

Digital Markets, Competition and Consumer Law: A Compliance Guide for Letting & Estate Agents



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Preparing for the Digital Markets, Competition and Consumer Act 2024

A Compliance Guide for Letting & Estate Agents

The Digital Markets, Competition and Consumer Law, came into force in 6th April 2024, introduces significant changes that letting and estate agents must comply with.

The good news is that it only applies in relation to contracts entered into after 6th April 2025, enforcement of the Act.

This guide outlines the key actions to take in preparation for the new obligations, particularly around consumer protection, material information, and the prevention of fake reviews.

The new Act repeals and replaces the Consumer Protection from Unfair Trading Regulations 2008 with a few key changes and new requirements for drip pricing and fake reviews.

The first significant change from the original act remedy can only be through the court to decide if your trading was unfair. Now the Competition and Mergers Authority will be able to make that decision. The court will still be able to make ruling but are likely to take into account the CMA's view on the matter. The law also gives local authorities a legal duty to enforce prohibitions, which alongside the Renters Rights Bill increases scrutiny on how agents operate. It appears that NTSELAT and local trading standards teams will still have the power to enforce consumer protection legislations *1

Key Compliance Areas

1. Transparency in Material Information & Terms of Business

Agents must ensure that all essential property details and business terms are clear, accurate, and readily available to consumers.

- ✓ Ensure contracts and terms of business are clear and fair.
- ✓ Review property listings to ensure all material information is included. Ensure you obtain information from clients and verify the information.
- ✓ Regularly audit marketing materials for compliance with new regulations.

The CMA does not have to demonstrate that the practice has actually affected the transactional decision making of the average consumer when bringing enforcement action, whereas the court required it under the previous law.



**1 James Muncro NTSELAT Propertymark Oxford conference.*

2. Preventing Fake Reviews & Misleading Practices

Businesses must take reasonable and proportionate steps to prevent the publication of fake or incentivised reviews.

It is also an offence to submit or commission a person to write a fake review or conceal that the review has been incentivised, as well as publishing consumer reviews in a misleading way. The scope is broad and covers graphic representations (including star ratings appearing next to your service, even in a search result).

✓ Create and publish a prevention & removal policy

This policy should prohibit fake reviews and outline your approach to handling them.
Clearly differentiate between a review and a complaint.

✓ Conduct regular risk assessments

Assess the risk of banned review material appearing on your platforms.
Update assessments regularly using internal data and third-party reporting tools.

✓ Implement detection methods

Introduce verification processes for reviews.
Use technology to identify misleading or fake reviews.
Enable third-party notifications for suspicious review activity.

✓ Set up an investigation procedure

Automatically remove clearly fake content.
For unclear cases, investigate in a timely manner to avoid misleading consumers.
Suspicious reviews should not contribute to overall ratings until verified.

✓ Apply sanctions where necessary

Remove or correct false/misleading reviews.
Ban accounts linked to repeated breaches.
Clearly notify consumers when banned reviews have been identified.



3. Considering the Vulnerability of Clients & Consumer Decision-Making

Agents must consider whether an average consumer, who is not expected to have insider knowledge of industry practices, could be misled into a decision with greater support being given to vulnerable clients.

- ✓ Identify vulnerable clients and ensure extra care is taken when providing information.
- ✓ Ensure business practices align with professional diligence and industry codes of practice.
- ✓ Regularly review your vulnerable client policy and train staff on its implementation and ethical selling practices.

4. Strengthening Compliance with Industry Standards

The law reinforces the need for agents to operate with professional diligence and adhere to industry best practices.

The onus is now firmly on agents to provide complete, accurate, and fair information—failure to do so could result in significant penalties

- ✓ Ensure you and your firm has membership in relevant professional bodies (e.g., Propertymark, TPO, RICS).
- ✓ Align internal policies with industry Codes of Practice.
- ✓ Provide regular compliance training for staff on the new regulations.



5. Sanctions:

1. Overview of monetary Penalties:

- The CMA has the authority to impose monetary penalties on businesses, including letting and estate agents, who are found to be in breach of the consumer protection rules outlined in the DMCC Act. The penalties can be applied after a formal investigation into the breach and may be imposed as part of a Final Infringement Notice (FIN) or as a consequence of non-compliance with direct consumer enforcement powers.

2. Calculation of Penalties:

- Amount of Penalty: The penalty is typically calculated as a percentage of the business's worldwide turnover. The specific formula or percentage may vary depending on the severity and nature of the breach.
 - Maximum Penalty: The CMA can impose a penalty up to £300,000 or 10% of the business's worldwide turnover for the relevant breach. This amount is designed to reflect both the severity of the infringement and the economic benefit that the offending party may have gained from the infringement.
- Turnover Consideration: When calculating penalties, the CMA will typically consider:
 - The turnover of the letting or estate agency business in the year the infringement occurred (and potentially previous years).
 - The global turnover of the business group (if the business is part of a corporate group). This is important for large firms that operate internationally, ensuring that penalties are proportionate to their financial capacity.

3. Penalty Determination Factors:

Several factors are taken into account when determining the amount of the penalty to be imposed:

- Duration of the Infringement: The longer the breach persists, the higher the penalty is likely to be. This is because ongoing infringements are considered to cause sustained harm to consumers.
- Severity and Impact on Consumers: The greater the harm caused to consumers (such as through misleading property descriptions, unfair rental practices, or discriminatory advertising), the more severe the penalty will be.
- Cooperation with the CMA: If the business cooperates during the investigation, such as by providing documents or offering commitments to resolve the issue, the penalty may be reduced. On the other hand, obstructing the investigation or failing to cooperate could lead to a higher penalty.
- Previous Offenses: If the business has a history of similar breaches, this may result in a higher penalty due to the cumulative impact of repeated violations.
- Financial Gain: The CMA will also assess whether the business has gained financially from the infringement. If the breach resulted in significant profits (for example, from unfairly inflated rent prices or false claims about property availability), the penalty may be set higher to reflect the economic benefit gained from the illegal practice.

4. Reduced Penalties for Settlement or Admission:

- The CMA may offer settlement options for businesses that wish to resolve the matter without protracted legal proceedings. If a letting or estate agent admits to the infringement and agrees to settle the matter, the CMA may reduce the penalty imposed as part of the settlement. This reduction is often a discount, depending on the timing of the settlement and the extent to which the business has cooperated.
- This is designed to encourage businesses to resolve issues quickly and avoid costly and lengthy investigations. However, businesses must accept the validity of the penalty and may not challenge it in court if they accept a settlement.

5. Monetary Penalties for Specific Breaches:

- Letting and estate agents may be subject to monetary penalties for breaches including, but not limited to:
 - Misleading Advertising: If a letting agent advertises properties with false or misleading information, such as inflated rental prices or inaccurate details about the condition of the property, they could face significant fines.
 - Price Fixing and Anti-Competitive Practices: If estate agents engage in price-fixing agreements or collude with other agents to manipulate rental prices or market share, these practices may trigger large monetary penalties. Anti-competitive behavior is a serious violation, and the penalties can be substantial to deter such conduct.
 - Unfair Trading Practices: Letting and estate agents who engage in aggressive sales tactics, misrepresent property details, or fail to disclose relevant property defects could be subject to penalties for unfair commercial practices.

6. Enforcement and Payment:

- Once a penalty is determined, the CMA will issue a Final Infringement Notice (FIN), which will include the exact penalty amount, payment deadlines, and any obligations the business must fulfill to remedy the breach.
- If a business fails to comply with the monetary penalty or refuses to pay, the CMA can take legal action to enforce the payment, including seeking court orders or enforcing payment via debt recovery mechanisms.

7. Appeals:

- A business that receives a monetary penalty can appeal the decision. Appeals are typically made to the High Court or equivalent court in the jurisdiction of the business. The appeal must be based on:
 - The penalty being disproportionate or unreasonable.
 - Errors in the CMA's calculation or interpretation of the breach.
- Until the appeal is resolved, the penalty may not need to be paid if the business is granted a suspension of the payment.

Criminal Liability for Letting and Estate Agents under the Digital Markets, Competition, and Consumer Act 2024

- Fines: For failure to comply with information requests or misleading claims.
- Imprisonment: Up to 2 years for obstructing CMA investigations or providing false/misleading information.
- Up to 5 years in prison for anti-competitive practices or fraud.

What You Need to Do Now

With the Competition and Markets Authority (CMA) taking over enforcement and gaining stronger fining powers, it is crucial for agents to act now.

Here's your action plan:

- ✂️ Review your business practices, particularly around advertising, consumer protection, and review management.
- ✂️ Implement a clear and transparent fake review prevention & removal policy.
- ✂️ Train your team on the new legal obligations and consumer rights.
- ✂️ Monitor and audit your processes regularly to ensure ongoing compliance.
- ✂️ Join a professional body and align with best practices to strengthen your credibility and compliance efforts.
- ✂️ Avoid the financial penalties of fines up to 10% of annual turnover or £300,000 whichever is higher for substantive breaches of consumer protections rules with additional penalties for non-compliance with enforcement directions, Directors and senior employees can be held liable.



For further information:

The CMA have produced some guidance on the new Act which can be seen here:

https://assets.publishing.service.gov.uk/media/67d44b1fa4075fa7b9851de1/Direct_consumer_enforcement_guidance_CMA200.pdf

The guidance is split into four clear sections.

Part 1 gives a short introduction and overview, setting out what the unfair commercial practices (UCP) provisions cover. There's also a handy flowchart to help you work out whether a particular business practice might be considered unfair.

Part 2 focuses on practices that involve prohibited conduct—things likely to cause a consumer to make a different decision than they otherwise would. This includes failing to act with professional diligence, misleading information (or leaving key things out), and aggressive tactics.

Part 3 lists commercial practices that are banned outright—regardless of whether they influence the customer. This includes things like leaving out essential information in an offer to purchase, using "drip pricing," or promoting practices that are unfair under any circumstances—even in industry codes of conduct.

Part 4 covers the criminal offences —where unfair commercial practices cross the line into potential prosecution.



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Please bear in mind that this is our initial view of how the new law might affect letting and estate agents.

A full industry review is awaited.

Stanley Strategic Consultants LLP are not a legal practice, and this information is not intended to be legal advice. If legal advice is required, you should consult a suitably qualified legal adviser.