



Christopher Hamer, the Ombudsman for Estate Agents on the murky rules on cooling-off periods and the dangers of hosting open days

The catchily-titled Cancellation of Contracts made in a Consumer's Home or Place of Work Etc Regulations 2008 came into force on 1 October 2008.

I think it fair to say that these regulations came as a surprise to most agents as there was little advance notice or publicity about them. My conversations with the OFT at the time of implementation led me to believe that the OFT recognised agents may not have been advised in sufficient detail and also that they were unsure of the applicability of the regulations to the estate agency sector. I understand that the NAEA and the RICS did issue guidance to their members but there remained some scepticism in the industry about whether estate agency contracts were caught as under Schedule 3 of the Regulations, 'Excepted Contracts' included contracts for the sale of immovable property and contracts concerning other rights relating to immovable property. Some industry figures that I spoke to at the time felt this gave a get-out clause. My view was and is that a contract for the sale of a property is not the same as an agreement for the provision of estate agency services and that the Regulations did apply.

The OFT have now seemingly determined their view that the Regulations do indeed apply to estate agency and lettings contracts when signed away from the agent's office, and have communicated this message during their recent round of seminars for agents and Trading Standards officers. Having spoken with some of my member firms it is clear that they are now



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amending their agreements to include the necessary seven day cooling-off period and allowing for a 'Notice of the Right to cancel' to be given when the contract is made.

I have always maintained that agents can help themselves by ensuring that clients understand what their

commitments are under the agreement through explaining clearly all relevant charges etc. This new aspect and the right to cancel equally needs to be highlighted to clients.

OPEN DAYS – BUYERS BEWARE!

I recognise that in the current market conditions, agents are being innovative in their approaches to letting and selling property. There appears to be an increase in the number of 'open days' as a way of marketing and I caution agents that exercises such as these, should still allow the client to gain adequate feedback and security of items and indeed the property itself must be maintained.

A recent case came up whereby an agent had been instructed to sell a property and had been provided with a set of keys to enable him to conduct viewings as the owner lived away. A block viewing or 'open day' at the property was organised and at the end of the viewing the agent secured the property and left. The owners were then contacted by a neighbour who had seen two people climbing out of a window of the property. It came to light that at the end of the open day the Member Agent did indeed secure the property but unfortunately he had left two viewers locked inside who had then made their escape via a downstairs window!

Christopher Hamer is the Ombudsman for Estate Agents. For more information on the see the Ombudsman website at www.oea.co.uk

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