

NATIONAL TRADING STANDARDS

**Estate and Letting
Agency Team**

Protecting Consumers
Safeguarding Businesses

**National Trading Standards Estate & Letting
Agency Team**

Business Plan

2019 to 2020



1. Introduction

The National Trading Standards Estate & Letting Agency Team is hosted by Powys County Council (PCC) and Bristol City Council. Powys County Council is designated by the Secretary of State as the lead enforcement authority (LEA) for the purposes of the Estate Agents Act 1979, and Bristol City Council is designated by the Secretary of State as the lead enforcement authority for the purposes of the Tenant Fees Act 2019.

The team is primarily responsible for the regulation of estate agency work in the UK and lettings agency work in England, specifically:

- issuing prohibition and formal warning orders to those found unfit to engage in estate agency work in the UK
- approving & overseeing the UK's consumer redress schemes, Ombudsmen, and Alternative Dispute Resolution entities in the estate agency sector
- overseeing the operation of relevant lettings agency legislation
- issuing guidance and advice for the public, businesses and enforcement authorities on:
 - estate agency work in the UK
 - relevant lettings agency work in England

The team consists of officers appointed by both authorities and overseen by a senior manager. Arrangements are in place for officers from each authority to act on behalf of the other authority. These arrangements are intended to maximise the resources of each LEA and to complement the arrangements for enforcement of lettings agency work in the devolved nations of Scotland, Northern Ireland and Wales.

Funding for the team is provided by virtue of a grant from the Ministry of Housing Communities and Local Government (MHCLG) which is administered by the Chartered Trading Standards Institute (CTSI) on behalf of National Trading Standards. The funding is ring-fenced by the host LEAs for the work of the Team.

Governance and oversight of the Team's work is carried out by National Trading Standards (NTS) and MHCLG, and the team's work is monitored internally by each LEA.

This business plan presents the work we plan to undertake in 2019-20, and will cover our commitments to NTS and accountability to the Secretary of State. The plan will be reviewed during the year and is subject to change depending on issues arising, such as emerging threats and other priorities agreed by the NTS/MHCLG governance group. Any additional work agreed as a part of the plan will be commensurate with the level of proposed resource.

2. Vision and Strategic Objectives

Our Vision

The vision of the Team is:

'protecting consumers and supporting businesses in the UK estate agency sector and lettings agency industry in England'

In working towards this, the team will:

- support and value a professional and skilled workforce – by ensuring that members of the team are knowledgeable, competent, and able to develop their full potential
- be accountable – by publishing regular reports about our work and by seeking views on our service to help shape the future work of the team,
- be visible to consumers, businesses, professional bodies, partner agencies, third sector organisations and policy makers - by engaging with them through the team's website, reports, presentations, seminars and social media; and by listening to suggestions and feedback
- encourage and challenge businesses to raise their standards – by providing advice and guidance and by looking for new initiatives to increase consumer confidence in the estate agency and lettings market
- ensure that our enforcement action is intelligence led and that we are able to deploy resources to maximise impact – by working with colleagues, businesses, and other organisations, and using the information to target and prioritise our work

Strategic Objectives

The team will seek to achieve its vision through the following strategic objectives:

1. Support businesses to comply with their legal obligations

Activity	Outcomes	Timescales
Provide sector-specific advice about legislative requirements relating to property sales in the UK and lettings work in England, including provision of regional training events and online resources	Businesses are aware of their obligations and are supported to comply with legal requirements	Publish lettings guidance (May) Annual review of guidance (August 2019)
Provide supplementary advice to business in response to specific emerging issues	Businesses (and their staff) have a better understanding of the legislative requirements	As required, around 3-4 times in the year
Liaise with Trading Standards Primary authorities in respect of advice provided to businesses	Guidance and advice to businesses is robust and consistent	Routinely, as and when required
Work with redress schemes	Extend the reach and	Throughout the

and professional bodies to provide advice and guidance to their members	coverage of advice and guidance, and improve consistency	year 2019/20
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2. Work with local Trading Standards, Environmental Health and Housing Services, other key stakeholders and partner agencies to facilitate and improve the effective enforcement of estate agency and relevant lettings legislation, including appropriate related legislation

Activity	Outcomes	Timescales
Organise seminars and training events for local authorities, plus attend other meetings and events where applicable (regional events, webinars, CTSI symposium 2019 etc.)	Local authorities are aware of the work of the team and the support available for providing advice and securing compliance locally	Before end of March 2020
Provide information for partners and stakeholders (via website, social media, sponsorship, attendance at conferences etc.)	Partners and stakeholders are aware of the work of the team and the support available for local authorities	Throughout the year 2019/20
Maintain links and partnerships with appropriate organisations (other NTS teams, local TS & EH, Housing teams, HMRC, CMA, Land Registry, redress scheme operators, ASA, industry bodies, trade associations etc.)	The team is better placed to co-ordinate and carry out enforcement and advisory activities	Ongoing – review MoU with HMRC according to timescale laid down. monitor arrangements with ASA and CMA
Review and update the toolkit for local authorities to assist with their enforcement of relevant legislation	Better consistency of enforcement across country	Review in April 2019 and expand to cover relevant lettings work
Conduct a market study or other national project into specific areas of estate agency work, in reaction to ongoing intelligence analysis	A fairer market place for consumers and reputable businesses	Start in April – review 6 monthly

3. Encourage, develop and support information and intelligence sharing with our partners

Activity	Outcomes	Timescales
Work with the NTS Intelligence team to develop the team's work, in conjunction with the broader NTS control strategy	Enforcement and support activity is better targeted and co-ordinated	1 st quarter (April-June 2019)
Establish information and intelligence sharing protocols amongst partner agencies and organisations	Partners are aware of communication channels and the means for providing intelligence and information	1 st quarter (April-June 2019)
Exchange information and	Enforcement and support	Ongoing

intelligence with partner agencies and LA teams as required	activity is better targeted and co-ordinated	
Co-ordinate access to the database of rogue landlords and property agents	Local authorities are able to easily access relevant information	Ongoing
Work with Citizen's Advice, Consumerline (NI) and Advice Scotland to ensure general advice is provided to consumers	Consumers are better informed of their rights and grounds for redress	Annual review of advice and agency staff awareness (August 2019)

4. Secure business compliance with legislative requirements and good practice

Activity	Outcomes	Timescales
Investigate cases and take action in line with enforcement policy where appropriate or where relevant local authority unable to take action	Consumers and reputable businesses are protected	No target set; depends on need
Introduce a new enquiry/case handling system	Reports are improved and greater analysis of cases and referrals can be made	implement in April 2019
Work with redress schemes and professional bodies to review and update codes of practice	Maintain and improve standards in the industry	Annually
Carry out investigations and issue prohibition or warning orders under the EA Act to unfit individuals or companies	Consumers and reputable businesses are protected by preventing unfit individuals and businesses from carrying out estate agency work	Ongoing, as required (forecast of 36 cases in year)

5. Consider and approve new consumer redress scheme operators and alternative dispute resolution (ADR) entity applicants in the property sales sector

Activity	Outcomes	Timescales
Provide advice for prospective scheme operators	Potential scheme operators are aware of the requirements of the scheme	Annual review (August 2019)
Receive applications for new consumer redress scheme operators and ADR entities, and grant approval where appropriate	Applications for new schemes are processed effectively to ensure that they comply with the necessary requirements to protect consumers	As and when applications received (2 schemes currently approved)

6. Monitor the operation of approved consumer redress schemes and ADR entities in the property sales sector

Activity	Outcomes	Timescales
Review the effectiveness of redress scheme approval	Schemes are fit for purpose and provide adequate levels	Ongoing, in conjunction with

Activity	Outcomes	Timescales
criteria	of protection for consumers	MHCLG & CTSI
Review approved redress scheme operators, including decisions made by ombudsmen	Scheme operators are acting in the best interests of consumers and the estate agency industry	Ongoing from Jan 2019; report by March 2020
Ensure approved ADR entities are complying with reporting requirements	ADR entities are providing a fit-for-purpose service in accordance with ADR regulations	July – Sept 2019 (in conjunction with CTSI)
Attend regular meetings with redress schemes and MHCLG	Better sharing of information and improvements in practice	At agreed times during year
Provide a single point of access to enquire about member firms	Details of member agents are available via single enquiry	Ongoing, (already in draft operation)

7. Maintain a public register of warning and prohibition orders made under the Estate Agents Act

Activity	Outcomes	Timescales
Publish details of banned and warned individuals and businesses under the EA Act	Public record of orders issued plus deterrent effect to others	Ongoing, when required
Review the content of the EA public register, including where and how the information is published	The information held is clearer and the content easier to search	July 2019

8. Keep under review and from time to time advise the Secretary of State about—

(a) social and commercial developments in the United Kingdom and elsewhere relating to the carrying on of estate and lettings agency work and related activities; and

(b) the working and enforcement of the Estate Agents Act and relevant lettings legislation

Activity	Outcomes	Timescales
Consult with partners to seek their opinions about the working and enforcement of legislation and relevant guidance	Sanctions and controls under the legislation are working effectively and are fit for purpose	Ongoing
Monitor related developments in the UK estate and lettings agency market, including emerging trends, in partnership with the Competition and Markets Authority. Report findings and recommendations (where appropriate) to NTS and MHCLG	Secretary of State (via MHCLG) is aware of issues (and potential issues) with estate and lettings agency industry and enforcement of relevant legislation	Via NTS/MHCLG governance group

3. Operating Framework

Budget

In 2019-20 the team has a budget of:

- £500,000 to fund its estate agency regulation work
- £240,000 to fund its lettings agency regulation work

The team will also receive additional funding to provide a programme of training and awareness on the Tenant Fees Act to local authorities and businesses in England. It may apply to NTS/MHCLG for additional funding to cover unexpected costs such as legal fees or for investigating large or complex cases, or to fund particular areas of research, or where additional funds could be used to invest in a project which would provide returns for NTS or MHCLG.

Staffing

The team will employ the following members of staff:

- Senior Manager - to provide strategic oversight and leadership for the team in accordance with this business plan.
- Operations Manager - To develop and maintain links with enforcement colleagues, industry, advice providers and other stakeholders to maintain the delivery of the team's functions. To issue warning or banning orders under the EA Act against those persons or businesses deemed to be unfit. To monitor existing consumer redress schemes and approve new schemes as appropriate. To provide guidance and advice for the industry and enforcement colleagues. To support the work of the Senior Manager and co-ordinate operational work with the investigators and support officers.
- Solicitor (0.8 FTE) - to provide legal advice and support to the team, and to represent the team in legal proceedings.
- Investigators (7 FTE) - to deliver the team's strategic objectives. To investigate referrals from enforcement colleagues, industry, and other stakeholders with a view to assessing the conduct of individuals or businesses under the Estate Agents Act 1979 or relevant lettings legislation. Where appropriate prepare reports proposing warning or banning orders or other sanctions against those persons or businesses. To monitor and review the performance of existing redress schemes/ADR entities, and assist with the production and provision of guidance and advice for the estate and lettings agency industry and enforcement colleagues.
- Intelligence officer (1 FTE) – to support the intelligence operations of the team; to collect, evaluate, collate and analyse intelligence, crime and incident data to facilitate both strategic and operational planning. To liaise with the NTS Intelligence Team to inform and produce relevant & timely management information of current trends and analysis
- Investigation support officers (1 FTE) – to provide administrative and technical support to the team. To assist with the co-ordination of

referrals and enforcement action with local authorities and other agencies.

- Adjudicators (contracted) – to consider and make determinations on cases concerning the fitness of individuals and businesses subject to a Notice of Proposal under sections 3 and 4 of the Estate Agents Act 1979, and appeals under section 6, including the hearing of live representations where required. To also review the effectiveness of the case handling procedure. The adjudicators are separated from the investigation process.

The team is supported by:

- HR, finance and legal officers, who provide support to the team – employed by Powys County Council and Bristol City Council and funded by way of a levy on individual staff costs.
- a financial investigator, who carries out financial investigation work for the team on an ad hoc basis – employed by either Powys County Council or Bristol City Council and funded by way of cost recovery in legal proceedings and Proceeds of Crime cases.
- Additional contractors and support workers as required.

Monitoring and Governance

NTS has oversight of the team, and the team's work is covered in the NTS Control Strategy and NTS Annual Business Plan for 2019-20. The senior manager reports on a regular basis via the NTS governance mechanism to demonstrate that the Lead Enforcement Authorities are acting effectively. The team's accounts are audited at the end of each financial year and submitted to the Chartered Trading Standards Institute in accordance with the terms of the grant funding.

4. Our Partners and Stakeholders

Delivery Partners

Ministry of Housing Communities and Local Government - funding for the team is provided by virtue of a grant from the Ministry of Housing Communities and Local Government (MHCLG) which is administered by the Chartered Trading Standards Institute (CTSI) on behalf of National Trading Standards.

Convention of Scottish Local Authorities (COSLA) - COSLA is the representative voice of Scottish local government and also acts as the employers' association on behalf of Scottish Councils. COSLA has a representative on the NTS board and provides funding and support for projects such as the lead enforcement authority for estate agency work where that project extends to Scotland.

Department for the Economy - Northern Ireland (DfE) - The DfE is a devolved Northern Ireland government department in the Northern Ireland Executive. It can provide funding and support for projects such as the lead enforcement authority for estate agency work where that project extends to Northern Ireland.

Local Trading Standards Services – designated as 'enforcement authorities' and responsible for enforcing the provisions of estate agency and relevant lettings legislation as well as other associated legislation. Also provide support to the team by seconding officers from time to time.

National Trading Standards Teams – including the Regional Investigations Teams, E-Crime, Scams, and Intelligence teams.

HMRC's anti-money laundering supervision team – sharing intelligence and data on registered estate agency businesses and taking enforcement action against unregistered businesses under a formal memorandum of understanding.

Citizen's Advice Consumer Service - The Citizens Advice Consumer Service provides confidential and impartial advice on consumer issues. It works in partnership with local Trading Standards Services and refers complaints of a serious nature which need further investigation.

Ombudsmen/redress schemes – there are two redress schemes approved by the team under the Estate Agents Act and Alternative Dispute Regulations (the Property Redress Scheme and The Property Ombudsman)

We also work with other key agencies, including:

- BEIS - Consumer & Competition Policy team
- Advertising Standards Authority and Committee for Advertising Practice
- Chartered Trading Standards Institute (CTSI)
- Competition and Markets Authority (CMA)
- Land Registry - Registration Fraud Intelligence Unit
- local and regional Police
- National Anti-Fraud Network

and other trade associations, organisations and professional bodies.

5. Enforcement Action

We will work as far as practicable in accordance with the principles set out in the Regulator's Code¹, the Code for Crown Prosecutors² and the Primary Authority scheme³. We will have regard to relevant parts of the enforcement policies published by Powys County Council and Bristol City Council.

Enforcement action is defined for these purposes as:

- simple cautions
- conditional cautions
- civil penalties (including penalty charge notices and fixed penalty notices)
- informal undertakings
- formal undertakings (including court orders and enhanced consumer measures)
- prosecution
- warning orders (under the Estate Agents Act)
- prohibition orders (under the Estate Agents Act)

Before taking enforcement action we will consider a number of factors before making our decision:

- The seriousness of any alleged infringement
- The monetary value, and actual or potential economic detriment involved
- The vulnerability of any consumers affected
- The previous history of the business or individual
- The age and health of any offender
- Any action taken to prevent recurrence
- Any explanation offered or representations made, and, as far as the law allows, the circumstances and attitude of the business or individual
- What course of action will best suit the public interest
- Whether there has been a breach of an undertaking
- If the individual or business has established a Primary Authority or Home Authority relationship with a Trading Standards Service in the UK, the views and actions of that authority and the Office of Product Safety and Standards (where relevant)

The following factors that will tend to weigh in favour of enforcement action:

- Evidence of deception, or fraud or intent
- An unwillingness to put things right
- Significant level of negligence or carelessness
- Ignored advice or warnings
- Likelihood of future perceived non-compliance
- Adverse impact on vulnerable person or persons
- Behaviour likely to give unfair commercial advantage or damage commercial interest of others
- Prevalence of offending practice
- Obstruction of officers

¹ <https://www.gov.uk/government/publications/regulators-code>

² <https://www.cps.gov.uk/publication/code-crown-prosecutors>

³ <https://www.gov.uk/government/publications/primary-authority-overview>

The following factors that will tend to weigh against enforcement action:

- A minor systems failure, and we are satisfied that real steps have been taken to remedy that failure
- Where other regulators (e.g. the CMA) have made arrangements, through leniency or immunity, with the individual or business in respect of the offending
- Exceptional, unusual or one-off circumstances that are very unlikely to be repeated and, if possible, steps have been taken to prevent reoccurrence
- Whether the person(s) or business(es) affected have been fairly and promptly compensated
- A willingness to put things right, and a commitment to future compliance

All relevant factors are taken into account and given appropriate weight depending on the facts of the case. This means that even if one or more factors favour enforcement action this is not necessarily the outcome. The contrary also applies.

We will prioritise our work so that enforcement action is always considered where there is evidence of (or potential for):

- direct harm to an individual consumer
- unlawful gain to an individual or business
- collective harm to consumers or businesses in general
- reputational harm to the NTS Estate & Letting Agency Team, NTS, Powys County Council or Bristol City Council

The team will also pursue Proceeds of Crime action where necessary, including confiscation and compensation orders against convicted individuals and civil recovery of proceeds of crime from individuals who have not been convicted but sufficient evidence exists that criminal activity has taken place within the estate agency, letting agency, or other relevant sectors.

6. Contact Us

Website: www.ntselat.uk (contact details on website)

Twitter: @ntselat

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