

Wilkinson Estate Agency response to the CMA's consultation on the draft unfair commercial practices guidance
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To whom it may concern,

In respect of the consultation on the above proposed legislation I take this opportunity to provide my comments. I am the Managing Director of an Estate Agency business, I am former Main Board Director of Propertymark and have sat as a representative on a number of Government working groups relating to the House buying and Selling process. I have been in practice for 42 years.

The relationship between a buyer and seller is fundamentally different for a property, than many other goods and services. The agent acts on behalf of the seller and is beholdant on much of the information they provide, ie about their neighbours. Similarly, the buyer has an independent lawyer/conveyancer and also a surveyor / valuer acting on their behalf and so have a duty to them – this is their ‘protection’. Also, the length of time of the transaction makes a materiel difference to many deals and the complexity and unknown variables also make a materiel difference. These variables are often outside the control of the parties to the transaction ie Mortgage rate changes. Planning Applications, Media stories.

Buyers typically ‘enhance’ their circumstances/situation to improve their negotiating position, to persuade the seller to accept their offer. It then transpires some weeks later, that the buyer lied about their situation. There has to be a duty on a purchaser to reveal their true position at the time of trying to negotiate to buy a property. Whereas a bar of chocolate is sold at a given price and the consumer pays the price without any negotiation and it is instant. A property purchase is entirely different and the vast majority of buyers ‘make an offer’ for a property and negotiations ensue, the process typically takes many months, (average transaction times in England currently 19 weeks according to various sources) and the buyer has the opportunity to pull out at anytime.

Accordingly, legislation should apply to the buyer as well as the seller. Also to the agent and or legal representative, the proposed legislation makes no reference whatsoever as to the duties of a consumer/buyer to behave honestly or their lawyer/conveyancer to extend a similar duty of care.

1. The legislation is not retrospective, BUT, there does not appear to be any limitation on the length of a claim. This means a home buyer could claim many years after the purchase that they were mis sold. Surely there has to be a limitation? A time of say 2 years would seem reasonable. The impact could be a huge rise in PI Insurance premiums for Estate Agency businesses.
2. The Legislation applies to land deals and also internet portals and as such is very welcome.

3. P 18 - Introduces the 'credulity' test. This seems to be far too wide and open to interpretation. It should be defined more precisely. Not least as most buyers will instruct an independent lawyer/conveyancer to act on their behalf and thus to an extent, they should ensure their client is fully aware and informed and not mislead.
4. P 26 para 5.7 Codes of Practice. This is a golden opportunity for Propertymark to introduce a Code of Practice, that would then be MANDATORY for Estate and Letting Agents, this looks like a huge opportunity for PM NOW and we should really exploit the opportunity and would possibly avoid the need for further legislation ie ROPA.
5. P 30 Para 6.5 (k) The consumers rights through the sale process and the risks they may face. This is a huge piece of work
6. P 47 Para (g) Giving the vendors personal contact details - this seems a contradiction with GDPR, this should not apply to vendors, many of whom are vulnerable and as such, the Estate Agent provides their 'protection'.
7. P 48 para 9.14 When would this have to be disclosed, as given 'negotiations' take place it would be pointless. Potentially could be included with Memorandum of Sale and when the Identification check for Money Laundering purposes is undertaken. It would make sense for this to be covered in a Code of Conduct.
8. P 63 para 20. How enforceable is this in reality - a Negotiator hearing a news story, again conditions will vary over time. Is this going to be a 'Gagging Order' and if it is expressed as a 'personal opinion' is that a defence?

Generally, there is no reference to the Estate Agents Act 1979 and the duties contained therein. The definition of an Estate Agent probably needs to be widened in these circumstances, not least to include 'online marketing'.

The former Office of Fair Trading Guide for Estate Agents should be replaced with new guidance, to include contractual terms and definitions. The Land Registry as a Government Agency should not be allowed to go on strike as this will lead to transactions failing and abortive fees. The Land Registry 'Property Passport' initiative and a swift online enabled transaction will dramatically reduce transactions times and provide certainty to all parties. The Government has a huge part to play in improving consumer confidence and market certainty, all beyond the control of the consumer, the agent and legal representatives.

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