

14/05/13

The European Commission is preparing a Communication on regulated professions. It has asked CEPI to help by providing answers to specific questions that relate to property agents and property managers.

The German Ministry of Finance is also working on revised rules pertaining to anti-money laundering and asked CEPI to provide information on the implementation of the existing Directives.

**Please answer the following questions for your country.**

The CEPI Secretariat is available for any further information you may need.

## 1. Definitions

The latest General Meeting approved following definitions:

**Real estate professional:** natural person or a legal entity which, in compliance with all legal and customary regulations applicable in his/her/its country, provides activities regularly, as an independent contractor and on behalf of third among which:

- provision of intermediary services such as sale, purchase, exchange, rent or cession of real estate properties, real estate rights and goodwill;
- management and conservation of common parts of a building or group of buildings in co-ownership;
- management of real estate properties and rights other than above;
- Valuation of properties.

**Property agent:** natural person or legal entity which, in compliance with all legal and customary regulations applicable in his/her/its country and as an independent contractor provides intermediary services such as sale, purchase, exchange, rent or cession of real estate properties, real estate rights and goodwill on behalf of third.

**Property manager:** natural person or legal entity which, in compliance with all legal and customary regulations applicable in his/her/its country and as an independent contractor, is charged with operating a real estate property or its common parts on behalf of an owner or community of owners.

According to the CEPI Competence profile, **tasks of the Property Agent** include the following:

- Prospecting
- Contracting with the client(s)
- Making a dossier
- Marketing and advertising a property
- Facilitating a transaction
- Managing an SME
- Promoting professionalism

According to the CEPI Competence profile, **tasks of the Property Manager** include the following:

- Prospecting the market
- Contracting with a client
- Managing administrative and legal services
- Managing financial services
- Managing technical services
- Managing additional services
- Managing an SME
- Promoting professionalism

## 1.1. Property agents

1.1.1 Are there differences with the definition and tasks of property agent above as perceived in your country? If so please indicate these differences:

(I) we find the references to independence in all of the definitions, including the definition of a Property Agent, difficult to understand. Certainly in the UK property agents are paid by one or more parties and act under the instructions of those party(s) rather than acting independently. The CEPI Competence profiles for Property Agents and Property Managers both refer to contracting with a client or client(s) which conflicts with the notion of independence.

We appreciate that it is necessary for the definitions to exclude situations where people deal with their own property; however this issue is deal with separately in all of the definitions. The definitions of Real Estate Professional and Property Agent both refer to 'on behalf of a third' [party], and the definition of Property Manager refers to 'on behalf of an owner or community of owners.' Therefore we cannot understand why the references to independence are necessary or what they supposed to add.

For the sake of clarity, please note that sales agents in the UK are usually instructed by sellers only, and therefore act in accordance with the seller's instructions (rather than independently). (There are also some relocation agents in the UK, and the membership association for these property search agents is the Association of Relocation Agents).

UK lettings agents are usually instructed by landlords, although they may receive payment from tenants as well. Again lettings agents act in accordance with instructions received from landlords rather than independently.

It may be helpful to note that implementation of the Unfair Commercial Practices Directive in the UK has extended agents duties of disclosure to non clients (buyers and tenants). See Consumer Protection from Unfair Trading Regulations (2008).

(ii) There is a statutory definition of estate agency in s.1 of the Estate Agents Act (1979) which includes real property auctioneers. We are uncertain whether the reference to sales in your definitions of Real Estate Professional and Property Agent are also intended to cover auctioneers.

(The UK's statutory definition will change as regards so called 'internet agents' on 1 October 2014, as outlined in section 7 of this survey).

(iii) At present there is no statutory definition of a lettings agent, however such a definition may need to be developed in the context of implementation of s.70 of the Enterprise and Regulatory Reform Act (2013). Once implemented this provision will require lettings agents to join a consumer redress scheme. (This is already a requirement for PPD members of ARLA, see 5.1). We are unsure whether block mangers will be covered.

1.1.2 Can the property agent be in charge of facilitating rental transactions in your country?

Yes. We refer to these agents as lettings agents who may deal with the initial let only or who may go onto to manage the let as it proceeds.

1.1.3 Do property agents have functions on closing contracts in the name of one of the contracting parties or which are regarded as participation on the transfer of funds? If so, give details.

Sales Agents

(i) No functions on closing contracts.

(ii) May have a role as regards transfer of funds from buyer to seller, e.g. the property agent may take a deposit from the buyer, and may forward it direct to the seller or to the seller's legal representative at the appropriate time.

Lettings Agents

- (i) May close contracts (tenancy agreements) on behalf of landlords if authorised to do so.
- (ii) Often do have a role in relation to transfer of funds between landlords and their tenants.

Property Auctioneers

- (i) Often close contracts on behalf of sellers.
- (ii) Often take deposits from buyers on behalf of sellers.

1.1.4 Do property agents have a public role which is fulfilled in other countries by notaries, solicitors or courts? If so, give details.

No.

1.2 Property managers

1.2.1 Are there differences with the definition and tasks of property manager as perceived in your country? If so please indicate these differences:

Your definition covers lettings agents who may continue to manage a property following the initial rental which they have facilitated.

Your definition also covers block managers who manage communal parts. Many block managers belong to the Association of Residential Managing Agents.

1.2.2 Can the property manager be in charge of facilitating rental transactions in your country?

Yes- please see our response to 1.2.1.

1.2.3 Can the property manager be in charge of facilitating rental transactions in your country?

Duplication of Q1.2.2.

1.2.4 Do property managers have functions on closing contracts in the name of their clients, one of the contracting parties or which are regarded as participation on a transfer of funds? If so, give details.

As lettings agents fall under your definition of Property Managers our response to 1.1.3 is relevant.

The Association of Residential Managing Agents may be able to provide further detail as regards the activities of block managers.

**2. Data**

2.1 Real estate professionals

2.1.1 What is the number of property agents affiliated to your association?

Approximately 15,000 individuals. (Note that some of the same individuals will be included in the figure provided at 2.1.2)

2.1.2. What is the number of property managers affiliated to your association?

Approximately 7700 individuals. (Note that some of the same individuals will be included in the figure provided at 2.1.1)

2.1.3. For each profession, what percentage of the profession as a whole does your association represent in your country?

Unknown. The best information available about the number of sales agents in the UK, which fall under the statutory definition as described at 1.1.1, is the information available from The Property Ombudsman. This is because all estate agents have to register for consumer redress. However even this is incomplete because there is a second consumer redress scheme.

The true size of the other sectors is even more opaque, e.g. there is no capture of the number of lettings agents.

There are a number of other professional associations in the UK including; Association of Residential Property Managers, Association of Relocation and Royal Institution of Chartered Surveyors. Some of our members also belong to other professional associations.

## 2.2 Real estate markets

2.2.1 What is the housing stock in your country? How quickly does it grow?

We suggest you make reference to the statistics publically available from the Department for Communities and Local Government.

2.2.2 What is the number of households? Is it developing quickly?

We suggest you make reference to the statistics publically available from the Department for Communities and Local Government.

2.2.3 How is the sales supply developing?

Supply is heavily influenced by demand, and demand is influenced by the mortgage market, which at the moment is restricting access to finance. There are also regional differences, e.g. there is a lack of supply in central London.

2.2.4 How is the rental supply developing?

We suggest you make reference to the statistics publically available from the Department for Communities and Local Government. Overall the private rented sector has grown in recent years, in fact in some areas there is an oversupply of rental properties.

2.2.5 How is the number of transactions developing?

Sales

The Land Registry provides publically available transaction data on a monthly basis.

Rental

We believe transactions are decreasing because tenants are tending to stay longer (which may be a reflection of the lack of affordable finance required to buy, see 2.2.3).

2.2.6 What is the size of the social sector?

The National Housing Federation may be able to provide information. We believe the social sector is about the same size as the private rented sector.

2.2.7 What are the price developments in the sales sector?

Depends on the region.

2.2.8 What are the price developments in the rental sector?

Depends on the region.

2.2.9 What is the number of mortgages realized over time?

The Council of Mortgage Lenders provides publically available statistics.

2.2.10 Is it becoming more or less affordable for households to buy / rent a house? Explain

Probably less, with regional variations.

2.2.11 Do national authorities provide fiscal incentives to support real estate transactions? Explain

The UK government has tried to assist with the problem of lack of affordable housing through a number of schemes, some of which have limited to so called public sector 'key workers'. The Council of Mortgage Lenders web site provides information on the latest Help to Buy scheme which was announced in March 2013 as part of the national budget.

2.2.12 What does make your national market very specific and different from other ones? Explain

Despite the growth in the private rented sector, the UK may have fewer lifetime renters than other member states. The UK may also have stricter planning controls than some other member states, and this problem is aggravated by a lack of land in certain key market areas. The Town & Country Planning Act (1990), s.106, is intended to try and mitigate these problems to an extent by allowing local authorities to require developers to include a percentage of affordable housing in new developments.

### 3. Regulation

3.1. There are different forms of regulation. We need to try and understand the differences. If the real estate professions are regulated in your country please give details of what legal provisions regulate protection of the title, admission to the profession, exercise of the professions and possible other regulatory documents.

There are no barriers to entry into the market, anybody can practice as an estate agent or lettings agent. However the Office of Fair Trading can ban or warn sales agents ( this can be described as 'negative' licensing).

3.2 Is the title of property agent or property manager (or equivalent) protected in your country?

The equivalent UK titles are not protected.

3.3 If the answer to the above is positive, are some activities reserved to the holder of the title? Please give details.

N/A

3.4 Does a person who intends to provide real estate services need to register and so make himself/herself known from the public authorities? Please explain

See 2.1.3. Sales agents who fall under the statutory definition of an estate agent must register for consumer redress. There are a choice of redress schemes, but The Property Ombudsman is by far the largest.

3.5 Is the access to the profession of property agent or property manager regulated?

There is no barrier to initial access, but see 3.1. regarding the Office of Fair Trading and negative licensing.

3.6 If the answer to 3.5 is positive, what are the required qualifications, if any? Please detail

N/A

3.7 If the answer to 3.5 is positive, what are other requirements other than qualifications, if any? Please detail

Repeat of 3.6.

3.8 If the answer to 3.5 is positive, what are the modalities and administrative procedures to obtain permission to access the market?

N/A

3.9 If the answer to 3.5 is positive, what risks does regulation try to cover? Explain

3.5. is limited to access only. Any regulation is bound to address risks to public protection.

3.10 Are (some) education and training programmes to become real estate agent or manager regulated and officially recognized in your country? Explain

There is no bar to initial access to work as a real estate agent or manager, including no educational requirements.

The information below relates to qualifications provided by NFOPP Awarding Body, which are voluntarily taken. Information about other recognised education needs to be addressed to the appropriate organisations.

NFOPP Awarding Body is regulated by the Office of Qualifications and Examinations Regulation ( OFQUAL) and offers regulated Property Qualifications.

Members of the division of NFOPP (National Association of Estate Agents, Association of Residential Lettings Agents, Institution of Commercial and Business Agents, and National Association of Valuers and Auctioneers ( real property)), are requested to hold a Level 3 regulated qualification within their specific area of property work. The NFOPP Awarding Body Technical Awards are Level 3 and they all sit within the Qualifications Credit Framework , and therefore are accredited and regulated by OFQUAL.

NFOPP Awarding Body also provides Level 4 qualifications in Residential Estate Agency, Residential Lettings & Property Management and also Commercial Property Agency, which will become regulated by OFQUAL before the end of 2013.

3.11 What is the relevant law which obliges estate agents to comply with money laundering rules?

The Proceeds of Crime Act (2002) covers reporting obligations, which in general terms apply to all agents. The Money Laundering Regulations ( 2007) covers preventative measures, and these only apply to sales agents.

3.12 What are the rules and obligations on the customer identification process?

The Money Laundering Regulations (2007) applies to sales agents, as covered by the statutory definition. This includes real property auctioneers, but excludes lettings agents and block managers.

The NFOPP, in association with a number of other professional bodies, has issued guidelines for its members about how to comply with the Money Laundering Regulations, including customer due diligence. This guidance is publically available. This guidance confirms that the UK defines the customer as the person who pays the agent, who is generally the vendor.

#### **4. Certification systems**

4.1 Please give details of any certification schemes relevant to property agents or property managers in your country:

There is nothing compulsory.

4.2 Does your association play a role regarding the certification of the RE professions? If so, please explain

Membership of our divisions is voluntary only.

4.3 Do public authorities give recognition to certification schemes for property agents and/or managers in your country?

No formal recognition.

## 5. Self-regulation by professional organisations

5.1 Please give details of any example of self-regulation by your association relevant to estate agents or property managers:

Information about our qualifications requirements is provided at 3.10.

Our members who are Principals, Partners, or Directors (PPDs) must also:

- (i) Provide us with an annual accountants report
- (ii) Evidence Professional Indemnity cover
- (iii) Contribute to a Client Money Protection scheme
- (iv) Belong to a redress scheme ( for some of our members this is also a legal requirement)

The divisions of the NFOPP have professional codes which apply to both to all of our members ( employees and PPDs) . If appropriate disciplinary action can be taken which can result in expulsion, but this does not prevent the agent from working. ( Only the Office of Fair Trading can prevent sales agents from working if it bans them).

5.2 Do public authorities in your country facilitate self-regulatory initiatives for property agents and managers? Please detail

We would like the Office of Fair Trading to let us know when they ban or warn one of our members, but in reality this flow of information is patchy at best.

We have a strong relationship with The Property Ombudsman, which could be called a public authority.

5.3 Do public authorities in your country give recognition to self-regulatory schemes and measures for property agents and managers? Please detail

Not at the moment but we hope that as a result of the 4<sup>th</sup> Money Laundering Directive we will soon be able to AML supervise our own members. If this proceeds then our position as an AML supervisor will need to be formally agreed by HM Treasury.

## 6. Deregulation

6.1 If one or both professions in your country have been deregulated, what are the reasons which have been given for this? Please give details

They have never been regulated.

6.2 If one or both professions in your country have been deregulated, what are the reasons which you think did lead to this? Please give details

See 6.1.

6.3 Are there reasons to have some regulation in place? Please explain

Our view is sales agent should be subject to stronger regulation ( the Office of Fair Trading currently has what is known as a negative licensing scheme, but this is insufficient). We also think that lettings agents ( probably including block managers) should also be regulated. They requirements which we think are appropriate for all sales and lettings agents are outlined in 5.1 above, in other words we believe that the requirements we apply to our members should apply to all agents.

We take very opportunity to explain why we think this is justified, including in all of our responses to government consultations which are publically available from the Campaigns areas of the NFOPP website, and from the divisional web sites. Included in these responses is the evidence at the Association of Residential Lettings Agents recently gave to the Communities and Local Government Select Committee on the Private Rented Sector, see below.

In general terms we feel strongly that there should be proper controls over those who help others deal with the biggest purchase of their lives. Lettings also involves vast quantities of client funds which is one of a number of reasons why we think lettings agents should be regulated. In fact we have had some successes in this area lately. We lobbied in favour of the extension of consumer redress towards all lettings agents, as outlined at 1.1.1. (iii). The Select Committee referred to above reported on 18 July 2013, and they are in favour of the regulation of lettings agents, albeit at the basic level that currently applies to estate agents.

## 7. Impact of the internet and specialised websites

7.1 What is the main impact of the web tools and specialised websites on the RE market? Please explain

Property portals (online advertising portals) are extremely popular.

The government also wishes to promote new types of agency, which is why internet agents are being excluded from the Estate Agency Act (1979). See 1.1.1 (ii) above.

7.2 What is the impact of the web tools and specialised websites on the business model of property agents? Please give details

New forms of internet agency will of course threaten traditional agents. Ultimately estate agents may cease to operate on high streets.

Completed by.....Liz Richards.....

For member association.....National Association of Estate Agents, Association of Residential Lettings Agents, Institution of Commercial and Business Agents, and National Association of Values and Auctioneers ( real property). The National Federation of Property Professionals (NFOPP) is the umbrella organisation for these professional bodies.....

Date: 19 July.....2013

Thank you for your replies!