

Selling and letting property

Consumer Protection from Unfair Trading Regulations
Business Protection from Misleading Marketing Regulations

Trading Standards information

www.southwark.gov.uk

1. Background

In October 2013 the laws regulating businesses involved in the marketing and sale of property changed.

The Property Misdescriptions Act 1991 was repealed because newer, and wider ranging, consumer and business protection legislation included the activities of property sellers, developers and estate agents. Business landlords and letting agents are also subject to the newer regulations.

The regulations concerned are called the Consumer Protection from Unfair Trading Regulations 2008 (known as CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs). It is a duty of local trading standards services to enforce these regulations.

The CPRs cover business to consumer issues whilst the BPRs deal with business to business issues. A consumer is defined as anyone who is acting for purposes outside their business.

2. Who do the regulations apply to?

Both regulations apply to any person who is acting for purposes relating to their trade, craft, business or profession. This means estate agents and property developers are caught as well as professional landlords and letting agents.

The regulations do **not** apply to statements made by private individuals direct to prospective purchasers. However, an agent of that person must comply with the regulations when passing on information supplied by those parties to prospective purchasers or tenants.

The regulations apply regardless of the country of location provided the marketing of property and/or services reaches, or is capable of reaching, consumers or business in the UK.

3. What do the regulations do?

The CPRs make it illegal to engage in 'unfair commercial practices' towards consumers. A commercial practice covers everything you do that may affect consumers. The term 'consumers' includes your own clients and prospective purchasers, as well as the wider public.

The BPRs make it illegal to engage in misleading activities towards other businesses. They also control how you may make comparisons with your competitors.

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4. What are unfair commercial practices?

There are five strands to what constitutes unfair commercial practices towards consumers.

Firstly it is an offence to engage in any of 31 practices listed in the regulations that are deemed unfair in all circumstances (these are known as banned practices). Examples of these include claiming to be a member of a professional body, or an approved redress scheme, when you are not and displaying a logo or quality mark without authorisation.

In the other four strands an offence can only be committed if the practice causes, or is likely to cause, the average consumer to take a 'transactional decision' he would not have taken otherwise. They are;

- misleading actions, i.e. giving false or misleading information
- misleading omissions, i.e. hiding or failing to provide material information, or providing it in a manner which is unclear, ambiguous or untimely
- aggressive practices, i.e. coercion, harassment or exerting undue pressure
- failing to show professional diligence, i.e. not acting with the standard of care and skill that is in accordance with honest market practice and in good faith

Transactional decision is defined widely and is not simply a consumer's decision to use your services or not, or to buy a property or not. It could, for example, be a client's decision to accept an offer, or a decision to view a property, commission a survey or instruct a conveyancer.

5. What constitutes material information?

This is the information that the average consumer would need to make an informed transactional decision. Remember the term 'transactional decision' is extensive in scope. It is not limited to decisions with financial consequences. It can also include a decision to find out more about your services, or to rule out using the services of one of your competitors.

For example a consumer who is thinking of signing a contract with you is likely to need to know material information such as; what services you will provide; your fees and charges; your terms of business, and any tie-in period.

A consumer who is considering whether to view a property is likely to need to know material information such as the asking price, location, number and size of rooms, and whether the property is freehold or leasehold.

Estate agents would not be expected to research issues that are outside their line of business, for example, where the issues are ones that a surveyor or conveyancer would investigate. However, should an agent become aware of such information, such as a major structural defect, they cannot ignore or suppress it. If the information is material it needs to be disclosed.

6. Pricing

The CPRs cover the pricing of all properties and if you are claiming a reduction in price then you must be careful not to mislead consumers about any previous price. The Pricing Practices Guide published by the Department for Business, Innovation and Skills (BIS) gives guidance on advertising price reductions and can be found online.

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7. How can I make sure I comply with the regulations?

To satisfy your obligations under the regulations, you need to treat consumers, business customers and competitors fairly. It will help if you can show that you act diligently, in keeping with any professional standards and taking reasonable steps to avoid committing a breach. Examples of this would be;

- You take care in gathering and presenting information used to advertise and market property or related agency services
- You have procedures, systems and safeguards in place to ensure that your marketing information is accurate, balanced and does not leave out material facts
- If you become aware, or have reason to suspect, that there might be a problem, you take reasonable steps to establish the facts for yourself so that you can disclose them if they are material. For example, you ask questions, carry out your own checks and/or consult official sources, as necessary
- You act promptly to correct or update marketing material and pass on information whenever new information becomes available
- You are open about any remaining gaps in your knowledge after you have taken all reasonable steps to establish facts or information etc.

8. What are the penalties for breaching the CPRs?

If a case is heard in a Magistrates Court you could be fined. If the case is heard in a Crown Court a fine and custodial sentence of up to 2 years imprisonment can also be given.

In addition, under the provisions of the Estate Agents Act 1979 you could be banned from carrying out some or all types of estate agency work.

If consumers take a complaint to an approved redress scheme, and it is upheld, then compensation of up to £25,000 may be payable. You could also be dismissed from the scheme which means you would not be able to carry on as an estate agent as membership of a scheme is mandatory.

9. Other legislation applicable to estate agents

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

These include provisions for cancellation rights when you enter into certain contracts with consumers away from your business premises. They provide a minimum fourteen-day cooling off period and you must notify consumers clearly in writing that they have the right to cancel and how they can do this.

In addition, if you enter into certain agreements with a consumer without face-to-face contact (for example online), you must provide certain pre-contractual information and cancellation rights. This applies, however, only to the supply of goods or services (such as estate and letting agency services), not to contracts for the sale of land or residential lettings contracts.

- Electronic Commerce Regulations 2002 and Companies Act 2006

If you have a web presence e-commerce rules require you to provide certain information about your business, for example the geographic address at which your business is based, your contact details to enable consumers to communicate with you, and details of any professional bodies and trade associations to which you belong.

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Company law requires you, amongst other things, to display your registered company name prominently at the places where you carry out business and your registered company name and registered office address on all of your company correspondence, documents and websites.

- Energy Performance of Buildings (Certificates and Inspections) (England and Wales) 2007, as amended by the 2011 regulations

Require you, if you are acting for a seller and marketing property for sale, to satisfy yourself before marketing that the seller has an Energy Performance Certificate (EPC) or has commissioned one and to include the first page of the EPC (the recommendations) in written property particulars.

- Estate Agents Act 1979 as amended by the Consumers, Estate Agents and Redress Act 2007

Requires you, when carrying out estate agency work, to comply with certain rules of conduct when acting for clients, for example:

- providing them with full and detailed information about fees and charges for your services
 - disclosing any personal interest that you may have in the sale
 - keeping them promptly informed about offers received
 - handling their money properly and
 - being a member of or registered with an officially approved consumer redress scheme.
- Financial Services and Markets Act 2000

Requires you to establish whether your business is a 'regulated activity' (for example advising, arranging or administering home finance activities) and, if it is, to obtain authorisation or exemption from the Financial Conduct Authority.

- Money Laundering Regulations 2007

When you are carrying out estate agency work, these require you 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.

- Redress schemes membership

Require all persons engaging in residential lettings and estate agency work in the UK to belong to an officially approved estate agents redress scheme. These provide a free and independent service for buyers or sellers of residential property who are in dispute with a member estate agent. There are three approved schemes; (1) Ombudsman Services: Property (2) the Property Ombudsman (TPO) and (3) Property Redress Scheme.

10. Further information

The Chartered Trading Standards Institutes' [Business Companion website](#) offers comprehensive guidance on regulatory issues affecting business.

Since the abolition of the Office of Fair Trading the national regulation of estate agents under the 1979 Act has been overseen by Powys County Council. Guidance on property sales and regulatory compliance is available from their [website](#).

If you still require further assistance please contact us at the address given at the foot of page 1.

PLEASE NOTE only the Courts can interpret legislation with authority and this leaflet is subject to revision or amendment without notice.
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