businesscompanion
trading standards law explained

Conditional selling by estate agents

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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).

Conditional selling is the practice whereby potential buyers are told by an estate agent that they can only view a property, or that their offers on a property will only be passed on to the vendor, if they use one of the agency's associated services - for example, a financial advisor, solicitor, surveyor, etc.

Agents often refer potential buyers to associated services, but they must be upfront about any arrangement, making it clear to the potential buyer that they are not under any obligation to use any services that are offered by the agent. Potential buyers are entitled to use their own financial advisor, solicitor, etc, and their refusal to use any additional services offered by an agent should not prejudice any offers made through the agent. If their refusal results in, for example, their offer not being passed on and consequently losing out on the property, the agent would be falling foul of estate agency and other consumer protection legislation.

The legal position

Schedule 2 to the Estate Agents (Undesirable Practices) (No. 2) Order 1991 states that "discrimination against a prospective purchaser by an estate agent on the grounds that that purchaser will not be, or is

unlikely to be, accepting services" is deemed to be an undesirable practice under article 2 of the Order. Therefore, NTSEAT advises that an agent must not discriminate against potential buyers because they do not want, or refuse to take, services from any of the following:

- The agent
- A connected person
- Someone from whom the agent or a connected person may receive financial benefits

For example, an agent must not:

- Refuse to give information about a property to these potential buyers
- Take longer to forward property details to these potential buyers than they might for other potential buyers
- Make additional requirements of these potential buyers as a condition of passing on an offer, such as insisting that they have a mortgage survey before their offers are passed on

Under the same Order, estate agents must give their vendor clients details of all offers received from potential buyers, except those offers that the vendor has told them not to pass on (for example, those below a certain price) or where agents are under a statutory duty to delay passing on such offers (for example, where a suspicious activity report is being made). This information on offers received must be passed on promptly and in writing, and estate agents must not mislead buyers or vendors in any way in relation to offers.

Pressuring a potential buyer to use associated services and/or refusing to pass on an offer because a potential buyer does not use any businesses / services recommended by the agent could also fall foul of the Digital Markets, Competition and Consumers Act 2024 (DMCCA).

Depending on the circumstances, the following unfair commercial practices may apply to a case of conditional selling:

- **Section 225: prohibition on unfair commercial practices.** Where a business fails to act in a professionally diligent way in its dealings with consumers, resulting in an unfair commercial practice. An agent is likely to be failing to act in a professionally diligent manner if they do not comply with legislation applying to the business (for example, the Estate Agents (Undesirable Practices) (No. 2) Order 1991) or any code of practice / terms of reference of their approved redress scheme
- **Section 226: misleading action.** An example of this is where a business gives false information that is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise
- **Section 228: aggressive practice.** Businesses are prohibited from engaging in aggressive commercial practices. A practice is aggressive if it involves harassment, coercion or undue influence, which therefore impairs the average consumer's ability to make an informed decision and is likely to cause them to take a transactional decision that they would not have taken otherwise

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

Consequences if an agent engages in conditional selling

If an agent doesn't comply with the DMCCA, they may face enforcement action from, for example, their local authority Trading Standards service. Enforcement action can range from helping the business meet their legal obligations with guidance and assistance, through to formal enforcement action such as criminal proceedings.

The conduct and offences outlined above constitute 'trigger events' under the EAA, which, if committed, allow NTSEAT to consider the imposition of an Order, which can either prohibit persons from engaging in

estate agency work or warn estate agents as to their conduct whilst engaging in estate agency work.

Where can I get more information?

NTSEAT advises that The Property Ombudsman's *Code of Practice for Residential Estate Agents* is used as a guide to best practice within the industry.

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
- Estate Agents (Undesirable Practices) (No. 2) Order 1991
- 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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