

To company directors

Our ref	CRE-E/28691av	Direct line	(020) 7211 8170
Date	7 August 2013	Email	cavendish.elithorn@oft.gsi.gov.uk

Dear Sir or Madam,

The OFT has today published a report on the 'Quick House Sales' sector (www.oft.gov.uk/shared_oft/market-studies/oft1499.pdf). We have defined the sector broadly and we consider that our report is relevant to your business.

We have concluded that the quick house sales sector can offer benefits to home sellers who want the certainty of a quick sale. However, we have also identified business practices that may not comply with the law. We are therefore issuing this advisory letter to almost 120 businesses in the sector. The purpose of this letter is to make you aware of our report, remind you of your legal obligations and ask you to check that your business practices comply with those obligations. For the avoidance of doubt, we have not investigated nor formed a view as to whether your business is in breach of the law.

This letter summarises three key areas of consumer protection law that you need to be aware of: unfair commercial practices, unfair contract terms and estate agency. Further details of these rules and some other legal obligations that may apply to businesses in the quick house sales sector are set out in an annexe to our report. We advise you to look closely at this part of the report and, if you are uncertain of any point, to obtain your own independent legal advice.

Unfair commercial practices

Whether you buy properties from home sellers, find a buyer for them, or pass on 'leads' to other providers, you must comply with the Consumer Protection from Unfair Trading Regulations 2008 in your business dealings with consumers. Amongst other things, this means you should

- not mislead consumers in any of your communications and representations to them. This includes taking care not to mislead by omitting any information that the average consumer needs to make informed decisions



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- not put undue pressure on consumers in a way that limits their ability to make free or informed decisions
- act in a professionally diligent way, exercising honesty and good faith towards consumers at all times.

The CPRs contain both civil breaches and criminal offences. The penalties for the latter are, on summary conviction, a fine not exceeding the statutory maximum and, on conviction on indictment, a fine or imprisonment not exceeding two years or both.

The OFT has published specific guidance for property sales businesses on these regulations (see www.of.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection/oft1364).

Unfair contract terms

If you enter into consumer contracts which use standard terms, you need to ensure that they comply with the Unfair Terms in Consumer Contracts Regulations 1999. You could find yourself unable to rely on such terms, and could potentially face enforcement action, unless:

- your terms and conditions meet the test of fairness contained in Regulations
- your terms and contractual documents are clear and in plain, intelligible language
- important contract terms are prominent in documents and actively brought to the consumer's attention in good time before they are asked to agree to them.

Estate agency

The OFT considers that business involving brokering activity is likely to include estate agency work as defined in the Estate Agents Act 1979 if the activity involves: introducing home sellers to third party buyers and, where an introduction has been made, any steps taken to progress a sale. Not all quick house sales providers will be covered by the Estate Agency Act 1979.

A person carrying on estate agency work must comply with the requirements of the Estate Agents Act 1979 and associated legislation (and also with the Money Laundering Regulations 2007). This means, amongst other things:

- being registered with an OFT-approved estate agents redress scheme, if doing residential estate agency work
- being registered with the OFT for anti-money laundering purposes

- complying with certain rules as to good practice including avoiding misrepresentation and providing written information promptly to clients on specified issues.

A person who carries out residential estate agency work but fails to register with an OFT approved redress scheme may receive a penalty charge by Trading Standards.

Failing to comply with the requirements of the Estate Agents Act 1979 and its associated legislation may trigger investigation, and potentially enforcement action. If this results in a finding that a person is unfit to carry on estate agency work, the OFT has the power to make a prohibition order under the Estate Agents Act. This would prevent the person (which could mean a company, a business or an individual) from carrying out estate agency activities, including quick house sale brokering. OFT advice on how to comply with estate agency rules can be found at www.offt.gov.uk/business-advice/estate-agents/.

Failing to comply with the Money Laundering Regulations 2007, for example carrying out estate agency work without registering with the OFT for money laundering purposes, may result in a fine. A statement on the OFT's penalty policy is at www.offt.gov.uk/shared_offt/money-laundering/OFT1271.pdf.

We would strongly encourage you to check whether you or others in your company are involved in business that involves estate agency work within the meaning of the Estate Agents Act 1979, taking independent legal advice as appropriate on the extent of the obligations you may owe.

If you conclude you do engage in estate agency work and are not currently appropriately registered, we would like you to confirm within the next 28 days that you are registered with

- an **OFT-approved estate agents redress scheme** (please name the scheme you are registered with)
- the **OFT for anti-money laundering purposes**. You will find a registration form at www.offt.gov.uk/OFTwork/aml/guidance.

Responses should be addressed to QHS.replies@oft.gsi.gov.uk.

Annexed to this letter are our practical advice and top tips for home sellers who sell to or through a quick house sale business and practical guidance to quick house sales providers. We are encouraging all businesses in the sector to share these top tips for home sellers

with their customers. An electronic version is available for you to download at www.ofst.gov.uk/OFTwork/markets-work/quick-house-sales.

I hope you find this advice, and the further information contained in our published report, helpful. If you have any general queries about this letter or the report, please reply by email to OHS.replies@ofst.gsi.gov.uk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C. Elithorn'. The signature is written in a cursive style with a large initial 'C'.

Cavendish Elithorn
Senior Responsible Officer, Quick House Sales market study

Examples of what the law requires from quick house sale businesses

You must not mislead about

- the sort of service you provide. For example, saying or giving the impression that you are a buyer if you are not
- the likely timescales for the sales process. For example, giving a false or unrealistic timescale for completion of the sale
- how the purchase will be paid for. For example, claiming to be a cash buyer, or to have cash buyers lined up, when this is not true
- the price that you, or a third party buyer, may be prepared to pay
- how you (or someone instructed by you) will value the property
- the status of the offer price. If it is conditional, you should explain how – for example, is it 'subject to survey and contract', 'subject to finding a buyer', 'subject to mortgage approval'?
- the reasons for any drop in the offer price
- any fees and charges that the home seller may be required to pay.

You must not

- reduce offer prices late in the process without a valid reason, where this puts undue pressure on the home seller and restricts their ability to make free or informed choices
- require the seller to use a solicitor of your choice, not theirs
- train your staff to use scripts and/or techniques that are intended, or likely, to mislead or pressurise home sellers.

You must

- conduct valuations in a proper manner, fairly and in good faith
- deal with consumer complaints promptly, effectively and in a professional manner
- bring to the seller's attention: how long any contractual agreement will last, what costs/charges would apply if the seller pulls out, any notices you will place at HM Land Registry, Registers of Scotland or Northern Ireland's Land and Property Services whilst the agreement is in place, and the effect of those notices on the seller's ability to sell the property to a different buyer at a later date
- ensure that your staff, and anyone else who represents your business, is complying with the law.