

19 December 2008

David Dalby, FRICS
Director - Residential
Royal Institution of Chartered Surveyors
12 Great George Street
London SW1P 3AD

Property Standards Board – Draft Code for Residential Estate Agency

Dear Mr Dalby,

Consumer Focus welcomes the opportunity to comment on the Property Standards Board's Draft Code for Residential Estate Agency. The huge financial and emotional investment that people make when buying and selling their home, together with the complexity and risks attached to these transactions, makes it vital that consumers receive a fair and competent service from estate agents.

The estate agency sector has a poor reputation among consumers due to poor practice among a significant proportion of the profession, as highlighted by the Office of Fair Trading market study in 2004 and evidence submitted to the Carsberg Review in 2008. As we enter a recession, fewer consumers will use the services of an estate agent; however, in our view, this actually makes it more rather than less important to improve standards in the sector. If estate agents can demonstrate they are consistently delivering high levels of service to their users, then consumers will have greater confidence in dealing with them when the housing market picks up again.

More broadly, we welcome the creation of the Property Standards Board as an attempt to develop a cross industry set of standards for residential estate agency business. While the focus of this code is understandably targeted at estate agency, we support the Board's ambition to provide codes in other aspects of residential transactions, in particular the rental sector where the Rugg Review has highlighted a range of consumer problems that need to be tackled. As the Board has identified, estate agency and rental transactions are often undertaken by the same business, so it makes sense for firms and consumers alike to join-up regulation as much as is practicable.

High-level points

Before offering some comments on the detail of the code, we would like to make some high-level observations.

Very few industry codes of practice succeed in gaining high levels of recognition among the public, to the extent that consumer demand provides a sufficient incentive for businesses to subscribe to a code. Further, the poor track record of self-regulation across the economy in the past, together with the current proliferation of logos and schemes, mean that consumers will need some convincing that the Board's initiative will deliver what it promises, whatever its actual merits are. The OFT Consumer Codes Approval Scheme was established to provide a robust 'buy with confidence' scheme that consumers can recognise across their purchasing needs. CCAS is now beginning to achieve penetration across major parts of the economy and, of course, it is already present in the estate agency sector to a degree. Therefore, we would encourage the Board to consider the merits of seeking CCAS status for its code. At the least, as CCAS represents the current acceptable standard for robust codes of practice, the Board should carry out a self-assessment against the publicly-available criteria, in order to ensure that its code covers the right areas and to the right level.

In order to maintain confidence among consumers that the code is there to protect their interests, rather than those of the profession, it is vital for there to be a clear separation between those who regulate estate agents from those who represent their interests. The Board, through the balance of its membership, does this admirably. However, we were concerned to note that the stated fifth aim of the code is to: 'promote the status of Agents as vital facilitators of property transactions'. It is not essential for consumers to use the services of an estate agent; indeed, private sales are on the rise and new business models, such as internet-based companies or those that may emerge following implementation of the Legal Services Act, will offer a growing range of alternatives. We will be encouraging the OFT, in its forthcoming market study on home buying and selling, to strike the right balance between encouraging innovation and consumer protection. Increased consumer confidence in estate agents may be a by-product of the Board's code of practice, but it should not be its *raison d'être*.

The code is silent on how compliance with its standards will be monitored and enforced, including available disciplinary sanctions. This is absolutely critical to give consumers confidence that estate agents are actually doing in practice what they claim they are on paper. We are sure that the Board has mechanisms in place, or shortly will have, in this respect. However, we encourage the Board to seek consumer input into the design of these mechanisms and to include details of these on the face of the code.

These mechanisms should include a facility for consumers to report non-compliance, but the Board should not entirely rely on consumer intelligence, as the complex and behind-the-scenes nature of the property transaction process makes it difficult for consumers to spot malpractice. In addition, we hope that the Board will share its intelligence with the OFT, which has the nuclear option of licence removal.

The code is also silent on entry requirements. Anyone may set up an estate agency business, but the purpose of self-regulation is to offer consumer protection above the minimum provided by law. Here is not the place to debate the merits of a positive versus a negative licensing arrangement for estate agency. On balance, we agree with Sir Bryan Carsberg's conclusion that, in the context of what is a complex transaction, 'consumers have an expectation that someone with an appropriate qualification is ensuring that the advice they are given is sound and well founded'. Therefore, the Board should consider with its stakeholders what form of entry requirement and/or ongoing system of checks is desirable and possible.

The relationship between the core principles and the text underneath is critical. We were encouraged to see the emphasis in the fourth objective on promoting an 'overarching **culture** of fairness and transparency' (our emphasis). As experience in the financial services industry and elsewhere suggests, a highly-prescriptive set of rules does not encourage those ultimately responsible for providing good levels of service to consumers to take ownership of an industry's problems, but rather fosters a tick-box mentality in compliance departments. Therefore, we were encouraged to see the statement that subscribers 'must approach all their activities in accordance with the overarching principles'. The bullets underneath these principles represent a non-exhaustive list of behaviours that underpin a culture of fairness and transparency. This approach will create challenges for the Board in terms of measuring compliance, but we consider the benefits outweigh these difficulties.

Finally, we understand the geographical jurisdiction of the code will extend across the UK. When providing the code in a suitable format for the public, it will be important to use language relevant to the different market supply structure in Scotland. In particular, it should be made clear whether the code applies to solicitors acting as estate agents, who predominate in the Scottish market. While such solicitors are of course regulated by the Law Society of Scotland, it is unclear to what extent this code will also apply to them, and we would ask whether the Board has had discussions with the Society about this issue.

Detailed points

The code's main components seem to map well across the problem areas identified in the OFT's market study, in particular around provision of information, misrepresentation and conflicts of interest. We make a number of small points below.

Core principle 1: vulnerable individuals

We welcome the focus on 'vulnerable individuals', but we would encourage the Board to adopt a wider definition of vulnerability than the one used in the code's Glossary. Consumer Focus defines vulnerability as relating to consumers whose needs are not ordinarily provided for in the market concerned. Consumers can end up being disadvantaged in markets either due to their personal circumstances or as a result of the actions of providers. This may involve a small or great many consumers, and people with different capabilities or circumstances, depending on the specific context.

Core principle 2: acting in the interests of the client

We are supportive of the principle that Agents should use their best endeavours to achieve the best possible outcome for their client. However, unfair bias towards one of the parties was a problem identified by the OFT, and so a reference to this principle would serve us a useful counterbalance.

Core principle 3: disclosure of pre-contractual information

We are supportive of the list of items that Agents must provide to their clients; however, it would be helpful to clarify at what stage this pre-contractual information should be provided to consumers.

Core principle 3: disclosure of redress procedures

We support a requirement for details of the Agent's complaint-handling procedure to be provided at the pre-contractual stage. Details of the statutory redress scheme that the Agent subscribes to should also be provided at this point.

Core principle 3: disclosure of key terms of business

Again, we support a requirement for Agents' terms of business to be clear, easily understandable and unambiguous. However, in addition we would expect Agents to

highlight the most relevant terms up front, consistent with existing provisions in unfair contract terms legislation.

Core principle 3: complaint resolution

We would welcome a maximum time limit for the Agent to resolve a complaint internally, similar to the eight-week/deadlock arrangements in the energy market and other sectors, so that Agents do not seek to frustrate consumers into abandoning their complaint by deliberately drawing-out the complaint-handling process.

Core principle 6: timeliness of feedback

The draft code currently requires Agents acting for both buyers and sellers to provide feedback or communicate offers 'within a reasonable time'. We fear that the word 'reasonable' will be difficult to interpret in practice and leaves Agents with too much wriggle-room. Instead, we suggest use of the word 'promptly'.

We hope these comments are helpful and look forward to working with the Property Standards Board further on this and future initiatives.

Yours sincerely,



Steve Brooker
Head of Fair Markets