

David Hart
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX.

Response to the draft Office of Fair Trading guidance for estate agents consultation

December 2011

About us

Consumer Focus and Consumer Focus Scotland are the independent statutory organisations campaigning for a fair deal for consumers. We are the voice of the consumer and work to secure a fair deal on their behalf. In campaigning on behalf of consumers we aim to influence change and shape policy to better reflect their needs. We do this in an informed way owing to the evidence we gather through research and our unique knowledge of consumer issues. We have a duty to be the voice of vulnerable consumers, particularly those on low incomes, people with disabilities, people living in rural areas and older people. In addition, we also seek to identify where other consumers may be disproportionately disadvantaged by a particular consumer issue or policy.

Overview

Consumer Focus and Consumer Focus Scotland welcomes the consultation on the draft OFT guidance for estate agents. We are grateful for the early sight of the original draft guidance and are able to see that many of our initial informal suggestions have been incorporated into the revised draft forming part of this consultation.

Our Response

We are pleased to note that the guidance makes it clear that it applies to solicitors acting as estate agents as well as non-solicitor estate agents. This is important for consumers in Scotland, given the prominent role which solicitors have in the Scottish estate agency market. It may not always be clear to consumers whether they are dealing with a solicitor or a non-solicitor estate agent. Buyers and sellers should be able to expect the same levels of service and protection whether they use a solicitor or a non-solicitor estate agent.

In general terms the guidance is clear and helpful. Some further examples of misleading actions or failures to provide sufficient information could be included such as when estate agents give wholly unrealistic and low guide prices for auctions simply to entice potential buyers to the sale. Some further examples could include:

- Failing to advise potential purchasers about sitting tenants
- Failing to disclose the existence of water meters or other ongoing contracts, particularly with regard to solar energy measures for which there is an ongoing liability or in the future, Green Deal payments

One area of the guidance which Consumer Focus Scotland considers to be unclear is in relation to the effect of the property questionnaire in the home report which the seller's agent must provide under the Housing Act (Scotland) 2006. While the legal obligation to provide the home report to prospective buyers lies with the agent, the information in the property questionnaire is provided by the seller, who is also liable in terms of the missives for providing accurate information to the buyer. Is the agent then obliged to check the accuracy of that information? Or are they entitled to rely on the seller providing accurate information?

There is a similar issue in relation to the second bullet point on page 11 of the guidance as this information is required to be provided by the seller to the vendor as part of the home report.

It is also not clear how the banned practice of using bait advertising sits with the practice in Scotland of advertising properties on the basis of 'offers over' a certain price. While this is much less prevalent following the introduction of the home report and the downturn in the market, this has long been a common practice in Scotland.

With regard to dissemination of the guidance, bodies such as the National Association of Estate Agents should be in a position to circulate the guidance to their members. Similarly the Law Society (England and Wales) and the Law Society of Scotland should make their members aware of new guidance. The Office of Fair Trading should also consider offering some training in relation to the guidance to both solicitor and non-solicitor estate agents.

For further information contact:

Gemma Bowen
Head of Consumer Focus Investigations

Sarah O Neil
Director of Policy
Solicitor

Consumer Focus
Ground Floor
Portcullis House
21 Cowbridge Road East
Cardiff CF11 9AD

Consumer Focus Scotland
Royal Exchange House
100 Queen Street
Glasgow G1 3DN

Telephone: 02920 787160
Email:
gemma.bowen@consumerfocus.org.uk

Tel. 0141 226 5261
Email:
sarah.oneill@consumerfocus-scotland.org.uk