



BRIEFING PAPER

Number CPB6900, 18 April 2019

Regulation of estate agents

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Summary

Many people who sell a property in the UK will use the marketing services of an estate agency. Estate agency work is defined by the [Estate Agents Act 1979](#) (EAA 1979) as:

‘introducing and/ or negotiating with people who want to buy or sell freehold or leasehold property (including commercial or agricultural property) where this is done in the course of a business pursuant to instructions from a client’.

Estate agents are principally regulated by the *EAA 1979* and the [Consumer Protection from Unfair Trading Regulations 2008](#). In addition to this statutory regulation, since 1 October 2008 all estate agents in the UK who engage in residential estate agency work are required to belong to an approved redress scheme dealing with complaints about the buying and selling of residential property. This is a requirement of the [Consumers, Estate Agents and Redress Act 2007](#).

The [National Trading Standards Estate Agency Team of Powys County Council](#) is the UK’s regulator under the *EAA 1979*. The team assesses whether an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the *EAA 1979*. It took over this enforcement role from the Office of Fair Trading (OFT) on 1 April 2014.

This Commons briefing paper provides an outline of the current regulation of estate agents in England and Wales only. In both countries there is no legally binding contract at the point when a seller accepts an offer; there is only the potential for a transaction at a verbally agreed price. This means that until exchange of contracts, either side can pull out without being liable to the other for any losses incurred. The situation is very different in Scotland, where there are different property laws. In Scotland, there is a much earlier legally binding agreement between the buyer and seller of a property.

1. Introduction

On 1 October 2013, two important changes to the law were implemented which changed the regulation of estate agents. First, the repeal of the *Property Misdescriptions Act 1991*, following a consultation by the Department of Business Innovation and Skills (BIS), and secondly, an amendment to the [Estate Agents Act 1979](#) (EAA 1979).

Estate agents are now principally regulated by the EAA 1979 and the [Consumer Protection from Unfair Trading Regulations 2008](#). Both Acts are enforced by local authority Trading Standards departments. For the purposes of section 1 of the EAA 1979, estate agency work includes introducing and/ or negotiating with people who want to buy or sell freehold or leasehold property (or their Scottish equivalents) including commercial or agricultural property where this is done:

- in the course of a business and
- pursuant to instructions from a client.

According to statistics published by the Office of Fair Trading (OFT), there are approximately 14,500 traditional residential estate agent offices in the UK.¹ New business models that have emerged in the UK include online estate agents and private seller websites.

¹ Office of Fair Trading, '[Home buying and selling – A market study](#)', OFT 1186, February 2010, [online] (accessed 29 May 2014)

2. Qualification of estate agents

2.1 Professional qualifications

Currently, estate agents are not required by law to be licensed or qualified.

However, many individual estate agents are professionally qualified and do belong to a professional body, such as the [Royal Institution of Chartered Surveyors](#) (RICS). The [National Association of Estate Agents](#) (NAEA) also offers qualifications for members of the profession.

Professional qualifications

Concerns have been raised in the past about some estate agents pursuing misleading practices designed to close a deal.² The sector has also been criticised for the lack of transparency about estate agent fees and contracts.³

Research by the Homeowners Alliance in 2013 found only 20% of homeowners and aspiring homeowners trusted estate agents when buying or selling a home, a far lower level than for conveyancers, surveyors or mortgage lenders.⁴ BEIS consumer research found that 82% of buyers and 83% of sellers surveyed were satisfied with the service they received from estate agents.⁵

Commentators have expressed concern that enforcement of the existing regulatory framework for estate agents is weak. According to the Conveyancing Association:

The issue is that the redress schemes take over six months to hear a complaint and NTS [National Trading Standards] in particular are under resourced and unable to enforce the existing regulation. NTS issued just 11 prohibition notices last year and its goal is to double that this year, but without improved resourcing it cannot properly regulate the industry.⁶

There have been calls to strengthen the regulation of estate agents by introducing minimum professional standards.⁷ It is contended that this would help professionalise the industry, improve services and reassure consumers.⁸ It would also align with Government plans to regulate letting and property management agents.⁹

² BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p3

³ HomeOwners Alliance, [Why the mystery?](#), 7 March 2014

⁴ HomeOwners Alliance, [Connecting with the concerns of homeowners and aspiring homeowners, 2013](#), p22

⁵ BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p57

⁶ The Conveyancing Association, [Responses to DCLG Call for Evidence](#), undated, p2

⁷ See for example: [‘RICS calls for compulsory qualifications for all agents’](#), *RICS press notice*, 3 May 2013

⁸ MHCLG, [Improving the home buying and selling process – Summary of responses to the Call for Evidence and government response](#), 8 April 2018, para 9

⁹ MHCLG, [Protecting consumers in the letting and managing agent market: government response](#), 1 April 2018

2.2 Scotland

In Scotland, a solicitor will manage much of the property sale. However, in England and Wales, unless the estate agent is a qualified chartered surveyor, he/she will liaise with other professional parties.

2.3 Calls for tighten regulation in England & Wales

From time to time, there have been calls for all estate agents to be professionally qualified. In May 2013, the RICS called for all estate agents to sign up to a professional regulation scheme, to ensure consumers are dealing with an agent who is suitably qualified to broker their sale and to advise on the process involved.¹⁰

The Conservative Party Manifesto 2017 committed to “reform and modernise the homebuying process so it is more efficient and less costly”.

More recently, in October 2017, the Government launched a Call for Evidence seeking the views of industry and the public on how to improve the conveyancing process. The consultation [response](#), published on 8 April 2018, concluded that there is no “silver bullet” – no single fundamental change which will improve the process. Instead, the Government proposed smaller, incremental changes to the current system, which when taken together are intended to make the process “quicker, cheaper and less stressful”.

The response sets out the Government’s ‘Plan of Action’ to improve the home buying and selling process in England. In respect of the regulation of estate agents the following proposals were made to:

- **Introduce further estate agent regulation.** The Government will:
 - i) consult on creating a mandatory professional qualification for estate agents;
 - ii) strengthen enforcement of the existing regulatory framework for estate agents; and
 - iii) increase the transparency of referral fees.
- **Develop and publish ‘How to Buy’ and ‘How to Sell’ guides** to ensure the public are better informed of the process.

Further detailed information is provided in a separate Library briefing paper, “[Improving the home buying and selling process in England](#)” (CBP6980).

¹⁰ [“RICS calls for compulsory qualifications for all agents”](#), RICS press notice, 3 May 2013, [online] (accessed 25 January 2016)

3. Enforcement – who regulates estate agents?

Box 1: The National Trading Standards Estate Agency Team (NTSEAT) is responsible for:

- issuing individual banning or warning orders under the EAA 1979;
- maintaining a public register of such banning or warning orders;
- approving and monitoring consumer redress schemes; and
- providing specific advice and guidance to businesses and consumers about their rights and obligations under the EAA 1979

Since 1 April 2014, the [National Trading Standards Estate Agency Team](#) (NTSEAT), headed by Powys County Council, has been responsible for regulating estate agents across the UK. It took over this enforcement role from the OFT. Powys County Council is delivering this new team on behalf of the National Trading Standards Board (NTSB) on a three-year contract. A direct grant funding arrangement between the council and the NTSB is in place during the contract.

The remit of the NTSEAT is to assess whether an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the EAA 1979; a breach of the Act is investigated by Trading Standards officers. If they believe that the conduct of a particular estate agency is in violation of certain provisions of the Act, they can refer the case to the NTSEAT for consideration of a banning or warning order.

In addition, since the 1 April 2014, the NTSEAT has also:

- maintained a public register on banning or warning orders;
- approved and monitored consumer redress schemes; and
- provided specific advice and guidance to businesses and consumers about their rights and obligations under the EAA 1979

As the UK's lead enforcement authority for the EAA 1979, the NTSEAT published in September 2015 "[Guidance on Property Sales](#)". The guidance is intended to help property sales businesses to comply with the [Consumer Protection from Unfair Trading regulations 2008](#) (CPRs) and the [Business Protection from Misleading Marketing Regulations 2008](#) (BPRs) when carrying out activities in the UK. ¹¹

¹¹ National Trading Standards Estate Agency Team's "[Guidance on Property Sales – Compliance with the Consumer Protection from Misleading Marketing Regulations 2008](#)", September 2015, [online] (accessed 25 January 2016)

4. Regulation by statute

Box 2: Regulation of estate agents – relevant legislation

- [Estate Agents Act 1979](#)
- [Consumer Protection from Unfair Trading Regulations 2008](#)
- [Business Protection from Misleading Marketing Regulations 2008](#)
- [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)
- [Consumers, Estate Agents and Redress Act 2007](#)
- [Town and Country Planning \(Control of Advertisements\) Regulations 1992](#)

4.1 Estate Agents Act 1979 (EAA 1979)

Box 3: Overriding aim of the EAA 1979:

- The [EAA 1979](#) regulates estate agency work.
- Its purpose is to make sure that estate agents act in the best interests of their clients, and that both buyers and sellers are treated honestly, fairly and promptly.
- Estate agents who do not comply with the law, could be banned from working as an estate agent. If they ignore the ban, they could be prosecuted and fined.

Estate agents are principally regulated by the [EAA 1979](#) and subsequent orders. By law, a person is an estate agent if they:

- deal with people who want to buy or sell freehold or leasehold property, throughout the UK (this includes commercial and agricultural property);¹²
- do this as part of a business; and
- act on instructions from a client.

In other words, the legal definition of what constitutes estate agency work is very wide and even if a person doesn't call themselves an estate agent they may be seen to be one in law; whether they work for themselves or for someone else.

For the purposes of the EAA 1979, a person cannot be an estate agent if:

- they are an undischarged bankrupt (although they can work for another estate agency, as long as it is not their own company); or
- the NTSEAT has banned them from this work (see below).

If a person is merely “publishing advertisements or disseminating information” (such as in a newspaper or similar publication), then for the purposes of the EAA 1979 they will not be acting as an estate agent.

Below is a non-exhaustive list of examples of the types of activities typically carried out by property retailers that the NTSEAT consider would take them beyond the exemption of merely publishing

¹² For the purposes of the EAA 1979, the definition of estate agency work does not cover the letting of properties

advertisements or disseminating information. If a person engages in such activities, they will be (or are likely to be) engaging in estate agency work:

- Sending out property particulars and arranging viewings
- Offering personal advice to potential sellers or buyers
- Receiving and fielding queries from potential sellers or buyers and passing on details to your clients
- Providing an energy performance certificate or arranging for it to be provided
- Providing clients with a 'For Sale' board and/or putting it up outside their property where the board contains your contact details and you deal with potential buyers on behalf of the seller.

A person will be misleading consumers if they state that they are not doing estate agency work when they are.

Intermediaries, such as internet property portals for private sales, are also exempt from the definition of an estate agent provided by EEA 1979. Intermediaries enable private sellers to advertise their properties and provide a means for sellers and buyers to contact and communicate with one another. This exemption applies provided the business does nothing else covered by the general definition of estate agency work.¹³

Intermediaries

As outlined above (see **Box 3**), the purpose of the EAA 1979 is to make sure that estate agents work in the best interests of their clients, and that both buyers and sellers are treated "*honestly, fairly and promptly*". To this end, the Act sets out the minimum standards of behaviour across the profession. Specifically, the EAA 1979 covers:

Minimum standards of behaviour for all estate agents

- duties that estate agents owe to clients and third parties (such as the passing on of offers, handling money and giving details of charges and terms of business);
- information to clients;
- declaring a personal interest in a transaction;
- handling negotiations (including which records must be kept of offers received);
- handling clients' money;
- insurance that must be taken out to cover liabilities arising out of the estate agency business;
- enforcement of the Act; and
- estate agency redress schemes

¹³ Section 1(4) of the EAA 1979, as amended by the [Enterprise and Regulatory Reform Act 2013 \(Commencement No.3, Transitional Provisions and Savings\) Order 2013](#). This Order has widened the categories of those to whom the EAA 1979 does not apply. Intermediaries who introduce buyers and sellers wishing to arrange private sales, usually through online portals, without giving advice or handling clients' money will now fall outside of the regulation required of estate agents.

In effect, the EEA 1979 regulates the conduct of estate agents in the course of their estate agency work. When investigating an estate agent, the NTSEAT can require anyone (including clients and potential buyers) to give information or produce documents. The EAA 1979 empowers the NTSEAT to issue warning or prohibition notices against those persons whom it considers to be unfit to carry on estate agency work.

Negative licensing regime

The EAA 1979 is often described as imposing a “negative licensing regime” in which an estate agent shown to have breached certain provisions of the Act, and/or to have been convicted of certain criminal offences (such as fraud or other serious dishonesty offences) may be banned from continuing in estate agency work.

4.2 Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

Box 4: Consumer Protection from Unfair Trading Regulations 2008 (the ‘CPRs’)

- On 1 October 2013, the *Property Misdescriptions Act 1991 (PMA 1991)* was repealed, following a consultation by BIS.¹⁴ Estate agents now have to comply with the [Consumer Protection from Unfair Trading Regulations 2008](#) (known as the *CPRs*).
- The CPRs, which are non-specific to the property sector, are wider in scope than the PMA 1991.
- The Regulations extend to all situations where estate agents engage with consumers, this includes not only when dealing with a paying client but also when advertising for business and targeting potential viewers or perspective clients. The CPRs also control descriptions used by estate agents and create criminal offences for traders that breach the Regulations.

In a nutshell, [the CPRs](#) provide consumer protection from unfair or misleading trading practices, misleading omissions and aggressive sales tactics. A practice undertaken by an estate agent will be unfair if it distorts, or is likely to distort, the economic behaviour of the average consumer in their transactional decision making. This means that estate agents must use care when using general descriptions relating to location, environment, photographs, measurements, parking and pricing. For example, failing to disclose a serious problem with title or information about the condition of the property may be regarded as misleading by omission under the CPRs.

The CPRs do not prevent the estate agent from acting in the vendor’s interests by presenting property in the best light, provided what they say, or do not say, does not mislead the purchaser

The CPRs do not prohibit the use of disclaimers. However, it is generally accepted that disclaimers in small print, telling buyers not to rely on details, would not be effective in preventing offences. In particular, they are unlikely to be effective in relation to any misleading omission under the CPRs. This also applies to information provided on an estate agents website. The CPRs also cover the pricing of properties. Consequently, estate agent must be careful not to mislead consumers about the previous price of a property if they are claiming a reduction in price.

The use of disclaimers by estate agents

¹⁴ Department for Business Innovation & Skills, ‘[Consultation on the repeal of the Property Misdescriptions Act 1991](#)’, January 2011, [online] (accessed 29 May 2014)

In respect of a breach of the CPRs, if a case is heard in the Magistrates' Court, the maximum fine is £5,000 per offence. One set of property particulars might contain several offences. If the case is heard in the Crown Court, there is no limit to the fine and up to two years' imprisonment.

It is important to note that the CPRs only cover descriptions used in the sale of property to consumers (i.e. private individuals). In respect of the sale of commercial property, similar provisions exist in the [Marketing Business Protection from Misleading Regulations 2008](#).

Another set of regulations, the [Business Protection from Misleading Marketing Regulations 2008](#) (known as the 'BPRs'), sit alongside the CPRs and govern misleading practices when dealing with other businesses, for example, when liaising with other estate agents about marketing the same property or when marketing a property to business customers. The BPRs ban misleading advertising - which is advertising that deceives (or is likely to deceive) other traders - and either:

- is likely to affect their economic behaviour or
- injure a competitor

The BPRs also regulate comparative advertising which is permissible if certain elements listed in the BPRs are complied with aiming to ensure that the comparisons are fair, objective and substantiated.

The Business Protection from Misleading Marketing Regulations 2008

4.3 Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

These Regulations will apply to a trader selling goods, services or digital content to a consumer. The Regulations set out:

- the information which a trader must give to a consumer before and after making a sale
- how that information should be given
- the right for consumers to change their minds when buying at a distance or off-premises
- delivery times and passing of risk
- a prohibition on any additional payments which appear as a default option
- a prohibition on consumers having to pay more than the basic rate for post-contract customer helplines.

Consumer enters into a contract with an estate agent at home

These regulations apply to contracts concluded on or **after 13 June 2014**.¹⁵ Where the Regulations apply, the consumer has a right to cancel the contract within a set period (**14 calendar days**), and the Regulations set out strict requirements as to how this right to cancel

¹⁵ On this date the Cancellation of Contracts made in a Consumer's Home or Place of Work (etc.) Regulations 2008 (the so-called 'Distance Selling Regulations 2000') and the Off-Premises (Doorstep) Regulations 2008 were revoked

must be communicated to the consumer. If this right to cancel is exercised then in most cases the contract is treated as if it had never been entered into and monies paid become recoverable.

Although the Regulations exempt contracts which create rights in immovable property (i.e. land), estate agents still need to comply with the Regulations. This is because the exemption relates to the contract between the vendor or landlord/lessor and the buyer or tenant/lessee, and not to associated services such as marketing, vetting, inventory listing etc. by estate agents.

4.4 Consumers, Estate Agents and Redress Act 2007

The [Consumers, Estate Agents and Redress Act 2007](#) (the *CEARA 2007*) places a requirement on estate agents to belong to an approved redress scheme. Independent redress schemes which are currently approved by the NTSEAT include:

- the [National Association of Estate Agents](#) and
- the [Property Ombudsman scheme](#)

The Act also implements measures to improve the regulation of estate agents by:

- requiring estate agents to make and keep records, including records of offer letters, for a period of six years;
- giving the NTSEAT and local Trading Standards officers powers to require access to premises and on-site production of records in a wider range of circumstances; and
- expanding the circumstances in which the NTSEAT can consider the fitness of an estate agent to practice and issue prohibition or warning notices under the EAA 1979

Legal requirement on estate agents to belong to an approved redress scheme.

4.5 Town and Country Planning (Control of Advertisements) Regulations 1992

[Schedule 3](#) of the [Town and Country Planning \(Control of Advertisements\) Regulations 2007](#) applies conditions and limitations to advertisements relating to the sale or letting of land or property.¹⁶

Specifically, Part 1 of [Schedule 3](#), paragraph 3A(3) states:

The advertisement shall be removed within 14 days after the completion of a sale or the grant of a tenancy.

In short, once the conveyance of a property has gone through, or premises have been let, any advertising sign (such as 'For sale', 'Sold' or 'To let' signs) may only be displayed outside the property by an estate agent for a maximum period of 14 days.

Estate agents for sale signs

¹⁶ SI 2007/783

4.6 Money Laundering Regulations 2007

On 15 December 2007, the [Money Laundering Regulations 2007](#) came into force across the UK. The purpose of the Regulations is to detect, deter and disrupt financial crime and terrorist financing by reducing the possibility of legitimate businesses being used for money laundering.

Anyone who engages in estate agency work within the meaning of section 1 of the EAA 1979 must comply with the regulations (including internet property retailers). In practice, this means that estate agents must put in place procedures to anticipate and prevent money laundering and to verify their client's identity before entering into a business relationship with them. In addition, estate agents must keep proper written records of transactions. On 1 April 2014, the OFT's anti-money laundering powers and responsibilities in respect of estate agents passed to [HM Revenue and Customs](#).

Legal obligation on estate agents to prevent money laundering

5. Market studies

In 2004, the Office of Fair Trading (the OFT) carried out a market study into the estate agency market in England and Wales. In its report, the OFT concluded that some consumers were not satisfied with the services they received and that price competition between estate agents was limited. It made several recommendations designed to encourage estate agents to provide better services and more competitive fees.¹⁷

2004 OFT market study

Subsequently, there were calls by a range of stakeholders for the government to consider introducing a registration or positive licensing scheme for estate agents; for instance, the [Carsberg Review](#)¹⁸. This was followed in December 2008 by an OFT proposal to carry out another market study; after consulting with interested parties on scope the OFT formally launched this study in February 2009.

On 18 February 2010 the OFT published its report, '[Home buying and selling – A market study](#)'.¹⁹ According to this report, consumer satisfaction with traditional estate agents has improved in recent years:

2010 OFT market study

We [the OFT] found that 12 per cent of consumers were dissatisfied with the service provided by their estate agent, down from 2004 when we found dissatisfaction among sellers and buyers of 26 and 28 per cent respectively.²⁰

The report made several recommendations to improve the home buying process, summarised by the OFT as follows:

We believe that the best way to tackle the lack of price competition is through promoting and encouraging new business models. Innovation in this sector would provide greater choice for consumers and would put pressure on the traditional ways of buying and selling a home. Regulation for these new models could safely be lighter and the current legislation may be preventing, or discouraging, innovation. We recommend that the existing legislation should be updated as soon as possible.

OFT recommendations

We found that most online estate agents can now access the major portals. We do not, therefore, believe that there is currently a need to intervene to ensure that online estate agents are able to access the major internet property portals. This is an area we will be monitoring closely in the future.

We have considered carefully the arguments for and against introducing a dedicated regulatory regime for estate agents and have weighed the potential costs of doing so against the risks consumers face in this sector, the evidence we have of consumer harm, and the likely success of a licensing approach in preventing such harm. Our view is that there is not a strong case for introducing more regulatory structures and rules in this sector. We are not, therefore, recommending positive licensing.

¹⁷ Office of Fair Trading, 'Estate Agency Market in England and Wales', OFT 693, March 2004, [not online]

¹⁸ '[Carsberg Review of Residential Property: standards, Regulation, Redress and Competition in the 21st Century](#)', June 2008, [online] (accessed 29 May 2014)

¹⁹ Office of Fair Trading, '[Home buying and selling – A market study](#)', OFT 1186, February 2010, [online] (accessed 29 May 2014)

²⁰ Office of Fair Trading, '[Home buying and selling – A market study](#)', OFT 1186, February 2010, [online] (accessed 29 May 2014)

15 Regulation of estate agents

Serious misconduct by estate agents should be dealt with by efficient enforcement and penalties which are high enough to deter such misconduct. We will work to improve co-ordination between Trading Standards, OFT and the Ombudsmen for a more rapid, prioritised response to complaints about estate agents which raise serious concerns.

The prospect of additional income may give the estate agent a financial incentive to prefer some buyers over others. We recommend that, as part of its work on the future of estate agency regulation, Government consider further whether the potential for conflicts of interest should be removed, including a ban on such payments.²¹

As already mentioned, the [Enterprise and Regulatory Reform Act 2013 \(Commencement No.3, Transitional Provisions and Savings\) Order 2013](#) essentially widened the categories of those to whom the EAA 1979 does not apply. Specifically, intermediaries who introduce buyers and sellers wishing to arrange private property sales (usually through online portals) without giving advice or handling clients' money fall outside of the Act. The change is part of the Government's Red Tape Challenge and is intended to inject further competition into the sector. The Government hopes that the clarification will give confidence to existing intermediaries and appeal to future entrants with new business models, thereby boosting consumer choice and competition.

EAA 1979 exemption

²¹ *Ibid*

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