

ESTATE AGENTS

Government response to the consultation on proposals for exercising powers in the Consumers, Estate Agents and Redress Act 2007 and other changes to secondary legislation relating to estate agents – Part 2: record keeping, offer letters and statutory definitions

JUNE 2009

ESTATE AGENTS: PROPOSALS FOR EXERCISING POWERS IN THE CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007 AND OTHER CHANGES TO SECONDARY LEGISLATION RELATING TO ESTATE AGENTS

The Government response to the consultation – Part 2: record keeping, offer letters and statutory definitions.

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Estate agents record keeping regulations and guidance - views sought

Draft record keeping regulations and draft guidance on the regulations, based on policy decisions in this consultation response, have been published on the BIS web-site. We are seeking views on the regulations and guidance prior to implementation. Comments on the draft regulations and guidance should be sent to the address above by 10 September 2009. Both documents are available at <http://www.berr.gov.uk/whatwedo/consumers/business/estate-agents/index.html>.

1. Introduction

The consultation

1.1 The Consumers, Estate Agents and Redress Act 2007 (CEARA 07) amends the Estate Agents Act 1979 (EAA 79) by including new provisions to improve the regulation of estate agents.

1.2 The Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills) launched a public consultation on 9 November 2007 to seek views on proposals for implementing powers in CEARA 07 enabling the Secretary of State to define the scope of estate agents redress schemes, set the penalty charge payable by estate agents for non membership of redress schemes and to prescribe certain requirements relating to the keeping of permanent records by estate agents. The consultation also sought views on reducing the fee to be paid by estate agents when applying to have prohibition orders revoked or varied, whether sellers should be given details of all offers received from prospective buyers and on alternative versions of the statutory definitions of the contract terms 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser' where they are used in estate agents' contracts.

Consultation responses

1.3 The consultation closed on 1 February 2008. Twelve written responses were received from consumer groups, regulatory bodies, ombudsman organisations, trade bodies and individual estate agents. Annex D contains a list of respondents and a glossary of abbreviations used in this document.

1.4 Responses showed broad support for the majority of the Government's proposals and provided constructive and insightful contributions to the development of the proposed measures.

1.5 The Government response in respect of redress schemes, penalty charges and application fees was published on 6 June 2008.

1.6 This document provides a summary of the main issues raised in the consultation in respect of record keeping, offer letters and statutory definitions and, in these areas, outlines the Government's decisions on the points of substance.

1.7 Draft record keeping regulations and draft guidance on the regulations, based on policy decisions in this consultation response, have been published on the BIS web-site. Comments on the draft regulations and guidance should be sent to the address on page 2 by 10 September 2009.

1.8 Once again we would like to thank all those who devoted their time and who gave so generously of their experience and knowledge, to help shape the Government's views on the issues. These contributions are very much appreciated.

2. Executive summary

2.1 A summary of the main policy decisions in this consultation response is provided below.

Record keeping regulations

2.2 The Government will **not** exercise the power under section 21A(4)(a) of EAA 79, as amended by CEARA 07, to require the keeping of additional information relating to a client's prospective liabilities to an estate agent. The Government will rely on the record keeping provisions in the amended EAA 79 relating to sections 18(1) and (3) of the 1979 Act.

2.3 The Government will **not** exercise the power under section 21A(4)(b) of EAA 79 to require the keeping of additional information relating to the disclosure of an estate agent's personal interest in a transaction. The Government will rely on the record keeping provisions in the amended EAA 79 relating to sections 21(1) and (2) of the 1979 Act.

2.4 The Government will exercise the powers under section 21A(4)(c) and (d) of EAA 79 to require the keeping of records relating to offers of a prescribed description and to information and actions relating to such offers. Estate agents will be required to keep records of offers received and of notifications sent to clients about offers received. The Government will seek to define an offer so that it includes all offers received, including those not passed on to sellers. Agents will therefore have to keep records of all offers received, even where clients have expressed in writing that they do not wish to receive certain types of offers. The list of record keeping requirements in relation to offers will be largely as per the list set out in the estate agents consultation, but with some limited changes and additions. The new list will include requirements for identifying individuals who receive offers and to whom they are passed on, and the recording of the seller's response to an offer. But the proposed requirement to record the status of the person making the offer has been removed.

2.5 The Government will exercise the power under section 21A(4)(e) to require the keeping of records relating to any other information or event of a prescribed description. This power is to be used to require estate agents to retain contracts (including variations of contracts) with sellers; disclosures to clients about a personal beneficial interest in land or the proceeds of sale of such an interest; declarations made to clients when a buyer applies to use an estate agent's services (such as mortgage advice); and declarations made by sellers as to the type of offers they don't want to see, which an agent is not required to pass on.

2.6 The Government will exercise powers under section 21A(6)(a) and (b) to specify the manner and the place or places at which permanent records are to be kept. The regulations will largely be as per the proposals set out in the estate agents consultation. Estate agents will be required to keep original or true copies of documents in paper or electronic form. Records should be kept

at the local branch or place of business associated with the transaction or be easily available at that branch or place of business, where records are kept in electronic form off site.

2.7 Draft record keeping regulations and draft guidance on the regulations, based on policy decisions in this consultation response, have been published on the BIS web-site. Comments on the draft regulations and guidance should be sent to the address on page 2 by 10 September 2009.

Changing the offer making process

2.8 The Government has decided **not** to amend the Estate Agents (Undesirable Practices) (No 2) Order 1991 to require agents to pass on all offers to sellers, including those that sellers have indicated they don't wish to see. On balance the Government believes that sellers should continue to have discretion to decide about the type of offer passed on to them. It is in the agent's best interest to advise a client where a decision of this kind is not beneficial to them. The removal of a seller's discretion may also damage the relationship between agent and client – passing on all offers received may irritate sellers who impose restrictions for what they consider to be good reasons.

2.9 Concerns about suitable offers not being passed on can be tackled by requirements in the record keeping regulations for details of all offers to be kept and recorded including those a client has indicated they don't want to see. This will enable enforcers to check whether an agent has acted in accordance with the seller's instructions. This we believe is a sensible compromise that benefits both businesses and consumers.

Changes to statutory terms

2.10 The Government remains committed to reviewing and amending if possible the statutory definitions of the contract terms 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser' contained in the Estate Agents (Provision of Information) Regulations 1991. The proposed changes to the statutory terms resulted in detailed, wide ranging and, in some instances, contradictory responses. The Government accepts that further work is required before deciding on the way forward. We will consult further with stakeholders and consider options such as road testing possible replacement terms. We will consider the ramifications of the Court of Appeal ruling on the use of the 'sole agency' term, the case for limiting the liability of sellers under 'sole agency' and 'sole selling rights' contracts to pay commission after the expiry of contracts, and whether clients should be informed about the persons the agent has introduced or had negotiations with during the contract period.

2.11 The Government has strong reservations about repealing the terms 'sole selling rights' and 'ready, willing and able purchaser', but will consider whether removing the definitions from the Estate Agents (Provision of Information) Regulations 1991 might make a difference to the protection of consumers under the Unfair Terms in Consumer Contracts Regulations 1999.

Prohibiting the statutory terms altogether would require primary legislation. The Government remains of the view that the best way forward is to amend the definitions to make them clearer and easier to understand.

2.12 The Government will consider again the issue of the proposed warnings accompanying the statutory terms.

3. Record keeping regulations

3.1 EAA 79, as amended by CEARA 07, contains a new requirement on estate agents engaged in estate agency work to keep records (“permanent records”) for a period of at least six years.

3.2 When new section 21A of EAA 79 is commenced, estate agents will be required to keep permanent records of certain matters, which include: information about a client’s prospective liabilities to an agent; information about an estate agent’s personal interest in a transaction; details of prescribed offers and prescribed information and actions in relation to such offers; and any other information prescribed by the Secretary of State.

3.3 The powers of the Secretary of State to prescribe information to be included in the permanent records, by means of regulations, are as follows:

- A power to require the keeping of additional information relating to a client’s prospective liabilities to an estate agent (ie fees and charges)
- A power to require the keeping of additional information relating to the disclosure of an estate agent’s personal interest in a transaction
- A power to require the keeping of records relating to offers of a prescribed description and information and actions relating to such offers
- A power to require the keeping of a record of any other information or event of a prescribed description

3.4 New section 21A also contains regulation-making powers regarding the keeping of records:

- A power to specify the manner in which permanent records are to be kept
- A power to specify the place or places at which permanent records are to be kept

3.5 The consultation did not propose to exercise all of the record keeping powers in EAA 79, but sought views on making regulations setting out requirements relating to offers, the manner in which records are to be kept and the place or places at which records are to be kept.

(i) Power to require the keeping of additional information relating to a client’s prospective liabilities to an estate agent

Question 11: Do you agree that there is no need to require the keeping of additional information relating to the giving of information to a client about their prospective liabilities to the estate agent?

Question 12: If not, what types of additional information should be specified?

3.6 Subsection 4(a) of new section 21A of EAA 79 requires estate agents to keep records of information given to clients about their prospective liabilities such as the fees and charges they will have to pay and the circumstances in which they are payable as required by sections 18(1) or (3) of EAA 79.

Subsection 4(a) also contains a power enabling the Secretary of State to prescribe the keeping of additional information relating to the giving of such information.

Summary of responses

3.7 The majority of respondents who commented agreed that there was no need to require the keeping of additional information relating to the giving of information to a client about their prospective liabilities to an estate agent, but there were dissenting opinions particularly from the enforcers who called for additional information to be recorded and kept.

3.8 LACORS and TSI called for internal and external correspondence – including letters, e-mails and notes of phone calls – regarding queries and/or disputes to be kept. TSI also asked for signed contracts or authorisations, schedules setting out charges, and correspondence regarding cancellation or extension of periods following initial contact with an agent to be kept.

3.9 The OEA called for the introduction of a ‘disclosure document’ or ‘key features document’ in addition to a formal agreement, which summarises the commitments set out in the contract and other information which may have a bearing on those commitments.

3.10 RICS called for written records of telephonic instructions to be kept. RICS was also critical of the six year rule for keeping records, which it said is not consistent with the Financial Services and Markets Act 2000.

Government response

3.11 The consultation stated that information from estate agents to clients about prospective liabilities was not a source of many complaints to the OFT and recommended the power to require the keeping of additional information relating to liabilities was not exercised.

3.12 The majority of the additional requirements suggested by LACORS and TSI are not in our opinion essential to proving misconduct. While it may be useful to have access to this information, the Government believes that the benefits would not outweigh the increased burden on estate agents of having to record and keep such information.

3.13 The Government does, however, accept that it would be sensible to require the keeping of contracts (including variations of contracts) between estate agents and their clients, as most disagreements about fees and charges concern the terms of a contract, rather than declarations about liabilities before entering into a contract. This should not be a significant burden as most estate agents keep contracts after they expire, in order to claim fees. **Rather than do this under section 21A(4)(a), which requires that information relates to sections 18(1) or (3), the Government will exercise the power in section 21A(4)(e), which enables the keeping of**

records relating to any other information or event of a prescribed description (see section iv below).

3.14 The Government has no plans to introduce a disclosure or key features document. While such a document may be useful for consumers, we think it more appropriate that such an initiative is made by the industry and adopted by agents on a voluntary basis.

3.15 Regarding the six year rule for keeping records, this is similar to the existing requirement set out in the Estate Agents (Accounts) Regulations 1981. It is also the limitation period for a basic contract claim under the Limitation Act 1980. This was not the subject of the consultation, and to change it would require primary legislation.

3.16 A suggestion was made by LACORS and TSI in relation to offers that the use of an estate agent's services by a prospective buyer should be recorded (see section iii below). In relation to prospective services generally there is already a requirement under the Estate Agents (Provision of Information) Regulations 1991 to give clients written confirmation of the services offered to prospective buyers. This information will be subject to the record keeping requirement under section 21A(4)(a), which requires a record to be kept of information given under sections 18(1) or (3) (note that the Estate Agents (Provision of Information) Regulations 1991 are made under section 18 and are therefore referred to in section 18(1)). We are also proposing to require that a record be kept of specific declarations to clients about the agent's services a prospective buyer has applied to use, as required by the Estate Agents (Undesirable Practices) (No 2) Order 1991. This issue is discussed further in sections iii and iv below.

(ii) Power to require the keeping of additional information relating to the disclosure of an estate agent's personal interest in a transaction

Question 13: Do you agree that there is no need to require the keeping of additional information relating to the disclosure of an estate agent's personal interest in a transaction?

Question 14: If not, what types of additional information should be specified?

3.17 Subsection 4(b) of new section 21A of EAA 79 requires estate agents to keep records of declarations about their personal interest in a transaction given before entering negotiations with any person, as required by sections 21(1) or (2) of EAA 79. Subsection 4(b) also contains a power enabling the Secretary of State to prescribe the keeping of additional information relating to the disclosure of such information.

Summary of responses

3.18 The majority of respondents who commented agreed that there is no need to require the keeping of additional information relating to this disclosure of an estate agent's personal interest in a transaction.

3.19 Again there were dissenting opinions from enforcers. LACORS and TSI thought that all information relating to a personal interest should be kept – they pointed out it was difficult to prove a personal interest when a declaration had not been made, and called for all internal and external correspondence in connection with a personal interest to be kept. TSI also called for records relating to the subsequent disposal/sale or prior acquisition of the property to be kept, together with records relating to queries, disputes and allegations.

3.20 TSI commented that TSDs often receive tip-offs and allegations of estate agents purchasing property cheaply and selling on at a large profit, but that the OFT will not investigate such allegations unless the vendor complains, which will not happen if he is unaware of what has occurred.

Government response

3.21 The consultation recommended the power to require the keeping of additional information relating to declarations of a personal interest was not exercised.

3.22 As before, the additional requirements suggested by LACORS and TSI are not in our opinion essential to proving misconduct, and while useful to have, the benefits would not outweigh the increased burden on estate agents of having to record and keep such information.

3.23 Having considered the responses, the Government remains of the opinion that it is not necessary to require the keeping of additional information about the disclosure of a personal interest. The Government will not exercise the power. However, the Government does intend to require a record to be kept of declarations to clients of personal interests in land or the proceeds of sale of land, as required by paragraph 2 of Schedule 1 of the Estate Agents (Undesirable Practices) (No 2) Order 1991. The Government will do this by exercising the power in section 21A(4)(e) (see section iv below).

3.24 Regarding the TSI concern that the OFT will not investigate complaints referred to it from TSDs where the vendor has not complained, the OFT responded that it takes all allegations seriously and welcomes the support of TSDs in identifying illegal activity by estate agents. The OFT regularly investigates allegations of estate agents purchasing property cheaply and selling on at a large profit. The OFT recognises that the number of these matters referred to it to investigate may be low compared to the actual incidents. While tip-offs and unsubstantiated allegations can be used to commence investigations, results such as prohibition orders, will only be achievable where evidence of unfitness can be obtained.

(iii) Power to require the keeping of records of offers of a prescribed description and information and actions relating to such offers

Question 15: Do you agree with the proposed list of information and actions that should be recorded and kept by the estate agent in relation to offers?

Question 16: Should records be kept of other information received in relation to an offer or of other actions taken?

3.25 Subsections 4(c) and (d) of new section 21A of EAA 79 require estate agents to keep records relating to offers of a prescribed description and prescribed information and actions relating to such offers. Unlike the requirements to keep records related to prospective liabilities and declarations of a personal interest, all requirements related to offers must be set out in the regulations including the definition of an offer (for the purposes of the regulations).

Summary of responses

3.26 The majority of respondents who commented agreed with the list of information and actions that should be recorded and kept by estate agents in relation to offers, but a number of respondents recommended that some changes be made to the requirements and that additional information be kept.

3.27 TSI recommended 'to whom' should be added to the date and time the offer was made. RICS called for the identity of the person in the agent's office receiving an offer to be recorded. LACORS recommended 'by whom' should be added to when and how the offer was communicated to the client. RICS recommended that where offers were communicated in the first instance by phone, the client's response to the offer, should be recorded. A similar response was received from Buckinghamshire TSD. TSI called for the client's response to an offer to be recorded together with when and to whom the response was communicated. TSI also called for the date, identity of the agent and method by which the response was conveyed to the offeror to be recorded.

3.28 The NFPP expressed concern about possible misrepresentation of an offeror's status and that it would be difficult to correctly ascertain this, before passing on the offer. Angus Bearn also expressed concern about the need for proper identity checks slowing down the offer making process. On the other hand, LACORS and TSNW asked what steps, if any, agents are required to take to establish whether an offeror is able to exchange contracts quickly. TSI also called for agents to record steps taken to confirm claims made by prospective buyers.

3.29 RICS suggested that information about the provision of HIPs to buyers could be recorded, together with steps taken where there is more than one vendor or a potential conflict involving a 'silent' vendor.

3.30 LACORS and TSI called for the status of a buyer to be recorded when they take up the services of an estate agent such as a mortgage. They claim that this may greatly influence the manner in which an offer is conveyed.

3.31 TSI called for all internal/external correspondence relating to queries or complaints about the passing on of offers to be kept. NCF recommended that estate agents be “encouraged to keep accurate records of all relevant activity and information”.

3.32 Angus Bearn thought that agents should be required to record the reasons for recommending acceptance of a lower offer. In response to the questions concerning the keeping of records relating to other information or events (section iv below), NCF called for the recording and keeping of details as to why an offer was not accepted.

Government response

3.33 Under the existing law, estate agents are required to pass on to their clients promptly and in writing accurate details of all offers received from prospective buyers, except where the client has indicated in writing that they do not want to receive certain types of offers, for example those below a certain price or where a buyer does not have a mortgage in place. The continuation of a client’s discretion not to receive certain offers is discussed in part 4 of this document.

3.34 In line with information given to clients in respect of prospective liabilities and declarations of a personal interest, the Government will require estate agents to keep records of notifications sent to clients about offers received.

3.35 For the purposes of the record keeping regulations, we will define an offer so that it includes all offers received by estate agents, including those not passed on to sellers. This means that a record of all offers received will need to be retained.

3.36 The consultation stated that the offer making process was the source of many disputes between estate agents and buyers and sellers and set out a series of information requirements and actions that should be recorded and kept in respect of each offer. The responses were largely supportive of the proposed list, but with some suggested changes and additions. **The list of information and actions to be recorded and kept in respect of each offer as proposed in the consultation document will be revised and subsequently reflected in regulations – see below.**

3.37 The Government supports proposals to record the identity of individuals who receive offers and of individuals to whom they are passed on. It also supports the recording of responses to offers from sellers.

3.38 The Government does not want the regulations to be overly bureaucratic. It does not believe it is necessary for estate agents to keep all internal/external correspondence relating to queries and complaints about offers. It is a matter for agents and industry bodies to decide what further information they need to keep in addition to the statutory requirements.

3.39 The Government is sympathetic to industry concerns about establishing the status of a buyer and the danger of unnecessarily slowing down the offer making process by imposing too stringent requirements. Looking again at this issue we think that there is a good case for not requiring agents to record the status of buyers. We agree that establishing a buyer's status could be burdensome on agents and increases the risk of delays to the passing on of offers. While it is in an estate agent's interest to pass on as much information as possible about a buyer, there are practical difficulties that make this difficult. The role of an agent is to introduce buyers and sellers - an agent's contractual relationship is with the seller rather than the prospective buyer. Thus, an agent will not always be in a position to verify the information given to him by prospective buyers as to their status. Furthermore, both parties usually engage the services of solicitors at the pre-contract stage, where relevant due-diligence as to the status of the parties normally takes place. **Having considered the responses, the Government has decided not to introduce a requirement for estate agents to record and keep the status of the person making the offer in respect of each offer.**

3.40 Regarding the recording of the use of an estate agent's services by a prospective buyer, the Government does not believe it is necessary for agents to do this in relation specifically to offers as there are already statutory requirements dealing with this issue. The Estate Agents (Provision of Information) Regulations 1991 requires agents to give clients written confirmation of the services they offer to prospective buyers, prior to the client becoming committed to the agent, and the Estate Agents (Undesirable Practices) (No 2) Order 1991 requires agents to inform clients in writing when a prospective buyer applies to use an agent's services (unless the application is refused). **Agents will be required to record and keep general declarations about services under section 21A(4)(a) of EAA 79 (see section i above) and specific declarations under section 21A(4)(e) (see section iv below).**

3.41 Taking into account the responses to the consultation the Government has amended the list of information and actions that should be recorded and kept in respect of each offer as follows:

- The amount of the offer to purchase a property
- Any conditions attached to the offer (subject to timing, inclusion of certain goods etc)
- The name of the person making the offer (including a person acting on behalf of the buyer)
- The name of the individual agent who receives the offer
- The date and approximate time the offer is received by the agent
- The means of communication (for example letter, email or telephone call) by which the offer is received by the agent
- The name of the individual agent who forwards the offer to the client (in the case only of offers which are required to be forwarded)
- The name of the individual to whom the offer is forwarded (ie the client or person receiving the offer on behalf of the client)

- The date and approximate time the offer is forwarded
- A copy of the letter or other written communication by which the offer is forwarded (note that the Estate Agents (Undesirable Practices) (No 2) Order requires the offer to be forwarded in writing)
- Any instructions received from the client in relation to that offer (including for example any conditions attaching to any acceptance of the offer)

3.42 Details of this list are included in the draft record keeping regulations. It should be noted that much of this information is already included in offer letters and recorded in the course of negotiations.

(iv) Power to require the keeping of a record of any other information or event of a prescribed description

Question 17: Do you agree that there is no need to require the keeping of records relating to any other information or event?

Question 18: If not, what other information or actions should be specified?

3.43 Subsection 4(e) of new section 21A of EAA 79 requires estate agents to keep records of any other information or event of a prescribed description.

Summary of responses

3.44 The responses received on the need to require the keeping of records relating to other information or events were pretty evenly split. Industry respondents agreed there was no need to require the keeping of other records. Enforcers, on the other hand, proposed a number of additional records they would like to see recorded, many of which are out of scope as far as this consultation is concerned.

3.45 LACORS and TSI would like to see information about sellers kept and recorded to enable TSOs to check the identity of sellers and confirm if a property has been genuinely sold or withdrawn from the market.

3.46 TSI want to see the keeping of comprehensive records in relation to 'for sale' and 'for let' boards (flyboards) including written instructions to firms contracted to erect signs on agents' behalf. TSI also called for the number of the property to be sold or let, to be included on a flyboard.

3.47 In conjunction with changes to statutory terms in estate agents contracts, Which? called for the regulations to be used to record who an agent has 'introduced' or 'had negotiations with' while they have a contract with the seller to sell their property.

Government response

3.48 Regarding the keeping of information about sellers enabling TSOs to check the identity of sellers, estate agents will be required to keep contracts with sellers (and records of certain other dealings), thus assisting

identification. Estate agents are also required to keep evidence of a customer's identity under the Money Laundering Regulations 2007. But even if the regulations were to require more information about sellers to be recorded by agents, this would not in itself improve the powers of TSOs to contact sellers and require confirmatory or other information to be given by them. Extending the powers of TSOs in this way is outside the scope of this consultation and would require primary legislation.

3.49 Regarding the misuse of flyboards, regulations already exist to deal with the erection of boards without consent. Flyboards must comply with the Town and Country Planning (Control of Advertisement) Regulations 1992 (as amended in 2007 for England) and in Scotland the Town and Country Planning (Control of Advertisement) Regulations 1990. Flyboarding can also be dealt with as a misleading practice under regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Using the record keeping regulations to deal with flyboarding would be problematic as it would only apply to 'for sale' boards (the scope of 'estate agency work' in EAA 79 is limited to the buying and selling of land). The requirement that house or flat numbers should be added to flyboards is outside the scope of this consultation. **For these reasons the Government will not require the keeping of records in relation to flyboards.**

3.50 The Which? recommendation that the regulations to be used to record who an agent has 'introduced' or has 'had negotiations with' during a contract with a client, is considered in part 5 of this consultation.

3.51 The Government has decided to exercise this power to require the keeping of contracts (including variations of contracts) between agents and clients (see section i above); disclosures to clients about a personal beneficial interest in land or the proceeds of sale of such an interest, as required by paragraph 2 of Schedule 1 of the Estate Agents (Undesirable Practices) (No 2) Order 1991 (see section ii above); declarations to sellers about the agent's services a prospective buyer has applied to use (see section iii above); and declarations made by sellers as to the type of offers they don't want to see and which an agent is not required to pass on (see part 4 below).

(v) Power to specify the manner in which permanent records are to be kept

Question 19: Do you agree with the proposals setting out the manner in which permanent records are to be kept?

Question 20: Should there be any other requirements setting out the manner in which permanent records are to be kept?

3.52 Subsection 6(a) of new section 21A of EAA 79 enables the Secretary of State to specify the manner in which permanent records are to be kept.

Summary of responses

3.53 All the respondents who commented agreed with the proposals setting out the manner in which records are to be kept, but there were some suggestions for additional requirements.

3.54 LACORS and TSI thought that original copies should be kept wherever possible to prevent tampering. TSI also commented that signed documentation should be kept as opposed to unsigned electronic records, which could be falsified at short notice.

3.55 LACORS and TSI recommended that electronic records should be backed up, so that they should not be “lost”. NCF called for businesses to put in place “continuity” (ie contingency) plans to protect against loss.

3.56 TSI also called for records to be easily auditable, stating when and by whom they have been created and amended, and that they should be easily accessible and easily copied at the request of enforcement officers.

Government response

3.57 The estate agents consultation proposed that the regulations specifying the manner in which permanent records are to be kept should require the keeping of either original documents (in paper or electronic form) or photocopies or scans of original documents. **The decision to keep original documents or copies and to keep them in paper or electronic form is, the Government believes, a matter for estate agents, provided that where copies are kept they are ‘true’ copies.** Records must therefore show the date of the transaction and contain a signature if used. Photocopies must be of a satisfactory standard.

3.58 Regarding the backing up of permanent records, the Government does not intend to have a specific requirement for agents to do this. Agents that fail to backup records, which are subsequently lost, will be in breach of the duty to keep permanent records. Failure to keep such records will be a trigger enabling the OFT to consider the fitness of estate agents to operate. The onus is on agents to take appropriate steps to ensure that relevant records are kept for the required six year period. How they do this is a matter for them.

3.59 Regarding the issue of auditing and ease of access, the duty to provide records requested by the OFT and TSOs falls on the agent. Failure to provide information requested by the OFT under section 9(1) and an authorised officer under section 11(1A) of EAA 79 are also ‘triggers’ enabling the OFT to consider the fitness of estate agents to operate. It is therefore in the interest of agents to provide the information promptly on request. **The Government does not therefore propose to introduce specific regulations on auditing and ease of access in relation to the manner in which records are kept.**

(vi) Power to specify the place or places at which permanent records are to be kept

Question 21: Do you agree with the proposals setting out the place or places at which permanent records are to be kept?

Question 22: Should there be any other requirements setting out the place or places at which permanent records are to be kept?

3.60 Subsection 6(b) of new section 21A of EAA 79 enables the Secretary of State to specify the place or places at which permanent records are to be kept.

Summary of responses

3.61 The majority of respondents who commented agreed with the proposals setting out the place or places at which permanent records are to be kept, but there were some suggestions for additional requirements.

3.62 Angus Bearn stated that the regulations should not concern themselves with where companies choose to store records, and that records should be made available within a certain period on request.

3.63 RICS expressed concern about the keeping of paper records at branches and cost this would entail and the likelihood of damage to older files. RICS also suggested the regulations should allow the keeping of records with professional archive storage companies.

3.64 LACORS, TSNW and TSI all called for provisions for storage and access when a branch closes or a business ceases trading. TSI also referred to takeovers. The NFPP also called for the regulations to cover circumstances where a branch closes or is relocated.

3.65 TSI asked about the place or places internet only estate agents should keep records.

Government response

3.66 The estate agents consultation proposed that regulations specifying the place or places at which permanent records are to be kept, should require that records are easily accessible at the local branch or place of business associated with the transaction. Records in paper form should be kept at the local branch/place of business, but where they are in electronic form they can be stored centrally, provided they are easily accessible at the local branch/place of business. The policy aim is that TSOs should be able to go to a local branch or place of business associated with a transaction and check the records there and then without delay. The term "place of business" applies to estate agents working from home and to internet only operations.

3.67 It is necessary to specify where records are to be kept to prevent TSOs having to travel possibly hundreds of miles to an office holding the records. The aim is not to preclude the holding of files centrally (or in electronic form),

but where they are held in this way, they should be made easily available at the relevant local branch/place of business. How this is done is a matter for agents – the Government has no intention of specifying the type of electronic equipment to be used to store and provide access to records.

3.68 The requirement that estate agents should provide permanent records on request is in line with the entry and inspection provisions in EAA 79, as amended by CEARA 07. The new provisions authorise TSOs to enter premises and require the production of books or documents where they have reasonable cause to suspect an offence under EAA 79 has been committed, or a person has failed to comply with certain provisions in the Act or engaged in a practice deemed undesirable by the Secretary of State. The Government believes that it is a matter for local TSDs whether or not they give agents a period in which to provide records, but it is important that they retain the right to demand the prompt production of records where they believe this is necessary. A notice period would give unscrupulous agents the opportunity to tamper with or destroy documents or create false documents related to a transaction. **The Government does not intend to hinder the activities of TSOs by giving agents an automatic notice period in which to provide permanent records.**

3.69 Regarding the keeping of records when a branch is relocated or closed down, we would expect the records to be moved to the new branch/place of business. In the case of a takeover, we would expect the records to be retained by the firm taking over the business. But where a firm goes out of business, and it is not taken over, the Government is unable to require the keeping of records, as there will be no business to take them on.

3.70 Regarding the keeping of records by internet-only estate agents that don't have any branches, applying local principles to storage will be problematic. However, as with all agents, failure by internet-based agents to comply with any obligations under section 21A will be a trigger enabling the OFT to consider their fitness to operate. Assuming that an internet agent has only one office or place of business and provides estate agency services throughout the country, TSOs will only have easy access to records in a handful of cases (where the office/place of business is locally based). TSOs will therefore have to liaise with colleagues in the agent's home authority to physically access the records. TSDs already operate home authority arrangements for internet retailers and auction sites whereby the home authority deals with all matters concerning the retailer/auctioneer. Such arrangements could apply to internet estate agents.

4. Changing the offer making process

Question 25: Is there a case for removing the seller's discretion to specify types of offers which they do not want their estate agent to pass on to them?

4.1 Estate agents are currently required to pass on to their clients accurate details of all offers received from prospective buyers, except where the client has indicated in writing that they do not want to see certain types of offers, for example, those below a certain price or where a buyer does not have a mortgage in place. The estate agents consultation discussed the recommendation made by the OFT in its 2004 market study that the discretion of sellers to opt-out should be removed and that agents should be required to pass on details of all offers received. The OFT argued that the ability of sellers to rule out in advance certain types of offers, created confusion between agents and their clients resulting in some suitable bids not being passed on. The consultation asked if there was a case for removing the seller's discretion not to see certain offers.

Summary of responses

4.2 The majority of respondents who commented agreed that there was a case for removing the seller's discretion to specify types of offers that they don't want agents to pass on to them.

4.3 The estate agents Angus Bearn and Mike Hewson objected. Angus Bearn thought that passing of "cheeky" offers would create ill feeling, and that as it was against the agent's interest to set the bar too high, the rules should be left as they are. Mike Hewson commented that few sellers instruct agents not to pass on certain types of offers, but where they do, it is a positive act. Passing on unsuitable bids would merely serve to irritate the client. Provided that the seller's instructions are clear there should be no confusion. Any competent estate agent who received an offer he thought worth considering would contact the client to see if he might change his mind. The OEA was also against the change. The Ombudsman thought that provided an estate agent is not asked to breach any discrimination laws, the seller should be allowed to define within certain parameters, who they entertain offers from and at what level they should be put forward.

4.4 In support were the majority of the enforcers, the consumer groups and in a more cautious manner, the trading bodies. TSNW said it was split on the issue and noted both the pros and cons.

4.5 Buckinghamshire TSD commented that the change removed uncertainty from the mind of the agent as to whether or not to forward offers, and that potential buyers would have no cause to complain that an offer has not been passed on. LACORS, TSNW and TSI all referred to the benefits of transparency and the avoidance of allegations of discrimination or preferential treatment should all offers be passed on. TSI commented that sellers might be reassured that offers were not being lost en route and that they were getting a true picture of the interest their property was generating. NCF thought that the

change would enable sellers to evaluate how active an agent had been in promoting a property. LACORS and TSNW did, however, recognise the danger of alienating sellers and that this could be burdensome on agents. Which? agreed in principle with the change as they want to see greater transparency in communication between agents and their clients. RICS agreed that agents should be required to report all offers including those at variance with a client's instructions. RICS did, however, suggest a defensive approach whereby agents approach clients telling them they have rejected offers in accordance with their instructions. The NFPP thought that in the majority of cases there would not be a problem with the change.

4.6 In response to the questions concerning the keeping of records relating to offers (part 3 iii above), TSI called for the recording of the declaration by sellers that stipulate they do not wish to receive certain types of offers.

4.7 In response to the questions concerning the keeping of other information or events (part 3 iv above), LACORS and TSNW called for details of offers sent to sellers to be copied to buyers, and for such letters to be recorded.

Government response

4.8 In the estate agents consultation the Government stated that it saw both advantages and disadvantages in removing the discretion of sellers not to be notified about certain types of offers.

4.9 The record keeping regulations when implemented will go a long way to improve transparency in the offer making process and consumer confidence in the integrity of property transactions.

4.10 On balance, the Government takes the view that consumers should continue to be able to make a decision not to see certain offers.

4.11 Removing a client's discretion would enable sellers to consider all offers, including some suitable offers that previously might not have been passed on to them, and give them a better idea of the interest in their property. It would also protect agents from accusations of bias.

4.12 But it is in the interest of both parties not to ignore sensible offers. The large majority of agents can be relied upon to inform a client about the pros and cons of restricting offers and whether or not the imposition of a restriction is in their best interest. While in the short term some suitable offers may not be passed on, over longer periods we would expect agents and their clients to reach consensus on suitable bids enabling an optimum sale to occur.

4.13 Forcing agents to pass on all offers runs the risk of irritating sellers, who may have imposed a restriction for good reasons. Advising sellers of rejected offers in accordance with their instructions would probably have a similar result. Passing on unsuitable bids may affect the client/agent relationship to such an extent that the client refuses to take sensible advice

from the agent about the state of the market, preventing a sale that could have taken place.

4.14 Concerns about suitable offers not being passed on can be tackled by requiring agents to record and keep details of all offers received, including those they believe clients do not want to see. This change can be introduced by using the record keeping regulations, and is something we are proposing to do in relation to offers (see section 3 iii above). By defining an offer to include all offers received, agents will be required to keep details of offers that are not passed on. In the event of a complaint about an offer not being passed on, enforcers will be able to confirm whether the agent acted in accordance with the seller's instructions. The Government does not believe that this will be too heavy a burden, as the OEA code of practice for residential estate agents already requires members to keep records of all offers received. The requirement for agents to keep written declarations made by sellers as to the type of offers they don't want to see, a requirement under the Estate Agents (Undesirable Practices) (No 2) Order 1991, will also help (see part 3 iv above). Changing the offer making process in this way is we believe a sensible compromise that benefits both businesses and consumers. **The Government will therefore keep the discretion of sellers not to consider certain types of offers.**

4.15 Regarding the copying of offer details (sent to sellers) to buyers, this was something also recommended by the OFT in its 2004 market study. When considering changes to the offer making process, the Government rejected the proposal on the grounds that it may encourage buyers to contact sellers directly, bypassing agents, and would entail extra work for agents. The aim of the reform – to improve confidence in the offer process – would also be met by the record keeping regulations. **The Government remains of the view that it is not necessary to require the copying of offer details to buyers.**

5. Changes to statutory terms

Question 26: Do you agree that the statutory terms should be made clearer and easier to understand?

Question 27: If so, do you have comments on the proposed amendments to the statutory terms?

Question 28: Do you agree that the warnings should also be included with the statutory terms?

5.1 Estate agents using the terms 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser' in their contracts with clients must use the statutory definitions contained in the Estate Agents (Provision of Information) Regulations 1991. The OFT market study in 2004 was critical of the wording of the terms and called for them to be made clearer so that customers were fully aware of the implications when entering into an agreement containing one or more of the terms. The estate agents consultation sought views on revised statutory terms, which it was hoped would make their meaning clearer and easier to understand. Views were also sought on accompanying warnings.

Summary of responses

5.2 All respondents who commented agreed that the statutory terms should be made clearer and easier to understand, but we received a wide range of comments on the proposed amendments to the statutory terms contained in the consultation document.

5.3 Angus Bearn thought that the new terms were not much of an improvement compared to their predecessors and thought that they should be road tested with consumers before introduction. LACORS, TSNW and TSI did not think that the terms were simple enough and could be made clearer. LACORS and TSNW asked how the terms fit with the Unfair Terms in Consumer Contracts Regulations 1999. They also expressed concern that many clients would not understand the difference between the terms 'sole agency' and 'sole selling rights'. LACORS, TSNW and TSI all proposed (pretty much identical) redrafts of the definitions. Angus Bearn also provided alternative versions of the terms 'sole agency' and 'ready, willing and able purchaser'. Which? welcomed the intention to improve the clarity of the statutory definitions, but thought the proposed changes did not go far enough. It considered the definitions unclear and neither fair nor proportionate to the problems they were designed to address.

5.4 Which? expressed support for the continued use of 'sole agency', but subject to a number of changes to make it less weighted in favour of the agent. Which? specifically criticised the potentially indefinite obligation on a seller to pay remuneration to an agent who had introduced a buyer or had negotiations with them, even if the property is sold by another estate agent. Which? pointed out that a seller has no real way of knowing who an estate

agent has introduced or had negotiations with, or when their liability under the clause may arise. Whilst the agent's duty to pass on offers makes it clear who has made an offer, sellers may not know the details of all potential buyers who simply discussed the property with the agent. To get around this, Which? suggests that agents should be required to provide details to the seller as to whom they have introduced or had negotiations with. This should be provided on a regular basis, including at the point of termination of a contract. But even with this change, Which? feels the overhang liability still has the potential to have a negative impact on consumers and the market by disincentivising sellers from switching to other agents, thereby hindering competition. In response Which? proposes that the obligation to pay commission should only apply during the term of a 'sole agency' contract, with the exception for private sales where the private buyer was introduced by the agent during the 'sole agency' period. The overhang should also be restricted to a maximum of 12 months. Which? notes that agents may respond by increasing the minimum term of their sole agency contract, and asks for steps to be taken to stop this.

5.5 Which? was also critical of 'sole selling rights', which it claimed gave the same safeguards to agents as 'sole agency', but was more restrictive on the seller. Which? believes that estate agents can gain adequate protection from 'sole agency', subject to its recommended amendments outlined in the paragraph above. It can see no valid reason why estate agents receive this additional protection and calls for the term to be prohibited. Angus Bearn agreed that 'sole selling rights' should be eliminated from the market. The OEA was also critical – it was unclear to the Ombudsman why any consumer would opt for a 'sole selling rights' contract if they fully understood its implications – but did not call for it to be prohibited. RICS commented that no customer should ever be asked to sign "such an agreement" without a detailed explanation.

5.6 Which? also criticised 'ready, willing and able purchaser' for providing a financial incentive to proceed with a sale in circumstances where a seller, for quite legitimate reasons, may not wish to do so. This it claimed was inconsistent with the UK house buying regime, whereby there is no obligation to proceed with a sale until and unless contracts have been exchanged. Which? believes there is no reasonable basis for a 'ready, willing and able purchaser' term to be included in contracts between sellers and estate agents. The OEA called for a much tighter definition of 'ready, willing and able purchaser'. LACORS and TSNW called for 'ready, willing and able purchaser' to be more prominent than any other term in a contract – it could be made the first listed statutory term in a contract followed by 'sole selling rights' and 'sole agency'. RICS commented that 'ready, willing and able purchaser' causes far too much confusion and considers the practice of commission solely due on the exchange of contracts to be clearer.

5.7 We also received a wide range of comments on the proposed warnings to be included with the statutory terms.

5.8 The majority of respondents who commented supported the introduction of health warnings. But LACORS and TSNW thought that it was

insufficient to refer a seller to 'independent advice' and proposed that vendors should be given examples of where to obtain such advice. With TSI they suggest that consumers be given examples of where to obtain independent advice such as a solicitor or a local TSD. Buckingham TSD recommended that there should be a clear statement to the effect that sellers should be advised to seek independent advice from a solicitor, Citizens Advice or Local TSDs. LACORS and TSNW would also like to see additional clarifications included in the warnings, or possibly a separate notice, giving a fuller explanation of the meaning of the terms and examples when fees might be payable.

5.9 The OEA did not consider the health warnings to be adequate, but differed with enforcers about the need to obtain advice. The Ombudsman believes that a consumer entering into a contract should be absolutely clear about his liability to an agent, without being directed to another professional for advice on the nature of the contract. RICS also called the health warnings inadequate. Rather than point a customer towards independent advice, RICS recommended that warnings be made stronger, advising customers not to sign an agreement containing a statutory term if in any doubt as to its meaning. RICS also called for the warnings to be included in the statutory definitions. The NFPP thought that the health warnings should be compulsory; otherwise estate agents would not use them.

5.10 Which? believes that if the terms are amended as they suggest, the warnings will not be so essential. Which? commented that the fact that warnings are called for in the first place, suggests the terms are unfair to consumers and the changes proposed will not remedy the situation.

Government response

5.11 The proposed changes to the statutory terms produced the most detailed responses in relation to any of the proposals set out in the consultation. While generally in favour of the intention to clarify the meaning of the individual terms, the overall consensus was that the proposed changes did not go far enough. There was also a wide range of suggested changes to the terms, which were often contradictory, including several redrafts. **It is clear we need to do more work before deciding on the way forward.**

5.12 The recommendation that the amended statutory terms should be road tested is something we will consider further, alongside further consultation with stakeholders.

5.13 We will need to consider any potential ramifications on the use of the sole agency term from the Court of Appeal ruling that took place after the consultation was published¹. The consultation (and the responses to it) reflected general understanding at that time, ie that an estate agent could usually claim a commission when a property was sold after the expiry of a sole agency contract, if the relevant agent had introduced the buyer or had

¹ Foxtons Ltd vs Pelkey Bicknell & Anr, Citation: [2008] EWCA Civ 419, 23 April 2008

negotiations with them, during the period of sole agency. The judgment arguably cast doubt upon the established viewpoint. We think it likely that an agent would only be entitled to a commission now, if the buyer purchased the property as a result of the agent's introduction. The agent should therefore be an effective cause of the transaction ie the introduction must lead to the actual purchase. We will need to consider the extent of any impact of the Court of Appeal ruling when amending the existing statutory terms.

5.14 We will review the period of liability a consumer has to pay commission once a 'sole agency' or 'sole selling rights' contract has come to an end. The Ombudsman for Estate Agents' code of practice for residential estate agents requires member agents not to seek a commission more than six months after a contract ends. **We will consider the suggestion that claims should not be allowed beyond a certain period after a contract comes to an end.**

5.15 We will consider the suggestion that consumers with 'sole agency' or 'sole selling rights' contracts should be informed at the end of the contract period of all persons with whom the agent has had negotiations or whom the agent has introduced. The Government considers that there may be some merit to this proposal and will consider the issue further.

5.16 Regarding calls for the removal of the statutory terms from legislation, one matter we shall need to consider is the interplay between these terms and the Unfair Terms in Consumer Contracts Regulations (UTCCRs), which was also a question from LACORS and TNSW. The UTCCRs provide certain legal protections for consumers in relation to the fairness and intelligibility of certain contractual terms. We shall need to review whether the removal of the statutory terms from legislation would make a significant difference to those protections.

5.17 Furthermore, the removal of the statutory definitions would also lead to a number of different versions of the terms, which was the case prior to the 1991 reforms. Consumers would be disadvantaged in that they cannot be expected to understand the consequences of the terms if every agent were to use a different explanation or term to describe the relevant behaviour.

5.18 Removing the statutory terms from the legislation would not mean that the practices the terms describe would be outlawed. To ban the practices would require primary legislation. The Government would also be fettering the ability of the parties to contract in any way they wish to do so. **On balance the Government remains of the opinion that the best way forward is to amend the definitions of the statutory terms to make them clearer and easier to understand.**

5.19 The consensus view on warnings is that they should be used in conjunction with the statutory terms, but the responses, exposed contradictory views on how they should be worded. **We will need to consider again how**

the warnings alert clients to the ramifications of signing contracts containing the terms.

5.20 The Government will therefore consider and consult further on statutory terms. We plan to issue a further consultation towards the end 2009.

6. Next steps

Record keeping regulations

6.1 The policy decisions set out in this consultation response are the basis for draft record keeping regulations and draft guidance on the regulations. Comments on the draft regulations and guidance, which have been published on the BIS web-site, should be sent to the address on page 2 by 10 September 2009. We aim to lay amended regulations and the order commencing the record keeping provisions in EAA 79, on or before 6 October 2009. In line with better regulation guidelines, the regulations and provisions will come into force on 6 April 2010. Our aim is that estate agents should have six months notice of the record keeping requirements. A Government review earlier in the year of costs to business and the timing of new regulations meant that it was not practicable to introduce the regulations in October 2009 as planned.

6.2 The Government is mindful of the deterioration of the housing market over last 18 months and the effect it has had on estate agents. Since the consultation was published, sales volumes have dropped significantly and hundreds of estate agency branches have closed or been mothballed. We appreciate the situation is likely to get worse in 2009 with many more branches closing. In the light of the downturn, we considered the case for delaying the introduction of the record keeping regulations further, but decided against it.

6.3 The aim of the record keeping regulations is to provide audit trails and make it easier for the OFT and TSDs to obtain evidence of misconduct and take enforcement action. The regulations will also go a long way to improve transparency in the offer making process and consumer confidence in the integrity of property transactions.

6.4 The record keeping regulations are complementary to the enforcement changes introduced on 1 October 2008. The latter gave enforcers wider powers to access estate agents' premises and demand the on-site production of records, and expanded the circumstances in which the OFT can consider the fitness of agents to operate and issue warning and prohibition orders banning them from carrying out estate agency work. The changes were always envisaged as a coordinated package of reforms.

6.5 Delaying the record keeping regulations beyond 6 April 2010 would therefore expose buyers and sellers to unnecessary disadvantage. But balanced against this, the Government is mindful of increased costs to estate agents at what is a very difficult time for the industry.

6.6 In reaching decisions on matters of policy the Government has been careful to balance the needs of both consumers and businesses and consider each proposal on its merits. The industry was broadly supportive of the Government's initial proposals on record keeping. Enforcers and consumer groups, on the other hand, wanted to see more comprehensive requirements

resulting in the keeping of a wide range of additional records and information. We consider that the majority of these suggestions while useful to have, would be unnecessarily burdensome on agents. Consequently, the policy decisions set out in this response are very much as originally proposed. While we have added some requirements, we have also listened to industry concerns and removed the requirement to establish the status of a buyer.

6.7 Our aim is also to make the regulations as flexible as possible – allowing the keeping of documents in electronic form, and not specifying the types of systems to be used to store electronic records.

6.8 Another consideration is how many estate agents are already complying with some or all of the record keeping requirements. The OEA code of practice for residential estate agents, to which about 90% of agents have signed up, requires agents to keep clear and full written records of all transactions and keep a written or computerised record of all offers received. This means a large majority of agents should be carrying out the bulk of the record keeping requirements already. Estate agents are already required to keep records under the Estate Agents (Accounts) Regulations 1981 in relation to the keeping of clients' money. They are also required to keep records to show compliance with the Money Laundering Regulations.

6.9 The costs and benefits of the record keeping regulations will be discussed in more detail in the Impact Assessment (IA) that accompanies the regulations when they are laid in Parliament. The draft IA² prepared to accompany the draft record keeping regulations estimates that the benefits resulting from implementing the regulations, in terms of reduced consumer detriment, would be between £0.9m and £1.4m pa. Compliance costs for estate agents are estimated at between £0.4m and £1m pa. We welcome feedback from stakeholders on this issue.

6.10 On balance, the Government thinks that despite the deterioration of the housing market and the problems experienced by estate agents, we should go ahead and introduce the record keeping provisions and regulations in April 2010. The new requirements will improve enforcement in the sector and consumer confidence. Based on the above considerations costs to most estate agents are likely to be low. Completing the requirements in CEARA 07 will provide greater certainty for business and consumers in a difficult climate.

Changes to statutory terms

6.11 In view of the detailed, wide ranging and diverse responses to our proposals, the Government will continue to work on improving the statutory definitions of the contract terms 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser'. We will consult further with stakeholders on the wording of the terms and the use of health warnings. We will consider the impact of the Court of Appeal Ruling on the 'sole agency' term, the merits of

² Available from <http://www.berr.gov.uk/whatwedo/consumers/business/estate-agents/index.html>

limiting the liability of sellers to pay fees to agents after the expiry of 'sole agency' and 'sole selling rights' contracts, and requiring agents to declare to sellers whom they have introduced or had negotiations with during the contract period. We expect to set out our plans for the statutory terms consultation towards the end of 2009.

Annex A: List of respondents and glossary of abbreviations and terms

List of respondents

Angus Bearn
Buckinghamshire Trading Standards Department (Buckinghamshire TSD)
Mike Hewson
Local Authorities Co-ordinators of Regulatory Services (LACORS)
National Consumer Federation (NCF)
National Federation of Property Professionals (NFPP)
Ombudsman for Estate Agents (OEA) – now The Property Ombudsman
Royal Institution of Chartered Surveyors (RICS)
The Ombudsman Service Ltd (TOSL)
Trading Standards Institute (TSI)
Trading Standards North West (TSNW)
Which?

Glossary of abbreviations and terms used in this response document

CEARA 07 – Consumers, Estate Agents and Redress Act 2007
EAA 79 – Estate Agents Act 1979
HIP – Home Information Pack
OFT – Office of Fair Trading
OFT Report – the Office of Fair Trading report on the estate agency market in England and Wales 2004
TSD – Trading Standards Department
TSO – Trading Standards Officer