

Competition and Markets Authority

Consultation on Draft Guidance on the Protection from Unfair Trading Provisions in the Digital

Markets, Competition and Consumers Act 2024

Response from Propertymark

February 2025

Background

1. Propertymark is the UK's leading professional body of property agents, with over 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – summary

2. The Competition and Markets Authority (CMA) are looking for views on the implementation of new draft guidance on the unfair commercial practices (UCP) provisions in the Digital Markets, Competition and Consumers Act (DMCC Act).
3. The DMCC Act was enacted on 24 May 2024 and provides regulation of competition in digital markets, amending the Competition Act 1998 and the Enterprise Act 2002 and encompassing the protection of consumer rights and other related rights. It also confers powers and duties on the Competition and Markets Authority (CMA) to regulate competition in these markets, updates powers to investigate and enforce competition law; updates and enhances powers to investigate and enforce consumer protection law and resolve consumer disputes; and gives consumers protections in respect of unfair commercial practices, subscription traps and prepayments to savings schemes.
4. Specific to this consultation are the provisions in Chapter 1 of Part 4 of the DMCC Act, which prohibit unfair commercial practices and replaces and updates the Consumer Protection from Unfair Trading Regulations 2008 (CPUTRs). These provisions will come into force at a later date, estimated to be April 2025.

Propertymark response

5. Propertymark has carefully considered the information outlined within the draft guidance, our main points will focus on the clarity of the guidance. The summary of our response can be made in the following points:

- The guidance should make clear the distinction between and roles of sector specific regulators such as the National Trading Standards Estate and Letting Agency Team (NTSELAT) for the estate and letting agents and the Competition and Markets Authority.
- The guidance should be more specific and clearly outline material information requirements in relation to the advertisement of property.
- It was estimated that the number of UK residential transactions in December 2024 was 96,330, which illustrates a high volume of consumer interaction and economic value of the property sector to the UK's economy.¹ The guidance, therefore, must provide more illustrative examples which relate to property transactions.

Questions

Question 1: Do you have any comments on the structure or clarity of the Draft Guidance?

6. The guidance is written and structured in a clear, simple and readable manner. Yet there is a lack of clarity in the definition and use of the guidelines and where they replace previous regulations, which clearly define the obligations of a property agent in relation to information given to a consumer. Furthermore, it appears that property agents do fall under the remit of these regulations, in the course of their advertising and through information provided during transactions. Property agents also adhere to the Estate Agents Act 1979 and the Consumer Protection from Unfair Trading Regulations 2008. Through these regulations, estate and letting agents have a legal obligation not to omit material information from property listings. However, this draft guidance states that the new legislation replaces the aforementioned Consumer Protection Regulations, yet material information of property listings is not explicitly covered in this guidance.

7. Within the new draft guidance, the definition of a product does include "immovable property", as defined on Section 3.4 as:

¹ <https://www.gov.uk/government/statistics/monthly-property-transactions-completed-in-the-uk-with-value-40000-or-above/uk-monthly-property-transactions-commentary>

“The definition of ‘product’ covers both physical and intangible things, including goods (including immovable property, rights and obligations), services and digital content. For example:

b) Immovable property is included, and so the UPC provisions apply to the practices of traders concerned with the sale or lease of land to consumers.”

8. However, there is a lack of clarity throughout the document, which only makes mention of estate agents once (section 20.1), viewing a property once (section 3.30 b) and one mention of letting a holiday home (section 9.22). There is no mention of private rented properties. Although we accept that every possible example cannot be included, this presents ambiguity for property agents. Furthermore, there is no mention of The National Trading Standards Estate and Letting Agency Team (NTSELAT) which primarily responsible for the regulation of estate agency work in the UK and letting agency work in England.² It is not made clear where the new UPC provisions will coincide or overrule the work of NTSELAT.

9. The guidance explains that the CMA will have authority to enforce the UPC provisions, and that they can make decisions outside of a court setting, with appeals going to the High Court. This differs from the role of NTSELAT which must go to court to get a conviction of a breach of material information requirements. The draft guidance states:

“In England, Wales and Northern Ireland prosecutions will generally be conducted by the CMA, local weights and measures authorities (also known as Trading Standards Services) or the Department for the Economy in Northern Ireland. In Scotland, prosecutions are conducted by the Crown Office and Procurator Fiscal Service on behalf of the Lord Advocate.”

10. Propertymark would like more clarity on the shared roles of CMA and NTSELAT. We have had discussions with NTSELAT who state that they will still have power to enforce Consumer Protection legislation, as well as local Trading Standards teams. There only appears to be a role for both authorities if they are clearly defined and separated, for example if NTSELAT take on individual breaches of regulations and CMA look at wider breaches of the new legislation such as ongoing miss-sold information or falsely claiming endorsement from a regulated body. But without this distinction clearly defined in the guidance there is no clear path for consumers to seek action.

² <https://www.nationaltradingstandards.uk/work-areas/estate-agency-team/>

Question 2: Do you have any comments on the illustrative examples of commercial practices applying the prohibitions? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?

11. The illustrative examples of commercial practices are easy to understand and provide good context for the reader, however Propertymark notes that there is little mention of property agents and their role in advertising, selling, letting and completing transactions with consumers.
12. There is frequent mention of the use of online marketplaces for the advertisement of physical items. The property industry now predominantly uses online sales websites to advertise properties for sale or let, either through the company's own website, auction sites or an online real estate portal such as Zoopla, OnTheMarket or Rightmove. Property agents also use websites to advertise their services as a sales or lettings agent or property management company. For this reason, it is important to include an example of how property agents should advertise online within the regulations.
13. Material information provisions under the Consumer Protection Regulations require that certain information is available to the consumer at the point of advertisement. However, this information is often missed on real estate portals, with the buyer instructed to contact the agent directly to gain material information which may influence their decision to buy or rent a property. It is not an uncommon practice for some agents to take the position that material information will be provided during viewings or upon request from the client, rather than being included in property advertisements. New guidance for sales and letting agents published by National Trading Standards Estate and Lettings Agency Team aims to help agents meet their existing legal requirements under the Consumer Protection Regulations.³ It would be helpful for the consumer and property agents to know how, under the new guidance, material information requirements will be enforced in order to support how information is provided.

Question 3: Do you have any comments on the Draft Guidance on the 'drip pricing' provisions in the DMCC Act (found in the 'Material pricing information' section of Chapter 9 of the Draft Guidance), including the illustrative examples? In particular, are there any specific pricing practices that have

³ <https://www.nationaltradingstandards.uk/work-areas/estate-agency-team/material-information/>

not been included in the ‘drip pricing’ illustrative examples which you think it would be helpful to include, and if so, what should such further guidance specifically cover?

14. “Drip pricing” is a practice which may be employed within the property market, particularly of agents in England who practice without the oversight of a regulatory body. It would be helpful to include an example where a property agent presents a price which is not indicative of the final cost, particularly for those providing property services. This would help to combat rogue agents who may advertise a fee for their services which is then added to during the process, thus misleading landlords or vendors who are committed to using their property services. Agents who are part of a voluntary regulatory body, such as Propertymark, already follow a code of conduct which ensures that this practice is prohibited.

15. However, it should also be noted that in some cases the final indicative price cannot be outlined at the beginning of the transaction process. An example of this would be the advertisement of future service charges for leasehold or freehold managed estates. A service charge is generally flexible and variable depending on certain factors, this can change year on year, so a provider may not be able to advertise or state what a future service charge would be before it is calculated. A useful example to include in the guidance could explain how a property agent might outline this variability and how they can fairly and accurately publish this to consumers and tenants.

Question 4: Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?

16. Propertymark agrees with the ban on fake or misleading consumer reviews. However, there should be clarity where a review is published on a third-party website, such as a property advertising portal or social media, who is responsible for monitoring and removing these reviews.

Question 5: Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance’s chapters.

17. Yes, we have several of additional comments, related to the following chapters:

- **Firstly, in relation to chapter 5: Contravention of the requirements of professional diligence, we have concerns over how “professional diligence” will be established.** As an unregulated sector, with no statutory Code of Conduct or Code of Practice, property agents outside of letting agents operating in Scotland and Wales, are not subject to clearly written defined professional standards. This risks decisions on what is considered “professional diligence” being widely open to interpretation and inconsistently enforced. To resolve this, estate agents operating across the UK and letting agents in England would first need to become regulated, as recommended by Lord Best and the Regulation of Property Agents Working Group report of 18 July 2019⁴ or for clear cross-sector professional diligence guidelines to be established. Out of the two options, sector specific professionalism guidelines for the property sector would be considerably more desirable as they can be tailored to the specific practices of property agents. This also applies to chapter 6 when establishing a clear set of “misleading” actions that property agents must avoid.
- **Secondly, in relation to chapter 7 “misleading omissions” it is not always clear within the regulations where liability lies if an agent has not included information that they were not aware of or were misinformed by a client.** For example, if an agent was informed by the property vendor that the property had no spray foam insulation, but in fact did, it is not clear if the liability would lie on the agent for not verifying the information or the vendor for misinforming the agent. While we understand that the agent should (and is able to in many circumstances) verify information provided to them about a property, it is not always possible and practicable to verify the information provided by the vendor. While some information is freely available and accessible online, some property information can be difficult to verify. We would recommend expanding on the existing guidance to make it clear where liability for misleading or omitted information lies, especially if the information has come from a third-party which the agent is relying on.
- **Thirdly, we seek clarity if duties to inform customers also apply to legal representatives or other interested parties during a transaction.** This is especially important as multiple professions work together during a property transaction, providing information that could be considered material information that is not always understood by the consumer.

⁴ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

Where this information is expected to be passed on by a legal representative to the client, agents will need certainty that they have met their requirements by informing the legal representative of the client, or the client, with the expectation that the person receiving the information will pass it on.

- **Fourthly, providing the required information on a property is often not sufficient for a consumer to make an informed choice, as consumers are not always aware of the full repercussions of information provided.** For example, if a consumer is not aware of what spray foam is, they may not be aware that the presence of spray foam would make it considerably more difficult to mortgage the property. This of course would impact their decision to purchase the property. It is therefore essential for the CMA to clarify its position on the level of detail that must be provided in property listings, whether consumers are expected to learn what certain information would mean or if agents are responsible for sharing the full impact of certain information on a property.

18. Propertymark would also welcome the opportunity to work with the CMA to develop the guidance further and to build on the implementation of future legislation.