

# MOVE IT.

WHICH? CAMPAIGN TO REGULATE ESTATE AGENTS



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**CAMPAIGN BRIEFING**

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"Last year we were working with an estate agent that was pretty much a nightmare. They consistently sent the wrong type of buyer round to our property."

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"If they have a mortgage advisory service, they will put forward the offer of the person who is taking their mortgage out rather than the person who isn't taking their mortgage out... and those practices are illegal."

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"You don't trust them, but you should be able to trust them."

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"I wouldn't know that they weren't regulated in some way."

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"My estate agent I was using last year would send imaginary people round."

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"Without any regulation it means that tomorrow I could open my own estate agents and start trading."

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"But why should it be like that? In so many other professions, bad practice just isn't accepted is it? To be in that profession you have to work to certain standards, so why shouldn't estate agents be the same?"

Which? started reporting on the estate agent industry in the 1960's. In our first survey of consumer thoughts on home buying and selling we found that people who had used estate agents to sell their houses complained that their agents seemed more interested in getting a quick commission. Forty years on, consumer complaints about home buying and selling are very similar.

## CASE STUDY 1



Estate agents' contracts may be unfair or misleading

Angela Hill and John McLeod signed up Halifax to sell their £45,000 flat in Grantham. Under their sole-agency agreement, if Angela and John found a buyer themselves, Halifax would get no commission. But when the couple did find their own buyer, Halifax demanded it anyway – and sued for over £750 plus costs. With help from our lawyers, John and Angela fought back and Halifax finally backed down – but refused to admit it was wrong.

Halifax said the couple should have cancelled their contract before selling privately (which is nonsense), and claimed to have played an active role in the sale.

In this case, the contract was clearly a 'sole agency agreement', which means that you can sell your house privately while it's being marketed by the one agent you have agreed to work with. But many estate agents include clauses in their contracts meaning that you have to pay commission even if you sell your house yourself.

Consumers entering the home-buying or selling process are substantially disadvantaged by the way estate agents currently operate. More than half of consumers who have bought or sold a home say that they have experienced problems with estate agency services:

- **about one third say the estate agent did not keep them well informed**
- **14 per cent say the estate agent incorrectly described property**
- **12 per cent say the estate agent put too much pressure on them**
- **9 per cent say they believe their estate agent behaved unethically**
- **3 per cent say they had to pay commission fees when they were not due**

Moreover, there is a widespread lack of consumer confidence in the industry, which is worth over £4 billion, comprises about 1.8 million transactions a year and charges fees well in excess of those that would have been due had they risen in line with inflation:

- **only one in ten home buyers and sellers strongly agrees that estate agents can usually be trusted**
- **70 per cent think that estate agents frequently give misleading information about properties**
- **70 per cent think that estate agents and property developers frequently work together to line each others' pockets**
- **over a half think that estate agents frequently invent offers from non-existent buyers**
- **less than a half think that estate agents generally keep sellers well informed**
- **less than a half think that estate agents pass on all offers to vendors**

Given that buying or selling a home is one of the largest transactions consumers will ever make, and one of the most stressful experiences of their lives, it is vital that estate agency services are of good quality and are seen to be of good quality. At the core is the need for an effective regulatory system, which ensures consumer confidence, guarantees a minimum standard of service and provides adequate protection for the consumer.

Which? research indicates that the present system, which is comprised of self- and co-regulation (so-called 'soft law'), does not have the capacity to either mitigate the identified consumer risk or improve consumer confidence. There is weak enforcement, limited monitoring, inadequate redress and incomplete coverage of the industry.

Furthermore, there is little consumer support for the continuation of the present system. While 82 per cent of people either strongly or slightly agree that all estate agents should be licensed by the government, 95 per cent either strongly or slightly agree that all estate agents should be monitored regularly by an independent authority.

Given that the present system is the one in which widespread problems are being experienced, it is clear that the environment needs more than just soft law to govern it. Tinkering with self- or co-regulatory structures will, therefore, not provide sufficient protection for the consumer or increase consumer confidence. Stronger regulatory intervention is a necessity. Our comparative analysis of regulatory regimes, where estate agents are licensed, shows that this is not only achievable but also of positive benefit to the consumer.

## CASE STUDY 2



Broken  
promises

Peter and Ann Hotchkiss were delighted when their offer of £165,000 was accepted on a bungalow in Welford-on-Avon in April 2001. But, three months later, the couple were dismayed to see the house readvertised. The estate agent, Organ Dainton, claims the bungalow's owner had lost faith in the sale of Peter and Ann's house, and wanted the bungalow back on the market. It says it phoned the couple to tell them. However, they deny this and say the first they knew about the new advert was when they saw it in the paper.

They complained to the National Association of Estate Agents. It cautioned Stephen Organ but won't tell us the official reason. However, its code of conduct says agents must tell buyers in writing if they readvertise after an offer has been accepted.

Which? considers that an independent and dedicated estate agent regulator, with robust monitoring and enforcement regimes, should be established and that a positive licensing system (one where a licence is legally required for a trader to operate) should be introduced.

However an independent regulator is not enough, and in order to protect consumers and good estate agents from the rogues we are calling on the government to:

- Create an independent and dedicated estate agent Ombudsman Scheme, membership to which should be a condition of licence.
- Set up a consumer panel within the regulatory framework. This should have sufficient authority to be able to hold the regulator to account and a clear mandate to promote and protect consumer interests.
- Draw up a Statutory Code of Ethics, Practice Rules and Conduct Rules to provide adequate guidance to estate agents.
- Ensure that professional training should be a condition of market entry. Training for sales staff and estate agents should adopt a competency-based approach and should be set at the minimum level necessary to achieve the required protection for consumers.
- Ensure that entry conditions include various requirements designed to weed out individuals who have a history of dishonest acts.
- Licences should be subject to renewal on a regular basis and should be issued on condition that the holder undertakes continuous professional development (CPD). The regulator should identify priority learning activities for CPD to ensure that the industry remains responsive to the environment.
- Ensure that robust systems must be in place to monitor (1) compliance with the law, including relevant codes and rules (2) the relevance of training requirements and compliance with mandatory CPD and (3) consumer knowledge and satisfaction.
- Regulate to incorporate the provision of a comprehensive sanctions regime. The regulator must have wide-ranging and graded disciplinary power to be able to assign appropriate and effective sanctions.

Our proposals take a radical departure from the present regulatory system. However, the alternative is the maintenance of a system that simply is not working and does not have the ability to remedy the identified risk to consumers. More robust regulation, which places consumer protection at the heart of the regulatory framework, is now required.

## CASE STUDY 3



Commission to  
two estate  
agents on the  
same sale

Switching estate agents isn't always simple – you could end up paying commission twice.

In September 2000, Alannah Hunt's house was valued at £1,150,000 by Winkworth and at about £900,000 by FPD Savills. She initially signed with Winkworth but, when only one offer came in, she decided to give notice and switch to Savills instead. Soon after, she accepted an offer of £875,000, paid Savills its £20,000 fee and started to think about life in her new home in the countryside.

But about five months later, Winkworth asked for almost £18,000 in fees. It claimed it had introduced the buyer so it was contractually entitled to its fee. That was the first Alannah had heard about Winkworth having anything to do with the person who had bought her house – she'd trusted that Savills had found a new buyer. But, in fact, he had already seen the house with Winkworth and his details were on a list provided to Savills of people who had viewed the house. Savills had failed to tell Alannah. In the end, she paid a total of almost £38,000 in commission.

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