了一些新樓盤的小冊子，他聲稱李氏夫婦只是簽署臨時買賣合約後，才提出百分之二現金回贈的要求。然而，該從業員沒有作出合理解釋，為何他在錄音對話中，始終沒有反駁李氏夫婦謂他曾承諾給予現金回贈的指稱，更同意作出跟進。

紀律委員會拒絕接納該從業員沒有提供現金回贈的證供但接納李先生的證供，相信該從業員實際上曾經承諾送出百分之二的現金回贈，而李先生和太太是基於此，才答應使用該從業員的服務，認為該從業員沒有履行其承諾。

紀律委員會指出，從業員以現金回贈優惠吸引客戶使用其服務，其後卻沒有兌現承諾，這種行為會削弱市民對地產代理行業的信心，損害行業的名聲。因此，該從業員未有遵守《操守守則》第3.7.2段*。

結果，紀律委員會判令暫時吊銷該從業員的牌照一個月。

The Disciplinary Committee conducted an inquiry hearing into the case. Both Mr Lee and the practitioner testified at the hearing. Mr Lee produced a tape which recorded a conversation that he and his wife had with the practitioner. The conversation took place after the Lee couple had signed the provisional agreements for sale and purchase. During the conversation, Mrs Lee pointed out to the practitioner that the latter had, earlier on, promised to give a 2% cash rebate and it was only because of this promise that they had agreed to use his service to make the purchase. The practitioner did not deny that that was the case. In fact, the practitioner's response showed that he acknowledged having made such a promise. In the conversation, the Lee couple repeatedly reminded the practitioner to follow up with his superior for the payment of the cash rebate. The practitioner assured them that he would.

At the inquiry hearing, the practitioner denied that he had ever offered a cash rebate to Mr Lee. He said when he approached the Lee couple that day, he had provided them only with some pamphlets about the new development. He claimed that the Lee couple had made the request for a 2% cash rebate only after they had signed the provisional agreements for sale and purchase. As regards the taped conversation, the practitioner was unable to give any satisfactory explanation as to why he did not refute the Lee couple's assertion that he had made a cash rebate promise, but instead agreed to follow up the matter.

The Committee rejected the practitioner's evidence that he had not offered any cash rebate to the Lee couple. The Committee accepted Mr Lee's evidence and held that the practitioner had indeed promised the Lee couple a 2% cash rebate, that this was the condition upon which the Lee couple agreed to use the practitioner's service, and that the practitioner had failed to fulfil his promise.

The Committee pointed out that luring potential clients into using a practitioner's service by the promise of a cash rebate and then subsequently reneging on the promise would undermine confidence in and bring disrepute to the estate agency profession. The practitioner failed to observe paragraph 3.7.2 of the Code of Ethics*.

The Committee suspended the practitioner's licence for one month.

* 《操守守則》第3.7.2段
地產代理和營業員應避免做出可能令地產代理行業信譽及／或名聲受損的行為。

* Paragraph 3.7.2 of the Code of Ethics
Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.

個案 4 – 發出虛假和誤導廣告

一間地產代理公司因發出誤導的廣告而遭譴責及罰款。

2008年1月，該地產代理公司在置逸花園附近派發廣告單張，單張上載有置逸花園的放盤資料。置逸花園一號房子的業主高先生索取了一份單張，發現該單張上其中一項放盤資料，附有一張他自己房子的內部照片。高先生曾經委託其他地產代理公司放盤出售其物業，但從沒有委託該公司放盤。於是，他向監管局作出投訴。

該地產代理公司解釋，有關廣告其實是置逸花園七號房子的廣告，並出示該公司與七號房子的業主簽訂的地產代理協議(表格3)。該公司承認該廣告載有高先生的房子的照片，並表示這是由於公司員工錯誤地將高先生的房子的照片印於單張上。

該公司發出在要項上具誤導性的廣告，令讀者誤以為廣告中的放盤物業是高先生的物業，違反了《地產代理常規(一般責任及香港住宅物業)規例》(《常規規例》)第9(1)條*規定。

紀律委員會就該地產代理公司發出上述廣告，進行紀律研訊。該公司被紀律委員會譴責和罰款5,000元。

Case 4 – Issuing false and misleading advertisement

An estate agency firm was reprimanded and fined for issuing a misleading advertisement.

In January 2008, the firm distributed leaflets in the vicinity of Comfy Garden. The leaflets contained property listings of Comfy Garden. Mr Ko, the owner of House 1 of Comfy Garden, upon collecting a leaflet, discovered that one of its property listings contained a photograph showing the interior of his house. Mr Ko had listed his property for sale with other estate agency companies, but never with this firm. Mr Ko then lodged a complaint with the EAA.

The firm explained that the advertisement was in fact related to House 7 of Comfy Garden and provided an estate agency agreement (Form 3) signed by the owner of House 7. The firm admitted that the advertisement contained a photograph of Mr Ko's property and said the mistake was due to an error by a staff member, who had wrongly selected the photograph of Mr Ko's property when preparing the leaflet.

The advertisement issued by the practitioner was misleading in a material particular, in that it gave readers the impression that the property being advertised was Mr Ko's property, thereby breaching section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation)*.

An inquiry hearing was conducted against the firm for issuing such an advertisement. The firm was reprimanded and fined \$5,000 by the Disciplinary Committee.

* 《常規規例》第9(1)條

持牌地產代理不得安排或准許發出任何全部或部分與其地產代理業務有關並載有在要項上屬虛假或具誤導性陳述或詳情的廣告。

* Section 9(1) of the Practice Regulation

A licensed estate agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular.

個案 5 – 向代理人提供利益

一位地產代理從業員被控「向代理人提供利益」，違反《防止賄賂條例》第9(2)(a)條的規定，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

該從業員為和平地產代理公司的董事，毛先生則是九龍好好購物商場業主的租務經理。

2004年6月，陳氏公司透過該從業員介紹，決定租用好好購物商場的一個單位。根據市場慣例，好好購物商場的業主應該就陳氏公司租用該單位，向和平地產代理公司支付一個月租金的佣金。然而，毛先生向該從業員表示，好好購物商場業主會支付兩個月租金的佣金予和平地產代理公司，惟該從業員須將當中多出的部分，私下退回給他。

同年8月，該從業員就介紹陳氏公司租用該單位，向好好購物商場的業主發出繳費單，繳費單上註明的佣金數額相等於兩個月的租金。隨後，好好購物商場向和平地產代理公司支付14萬元佣金，該從業員繼而向毛先生支付7萬元現金。

好好購物商場的業主證實，沒有允許毛先生就處理好好購物商場的租務事宜，收受利益。

其後，該從業員被廉政公署拘捕，控以三項「向代理人提供利益」罪名。他承認其中一項控罪，而控方就另外兩項控罪沒有提出證供檢控。其後，他被判處160小時社會服務令。

Case 5 – Offering advantage to agent

The licence of an estate agency practitioner convicted of one count of “offering an advantage to an agent”, contrary to section 9(2)(a) of the Prevention of Bribery Ordinance, was suspended and attached with conditions by the Disciplinary Committee.

The practitioner was the director of Peaceful Property Agency. Mr Mo was the leasing manager for the owner of Good Plaza, a shopping mall in Kowloon.

In June 2004, Chan Company decided to rent a unit at Good Plaza upon the introduction of the practitioner. According to market practice, the owner of Good Plaza should have paid Peaceful Property Agency a sum equivalent to one month’s rental as commission for introducing Chan Company. Mr Mo, however, told the practitioner that the owner of Good Plaza would pay a sum equivalent to two months’ rental as commission to Peaceful Property Agency, but that the practitioner had to rebate the extra commission to him personally.

In August 2004, the practitioner submitted a demand note to the owner of Good Plaza for a sum equivalent to two months’ rental as commission for introducing Chan Company to rent the unit. Good Plaza paid Peaceful Property Agency \$140,000 as commission accordingly. The practitioner then paid Mr Mo \$70,000 in cash.

The owner of Good Plaza confirmed that it had not allowed Mr Mo to accept any advantage in relation to Good Plaza’s affairs or business.

The practitioner was subsequently arrested by ICAC officers and charged with three counts of “offering an advantage to an agent”. He pleaded guilty to one of the charges and the prosecution offered no evidence in respect of the other two. He was later sentenced to 160 hours of community service.

紀律委員會就該從業員違反上述條例，進行紀律研訊。該從業員承認有關指稱，因此未能符合《地產代理條例》第19(2)(d)條*訂明的持牌條件中，有關適當人選的要求。紀律委員會考慮到他提出的求情理由，包括他已深感後悔，決定暫時吊銷他的牌照兩個月，以及在他的牌照上附加條件，規定他在12個月內取得十個持續專業進修計劃核心科目的學分。

An inquiry hearing was conducted against the practitioner for committing the above offence. The practitioner admitted the allegation made against him, thereby failing to continue to be fit and proper to hold a licence as stipulated in section 19(2)(d) of the EAO*. The Committee, having considered the mitigating factors put forward by the practitioner, including the fact that he had shown genuine remorse, suspended his licence for two months. The Committee also attached conditions to the practitioner's licence, including requiring him to obtain 10 points in core subjects of the CPD Scheme within 12 months.

* 《地產代理條例》第19(2)(d)條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及該人因任何罪行（本條例所訂的罪行除外）在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

* Section 19(2)(d) of the EAO

In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.