

# NATIONAL TRADING STANDARDS

Estate Agency Team

Protecting Consumers  
Safeguarding Businesses

**Estate Agency Compliance Toolkit**

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## INTRODUCTION

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**The Estate Agents Act 1979 regulates estate agency work. Its purpose is to make Sure that estate agents act in the best interests of their clients, and that both buyers and sellers are treated honestly, fairly and promptly.**

**The National Trading Standards Estate Agency Team (NTSEAT) is hosted by Powys County Council (PCC) with support from the Isle of Anglesey Council (IoAC). Powys County Council is designated as the ‘lead enforcement authority’ for the purposes of the Estate Agents Act 1979.**

**The team is primarily responsible for the regulation of estate agency work in the UK and for overseeing the UK’s consumer redress schemes and Alternative Dispute Resolution entities. NTSEAT does this through:**

- issuing individual banning or warning orders under the Act
- maintaining a public register of such banning or warning orders
- approving and monitoring consumer redress schemes & ADR entities
- providing specific advice and guidance to businesses and consumers about their rights and obligations under the Act

## THE PURPOSE OF THIS TOOLKIT

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**With the backdrop of an ever changing consumer regulatory landscape, this toolkit is designed to give local authority Trading Standards enforcement officers clear and concise guidance on ways in which to assess the compliance of their local estate agencies to some key industry requirements.**

**This toolkit is not designed to be an exhaustive list of compliance checks that can be considered when investigating companies or individuals. However, it does cover some of the main areas of compliance verification which may be carried out as ‘desktop checks’, utilising the minimum of officer’s time resources. Some of the activities could give rise to the issuing of a Penalty Charge Notice (where required) giving the possibility of recovering some time costs, too. It is important to note that where breaches are identified and confirmed, there is the possibility that it would also count as an offence under the Consumer Protection from Unfair Trading Regulations 2008.**

### **Working Together**

NTSEAT is charged with assessing the suitability of individuals and businesses to work as estate agents and prohibits or warns those found to be unfit.

For NTSEAT to begin investigating the possibility of a warning or a prohibition order, either there must be a confirmed breach of the Estate Agents Act, or an undertaking, or an offence must have occurred which would then provide the necessary trigger point.

For this reason, the work of local Trading Standards Services and other enforcement agencies such as the Police or HMRC is essential in helping to ensure the effective regulation of the estate agency industry. Once NTSEAT receives notice that an investigation has taken place, it can then consider any appropriate further action.

### Approved Redress Schemes

There are two approved redress schemes in the UK. These are:

- The Property Redress Scheme - [theprs.co.uk](http://theprs.co.uk)
- The Property Ombudsman - [tpos.co.uk](http://tpos.co.uk)

## MEMBERSHIP TO REDRESS SCHEMES

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### Legislation Background - UK wide

With effect from 1 October 2008, all persons carrying out “estate agency work” as defined by Section 1(1) of the Estate Agency act 1979 (the Act) must have joined an appropriate (i.e. approved by NTSEAT) redress scheme. Section 23A(1) of the Act (as inserted by the Consumers, Estate Agents and Redress Act 2007) provides that the Secretary of State may make an Order requiring every person that undertakes relevant estate agency work to be a member of an approved redress scheme.

The Estate Agents (Redress Scheme) (Penalty Charge) Regulations 2008 prescribe the amount of the penalty charge that may be imposed by a local trading standards officer on an estate agent who breaches the duty to belong to an approved redress scheme. The amount is currently set at £1,000

### ***Take the following steps to confirm compliance:***

***Step 1: Check the agent’s membership status via the redress schemes’ websites. Contact the scheme operator to double check if no membership is shown.***

***Step 2: Send a letter of warning to the agent, advising them to gain membership (an example letter is on the next page)***

***Step 3: Notify NTSEAT if the agent remains non-compliant.***

***Step 4: Issue a Penalty Charge Notice, or request NTSEAT to issue one for you.***

**PLEASE NOTE – IF NTSEAT ISSUE A PCN, ANY MONIES WILL BE PAYABLE TO NTSEAT.**



## Penalty Charge Notice Page 1

Your ref

Tel:

Our ref:

Email

Date:

### **PENALTY CHARGE NOTICE**

**BREACH OF DUTY: ESTATE AGENTS (REDRESS SCHEME) ORDER made under s23A ESTATE AGENTS ACT 1979 (membership of approved redress schemes) PLEASE AMEND IF USING DIFFERENT LEGISLATION AND THROUGHOUT PCN**

**To:**

**Address:**

#### **DECLARATION AND CIRCUMSTANCES**

I, <INSERT NAME>, an authorised officer of XXXX County Council believe that you have committed a breach of the duty under the Estate Agents (Redress Scheme) Order 2008, made under Section 23A of the Estate Agents Act 1979, namely a failure to comply with the duty to belong to an approved redress scheme.

#### **DETAILS OF BREACH**

Between <INSERT DATE> and <INSERT DATE> the business was not a member of an approved redress scheme.

#### **WHAT THIS NOTICE REQUIRES YOU TO DO**

This notice requires you to carry out one of the following actions within the period of 28 days starting the day after the date of this notice; i.e. by <INSERT DATE>

**A** – pay the penalty charge of £1000, or

**B** – give notice to this authority that you wish the notice to be reviewed (see reverse for details)

SIGNED:

DATE:

<INSERT NAME>

<INSERT JOB TITLE>

## Penalty Charge Notice Page 2

### HOW THE PENALTY CHARGE MAY BE PAID

The penalty charge should be paid to **XXX** County Council

Payment may be made:

- by cheque (payable to 'XXXX County Council') sent to **(Insert your address)**
- by phone – ring **(insert your details)** with your debit or credit card details

### 2. WHAT TO DO IF YOU WOULD LIKE THE COUNCIL TO REVIEW THIS NOTICE

Please give notice in writing before the 28 day period has expired

- by email to **(insert your details)**, or
- by post to **(Insert your details)**

Please include an explanation of why the review is being requested. A penalty charge notice can be withdrawn if we are satisfied that:

- a) you did not commit the breach specified in the notice, or
- b) that the notice was not issued within the period of six months following the date on which the breach occurred (or in the case of a continuing breach, the last date on which the breach occurred)
- c) that the notice does not comply with the conditions set out in Schedule 4 of the Estate Agents Act 1979 **(Please amend if using different legislation)**
- d) that in the circumstances of the case it was not appropriate for a penalty charge notice to be given

### 3. WHAT YOU SHOULD EXPECT AFTER A REVIEW

We will consider any representations you make and the circumstances of the alleged breach, and decide whether to confirm or withdraw this notice. We will notify you of our decision in writing. If we confirm the penalty charge you may then appeal to the County Court within 28 days from the day after the date of our confirmation. The Court may extend the period for appealing against the notice. An appeal to the County Court must be one or more of the grounds listed in section 2 (a), (b), (c) or (d) above.

### 4. IF YOU DO NOT PAY THE PENALTY CHARGE (INCLUDING NON-PAYMENT AFTER AN UNSUCCESSFUL REVIEW OR APPEAL)

Unless we withdraw this notice, or a Court quashes it, we can start debt recover proceedings against you through the County Court. These proceedings cannot be started any earlier than:

- a) the end of the period allowed for the payment of the charge; or
- b) 28 days from the day after we confirm the penalty charge after a review (where requested); or
- c) Where you appeal to the County Court following a review, before the end of the period of 28 days from the day on which the appeal is either withdrawn or determined.

**IMPORTANT: A BREACH OF THE DUTY TO BELONG TO AN APPROVED REDRESS SCHEME IS A TRIGGER EVENT FOR CONSIDERATION OF PROHIBITION ACTION AND MAY RESULT IN A PROHIBITION ORDER AGAINST AN INDIVIDUAL AND/OR BUSINESS.**

**Note: Under s.35 of the Energy Performance of Building Regulations, officers have the power to require a person to show evidence of any reasonable steps taken to obtain an EPC.**

## ENERGY PERFORMANCE CERTIFICATE REQUIREMENTS

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### Legislation Background – England & Wales only

The Energy Performance of Buildings (England and Wales) Regulations 2012

These regulations place a duty on the relevant person (the seller or landlord) to ensure that an EPC has been commissioned prior to the building being placed on the market. The person acting on behalf of the relevant person (for instance, the estate agent) has a duty to ensure that they are satisfied that an energy performance certificate has been commissioned for the building. Before the end of 7 days starting the day the building is first put on the market every reasonable step must be taken to obtain the EPC.

If, after 7 days and having used all reasonable efforts, the EPC was unobtainable – the time limit is extended for a further 21 days starting the end of the previous 7-day period. If after 28 days has passed and the building is still being marketed without an EPC, an officer of the local weights and measures authority may issue a penalty charge notice payable by the relevant person or the agent, not exceeding £200 for a non-commercial building, per property. (A commercial building carries a fine of £500 minimum, per property.)

### ***Take the following steps to confirm compliance:***

***Step 1: Search estate agent particulars online for any buildings that are marketed without an EPC.***

***Step 2: Send an initial letter to the agent (an example is on the next page)***

***Step 3: Depending on the outcome of the investigation i.e. if there is no evidence of reasonable steps being taken or 28 days have passed – issue a Penalty Charge Notice (an example is provided in this document) and notify NTSEAT.***

## **INITIAL LETTER FOR NO EPC**

Displayed

[ ]

Your ref

Telephone

Our ref

Email

Date

Dear Sir/Madam

### **ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES) REGULATIONS 2012**

[name of agent and address]

Following the implementation of the above Regulations it is a requirement that before a building is put on the market that the seller or landlord must commission an EPC for that building (if no valid EPC exists already for it). A person acting on behalf of the seller or landlord (for example, the estate or letting agent) must be satisfied that an EPC has been commissioned for the building before it is put on the market.

The following property(s) are currently being marketed without an EPC on the following website/publication  
[list the properties and specify the publication]

The above Regulations allow an initial 7 days from the day the building is first marketed to obtain an EPC for that building. A further 21 days' extension is allowed should you be able to show evidence that all reasonable steps have been taken to obtain an EPC for that building but have remained unable to do so. Under s. 35 of the above Regulations we may require you to produce evidence of any of the aforementioned reasonable steps taken.

Should you be unable to obtain an EPC within 28 days or fail to provide any evidence requested, it may lead to the issuing of a penalty charge notice of £200. You can email details to us at [insert email address] or send it to the address on this letter.

Failure to provide an EPC when required to do so is also a trigger for the National Trading Standards Estate Agency Team to consider an agent's fitness to continue to engage in estate agency work. A continued refusal to comply could lead to the National Trading Standards Estate Agency Team issuing a prohibition or warning order against an individual or business engaging in estate agency work.

Yours faithfully

<insert name and title>

## Penalty Charge Notice for No EPC Page 1

Your ref

Tel:

Our ref:

Email

Date:

### **PENALTY CHARGE NOTICE**

#### **BREACH OF DUTY: THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES) REGULATIONS 2012 (making available an energy performance certificate)**

**To:**

**Address:**

#### **DECLARATION AND CIRCUMSTANCES**

I, <INSERT NAME>, an authorised officer of **xxxx** County Council believe that you have committed a breach of the duty under the Energy Performance of Buildings (England and Wales) Regulations 2012, namely to not taking reasonable steps to ensure when required that an energy performance certificate had been commissioned for a building prior to going on the market.

#### **DETAILS OF BREACH**

Between <INSERT DATE> and <INSERT DATE> the following property(s) were marketed through **[enter publication details]** without being able to show that all reasonable steps were taken to ensure the commission of an energy performance certificate prior to placing the building(s) on the market.

#### **WHAT THIS NOTICE REQUIRES YOU TO DO**

This notice requires you to carry out one of the following actions by 28 days starting the day after the date of this notice; i.e. by <INSERT DATE>

**A – pay the penalty charge of £200 [per building](£500 for commercial, per property), or**

**B – give notice to this authority that you wish the notice to be reviewed (see reverse for details)**

SIGNED:

DATE:

<INSERT NAME>

<INSERT JOB TITLE>

## Penalty Charge Notice for No EPC Page 2

### HOW THE PENALTY CHARGE MAY BE PAID

The penalty charge should be paid to XXXX County Council.

Payment may be made:

- by cheque (payable to 'XXXX County Council') sent to **(Insert your details)**
- by phone – ring **Insert your details** with your debit or credit card details

### 2. WHAT TO DO IF YOU WOULD LIKE THE COUNCIL TO REVIEW THIS NOTICE

Please give notice in writing before the 28 day period has expired

- by email to **Insert your details**, or
- by post to **Insert your details**

Please include an explanation of why the review is being requested. A penalty charge notice can be withdrawn if we are satisfied that:

- a) you did not commit the breach specified in the notice, or
- b) that the notice was not issued within the period of six months following the date on which the breach occurred (or in the case of a continuing breach, the last date on which the breach occurred)
- c) that the notice does not comply with the conditions set out in Schedule 4 of the Estate Agents Act 1979 **(Please check legislation applicable if for letting agents)**
- d) that in the circumstances of the case it was not appropriate for a penalty charge notice to be given

### 3. WHAT YOU SHOULD EXPECT AFTER A REVIEW

We will consider any representations you make and the circumstances of the alleged breach, and decide whether to confirm or withdraw this notice. We will notify you of our decision in writing. If we confirm the penalty charge you may then appeal to the County Court within 28 days from the day after the date of our confirmation. The Court may extend the period for appealing against the notice. An appeal to the County Court must be one or more of the grounds listed in section 2 (a), (b), (c) or (d) above.

### 4. IF YOU DO NOT PAY THE PENALTY CHARGE (INCLUDING NON-PAYMENT AFTER AN UNSUCCESSFUL REVIEW OR APPEAL)

Unless we withdraw this notice, or a Court quashes it, we can start debt recover proceedings against you through the County Court. These proceedings cannot be started any earlier than:

- a) the end of the period allowed for the payment of the charge; or
- b) 28 days from the day after we confirm the penalty charge after a review (where requested); or
- c) Where you appeal to the County Court following a review, before the end of the period of 28 days from the day on which the appeal is either withdrawn or determined.

**IMPORTANT: A BREACH OF THE DUTY TO ENSURE THE COMMISSIONING OF AN ENERGY PERFORMANCE CERTIFICATE IS A TRIGGER EVENT FOR CONSIDERATION OF WARNING OR PROHIBITION ACTION AND MAY RESULT IN A PROHIBITION OR WARNING ORDER AGAINST AN INDIVIDUAL AND/OR BUSINESS**

## HMRC & SUPERVISION OF ANTI MONEY LAUNDERING REGULATIONS

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### Legislation Background – UK wide

On 1 April 2014 HM Revenue and Customs (HMRC) became the supervisor of Estate Agency Businesses under the Money Laundering Regulations 2007. The Money Laundering Regulations were introduced to ensure businesses at risk of being used for money laundering by criminals and terrorists have controls in place to minimise the risk of this happening. It is an offence to trade as an estate agent unless you are registered with HM Revenue and Customs (HMRC) for anti-money laundering supervision. The current legislation in place is The Money Laundering, Terrorist Financing and Transfer of Funds (Information on The Payer) Regulations 2017.

Whilst carrying out searches on your local estate agencies, it is possible to search the list of current Supervised Businesses on the HMRC Register by visiting:

[www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register](http://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register)

***Take the following steps to confirm compliance:***

***Step 1: Search the money laundering supervised businesses register to see if an agent is signed up.***

***Step 2: Should the agency not be listed, you may notify NTSEAT by emailing [estate.agency@powys.gov.uk](mailto:estate.agency@powys.gov.uk) and it will be reported to HMRC through the organisations' new data sharing arrangement.***

#### **HMRC Guidance on Anti-Money Laundering Registration**

The HMRC has published guidance for estate agents on how best to protect against money laundering. This is available through:

[www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register](http://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register)

## **ALTERNATIVE DISPUTE RESOLUTION ('ADR')**

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### Legislation Background – UK wide

From 9 July 2015 alternative ways of resolving contractual disputes between consumers and businesses will be available much more widely across the UK and the EU. With the implementation of the Alternative Dispute Resolution directive, there will be the creation of ADR providers within the remit of the estate agency sector.

As such, there will be requirements placed on relevant businesses which will be effected by the creation of an ADR provider applicable to their trade sector. For example, any business that is obliged by law or through membership of a particular trade association to use a particular ADR provider, or which has voluntarily committed to use a certified ADR provider to resolve disputes, must provide information about that certified ADR provider on their website and, if applicable, in the terms and conditions of sales or service contracts.

For estate agents, who are required by law to be member of a residential redress scheme, they will have to conform with these changes

### ***Take the following steps to confirm compliance:***

***Step 1: Whilst carrying out searches on an estate agent's website after the implementation of the ADR regulations, check that all the specified information is displayed correctly on the site or terms & conditions.***

***Step 2: Consider advisory or enforcement action in line with your service's policies and notify NTSEAT by emailing [estate.agency@powys.gov.uk](mailto:estate.agency@powys.gov.uk) of any confirmed infringements***

#### **Information**

**For information on the ADR regulations, visit :  
[www.gov.uk/government/publications/alternative-disputeresolution-for-consumers](http://www.gov.uk/government/publications/alternative-disputeresolution-for-consumers)**

## **CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS & MATERIAL INFORMATION**

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### **Legislation Background – UK wide**

The CPRs prohibit 31 banned practices always considered to be unfair and create offences for aggressive practices. The Regulations prohibit ‘misleading actions’ and ‘misleading omissions’ that cause, or are likely to cause, the average consumer to take a transactional decision they would otherwise not have taken. The CPRs apply to commercial practices relating to products (meaning both goods and services) before, during and after a contract is made which includes all services carried out by an estate agency.

#### **What is prohibited**

- Broadly speaking there are 4 types of practices controlled by the CPRs
- Practices that are prohibited in every circumstance (the 31 banned practices)
- Misleading acts and omissions
- Aggressive practices
- general duty not to trade unfairly

Aside from the 31 banned practices, it is necessary to show that the agent’s actions has an effect (or is likely to have an effect) on the actions of the average consumer. This section of the Toolkit deals with a range of actual scenarios in property sales services previously posed to NTSEAT relating to the Consumer protection from Un-fair Trading Regulations, in particular when material information ought to be disclosed by an estate agent and how. For further guidance on the CPRs in relation to property sales services,

**[Read our “Guidance on Property Sales” on powys.gov.uk/estate agency](https://www.powys.gov.uk/estate-agency)**

**Offences under the CPRs can be a “trigger” event for NTSEAT to be able to investigate whether a prohibition or a warning order must be issued.**

**Trading Standards partners who take action against estate agents can share this information with NTSEAT through [estate.agency@powys.gov.uk](mailto:estate.agency@powys.gov.uk)**

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## **SCENARIO ONE**

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### **The unauthorised bedroom**

A property is advertised by a local estate agency business. It is listed on online property portals, the local newspapers and the business' shop windows as benefiting from two double bedrooms and an attic conversion. It is clear to the potential buyers who view the property that there has been extensive work carried out to a high standard throughout the home, including the upstairs attic room which is easily accessible by well installed carpeted stairs and which itself contains a decent sized double bed and in-built under eaves wardrobe storage.

The potential buyers put in an offer, no questions asked, which is immediately accepted by the sellers. At no point is the question of building regulations raised in any aspect of the property and it later comes to light through the buyer's conveyancing searches that the attic does not have the necessary permissions to be a bedroom. In this instance, has the agency breached the Consumer Protection from Unfair Trading Regulations?

## SCENARIO ONE - Answer

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### The unauthorised bedroom

The CPRs define material information as 'the information that the average consumer needs, according to the context, to take an informed transactional decision.'

In practice, this means equipping the average consumer with all the information they need to make a particular transactional decision on an informed basis. Consumers need to be provided with the right information at the right time, so that they are able to find the product that is right for them in a straightforward way.

Estate agents, as with all traders, are required to make reasonable checks in order to find out if any material information exists. In this instance, regardless of whether the consumer has queried the material information or not, there are some details which are in most circumstances going to be considered material information and should be provided as early as possible.

The presence of any building regulation restrictions would be important information for the average consumer to know and adopting an "ask no questions and I shall tell no lies" approach would not be enough and could also potentially be a misleading omission under the CPRs.

Making enquiries with a Local Authority upon seeing that their seller-client has an obviously recently renovated attic space, regardless of what the seller might have said about the conversion, could be considered a reasonable check to make.

## **SCENARIO TWO**

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### **The floodplains**

A property is advertised by a local estate agency business which is situated a reasonable distance away from a major river. In the past year, during exceptional rain storms which had not occurred in the last 70 years, the area became severely flooded. The property in question had never been listed previously as being in the flood risk zone, but since the recent events it is now listed as at a medium risk level of an event happening.

The agency is aware of the flood happening, but is also aware of the history of the area and the recent flood risk assessment change, so takes the decision not to disclose the information in the marketing or the particulars of sale thinking that the unlikelihood of the flood happening again is not significant. Instead, the agency does highlight the fact that there is a river nearby as a pleasant selling feature about the property.

Considering the odds newly placed on the flood risk area, is the agency correct in avoiding direct mention of the issues in the marketing and the particulars of the property?

## **SCENARIO TWO - Answer**

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### The floodplains

The Environment Agency estimates that one in six homes in England are at risk from flooding. Of these, 2.4m are at risk from flooding from rivers or the sea alone, 3m are at risk from surface water alone and 1m are at risk from both. In Wales, over 200,000 properties are at risk from sea or river flooding and approximately 230,000 properties are at risk from surface water flooding. The most common types of flooding are:

- Surface water flooding
- Sewer flooding
- Groundwater flooding
- River flooding
- Coastal flooding
- Flooding as a result of localised private drainage failure - for example failure in the operation of soakaways. This is the main reason for flood claims in the UK.

There are a number of means that an agent may be able to check flood map areas and this would be considered a reasonable check to make, especially when already knowing or having been put on notice that the area has flooded previously. It would be advisable for an agent to disclose this information if it is likely to adversely affect the property to potential buyers at the earliest opportunity to avoid being caught out by the CPRs and committing the offence of misleading omission.

Find further detailed guidance on our “Guidance on Property Sales” available online at [www.powys.gov.uk/estateagency](http://www.powys.gov.uk/estateagency)

## **SCENARIO THREE**

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### The unwanted neighbour

An estate agency contacts its local Trading Standards service for advice and guidance on a particularly sensitive issue concerning the marketing and sale of a property in relation to the Consumer Protection from Unfair Trading Regulations, material information and when to disclose it to potential buyers.

The agent explains that the detached property they are advertising, whilst situated in a quiet cul-de-sac with a comparatively low crime rate for the area, is also known by the agency to have an individual living in the house next door whose name appears on the sex offenders register. The property that is for sale has had a lot of interest, and potential buyers appear keen to purchase. They are a young couple who were interested in converting one of the rooms into a nursery in order to plan for a future family.

The agency wants to know whether this constitutes material information for the purposes of the CPRs, whether they should disclose what knowledge they have to avoid a misleading omission and, if so, at what point in their sales practices should they do so.

## **SCENARIO THREE - Answer**

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### The unwanted neighbour

This is a scenario within the property sales industry which has been posed to NTSEAT in different ways, in different guises and as a naturally sensitive issue, can be perceived as a problematic hurdle for property sales businesses, sellers and buyers when considering material information. It is unsurprisingly difficult to provide any definitive answer to every eventuality.

Material information is not the same as the information that a consumer might like to have in order to make what would be the best possible decision for them. Rather, material information is the information without which the consumer cannot make a properly informed decision. For example, a buyer might like to know the lowest price that the seller would accept. However, this is not material information, since knowledge of it is not necessary for a buyer to make an offer.

What information a consumer needs to know at each stage of the process in order to make a sufficiently informed decision should be approached objectively. It is not necessarily what you consider the consumer in front of you might need, but what the reasonably well-informed, reasonably observant and circumspect consumer might need. However, with misleading omissions, the circumstances and the context of the commercial practices will be taken into account.

In this fictional circumstance, for example, it is not actually known or stated the exact reason why the individual is on the register and could, in fact, have little or no bearing on the average consumer.

## **LETTINGS SCHEMES AGENCIES AND REDRESS SCHEMES**

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'Estate agency work' as defined in the Estate Agents Act 1979 does not include the work carried out by property managers and lettings agencies. As such, those professions are not regulated by the EAA 1979 and are instead subject to a range of other legislation. NTSEAT is not the lead enforcement authority for these professions and cannot prohibit or warn those seen to be unfit from being a lettings or property management professional.

**This section is intended to explain further how lettings and property management work is connected to the activities NTSEAT carries out and to also provide an overview of the notable current regulatory framework applicable to that sector.**

***Whilst NTSEAT cannot ban or warn unfit persons from carrying out lettings work, the team is keen for partners to share intelligence relating to non-compliant lettings or property management agencies as action taken against such professions may be a trigger event for NTSEAT to carry out a fitness investigation to prohibit or warn them against estate agency work***

### **England**

Since 1<sup>st</sup> October 2014 agents who carry out letting agency or property management works in England are required to become a member of an approved redress scheme under Section 3 of the **Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014**. A penalty of up to £5,000 can be imposed by 'an enforcement authority' for breaches of these requirements, subject to any statutory guidance issued and an appeals procedure.

### **Wales**

**The Housing (Wales) Act 2014** requires landlords to register and agents and self-managing landlords to obtain a licence. Those directly involved in letting and managing rental property will have to become suitably trained and be 'fit and proper'. This is being delivered by Rent Smart Wales and began on 23 November 2015.

## England & Wales

From 23 November 2015, letting agents in England and Wales have a legal obligation under the **Consumer Rights Act 2015** to publicise their fees. A penalty of up to £5,000 can be imposed by trading standards services for breaches of these requirements, subject to any statutory guidance issued and an appeals procedure.

Further information can be found at [businesscompanion.info](http://businesscompanion.info)

## FACTS AND QUESTIONS

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**The following are some of the questions which are posed to NTSEAT. However, if your query is not answered here, please do not hesitate to contact the team using the details at the end of this document. NTSEAT is committed to providing support by way of advice and guidance to partner organizations.**

**Q: A commercial estate agent (i.e. an agent who only markets business premises) claims that he does not have to join a redress scheme – is this true?**

A: If the agent is just marketing business premises then he does not need to join a redress scheme as this legal requirement only covers those marketing residential properties. However, many commercial agents market business properties that have residential accommodation attached e.g. a newsagents with a flat above. The agent would therefore have to join a redress scheme as far as the residential element only is concerned.

**Q: A local estate agent has been “flyboarding” – what action can we take?**

A: “Flyboarding” is the practice of erecting “For Sale” or “To Let” boards outside a property when the agent concerned does not have any instructions to sell or let the property. It also applies when a “Sold” or “Let” board is left outside a property long after the transaction has been completed.

Estate Agents’ boards are controlled by the Town & Country Planning (Control of Advertisements) Regulations 1989.

Under these regulations, deemed planning consent is given to certain types of advertisement. An advertisement by an estate agent relating to the sale of land on which the advert is displayed has deemed planning consent provided that it satisfies certain conditions. Among these conditions are:

- there should be no indication that the property has been sold unless by a statement either that the sale has been agreed or that the property has been sold, subject to contract.
- the advertisement should be removed within 14 days of the sale being completed.
- If the conditions for placing the advertisement are not met then there is no deemed consent and the estate agent's board would need express permission from the local planning authority. If express consent is not

obtained, the local planning authority could prosecute the estate agent for contravention of the Regulations.

**Q A local property development company are marketing their own properties are they doing estate agency work?**

A: No, they are not. There is no difference between you selling your property and a company selling properties that they own – neither of you are doing estate agency work if you market a property that you own. You may well negotiate and do it in the course of a business but you are not acting on instructions from a client.

**Q: A local estate agency firm is marketing a property which belongs to an employee of that firm – the agent negotiating the sale is not the same employee that owns the property. Is there a personal interest issue here that must be disclosed to the client?**

A: Yes, as the owner of the property being an employee of the same estate agency business is considered a “connected person”.

The legal requirement for an agent to declare a personal interest either of himself or any “connected” person promptly and in writing to his client is because a massive conflict of interest situation may have arisen. An agent’s fiduciary duty is to put his client’s interests above his own at all times and this is normally manifested by the agent trying to get the best possible price for his client’s property. However, if he or a “connected” person (e.g. his brother) wants to buy a property that he is marketing, will he try to ensure that he gets the highest possible price for the property?

The EAA does not prevent an agent or a “connected” person from buying his client’s property but, if he or the “connected” person wants to do so, then he is required to advise his client promptly (prior to the commencement of negotiations) and in writing of this fact. This should serve to alert his client that the agent may not now be acting in his best interests and he should therefore take whatever steps he considers necessary to protect his interests.

**Q: What constitutes a “connected” person?**

**A:** The Estate Agents Act states that an agent's "connected persons" are as follows:

- a) His employer or principal
- b) His employee or agent
- c) Any "associate" either of the agent or of any of the persons mentioned above.

Associates include:

- A person's spouse and relatives and the spouse and relatives of a person's business associate.
- spouse includes a former spouse and someone living as if they were a spouse
- relative includes a brother, sister, uncle, aunt, nephew, niece, lineal ancestor and linear descendant, whether or not any particular child is illegitimate or a stepchild.

b. Companies are associates of each other if:

- the same person is a controller of both; or
- a person is a controller of one and his associates are controllers of the other one or - a person is a controller of one and he and his associates are controllers of the other or - the same group of two or more persons is a controller of each company.
- The controller of a company means the person or company that normally tells the directors of the company how to act or owns or controls one third of the shares in the company. As regards the shareholdings, this may be alone or with any associate.

c. Partnerships are associates of each other if:

- any person is a member of both or
- a partner in one is an associate of a partner in the other or
- a partner has an associate who is also an associate of a partner in the other.

d. Unincorporated associations are associates of each other if any person: - is an officer of both or

- has the management or control of the activities of both or
- is an officer of one and has the management or control of the activities of the other.

e. Business associates

- a company is a business associate of each of its directors and controllers.
- In a partnership, each of the partners is a business associate of each other and of the partnership itself. If one of the partners is a company, every

business associate of the company is also a business associate of each of the partners.

- An unincorporated association is a business associate of each of its officers and of each person who has management or control of its activities.

Basically, it can be seen from the above that someone who may be a "friend" of the agent is not deemed to be a "connected person" under the Act. A friend cannot really be legally defined whereas a brother, sister etc can be. Similarly, someone may have a business relationship with the agent e.g. he may have bought several properties through the agent over a period of years but this is not enough to deem them a "business associate" under the Act.

Whilst it is easy enough to determine that a brother, mother, sister etc are "connected persons" it is a lot more difficult to decide whether there is any personal interest that should have been disclosed when there are several connected companies involved.

**Q. A local lettings agent is giving out false and misleading information out to potential tenants. Can NTSEAT issue a warning or a prohibition order against them?**

A: Letting agents and property management companies are subject to the range of consumer protection legislation for issues such as giving out false or misleading information, not conforming to the standard of care & skill required, or for falsely claiming to be a member of a professional body. Consumer rights legislation is enforced by Trading Standards, therefore; should an officer secure a conviction against a letting agent, it is possible that although letting agents do not fall within the definition of an estate agent under the EAA 1979, an offence by a lettings agent or property management company could be a trigger point for NTSEAT to consider an order.

**Q. We are a Trading Standards section based in England and have been informed of a local lettings agent which is not a member of an approved redress scheme. Are lettings agents required to be members of such a scheme if they do not fall under the definition of an estate agent under the EAA 1979?**

A: Since the 1 October 2014, it has become a legal requirement for lettings agents and property managers in England to become members of an approved redress scheme. This only applies to England as per the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

**Q. If a lettings agent in England refuses to join a redress scheme, who enforces this?**

A: Under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, an 'enforcement authority' is defined as "a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, or the Council of Isles of Scilly." It is not specified in the order which particular section within the individual authority is to enforce these requirements. It is recommended that you check with within your own authority before proceeding.

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