

Draft Guidance on the Operation of the CMA's UK Internal Market Functions

Response from Propertymark

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Background

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 17,500 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry leading training programme and mandatory Continuing Professional Development.

Feedback

Relevant national authority

2. We acknowledge that 'relevant national authority' means the Secretary of State; the Scottish Ministers; the Welsh Ministers; and a Northern Ireland department. However, the Competition and Markets Authority (CMA) must also recognise that housing policy is devolved and the framework of regulation for professionals working in the property sector must be looked at within five divergent approaches as well as awarding bodies who provide qualifications for industry. Firstly, there is no statutory regulation to ensure estate agents working across the UK are suitably qualified nor are they required to belong to a professional body. Secondly, there is currently no overarching statutory regulation of letting or managing agents in England and Northern Ireland, nor is there any legal requirement for them to be trained and qualified or belong to a professional body. Thirdly, letting agents in Scotland are required to join the Scottish Government's Register of Letting Agents¹ and comply with a Letting Agent Code of Practice.² Fourthly, letting agents in Wales are required to be trained and licenced under Rent Smart Wales.³ Fifthly, members of Propertymark are property professionals who have voluntarily opted for regulation in a mainly unregulated sector.⁴ Within Propertymark our sister company called Propertymark Qualifications provide qualifications in the following property specialisms: lettings, sales, commercial, auctioneering, inventory, and tenancy deposit.⁵

Information gathering powers

3. When the Office for the Internal Market (OIM) requests the provision of relevant data, documents, forecasts, estimates, and responses to questions it is important that the process not only interacts with the relevant national authority but alongside government regulators

¹ <https://lettingagentregistration.gov.scot/>

² <https://www.gov.scot/publications/letting-agent-code-practice/>

³ <https://www.rentsmart.gov.wales/en/home/>

⁴ <https://www.propertymark.co.uk/membership.html>

⁵ <https://www.propertymarkqualifications.co.uk/>

and other body regulators that operate in the property sector throughout the UK. The regulators and bodies involved are different for letting agents in the four nations and UK wide for estate agents.

4. In England, letting agents are legally required to join a government-approved Client Money Protection scheme where the agent holds client money.⁶ Letting agents in England are also legally required to belong to a redress scheme. Under the Tenant Fees Act 2019⁷, National Trading Standards Estate and Letting Agency Team's (NTSELAT)⁸ remit was extended to letting agents and Bristol City Council was assigned as the lead enforcement authority for the purposes of the Act. Their work covers agent's responsibility for fee transparency rules under the Consumer Rights Act,⁹ membership of a redress scheme under the Enterprise and Regulatory Reform Act 2013¹⁰ and membership of a Client Money Protection scheme under the Housing and Planning Act 2016.¹¹
5. There are no legally binding requirements on letting agents in Northern Ireland to join a redress scheme or have Client Money Protection. However, in January 2017 the Department for Communities proposed in its consultation paper 'Private Rented Sector in Northern Ireland: Proposals for Change'¹² to introduce a new regulatory framework for all letting agents including bringing forward legislation to ban all letting agent fees for tenants. Furthermore, Ministers in Northern Ireland have recently approved some of the recommendations from that review which have been included in the Private Tenancies Bill.¹³
6. To obtain a licence under Rent Smart Wales the applicant must be 'fit and proper', have undertaken approved training and paid a fee. The licence holder must comply with the Welsh Government's Code of Practice.¹⁴ Letting agents must also have Professional Indemnity Insurance, Client Money Protection and be a member of a redress scheme. Cardiff Council are designated as the single licensing authority to administer the scheme for the whole of Wales.
7. The Scottish Government, through letting agent regulation, have introduced obligations for individuals employed in the industry, along with wider obligations for agencies. All agencies will need to ensure relevant staff are qualified and that staff understand and follow the Code of Practice. The framework for regulation introduced a new way for tenants and landlords to

⁶ <https://www.gov.uk/client-money-protection-scheme-property-agents>

⁷ <https://www.legislation.gov.uk/ukpga/2019/4/contents/enacted>

⁸ <https://www.nationaltradingstandards.uk/work-areas/estate-agency-team/>

⁹ <https://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

¹⁰ <https://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

¹¹ <https://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

¹² <https://www.communities-ni.gov.uk/consultations/private-rented-sector-northern-ireland-proposals-change>

¹³ <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/private-tenancies-bill2/>

¹⁴ <https://www.rentsmart.gov.wales/en/licensing/#conditions>

resolve complaints against letting agents for breaches of the statutory code of practice through a new specialist First-tier Tribunal for Scotland (Housing and Property Chamber).¹⁵

8. Estate agents working across the UK are principally regulated by the Estate Agents Act 1979¹⁶ and the Consumer Protection from Unfair Trading Regulations 2008.¹⁷ The NTSELAT is the UK's regulator under the Estate Agents Act 1979 and Powys County Council is the lead enforcement authority that assesses whether an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the Act. Additionally, since 1 October 2008, all estate agents in the UK who engage in residential estate agency work are required to belong to an approved redress scheme dealing with complaints about the buying and selling of residential property under the Consumers, Estate Agents and Redress Act 2007.¹⁸

Recognition of professional qualifications

9. In relation to the property sector, it would be more helpful if the CMA also assessed the characteristics of products or how they are supplied as well as access for individuals to professional practice in different parts of the UK. This is important because outside of regulatory requirements for letting agents in Scotland and Wales, there are no minimum standards to work in the sector and there are no statutory rules to ensure agents are suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards.

¹⁵ <https://www.housingandpropertychamber.scot/>

¹⁶ <https://www.legislation.gov.uk/ukpga/1979/38>

¹⁷ <https://www.legislation.gov.uk/uksi/2008/1277/contents/made>

¹⁸ <https://www.legislation.gov.uk/ukpga/2007/17/contents>