

Home Buying and Selling Market Study

Survey of local authority Trading Standards Services

February 2010

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1 EXECUTIVE SUMMARY

- 1.1 As part of the OFT's Market Study of Home Buying and Selling, between 22 June and 24 July 2009, we surveyed all local authority Trading Standards Services (TSS). Of the 198 TSS we contacted, we received responses from 78 (39 per cent).
- 1.2 In 2008 responding TSS made 984 estate agency inspections. In 24 per cent of these cases the estate agents were found not to be complying with the relevant regulations on the first visit.
- 1.3 In 2008 respondents received a total of 2,209 complaints relating to estate agents, which represented one per cent of total complaints. Consumers were the main source of complaints to TSS about estate agents, followed by estate agents complaining about other estate agents.
- 1.4 The most common category of complaints received by respondents about estate agents related to allegations of consumer protection law infringements, for example the Property Misdescriptions Act 1991 (PMA) and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). These accounted for 585 of complaints to respondents, equivalent to 44 per cent of categorised complaints received.
- 1.5 In 2008, respondents conducted 965 investigations into estate agents, equivalent to 44 per cent of the number of complaints about estate agents. Of these investigations, 400 (41 per cent) were categorised as civil, and 565 (59 per cent) were criminal. The most common outcome of these TSS investigations was an informal resolution through the provision of advice to the business. Enforcement action was taken in 14 cases (one per cent). In 11 of these 14 cases the legislation used was the PMA.
- 1.6 The most common steps taken by responding TSS to raise consumer awareness of relevant regulations included placing information on their websites and providing advice to those who approached TSS. The

latter was also the most common step taken to raise awareness among estate agents, followed by visits by TSS to estate agents' premises.

- 1.7 Respondents rated the PMA as the most effective legislation for protecting consumers using estate agents, with 93 per cent stating that they agreed it was effective. Most (77 per cent) disagreed with the suggestion that the introduction of the CPRs meant that the PMA was no longer needed.

2 METHODOLOGY

- 2.1 In June 2009 the OFT sent local authority TSS an email inviting them to participate in an online survey being undertaken for the Home Buying and Selling market study. The survey sought to collect information on the nature of complaints, investigations and enforcement actions taken by authorities. It also asked about how effective the current legislation is in protecting consumers using estate agents, and the steps taken to raise awareness of regulations among consumers and estate agents. See Annexe two for the full questionnaire.¹
- 2.2 The survey was developed by the OFT market study team and piloted by a number of volunteer TSOs. There are 198 TSS in the UK, all of whom were asked to participate in the survey. We received a total of 78 successfully completed and valid responses from TSS across England and Wales, Scotland and Northern Ireland – a response rate of 39 per cent. Fieldwork ran between 22 June and 24 July 2009. The survey was publicised in the Local Authorities Coordinators of Regulatory Services' (LACORS) newsletter and reminders were sent to authorities that had not yet responded on 8 July. We would like to express our thanks to LACORS and all those officers who participated in this research.
- 2.3 We asked respondents to provide data for the most recent 12-month period for which they could report. Forty-eight TSS provided information for the 2008 calendar year and 25 provided information for the latest financial year (April 2008 to March 2009).² Although these periods differ slightly, for the purposes of analysis we have collated the two 12-month datasets.

¹ Readers requiring data for the charts in this report can find these in the supplementary tables presented in Annexe 1.

² Five TSS did not state for which type of 12-month period they were reporting results.

3 RESULTS

Respondents

3.1 Table 3.1 below shows a regional breakdown of the responses received from the surveyed TSS, along with details of the number of TSS in each region and the associated response rate. We received responses from TSS in every region but there was a degree of variation in the response rates, particularly within the English regions, 70 per cent of TSS responded in the East of England compared with 14 per cent in Central England and the North West. Looking at the countries, Wales had the highest response rate with 64 per cent, followed by Scotland and England with 38 per cent and 35 per cent respectively.

Table 3.1: Regional breakdown of survey respondents

	Region	Number of responses	Number of TSS	Response rate
CEnTSA	Central England	2	14	14%
EETSA	East of England	7	11	64%
LoTSA	London	7	32	22%
NETSA	North East England	4	12	33%
SWERCOTS	South West England	7	15	47%
TSEM	East Midlands	4	8	50%
TSNW	North West England	3	22	14%
TSSE	South East England	13	19	68%
Y&H	Yorkshire and the Humber	4	11	36%
	England Total	51	144	35%
WWhoTS	Wales	14	22	64%
SCOTSS	Scotland	12	32	38%
NI	Northern Ireland	1	1	100%

The number of estate agents

3.2 73 responses provided information on the number of estate agents operating within the TSS' authority. In total these TSS reported 7,818 estate agents in their areas, equating to an average of 107 estate

agents per authority. On average each TSS reported to be the home authority³ for eight estate agents.

- 3.3 Using supplementary information about local authority populations to weight the number of estate agents reported by TSS respondents produces an estimate for the UK as a whole of 16,876 estate agents. This figure is broadly consistent with other sources, for example the Office for National Statistics reported the number of real estate agencies (SIC 70.31) as 18,555 in 2007.⁴ The discrepancy in the figures is consistent with reports that the number of estate agents has declined in 2008 and 2009.

TSS inspections of estate agents

- 3.4 Under the TSS risk assessment scheme developed by LACORS each industry is assigned an inspectional risk rating which determines the frequency with which businesses are inspected. Particular businesses within an industry can be assigned a higher inspectional risk if it is believed that their practices pose a higher than average risk to consumers and require more frequent inspection. Estate agents are considered to be 'medium' inspectional risk and the survey shows that in total only 12 estate agents had been identified by TSS respondents as being above this category. Eleven of these were reported in England with the remaining one being in Scotland.
- 3.5 Responding TSS made 984 estate agent inspections in 2008 – an average of 13 inspections per TSS. On average TSS in England inspected 15 estate agents in 2008, compared to nine in Wales and Scotland and 24 in Northern Ireland.

³ Formal relationship between a TSS and a business based upon the LACORS published Home Authority Principle. The principles concern assisting businesses by providing contact points for advice and guidance in order to maintain high standards of public protection, the encouragement of fair trade and developing a consistent approach to enforcement.

⁴ ONS Annual Business Enquiry, Section K - Real estate, renting and business activities
www.statistics.gov.uk/abi/downloads/section_k.xls

3.6 In 24 per cent of these inspections the estate agent was found to be non-compliant with the relevant regulations. Seventy-two per cent of TSS reported that they had found at least one estate agent to be non-compliant. The average proportion of estate agents found to be non-compliant was 45 per cent in Northern Ireland, 18 per cent in England, six per cent in Scotland and five per cent in Wales.

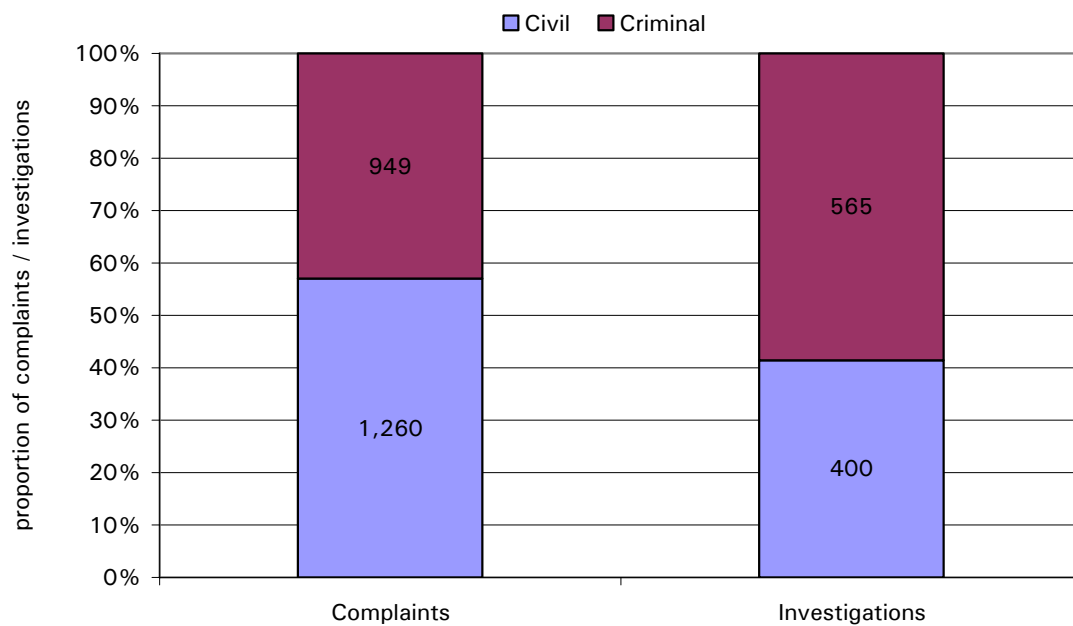
Complaints and investigations

3.7 In 2008 the responding authorities received a total of 2,209 complaints relating to estate agents, which represented one per cent of all complaints they had received over the corresponding period. Of these complaints, 1,260 (57 per cent) were categorised by the TSS as civil complaints, and the remaining 949 (43 per cent) were categorised as criminal complaints.⁵

⁵ A TSS will categorise a matter as a complaint if there is an allegation which, on the evidence presented, suggests a contravention of civil or criminal law.

3.8 Investigations into estate agents accounted for one per cent of all investigations started by the TSS respondents. As Chart 3.2 shows, 965 investigations were conducted in 2008, which is equivalent to 44 per cent of the number of complaints. Of these investigations 400 (41 per cent) were civil, and 565 (59 per cent) were criminal. This suggests that TSS respondents were more likely to carry forward into an investigation those complaints they considered mainly to be criminal in nature than those they considered mainly to be civil.

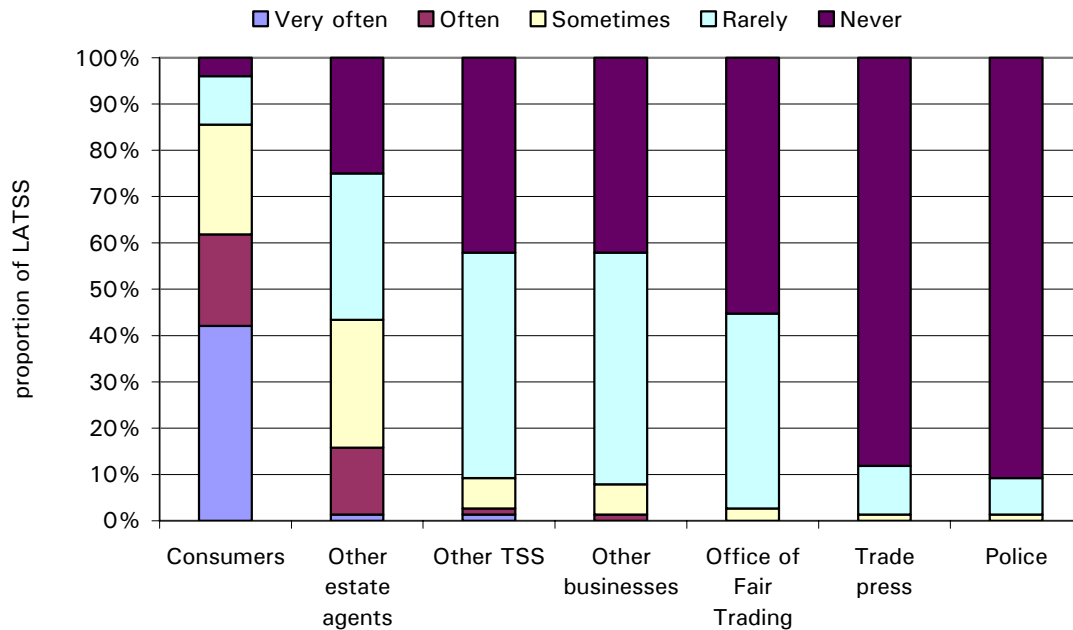
Chart 3.2: Civil and criminal estate agent complaints and investigations



Base: 66

3.9 Of potential complaint sources, consumers were most often the source with 62 per cent of TSS saying they were often or very often the source of a complaint (Chart 3.3). This was followed by other estate agents with 16 per cent of TSS stating that they often received complaints from them. The trade press and police were the least common sources, with around 90 per cent of TSS stating that they never received complaints via these sources.

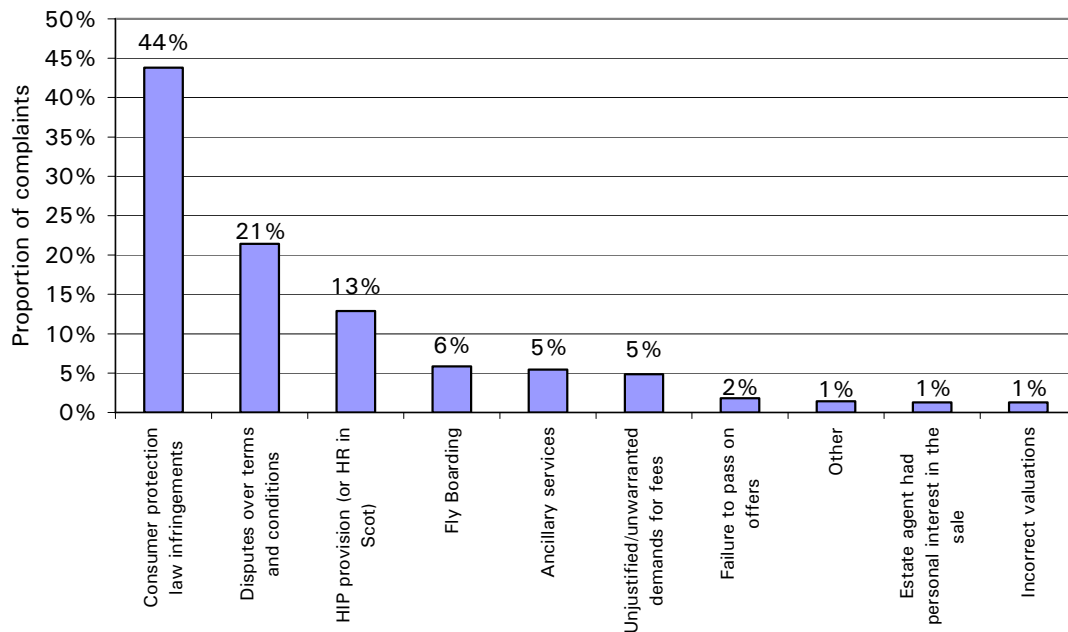
Chart 3.3: Sources of complaints to TSS about estate agents, 2008



Base: 76

3.10 The most common complaints related to allegations of consumer protection law infringements (such as the PMA and CPRs), as shown in Chart 3.4. These accounted for 585 complaints (44 per cent of all complaints received about estate agents). The next most common subjects were disputes over terms and conditions and Home Information Pack (HIP) provision, making up 21 per cent and 13 per cent of all complaints respectively. These three categories were together responsible for almost four-fifths (78 per cent) of all complaints received by TSS.⁶ These patterns did not vary substantially by region or country.

Chart 3.4: Subjects of complaints to TSS about estate agents, 2008

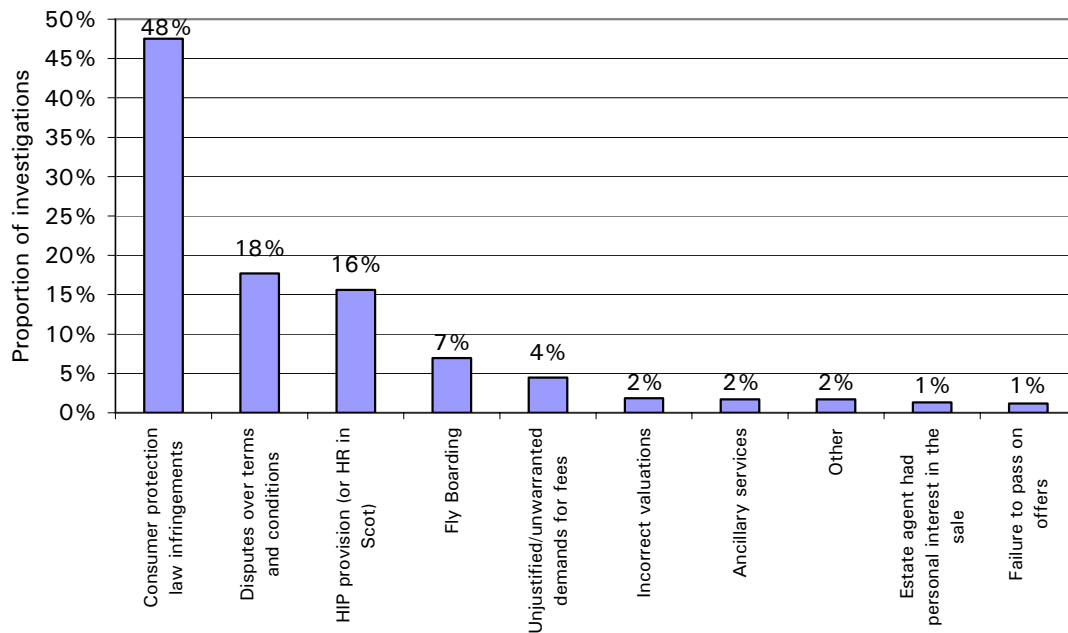


Base: 44

⁶ Respondents were asked to specify any additional complaint types that did not appear in the categories provided in the questionnaire. Other areas of complaints received accounted for one per cent of all complaints about estate agents and included: estate agents touting for business, estate agents approaching vendors already signed-up with another agent, estate agents ignoring instructions to stop marketing properties, and general poor level of service from estate agents.

3.11 The pattern of complaints was mirrored very closely by the resulting investigations, as shown in Chart 3.5. Again the top three categories (allegations of consumer protection law infringements, disputes over terms and conditions and HIP provision) accounted for four-fifths (81 per cent) of all investigations.

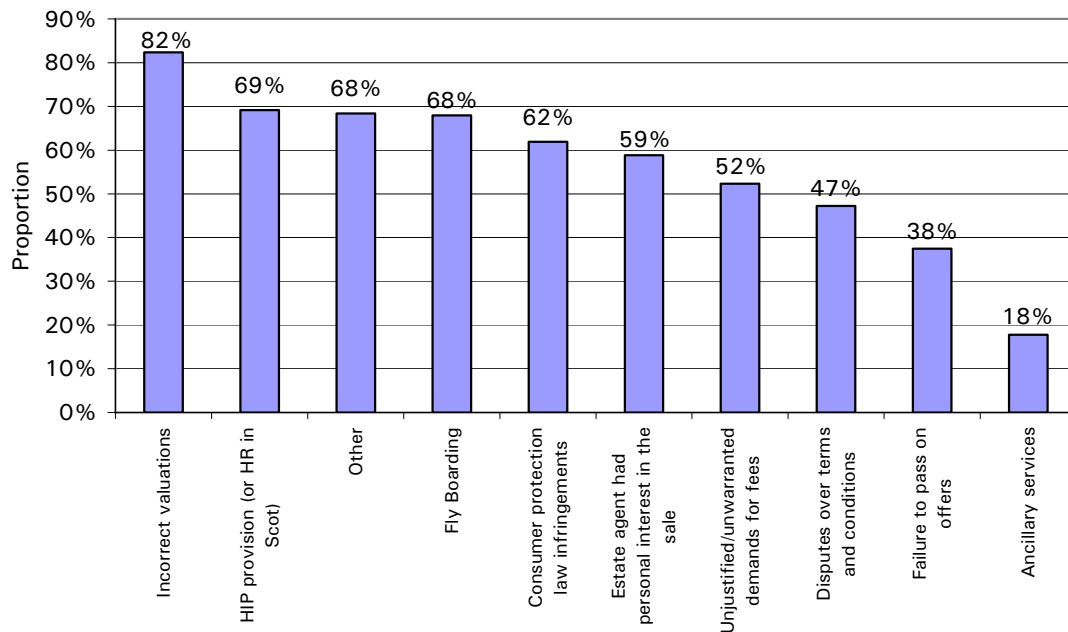
Chart 3.5: Problems investigated in TSS estate agent investigations, 2008



Base: 40

3.12 Comparing Figures 3.4 and 3.5 shows a consistent pattern where those categories that have relatively high numbers of complaints also have relatively high numbers of investigations. Looking at this relationship more closely, Chart 3.6 below shows the proportion of complaints that resulted in investigations. At 69 per cent and 68 per cent respectively, responding TSS were more likely to investigate HIP provision and fly boarding than they were disputes over terms and conditions (47 per cent). Incorrect valuations resulted in the highest proportion of investigations at 84 per cent – but this was based on a low number of complaints (17).

Chart 3.6: Proportion of complaints that became investigations, 2008



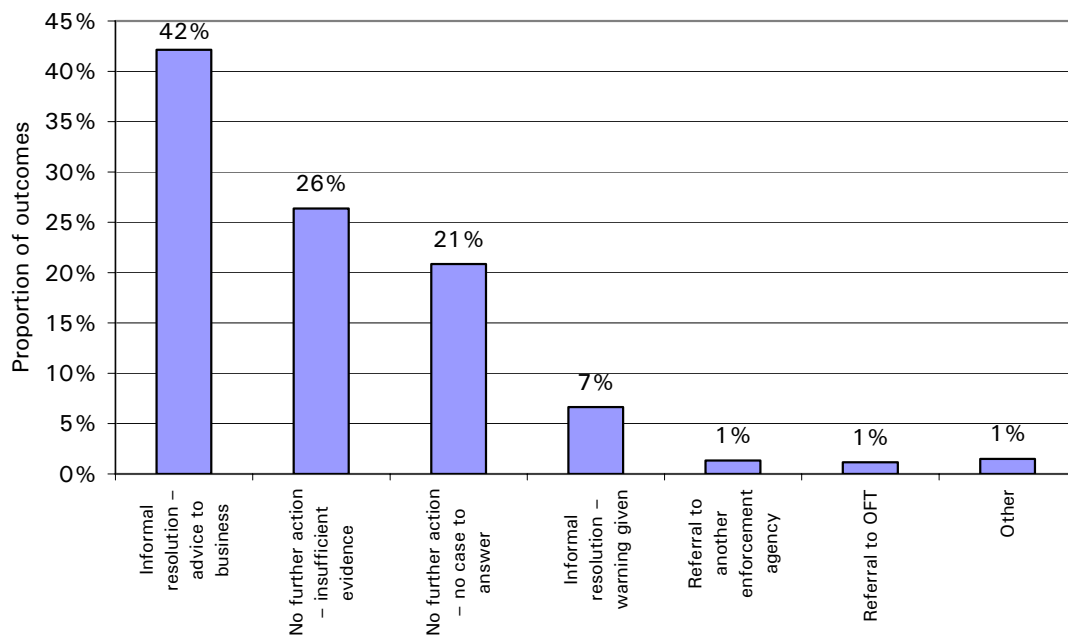
Base: 40

Outcomes

3.13 The most common outcome from the TSS investigations into estate agents, as shown in Chart 3.7, was informal resolution through the provision of advice to the business (42 per cent). In almost half of cases no further action was taken, due to insufficient evidence (26 per cent) or because there was no case being found to answer (21 per cent). In seven per cent of cases an informal warning was given, and in only one per cent of cases was a criminal case brought by TSS. The pattern in investigation outcomes was very similar within each of the UK's countries.

3.14 Where enforcement action was taken, the most commonly used legislation, accounting for 11 cases, was the PMA. The Estate Agents Act 1979 (EAA), and the CPRs 2008 / Trade Descriptions Act 1968 (TDA) were both used three times.

Chart 3.7: Outcome of TSS investigations into estate agents, 2008

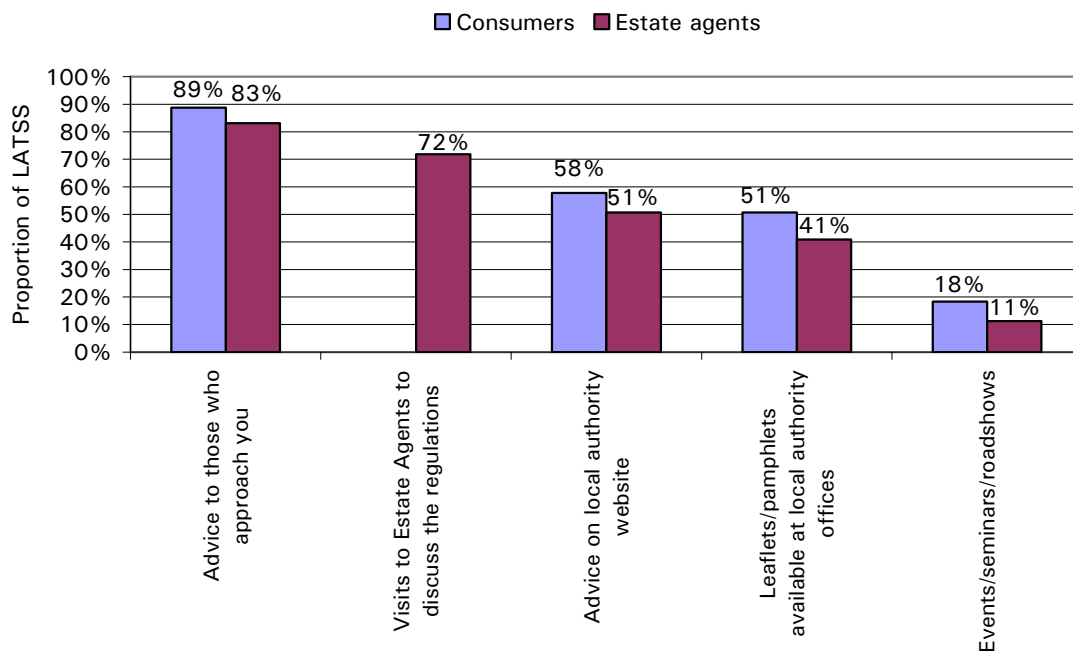


Base: 33

Awareness of regulations

3.15 Chart 3.8 shows the steps taken by TSS to raise awareness of relevant regulations, both for consumers and estate agents. Advice given to consumers and estate agents that approached TSS formed the most common channel for raising awareness, with 89 per cent and 83 per cent of TSS respectively reporting that they did this. This was followed by TSS visits to estate agents' premises (72 per cent) and advice placed on the local authority's website for consumers (58 per cent).

Chart 3.8: Steps to raise awareness of regulations, 2008



Base: 71

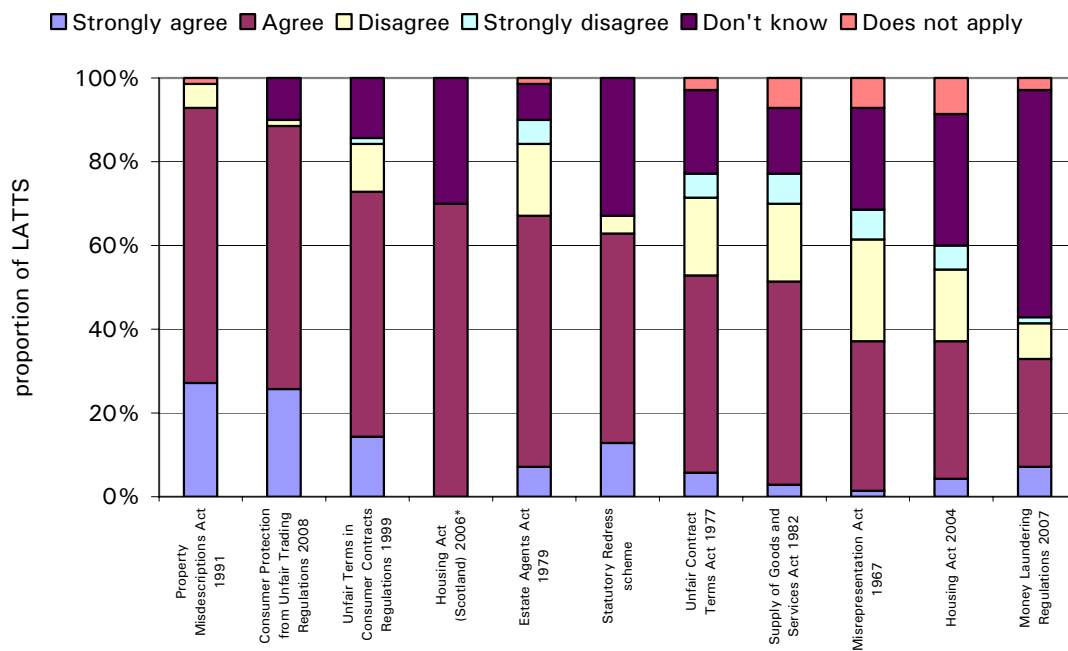
3.16 Other steps taken by TSS to raise awareness of regulations included:

- writing to estate agents to explain regulations, and
- placing articles about regulations in relevant publications.

Effectiveness of consumer protections

3.17 Chart 3.9 below shows which consumer protection legislation TSS believed to be the most effective in protecting consumers using estate agents. The PMA was rated highest, with 93 per cent of TSS stating that they agreed that it was effective. This did not vary substantially by region or country. In comparison, 67 per cent agreed that the EAA was effective, whilst 37 per cent considered the Housing Act 2004 (HA) (which introduced HIPs) to be effective. In Scotland, all those TSS that gave an opinion agreed that the Housing Act (Scotland) 2006 was effective.

Chart 3.9: Effectiveness of consumer protection laws, 2008



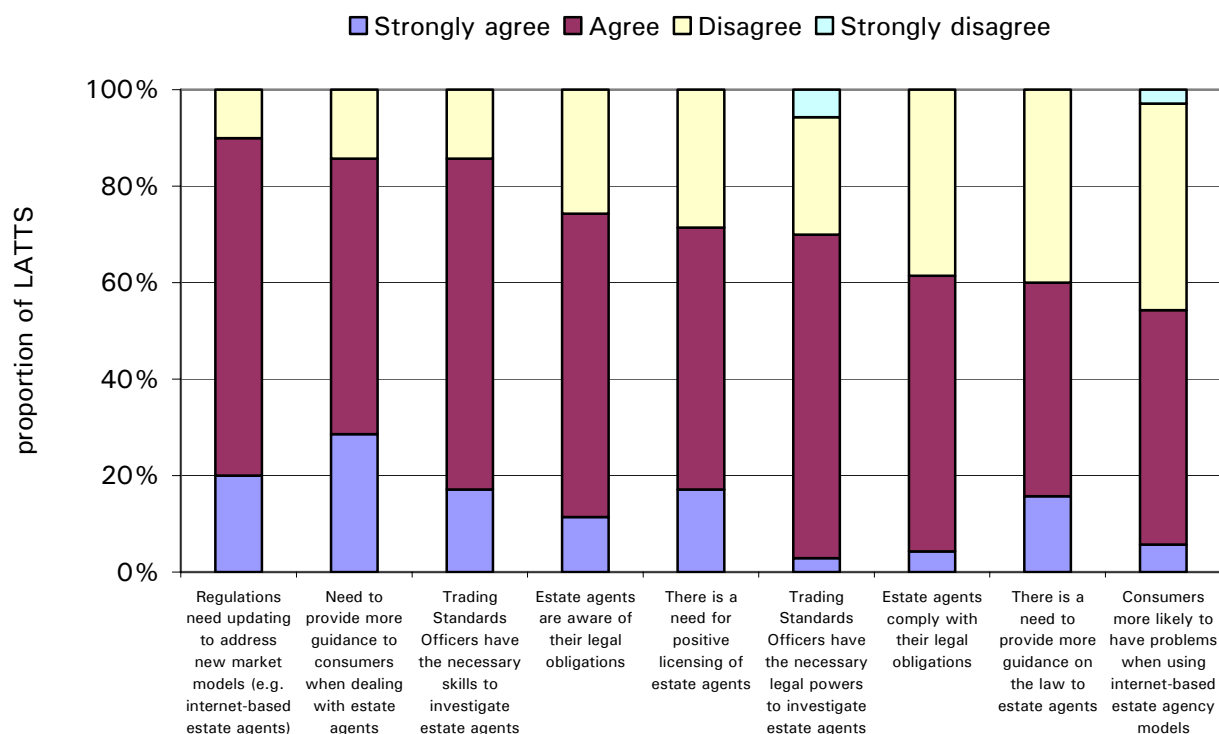
Base: 70 *result shown for just those TSS in Scotland (10 responses)

TSS opinions

3.18 A number of statements were presented to the TSS, to which they were asked to state their level of agreement. Chart 3.10 presents those statements that TSS generally agreed with (that is, where the combined proportion that agreed or strongly agreed, is greater than 50 per cent),

- 90 per cent agreed that the regulations need to be updated to address new estate agency models (for example, internet-based estate agents)
- 86 per cent agreed that there is a need to provide more guidance to consumers about their rights when dealing with estate agents
- 86 per cent agreed that Trading Standards Officers have the necessary skills to investigate estate agents
- 74 per cent agreed that estate agents are aware of their legal obligations
- 71 per cent agreed that there is a need for positive licensing of estate agents
- 70 per cent agreed that Trading Standards Officers have the necessary legal powers to investigate estate agents (although 29 per cent agreed that Trading Standards Officers have the necessary resources to investigate estate agents – see below)
- 61 per cent agreed that estate agents comply with their legal obligations
- 60 per cent agreed that there is a need to provide more guidance on the law to estate agents
- 54 per cent agreed that consumers are more likely to have problems when using internet-based estate agency models.

Chart 3.10: Agree/disagree statements 1



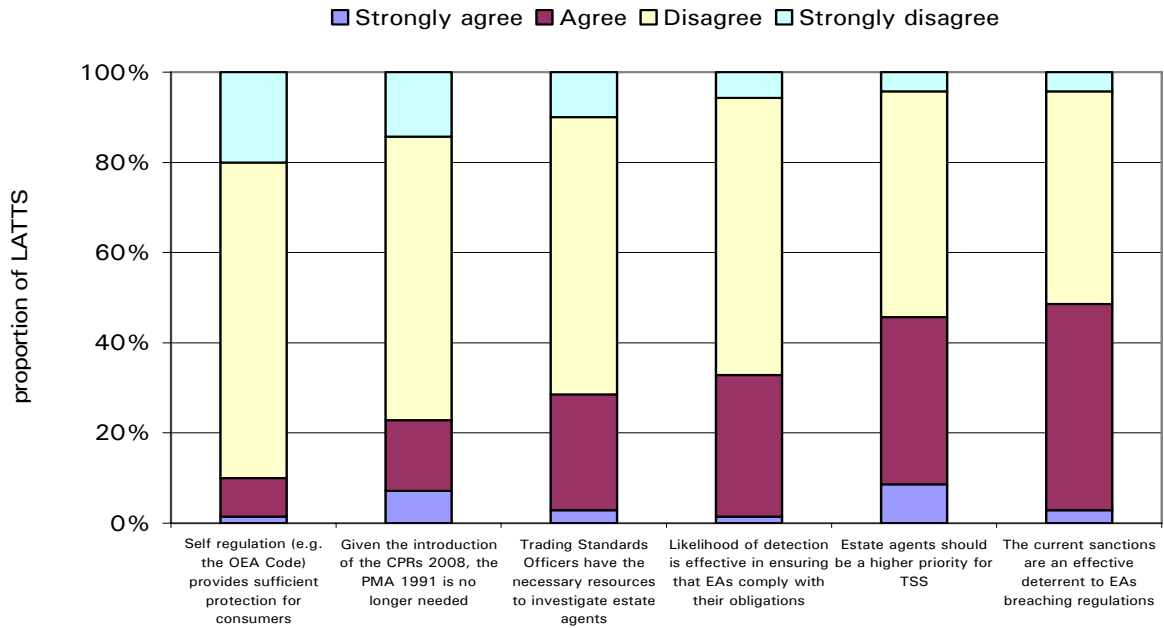
Base: 70

3.19 Chart 3.11 presents those statements that TSS generally disagreed with (that is, where the combined proportion that agreed or strongly agreed is less than 50 per cent),

- 90 per cent disagreed that self regulation (for example, the OEA/TPO code) provides sufficient protection for consumers
- 77 per cent disagreed that given the introduction of the CPRs 2008, the PMA 1991 is no longer needed
- 71 per cent disagreed that Trading Standards Officers have the necessary resources to investigate estate agents
- 67 per cent disagreed that the likelihood of detection under the current enforcement regime is effective in ensuring that estate agents comply with their obligations under the law

- 54 percent disagreed that estate agents should be a higher priority for TSS
- 51 per cent disagreed that the current sanctions are an effective deterrent to estate agents breaching regulations. Of those TSS that disagreed that current sanctions were effective, 100 per cent also disagreed that estate agents complied with their legal obligations.

Chart 3.11: Agree/disagree statements 2



Base: 70

4 QUALITATIVE RESPONSES

- 4.1 We asked TSS respondents the following opened ended questions:
- What, if any, estate agency related regulatory and/or enforcement changes are needed, and what would be the effect?
 - Are there any other issues or comments you would like to add?
- 4.2 TSS were also asked if they had any useful estate agency related examples and case studies demonstrating problems with enforcement that they would be willing to share with us, and whether they were willing for us to contact them to explore their replies further.
- 4.3 Overall, we received relatively few free text responses to these questions: 25 respondents commented on the need for regulatory changes, seven provided other comments, and two gave us case study examples. This chapter assesses the replies we received.

What changes are needed?

- 4.4 There was a degree of overlap in relation to responses to the first two open-ended questions we asked, and the summary below is therefore an amalgamation of the responses received.
- 4.5 There appeared to be a view among TSS respondents that the law regulating estate agents and the home buying and selling process is overly complex and further clarification or the creation of a more simplified enforcement regime is required. One respondent stated: **'the current situation regarding legislation that applies to estate agents is a mish mash. No one seems to know what is required. Perhaps a consolidation Act might be the answer'**. There also appeared to be some confusion as to which legislation applies and when.
- 4.6 Three respondents thought a review of the PMA and the CPRs would be useful – with two citing, as their reason, the overlaps between the CPRs and the PMA. There were also calls by two respondents for

further guidance to inform understanding of when the CPRs would be applicable to estate agents - particularly in relation to when, how much and what sort of information estate agents should be disclosing. One respondent also believed that clarification was needed on whether the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008⁷ applied to estate agents.

- 4.7 The regulation of HIPs and Energy Performance Certificates (EPC) in particular was highlighted as an area of concern. The small number commenting considered HIPs and EPCs to be unduly complex and that HIPs in particular were adding little to the home purchase transaction, because the required searches were often being carried out separately by the buyer's conveyancer for certainty. Comments included the following:

'HIPS/EPCs too complex and no benefit seen.'

'HIP/EPC legislation needs to be looked at as it's ineffective.'

'Home Information Packs would have been better if they had contained a property survey instead of searches and energy certificates as nobody looks at these when buying a house.'

- 4.8 It was pointed out by one respondent that although enforcers are granted powers to require estate agents to produce a copy of a HIP or EPC, the estate agent has seven days to comply,⁸ during which time the estate agent could potentially order the documents in an attempt to cover up any breach. There may also be difficulties determining

⁷ SI 2008 No.1816. The Regulations protect consumers when goods or services are bought away from the normal business premises. It covers matters such as cancellation rights and cooling off periods. The OFT view is that an agreement between a consumer and an estate agent to market their home for sale would normally fall within the scope of the Regulations.

⁸ S167(4) of the Housing Act (HA) and Regulation 39(4) of the Energy Performance of Buildings Certificates and Inspections (England and Wales) Regulations 2007 (EPC Regulations).

whether the HIP documents have been obtained before the property is placed on the market. This was felt to be causing a significant hindrance in terms of enforcement (see Case Study).

CASE STUDY

TSS A is experiencing significant difficulties enforcing the HIPs requirements under the HA and contemplating modifying its enforcement policy to specifically exclude proactive enforcement and limit reactive enforcement whilst retaining a commitment to provide advice to businesses.

Enforcers have powers of entry and inspection if they have reasonable cause to suspect that an offence has been committed under the Act or that certain obligations are not being complied with or undesirable practices being engaged in (section 11 EEA). They do not have the general power to access the property file to enable them to determine, with a sufficient degree of certainty, when the property was first marketed and in turn ensure the HIP has been obtained in sufficient time. TSS A felt this problem could be addressed if enforcement powers were extended to include production of documents relating to the receipt of sales instructions, marketing, advertising and the construction or ordering of the HIP. An amendment to the EAA has been proposed but not yet introduced (in the form of a new section 21A) which would require estate agents to keep certain records for a period of at least six years. These records would include information which an estate agent is required to give under section 18 as to the agent's fees and charges. This new requirement may make it easier for an enforcer to determine when a property is first marketed.

TSS A has also found it extremely difficult to locate the required HIPs and check for compliance where various EAs are involved in the marketing of the property. This will arise where multiple agency instructions are taken or where vendors cancel their agreement with one agent and move to a second.

Concerns were also raised regarding the way in which HIPs were often marketed to consumers. For instance, consumers often entered into an agreement with the estate agent whereby the HIP was provided at a 'discount' as part of the overall service package, but if the consumer then chose to use a different estate agent they found themselves contractually obligated to pay for the HIPs upfront at the undiscounted price.

This could be a problem for some during what is a financially demanding period.

The TSS also noted that it is common for EAs (particularly small independent businesses) to use terms and conditions likely to be in breach of unfair contract terms legislation. This was usually a result of amendments they had made, often over a period of time, to what originally may have been standard terms and conditions created by bodies such as the Royal Institute of Chartered Surveyors (RICS).

- 4.9 There appeared to be a desire on the part of TSS respondents for more criminal sanctions to be implemented in relation to HIPs and EPCs as well as the regulation of estate agents generally. One respondent suggested: **'Create proper criminal sanctions for all breaches of HIP, EPC and Estate Agents Act requirements. This ought to increase compliance as the sanctions would be more of a concern to estate agents'**.
- 4.10 More specifically, TSS respondents made the following suggestions regarding improvements to enforcement:
- powers to enable enforcers to inspect documents and client account records without suspicion of wrongdoing
 - giving consumers civil rights of action to claim damages for estate agents' failure to comply with the PMA and CPRs
 - self regulatory codes to be monitored more rigorously
 - an assessment of the regulation of internet based estate agents to ensure a level playing field.
- 4.11 One respondent suggested setting up a central resource base, providing up-to-date guidance and training for estate agents on their legal obligations, whilst another called for structured guidance and support for enforcers by central agencies to assist in the local regulation of the sector.

- 4.12 In Scotland, however, TSS respondents considered that compliance levels were generally high, because most estate agents were also solicitors (this was noted by two of the three Scottish authorities responding to the free text questions). As a result, only one Scottish TSS cited a need for regulatory change.
- 4.13 Lack of resource also appeared to be a potential issue, with three respondents pointing out that it limited the extent to which they could regulate the sector.

Positive Licensing

- 4.14 As noted in Chapter 4, 71 per cent of all TSS respondents would support a proposition that there should be positive licensing of estate agents. Those TSS respondents giving free text replies reiterated their support for positive licensing with comments such as **'I feel that there is a definite need for positive licensing in the Estate Agency Sector.'** Most however did not elaborate substantially their reasons.
- 4.15 Seven out of the 25 respondents, to the question of what regulatory and enforcement changes are needed, specifically mentioned a need for positive licensing, whilst one felt that licensing wasn't necessary but there should at least be a minimum competency requirement and another specifically mentioned the need for formal qualifications.
- 4.16 One respondent believed the effect of licensing would be **'to ensure that only fit and proper persons are able to undertake estate agency work and to raise minimum standards of competency within the industry.'** Another respondent commented that a positive licensing system where TSS are informed of applicants, as with credit licence applications, would enable TSS to keep up to speed with new businesses emerging in their area and in turn give them an opportunity to provide advice, support and guidance. It was suggested by another respondent that licensing should include letting and sales.

ANNEX 1: SUPPLEMENTARY TABLES

Table A.1 How many complaints did your authority receive? / How many investigations did you launch? (Chart 3.2)

	Total (all topics)			
	Civil	%	Criminal	%
Complaints	295,397	90%	121,105	79%
Investigations	34,295	10%	33,976	21%

	Estate agency related			
	Civil	%	Criminal	%
Complaints	1260	76%	949	63%
Investigations	400	24%	565	37%

Base: 66 TSS

Table A.2: In 2008, what were the main sources of complaints about estate agents? (Chart 3.3)

Per cent	Never	Rarely	Sometimes	Often	Very often
Consumers	4%	11%	24%	20%	42%
Other estate agents	25%	32%	28%	14%	1%
Other TSS	42%	49%	7%	1%	1%
Other businesses	42%	50%	7%	1%	
Office of Fair Trading	55%	42%	3%		
Trade press	88%	11%	1%		
Police	91%	8%	1%		

Base: 76 TSS

Table A.3: Of the complaints your authority received in 2008 that related to estate agents, how many times were the following issues the subject of the complaint? (Chart 3.4)

Issue of complaint	Number of complaints about estate agents	Percentage of complaints about estate agents
Trading standards law infringements	585	44%
Disputes over terms and conditions	286	21%
HIP provision (or HR in Scot)	172	13%
Fly Boarding	78	6%
Ancillary services	73	5%
Unjustified/unwarranted demands for fees	65	5%
Failure to pass on offers	24	2%
Other	19	1%
Estate agent had personal interest in the sale	17	1%
Incorrect valuations	17	1%
Total	1336	100%

Base: 44 TSS

Table A.4: Of the investigations your authority launched in 2008 that related to estate agents, how many times were the following possible problems investigated? (Chart 3.5)

Problem investigated	Number of investigations into estate agents	Percentage of investigations into estate agents
Trading standards law infringements	362	48%
Disputes over terms and conditions	135	18%
HIP provision (or HR in Scot)	119	16%
Fly Boarding	53	7%
Ancillary services	34	4%
Unjustified/unwarranted demands for fees	14	2%
Failure to pass on offers	13	2%
Other	13	2%
Estate agent had personal interest in the sale	10	1%
Incorrect valuations	9	1%
Total	762	100%

Base: 40 TSS

Table A.5: Proportion of complaints that became investigations, 2008 (Chart 3.6)

Problem investigated	Proportion of complaints that became investigations
Incorrect valuations	82%
HIP provision (or HR in Scot)	69%
Other	68%
Fly Boarding	68%
Trading standards law infringements	62%
Estate agent had personal interest in the sale	59%
Unjustified/unwarranted demands for fees	52%
Disputes over terms and conditions	47%
Failure to pass on offers	38%
Ancillary services	18%
Incorrect valuations	82%

Base: 40 TSS

Table A.6: Of the investigations conducted in 2008 that related to estate agents, approximately how many times were each of the following outcomes observed? (Chart 3.7)

Outcome	Frequency of occurrences
No further action – insufficient evidence	42%
No further action – no case to answer	26%
Informal resolution – advice to business	21%
Informal resolution – warning given	7%
Referral to OFT	1%
Referral to another enforcement agency	1%
Enterprise Act undertaking provided to TSS / Court	1%
Criminal case brought by TSS	1%
Other	0%

Base: 33 TSS

Table A.7: What steps do you take to raise consumer and estate agents' awareness of the relevant regulations? (Chart 3.8)

	Consumers	Estate agents
Advice on local authority website	41%	36%
Leaflets/pamphlets available at local authority offices	36%	29%
Advice to those who approach you	63%	59%
Events/seminars/roadshows	13%	8%
Visits to estate agents to discuss the regulations	0%	51%

Base: 71 TSS (NB columns sum to more than 100 per cent because TSS could select more than one option)

Table A.8: To what extent do you agree that the following consumer protection legislation is effective in protecting consumers using estate agents? (Chart 3.9)

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	Does not apply
Property Misdescriptions Act 1991	27%	66%	6%	0%	0%	1%
Consumer Protection from Unfair Trading	26%	63%	1%	0%	10%	0%
Unfair Terms in Consumer Contracts	14%	59%	11%	1%	14%	0%
Housing Act (Scotland) 2006*	0%	70%	0%	0%	30%	0%
Estate Agents Act 1979	7%	60%	17%	6%	9%	1%
Statutory Redress scheme	13%	50%	4%	0%	33%	0%
Unfair Contract Terms Act 1977	6%	47%	19%	6%	20%	3%
Supply of Goods and Services Act 1982	3%	49%	19%	7%	16%	7%
Misrepresentation Act 1967	1%	36%	24%	7%	24%	7%
Housing Act 2004	4%	33%	17%	6%	31%	9%
Money Laundering Regulations 2007	7%	26%	9%	1%	54%	3%

Base: 70 TSS. Note: *result shown for just those TSS in Scotland (10 responses)

Table A.9: To what extent do you agree with the following statements? (Figures 3.10 and 3.11)

	Strongly agree	Agree	Disagree	Strongly disagree
The regulations need updating to address new estate agency models (e.g. internet-based estate agents)	20%	70%	10%	0%
There is a need to provide more guidance to consumers about their rights when dealing with estate agents	29%	57%	14%	0%
Trading Standards Officers have the necessary skills to investigate estate agents	17%	69%	14%	0%
Estate agents are aware of their legal obligations	11%	63%	26%	0%
There is a need for positive licensing of estate agents	17%	54%	29%	0%
Trading Standards Officers have the necessary legal powers to investigate estate agents	3%	67%	24%	6%
Estate agents comply with their legal obligations	4%	57%	39%	0%
There is a need to provide more guidance on the law to estate agents	16%	44%	40%	0%
Consumers are more likely to experience problems when using internet-based estate agency models than traditional high street estate agents	6%	49%	43%	3%
Self regulation (e.g. the OEA Code) provides sufficient protection for consumers	1%	9%	70%	20%
Given the introduction of the Consumer Protection from Unfair Trading Regulations 2008, the Property Misdescriptions Act 1991 is no longer needed	7%	16%	63%	14%
Trading Standards Officers have the necessary resources to investigate estate agents	3%	26%	61%	10%
Likelihood of detection under the current enforcement regime is effective in ensuring that estate agents comply with their obligations under the law	1%	31%	61%	6%
Estate agents should be a higher priority for TSS	9%	37%	50%	4%
The current sanctions are an effective deterrent to estate agents breaching regulations	3%	46%	47%	4%

Table A.10: What estate agency related regulatory and/or enforcement changes are needed, and what would be the effect?

<p>What, if any, estate agency related regulatory and/or enforcement changes are needed, and what would be the effect?</p>
<p>Although potentially now covered by the Unfair Trading Regs clarification and introduction of 'criminal' sanctions for traditional 'undesirable practices' etc.</p>
<p>The local enforcement / advice provision relating to the existing legislative framework is lacking. A tailored resource base from the OFT/LACORS would be helpful - providing training materials for estate agents, up-to-date interpretation and guidance.</p>
<p>Not enough TSS resources to police this area effectively. HIPS/EPCs too complex and no benefit seen (and civil penalties ineffective deterrent). TSS has no powers under EPC legislation to require the letting agent to identify the landlord. EPCs - confusion with domestic and commercial property and different requirements.</p>
<p>Clarification on the internet based agents - effect to provide level playing field. Estate agents are now sometimes caught by Cancellation of Contracts made in a consumers Home or Place of Work Regulations - Do they need to be? If so clarification could be useful as to when. Consumer Protection from Unfair Trading Regs - PMA seems to have been made somewhat unnecessary - However more guidance required on the practical implications for agents, A more consistent approach to advice and enforcement by TSS nationally would assist.</p>
<p>In Scotland, and certainly Edinburgh, the vast majority of estate agency business is carried out by solicitors. To this end, we find that compliance levels are high and this is reflected by the small number of complaints that are received by this Service. Accordingly, we do not see the need for further regulation. That said, we fully appreciate that the situation in England and Wales is completely different and looking at this from the perspective of TSS in England and Wales further regulation may well be required.</p>
<p>If there were a positive licensing system where TSS were informed of applicants, as with credit licence applications, we would be aware of new businesses and able to give advice. Since inspection is now quite rare, we will only become aware of a new business through a complaint. Failure to comply with HIPs regulations should attract greater sanctions.</p>
<p>Create proper criminal sanctions for all breaches of HIP, EPC and Estate Agents Act requirements. This ought to increase compliance as the sanctions would be more of a concern to estate agents.</p>
<p>Self regulatory codes must be monitored more closely.</p>
<p>The current situation regarding legislation that applies to estate agents is a mish mash. No one seems to know what is required. Perhaps a consolidation Act might be the answer.</p>

<p>1. Even with the new enforcement powers brought in under CEARS, there is still no right for Trading Standards Officers to enter agents' premises to inspect files and documents to check whether they are complying with the law, unless we suspect a breach. This would be helpful although, given current resources, we may not be able to use such powers very frequently. 2. Although I am not convinced that a licensing system is necessary (although it will effectively happen via the money laundering regime, a requirement for agents to be 'competent' would be of benefit. The provisions of the EAA 1979 regarding minimum standards have never been brought into force.</p>
<p>Formal qualification required for estate agents and licensing.</p>
<p>Simplify the HIPs requirements to make it easier to obtain compliance. Regional access to Financial Advisors to check on irregularities</p>
<p>HIP/EPC legislation needs to be looked at as it is ineffective</p>
<p>In Scotland estate agents are not a problem sector as the majority of estate agents in our area are also solicitors</p>
<p>A proactive licensing scheme - the effect being to ensure only fit and proper persons are able to undertake estate agency work and raising minimum standards of competency within the industry.</p>
<p>In respect of HIPS and EPCs there are considerable deficiencies in the legislation particularly in respect of enforcement powers. Both the Housing Act 2004 powers and the EPC Regs provide a power to require production of the HIP documents and EPC respectively. This is tempered by a 7 day timescale to produce the documents. However the documents themselves do not contain sufficient information to determine if a breach of duty has occurred, it is necessary to have the marketing history, dates of advertising etc. However there are no powers to require production of this information and our experience is that we have been unable to establish with a sufficient degree of confidence whether a breach has been committed or not. We would therefore recommend that the enforcement powers be extended to include documents relating to the receipt of sales instructions, marketing, advertising and the construction/ordering of HIP and EPC. Further HIP packs are rarely dated, although the index contains dates and few contain unique numbers.</p> <p>In conclusion we are considering taking a policy position to the effect that whilst we may investigate complaints where a sale has taken place without either a HIP or EPC we will not take steps other than business advice in respect of any other apparent breach.</p>
<p>Review of the property misdescriptions legislation in line with current practices and experiences encountered by enforcers so far. The effect is a simplified enforcement regime.</p>
<p>Positive licensing regime</p> <p>Clarity of guidance on CPR's and relevance to estate agents.</p>
<p>As indicated above, a positive licensing system to include letting and sales. We would also welcome further clarification of 'consumer landlords' following the recent Foxtons case.</p>
<p>Better powers to inspect client account records without needing concerns.</p>
<p>The requirement to have Home Information Packs should be removed as they have contributed to the collapse of the housing market by deterring property sales.</p>

<p>Making failure to comply with the PMA and CPRs a breach of statutory duty that will enable individual consumers to sue for damages.</p>
<p>A positive licensing regime is needed. Is the PMA still needed? PMA was brought in because the Trade Descriptions Act 1968 (TDA) did not cover property. The CPR's define 'goods' as things attached to land and 'products' as immovable property. Misdescribed property could therefore be an offence under CPRs. PMA links in with the specified matters order, which lists specifics such as room sizes etc. If PMA was repealed, these matters could be dealt with under the general misleading action or omission sections. Not sure whether land itself, e.g. gardens would be caught by CPRs (hence PMA might still be needed). Repealing PMA would help reduce the regulatory burden of business and legislative control would not be lost because of the CPR's (if indeed the CPRs do cover property and gardens).</p>
<p>I feel that there is a definite need for positive licensing in the Estate Agency Sector.</p>

Table A.11: Are there any other issues or comments you would like to add?

<p>Are there any other issues or comments you would like to add?</p>
<p>It is too early to say whether CPR's will be effective and the PMA should stay in the meantime.</p>
<p>I would support greater efforts to regulate this sector - there appears to be little will or resource available to do so locally - but further guidance from central agencies would assist.</p>
<p>We need to set up new financial arrangements to order and take civil penalty payments.</p>
<p>Just to expand on the issues agents are telling me in relation to problems with the new CPRs. What to disclose and when.</p>
<p>This is most probably the biggest financial commitment that any average consumer will make, and the successful outcome of this transaction will determine the financial security of that consumer for the next 2-3 decades.</p>
<p>HIPs would have been better if they had contained a property survey instead of searches and energy certificates as nobody looks at these when buying a house</p>

ANNEX 2: SURVEY QUESTIONNAIRE

This questionnaire is about **Home Buying and Selling**. Please read the [covering letter](#) before completing the questionnaire. We only require one response from each Trading Standards Department. If you have any queries about the Study and this questionnaire, please contact Akosua Serbeh-baah on 0207 211 8213, or by e-mail at: akosua.Serbeh-baah@oft.gsi.gov.uk If you are experiencing technical difficulties with completing the survey online please contact Gregory Haigh on 0207 211 5886, or by e-mail at: greg.haigh@oft.gsi.gov.uk If Greg or Akosua are unavailable, please contact the team at: homebuyingandselling@oft.gsi.gov.uk

Please complete the questionnaire by 5pm on 17th July 2009. **Thank you for your assistance!**

Guidance for completing the questionnaire In the questionnaire please use the following as definitions and guidance. **You may like to print out this page and have it near by as you complete the questionnaire.**

- Where we use the term 'EA' (or EA) we mean all types of estate agency work - whether the business is traditional high street agent, the estate agency element of a mixed sale and letting, agents trading solely over the internet, or the sale of homes through auction. For Scotland the term EA also covers Solicitor EAs.
- The survey covers sales and purchases of homes in the UK and **does not include commercial properties or rentals/letting.**
- Where we have asked for a civil/criminal categorisation please categorise according to whether it was mainly a civil or criminal matter.
- Where we say 'investigation' we mean work done on civil or criminal based matters beyond first step advice.
- Unless otherwise stated the time frame for the information requested is 2008 – that is, the **12 months from 1 January 2008 to 31 December 2008 inclusive.***

- Please use the 'Prev' and 'Next' buttons on the survey (not your browser's 'Back' and 'Forward' buttons) to navigate, otherwise your answers may not be stored.
- If you wish to complete the survey in more than one session please press the 'stop' button. Your progress will be saved as far as the last fully completed question, and you will be returned to your current position in the survey when you log back in.
- If your internet connection fails during completion of the survey, the system may require you to wait ten minutes before you can login again. Your progress will be saved as far as the last fully completed question, and you will be returned to your current position in the survey when you log back in.
- Please note that the survey requests some information on numbers and types of relevant complaints and investigations. It may be easiest to extract and have these easily to hand when completing the questionnaire. If you do not have exact figures please use a best estimate.* If calendar year figures are not available, please use data for the most recent financial year and indicate this in the selection below.

A. Please complete the following contact details:

- 1. Name:
- 2. Job Title:
- 3. Email Address:
- 4. Telephone:
- 5. Name of TSS Authority:

B. Background Information on EAs in your area

Under the LACORS guidance of risk assessment:

	Number
6. How many EAs' premises are in your authority?	
7. How many EAs are greater than medium inspectional risk?	
8. How many EAs do you consider you are Home Authority for?	

In 2008:

	Number
9. How many EAs did you inspect?	
10. How many of the EAs that you inspected were found to be in compliance on the first visit?	

In 2008: *please categorise according to whether it was **mainly** a civil or criminal matter.

	Civil *	Criminal
11. How many complaints did your authority receive in total (i.e. about all topics, not just EAs)?		
12. How many complaints did your authority receive about EAs?		
13. How many investigations did you launch in total (i.e. covering all topics – not just about EAs)?		
14. How many investigations did you launch in relation to EAs?		

15. In 2008, what were the main sources of **complaints** about EAs? *As a guide, please consider: 'Rarely' to mean in less than 25% of cases, 'Sometimes' to be in 26-50% of cases, 'Often' to be in 51-75% of cases and 'Very often' to be in 76-100% of cases. Frequency *

	Never	Rarely	Sometimes	Often	Very often
Consumers (including via Consumer Direct)					
Office of Fair Trading					
Other EAs					
Other businesses (e.g. solicitors, surveyors, search/HIP/HR providers)					
Other Trading Standards Services					
Police					
Trade press					

16. Of the **complaints** your authority received in 2008 that related to EAs, how many times were the following issues the subject of the **complaint**? *Where a complainant identified multiple concerns please count each one - that is, one complaint that covered **both** failure to pass on offers and fly boarding would count as one against **each** concern listed below. Concern raised by complainant

	Number of complaints*
EA had personal interest in the sale	
Failure to pass on offers	
Fly Boarding (including failure to take down signs after sale)	
HIP provision (or Home Report in Scotland)	
Unjustified/unwarranted demands for fees (e.g. for to pay a second fee after changing agent)	
Disputes over terms and conditions	
Incorrect valuations (e.g. suspected overvaluation to secure client)	
Allegations of trading standards law infringements (e.g. PMA and CPRs)	
Ancillary services e.g. Mortgage advice	

17. Of the **investigations** your authority launched in 2008 that related to EAs, how many times were the following possible problems investigated? *Where multiple problems were identified please count each one - that is, an investigation that looked at **both** failure to pass on offers **and** at fly boarding would count as one against **each** problem listed above

Potential problem investigated

	Number of investigations*
EA had personal interest in the sale	
Failure to pass on offers	
Fly Boarding (including failure to take down signs after sale)	
HIP provision (or Home report in Scotland)	
Unjustified/unwarranted demands for fees (e.g. for to pay a second fee after changing agent)	
Disputes over terms and conditions	
Incorrect valuations (e.g. suspected overvaluation to secure client)	
Allegations of trading standards law infringements (e.g. PMA and CPRs)	
Ancillary services e.g. Mortgage advice	

18. Of the **investigations** conducted in 2008 that related to EAs, approximately how many times were each of the following **outcomes** observed?

	Number of investigations where this was the main outcome
No further action – insufficient evidence	
No further action – no case to answer	
Informal resolution – advice to business	
Informal resolution – warning given	
Referral to OFT	
Referral to another enforcement agency	
Enterprise Act undertaking provided to TSS / Court	
Criminal case brought by TSS	

C. Enforcement and Protections

19. If your authority took **enforcement** action (undertakings, court order, criminal prosecution) against EAs in 2008, please state how often the applicable **legislation** was used. If the Act does not apply (for example, the Housing Act 2004 does not apply in Scotland) please simply mark as '0'. Legislation

	Used in how many cases?
EAs Act 1979	
Property Misdescriptions Act 1991	
Money Laundering Regulations 2007	
Consumer Protection from Unfair Trading Regulations 2008 / TDA 68	
Supply of Goods and Services Act 1982	

Misrepresentation Act 1967	
Unfair Contract Terms Act 1977	
Unfair Terms in Consumer Contracts Regulations 1999	
Housing Act 2004	
Housing Act (Scotland) 2006	

20. What steps do you take to raise consumer and EAs' awareness of the relevant **regulations** [please tick all that apply]

	Consumers	EAs	No Answer
Advice on local authority website			
Leaflets/pamphlets available at local authority offices			
Advice to those who approach you			
Events/seminars/roadshows			
Visits to EAs to discuss the regulations			
None			

21. To what extent do you agree that the following **consumer protection legislation** is effective in protecting consumers using EAs? **Legislation**

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know	Does not apply
EAs Act 1979						
Statutory Redress scheme (Consumer Estates Consumers, EAs and Redress Act 2007)						
Property Misdescriptions Act 1991						
Money Laundering Regulations 2007						
Consumer Protection from Unfair Trading Regulations 2008						
Supply of Goods and Services Act 1982						
Misrepresentation Act 1967						
Unfair Contract Terms Act 1977						
Unfair Terms in Consumer Contracts Regulations 1999						
Housing Act 2004						
Housing Act (Scotland) 2006						

22. To what extent do you agree with the following statements? **Statement**

	Strongly agree	Agree	Disagree	Strongly disagree
There is a need to provide more guidance to consumers about their rights when dealing with EAs				
EAs are aware of their legal obligations				
EAs comply with their legal obligations				
There is a need to provide more guidance on the law to EAs				
Consumers are more likely to experience problems when using internet-based estate agency models than traditional high street EAs				
The regulations need updating to address new estate agency models (e.g. internet-based EAs)				
Given the introduction of the Consumer Protection from Unfair Trading Regulations 2008, the Property Misdescriptions Act 1991 is no longer needed				
Self regulation (e.g. the OEA Code) provides sufficient protection for consumers				

There is a need for positive licensing of EAs				
Trading Standards Officers have the necessary skills to investigate EAs				
Trading Standards Officers have the necessary resources to investigate EAs				
Trading Standards Officers have the necessary legal powers to investigate EAs				
Likelihood of detection under the current enforcement regime is effective in ensuring that EAs comply with their obligations under the law				
The current sanctions are an effective deterrent to EAs breaching regulations				
EAs should be a higher priority for TSS				

What, if any, EA related regulatory and/or enforcement changes are needed, and what would be the effect?

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	Yes	No
23. Do you have any useful EA related examples and case studies demonstrating problems with enforcement that you would be willing to share with the OFT?		

23.b Are there any other issues or comments you would like to add?

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	Yes	No
24. Would you be willing to be contacted by the Study Team to explore the issues in more detail?		