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trading standards law explained

Transparency of fees involving property sales

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> In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

Introduction

This advice document was produced by the National Trading Standards Estate Agency Team (NTSEAT). NTSEAT is hosted by Powys County Council; it is the UK's lead enforcement authority for the purposes of the Estate Agents Act 1979 (EAA).

The document addresses the issue of transparency of fees, including referral fees, within the estate agency sector; it should be regarded as replacing any earlier advice on the point.

Where there is reference to an 'estate agent', this should be interpreted as a person engaging in estate

agency work in accordance with section 1 of the EAA.

NTSEAT acknowledges the contributions of Property Redress, The Property Ombudsman, Propertymark, RICS and The Guild of Property Professionals, all of whom assisted in the preparation of this information.

Summary

Failure to disclose referral arrangements may render an estate agent liable for criminal prosecution under the Digital Markets, Competition and Consumers Act 2024 (DMCCA) and/or action by NTSEAT for warning or prohibition under the EAA.

Ultimately, only a court may decide whether any particular set of circumstances amount to a breach of the DMCCA. However, NTSEAT offers the following recommendations as a statement of desirable practice.

An estate agent should disclose all of the following in plain terms:

- The price of its services, including any 'compulsory' extras
- Where a referral arrangement exists, that it exists and with whom
- Where a transaction-specific referral fee is to be paid, its amount
- Where a referral retainer exists, an estimate of the annual value of that retainer to the estate agent or its value per transaction
- Where the referral is rewarded other than by payment, an assessment of the annual value of the reward or the value of the reward per transaction

Disclosure should be made, in writing, to both of the following:

- A seller, as part of standard terms and conditions
- Buyers, by being incorporated into or annexed with the property particulars before any ancillary services are promoted

The disclosure must be made in a way that is clear and timely, and has no lesser prominence in documentation than other important terms, conditions or information.

Estate Agents Act 1979

The EAA makes specific provision for disclosure of information to sellers (see annex A). An estate agent is required to inform their client as to the client's liability to the agent, and as to the services that the agent is offering or intends to offer to a prospective purchaser, or that the agent knows a connected person or third party is offering or intends to offer to a prospective purchaser (section 18(1)(a) and (2) of the EAA).

An estate agent is also required to give details of any payments due under the contract to the agent or another that are not part of the agent's remuneration for estate agency work (section 18(2)(c) of the EAA).

The EAA prohibits an agent from discriminating against the seller or buyer if they choose to decline the services offered by the connected person.

Digital Markets, Competition and Consumers Act 2024

The DMCCA operates to ensure that consumers have appropriate information on which to make an informed 'transactional decision', which in this sector includes a decision whether or not to deal with an estate agent or other service provider.

The DMCCA governs relationships between businesses and consumers. It prohibits and criminalises certain

unfair commercial practices, including:

- Misleading actions
- Misleading omissions
- Aggressive practices
- Actions that contravene the requirements of professional diligence
- Omission of material information from an invitation to purchase

Any practice by an estate agent that hides the real price of a service may be found to be an unfair commercial practice under the DMCCA - for example, the price of the service that the agent is themselves providing or the price of a service that they have recommended. The existence and scope of such payments are 'material information', which could affect a consumer's decision about whether, or not, to engage with an estate agent.

As to the latter, surveys have shown:

- Firstly, that it is common for solicitors, conveyancers and others to pay estate agents to refer sellers and buyers to them
- Secondly, that consumers are largely unaware of the practice

In the event of a proven breach of the DMCCA, NTSEAT has the power to pursue Warning and Prohibition Orders under the EAA.

For more information on the DMCCA, see 'Protection from unfair trading (criminal law)'.

Definition of referral fees

A referral fee applies where any of the following occur:

- An estate agent refers work or a service to another person and is paid or has been paid for the referral
- Work or a service is referred to the estate agent, and the estate agent pays or has paid for the referral
- An estate agent:
    - Arranges for another person to provide services to the estate agent's client or a potential purchaser of property
      and
    - The estate agent is paid or has been paid for making the arrangement

Work or a service is referred if the following apply:

- A person provides information to another
- It is information that a provider of services would need to make an offer to the seller or potential buyer of property to provide relevant services
- The person providing the information is not the seller or potential buyer of property

References to payment include references both to money, whether by way of transaction-specific fee or by way of retainer, and other consideration. In this way a referral fee does not have to be a transaction-specific payment, but also encompasses retainers and gift-giving.

A traditional referral fee exists where an agent recommends (refers) another business to a seller or prospective buyer, and that business rewards the agent for the referral by a 'consideration' (money, gifts or any other form of benefit). The other business might offer preliminary services, such as photography, or something as fundamental as conveyancing.

Additionally, referrals to associated companies such as financial advisers, mortgage providers, etc, whether under the same roof or not, may still constitute a referral where consideration is passed between the companies.

The status of the connected service provider must be made explicit to the consumer, irrespective of their status as buyer or seller.

Application of the DMCCA: examples

Example 1: the traditional referral fee

An estate agent routinely refers sellers to a conveyancer, which pays the estate agent a fixed fee for every referral. Neither the fact of the referral fee nor its amount is disclosed by the estate agent.

This is potentially a misleading omission on the part of the estate agent; a proportion of what appears to be the fee for conveyancing is, in fact, a referral fee. This has a strong potential to affect a consumer's decision whether to purchase that service or to look elsewhere.

Agents should not rely on the obligations of other professionals (for example, solicitors or licensed conveyancers) to itemise referral fees. Not only do all potential referral business have such an obligation, the unfair commercial practice occurs when the consumer is, by the misleading omission, diverted or prevented from making an informed choice.

In the same way, an agent should not wait to declare the referral fee after the consumer has taken the decision to proceed. Timing is crucial. Failure to make a required disclosure in a timely fashion is itself capable of being a misleading omission. It must be remembered that the transactional decision is not necessarily the decision to buy or sell, or not to buy or sell, an interest in land, but can equally be the consumer's decision to accept the recommended service.

Recommended action

The estate agent should declare the fact of the referral arrangement, and the fixed fee they will receive, in their contract with the seller. They should also make it clear that the consumer can choose to source this service from another provider.

"We always refer sellers to XY Conveyancers. It is your decision whether you choose to deal with XY Conveyancers. Should you decide to use XY Conveyancers, you should know that we would receive a referral fee of £ … from them for recommending you to them. The service that you receive from us is not dependent on your using XY Conveyancers."

Example 2: the retainer

An estate agent routinely refers potential purchasers to a conveyancing solicitor, which pays the estate agent an annual fixed retainer, irrespective of cases referred.

This is equally a potential misleading omission on the part of the estate agent; again, a proportion of what appears to be a conveyancing fee is in fact a referral fee, regardless of the fact that the actual proportion cannot be easily discerned.

Another feature of this example is that it involves purchasers. It is certainly possible that a consumer may choose not to deal with an estate agent that operates on a referral basis.
Disclosure of these terms should be made at an early stage, to allow the consumer to make that choice.

Recommended action

The estate agent should declare the fact of the referral arrangement, with an assessment of the annual or averaged per-transaction value to the agent of the arrangement. The estate agent should also make it clear that the consumer can choose to source the conveyancing service from another provider.

"We routinely refer potential purchasers to XY LLP. It is your decision whether you choose to deal with XY LLP. In making that decision, you should know that we receive an annual payment benefit from XY LLP, equating to approximately £ … per referral. The service you receive from us is not dependent on your using XY LLP."

To ensure the disclosure is timely, it should be made as part of the property particulars, whether paper, electronic or hosted.

Example 3: intangible benefits

An estate agent refers all sellers and confirmed purchasers to a removal company. No retainer is paid, but the owners of the removal company provide benefits to the estate agent - for example, by personally making a contribution to the estate agent's children's school fees, or by providing tickets and hospitality to sporting events.

Few people move house often, and the practicalities of moving often take a back seat to the emotional attachment to the idea of a new property. Moving services are too often an afterthought for many, who may well take a lifeline of a recommendation by an estate agent.

Any recommendation may mean that a consumer decides not to seek other quotes or shop around, for the sake of ease. If they might not have done so knowing the estate agent's connection with the moving company, the consumer's transactional decision is affected.

Recommended action

While it may be unrealistic for the estate agent to quantify their benefit from this arrangement, they should at least declare the fact of their connection with the moving company.

"We routinely refer clients to XY Moving Ltd. It is your decision whether you choose to deal with XY Moving Ltd. In making that decision, you should know that we receive gratuities from XY Moving Ltd worth approximately £ … per annum. The service you receive from us is not dependent on your using XY Moving Ltd."

So far as sellers are concerned, this should be in the contract; so far as buyers are concerned, in the particulars.

Example 4: variable gifts

An estate agent refers all potential purchasers to a financial adviser (FA) for 'proceedability' checks. There

is no financial arrangement between them, but there is an understanding that the estate agent will receive a case of Champagne every Christmas. If the financial advisor sells a particular product at any stage during the year, they will upgrade to a case of a more expensive Champagne. Both understand that the more expensive Champagne is paid for from the commission that the FA receives from the sale, and the FA declares their commission to the consumer.

Agents should focus on consumer protection legislation to ensure that consumers are provided with enough information to make an informed choice. The consumer may have been able to acquire the recommended financial product at a lower commission rate if they dealt with a different FA or directly with the financial institution.

Recommended action

The fact of the referral arrangement should be disclosed as well as an assessment of its value.

"We routinely refer all potential purchasers to XY FA Ltd. It is your decision whether you choose to deal with XY FA Ltd. In making that decision, you should know that we receive benefits from XY FA Ltd worth between £ … and £ … per annum. The service you receive from us is not dependent on your using XY FA Ltd."

Example 5: opaque pricing

An estate agency charges the seller an initial fixed fee for marketing a property for sale. The seller is invited to use a 'partner' for additional services (such as conveyancing) for a further fee.

Should the seller decline to use this partner, the seller is charged a fee of a different description by the estate agency.

This situation potentially reveals the following unfair commercial practices:

- A misleading action, as the initial statement of the fee as 'fixed' may be false or likely to deceive if, in reality, a higher fee becomes payable if the seller declines to use the partner service. Price is perhaps the feature most likely to affect the taking of a transactional decision
- A misleading omission, as the extra fee payable on exercising the option not to use the 'partner' service is not made plain at the outset
- A breach of the requirement to act with professional diligence, as to fail to observe the statutory duty under the DMCCA to tell clients what they will owe would certainly amount to a failure to meet the standard of care and skill required

Recommended action

The estate agent should not declare the marketing price to be a 'fixed fee', as that amount will only be payable if the seller does not accept any offer. Where additional services fees are fixed, it is legitimate to advertise the additional services' inclusive price as the fixed fee. Where additional service fees vary per transaction, it is legitimate to advertise the non-use fee inclusive price as the fixed fee. In both scenarios, the agent should declare any association with the 'partner' company.

Fixed additional services fee

"Our fixed fee of £ … (inc VAT), includes XXX services provided by XY Ltd. Should you choose not to use XY Ltd, our fixed fee will be £ … (inc VAT), which includes a fee for not using XY Ltd's services. If your property

does not progress beyond the offer stage, you will be charged our fixed marketing fee of £ ... (inc VAT). [XY Ltd is a wholly owned subsidiary of this estate agency.]"

Variable additional services fee

"Our fixed marketing fee is £ ... (inc VAT). After acceptance of an offer, you will also be required to pay for XXX services provided XY Ltd. The fee for these services will vary depending on the transaction. As a guide, the average additional cost of XY Ltd's services is £ ... (inc VAT). Should you choose not to use XY Ltd, our fixed marketing fee will be £ ... (inc VAT), which includes a fee for not using XY Ltd's services. [XY Ltd is a wholly owned subsidiary of this estate agency.]"

Recommendations

When disclosing referral fees, it is strongly recommended estate agents use the pro forma declaration in annex B.

Annex A: section 18 of the Estate Agents Act 1979

"18. Information to clients of prospective liabilities.

"(1) Subject to subsection (2) below, before any person (in this section referred to as "the client") enters into a contract with another (in this section referred to as "the agent") under which the agent will engage in estate agency work on behalf of the client, the agent shall give the client:
(a) the information specified in subsection (2) below; and
(b) any additional information which may be prescribed under subsection (4) below.

"(2) The following is the information to be given under subsection (1)(a) above:
(a) particulars of the circumstances in which the client will become liable to pay remuneration to the agent for carrying out estate agency work;
(b) particulars of the amount of the agent's remuneration for carrying out estate agency work or, if that amount is not ascertainable at the time the information is given, particulars of the manner in which the remuneration will be calculated;
(c) particulars of any payments which do not form part of the agent's remuneration for carrying out estate agency work or a contract or pre-contract deposit but which, under the contract referred to in subsection (1) above, will or may in certain circumstances be payable by the client to the agent or any other person and particulars of the circumstances in which any such payments will become payable; and
(d) particulars of the amount of any payment falling within paragraph (c) above or, if that amount is not ascertainable at the time the information is given, an estimate of that amount together with particulars of the manner in which it will be calculated.

"(3) If, at any time after the client and the agent have entered into such a contract as is referred to in subsection (1) above, the parties are agreed that the terms of the contract should be varied so far as they relate to the carrying out of estate agency work or any payment falling within subsection (2)(c) above, the agent shall give the client details of any changes which, at the time the statement is given, fall to be made in the information which was given to the client under subsection (1) above before the contract was entered into."

Annex B. Disclosure

Each of the paragraphs below are optional and are to be treated independently. Your disclosures may vary, depending on which benefits are being disclosed. Use only the paragraphs that are appropriate for each

referral and for your business.

Any disclosure should be in writing and a record kept by the agent.

Referral fee disclosure

As well as your obligation to pay our commission or fees, we may also receive a commission, payment, fee, or other reward or other benefit (known as a Referral Fee) from ancillary service providers for recommending their services to you.

We believe that you may benefit from using the services of … *[name of the company being referred]*, the Provider, who are … *[the nature of business of the company being referred]*.

We recommend that sellers and/or potential buyers use the services of the Provider. Should you decide to use the services of the Provider, you should know that we would expect to receive a referral fee of £ … from them for recommending you to them.

We recommend that potential sellers and/or potential buyers use the services of the Provider. Should you decide to use the services of the Provider, you should know that we expect to receive an annual payment benefit from them equating to approximately £ … per referral.

We recommend that sellers and/or potential buyers use the services of the Provider. You should know that we expect to receive gratuities from the Provider worth approximately £ … per annum.

We recommend that sellers and/or potential buyers use the services of the Provider. In deciding to use the Provider, you should know that we expect to receive benefits from the Provider worth between £ … and £ … per annum.

Our fixed fee of £ … includes services provided by the Provider. Should you choose not to use the Provider, our fixed fee will be £ …, which includes a fee for not using their services. If your property does not progress beyond the offer stage, you will be charged our fixed marketing fee of £ … .

Our fixed marketing fee is £… . After acceptance of an offer, you will also be required to pay for services supplied by the Provider. The fee for these services will vary depending on the transaction. As a guide, the average additional cost of the Provider's services is £ … . Should you choose not to use the Provider, our fixed marketing fee will be £… , which includes a fee for not using the Provider's services.

The Provider is a wholly owned subsidiary of this estate agency.

This estate agency and the Provider are part of the same group of companies.

You are not under any obligation to use the services of any of the recommended Providers, though should you accept our recommendation, the Provider is expected to pay us the corresponding Referral Fee. The Referral fee is separate from your obligation to pay our own fees or commission.

Trading Standards

For more information on the work of Trading Standards services and the possible consequences of not abiding by the law, please see 'Trading Standards: powers, enforcement and penalties'.

In this update

New guidance: June 2026

Key legislation

- Estate Agents Act 1979
- Digital Markets, Competition and Consumers Act 2024:
    - Part 4, Chapter 1

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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