

The Estate Agents Act 1979

Notice of proposal - your right to make representations

1. Introduction

The notes are to help you decide what to do if you receive a notice of proposal to make a prohibition order or a warning order ('the notice') under the Estate Agents Act 1979.

Please note that the notice consists of three parts, a covering letter, a notice of proposal signed by the adjudicator, and all the documents referred to in the notice.

Under the Estate Agents Act 1979, the Office of Fair Trading (OFT) has the power to:

- prohibit (ban) you from doing any estate agency work at all, or
- prohibit you from doing a particular kind of estate agency work, or
- issue a warning order, or
- revoke or vary the terms of existing orders.

The notice can be issued to persons covered by the Estate Agents Act, irrespective of whether or not they are at that time working as estate agents, or intending to do so in the future.

A warning order is a serious reflection on a person's fitness to work as an estate agent. Where a warning order has been made and matters lead to the issuing of a further notice, the adjudicator will take that warning order into account in deciding whether to issue a prohibition order. Failure to comply with a warning order will be regarded as evidence of unfitness to act as an estate agent, and will lead to a prohibition order.

You have been sent the notice by an adjudicator acting on behalf of the OFT. It is the adjudicator who decides, on behalf of the OFT, whether to make the proposed order. The adjudicator does not have access to any information other than that which is set out in the notice.

2. What you should do when you receive the notice

When you receive a notice from an adjudicator, it is your right to decide whether to make representations or not.

If you decide not to make representations, the adjudicator will make a decision on the basis of the information given in the notice sent to you. In the absence of representations, it is likely that the order will be made.

If you decide to make representations, you must choose whether you want to deal with the matters raised in the notice by making written representations, or oral representations, or both. In deciding how you should proceed, you may wish to obtain professional advice. It is for you to provide the evidence which you wish the adjudicator to take into account, including any supporting documents.

You will need to write to the adjudication unit within 21 days of receipt of the notice, either to submit your written representations, or to ask for a hearing at which to make your oral representations, or both. If you are unable to meet the time limit, you should contact the adjudication unit at once to explain why, and ask for an extension of time.

If you do not respond to the notice within 21 days, it is likely that you will lose the

right to make representations, unless you have a good reason for the delay.

You may use the form included with these notes to respond to the notice. If you want more space, you can continue on separate sheets which should be individually signed and attached to the form. You are not obliged to use the form. If you want, you may write a letter or supply some other appropriate document signed by you.

3. Written representations

If you decide to make written representations, you should try to respond to each of the issues raised in the notice. You can support your case with other documents such as business records, letters, sworn or unsworn statements, and references.

You do not have to follow any particular order but you should cover all the points you would like the adjudicator to consider.

You can also make general comments and draw attention to any other factors you think the adjudicator should take into account in making a decision on the matters set out in the notice.

4. Oral representations

If you inform the adjudicator that you want to make oral representations, the adjudication unit will arrange a hearing at a date, time and venue which suits you and the adjudicator. Unless you have specifically requested otherwise, this information will be sent to the same address as that to which the notice was sent. You will be given at least 21 days notice of the hearing, although you can agree to a shorter period.

The hearing will be in private. You can present your case yourself, or be represented by a lawyer or other professional adviser, or by somebody else acting on your behalf. You may also bring other people to the hearing to support your case or, if that is not possible, a letter or report from them. You should tell us in advance whether anyone else is accompanying you to the hearing. You should bring with you all the documents the adjudicator has sent you.

Please inform us in advance of the hearing if you, or anyone attending the hearing with you, has any disabilities or communication requirements that need to be accommodated at the hearing or before it.

There is no formal procedure laid down for the hearing. You will not be required to take the oath, or affirm, or be subjected to formal cross-examination. No evidence will be excluded solely on the grounds that it would not be admitted in a court of law.

If, at any stage of the process, the adjudicator becomes aware of any further information that is relevant under the Estate Agents Act 1979, that information will be made available to you and you will be given the opportunity to respond to it orally or in writing or both. If it is necessary to adjourn the hearing, you will be given notice of the date, time and place at which it will be resumed.

5. Criminal offence

Your representations should be made honestly and accurately. It is a criminal offence under s27 of the Estate Agents Act 1979:

- (1) to fail, without reasonable cause to give the OFT any assistance or information which may be reasonably required in order to carry out its functions under the Estate Agents Act 1979 or
- (2) when giving information to the OFT to make a statement knowing it to be false.

The penalty for conviction is a fine.

6. The adjudicator

The adjudicator's role is to consider your representations, whether written or oral or both, and to make a decision based on the information in the notice, and your representations.

The adjudicator's decision will be given in writing and will include a statement of reasons explaining the decision.

7. Appeals

You have the right to appeal against the decision of the adjudicator to the Secretary of State for Business, Enterprise and Regulatory Reform. Your rights of appeal and the procedures for appealing are explained in a leaflet that will be sent to you automatically if the adjudicator's decision is adverse to you.

8. Disclosure of information by the Office of Fair Trading

The OFT intends to use the information you supply for the purposes of these proceedings under the Estate Agents Act 1979.

While Part 9 of the Enterprise Act 2002 places restrictions on disclosure of such information, it does, nonetheless, allow disclosure for a number of other purposes without your further consent.

By way of example, the OFT may use and disclose the information in connection with enforcement or regulatory action under its own powers or may refer the information to another government department or enforcement authority.

9. The Estate Agents Public Register

A record of the adjudicator's decision is entered in the Estate Agents Public Register ('the register') that is maintained by the OFT in accordance with section 8 of the Estate Agents Act 1979. This register will indicate whether there is a prohibition order or a warning order, including any variations of such orders. Where an appeal has been lodged against a decision, the information on the register will indicate that the order or variation has not yet come into effect.

10. Publicity

Orders made together with any relevant information will also be listed in OFT publications.

In addition, and subject to the disclosure provisions referred to in paragraph 8 of this leaflet, the OFT may issue a press release reporting the adjudicator's decision, and the reasons for it.

Copies of the notice and the decision are sent to your Local Authority Trading Standards Services.

11. Contact

When writing to the OFT about any notice you have been sent, or to provide any representations, address your letters to:

**Adjudication Unit
Office of Fair Trading
Fleetbank House
2 - 6 Salisbury Square
London EC4Y 8JX**

**Telephone: 020 7211 8832
or 020 7211 8833
Fax: 020 7211 8404
Email: adjudication@oft.gsi.gov.uk**

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Representations form

Name of recipient of notice.....

EST reference number.....

Please indicate what type of representations you wish to make by putting an X in the correct box and returning this page only to:

**Adjudication Unit
Office of Fair Trading
Fleetbank House
2 - 6 Salisbury Square
London EC4Y 8JX**

- a** written representations only
- b** oral representations at a personal hearing only
- c** written representations, followed by oral representations at a personal hearing

Note

Written representations may be submitted in the space provided overleaf. If you want more space, you can continue on separate sheets which should be individually signed and attached to this sheet.

Signature

..... Date

Name of person signing in BLOCK LETTERS

.....

Address.....

.....

Postcode..... Daytime telephone No.....

