



*Eatons*

## Buying a House and Consumer Protection

With the advent of Home Information Packs (HIPs), the appointment of an Ombudsman for Estate Agents (OEA), the laying down in statute of the duties of estate agents and the recent passing of the Consumers, Estate Agents and Redress Act 2007 (CEARA), a property purchaser might reasonably conclude that their interests are strongly protected under the law.

This view is likely to be bolstered by an awareness of the existence of the National Association of Estate Agents' (NAEA) own disciplinary and redress scheme. However, the assumption that a buyer's interests are well protected is not as well founded as you might think.

The main function of the HIP is to collect information (searches, title details and so on) about the property and its energy efficiency. It is supplied by a provider independent of the owner of the property. The rights of the property purchaser are primarily protected by making the HIP provider carry insurance to meet claims for losses suffered by buyers as a result of incorrect HIP content.

The estate agent's main duty is to the vendor of the property, so the regulations under which they operate relate mainly to their relationship with the vendor. They are bound not to discriminate against purchasers who do not wish to buy other services they offer and to declare a personal interest to any buyer. It is important to note that even when the sales particulars of a property are inaccurate, the right of redress may be limited. Recently, the court ruled that an agent was not liable for providing false information to the effect that a property included a substantial area of land which was not in fact registered in the vendor's name. The estate agent had simply accepted without enquiry that the area of land was part of the property and included it in the sale particulars. The court considered that any purchaser would have made sure that a proper search of the title was done and in any event the offer for sale was 'subject to contract' – placing the onus on the purchaser to make sure their enquiries were carried out carefully!

The Ombudsman service deals with claims against estate agents, but its powers are limited and the maximum award that can be made is £25,000. In practice, most awards are a small fraction of that amount. Members of the NAEA must belong to the OEA redress scheme.

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Whilst the CEARA requires estate agents to belong to an approved redress scheme, the tendering process for operation of the scheme has not yet been completed and it is not expected to be fully implemented until October 2008. The relevant section of the Act itself mainly relates to record keeping and inspection of records issues and the grounds under which estate agents can be warned or banned. There is no specific mechanism for compensating consumers.

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The best protection for a buyer is to use a solicitor who will take care to make sure that everything is as it should be. A person's house is normally the most valuable asset they will ever own and, as such, it makes sense to ensure that the purchase is carried out in a professional way.

Eatons can assist in all property matters and disputes arising from property and other transactions.

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