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trading standards law explained

Property descriptions: sale or let

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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.

This guidance is for Scotland

Part 4, Chapter 1 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) controls descriptions used by estate agents and letting agents. It creates criminal offences for traders that breach them. The Act prohibits 'misleading actions' and 'misleading omissions' that are likely to cause the average consumer to take a 'transactional decision' that they would not have taken otherwise.

Care should be taken when using general descriptions relating to location, environment, photographs,

measurements, parking and pricing. General disclaimers in small print, telling buyers not to rely on details, won't be effective in preventing offences. This also applies to information provided on your website.

The law

The DMCCA prohibits misleading actions that are likely to cause the average consumer to take a transactional decision that they would not have taken otherwise. The definition of a 'misleading action' is very detailed (section 226 of the DMCCA), but it essentially means providing false or misleading information or giving an overall presentation that is likely to deceive the consumer, even if the information is factually correct.

The DMCCA also prohibits the omission of material information provided to consumers, if that omission is likely to cause the consumer to take a transactional decision that they would not have taken otherwise (section 227). 'Material information' is defined as "information that the average consumer needs to take an informed transactional decision". A 'transactional decision' is not just whether a consumer decides to purchase or rent a property, but could also include such things as whether to view a property in the first place.

Things you say verbally about the property will be covered, as well as the printed word, photos, plans, models, websites, etc.

The DMCCA does not prevent you from acting in vendors' interests by presenting a property in the best light, as long as what you say, or do, does not mislead the purchaser or the vendor.

See 'Protection from unfair trading (criminal law)' for more information on the Act, including the legal definition of a transactional decision.

The DMCCA only covers descriptions used in the sale of property to consumers. However, similar provisions exist in the sale of commercial property by way of the Business Protection from Misleading Marketing Regulations 2008 (see 'Business-to-business marketing').

Recommended practices

Ask vendors to sign a document confirming that particulars are correct before you market a property. Give them a chance to amend anything that is wrong. This won't protect you if you print a misdescription that you could have reasonably checked out for yourself, but it will minimise the risk.

Think about all the descriptive phrases you use and ask yourself what they will mean to a purchaser.

Make it somebody's task to proofread particulars and sign to say they have done so.

When you get enquiries about a property, ensure that the person who prepared the details answers the questions, and keep a record of what is said on file.

Check everything you can. Ask to see receipts and guarantees for work carried out. Call to check Council Tax bands. Ask for evidence of sales and turnover if you want to describe the success of a business property.

Set up a process to ensure that your staff are adequately trained and that their work is regularly checked. You should consider random double-checking of property details against the property itself during this auditing process. Any deficiencies can then be dealt with by issuing corrected particulars and retraining

where necessary. You should keep records of training and checks made.

General terms and descriptions

Care should be taken when using terms such as 'immaculate condition' or 'recently decorated'. These terms will be taken to refer to the entire property, unless otherwise stated. If there are any particularly attractive features, your client will obviously expect you to use them as selling points, but they should not be emphasised to the exclusion of bad features if the overall result is a misleading description.

Location

Don't stretch popular and desirable areas too far; use the correct postal address. If a house is in one county geographically, but its postal address is in a neighbouring county, you should include both with equal prominence.

Comments concerning the proximity of properties to local services should be used with care. Terms such as 'close' or 'easy access' are best avoided, as are estimates of journey times. A statement of the actual distance is more accurate - for example, three miles to junction 4 of the M8.

Council Tax

The Council Tax band applicable to a property will be considered as material information, and will therefore need to be disclosed. This will be found in the Home Report.

Environment

If a house has open fields on three sides and a builder's yard or nightclub on the fourth, the safest option is to not refer to the outlook of the property. If you said that it was surrounded by views across open fields, you would mislead unless you made equal reference to the view on the fourth side. If the fourth side was of such importance to a consumer that it could affect their decision to buy, it may be a misleading omission not to mention it. If you use a photograph of the back or the side of a property on its own, you should make that fact clear.

Photographs

A photograph can be misleading. Do not doctor photos or use extreme lenses that affect the perspective of the image. If you take a photo of the view from a bedroom window, but cannot include the rubbish dump, don't say 'panoramic views' or 'unspoilt countryside'.

Measurements

You should try to make measurements as accurate as you can. Laser measures are the most common tool used by agents, and these should be regularly checked for accuracy against a known distance.

Be careful with gardens, where large length or area measurements can be involved. Ensure that accurate dimensions etc are given.

New instructions

You may advertise a property as a 'new instruction' to your agency for only a short period (we would suggest no more than a month) after you have been asked to become the vendor's agent. This applies even if the property has been advertised previously with another agency.

Pricing

The DMCCA covers the pricing of all properties, and you must be careful not to mislead consumers with regard to the previous price of a property if you are claiming a reduction in price. *Guidance for Traders on Pricing Practices*, produced by the Chartered Trading Standards Institute (CTSI), gives guidance as to how price reductions can be advertised.

Where there is an 'invitation to purchase' (for example, an advertisement showing a new housing development and indicating the price of at least one style of property) then the advertisement must contain a number of specified matters, which are indicated in section 230 of the DMCCA. Failure to include this information can amount to a criminal offence.

You should also be aware that the Act bans a trader from passing on materially inaccurate information about market conditions with the intention of getting the consumer to make a purchase in less favourable conditions (for example, an agent incorrectly telling a consumer that they have sold several properties in the same area, just like the one the consumer is viewing, at a certain price, in order to get the consumer to buy at an inflated price).

Of course, you can change the price at any time and not claim a 'reduction' (but make sure all copies and methods of advertising a property are changed at the same time).

Extensions, loft conversions and outhouses

Extensions, loft conversions and outhouses have created problems where an estate agent has described a room as a bedroom, but it has not been subject to planning or building regulation approval and, therefore, is not suitable to be used as such.

If a vendor is unable to supply details, then the planning office should be approached for confirmation.

If you are unable to establish that the room was correctly approved, then great care needs to be exercised; either describe the room as a boarded loft area (or other appropriate description), or state clearly that planning permission for the room has not been obtained.

Communal areas and parking places

Problems have arisen when a vendor has assumed that they own, or have rights over, a particular parking space when actually they only park there by habit or private arrangement. If a parking space used by a vendor is not clearly within the boundary of a property, further checks should be made, or great care should be used when describing this feature.

Re-checking

If you have a property that has been under your instruction for a long period of time, it is advisable to check whether the details are still correct. If particulars are issued that contain information that is no longer accurate, an offence could be committed.

If a new road is planned, or if the local train operator withdraws a train service to which you had referred, you should modify your details and advertisements. You should consider a system of re-verifying particulars with vendors and including a clause in their contract requiring notification of any material alterations they make to the property post-marketing.

It is suggested that particulars should carry the date on which they were compiled or revised to avoid confusion.

Disclaimers

The DMCCA does not state that disclaimers may be used, nor does it prohibit their use.

General disclaimers in small print, telling buyers not to rely on details, won't be effective in preventing offences. In particular, they are unlikely to be effective in relation to any misleading omission under the DMCCA.

However, there are some cases where a specific qualifying description may be acceptable. For example, if the vendor claims, without documentary evidence, that the property was treated for dry rot, you may only mention this if you say as part of that description that you have not seen any documents to verify this. A similar qualification might be applied to the working order of household appliances, central heating or claims about the history of a property. The crucial fact in assessing whether a qualified description is valid is the ease with which you could have reasonably checked it.

Other matters that may affect you

The DMCCA applies in relation to all elements of estate agency work, so will not only cover descriptions you apply to properties, but also any description you make concerning the service you provide, as well as the service itself. For example, if you display a 'For Sale' board outside a property you are not authorised to market, or display a 'Sold' board outside a property you have not sold, you are likely to be breaching the Act and could face civil and/or criminal action.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) apply to contracts made on-premises, off-premises and at a distance (such as via the internet). Where contracts to provide estate agency services are made off-premises or at a distance, the consumer has a right to cancel the contract within a 14-day period and the Regulations set out strict requirements as to how this right to cancel must be communicated to the consumer. See 'Consumer contracts: off-premises sales' or 'Consumer contracts: distance sales' for more information.

The CCRs also create requirements for the provision of certain information that a trader must give a consumer before a contract is agreed. This is covered in the two guides linked to above and also in 'Consumer contracts: on-premises sales'.

In addition, the DMCCA provisions regarding misleading omissions cover omitting information that is required under other legislation, including the CCRs, if its omission is likely to cause a consumer to take a transactional decision that they would not have taken otherwise.

Although you are unlikely to finalise a sale without any face-to-face contact with the purchaser, if you use a website to advertise properties, the Electronic Commerce (EC Directive) Regulations 2002 will apply. These are also covered in 'Consumer contracts: distance sales'.

Homes for sale must have a Home Report available to prospective purchasers. The Home Report is a pack of three documents:

- **single survey.** Contains an assessment by a surveyor of the condition of the home, a valuation, and an accessibility audit for people with particular needs
- **energy report.** Contains an assessment by a surveyor of the energy efficiency of the home and its environmental impact. It also recommends ways to improve the home's energy efficiency
- **property questionnaire.** Completed by the seller of the home. It contains additional information about the home, such as Council Tax banding and factoring costs that will be useful to buyers

Details of the Home Report requirements can be found on the Scottish Government website.

The Consumers, Estate Agents and Redress Act 2007 places a requirement on estate agents to belong to an approved redress scheme. The National Trading Standards Estate Agency Team (NTSEAT) has approved two estate agency redress schemes, operated by The Property Ombudsman and Property Redress.

Under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, the display of temporary 'For Sale', 'To Let' or 'Sold' boards is allowed by way of a 'deemed planning consent', providing certain criteria regarding maximum size etc are met. Once a sale has gone through, or a premises has been let, a sign such as 'Sold' or 'Let' may only be displayed for a maximum of 14 days.

Most of the Estate Agents Act 1979 is enforced by NTSEAT by a system of negative licensing. This means you do not need a licence to act as an estate agent, but if you breach the legislation, you may be banned. It covers various undesirable practices, such as failure to declare a personal interest, failing to pass on offers, discriminating against buyers that do not take other services, conviction for other offences involving fraud, dishonesty, etc. The part enforced by Trading Standards services relates to the maintenance and auditing of clients' accounts.

Anyone who lets furnished accommodation as a business activity (including letting agents, estate agents and private landlords) needs to be aware of the safety requirements; see 'Goods in rented accommodation'.

If you offer credit, or introduce people to sources of credit, you need to be authorised by the Financial Conduct Authority; see 'Credit and other financial matters'.

Letting agency registration

Letting agency work is defined as carrying out work for a private landlord who wants to let their property out to a tenant, or managing a property that is either rented out to a tenant or is planned to be. The definition of managing a property includes collecting rent, inspecting the property and arranging for repairs and maintenance.

If you fall within the above definition you must be registered with the Scottish Government and follow the Letting Agent Code of Practice.

You must also have one, or more, separate and dedicated client accounts, have client money protection and have professional indemnity insurance.

For more information, see 'Letting agents and property management'.

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

The National Trading Standards guidance has been temporarily withdrawn; references to it have been removed.

Last reviewed / updated: October 2025

Key legislation

- Estate Agents Act 1979
- Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984
- Enterprise Act 2002
- Housing (Scotland) Act 2006
- Consumers, Estate Agents and Redress Act 2007
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Housing (Scotland) Act 2014
- 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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