

OFT Guidance for estate agents - a consultation

In recent years, the Office of Fair Trading (OFT) carried out a Home Buying and Selling Study in which it was discovered that many estate agents needed guidance when it came to particular areas of law. The term 'estate agent' is used loosely as there are an abundance of agent structures, not just the typical high street firm which displays properties for sale in the window. The guidance will of course be of interest to businesses who are involved in the property sector, but who are not deemed as agents themselves.

As a result of the study, in September the OFT published a consultation¹ on draft guidance which aims to help estate agents offering property sales services, property developers that market and sell their own developments, relevant trade associations, professional bodies and the property ombudsmen comply with two key areas of law:

- 1 The Consumer Protection from Unfair Trading Regulations 2008 ("CPRs"); and
- 2 The Business Protection from Misleading Marketing Regulations 2008 ("BPRs") (together "the Regulations").

The guidance is essentially two fold; its promise is to safeguard consumers who are probably "making the biggest purchase of their lives.....from unfair business practices that can cause substantial harm" whilst seeking to clarify for businesses what they should do to comply with the law and how the Regulations apply to estate agency.

The Regulations are in place to protect consumers. For example, the CPRs say that businesses should act in good faith and should not act aggressively or use any undue influence. To be unfair, the behaviour such as that referred to above, must cause the consumer to do something he would not normally do i.e. purchase a property that he may not have done had misleading information not been provided to him.

The BPRs 'do what they say on the tin'. They prevent businesses from acting deceptively when advertising or marketing services and/or property to potential clients.

Thinking logically through the process of a purchase or sale transaction, there are many ways in which the Regulations could be breached. Examples the OFT's guidance gives is where the agent uses selling points to secure a deal, such as 'a peaceful area' when in truth there is a bypass construction planned, or the classic promise of 'off street parking' when in truth, the parking is located on a publicly adopted highway.

The consultation gives practical guidance on how businesses should comply. Examples include ensuring that marketing information is accurate, treating buyers and sellers fairly, giving consistent market advice and when using selling points making sure that they not misleading. The steps aim to help businesses comply with the Regulations during every step of the transaction, from sending out marketing documentation, right through to negotiating and closing the deal.

Breaches of the Regulations can lead to hefty financial penalties and even imprisonment for severe breaches, so businesses are likely to welcome the guidance if and when it comes to fruition. The consultation period closes on 9 December 2011.



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1 Link to document: [OFT Guidance for estate agents: A Consultation](#)