

Quick House Sales

Market Study

Annexe A: What are the main laws that may apply to quick house sales?

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What are the main laws that may apply to quick house sales?

Our study suggests that some quick house sale providers may not be aware of all the legal requirements that apply to them. In this Annexe, we set out the main laws that apply or may apply to them depending on the services that they provide. We look first at three particularly important pieces of legislation (the EAA, CPRs and UTCCRs), then we list the laws alphabetically.

Penalties

Contravention of consumer protection and/or estate agency legislation can lead to enforcement action being taken. In some instances, the practices involved could lead to criminal prosecution. Of particular note:

- Designated enforcers can apply to a court for an enforcement order to prevent infringements of the CPRs and/or UTCCRs. Breach of an enforcement order could be contempt of court, which could lead to up to two years' imprisonment and/or an unlimited fine.
- The CPRs also contain criminal offences. The penalties are, on summary conviction, a fine not exceeding the statutory maximum and, on conviction on indictment, a fine or imprisonment not exceeding two years or both.
- Under the UTCCRs, where a term drawn up for general use in contracts with consumers is considered unfair, enforcement action can be taken to stop its use, if necessary by seeking a court injunction in England, Wales or Northern Ireland or an interdict in Scotland. A term found by a court to be unfair is not binding on consumers and this may extend to any similar term or a term that has similar effects.
- Under the EAA, the OFT (and, in the future, designated enforcers) can make a prohibition order banning individuals or businesses from carrying on 'estate agency work' if satisfied they are unfit to do so. The power to make such an order is triggered by certain events, for example where the individual or business has: failed to comply with the requirements of the EAA or associated legislation; committed a criminal offence involving violence, fraud or other dishonesty, or committed certain specific offences listed in orders made under the EAA. In deciding whether the agent is unfit,

account would be taken of this event, and also of any other breaches in duties owed in (a) the agent's estate agency work or (b) any other business they carry on. These duties would include those that the agent owes under legislation, contract or rule of law. Alternatively, a warning order might be made under the EAA, which tells the estate agent that if they were to repeat this activity, they will be considered unfit to do estate agency work and a prohibition order would be made. Failure to comply with a prohibition order is a criminal offence which could lead to a fine.

Estate Agents Act 1979 (EAA), as amended by the Consumers, Estate Agents and Redress Act 2007 (CEARA), and subordinate legislation

Who does it apply to? Applies to persons carrying out 'estate agency work' (as defined by the EAA, section 1). A person will be carrying out estate agency work when, in the course of a business, and pursuant to instructions received from another person wishing to dispose of or acquire an interest in land, they do things with a view to introducing to this person a third party wishing to acquire or dispose of that interest, and, where such an introduction has been carried out, do things for the purpose of securing the sale/purchase. It is irrelevant whether or not a business refers to itself as an 'estate agent'. As a result of our market study, we have identified that some quick house sale providers are carrying on the type of activities that we consider mean they are likely to be carrying on estate agency, for example:

- (i) brokers, if their activities involve: introducing sellers to potential buyers and, if an introduction is made, any steps taken to progress a sale, and
- (ii) lead generators' activities where they are instructed by sellers or buyers with a view to identifying and putting them in touch with suitable sellers or purchasers.

The OFT considers that the EAA is therefore likely to apply to providers carrying on such activities.

What does it require? Requires these persons/businesses to comply with certain legislative requirements when doing estate agency work, for example:

- providing clients with particular specified information, in writing, about fees and charges for services before agreeing to act for them, as well as giving details of any later changes or variation to that agreement
- disclosing to clients (i) any services the agent is offering/intends to offer to any prospective purchaser or (ii) any financial benefit the agent or someone connected to the agent would obtain from another person offering services to a prospective purchaser

- promptly disclosing in writing any personal interest that they, or a connected person, may have in the sale
- keeping clients promptly informed in writing about offers received not misrepresenting the existence or nature of offers received or the existence or status (including financial standing) of prospective buyers
- handling clients' money properly, and
- for those engaging in estate agency work in relation to residential property, being a member of or registered with an officially approved estate agents redress scheme.

For more information, see www.oft.gov.uk/about-the-oft/legal-powers/legal/estate-agents-act.

Note. The Government plans to remove property introduction sites from the scope of the EAA by 1 October 2013. These are sites that provide a platform for two people (buyer and seller) to get in touch with each other, but which play no other part in the negotiation or sale.

Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

Who do they apply to? Apply to any person acting in the course of their business in relation to their dealings with consumers, and to anyone acting in the name of or on behalf of that person. Hence, apply to all quick house sale providers (buyers, brokers, lead generators).

What do they prohibit? Prohibit businesses from engaging in unfair commercial practices across their whole range of business activities concerning consumers. This includes their website claims, advertisements, pre-agreement advice, negotiations, and complaints handling. Businesses:

- must not give false or misleading information to consumers that causes or would be likely to cause the average consumer to take a transactional decision they would not have taken otherwise ('misleading actions')

- must not hide or fail to provide consumers with 'material' information, that is the information that the average consumer needs to take an informed decision, where this causes or would be likely to cause the average consumer to take a transactional decision they would not have taken otherwise ('misleading omissions')
- must not adopt practices that, through harassment, coercion or undue influence, significantly restrict or would be likely to significantly restrict how the average consumer would act or their ability to make free or informed choices, where this causes or would be likely to cause the average consumer to take a transactional decision they would not have taken otherwise ('aggressive practices')
- must exercise the reasonable standard of care and skill that is in accordance with honest market practice and in good faith, so as not to materially distort or be likely to materially distort the economic behaviour of the average consumer (showing 'professional diligence')
- must not engage in any of the CPRs' 'banned practices', which are considered unfair in all circumstances. Examples include displaying a trust mark (such as a logo) without authorisation, or claiming falsely to be approved, endorsed or authorised by a professional body or to be a signatory to a code of conduct.

For more information, see the OFT's guidance on the CPRs and BPRs for property sales businesses at www.offt.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection/oft1364 and the OFT's general guidance on the CPRs at www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf.

Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)

Who do they apply to? Apply to businesses, including quick house sale providers, when they use standard contract terms (subject to certain exceptions) in consumer contracts.

What do they require? Require businesses' contractual terms to satisfy the statutory test of fairness, for example:

- Terms must be expressed in plain and intelligible language.
- To respect consumers' legitimate interests, they should not take advantage of consumers' weaker bargaining position, or lack of experience, in deciding what their rights and obligations shall be under the contract.
- Important contractual terms should be prominent in documents and actively brought to the consumer's attention in good time before they are asked to agree to them.

For more information, see www.offt.gov.uk/business-advice/unfairterms.

Business Protection from Misleading Marketing Regulations 2008 (BPRs)

Who do they apply to? Applies to businesses, including quick house sale providers, when they market goods and services to other businesses and/or when they make comparisons with competitors. If a quick house sale broker introduces a seller to a business buyer, then the BPRs apply to its dealings with that buyer (but the CPRs would still apply to its dealings with the home seller).

What do they prohibit? Prohibit businesses from engaging in misleading marketing, for example when advertising services to potential clients that are businesses or when marketing property for sale to business. Also set out the conditions under which businesses are allowed to make comparisons with competitors.

For more information, see the OFT's guidance on the CPRs and BPRs for property sales businesses at www.offt.gov.uk/shared_offt/estate-agents/OFT1364.pdf and the OFT's general guide on the BPRs at www.offt.gov.uk/shared_offt/business_leaflets/general/oft1056.pdf.

Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 (the 'doorstep selling regulations')

Who do they apply to? Apply to contracts for goods or services between consumers and businesses made away from the latter's own business premises, for example in the consumer's home. There is an exemption for contracts for the sale of land or concerning rights relating to land, but we

consider that estate agency services are within scope. Hence, may apply to quick house sale brokers (as defined in this report) in these circumstances.

What do they require? Require these businesses, amongst other things, to provide a minimum seven-day cooling off period and to notify consumers clearly in writing that they have the right to cancel and how they can do this.

For more information, see www.gov.uk/doorstep-selling-regulations.

Common law protections

Who do they apply to? Apply to businesses, including quick house sale providers, entering into or negotiating contractual agreements.

What do they require? Require businesses to perform exactly what they undertook and agreed to do under a contract. If the business fails to fulfill its contractual obligations, it is likely to be in breach of contract, which would entitle a consumer to sue for damages to put them in the position as if the contractual obligations had been performed correctly. This may include compensating the consumer for losses incurred. Businesses should also ensure that, during pre-contractual negotiations, they do not commit misrepresentations by making untrue statements of fact which induce consumers to enter into contracts (for example, in relation to the anticipated speed of sale).

Businesses must also ensure that they do not put undue pressure on consumers to perform contractual obligations, through imposing or threatening a fine or other penalty should they not meet those obligations. While businesses may use contractual terms providing for compensation for genuine losses they incur, the courts will look carefully at terms that set out specific sums (called liquidated damages) to be paid to the business in such circumstances. The courts may find a term to be a penalty if the payment required is not a genuine pre-estimate of loss the business is likely to incur from the consumer's breach. Such penalties are unenforceable under the law.

Consumer Credit Act 1974 (CCA) as amended by the Consumer Credit Act 2006

Who does it apply to? Applies to businesses when they give advice on satisfying debts due under regulated agreements or engage in certain other consumer credit activities. Hence, may apply to quick house sale providers in limited circumstances.

What does it require? Requires those engaged in a consumer credit business, consumer hire business or an ancillary credit business to have a licence from the OFT. To gain a licence, the business must satisfy fitness requirements and adhere to certain rules, for example on advertising, pre-contract disclosure, credit agreements and post-contractual information. (From April 2014, the licensing regime will pass from the OFT to the Financial Conduct Authority).

For more information, see www.oft.gov.uk/about-the-oft/legal-powers .

Consumer Protection (Distance Selling) Regulations 2000 (DSRs)

Who do they apply to? Apply to contracts concluded between businesses and consumers without face-to-face contact, using distance means (for example, the internet or by telephone). Only applies, however, to the supply of goods or services, not to contracts for the sale or disposition of interests in land. Hence, may apply to quick house sale providers where the specific agreement in question is not expressly excluded.

What do they require? Require these businesses to provide certain pre-contractual information and cancellation rights.

For more information, see <http://dshub.tradingstandards.gov.uk>.

Data Protection Act 1998 (DPA)

Who does it apply to? Applies to any persons or organisations processing information relating to individuals (personal data). 'Processing' includes obtaining, holding, using or disclosing such information. Applies to quick house sale providers (buyers, brokers, lead generators) where they hold personal data.

What does it require? Requires these persons or organisations to process personal data fairly and lawfully and, in particular, to handle personal data in accordance with the data protection principles.

For more information, see www.ico.org.uk.

Electronic Commerce Regulations 2002 (ECRs)

Who do they apply to? Apply to businesses, including quick house sale providers, when they have a website and/or market their services electronically, for example by text message or email.

What do they require? Require these businesses to put important business details on their websites, for example:

- their full name and the geographic address at which they are established
- their electronic contact details to enable consumers to communicate with them rapidly and in a direct and effective manner
- details of any professional bodies or trade registers to which they belong.

For more information, see

http://dshub.tradingstandards.gov.uk/sites/default/files/DSChecklist_ECRs_PDF.pdf.

Housing (Scotland) Act 2006 and subordinate legislation

Who does it apply to? Applies to businesses when they market residential property for sale in Scotland. Hence, may apply to quick house sale brokers (as defined in this report) in these circumstances.

What does it require? Requires these businesses to provide a Home Report, comprising a Property Questionnaire (filled in by the seller), an Energy Report (produced by a surveyor) and a Single Survey (a surveyor's assessment of the condition and value of the home).

For more information, see www.homereportscotland.gov.uk.

Money Laundering Regulations 2007 (MLRs)

Who do they apply to? Apply to businesses specified by the MLRs, including those carrying out estate agency work (as defined by the EAA) when in the course of that work. Hence, would apply to quick house sale providers if they are carrying out estate agency work.

What do they require? Require businesses conducting estate agency work to register with the OFT and to take necessary steps to prevent money laundering or terrorist financing, for example to put in place procedures to identify clients and verify their identities before entering into a business relationship or transaction.

For more information, see www.offt.gov.uk/OFTwork/aml/money-laundering.

Provision of Services Regulations 2009 (PSRs)

Who do they apply to? Apply to businesses when they offer or supply services (unless those services are specifically excluded by the PSRs). Will therefore apply to quick house sale providers that offer advice or provide any form of professional service, unless their activities are specifically excluded by the PSRs.

What do they require? Require these businesses to communicate certain information about themselves and their services, including their geographic address, general terms and conditions (if any), and the price and main features of their service. Also require businesses to respond to customer complaints as quickly as possible and to make their best efforts to find a satisfactory solution to the complaint.

For more information, see www.bis.gov.uk/files/file53100.pdf.