

OFT draft guidance

January 2012

For property developers and estate agents

On 19 September 2011, the Office of Fair Trading (OFT) published draft guidance designed to assist property developers and estate agents in complying with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs). The guidance is aimed primarily at estate agents offering property sale services but also property developers that market and sell their developments.

The OFT is concerned that understanding of the CPRs may be limited. In response, the draft guidance published by the OFT is designed to clarify how the regulations apply to estate agency and property development and what businesses should do to comply with the law.

The CPRs set out broad rules outlining when business practices are unfair. These fall into five main categories:

- Giving misleading information to consumers, for example through false or deceptive advertisements or statements.
- Giving insufficient information to consumers, for example leaving out or hiding important information.
- Acting aggressively, for example through sales techniques that use harassment, coercion or undue influence.
- Failing to act in accordance with reasonable expectations of acceptable trading practice (honest market practice/good faith).
- Engaging in any of 31 specific practices that the CPRs ban outright.

The draft guidance provides that in order for a practice to be unfair under the first four categories above, they must cause, or be likely to cause, the average consumer to take a different decision, for example where they

cause the consumer to:

- Sign an agreement under terms that they would not otherwise have agreed to; and/or
- Pay for a survey, conveyancing work or some other service when they would not otherwise have done so; and/or
- Buy or sell a home when they would not otherwise have bought or sold; and/or
- Buy or sell a home on more disadvantageous terms than they would otherwise have done.

The draft guidance provides examples of areas where businesses need to be careful to avoid breaching the regulations. It is a breach of the CPRs to give misleading information to consumers and examples of this could include: -

- Misleading information given over the telephone or in the course of discussions with prospective clients before taking instructions from them.
- Misleading details in property particulars or other marketing material, for example newspaper advertisements, web pages and brochures.
- Misleading photographs, video clips, floor plans, artist impressions, models or show homes.
- The draft guidance also provides numerous examples of misleading actions. These (non-exhaustively) include:
 - Distributing leaflets to homes claiming that buyers are lined up for these sorts of properties when this is not true;
 - Making a selling point when you have contrary information (for example, 'secluded garden' when there is a public right of way through the garden or 'peaceful area' when a bypass is planned close to the property); and
 - Quoting false higher offers to induce a



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potential buyer to put in their own offer at a higher price (to outbid those 'rival' offers).

Other examples of breach include giving insufficient information to consumers and acting aggressively in sales techniques.

In seeking to comply with the regulations, the draft guidance suggests that businesses:

- Consider how the guidance applies to their property sales business;
- If necessary, make changes to their business practices; and
- Ensure that their staff understand the regulations and comply with them.

The draft guidance states that failure to comply with the regulations may lead to civil and/or criminal sanction. In fact, a business could face a fine not exceeding the statutory maximum which is £5,000 (if in the Magistrates Court) or an unlimited fine and/or imprisonment for up to 2 years (if in the Crown Court).

The consultation closed on 9 December 2011. In due course, the OFT will publish its final guidance and a summary of the responses received.

If you have any queries or would like to discuss any of the issues raised, please feel free to contact:



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